CITY OF SANTA CLARA

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CITY COUNCIL MEETING

AGENDA

A complete agenda packet with back-up reports is available at either City Library beginning Saturday before the Tuesday meeting or at the City Clerk's Office on weekdays. A complete agenda packet is also available at the City Council meeting and on the City's website.

November 18, 2014

5:00 pm
Study Session
Council Chambers
Single-Family and Duplex Residential Design Guidelines

6:00 pm
Closed Session
Council Conference Room
Conference with Labor Negotiators
Pursuant to Government Code Section 54957.6
City designated representatives: Julio J. Fuentes, City Manager (or designee)
Employee Organization(s):
Unit #1 - Santa Clara Firefighters Association, IAFF, Local 1171
Unit #2 - Santa Clara Police Officer's Association
Unit #3 - IBEW Local 1245 (International Brotherhood of Electrical Workers)
Unit #4 - City of Santa Clara Professional Engineers
Units #5, 7 & 8 - City of Santa Clara Employees Association
Unit #6 - AFSCME Local 101 (American Federation of State, County and Municipal Employees)
Unit #9 - Miscellaneous Unclassified Management Employees
Unit #9A - Unclassified Police Management Employees
Unit #9B - Unclassified Fire Management Employees
Unit #10 - PSNSEA (Public Safety Non-Sworn Employees Association)
and
Conference with Real Property Negotiator
Pursuant to Government Code Section 54956.8
Property: APN 104-03-036, APN 104-03-038, APN 104-03-039, APN 104-03-040
Negotiating Party(ies): Kurt Wittek, Montana Property Group, LLC;
William A. Witte, President, Related California
City Negotiator: Julio J. Fuentes, City Manager (or designee)
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property
(provisions, price and terms of payment)
and

Conference with Real Property Negotiator
Pursuant to Government Code Section 54956.8
Property: APN 290-26-029
Negotiating Party(ies): Bruce Wigo, International Swimming Hall of Fame
City Negotiator: Julio J. Fuentes, City Manager (or designee)
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property
(provisions, price and terms of payment)
and
Conference with Legal Counsel - Existing Litigation
Pursuant to Government Code Section 54956.9(a)
Vinod K. Sharma, et al v. Successor Agency to the
Redevelopment Agency of the City of Santa Clara, et al.
Sacramento County Superior Court Case No. 34-2013-80001396
and
Governing Board of the Successor Agency to the City of Santa Clara Redevelopment Agency
Conference with Legal Counsel - Existing Litigation
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Redevelopment Agency of the City of Santa Clara, et al.
Sacramento County Superior Court Case No. 34-2013-80001396

REGULAR MEETING
7:00 PM in the City Hall Council Chambers

APPEAL OF HEARING DECISIONS OF THE CITY COUNCIL MUST BE MADE TO THE SUPERIOR COURT WITHIN 90 CALENDAR DAYS OF FINAL ACTION. BECAUSE OF THE AGENDA PROVISION FOR RECONSIDERATION, FINAL ACTION IS DEEMED TO OCCUR AT THE END OF THE NEXT REGULAR MEETING PURSUANT TO CITY COUNCIL POLICY (P&P 042). (CODE OF CIVIL PROCEDURE SECTION 1094.6)

1. PLEDGE OF ALLEGIANCE AND STATEMENT OF VALUES:

2. ROLL CALL:

3. APPROVAL OF MINUTES:

A. October 14, 2014.

B. October 16, 2014 - Special Meeting.

4. CONTINUANCE/EXCEPTIONS:

A. The Public Hearing to obtain public comments for the City of Santa Clara's Housing and Community Needs for its Five Year Consolidated Plan (2015-2020) and Fiscal Year 2015-16 Annual Plan for the Use of Federal Community Development Block Grant (CDBG) and Home Investment Partnerships Act (HOME) Entitlement Funds and on a substantial amendment to the Citizen Participation Plan for Federal Entitlements has been continued.

5. SPECIAL ORDER OF BUSINESS:

6. UNFINISHED BUSINESS:

A. Possible Reconsideration of Actions Taken at Immediately Preceding Meeting. (See Summary of Actions for potential reconsideration, which is attached to the posted Agenda and is in the Agenda Packet Binder in the Council Chambers.)

B. Pass to print an Ordinance amending Chapter 17.35 (Park and Recreational Land) of Title 17 (Development) of the City Code to make minor modifications to the parkland dedication requirement.

7. CONSENT CALENDAR:

[Items listed on the CONSENT CALENDAR are considered routine and will be adopted by one motion. There will be no separate discussion of the items on the CONSENT CALENDAR unless discussion is requested by a member of the Council, staff, or public. If so requested, that item will be removed from the CONSENT CALENDAR and considered under CONSENT ITEMS PULLED FOR DISCUSSION.]

A. **Departmental Reports**

1. Approval of the Final Map for Tract 10252 for a single lot subdivision for the Planned Development (PD) of 28 residential condominiums and four commercial condominiums on an approximately 0.67 acre parcel located at 1460 Monroe Street by Silicon Sage Builders, LLC and authorization to make minor modifications, if needed, and record the Final Map with the County Recorder (APN 269-03-067, 068, 075, 142, 143 and 147).
2. Approval for the use of City Water Utility forces for the water service connections at 1111 Bellomy Street and 1730 Emig Court.
3. Approval for the use of City Electric forces for the installation of facilities at 2718 and 2724 Pruneridge Avenue; 3299 Tasman Drive; and 2620 Augustine Drive.
4. Note and file the Departmental Activity Report for the month of August 2014.
5. Approval to set a Public Hearing on December 9, 2014 to consider a Resolution granting a Non-Exclusive Franchise Agreement for the hauling of industrial refuse and recyclables with Waste Connections of California, Inc., dba GreenTeam of San Jose.
6. Acceptance of the Santa Clara Convention Center and Convention-Visitor's Bureau (SCCC-CVB) Activity Report for Fiscal Year 2014-15 First Quarter, as submitted by the SCCC-CVB.
7. Acceptance of a gift to the City of a police canine by allowing the Sean M. Walsh K-9 Memorial Foundation to pay the vendor with donated funds and authorization to transmit a letter of appreciation.
8. Approval of the Bicycle and Pedestrian Advisory Committee (BPAC) recommendation to appoint James Lucas and Abigail Shull for terms expiring on December 31, 2017.

9. Acceptance of the work performed by SummerHill Winchester LLC for Site No. 6707, EP 13031, Tract 9972 - Public Improvements located at 90 N. Winchester Boulevard and authorization to record the Notice of Completion with the County Recorder.

B. **Agreements**

1. Approval of an Agreement for the Performance of Services with Electrical Maintenance Consultants, in an amount of $50,000 per year for a total not to exceed amount of $150,000, to provide generator inspection, testing and cleaning at the Donald Von Raesfeld (DVR) Power Plant.
2. Approval of a Legal Services Agreement with Goldfarb & Lipman LLP, in an amount not to exceed $50,000, for legal services to the City of Santa Clara acting in its capacity as the Successor Agency to the Redevelopment Agency of the City of Santa Clara.
3. Approval of a Legal Services Agreement with Goldfarb & Lipman LLP, in an amount not to exceed $50,000, for legal services to the City of Santa Clara.
4. Approval of an Agreement for the Performance of Services with Flexible Lifeline Systems, Inc., in an amount not to exceed $149,343, to provide fall protection systems on four rooftops at the Donald Von Raesfeld (DVR) Power Plant.
5. Approval of an Affordable Housing Agreement with 1460 Monroe, LLC for the provision of three (3) Below Market Purchase (BMP) units within a 28-unit housing project at 1460 Monroe Street.
6. Approval of an Affordable Housing Agreement with 2585 El Camino Real, LLC for the provision of six (6) Below Market Purchase (BMP) units within a 60-unit housing project at 2585 El Camino Real.
7. Approval of an Agreement for Design Professional Services with ELS Architecture and Urban Design, in an amount not to exceed $850,000, for schematic architectural design, engineering, strategic communication, financial analysis and California Environmental Quality Act (CEQA) services and authorization to make minor modifications, as necessary.
8. Approval of an Agreement for Professional Services with RMC Water and Environmental, in an amount not to exceed $309,007, to provide consulting services for the Sanitary Sewer Master Plan (Update) Project and authorization to make minor modifications, as necessary.
9. Approval of Call No. 14-5 for Professional Services with Milton Security Group LLC, in an amount not to exceed $111,000, for Advanced Metering Infrastructure (AMI) Programmer Analysts to assist the System Support Division of the Electric Department.

10. Approval of a Software Maintenance Agreement with ABB, Inc., with a start date retroactive to September 1, 2014, in the amount of $121,152 for the first year and a total not to exceed amount of $363,456, to provide continued maintenance and support for Silicon Valley Power's (SVP) Electric Supervisory Control and Data Acquisition (SCADA) System.
11. Approval of a Capital Loan Agreement with Santa Clara Methodist Retirement Foundation to provide $67,500 for the hot water piping system upgrade at Liberty Tower, 890 Main Street.
12. Approval of an Agreement and Covenant Running with the Land with SummerHill Winchester LLC to retain and maintain private street light poles, mailboxes, and non-standard driveway approaches within Worthington Circle at 90 N. Winchester Boulevard and authorization to record the Agreement with the County Recorder (Adjacent to APN 303-53-001 thru 110, SC 18,456).
13. Approval of the Affordable Housing Agreement with 555 Saratoga LLC for the provision of one (1) Below Market Purchase (BMP) unit and payment of a BMP in-lieu fee for a fractional unit within a 13-unit housing project located at 555 Saratoga Avenue.
14. Approval of Change Order No. 2 to Public Works Contract 2129A, in the amount of $34,648.84, for the Raymond Substation Building Pad, Roadway and Substructure Construction with Anderson Pacific Engineering Construction, Inc.; approval of Change Order No. 1 to Public Works Contract 2129B, in the amount of $17,764, for the Raymond Substation Storage Structure Construction with Guerra Construction Group; and authorization to execute any additional Change Orders related to the project not to exceed the Council approved appropriation.

C. Reports for Information and Possible Action

1. Notice of Availability of Community Development Block Grant (CDBG) and Home Investment Partnerships Act (HOME) Entitlement Funds and Availability of Fiscal Year 2015-16 Application Form.

D. Minutes to Note and File

1. Cultural Commission - August 4, 2014.
2. Youth Commission - May 13, 2014.
3. Youth Commission - August 19, 2014.
4. Cultural Commission - July 7, 2014.

E. **Routine Written Petitions for Approval**

1. Ken Simons, Standard of Excellence - 52 N. Winchester Boulevard: Request for a Special Permit to allow use of a temporary showroom trailer for a one-day parking lot event. Staff Recommendation: Approval (retroactive), subject to conditions (PLN2014-10693).

8. ITEMS SET FOR HEARING:

[Planning Commission items not being appealed, or which are not related to an appeal, will be heard under BOARDS AND COMMISSIONS FOR ACTION.] If you challenge a City Council land use decision in court, you may be limited to raising only those issues you or someone else raised at this hearing before the City Council or in written correspondence delivered to the City at, or prior to, the City Council hearing on the matter. (California Government Code Section 65009)

A. **Santa Clara Square Project (Office Phase II and III), a 27.5 acre project located at 2465, 2505, 2525, 2575 Augustine Drive and 3393 and 3333 Octavius Drive**
Adoption of a Resolution to approve Addendum No. 3 to the Augustine-Bowers Office Park Environmental Impact Report (EIR); adoption of a Resolution approving the General Plan Amendment from Light Industrial to High Intensity Office/R&D; adoption of a Resolution approving a Rezone from Light Industrial (ML) to Commercial Park (CP) to allow the construction of up to 1,243,300 square feet of office space out of a total (inclusive of Office Phase I and Retail) of up to 2,000,100 square feet of development, subject to conditions; adoption of a Resolution approving the Vesting Tentative Parcel Map for 27.5 acres where 6 parcels will be combined to create 3 parcels, subject to conditions; pass to print an Ordinance to approve the Third Amendment to the Development Agreement with The Irvine Company LLC, 2525 Augustine Drive LLC and 3255 Scott Boulevard LLC; and refer the project to the Architectural Committee for the final architectural review (PLN2014-10577, PLN2014-10578, PLN2014-10579, PLN2014-10580, PLN2014-10581 and CEQ2014-01181).

B. **166 Saratoga Avenue**
Adoption of a Resolution to disapprove the Mitigated Negative Declaration (MND) and disapprove a Mitigation Monitoring or Reporting Program for 33 dwelling units; adoption of a Resolution to deny a rezone from R1-6L (Single Family Residential) to PD (Planned Development) and adoption of a Resolution to deny a Vesting Tentative Subdivision Map for 33 Residential Lots; and adoption of a Resolution to deny a General Plan Amendment from Community Mixed Use to Medium Density Residential (PLN2013-10111 and CEQ2014-01169).

C. Adoption of a Resolution approving the Single Family and Duplex Residential Design Guidelines (PLN2013-09855).

9. WRITTEN PETITION:

A. John Marinshaw: Comments of concern regarding a) supplemental parking for Pomeroy School Open House and other events, b) Street Department communication regarding the City's Annual Clean-Up Campaign; and c) City Manager's accessibility.

10. BOARDS AND COMMISSIONS FOR ACTION:

A. Facilities & Honorary Recognition Ad Hoc Committee - Minutes of July 10, 2014: Request to note and file.

1. Adoption of a Resolution declaring the new park site located at Worthington Circle in the Mid Town Village development "Thomas Barrett Park".

11. CONSENT ITEMS PULLED FOR DISCUSSION:

12. PUBLIC PRESENTATIONS:

This item is reserved for persons to address the Council on any matter not on the agenda that is within the subject matter jurisdiction of the City. The law does not permit Council action on, or extended discussion of, any item not on the agenda except under special circumstances. The Council, or staff, may briefly respond to statements made or questions posed, and the Council may request staff to report back at a subsequent meeting. Although not required, please submit to the City Clerk your name and subject matter on forms available by the door in the Council Chambers.

13. REPORTS FOR COUNCIL ACTION:

A. Adoption of a Resolution amending Rate Schedules for electric utility service applicable to all classes of customers, to increase electric rates and charges in each rate schedule by five percent (5%) beginning January 1, 2015 (Bill Cycle 632).

B. Acceptance and appropriation of a donation from Park Eun Joo, Ph.D, in the amount of $2,500, for the purchase of a new (replacement) park bench and commemorative plaque to be placed in Bowers Park and authorization to transmit a letter of appreciation.

C. Approval of the Santa Clara Valley Transportation Authority Congestion Management Program Transportation Fund for Clean Air Agreement Fiscal Year 2014-15 with the Santa Clara Valley Transportation Authority (VTA) for the design and construction of the Saratoga Signal Timing and Interconnect Project and approval and appropriation of estimated funds, in the amount of $498,000, for the project.

14. BILLS AND CLAIMS/PROGRESS PAYMENTS:

(Lists are available in the Council Office and the City Clerk's Office.)

A. Approval of Bills and Claims and Progress Payments.

15. REPORTS OF COUNCILORS AND SPECIAL COUNCIL COMMITTEES:

A. Reports regarding conference attendance, if any.

16. CITY MANAGER REPORTS:

17. CLOSED SESSION MATTERS:

A. City Attorney Reports:

B. Set November 25, 2014 for 6:00 pm for a Closed Session in the Council Conference Room for a Conference with Labor Negotiators pursuant to Government Code Section 54957.6; City designated representatives: Julio J. Fuentes, City Manager (or designee); Employee Organization(s): Unit #1 - Santa Clara Firefighters Association, IAFF, Local 1171; Unit #2 - Santa Clara Police Officers Association; Unit #3 - IBEW Local 1245 (International Brotherhood of Electrical Workers); Unit #4 - City of Santa Clara Professional Engineers; Units # 5, 7 & 8 - City of Santa Clara Employees Association; Unit #6 - AFSCME Local 101 (American Federation of State, County and Municipal Employees); Unit #9 - Miscellaneous Unclassified Management Employees; Unit #9A - Unclassified Police Management Employees; Unit #9B - Unclassified Fire Management Employees; Unit #10 - PSNSEA (Public Safety Non-Sworn Employees Association) and Conference with Legal Counsel-Existing Litigation pursuant to Government Code Section 54956.9(a); *Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al.,* Sacramento County Superior Court Case No. 34-2013-80001396.

18. ADJOURNMENT:

A. To Tuesday evening, **November 25, 2014** at 7:00 pm for the regular scheduled meeting in the City Hall Council Chambers.

11/18/14

6:00PM

Santa Clara

All-America City

2001

CLOSED SESSION NOTICE

City of Santa Clara, California

The **CITY COUNCIL OF THE CITY OF SANTA CLARA** will meet in closed session on **Tuesday, November 18, 2014,** at **6:00 p.m.**, or as soon thereafter as the matter can be discussed, in the Council Conference Room located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to it/them:

☒ **CONFERENCE WITH LABOR NEGOTIATORS**
Pursuant to Gov. Code § 54957.6
City designated representatives: Julio J. Fuentes, City Manager (or designee)
Employee Organization(s):
Unit #1 – Santa Clara Firefighters Association, IAFF, Local 1171
Unit #2 - Santa Clara Police Officer's Association
Unit #3 – IBEW Local 1245 (International Brotherhood of Electrical Workers)
Unit #4 - City of Santa Clara Professional Engineers
Units #5, 7 & 8 - City of Santa Clara Employees Association
Unit #6 - AFSCME Local 101 (American Federation of State, County and Municipal Employees)
Unit #9 – Miscellaneous Unclassified Management Employees
Unit #9A - Unclassified Police Management Employees
Unit #9B - Unclassified Fire Management Employees
Unit #10 – PSNSEA (Public Safety Non-Sworn Employees Association)

☒ **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
Pursuant to Gov. Code § 54956.8
Property: APN 104-03-036, APN 104-03-038, APN 104-03-039, APN 104-03-040
Negotiating Party(ies): Kurt Wittek, Montana Property Group, LLC /
William A. Witte, President, Related California
City Negotiator: Julio J. Fuentes, City Manager (or designee)
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment)

☒ **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
Pursuant to Gov. Code § 54956.8
Property: APN 290-26-029
Negotiating Party(ies): Bruce Wigo, International Swimming Hall of Fame
City Negotiator: Julio J. Fuentes, City Manager (or designee)
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment)

☒ **CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION**
Pursuant to Gov. Code § 54956.9(a)
Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al., Sacramento County Superior Court Case No. 34-2013-80001396

Date: November 14, 2014

RICHARD E. NOSKY, JR.
City Attorney

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CLOSED SESSION NOTICE

Successor Agency to the City of Santa Clara
Redevelopment Agency

The **GOVERNING BOARD OF THE SUCCESSOR AGENCY TO THE CITY OF SANTA CLARA REDEVELOPMENT AGENCY** will meet in closed session on **Tuesday, November 18, 2014,** at **6:00 p.m.**, or as soon thereafter as the matter can be discussed, in the Council Conference Room located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to it/them:

☒ **CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION**
Pursuant to Gov. Code § 54956.9(a)
Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al., Sacramento County Superior Court Case No. 34-2013-80001396

Date: November 14, 2014

RICHARD E. NOSKY, JR.
Successor Agency Counsel

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11/18/14

3A

MINUTES OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA FOR REGULAR MEETING HELD ON TUESDAY EVENING, OCTOBER 14, 2014

The City Council of the City of Santa Clara, with a quorum present, met at 6:00 pm in the City Hall Council Chambers. With no public comment, the Council then met for a Closed Session in the Council Conference Room for a Conference with Labor Negotiators pursuant to Government Code Section 54957.6; City designated representatives: Julio J. Fuentes, City Manager (or designee); Employee Organization(s): Unit #1 - Santa Clara Firefighters Association, IAFF, Local 1171; Unit #2 - Santa Clara Police Officer's Association; Unit #3 - IBEW Local 1245 (International Brotherhood of Electrical Workers); Unit #4 - City of Santa Clara Professional Engineers; Units #5, 7 & 8 - City of Santa Clara Employees Association; Unit #6 - AFSCME Local 101 (American Federation of State, County and Municipal Employees); Unit #9 - Miscellaneous Unclassified Management Employees; Unit #9A - Unclassified Police Management Employees; Unit #9B - Unclassified Fire Management Employees; Unit #10 - PSNSEA (Public Safety Non-Sworn Employees Association); Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-03-036, 104-03-038, 104-03-039, 104-03-040; Negotiating Party(ies): Kurt Wittek, Montana Property Group, LLC; City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: 90 N. Winchester Blvd., APN 303-17-047 through 049; Negotiating Party(ies): SummerHill Homes and Kirk Vartan; City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-43-004, 4701 Great America Parkway, Santa Clara; Negotiating Party(ies): Michael Carlin, San Francisco Public Utilities Commission (SFPUC); City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); Conference with Legal Counsel - Existing Litigation pursuant to Government Code Section 54956.9(a); *Daniel C. Garcia v. City of Santa Clara, et al.*, United States District Court, Northern District of California Case No. CV10-02424SI; Conference with Legal Counsel - Existing Litigation pursuant to Government Code Section 54956.9(a); *Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al.*, Sacramento County Superior Court Case No. 34-2013-80001396; and Governing Board of the Successor Agency to the City of Santa Clara Redevelopment Agency Conference with Legal Counsel

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- Existing Litigation pursuant to Government Code Section 54956.9(a) *Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al.;* Sacramento County Superior Court Case No. 34-2013-80001396 (City Attorney - 10/10/14).

The Council reconvened in the Council Chambers at 7:02 pm and the regular meeting was opened with the recitation of the Pledge of Allegiance and Statement of Values in the Council Chambers.

Present: Council Members Debi Davis, Lisa M. Gillmor, Patrick Kolstad, Patricia M. Mahan, Jerry Marsalli, and Teresa O'Neill and Mayor Jamie L. Matthews.

Staff present: City Manager, City Attorney and City Clerk/Auditor.

3A. **MOTION** was made by Davis, seconded and unanimously carried, that the **Minutes** for the meeting of **September 23, 2014** be adopted as written.

4. (5A.) (8A.) Under Continuances/Exceptions, the City Clerk noted that appointment to fill one vacancy on the Historical and Landmarks Commission under Special Order of Business and the Written Petition submitted by John Marinshaw both were continued.

5B. As a Special Order of Business, the City Librarian addressed the Council with introductory comments and then Keith Stattenfield, President of the Board of the **Santa Clara City Library Foundation and Friends**, presented **recognition plaques** to **acknowledge significant contributions** made by corporations and community groups that have partnered with the Library and Santa Clara City Library Foundation and Friends this year (City Librarian - 10/14/14). Photographs were then taken.

6B. 6C. As items of Unfinished Business, the Council proceeded to consider the pass to print of an **Ordinance** amending Chapter 17.35 (Park and Recreational Land) of Title 17 (Development) of the City Code to make **minor modifications** to the **park land dedication requirement** and approval to **set** the **initial fee amounts** due **in-lieu of park land dedication** for Fiscal Year 2014-15 based on 65% of cost recovery and adoption of a **Resolution** establishing the **Residential Development Park Dedication In-Lieu Fee Schedule** for Fiscal Year 2014-15 for **new residential development** in accordance with Title 17 (Development) Chapter 35 (Park and Recreational Land) of the City Code. The City Manager made introductory remarks and then the Director of Parks and Recreation reviewed his memos (10/07/14 and 10/08/14) and gave an electronic presentation, which

outlined cost recovery proposals between 60-100%. He, the City Attorney and the City Manager then answered Council questions. The following people addressed the Council with comments of support regarding staff recommendation: Dennis Martin, Katia Kamangar and Steve Van Dorn. Roseann LaCoursiere addressed the Council with general comments. The following people addressed the Council with comments of concern regarding staff recommendation: Jan Hintermeister, Michael O'Halloran, Kirk Vartan, Clysta Seney, Tino Silva, Keith Stattenfield, Deborah Bress, Kevin Park and Mohammed Nadeem. A Council discussion followed and additional Council questions were answered by the Director of Parks and Recreation and the City Manager. **MOTION** was made by Marsalli, seconded and carried with Davis and O'Neill dissenting, that the Council **continue** consideration of the pass to print of an **Ordinance** amending Chapter 17.35 (Park and Recreational Land) of Title 17 (Development) of the City Code to make **minor modifications** to the **park land dedication requirement**. Further Council comments were made. **MOTION** was made by Mahan, seconded but failed with Davis, Gillmor, O'Neill and Mayor Matthews dissenting, that the Council **set** the initial fee amounts due in-lieu of parkland dedication for Fiscal Year 2014-15 based on 65% of cost recovery. **MOTION** was then made by Gillmor, seconded and carried with Kolstad, Mahan and Marsalli dissenting, that the Council **set** the initial fee amounts due in-lieu of parkland dedication for Fiscal Year 2014-15 based on 100% of cost recovery and **adopt Resolution No. 14-8174** entitled, "A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA ESTABLISHING THE FEE SCHEDULE FOR FISCAL YEAR 2014-2015 FOR NEW RESIDENTIAL DEVELOPMENT IN ACCORDANCE WITH TITLE 17 (DEVELOPMENT) CHAPTER 35 (PARK AND RECREATIONAL LAND) OF THE CODE OF THE CITY OF SANTA CLARA" which establishes the Residential Development Park Dedication In-Lieu Fee Schedule for Fiscal Year 2014-15 for new residential development in accordance with Title 17 (Development) Chapter 35 (Park and Recreational Land) of the City Code.

7A.1 **MOTION** was made by O'Neill, seconded and unanimously carried, that, per the Director of Electric Utility's memo (09/30/14), the Council **approve** the use of **City Electric forces** for the installation of facilities at **3565 Monroe Street** and **1705 Martin Avenue**.

7A.2 **MOTION** was made by O'Neill, seconded and unanimously carried, that, per the Director of Human Resources' memo (09/30/14), the Council **approve** the **revised job description** for **Police Records Manager**, set the control point at $9,088 per month, and add this specification to the City's Conflict of Interest Code, Disclosure Category 1.

7A.3 **MOTION** was made by O'Neill, seconded and unanimously carried, that, per the Director of Water and Sewer Utilities' memo (09/30/14), the Council **adopt Resolution No. 14-8175** entitled, "A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, APPROVING A WATER SUPPLY ASSESSMENT FOR A PROPOSED MIXED USE DEVELOPMENT AT 5120 STARS AND STRIPES DRIVE" which approves a **Water Supply Assessment** for the proposed **Centennial Gateway** mixed use development at **5120 Stars and Stripes Drive**.

7A.4 **MOTION** was made by O'Neill, seconded and unanimously carried, that, per the Director of Parks and Recreation's memo (09/30/14), the Council **accept** a **donation** from **Gregory Bauer**, in the amount of $216, to help with the **purchase** of **dog waste bags** for use at **Parkway Park** and **authorize** the transmittal of a letter of appreciation signed by the Mayor and City Manager.

7A.5 **MOTION** was made by O'Neill, seconded and unanimously carried, that, per the Director of Director of Public Works/City Engineer's memo (09/16/14), the Council **accept** the **work performed** by **Robert A. Bothman, Inc.** on the **San Tomas Aquino Spur Trail Project** and **authorize** the recordation of a **Notice of Completion** with the County Recorder (CE 11-12-03).

7A.6 **MOTION** was made by O'Neill, seconded and unanimously carried, that, per the Director of Public Works/City Engineer's memo (10/01/14), the Council **adopt Resolution No. 14-8176** entitled, "A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, ORDERING THE VACATION OF VARIOUS PUBLIC EASEMENTS LOCATED AT 5409 STEVENS CREEK BOULEVARD [APN 316-19-031 (2014-15)]" which **orders the vacation** of **various public easements** at **5409 Stevens Creek Boulevard** to **Richard T. Peery**, Trustee, and **John Arrillaga**, Trustee, and **authorize** the recordation of the Resolution with the County Recorder (APN 316-19-031; SC 18,707).

7A.7 **MOTION** was made by O'Neill, seconded and unanimously carried, that, per the Director of Public Works/City Engineer's memo (09/30/14), the Council **approve** the **plans and specifications** for the **Trimble Road Trunk Sanitary Sewer Improvements Project** and **authorize** the City Manager to make minor modifications and **authorize** the advertisement for bids (CE 13-14-02).

7A.8 **MOTION** was made by O'Neill, seconded and unanimously carried, that, per the Director of Water and Sewer Utilities' memo (09/30/14), the Council **accept** the **work performed** by **Evans Brothers, Inc.** on the **Demolition of Walsh Elevated Water Storage Tank Project** and **authorize** recordation of a **Notice of Completion** with the County Recorder (WA 30168).

DRAFT

7A.9 **MOTION** was made by O'Neill, seconded and unanimously carried, that, per the Management Analyst's memo (10/06/14), the Council **approve** the **proposed 2015 topics schedule** for the publication of **Mission City SCENES** and **utility bill inserts** and **authorize** the City Manager to publish on a monthly basis.

7B.1 **MOTION** was made by O'Neill, seconded and unanimously carried, that, per the Director of Electric Utility's memo (09/30/14), the Council **approve**, and authorize the City Manager to execute, **Amendment No. 1** to the **Agreement for the Performance of Services** with **GE Mobile Water, Inc.**, in an amount not to exceed $60,000, to extend the term of the Agreement to April 30, 2015, to provide **de-mineralized water** to the **Donald Von Raesfeld (DVR) Power Plant**.

7B.2 **MOTION** was made by O'Neill, seconded and unanimously carried, that, per the Director of Electric Utility's memo (10/01/14), the Council **approve**, and authorize the City Manager to execute, **Call No. 14-2** for **Professional Services** with **MTH Engineers, Inc.**, in an amount not to exceed $225,331, for **preparation of construction documents** for the **El Camino Real Street Lighting Improvement Project**.

7B.3 **MOTION** was made by O'Neill, seconded and unanimously carried, that, per the Director of Public Works/City Engineer's memo (10/14/14), the Council **approve**, and authorize the City Manager to execute, an **Agreement for the Performance of Services** with **MCK Services, Inc.**, in an amount not to exceed $409,877.50, for the **Clyde Avenue Pavement Rehabilitation Project** and **authorize** the City Manager to execute Change Orders, in an amount not to exceed $41,000 or 10% of the Agreement amount, for a total not to exceed amount of $450,877.50.

7D.1 **MOTION** was made by O'Neill, seconded and unanimously carried, that, per the Director of Planning and Inspection's memo (09/18/14), the Council **note and file** the **Minutes** of the **Historical and Landmarks Commission** for the meeting of **August 7, 2014**.

7D.2 **MOTION** was made by O'Neill, seconded and unanimously carried, that, per the Director of Planning and Inspection's memo (09/24/14), the Council **note and file** the **Minutes** of the **Planning Commission** for the meeting of **May 28, 2014**.

7D.3 **MOTION** was made by O'Neill, seconded and unanimously carried, that, per the Director of Planning and Inspection's memo (09/24/14), the Council **note and file** the **Minutes** of the **Planning Commission** for the meeting of **June 18, 2014**.

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7D.4 **MOTION** was made by O'Neill, seconded and unanimously carried, that, per the Director of Planning and Inspection's memo (09/24/14), the Council **note and file** the **Minutes** of the **Planning Commission** for the meeting of **August 6, 2014**.

7D.5 **MOTION** was made by O'Neill, seconded and unanimously carried, that, per the Director of Planning and Inspection's memo (09/18/14), the Council **note and file** the **Minutes** of the **Historical and Landmarks Commission** for the meeting of **June 5, 2014**.

7D.6 **MOTION** was made by O'Neill, seconded and unanimously carried, that, per the Director of Planning and Inspection's memo (09/18/14), the Council **note and file** the **Minutes** of the **Historical and Landmarks Commission** for the meeting of **July 10, 2014**.

7D.7 **MOTION** was made by O'Neill, seconded and unanimously carried, that the Council **note and file** the **Minutes** of the **Neighborhood-University Relations Committee** for the meeting of **April 7, 2014**.

12A. **MOTION** was made by O'Neill, seconded and unanimously carried, that, per the Director of Parks and Recreation's memo (09/26/14), the Council **approve** and accept a **donation**, in the amount of $1,102.75, from **The Habit Burger Grill** for the **Nutrition Program** at the **Santa Clara Senior Center** (account 111-1112-59650-(G)SRDON); **approve** the additional appropriation, in the amount of $1,102.75, for the Nutrition Program at the Santa Clara Senior Center (account 111-1112-87530-(G)SRDON); **approve** unexpended appropriations to be re-appropriated each fiscal year; and **authorize** the transmittal of a letter of appreciation signed by the Mayor and City Manager.

12B. **MOTION** was made by Davis, seconded and unanimously carried, that, per the Director of Parks and Recreation's memo (10/01/14), **approve** the transfer (account 532-1135-58700-3000) and appropriation of funds (account 532-1134-80300-3010), in the amount of $83,500; **approve**, and authorize the City Manager to execute, an Agreement for the Performance of Services with **Pacific Coast Roofing & Construction, Inc. dba Petersendean Open**, in the amount of $83,500, for the **roof replacement** of the **gymnasium roof** at **Earl Carmichael Park**; and **authorize** the City Manager to execute all documents necessary and to make minor, non-substantive modifications, if necessary.

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13A. **MOTION** was made by Davis, seconded and unanimously carried, that the Council **approve** the **bills and claims** and **Progress Payments**.

14A. Under Reports of Councilors and Special Council Committees, Mayor Matthews reported on his attendance at recent community events (provided handout).

Council Member O'Neill made comments regarding her attendance at the Stadium Community meeting hosted by the Santa Clara Police Department, 49ers Management Company and the Santa Clara Valley Transportation Authority (VTA) held on October 7, 2014 at Don Callejon School and also made comments regarding serving on the Housing and Loan Rehabilitation Committee and possible water conservation efforts.

16A. The City Attorney reported that the Council met earlier this evening and would continue the Closed Session at the conclusion of the meeting in the Council Conference Room for a Conference with Labor Negotiators pursuant to Government Code Section 54957.6; City designated representatives: Julio J. Fuentes, City Manager (or designee); Employee Organization(s): Unit #1 - Santa Clara Firefighters Association, IAFF, Local 1171; Unit #2 - Santa Clara Police Officer's Association (Council Member Davis recused herself on discussions regarding Unit #2); Unit #3 - IBEW Local 1245 (International Brotherhood of Electrical Workers); Unit #4 - City of Santa Clara Professional Engineers; Units #5, 7 & 8 - City of Santa Clara Employees Association; Unit #6 - AFSCME Local 101 (American Federation of State, County and Municipal Employees); Unit #9 - Miscellaneous Unclassified Management Employees; Unit #9A - Unclassified Police Management Employees; Unit #9B - Unclassified Fire Management Employees; Unit #10 - PSNSEA (Public Safety Non-Sworn Employees Association); Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-03-036, 104-03-038, 104-03-039, 104-03-040; Negotiating Party(ies): Kurt Wittek, Montana Property Group, LLC; City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: 90 N. Winchester Blvd., APN 303-17-047 through 049; Negotiating Party(ies): SummerHill Homes and Kirk Vartan; City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-43-004, 4701 Great America Parkway, Santa Clara;

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Negotiating Party(ies): Michael Carlin, San Francisco Public Utilities Commission (SFPUC); City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); Conference with Legal Counsel - Existing Litigation pursuant to Government Code Section 54956.9(a); *Daniel C. Garcia v. City of Santa Clara, et al.*, United States District Court, Northern District of California Case No. CV10-02424SI; Conference with Legal Counsel - Existing Litigation pursuant to Government Code Section 54956.9(a); *Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al.*, Sacramento County Superior Court Case No. 34-2013-80001396; and Governing Board of the Successor Agency to the City of Santa Clara Redevelopment Agency Conference with Legal Counsel - Existing Litigation pursuant to Government Code Section 54956.9(a) *Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al.;* Sacramento County Superior Court Case No. 34-2013-80001396.

16B. The Council duly set a Closed Session for October 28, 2014 at 7:00 pm in the Council Conference Room, per the City Attorney's memo (10/10/14), for a Conference with Labor Negotiators pursuant to Government Code Section 54957.6; City designated representatives: Julio J. Fuentes, City Manager (or designee); Employee Organization(s): Unit #1 - Santa Clara Firefighters Association, IAFF, Local 1171; Unit #2 - Santa Clara Police Officer's Association; Unit #3 - IBEW Local 1245 (International Brotherhood of Electrical Workers); Unit #4 - City of Santa Clara Professional Engineers; Units #5, 7 & 8 - City of Santa Clara Employees Association; Unit #6 - AFSCME Local 101 (American Federation of State, County and Municipal Employees); Unit #9 - Miscellaneous Unclassified Management Employees; Unit #9A - Unclassified Police Management Employees; Unit #9B - Unclassified Fire Management Employees; Unit #10 - PSNSEA (Public Safety Non-Sworn Employees Association) and for a Conference with Legal Counsel - Existing Litigation pursuant to Government Code Section 54956.9(a); *Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al.*, Sacramento County Superior Court Case No. 34-2013-80001396.

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17A. **MOTION** was made by O'Neill, seconded and unanimously carried, that, there being no further business, the Council adjourn the meeting at 9:08 pm **In Memory** of **Milton Henry "Mickey" Kaliterna** (long time Santa Clara resident and former Civil Service Commissioner) to Tuesday evening, **October 28, 2014** at 6:00 pm for a Closed Session in the Council Conference Room and to 7:00 pm for the regular scheduled meeting in the City Hall Council Chambers. The Council then met in the Council Conference Room to continue the Closed Session as agendized. The Council reconvened in the Council Chambers at 9:55 pm and the City Attorney noted that there was no reportable action. The meeting stood adjourned.

ATTEST: _____
City Clerk

APPROVE: _____
Mayor

DRAFT

11/18/14

3B

MINUTES OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA
FOR SPECIAL MEETING HELD ON THURSDAY EVENING, OCTOBER 16, 2014

The City Council of the City of Santa Clara met at 4:00 pm, on the above-mentioned date, for a Special Meeting in the City Hall Council Chambers.

Present: Council Members Debi Davis, Lisa M. Gillmor, Patrick Kolstad, Patricia M. Mahan, Jerry Marsalli, and Teresa O'Neill and Mayor Jamie L. Matthews.

Staff present: City Manager, Assistant City Manager/Economic Development Officer, City Attorney and Assistant City Clerk.

3B. With no public input, the Council then met for a **Closed Session** in the SVP Electric Administration Conference Room for a Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-03-036, APN 104-03-038, APN 104-03-039, APN 104-03-040; Negotiating Party(ies): Kurt Wittek, Montana Property Group, LCC; City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/ Exchange/Lease of Real Property (provisions, price and terms of payment).

The Council reconvened at 5:16 pm in the Council Chambers. The City Attorney stated that there was no reportable action.

4A. There being no further business, the meeting was adjourned at 5:16 pm to Tuesday evening, **October 28, 2014** at 6:00 pm for interviews to fill a vacancy on the Historical and Landmarks Commission in the lobby area adjacent to the City Clerk's Office, 6:00 pm for a Closed Session in the Council Conference Room and to 7:00 pm for the regular scheduled meeting in the City Hall Council Chambers

ATTEST: _____
City Clerk

APPROVE: _____
Mayor

DRAFT

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 4A

Date: November 4, 2014

To: City Manager for Council Information

From: Director of Planning and Inspection

Subject: Continuance of Public Hearing to Obtain Public Comments for the City of Santa Clara's Housing and Community Needs for its Five Year Consolidated Plan (2015-2020) and FY 2015-16 Annual Plan for the Use of Federal Community Development Block Grant and Home Investment Partnerships Act Entitlement Funds and on a Substantial Amendment to the Citizen Participation Plan for Federal Entitlements

Notices were distributed for conducting a public hearing to obtain public comments for the City's housing and community needs for its Five-Year Consolidated Plan (2015-2020) and FY 2015-16 Annual Plan for the Use of Federal Community Development Block Grant and HOME funds. In addition, a substantial amendment to the Citizen Participation Plan is being proposed in an effort to streamline the annual action plan process. Staff has determined that more time is needed to review the proposed changes to the Citizen Participation Plan and therefore this public hearing be continued to the regular meeting of November 25, 2014.

Kevin L. Riley
Director of Planning and Inspection

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report:
1) None

F:\Annual Plans 2015-2020\Agenda Reports and Notices\Needs public hearing 11-18-14\continuance 11-18-14.doc

PROOF OF PUBLICATION

Santa Clara Weekly

P.O. Box 580, Santa Clara, California 95052

IN THE
City of Santa Clara,
State of California,
County of Santa Clara

CITY OF SANTA CLARA NOTICE OF PUBLIC HEARING TO OBTAIN PUBLIC COMMENTS FOR THE CITY OF SANTA CLARA'S HOUSING AND COMMUNITY NEEDS FOR ITS FIVE YEAR CONSOLIDATED PLAN (2015-2020) AND FY 2015-16

State of California, } SS.
County of Santa Clara

The undersigned, being first duly sworn, deposes and says: That at all times hereinafter mentioned affiant was and still is a citizen of the United States, over the age of eighteen years, and not a party to nor interested in the above entitled proceeding; and was at and during all said times and still is publisher of the Santa Clara Weekly, a newspaper of general circulation printed and published weekly in the County of Santa Clara, State of California, and said Santa Clara Weekly is and was at all times hereinmentioned a newspaper of general circulation as that term is defined by sections 6000 and following, of the government code of the State of California, and, as provided by said sections, is published for the dissemination of local or telegraphic news and intelligence of a general character, having a bonafide subscription list of paying subscribers, and is not devoted to the interest or published for the entertainment or instruction of a particular class, profession, trade, calling, race or denomination, or for the entertainment and instruction of any number of such classes, professions, trades, callings, races or denominations; that at all times said newspaper has been established, printed and published in the said County of Santa Clara and State of California at regular intervals for more than one year proceeding the first publication of the notice herein mentioned; that said notice was set in type not smaller than non-parell, describing and expessing in general terms the purport and character of the notice intended to be given; that the clipping of which the annexed is a true printed copy, was published and printed in said newspaper on the following dates to wit:

Pub: 10/15/2014

Dated at Santa Clara, California

This 15TH day of OCTOBER, 2014

I declared under penalty of perjury that the foregoing is true and correct.

igned: _____
(Assoc.) Publisher of the Santa Clara Weekly

The Santa Clara Weekly was adjudicated a newspaper of general circulation in and for the County of Santa Clara on September 3, 1974 (Case No. 314617). The Santa Clara Weekly was adjudicated a newspaper of general circulation within the City of Santa Clara on April 2, 1976 (Case No. 347776).

NOTICE OF PUBLIC HEARING TO OBTAIN PUBLIC COMMENTS FOR THE CITY OF SANTA CLARA'S HOUSING AND COMMUNITY NEEDS FOR ITS FIVE YEAR CONSOLIDATED PLAN (2015-2020) AND FY 2015-16 ANNUAL PLAN FOR THE USE OF FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIPS ACT ENTITLEMENT FUNDS AND ON A SUBSTANTIAL AMENDMENT TO THE CITIZEN PARTICIPATION PLAN FOR FEDERAL ENTITLEMENTS

Notice is hereby given that the City of Santa Clara has determined and fixed November 18, 2014, at 7:00 P.M., in the City Hall Council Chambers, 1500 Warburton Avenue, Santa Clara, California, as the date, time and place of a Public Hearing to Obtain Public Comments for the City of Santa Clara's Housing & Community Development Needs for the five year period beginning July 1, 2015 and ending June 30, 2020 and the one year period from July 1, 2015 to June 30, 2016. This hearing will be the first step in the development of the City's Five Year and Annual Consolidated Plan for spending federal Community Development Block Grant (CDBG) and Home Investment Partnerships Act (HOME) entitlement funds in those periods.

For Fiscal Year 2015-16, the CDBG Entitlement Grant is estimated at $850,000; the HOME Entitlement Grant is estimated at $300,000. These funds are to be used to benefit low and moderate income residents of the City.

This hearing will also address proposed changes that are considered a substantial amendment to the City's Citizen Participation Plan for Federal Entitlements to be consistent with 24 Code of Federal Regulations 91.105 as amended December 5, 2011 while at the same time reducing the number of public meetings required in the City's current plan. The full text of the amendment will be available for a thirty-day review period from October 17 through November 18, 2014 by contacting the Housing & Community Services Division at (408) 615-2490.

Persons wishing to present their views may attend the Public Hearing and provide written and/or oral testimony concerning the priority of needs for which the Entitlement Funds might be used, or submit written comments prior to the Public Hearing to the Housing & Community Services Division offices at 1500 Civic Center Drive, Santa Clara, California.

The public hearing location is fully accessible by wheelchair and public transportation. People with impaired speech or hearing may call (408) 615-2490 through 711 the nationwide Telecommunications Relay Service. Sign language interpretation, translation into languages other than English, and interpretation for persons with visual impairments are available. If you need sign or other interpretation, please call (408) 615-2490 at least one week in advance of the hearing. Reasonable modifications in policies, procedures and/or practices will be made as necessary to provide access for all individuals with a disability or with limited English proficiency.

Rod Diridon, Jr., City Clerk

Pub.: 10/15/2014

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 6B

Santa Clara All-America City 2001

Date: November 6, 2014

To: City Manager for Council Action

From: Director of Parks & Recreation

Subject: Pass to Print an Ordinance Amending Chapter 17.35 ("Park and Recreational Land") of Title 17 ("Development"), of "the Code of the City of Santa Clara, California" to Make Minor Modifications to the Parkland Dedication Requirement

EXECUTIVE SUMMARY:

On July 15, 2014, Council adopted Ordinance No. 1928 adding Chapter 17.35 "Park and Recreational Land" to Title 17 "Development" of the Santa Clara City Code. Chapter 17.35 ensures that new residential development provides adequate park and recreational land and/or pays a commensurate fee in-lieu of parkland dedication to mitigate the impacts of the new growth. There are two actions anticipated by the proposed amendment. First, the proposed amendment would eliminate the pre-requisite dedication of one (1) acre of public parkland to the City of Santa Clara on multi-family units needed in order to qualify for a 50% credit on the private on-site parks and recreational amenities. Second, the proposed amendment would clarify the definition of the multiple dwelling type of housing unit. The existing Santa Clara City Code definition for a multiple dwelling unit is defined as "three or more," not "two or more" unintentionally exempting duplex housing units by definition from Chapter 17.35. All other provisions remain unchanged.

This item was brought forward at the October 14, 2014 Council meeting, and after discussion, Council requested it be brought back at a future meeting.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The purpose of Chapter 17.35 is to help mitigate the impacts of new housing development growth on existing parkland. The mitigation is accomplished through a mix of public parkland dedication, collection of fees in-lieu of the land dedication, and private on-site amenities for which a developer may receive 50% credit against the public land and fees.

One Acre Prerequisite. The elimination of the one (1) acre public parkland dedication pre-requisite on multi-family units prior to consideration of the 50% credit for eligible private parks and recreation on site amenities may increase the feasibility that developers may be able to fund and dedicate the on-site parkland and amenities, particularly for smaller sized development parcels and multi-family unit projects such as apartment complexes. It may also improve the ability of the City to negotiate the size and types of private on-site amenities offered by the developer and required/approved by the City. The City will still receive fees equivalent in value to any deficit in parkland or fees calculated for a particular development. The initial one (1) acre dedication requirement would remain in effect for single family unit development of 50 or more units where credit is generally not sought and parkland dedication is more likely.

Duplex Definition. The Santa Clara City Code defines a multiple dwelling unit as "three or more," not "two or more," unintentionally exempting duplex housing units. These units are not secondary housing units that are exempt. Correcting the unintended exemption of "duplex housing unit" from the definition of "multiple family unit dwellings" will provide equal treatment of multiple family dwelling units. There are no disadvantages since the Chapter 17.35 was intended to apply to all single and multiple family units, two or more.

Implementation Schedule. If the amendment is adopted and the second reading is October 28, 2014, the new provisions will become effective 30 days after adoption on November 27, 2014.

ECONOMIC/FISCAL IMPACT:

There is no fiscal impact due to the elimination of the one (1) acre prerequisite to eligibility for private on site credits, since the total value of the parkland required to be dedicated on a particular project will be received in either acres of dedicated parkland, fees in-lieu of land dedication, or a combination of the two. The receipt of the maximum credit of 50% of the value of the land devoted to eligible private open space and amenities will still be subject to Council approval for each project.

There is no negative fiscal impact to the City with the correction of the multi-family dwelling definition that will assure that duplex developments provide parkland and/or pay an in-lieu fee.

RECOMMENDATION:

That the Council pass to print an *Ordinance Amending Chapter 17.35 ("Park and Recreational Land") of Title 17 ("Development"), of "the Code of the City of Santa Clara, California" to Make Minor Modifications to the Parkland Dedication Requirement.*

James Teixeira

James F. Teixeira
Director of Parks & Recreation

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report:

1. ***An Ordinance Amending Chapter 17.35 ("Park and Recreational Land") of Title 17 ("Development"), of "the Code of the City of Santa Clara, California" to Make Minor Modifications to the Parkland Dedication Requirement***

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING CHAPTER 17.35 ("PARK AND RECREATIONAL LAND") OF TITLE 17 ("DEVELOPMENT"), OF "THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA" TO MAKE MINOR MODIFICATIONS TO THE PARK LAND DEDICATION REQUIREMENT

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on July 15, 2014, the City Council adopted Ordinance No. 1928, adding Chapter 17.35 to Title 17 of the Santa Clara City Code, establishing a park land dedication requirement on new residential development;

WHEREAS, the park land dedication requirement in Chapter 17.35 applies to "single-family dwellings" and "multiple dwellings," but does not include duplex dwellings;

WHEREAS, the Council now wishes to add duplex dwellings to the types of developments subject to the park land dedication requirement;

WHEREAS, Chapter 17.35 allows residential developers to apply for a credit against the dedication requirement, when the developer provides private open space, if the developer dedicates a minimum of one (1) acre of open space to the City for park purposes; and,

WHEREAS, the Council now wishes to delete the pre-requisite one (1) acre minimum for the credit for private open space within multi-family development projects.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That Subsection (e) ("Dwelling Unit Categories") of Section 17.35.010 ("Definitions") of Chapter 17.35 ("Park and Recreational Land") of Title 17 ("Development") of "The Code of the City of Santa Clara, California" ("SCCC") is amended to read as follows:

"(e) "Dwelling unit categories" shall mean the following types of dwellings, as they are defined by the Zoning Ordinance, for which a separate dedication and/or fee requirement is to be set by Council resolution:

(1) Duplex dwellings and multiple dwellings.

(2) Single-family dwellings."

SECTION 2: That the first paragraph of Section 17.35.070 ("Credit for private open space") of Chapter 17.35 ("Park and Recreational Land") of Title 17 ("Development") of "The Code of the City of Santa Clara, California" ("SCCC") is amended to read as follows:

"Where private open space is to be provided in a proposed residential development, the developer may submit a written request with the project application for a credit against the amount of parkland dedication or the amount of the in-lieu fee thereof. As a pre-requisite for receiving credit, single family unit developments of fifty or more units must first dedicate a minimum of one (1.0) acre of public open space to the City for public park purposes; multifamily unit developments will be exempt from the one (1.0) acre public open space dedication pre-requisite. A maximum credit of fifty percent (50%) of the value of the land devoted to private open space that is eligible for credit may be given against the requirement of land dedication or fees in lieu thereof required by this chapter, if the approving authority finds that it complies with this section and that it is in the public interest to do so. In order to receive such a credit, the approving authority must make findings that the private open space meets the following standards:"

SECTION 3: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding

pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 4: Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 5: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this _____ day of _____, 2014, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None
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Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-1

Santa Clara All-America City 2001

Date: November 4, 2014

To: City Manager for Council Action

From: Director of Public Works/City Engineer

Subject: Approval of Final Map - Tract 10252
1460 Monroe Street (APNs 269-03-067, 068, 075, 142, 143 & 147)
Owner(s): 1460 Monroe, LLC, a California Limited Liability Company
Developer(s): Silicon Sage Builders, LLC

EXECUTIVE SUMMARY:

Tract 10252 is a single lot subdivision for the Planned Development (PD) of 28 residential condominiums and four commercial condominiums on an approximately 0.67 acre parcel located at 1460 Monroe Street. The Final Map has been reviewed by staff and meets the Tentative Map requirements approved by Council on March 18, 2014.

The Conditions, Covenants, and Restrictions (CC&R's) have been reviewed and approved by the Planning Division and the City Attorney's Office. Development fees will be paid prior to issuance of the Building Permits for the subdivision.

A copy of the Final Map can be viewed on the City's website or is available in the City Clerk's Office for review during normal business hours.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Approval of the Final Map is necessary for this development to proceed.

ECONOMIC/FISCAL IMPACT:

There will be additional cost to the City for providing services to the added residential units that will not be completely offset by additional tax revenue.

RECOMMENDATION:

That the Council:

1. Approve the Final Map for Tract 10252;
2. Authorize the City Manager to make minor modifications, if necessary; and
3. Authorize recordation of the Final Map for Tract 10252, a single lot subdivision for the Planned Development (PD) of 28 residential condominiums and four commercial condominiums on an approximately 0.67 acre parcel located at 1460 Monroe Street (APNs 269-03-067, 068, 075, 142, 143 & 147) by Silicon Sage Builders, LLC.

Rajeev Batra
Director of Public Works/City Engineer

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report:
1) Final Map Tract 10252

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TRACT NO. 10252 – MADISON PLACE

A ONE LOT SUBDIVISION FOR CONDOMINIUM PURPOSES TO CONSIST OF TWENTY EIGHT RESIDENTIAL CONDOMINIUMS AND FOUR COMMERCIAL CONDOMINIUMS. CONSISTING OF THREE SHEETS

BEING A RESUBDIVISION OF PORTIONS OF BLOCK 5 NORTH, RANGE 4 WEST, ACCORDING TO THE OFFICIAL MAP OF THE TOWN OF SANTA CLARA, SAID MAP BEING ENTITLED "MAP OF THE TOWN AND SUB-LOTS OF SANTA CLARA, SANTA CLARA COUNTY, CALIFORNIA, SURVEYED BY J.J. BOWEN, COUNTY SURVEYOR, JULY 1866", RECORDED IN BOOK "B" OF MAPS AT PAGE 103, AND LYING ENTIRELY WITHIN THE CITY OF SANTA CLARA, SANTA CLARA COUNTY, CALIFORNIA – OCTOBER 2014

OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF, OR HAVE SOME RIGHT, TITLE, OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN UPON THIS MAP; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; AND THAT WE HEREBY CONSENT TO THE MAKING AND RECORDING OF SAID MAP AND SUBDIVISION AS SHOWN WITHIN THE DISTINCTIVE BORDER LINE.

WE HEREBY DEDICATE TO THE CITY OF SANTA CLARA EASEMENTS IN, ON, OVER, UNDER, ALONG, AND ACROSS THOSE CERTAIN STRIPS OF LAND DESIGNATED AND DELINEATED HEREON AS "W.L.E." (WATER LINE EASEMENT) FOR THE PURPOSE OF CONSTRUCTING, INSTALLING, OPERATING, MAINTAINING, REPAIRING, AND REPLACING WATER DISTRIBUTION SYSTEM FACILITIES AND APPURTENANCES THERETO. SAID EASEMENTS SHALL BE KEPT OPEN AND FREE FROM TREES, BUILDINGS, AND STRUCTURES OF ANY KIND EXCEPT IRRIGATION SYSTEMS AND APPURTENANCES THERETO, AND LAWFUL FENCES. NO PRIVATE OR OTHER PUBLIC UTILITIES SHALL BE PLACED IN THE "W.L.E.." EXCEPT FOR PURPOSE OF CROSSING. THE CITY SHALL HAVE RIGHT OF ACCESS ACROSS AND/OR ALONG THE ADJOINING PROPERTY FOR THE PURPOSE OF MAINTAINING, REPLACING, ADDING TO, OR REMOVAL OF ITS FACILITIES.

WE HEREBY DEDICATE TO THE CITY OF SANTA CLARA AN EXCLUSIVE EASEMENT ON, UNDER, ALONG, AND ACROSS THOSE CERTAIN AREAS OF LAND DESIGNATED AND DELINEATED HEREON AS "UNDERGROUND ELECTRICAL EASEMENT" FOR THE PURPOSE OF CONSTRUCTING AND RECONSTRUCTING, INSTALLING, OPERATING, MAINTAINING, REPAIRING AND/OR REPLACING UNDERGROUND ELECTRICAL DISTRIBUTION AND/OR COMMUNICATION SYSTEMS, AND APPURTENANCES. THE UNDERGROUND SYSTEM WILL CONSIST OF CONDUITS, CABLES, VAULTS, AND SPLICE BOXES INSTALLED FLUSH WITH OR BELOW GRADE AND OTHER NECESSARY APPURTENANCES. TRANSFORMER AND SWITCHES WILL BE MOUNTED ABOVE GRADE ON A CONCRETE PAD. SAID UNDERGROUND ELECTRICAL EASEMENT SHALL BE KEPT OPEN AND FREE FROM TREES, BUILDINGS, AND STRUCTURES OF ANY KIND EXCEPT IRRIGATION SYSTEMS, APPURTENANCES THERETO, AND LAWFUL FENCES. NO PRIVATE OR OTHER PUBLIC UTILITIES SHALL BE PLACED IN THE UNDERGROUND ELECTRICAL EASEMENT EXCEPT FOR THE PURPOSE OF CROSSING. THE CITY SHALL HAVE THE RIGHT OF ACCESS ACROSS AND/OR ALONG THE ADJOINING PROPERTY FOR THE PURPOSE OF MAINTAINING, REPLACING, ADDING TO, OR REMOVAL OF ITS FACILITIES.

AS OWNER:

1460 MONROE, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

BY: _____
SANJEEV ACHARYA

AS BENEFICIARY:
DR. ROYA O JAVID

BY: _____ ,
SIGNATURE

AS BENEFICIARY:
DOUGLAS G. SYKES, TRUSTEE OF THE DOUGLAS G. SYKES LIVING TRUST

BY: _____ ,
SIGNATURE

OWNER'S ACKNOWLEDGEMENT

STATE OF CALIFORNIA
COUNTY OF _____ } SS

ON _____ BEFORE ME, _____ ,

A NOTARY PUBLIC,

PERSONALLY APPEARED _____

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:

NOTARY'S SIGNATURE _____

PRINTED NOTARY'S NAME _____

NOTARY'S PRINCIPAL PLACE OF BUSINESS _____

NOTARY'S COMMISION NO. _____

EXPIRATION OF NOTARY'S COMMISSION _____

CITY CLERK'S STATEMENT

I HEREBY STATE THAT ON THE 18TH DAY OF MARCH, 2014, THE CITY COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA DID APPROVE THE TENTATIVE OF THIS MAP AND ON THE ____ DAY OF _____, 20___ DID APPROVE THIS MAP AND ACCEPT ON BEHALF OF THE PUBLIC ALL EASEMENT DEDICATIONS, IF ANY, REQUIRED AS A CONDITION OF APPROVAL OF SAID MAP AND IN CONFORMITY WITH TERMS OF THE OFFER OF DEDICATION MADE HEREON.

_____ DATE

_____
ROD DIRIDON, JR.,
CITY CLERK AND EX-OFFICIO CLERK
OF THE CITY COUNCIL OF THE
CITY OF SANTA CLARA, CALIFORNIA

CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE WITHIN FINAL MAP; THAT THE SUBDIVISION SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF; THAT ALL PROVISIONS OF CHAPTER 2 OF THE CALIFORNIA STATE SUBDIVISION MAP ACT, AS AMENDED, AND ANY LOCAL ORDINANCE APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH.

_____ DATE

_____
RAJEEV BATRA, R.C.E. 37877
CITY ENGINEER
CITY OF SANTA CLARA, CALIFORNIA

REGISTERED PROFESSIONAL ENGINEER
RAJEEV BATRA
NO. 37877
CIVIL
STATE OF CALIFORNIA

CITY SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE HEREON FINAL MAP OF TRACT NO. 10252 AND I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

_____ DATE

_____
JAMES L. PARISSENTI, L.S. 7531
CITY SURVEYOR
CITY OF SANTA CLARA, CALIFORNIA

LICENSED LAND SURVEYOR
JAMES L. PARISSENTI
Exp. _____
NO. 7531
STATE OF CALIFORNIA

GEOTECHNICAL REPORT

A GEOTECHNICAL REPORT ENTITLED "GEOTECHNICAL INVESTIGATION, PROPOSED RESIDENTIAL AND COMMERCIAL MIX DEVELOPMENT, 1460 MONROE STREET, SANTA CLARA CALIFORNIA" AND DATED 26 JUNE 2012 WAS PREPARED BY WAYNE TING & ASSOCIATES, INC., PROJECT NO. 2929 AND SIGNED BY WAYNE L. TING, RCE 46276. A COPY OF THIS REPORT HAS BEEN FILED WITH THE BUILDING AND INSPECTION DIVISION OF THE CITY OF SANTA CLARA PLANNING AND INSPECTION DEPARTMENT.

ENGINEER'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF SILICON SAGE BUILDERS ON MARCH 26, 2013. I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP; THAT THE SURVEY IS TRUE AND CORRECT AS SHOWN; THAT ALL MONUMENTS ARE OF THE CHARACTER AND WILL BE SET IN THE POSITIONS INDICATED ON OR BEFORE SEPTEMBER 2015; AND THAT THE MONUMENTS WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

_____
DAVID B. VOORHIES, R.C.E. 26429
REGISTRATION EXPIRES 03-31-2016

REGISTERED PROFESSIONAL ENGINEER
DAVID B. VOORHIES
No. 26429
Exp. 03-31-16
CIVIL
STATE OF CALIFORNIA

_____ DATE

COUNTY RECORDER'S STATEMENT

FILE NO.: _____ FEE: _____ PAID: _____

FILED THIS _____ DAY OF _____ 20 ___ AT _____.M. IN BOOK _____

OF MAPS, AT PAGES _____ , SANTA CLARA COUNTY RECORDS, AT THE REQUEST OF SILICON SAGE BUILDERS, LLC.

REGINA ALCOMENDRAS, COUNTY RECORDER
SANTA CLARA COUNTY, CALIFORNIA

BY _____
DEPUTY

UNDERWOOD & ROSENBLUM, INC.
civil engineers and surveyors
1630 Oakland Road Ste. A114 San Jose, Ca. 95131
Tel. No. (408) 453 1222 Fax No. (408) 453 1207

TRACT NO. 10252 – MADISON PLACE

A ONE LOT SUBDIVISION FOR CONDOMINIUM PURPOSES TO CONSIST OF TWENTY EIGHT RESIDENTIAL CONDOMINIUMS AND FOUR COMMERCIAL CONDOMINIUMS. CONSISTING OF THREE SHEETS

BEING A RESUBDIVISION OF PORTIONS OF BLOCK 5 NORTH, RANGE 4 WEST, ACCORDING TO THE OFFICIAL MAP OF THE TOWN OF SANTA CLARA, SAID MAP BEING ENTITLED "MAP OF THE TOWN AND SUB-LOTS OF SANTA CLARA, SANTA CLARA COUNTY, CALIFORNIA, SURVEYED BY J.J. BOWEN, COUNTY SURVEYOR, JULY 1866", RECORDED IN BOOK "B" OF MAPS AT PAGE 103, AND LYING ENTIRELY WITHIN THE CITY OF SANTA CLARA, SANTA CLARA COUNTY, CALIFORNIA – OCTOBER 2014

BENEFICIARY'S ACKNOWLEDGEMENT

STATE OF CALIFORNIA
COUNTY OF _____ } SS

ON _____ BEFORE ME, _____,

A NOTARY PUBLIC,

PERSONALLY APPEARED _____

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:

NOTARY'S SIGNATURE _____

PRINTED NOTARY'S NAME _____

NOTARY'S PRINCIPAL PLACE OF BUSINESS _____

NOTARY'S COMMISION NO. _____

EXPIRATION OF NOTARY'S COMMISSION _____

BENEFICIARY'S ACKNOWLEDGEMENT

STATE OF CALIFORNIA
COUNTY OF _____ } SS

ON _____ BEFORE ME, _____,

A NOTARY PUBLIC,

PERSONALLY APPEARED _____

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:

NOTARY'S SIGNATURE _____

PRINTED NOTARY'S NAME _____

NOTARY'S PRINCIPAL PLACE OF BUSINESS _____

NOTARY'S COMMISION NO. _____

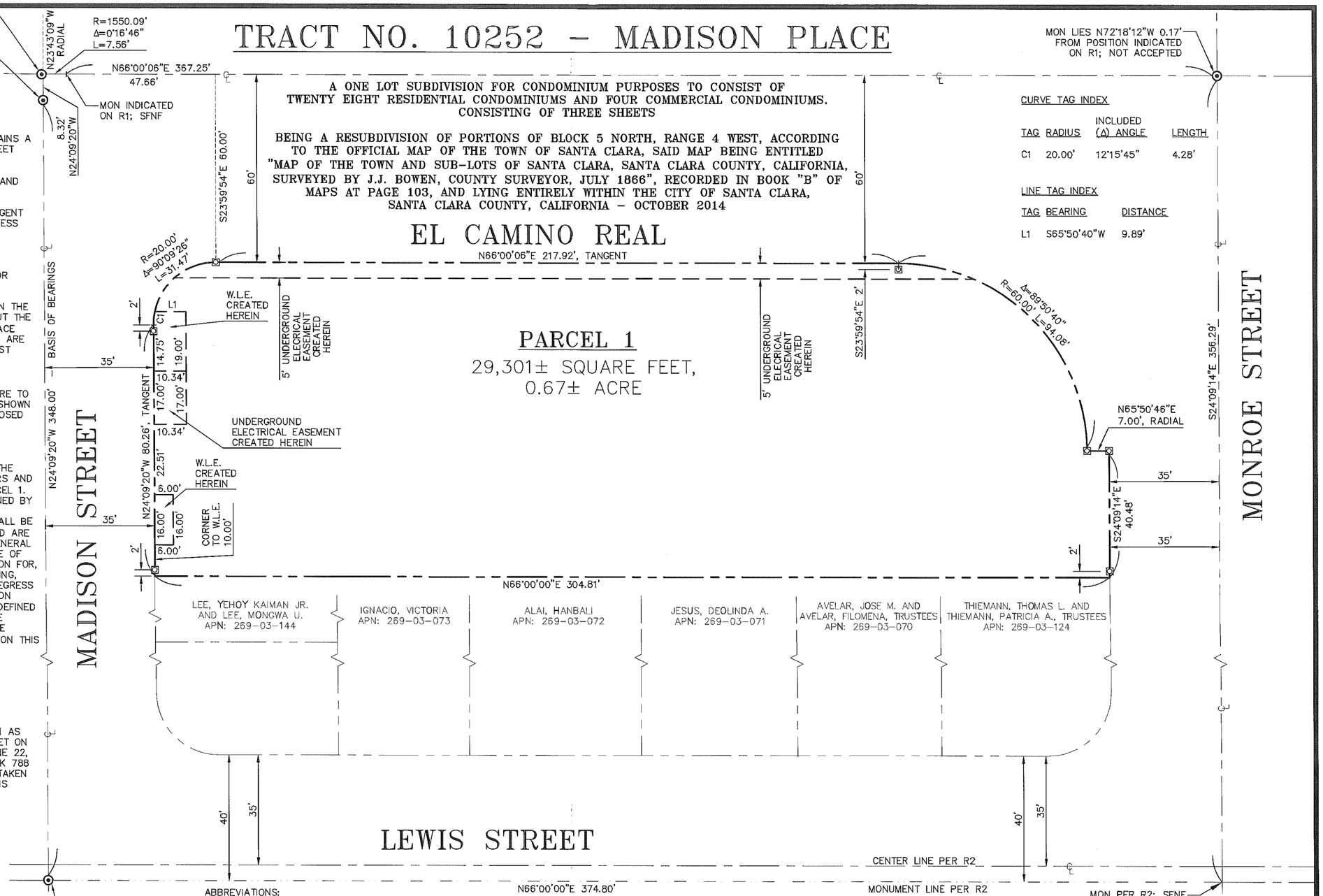
EXPIRATION OF NOTARY'S COMMISSION _____

UNDERWOOD & ROSENBLUM, INC.
civil engineers and surveyors
1630 Oakland Road Ste. A114 San Jose, Ca. 95131
Tel. No. (408) 453 1222 Fax No. (408) 453 1207

TRACT NO. 10252 – MADISON PLACE

A ONE LOT SUBDIVISION FOR CONDOMINIUM PURPOSES TO CONSIST OF TWENTY EIGHT RESIDENTIAL CONDOMINIUMS AND FOUR COMMERCIAL CONDOMINIUMS. CONSISTING OF THREE SHEETS

BEING A RESUBDIVISION OF PORTIONS OF BLOCK 5 NORTH, RANGE 4 WEST, ACCORDING TO THE OFFICIAL MAP OF THE TOWN OF SANTA CLARA, SAID MAP BEING ENTITLED "MAP OF THE TOWN AND SUB-LOTS OF SANTA CLARA, SANTA CLARA COUNTY, CALIFORNIA, SURVEYED BY J.J. BOWEN, COUNTY SURVEYOR, JULY 1866", RECORDED IN BOOK "B" OF MAPS AT PAGE 103, AND LYING ENTIRELY WITHIN THE CITY OF SANTA CLARA, SANTA CLARA COUNTY, CALIFORNIA – OCTOBER 2014



CURVE TAG INDEX

TAG	RADIUS	INCLUDED (Δ) ANGLE	LENGTH
C1	20.00'	12°15'45"	4.28'

LINE TAG INDEX

TAG	BEARING	DISTANCE
L1	S65°50'40"W	9.89'

NOTES:

1. THE DISTINCTIVE BORDER LINE INDICATES THE BOUNDARY OF LAND SUBDIVIDED BY THIS MAP AND CONTAINS A GROSS AREA OF 29,301± SQUARE FEET (0.67± ACRE).

2. DISTANCES ARE GIVEN IN FEET AND DECIMALS THEREOF.

3. ALL LOT LINE CURVES ARE TANGENT TO ADJACENT LINES OR CURVES UNLESS NOTED OTHERWISE.

4. ALL EASEMENT LINES WITHOUT BEARINGS ARE PARALLEL WITH OR PERPENDICULAR TO THE LDT LINES OR BOUNDARY LINES.

5. SOME DIMENSIONS SHOWN WITHIN THE HEREON MAP ARE DISPLAYED WITHOUT THE DECIMAL POINT (IE: 10') DUE TO SPACE CONSTRAINTS. ALL SUCH DIMENSIONS ARE ACTUALLY ACCURATE TO THE NEAREST ONE-HUNDREDTH OF A FOOT (IE: 10'=10.00').

6. SOME PROPERTY MONUMENTS ARE TO BE OFFSET FROM LOT CORNERS AS SHOWN DUE TO EXISTING FENCES AND PROPOSED FENCES AND/OR HARDSCAPE TO BE CONSTRUCTED.

7. PARCEL 1 IS NOT OFFERED FOR DEDICATION AND IS RESERVED FOR THE FUTURE CONVEYANCE TO THE OWNERS AND HOMEOWNERS' ASSOCIATION OF PARCEL 1. PORTIONS OF PARCEL 1 TO BE DEFINED BY SEPARATE INSTRUMENT AS THREE DIMENSIONAL AIRSPACE PARCELS SHALL BE DESIGNATED AS "COMMON AREA" AND ARE NOT DEDICATED FOR USE BY THE GENERAL PUBLIC, BUT RESERVED FOR THE USE OF THE HOMEOWNERS OF THE SUBDIVISION FOR, BUT NOT LIMITED TO, ACCESS, PARKING, UTILITIES, DRAINAGE, INGRESS, AND EGRESS IN ACCORDANCE WITH THE SUBDIVISION CC&R'S. PARCEL 1, ONCE FURTHER DEFINED BY SEPARATE INSTRUMENT AS THREE DIMENSIONAL AIRSPACE, WILL INCLUDE PRIVATE DRIVE AISLES (NOT SHOWN ON THIS MAP).

BASIS OF BEARINGS:

THE BEARING OF N24°09'20"W SHOWN AS THE CENTER LINE OF MADISON STREET ON THE PARCEL MAP RECORDED ON JUNE 22, 2005 AS FILE NO. 18435586 IN BOOK 788 OF MAPS AT PAGES 2 AND 3 WAS TAKEN AS THE BASIS OF BEARINGS FOR THIS MAP.

LEGEND

- DISTINCTIVE BORDER LINE
- CENTER LINE
- MONUMENT LINE
- ADJOINER LOT LINE
- EASEMENT LINE
- TIE/RADIAL/TANGENT LINE

FOUND MONUMENT AS INDICATED

3/4" BRASS TAG OR IRON PIPE TO BE SET, TAGGED "RCE 26429"

ABBREVIATIONS:

APN	ASSESSOR'S PARCEL NUMBER
FND	FOUND
M	(OF) MAPS
MON	MONUMENT
NO.	NUMBER
PM	PARCEL MAP
RCE	REGISTERED CIVIL ENGINEER
SFNF	SEARCHED FOR NOT FOUND
W.L.E.	WATER LINE EASEMENT

RECORD DATA REFERENCE:

R1 PM, 846 M 34–35, 2011–08–23
R2 PM, 788 M 2–3, 2005–06–22

GRAPHIC SCALE

20 0 10 20

(IN FEET)
1" = 20'

UNDERWOOD & ROSENBLUM, INC.
civil engineers and surveyors
1630 Oakland Road Ste. A114 San Jose, Ca. 95131
Tel. No. (408) 453 1222 Fax No. (408) 453 1207

SAM2014–01131/PLN2013–09656 SHEET 3 OF 3 JOB NO. J13011

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-2

Santa Clara All-America City 2001

Date: November 4, 2014

To: City Manager for Council Action

From: Director of Water and Sewer Utilities

Subject: Approval for Use of City Water Utility Forces

EXECUTIVE SUMMARY:

It is requested that City Council find that City Water Utility forces can best perform the following water service connections and therefore approve the use of City Water Utility forces for:

Location:	1111 Bellomy St – Buchser Middle School
Type of Service:	One new 8-inch fire service with RPDA and one new fire hydrant
Description of Work:	Provide installation services for the improvements listed above.
Estimated Cost:	$43,145.00
Source of Revenue:	Developer contribution
Job Number:	592-1423-80300-7006-(I)30254

Location:	1730 Emig Ct
Type of Service:	One new 1-inch water service
Description of Work:	Provide installation services for the improvement listed above.
Estimated Cost:	$10,350.00
Source of Revenue:	Developer contribution
Job Number:	592-1423-80300-7006-(I)30256

RECOMMENDATION:

That the Council approve the use of City Water Utility forces for the water service connections at 1111 Bellomy Street and 1730 Emig Court.

Christopher L. de Groot
Director of Water and Sewer Utilities

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report: None

I:\Water\MEMOS\AGENDA\2014\3-City Forces\1111 Bellomy_1730 Emig.doc

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-3

Santa Clara All-America City 2001

Date: November 4, 2014

To: City Manager for Council Action

From: Director of Electric Utility

Subject: Approval for Use of City Forces, Electric Department Estimates

EXECUTIVE SUMMARY:

It is requested that the City Council find that City Forces, supplemented by Public Works and Contract Labor, if necessary, can best perform the installation of the following electric facilities and approve the use of City Forces, therefore:

Estimate No: 33065
Title/Location New Residential Services, 2718 and 2724 Pruneridge Avenue
Type of Job: New Business
Description of Work: Install 60'± of 3-4/0 AL secondary conductor and connect customer services.

Estimated Cost:	$1,295.96	Customer/Developer Contribution:	$	2,680.82
		Salvaged Plant	$	.00
		Customer Service Charge	<$	1,384.86 >

Estimate No: 33616
Title/Location VTA Service Bungalow Service, 3299 Tasman Drive
Type of Job: New Business
Description of Work: Install one 50kVA 102/240 V padmount transformer, 50' ± of 1/0 al triplex primary conductor and connect customer service.

Estimated Cost:	$8,540.00	Customer/Developer Contribution:	$	2,208.71
		Salvaged Plant	$	.00
		Customer Service Charge	$	6,331.29

Estimate No: 33117
Title/Location Irvine Santa Clara Tech Campus, 2620 Augustine Drive
Type of Job: New Business
Description of Work: Install 3000' of primary cable, four padmount switches, cable terminations and two meters.

Estimated Cost:	$274,971.51	Customer/Developer Contribution:	$	657,576.00
		Salvaged Plant	$	.00
		Customer Service Charge	<$	382,604.49 >

RECOMMENDATION:

That Council approve the use of City Electric forces for the installation of facilities 2718 and 2724 Pruneridge Avenue; 3299 Tasman Drive; and 2620 Augustine Drive.

John C. Roukema, Director of Electric Utility

APPROVED

Julio J. Fuentes, City Manager

Documents related to this report: None

F:\COUNCIL\ACTION\USE OF CITY FORCES\2014\111814.DOC

Rev. 02/26/08

Meeting Date: 11/18/14

AGENDA REPORT

Agenda Item # 7A-4

City of Santa Clara, California

Santa Clara All-America City 2001

Date: October 3, 2014

To: Mayor for Council Action

From: City Manager

Subject: Departmental Activity Report for August 2014

EXECUTIVE SUMMARY:

A copy of the Departmental Activity Report for the month of August 2014 can be viewed on the City's website or is available in the City Clerk's Office for review during business hours.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The Departmental Activity Report includes activity reports for all City Departments. There is no disadvantage.

ECONOMIC/FISCAL IMPACT:

There is no additional cost to the City other than administrative staff time and expense.

RECOMMENDATION:

That the Council note and file the Departmental Activity Report for the month of August 2014.

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report:
1) Departmental Activity Report

I/CITYCLERK/DEPARTMENTALACTIVITYREPORT/Agenda Report
02/19/13
Office Records Specialist

CITY OF SANTA CLARA

DEPARTMENTAL ACTIVITY REPORT

MONTH OF

AUGUST 2014

CITY OF SANTA CLARA

I\CITYCLERK\DEPARMENTAL ACTIVITY REPORT\Cover, List of Departments & Missing Page.doc
01/01/07
Office Records Specialist

DEPARTMENTAL ACTIVITY REPORT
LIST OF DEPARTMENTS

City Manager

City Clerk/City Auditor
- **Performance Measures**

Electric Department
- **Monthly Outage Report**

Finance & Purchasing
- **Performance Measures**
- **Municipal Services/License**

Fire Department
- **Emergency Services/Disaster Preparedness**

Human Resources
- **Employee Activity**
- **Performance Measures**
- **Training/Safety Program Status**
- **Workers Adjustment & Retraining**

Library Department
- **Performance Measures**

Parks and Recreation Department
- **Cemetery Division/Mission City Memorial Park**

Planning & Inspection Department
- **Planning Division**
- **Building Inspection Division**
- **Housing & Community Services Division**

Police Department

Public Works Department
- **Automotive Services**
- **Engineering & Building Maintenance**
- **Street**

Water and Sewer Utilities Department
- **Sewer Utility**
- **Water Utility**

Monthly Activity Report
CITY MANAGER'S OFFICE

August 2014				Previous year		
Performance Measures/Activities	**Current Month**	**Year to Date**	**Budget**	**Current Month**	**Year to Date**	**Budget**
Number of citizen contacts responded to by City Manager's Office	40	75	450	43	83	450
Number of contacts assigned out within 5 business days	40	75	---	6	46	---
% contacts assigned out within 5 business days	100%	100%	90%	14%	55%	90%
Number of EOC training meetings	0	0	5	0	0	5
Number of hours of EOC activation	0	0	---	0	0	---
Assist families in purchasing a home though the First Time Homebuyers Program	0	0	25	2	5	25
Prepare and distribute the Annual Report/Calendar	0	0	1	0	0	1
Prepare and distribute monthly utility bill inserts to utility customers	1	2	12	1	2	12
Prepare City Employee newsletter and distribute to all employees, six times per year	1	1	6	1	1	6
Prepare City newspaper (Inside Santa Clara) and distribute three times per year	0	0	3	0	0	3
Prepare and distribute newsreleases as needed	0	2	---	4	8	---
Number of website updates processed	12	32	---	21	70	---
Number of website page views	285,371	1,874,513	---	1,507,858	3,097,000	---
Develop and review City publications	3	6	---	37	58	---
Number of weekly cable channel updates processed	52	97	---	12	50	---
Number of press contacts	35	96	---	24	66	---
Number of video newsbriefs produced	0	1	44	4	6	44
Percent of Council meetings taped and broadcast	100%	100%	100%	1	1	1
Respond to legislative inquiries within 4 working days	95%	98%	90%	90%	1	90%
Number of special events, recognition, and dedications held	6	12	---	4	10	---
Number of business outreach contacts	16	49	---	12	43	---
Provide staff support to Council Committees/ Commissions (number of meetings attended)	5	9	---	7	17	---
Update and administer agreements with organizations and intergovernmental agencies	7	11	10	2	4	10

Performance Measures Reporting
Department: City Clerk's Office
August 2014

Division/Program/Measure	2014-15 Current Month	2014-15 Year to Date	2014-15 Budget	2013-14 Current Month	2013-14 Year to Date	2013-14 Budget
Council/Administration Support						
1. Percent of Council minutes approved within 4 weeks	100%	100%	90%	100%	100%	90%
Number of Council minutes approved	3	4		5	6	
Number of Council minutes approved within 4 weeks	3	4		5	6	
2. Percent of Council minutes approved without amendment	100%	100%	100%	100%	100%	100%
Number of Council minutes approved without amendment	3	4		5	6	
Public Information/Legislative Records Management						
1. Percent of records declared eligible for destruction are destroyed within 30 days	100%	100%	100%	100%	100%	100%
Number of records destruction requests processed	1	6		1	7	
Number of records declared eligible for destruction are destroyed within 30 days	1	6		1	7	
2. Percent of requests for records/information completed within one business day	100%	100%	100%	100%	100%	100%
Number of requests for records/information from citizens (includes telephone inquiries)	1,608	3,122		1,262	2,602	
Number of requests for records/information from staff	748	1,461		712	1,251	
3. Number of documents processed	67	148	1,200	79	158	1,820
Elections/Political Reform Act						
1. Percent of Campaign Disclosure Reports distributed	100%	100%	100%	100%	100%	100%
2. Number of Campaign Disclosure Reports processed	0	16	30	0	0	30
3. Number of Conflict of Interest forms processed	0	0	200	0	0	200
4. Number of elections held	0	0	1	0	0	1

Performance Measures Reporting
Department: City Clerk's Office
August 2014

Division/Program/Measure	2014-15 Current Month	2014-15 Year to Date	2014-15 Budget	2013-14 Current Month	2013-14 Year to Date	2013-14 Budget
City Auditor						
1. Number of vendor warrants audited	1,014	2,103	20,000	1,136	2,469	20,000
2. Number of travel reports audited	13	31	750	17	35	750
3. Number of payroll checks processed	2,576	4,965	35,000	2,395	4,748	35,000
Miscellaneous Tasks (not a program)						
UPS deliveries processed	20	37		29	73	
Number of Notary transactions completed	8	32		0	13	
Number of deeds and real property interests accepted and recorded	2	6		5	10	

Rod Diridon, Jr., City Clerk

ELECTRIC DEPARTMENT ACTIVITY REPORT

The following report covers the principal activities of the Electric Department during the month of **August 2014**

DESCRIPTION		CURRENT MONTH	YEAR TO DATE
Poles Replaced		1.0	14.0
Transformers Installed		0.0	11.0
Transformers Replaced		5.0	25.0
Distribution Patrol (circuit maps)	**Total 70 Maps**	0.0	0.0
Distribution Inspection O/H (circuit maps)	**Total 19 Maps**	0.0	0.0
Distribution Inspection U/G (circuit maps)	**Total 19 Maps**	0.0	0.0
Switches Replaced/Installed		1.0	8.0
Underground Cable Installed (ft)		12800.0	61160.0
Underground Cable Replaced (ft)		1,250.0	9715.0
Metering New Services (Residential/Comm/Indust)		100.0	184.0
Total Meter Removals (Residential/Comm/Indus)		6.0	56.0
Street Lights Installed or Replaced (Knock Down & New Installations)		0.0	7.0
Street Lights Repaired/Replaced		123.0	567.0
Traffic Signal Lamps Replaced		1.0	13.0
Unlocks	Electric	0.0	4.0
Service & Trouble Calls		148.0	1138.0
Trees Trimmed	Contractor	630.0	5191.0
Underground Locates		373.0	2903.0
Underground Inspections		123.0	496.0
Peak Demands		August 2014 August 2013	471.80 460.70
Energy Requirements		August 2014 August 2013	282,979.02 272,001.20

Average Service Availability Index (ASAI)	99.98474
System Average Interruption Frequency Index (SAIFI)	0.06438
Customer Average Interruption Duration Index (CAIDI) (Number of hours per customer)	105.83126

Outages (see attached sheet)

Total Customers this Month	51,088	Days of Month
Total Customer Minutes this Month	2,280,568,320	31

Outage Totals

		This Month	This Month Last Year
Unscheduled Outages			
Long	# Outages	7	3
	# Customers Out	3,289	3297
	# Minutes Out	1,293	226
	# Customer Minutes Out	348,079	265948
	# Within City System	7	3
	# Supply to City Minutes	114,632	800
Short	# Outages (Blinks)	0	3
	# Customers Affected	0	452
	# Within City System	0	3
	# Supply to City Minutes	0	0
Scheduled Outages			
Long	# Outages	0	0
	# Customers Out	0	0
	# Minutes Out	0	0
	# Customer Minutes Out	0	0
	# Within City System	0	0
	# Supply to City Minutes	0	0
Short	# Outages (Blinks)	0	0
	# Customers Affected	0	0
	# Within City System	0	0
	# Supply to City Minutes	0	0
Totals			
Total Long Outages		7	3
Total Short Outages (Blinks)		0	3
Total Customers Out (Long)		3,289	3297
Total Customers Affected (Short- Blinks)		0	452
Total Customer Minutes Out		348,079	265948
Total Outages Within City System		7	3
Total Outages in Supply to City		0	0

Number of Outages (by Cause)

Cause #	Description	Total This Month	This Month Last Year	Rolling AT	% AT
0	Supply to City	0	0	0	0%
1	Overhead Equipment Failure	1	1	18	27%
2	Underground Equipment Failure	0	1	8	12%
3	Weather	0	0	0	0%
4	Birds, Animals, Snakes, etc.	3	1	17	25%
5	Trees	1	0	4	6%
6	Foreign Interference	1	1	6	9%
7	Human	0	0	2	3%
8	Other	0	0	0	0%
9	Unknown	1	1	12	18%
10	Vehicle	0	0	0	0%
	Total	7	5	67	

12 Month Outage Statistics

Index	As of This Month	As of This Month Last Year	Current Month
ASAI (%)	99.9892	99.9948	99.98474
CAIDI (Long) (min)	106.59	78.86	105.83126
SAIDI (Long) (min)	56.58	27.33	6.81332
SAIFI (Long) (ints/tot cust)	0.53	0.35	0.06438
SAIFI (Short) (ints/tot cust)	0.18	0.23	0.00000

ASAI - Average Service Availability Index
(customer minutes available/total customer minutes, as a %)
CAIDI - Customer Average Interruption Duration Index
(average minutes interrupted per interrupted customer)
SAIDI - System Average Interruption Duration Index
(average minutes interrupted per customer for all customers)
SAIFI (Long) - System Average Interruption Frequency Index
(# of long interruptions per customer for all customers)
SAIFI (Short) - System Average Interruption Frequency Index
(# of short interruptions per customer for all customers)

S/U - Scheduled or Unscheduled
Ints - # of Interruptions
Long - >1 min; Short - <1 min
Cause # - see table on page 3

9/02/14
Jeff Ipsaro
Division Manager - Operations

Silicon Valley Power **MONTHLY OUTAGE REPORT** **August 2014**

General Information				Cause		Time & Duration				Customers	
#	Date	S/U	Address/Location	Description	#	Ints	T off	T on	Mins	# Out	Cust Min
1	8/11/2014	U	205-U 2900 Mead Ave	Bird contact Xfmr 10953/10954/10956	4	1	8/11/14 3:25 PM	8/11/14 3:52 PM	27	1	27
2	8/12/2014	U	105-U IRO 2125 Santa Cruz	Balloons in primary overhead	6	1	8/12/14 8:36 AM	8/12/14 9:57 AM	81	301	24381
3	8/13/2014	U	103-H 2960 Jerald Ave.	Palm tree in primary overhead	5	1	8/13/14 3:43 PM	8/13/14 6:54 PM	191	144	27504
4	8/18/2014	U	204-P Tower 104A07	Bird contact	4	1	8/18/14 4:12 PM	8/18/14 5:13 PM	61	627	38247
5	8/18/2014	U	204-P Tower 104A07	Bird contact			8/18/14 4:12 PM	8/18/14 6:30 PM	138	670	92460
6	8/18/2014	U	204-P Tower 104A07	Bird contact			8/18/14 4:12 PM	8/18/14 7:13 PM	181	120	21720
7	8/18/2014	U	204-P Tower 104A07	Bird contact			8/18/14 4:12 PM	8/18/14 7:58 PM	226	1	226
8	8/18/2014	U	204-P Tower 104A07	Bird contact	4	1	8/18/14 8:39 PM	8/18/14 10:20 PM	101	1,417	143117
9	8/18/2014	U	204-P Tower 104A07	Bird contact			8/18/14 8:39 PM	8/19/14 12:25 AM	226	1	226
10	8/24/2014	U	103-B 1651 Homestead Rd.	Blown C/O on BTS15	9	1	8/24/14 9:39 AM	8/24/14 10:01 AM	22	6	132
11	8/26/2014	U	103-B 1000 Lincoln St.	T7239/25 fused door dropped open	1	1	8/26/14 11:33 AM	8/26/14 12:12 PM	39	1	39

S/U - Scheduled or Unscheduled
Ints - # of Interruptions
Long - >1 min; Short - <1 min
Cause # - see table on page 3

9/23/14
Jeff Ipsaro
Division Manager - Operations

Performance Measures Reporting
Department: Finance
August-14

Division/Program/Measure	2014-2015			2013-2014		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
Administrative Services/City-Wide Fiscal Planning & Administration						
1. Prepare Operating Budget, Capital Improvement Plan and CAFR documents.	N/A	N/A	3	N/A	N/A	3
2. Meet with staff at least quarterly to review work plans.	N/A	N/A	4	N/A	N/A	4
Administrative Services/Special Projects						
1. Percent of legislative analysis completed within negotiated time frame.	100%	100%	100%	100%	100%	100%
2. Percent of special requests completed within negotiated time frame.	100%	100%	100%	100%	100%	100%
Budget and Treasury/Cash Management						
1. Average weighted yield on unrestricted funds will be at least 100% of the twelve month average yield on two-year US Government Agency securities.	177%	180%	100%	268%	271%	100%
Budget and Treasury/Contract Management						
1. All actions required in contracts will be met by agreed upon due dates.	100%	100%	100%	100%	100%	100%
2. Ensure that quarterly lease payments for the Great America Theme Park site are made when due.	100%	100%	100%	100%	100%	100%
Budget and Treasury/Debt Management						
1. Submit debt schedules to Council no later than January 31 and July 31 of each year.	N/A	100%	100%	N/A	100%	100%
Budget and Treasury/Financial Analysis						
1. Complete special projects by agreed upon due dates.	100%	100%	100%	100%	100%	100%

Performance Measures Reporting
Department: Finance
August-14

Division/Program/Measure	2014-2015			2013-2014		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
Budget and Treasury/Budget Development & Analysis						
1. Receive California Society of Municipal Finance Officers (CSMFO) budget awards.	N/A	N/A	2	N/A	N/A	2
Accounting/General Accounting						
1. Complete the external audit process and preparation of City's Comprehensive Annual Financial Report with an unqualified audit by December 31.	N/A	N/A	100%	N/A	N/A	100%
2. Receive Government Financial Officers Association of the United States and Canada (GFOA) excellence in financial reporting award.	1	1	1	1	1	1
3. Complete the preparation and submission of various State, Local, and Federal Agency reports by due dates.	100%	100%	100%	100%	100%	100%
4. Complete the month-end accounting close process and distribution of department budget status reports by the 15th working day of the following month.	100%	50%	83%	0%	0%	83%
Accounting/Payroll						
1. Process bi-weekly payroll and issuance of employee checks by the due date and time.	100%	100%	100%	100%	100%	100%
2. Complete and file the required monthly/quarterly State and federal tax returns before due date.	100%	100%	100%	100%	100%	100%
3. Issue employee W-2 forms by January 31.	N/A	N/A	100%	N/A	N/A	100%
4. Transmit the electronic version of W-2 to Social Security Administration by March 31.	N/A	N/A	100%	N/A	N/A	100%

Performance Measures Reporting
Department: Finance
August-14

Division/Program/Measure	2014-2015			2013-2014		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
Accounting/Accounts Payable						
1. Number of invoices processed.	3,643	6,582	40,000	3,620	6,308	40,000
2. Number of vendor warrants issued.	1,016	2,106	14,000	1,384	2,275	15,000
3. Percent of vendor invoices paid within 7 days of receipt.	98%	74%	95%	98%	85%	95%
4. Number of quick invoice vouchers processed.	1,413	2,510	15,000	1,286	2,250	15,000
5. Number of Payables process improvements.	0	0	1	0	0	2
Accounting/Business License/Receivables/Fixed Assets						
1. Percent of time that invoices are mailed within 10 working days of receipt of documentation from City Departments.	100%	100%	100%	100%	100%	100%
Municipal Services/Utility Billing Services						
1. Percent of closed delinquent accounts collected in-house.	86%	86%	80%	74%	79%	80%
2. Amount of late fees assessed.	$50,051	$112,060	$825,000	$70,961	$150,276	$825,000
Municipal Services/Revenue Receipting-Cashiering						
1. Average monthly number of utility accounts paying by automated methods.	31,759	33,234	31,000	31,963	31,992	29,000
2. Average monthly utility payments processed.	50,787	53,568	51,000	54,784	54,616	50,000
3. Percent of cash drawers reconciled.	100%	100%	100%	99%	100%	100%

Performance Measures Reporting
Department: Finance
August-14

Division/Program/Measure	2014-2015			2013-2014		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
Municipal Services/Business Certificate						
1. Number of business tax certificates processed annually.	1,126	2,405	13,000	1,052	1,916	12,000
2. Percent of delinquent tax certificates at fiscal year end.	6.9%	6.1%	5.0%	3.7%	4.4%	5.0%
Municipal Services/Field Service						
1. Percent of monthly utility meters accurately read.	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
2. Number of service requests processed yearly.	3,047	6,213	40,000	3,601	7,171	42,000
3. Average number of meters read monthly.	80,149	80,130	80,000	79,923	79,916	80,000
4. Number of months where all 200 routes are read and billed.	1	2	12	1	2	12
Municipal Services/Administration						
1. Percent of Accounts Receivables written off as bad debt annually.	0.02%	0.02%	0.40%	0.02%	0.01%	0.40%
2. Number of major UMIS initiatives successfully implemented during the year.	0	0	4	0	0	5
Municipal Services/Call Center/Communication						
1. Percent of customer calls answered within 90 seconds.	47%	47%	40%	33%	35%	40%
2. Average hold time of sequenced calls (m:s).	3:26	3:29	4:00	4:10	4:04	4:00
3. Number of dropped calls to total calls.	12%	12%	15%	13%	13%	15%
4. Average hold time of sequenced calls before drop (m:s).	3:12	3:07	4:00	3:11	3:12	4:00
5. Average number of customer telephone calls taken monthly.	6,469	6,507	6,000	6,456	6,351	6,000
6. Average number of IVR calls received monthly.	11,591	11,672	12,000	11,612	11,397	12,000
7. Average number of outbound calls made by CSR's.	1,646	1,686	1,500	1,497	1,494	1,500

Performance Measures Reporting
Department: Finance
August-14

Division/Program/Measure	2014-2015			2013-2014		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
Purchasing/Warehouse						
1. Number of material requisitions.	293	886	3,200	292	630	3,200
2. Number of inventory items cycle counted.	217	438	1,200	98	346	1,200
Purchasing/Purchasing						
1. Number of purchase orders.	118	255	1,250	100	297	1,250
2. Number of cost reductions/avoidance.	0	0	5	0	0	5
Purchasing/Mail Services						
1. Number of mail pieces processed.	14,753	29,137	147,000	15,052	28,574	147,000

CITY OF SANTA CLARA
DEPARTMENT OF FINANCE - BUSINESS TAX & BUSINESS LICENSE
MONTHLY ACTIVITY REPORT
For the month ending August 31, 2014
With Comparative Amounts for the month ended August 31, 2013

	CURRENT FY 2014-2015		PRIOR FY 2013-2014	
	This Month	Fiscal Year To Date	This Month	Fiscal Year To Date
CASH RECEIVED FROM:				
Business License (Tax Certificate)	$ 84,274	$ 183,074	$ 66,585	$ 132,486
Fire Permits	$ 262,817	$ 499,918	$ 121,609	$ 215,420
Rubbish Hauler (3%-16%)	$ -	$ 287,983	$ 46,901	$ 281,272
Transient Occupancy Tax (9.5%)	$ 1,123,898	$ 3,659,476	$ 909,137	$ 3,165,847
FISCAL YEAR STATISTICS FOR BUSINESS LICENSES:				
NEW BUSINESS INFORMATION:				
No. of Rental Businesses	5	12	6	8
No. of Santa Clara Businesses	110	217	134	253
No. of Out-of-Town Businesses	89	158	63	116
Total New Businesses	204	387	203	377
RENEWALS	922	2,018	849	1,539
LICENSES/PERMITS DELETED:	160	401	140	276
FIELD ENFORCEMENTS/DELINQUENCIES:				
Total No. of Delinquent Accounts	911	* n/a	480	* n/a
Total No. of Accounts in Collection	408	* n/a	437	* n/a
No. Delinquent Accounts Paid	60	136	68	116
No. Delinquent Accounts Deleted	44	142	65	144
Total Delinquents as a % of Total Certificates	6.9%	* n/a	3.7%	* n/a
BREAKDOWN OF CURRENT BUSINESS LICENSES:** (Tax Certificates)				
Number of Hotels/Motels	30		29	
Rental Owners	1,475		1,442	
Fixed Location in City (Inc Home Bus)	8,314		8,155	
Out of City (Includes Contractors)	3,328		3,221	
Number of Active Business Tax Accounts	13,147		12,847	

Gary Ameling
Director of Finance

cc: City Clerk

* Fiscal Year To Date amounts in these categories are labled not applicable (n/a), as the number listed under "This Month" reflects a revolving count.
** As of report run date on 8/11/14

Santa Clara Fire Department
Monthly Activity Report
Aug 2014

Division: Protection
Program: Administration

		This Month	FY 14/15 To Date
1	Number of hours contributed by the Volunteer/Reserve Division	972	1927
2	Number of Fire responses	12	23
3	Number of emergency Medical responses	310	646
4	Number of non-emergency Medical responses	124	259
5	Number of Hazardous Materials responses	0	2

Division: Protection
Program: Emergency Response

1	Response time in 90% of all high level emergency medical calls.	6:09	6:15
2	Rseponse time in 90% of all high level emergency fire calls.	0:00	2:37
3	Number of emergency responses	412	865
4	Number of non-emergency responses	0:00	396
5	Percent of total alarms catagorized as false	9.85%	10.5%

Division: Prevention
Program: Code Enforcement/Public Education

1	Number of inspections performed by the Fire Prevention Bureau	372	730
2	Number of inspections performed by the Fire Protection Division	200	681
3	Number of citizen complaints	0	0
4	Number of community participants in fire and safety training and education programs	0	300
5	Number of public education meetings	0	1
6	Number of permit inspections	201	409
7	Number of new business license inspections	4	10
8	Number of plans reviewed	138	316
9	Percent of multi-family (R-1) occupancies inspected	3.79%	13.30%

	This Month	FY 13/14 To Date
Division: Prevention		
Program: Investigations		
1 Number of fires investigated	1	1
2 Number of hazardous materials incidents investigated	1	1
Division: Training		
Program: Training		
1 Number of fire prevention training hours	91.50	152.77
2 Number of hazardous materials training hours	33.83	48.33
3 Number of Emergency Medical Services training hours	184.33	274.13
4 Number of rescue training hours	73.50	157.92
5 All other training hours	518.87	1169.64
Division: Hazardous Materials		
Program: Hazardous Materials Code Enforcement		
1 Number of hazardous materials emergency responses	2 29	2
2 Number of business inspections	43	72
Division: Incremental EMS Costs		
Program: Paramedic Services		
1 Response time in 90% of all high level emergency medical calls.	6:09	6:15

William G. Kelly
Fire Chief

Fire Department

Interoffice Memorandum

Date: September 24, 2014

To: Julio Fuentes, City Manager

From: William Kelly, Fire Chief

Subject: August 2014 Monthly OES Report

8/5: Regional response and EOC activation during communication system failure – Tabletop Exercise – 1 hour

8/17: Preplan mutual aid response for stadium events: NFL events at Levi's Stadium - 3 hours

8/21: Webinar: Social media for community engagement during emergencies – 1 hour

8/24: Preplan mutual aid response for stadium events: NFL events at Levi's Stadium – 2 hours

8/28: Meeting of the Santa Clara County Operational Area Council (OAC) – 2.5 hours

8/28: Research: Job specifications for Emergency Services Coordinator – 3.5 hours

City of Santa Clara
Employee Activity Report - August 2014
July 20, 2014 - August 30, 2014

	Classified	Unclassified	As-Needed	Total
Budgeted Positions	**902.50	127.00		**1029.50
Filled Positions	741.25	104.00		845.25
Available Positions	161.25	21.00		182.25
Regular Appointments	8.00	2.00		10.00
As-Needed Appointments (includes Additional Classes)			50.00	50.00
Filled As-Needed Positions			492.00	492.00
Separations - Failed Probation	1.00			1.00
Separations - Resignation				0.00
Separations - Dismissal				0.00
Separations - As-Needed			12.00	12.00
Rehire				0.00
Retirements - Industrial Disability				0.00
Retirements - Service	2.00	1.00		3.00
Retirements - Service Pending Industrial Disability				0.00
Promotions	7.00	4.00		11.00
Death				0.00
Transfer		1.00		1.00
Voluntary Demotion				0.00
Step/Merit Increases Granted	28.00		28.00	56.00
Step Increases Denied	1.00			1.00
Unemployment Insurance Claims	1.00		1.00	2.00
Long Term Disability Claims				0.00
State Disability Claims	5.00			5.00
Industrial Injury/Illness - Supervisor's Report	4.00		1.00	5.00
Industrial Injury/Illness - Medical Only	2.00			2.00
Industrial Injury/Illness - Indemnity (Lost Time)	8.00			8.00

** Total includes 1 City Manager Temporary Overfill position.

FHunt

Francine Hunt
Human Resources Supervisor

PERFORMANCE MEASURES REPORTING
HUMAN RESOURCES - RECORDS BENEFITS
AUGUST 2014

Records and Benefits	2014-2015		2013-2014	
	Year to Date	Budget Goal	Budget Actual	Budget Goal
Benefits, Records and Payroll				
1. Percent of employee benefits & compensation transactions processed accurately and timely.	100%	100%	100%	100%
2. Percent separation and retirement payoff calculations completed according to policy and within the final pay period.	100%	100%	100%	100%
3. Percent of new hires processed for pay and benefits in time for their first paycheck	100%	100%	100%	100%

Records and Benefits	2013-2014		2012-2013	
	Year to Date	Budget Goal	Budget Actual	Budget Goal
Workers' Compensation				
1. Percent of Workers' Compensation claims processed within five business days of receipt in Human Resources Department.	100%	100%	100%	100%
2. Percent of work hours lost as a result of industrial injuries and illnesses.	1.07%	2.0%	1.15%	2.0%
3. Percent of workforce that is accident free.	85.9%	85%	86.6%	83%
4. Percent of City-sponsored training classes rated very good or above by attendees.	95%	95%	95%	95%
5 Percent of City employees attending City sponsored training classes.	28%	40%	64.3%	40%

Notes:

* ANNUALIZED TO DATE

Report Date: 09/29/14
DVMGR:

HUMAN RESOURCES DEPARTMENT

TRAINING AND SAFETY ACTIVITIES
Monthly Report

August 2014

TRAINING

1. Topic: Harassment Prevention – Employee (Video)
Date: August 4, 8, 11, 12, 14, 18, 19, 22, 25, 27, 28, 2014
Participants: 34
Duration: 1 hr.

2. Topic: Dealing With Difficult People Workshop
Date: August 21, 2014
Participants: 64
Duration: 2 hrs.

3. Topic: Beginner Series #4: Understanding File Management
Date: August 5, 2014
Participants: 2
Duration: 1.5 hrs.

4. Topic: For New Employees – City of Santa Clara Technology Overview
Date: August 18, 26, 2014
Participants: 10
Duration: 1 hr.

5. Topic: CAFR Refresher for Accountants
Date: August 22, 2014
Participants: 5
Duration: 1.5 hrs.

6. Topic: Track Changes (Redlining)
Date: August 26, 2014
Participants: 2
Duration: 1 hr.

7. Topic: Work Form Creation
Date: August 28, 2014
Participants: 6
Duration: 1.5 hrs.

8. Topic: Working with PD Libraries in CSI
Date: August 28, 2014
Participants: 2
Duration: 1 hr.

SAFETY

No significant activities for the month on a City-wide basis.

ADDITIONAL DEPARTMENTAL TRAINING

FIRE

1. Topic: 2nd Quarter EMT Refresher
Date: August 4, 5, 7, 8, 11, 12, 13, 18, 19, 26, 27, 30, 2014
Participants: 111
Duration: 4 hrs.

2. Topic: Blue Group 2: Fire Attack Training
Date: August 4, 8, 14, 2014
Participants: 33
Duration: 3 hrs.

3. Topic: State Statutes and Regulations
Date: August 6, 7, 2014
Participants: 2
Duration: 12 hrs.

4. Topic: Blue Group 3: Fire Attack Training
Date: August 7 – 9, 2014
Participants: 32
Duration: 3 hrs.

5. Topic: Blue Group 1: Fire Attack Training
Date: August 14, 2014
Participants: 11
Duration: 3 hrs.

6. Topic: Truck Shoring Drill
Date: August 14, 21, 2014
Participants: 13
Duration: 5 hrs.

7. Topic: Statutes and Regulations
Date: August 15, 2014
Participants: 1
Duration: 12 hrs.

8. Topic: US&R Training
Date: August 18, 2014
Participants: 1
Duration: 3 hrs.

9. Topic: BLS Instructor Re-Certification
Date: August 20, 26, 2014
Participants: 22
Duration: 4.5 hrs.

10. Topic: Trench Rescue Drill
Date: August 22, 2014
Participants: 16
Duration: 4 hrs.

Attached is the current statistics regarding the Worker Adjustment and Retraining Notification (WARN) Act.

Greg Harris
Human Resources Division Manager/
Training and Safety Officer

cc: Director of Human Resources

WORKER ADJUSTMENT AND RETRAINING NOTIFICATION (WARN) ACT
2014

COMPANY NAME	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Notifications Received This Month	0	0	0	0	0	0	0	0	0	0	0	0
Received This Month Last Year	2	0	2	0	0	0	0	0	1	2	1	0

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Employees Affected This Month	0	0	0	0	0	0	0	0	0	0	0	0
Affected This Month Last Year	118	0	85	0	0	0	0	0	36	27	2	0

Total Notifications Received This Year:	0
Total Notifications Received Last Year:	8

Employees Affected This Year:	0
Employees Affected Last Year:	268

City of Santa Clara
Library Department Monthly Report
August 2014

		August-2014	August-2013	Fiscal YTD 2014/15	Fiscal YTD 2013/14
Items Borrowed					
Central Library		212,414	203,838	407,228	420,736
Mission Branch		1,547	1,821	3,490	4,169
Northside Branch		5,656	0	5,656	0
TOTAL		219,617	205,659	416,374	424,905
Patron Visits					
Central Library		72,878	72,380	133,133	148,142
Mission Branch		3,174	3,574	6,434	7,080
Northside Branch		22,526	0	22,526	0
TOTAL		98,578	75,954	162,093	155,222
Patron Electronic Resources Use					
Public Internet Users		12,350	11,914	23,216	23,360
Reference Inquiries					
Central Library		13,719	15,382	25,477	26,882
Mission Branch		214	492	458	947
Northside Branch		1,257	0	1,257	0
TOTAL		15,190	15,874	27,192	27,829
Program Attendance	*Number*				
Children: Central Library	*0*	0	42	3,037	3,030
Mission Branch	*2*	46	16	221	183
Northside Branch	*4*	746	0	746	0
Adults: Central Library	*11*	275	408	659	878
Mission Branch	*9*	29	20	56	32
Northside Branch	*3*	75	0	75	0
Senior Booktalks	*1*	13	17	25	29
TOTAL	*30*	1,184	503	4,819	4,152
Patron Registration					
Santa Clara		2,163	892	2,896	1,754
SVLS Libraries		1,008	454	1,437	902
Other Libraries		125	63	184	127
TOTAL		3,296	1,409	4,517	2,783
Collection					
Items Added*		15,968	2,495	49,716	5,685
*Includes opening collection for new Northside Library.					
Holds					
Placed		7,563	6,768	15,412	13,638
Filled		5,456	5,311	11,243	10,717
Volunteer Hours					
Genealogy		180.50	202.25	363.50	378.75
READ Santa Clara		221.50	465.50	585.50	884.50
Volunteer Program		147.74	224.11	534.36	609.75
Foundation and Friends		477.00	477.00	978.00	978.00
TOTAL		1,026.74	1,368.86	2,461.36	2,851.00

Hilary Keith
City Librarian

Performance Measures Reporting
Department: Library
2014-2015
Month Ending August 2014

Division/Program/Measure	2014-2015 Year to Date	2014-2015 Budget	2013-2014 Year to Date	2013-2014 Budget
Division: Administration				
Program: Administration				
1. Number of hours Library facilities are open to the public annually. (Northside Library opened August 2014)	864.00	4,000	709	4,000
2. Number of patron visits to all Library facilities annually. (Northside Library opened August 2014)	162,093	850,000	155,222	1,400,000
Division: Youth & Extension Services				
Program: Youth Services				
1. Number of programs for children and parents offered.	17	250	19	250
2. Number of reference and reader's advisory questions annually.	9,155	35,000	8,709	35,000
3. Number of participants registered annually in Summer Reading Club.	353	2,800	422	2,800
4. Number of children and adults attending programs*.	3,037	30,000	3,030	30,000

*Performance Measure changed effective July 1, 2012

Division/Program/Measure	2014-2015 Year to Date	2014-2015 Budget	2013-2014 Year to Date	2013-2014 Budget
Division: Youth & Extension Services				
Program: Young Adult				
1. Number of Young Adult programs offered.	13	20	13	20
2. Number of Young Adult items circulated.	14,195	75,000	16,019	75,000
3. Number of participants annually in the Teen Summer Reading Program.	109	800	141	800
Division: Youth & Extension Services				
Program: Mission Library				
1. Number of items circulated.	3,490	26,000	4,169	26,000
2. Number of programs for children and parents.	5	11	3	11
3. Number of participants registered annually in the Summer Reading Club.	40	200	0	200
4. Number of matched literacy pairs.	73	75	64	75
5. Number of children and adults attending programs.	221	400	183	400
Division: Youth & Extension Services				
Program: Extension Services				
1 Number of homebound patrons served each month.	16	18	17	20
2 Number of programs for adults.	2	11	2	11
3 Number of volunteer hours.	2,461.36	15,000	2,851.00	15,000

Division/Program/Measure	2014-2015 Year to Date	2014-2015 Budget	2013-2014 Year to Date	2013-2014 Budget
Division: Youth & Extension Services				
Program: Northside Branch Library (Northside Branch opened in August 2014)				
1 Number of items circulated.	5,656	250,000	n/a	n/a
2 Number of programs for children and/or adults programs	4	120	n/a	n/a
3 Number of children and /or adults attending programs	746	2,700	n/a	n/a
4 Number of participants registered in Summer Reading Program	0	500	n/a	n/a
Division: Adult Services				
Program: Reference				
1. Number of reference and reader's advisory questions answered annually.	16,322	75,000	22,065	75,000
2. Number of programs offered to adults.	20	90	25	90
3. Total attendance at programs offered to adults.	671	4,000	878	4,000
Division: Adult Services				
Program: Periodicals				
1 Number of periodicals checked in and processed monthly.	823	2,000	897	7000
2 Number of requests for Service resolved by Periodicals staff monthly *	911	1,400	988	6,000
*Performance Measure added effective July 1, 2012				

Division/Program/Measure	2014-2015 Year to Date	2014-2015 Budget	2013-2014 Year to Date	2013-2014 Budget
Division: Adult Services				
Program: Local History				
1 Number of programs presented/sponsored annually	2	20	3	20
2 Number of displays developed annually.	0	5	0	5
3 Research inquiries answered annually.	373	3,000	578	3,000
Division: Adult Services				
Program: Circulation				
1 Number of items circulated annually*	407,228	2,400,000	420,736	2,400,000
2 Number of patrons registered annually (Includes Northside Library opened August 2014)	4,517	14,000	2,783	14,000
*Performance Measure changed effective July 1, 2012				
Division: Collection Services				
Program: Technical Services				
1. Number of items added to the collection each month.*	15,968	2,500	2,495	2,000
*Reflects opening collection for new Northside Library.				

Division/Program/Measure	2014-2015 Year to Date	2014-2015 Budget	2013-2014 Year to Date	2013-2014 Budget
Division: Collection Services				
Program: Collection Management				
1. Books held per capita.	3.30	3.00	2.93	3.00
2. Total items held per capita.	3.77	3.40	3.33	3.40
3 Library materials expenditure per capita.	3.80	3.80	4.15	$ 3.80
Division: Support Services				
Program: Facilities				
1 # of safety inspections made annually	2	12	2	12
2 % of safety issues resolved within 48 hours of report	98%	99%	98%	99%
Division: Support Services				
Program: Technology				
1 Percent of problem reports responded to within 24 hours of receipt.	100%	100%	100%	100%
2 Number of tickets/requests for services resolved by Technology Staff	685	1,000	345	600
3 Number of tickets/requests for services resolved by Technology Aides	4,139	12,000	2,917	10,000
4 Number of Library public computer users*	23,216	108,000	23,360	108,000*
5 Number of Public laptop users	31,023	70,000	25,304	10,000

* Performance Measure changed effective July 1, 2012

Month: August Year: 2014
PARKS AND RECREATION DEPARTMENT
MONTHLY ACTIVITY REPORT

1 **Participant Attendance Total** **50,012** with breakdown as follows:

A. By Program

Senior Citizens	16,271	Sports Classes & Leagues	6,179
Pre School	172	Teen Activities	1,378
Culture/Performing Arts	3,686	Therapeutics	142
Special Events	2,146	Instructional Swim	5,146
Camps	2,173	Recreational Swim	6,839
Total	**50,012**	Youth Activities	5,880

B. By Location (consider special events for each location)

Community Recreation Center	5,208	Parks	8,233
Senior Center	16,534	Pools	11,985
Parks Buildings	2,303	School Facilities (add special events)	73
Youth Activities Center	3,732	Teen Center	1,565
Total	**50,012**	Off-Site	379

2 **Non-Directed. Permit or Contract groups attendance total** **55,791** with breakdown as follows:

A. By Activity

	Groups	Attendance
Community Recreation Center Reservation		5,341
Senior Center		1,131
Teen Center/YAC		0
Parks- Buildings Reservation		2,180
Parks- Picnic Reservation		12
Field Reserv., Adult & Youth Groups		15,692
Swim Pool Reservations		31,435
	Total	**55,791**

B. By Location

Senior Center	1,131	T.C./YAC	0
Community Recreation Center	5,341	Fields	15,692
Park Buildings	2,180	Pools	31,435
Parks Picnics	12		
		Total	**55,791**

3 **Monthly Participation totaled** **105,803** (Program attendance & non-directed or permit groups)

4 **Revenue Collected for the Month:**

		Year to Date Fiscal				Fiscal Year
		8/1/2014	**2014/15**		**8/1/2013**	**2013/14**
6	Swim Pool Admission	2,501.25	13,996.25	$	4,943.00	$ 14,278.00
7	Rec. Classes/Swim Lessons	193,297.93	393,972.27	$	266,122.60	$ 381,500.08
8	Rentals & Commissions	17,962.00	31,840.50	$	29,803.50	$ 40,258.97
		$213,761.18	**$439,809.02**	**$**	**300,869.10**	**$ 436,037.05**

August-14
MONTHLY PROJECT ACTIVITY REPORT
PARKS AND RECREATION DEPARTMENT
PARKS DIVISION, CEMETERY DIVISION, SCG&TC OPERATOR

Fund 532 Parks & Recreation:		**Activity**
3001	Miscellaneous Park Improvements	**H. Schmidt** - Caboose repair complete, awaiting installation at park. **Agnew** -Misc. landscape improvements have been completed. **Live Oak** - The strip along the curb has been complete.
3002	Community Recreation Center	
3003	Tennis & Sport Courts	**Central Tennis Center** - All tennis courts at the Santa Clara Tennis Center located in Central Park, have been resurfaced.
3004	Youth Activity Center	YAC roof replacement is complete.
3005	Senior Center	
3006	Teen Center	Projects in the planning stages.
3007	Mission City Cntr for Performing Arts	Maintenance continued by S.C.U.S.D., City pays 33%.
3008	Townsend, Johnson, Washington Sports Field	Continuing field repairs & maintenance. **Washington Field** - Renovations have been completed.
3009	Tree Inventor & Habitat Restoration	
3010	Park Building Roof, Structure Rehabilitation & Replacement	Not funded for 2013-14.
3140	Ulistac Natural Area	Plans for extending the recycled water line have been sent to the South Bay Water Recycling for approval.
3170	Central Park Pond Refurbishment	Central Park Pond Improvement Project is nearing completion. Ribbon cutting for the project is scheduled for July 4, 2014 at 12:30pm.
3172	International Swim Center Pool	No projects funded 2013-14.
3176	Miscellaneous Swim Pool Improvements Phase VI	**International Swim Center** - Replacement of defective return valve to racing & training pools. **M.Gomez** - Additional deck light installation on hold waiting for arrival of light poles.
Other		

Fund 562-CDBG Projects:		**Activity**
5556	Senior Center ADA Improvements	All projects completed, fund depleted (ADA). No additional funding for FY 2013-14
5558	Senior Center Emergency Generator	Project Completed. No additional funding for FY 2013-14.

Fund 840 SOSA		**Activity**
9532	Golf Course Drainage Restoration	No projects funded for FY 2013-14.

Fund 593 Cemetery		
3625	Burial Improvements	No projects funded for 2013-14.

THE CITY OF SANTA CLARA

ACTIVITY REPORT FOR THE MONTH OF AUGUST, 2014

MISSION CITY MEMORIAL PARK

TOTAL INCOME FROM ALL SOURCES:				FISCAL YEAR COMPARISON SUMMARY TOTALS TO DATE:	
	AUGUST, 2014	AUGUST, 2013	%	2014-2015	2013-2014
FACILITIES					
093/1162/5730					
093/1163/5730	$9,509.00	$10,686.00	-11.0%	$18,087.00	$36,566.00
LABOR					
093/1162/5740					
093/1163/5740	$19,787.00	$15,210.00	30.1%	$36,032.00	$46,613.00
MATERIALS					
093/1162/5760					
093/1163/5760	$13,008.00	$6,890.00	88.8%	$14,131.00	$24,568.00
BSR					
TOTALS	$42,304.00	$32,786.00	29.0%	$68,250.00	$107,747.00
SALES TAX	$1,138.23	$602.90	88.8%	$1,236.50	$2,149.76
ENDOWMENT CARE					
077/0131/57500					
077/0131/0361	$3,253.00	$3,832.00	-15.1%	$6,409.00	$12,344.00
TOTAL INCOME	$46,695.23	$37,220.90	25.5%	$75,895.50	$122,240.76

MONTHLY PURCHASES AND BURIAL SUMMARY

AUGUST FISCAL YEAR 2014-2015		AUGUST FISCAL YEAR 2013-2014	
INVOICES	32817-32828	INVOICES	32690-32699
NICHES PURCHASED	0	NICHES PURCHASED	0
CREMATION PLOTS PURCHASED	0	CREMATION PLOTS PURCHASED	2
CREMATION BURIAL RIGHTS	1	CREMATION BURIAL RIGHTS	2
FULL BODY PLOTS PURCHASED	1	FULL BODY PLOTS PURCHASED	0
CREMATION BURIAL (GROUND OR NICHE)	5	CREMATION BURIAL (GROUND OR NICHE)	6
FULL BODY BURIALS	4	FULL BODY BURIALS	4
TOTAL BURIALS FOR THE MONTH OF AUGUST 2014	9	TOTAL BURIALS FOR THE MONTH AUGUST 2013	10

LAWRENCE DEJANVIER
CEMETERY OPERATIONS SUPERINTENDENT

MONTHLY ACTIVITY REPORT
Planning Department
August 1 - 31, 2014

Division/Program/Measure	2014 - 2015 Current Month	2014 - 2015 Fiscal Year To Date	2013 - 2014 This Month Last Year	2013 - 2014 Fiscal Year To Date
Planning Commission Agenda Items				
Variances & Modifications	0	0	3	3
Use Permits (includes Conditional and Special)	5	5	3	3
Zoning & Rezoning	5	5	3	3
Tent. Map, Ten. Parcel Map & Lot Line Adj.	2	2	1	1
ARC Referrals & Review	0	0	0	0
General Plan Amendment	2	2	1	1
CEQA Determination - EIR, Mitigated Neg. Dec	5	5	1	1
Others including Appeals	2	2	0	0
Total	**21**	**21**	**12**	**12**
Historical & Landmark Commission Agenda Items				
Projects reviewed	**5**	**7**	**2**	**5**
Applications Filed				
Variance	0	0	0	0
Permits - Special & Use	6	7	3	12
Zoning - Regular	4	4	1	1
Zoning Administrator Action (Including Modification)	24	44	10	23
Lot Line Adjustment	0	0	0	0
Tentative Map, Tentative Parcel Map, Subdivision Map	1	2	2	2
Historical & Landmarks including Mills Act	4	12	0	1
General Plan Amendments	2	2	2	2
Residential Additions (story) - No Fee	0	0	0	0
Residential Addition (story) - With Fee	1	4	2	2
Residential Regular Projects- No Fee	10	12	11	23
Residential Regular Projects - With Fee	14	22	0	1
Non-Residential - No Fee	1	4	4	7
Non-Residential - With Fee	3	8	1	3
Mixed Use & New Building	6	7	8	8
Landscape - Non Residential	6	8	2	5
Signs	11	24	40	54
Temporary Signs	2	2	2	4
Others including Appeals	6	7	6	8
Total	**101**	**169**	**94**	**156**
Code Enforcement				
New Complaints	**159**	**191**	**28**	**58**
Complaints Resolved	**146**	**162**	**21**	**42**
Fees Collected				
Unadjusted Fees Collected	$ 107,113.00	$ 28,566.00	$ 52,091.00	$ 27,364.00
Add/Deduct: Adjustments & Refunds				
Net Fees Collected	**$ 107,113.00**	**$ 135,679.00**	**$ 52,091.00**	**$79,455.00**

Kevin L. Riley

KEVIN L. RILEY
Director of Planning and Inspection

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City of Santa Clara

Monthly Activity Report — August, 2014

Department of Plannning and Inspection

Building Inspection Division

DESCRIPTION	THIS MONTH	FY YR TO DATE	LAST YEAR
1. PERMITS ISSUED:			
Building	174	354	223
Electrical	171	335	224
Plumbing	115	251	166
Mechanical	113	199	158
Total Number of Permits	573	1139	771
2. NUMBER OF INSPECTIONS:			
Building	1061	2145	1522
Electrical	612	1222	770
Plumbing/Mechanical	774	1547	884
Housing	0	0	0
Total Number of Inspections	2447	4914	3176
Total Daily Average	117	114	144
3 SERVICE REQUESTS, COMPLAINTS, CN'S			
Service Requests/Complaints	19	28	18
Correction Notices Issued	17	41	20
Correction Notices Resolved	10	31	22
Correction Notices Unresolved	224	N/A	167
Citations Issued	8	26	7
4. REVENUE GENERATED FEES:			
Building Permits	$ 242,062.45	$ 563,803.59	$ 205,411.82
Plan Check	$ 91,557.02	$ 165,250.68	$ 115,013.10
Electrical Permits	$ 28,647.11	$ 75,594.63	$ 26,396.26
Plumbing Permits	$ 17,917.87	$ 64,122.00	$ 13,771.93
Mechanical Permits	$ 19,849.70	$ 60,703.61	$ 20,355.45
Miscellaneous	$ 38,179.26	$ 74,902.22	$ 24,823.76
Total Fees	$ 438,213.41	$ 1,004,376.73	$ 405,772.32
Total last year to date		$ 1,089,463.25	

5. NATURE OF BLDG PERMITS ISSUED:

	NO	VALUATION	UNITS	SQFT	PLAN CHECK	PERMIT FEES
Single Family	3	$756,503.16			$ 6,175.25	$ 5,589.71
Multi-Family						
Duplex						
Apartments						
Commercial	1	$3,480,370.00		6,758	$ 14,240.73	$ 14,674.45
Industrial	1	$1,773,482.00		19,059	$ 6,334.65	$ 8,444.31
Public						
Alteration & Additions						
Residential	58	$2,082,215.00		5,980	$ 20,249.52	$ 25,858.33
Commercial/Industrial	34	$25,221,014.00		7,520	$ 113,133.26	$ 121,304.56
Miscellaneous	77	$10,068,234.00			$ 53,400.56	$ 67,496.57
Public						
Total		$43,381,818.16				
Total F/Y to Date		$115,845,565.06				

Bounmy Soumountha

Bounmy Soumountha, Acting Building Official

9/25/2014

PERFORMANCE MEASURES
BUILDING INSPECTION DIVISION
August, 2014 - FY 2014/15

Permit Services	Adopted	Actual	% Actual/Adopted
1. Percent of express plan checks performed within two working days.	95%	100.0%	105.3%
2. Percent of short cycle plan checks performed within ten business days.	90%	88.9%	98.8%
3. Percent of regular cycle plan checks performed within 30 calendar days.	85%	77.8%	91.5%
4. Percentage of service provided to all Permit Center customers within 20 minutes of their arrival.	90%	74.16%	82.4%
Inspection			
1. Percent of code complaints responded to within two working days.	90%	73%	81.1%
2. Percent of inspections completed within next working day.	95%	95%	99.7%
Housing Inspection			
1. Percent of multi-family rental housing complexes inspected per month.	1.67%	0.0%	0.0%
2. Percent of housing code complaints responded to within two business days.	90%	n/a	N/A

9/25/2014

CITY OF SANTA CLARA
DEPARTMENT OF PLANNING & INSPECTION

HOUSING & COMMUNITY SERVICES DIVISION
ACTIVITY REPORT FOR AUGUST 2014

Program: Federal & State Grant Administration

Mission: Meet the expectations of city residents in delivering needed community services while meeting program administration requirements stipulated by the U.S. Department of Housing and Urban Development.

Measures:	Budgeted	Current Month	FYTD
1. Obtain approval by HUD of the City's annual Consolidated Plan.	100%	0%	0%
2. Obtain approval by HUD of the City's Consolidated Annual Performance and Evaluation Report.	100%	0%	0%

Program: Neighborhood Conservation & Improvement Program

Mission: Improve the local housing stock for the protection of residents and the enhancement of the City.

Measures:	Budgeted	Current Month	FYTD
1. Complete minor and substantial rehabilitation of up to 50 owner-occupied houses.	50	0	0

Program: Housing & Community Development Projects

Mission: Implement in a timely manner budgeted projects and programs that are identified as meeting particular community needs, primarily for low and moderate income people.

Measures:	Budgeted	Current Month	FYTD
1. Monitor the performance of all Public Service Agencies contracting with the City and Agency for compliance to contractual obligations.	10	0	0
2. Annually monitor for compliance all affordable housing contracts.	44	15	18

Eloiza Murillo-Garcia
Acting Housing & Community Services
Division Manager

Approval:

Kevin L. Riley
Director of Planning & Inspection

SANTA CLARA POLICE DEPARTMENT

MONTHLY ACTIVITY REPORT

August 2014 (by Calendar Year)	Current Month	Previous Month	This Year to Date	Prev. Year to Date
Homicide	0	0	0	0
Rape	0	0	19	10
Robbery	4	11	54	38
Felony Assaults	1	2	19	82
Burglary	43	53	385	312
Larceny - Thefts	176	201	1,530	1,379
(Of above that were from vehicle)	<85>	<98>	<789>	<563>
Auto Theft	26	45	283	253
Local Recovered	25	38	362	182
Recovered for Others	8	23	132	148
Traffic Collisions				
Fatalities	1	0	2	0
Injuries	9	14	120	188
Prop. Damage	40	59	490	560
Total	**50**	**73**	**612**	**748**
Traffic Violations				
Moving	448	227	2,932	6,685
Parking	423	746	4,853	5,736
Miscellaneous	0	0	0	0
Total	**871**	**973**	**7,219**	**12,421**
Arrests				
Adult	481	358	3,289	2,950
Juvenile	12	19	139	186
Total	**493**	**377**	**3,428**	**3,136**
Warrants				
Received	201	214	1,463	1,206
Cleared	154	146	1,096	963
Reserve Police Hours	**1,393**	**966**	**7,936**	**7,442**

August 2014 (by Fiscal Year)	Current Month	Previous Month	This Fiscal Year to Date	Prev. Fiscal Year to Date
Financial Report				
Alarm Permits (4820)	$ 939.50	$ 947.00	$ 1,886.50	$ 1,831.00
Vehicle Release Fee (7396)	$ 3,485.50	$ 2,939.00	$ 6,424.50	$ 5,021.00
CA Vehicle Code (7461)	$ 0.00	$ 36,942.51	$ 36,942.51	$ 30,850.59
Misdemeanor Fines (7463)	$ 0.00	$ 597.47	$ 597.47	$ 1,084.98
City Traffic School Fines (7470)	$ 0.00	$ 14,916.38	$ 14,916.38	$ 18,750.49
Parking Enforcement (7472)	$ 22,897.80	$ 20,018.24	$ 42,916.04	$ 62,606.13
DUI Billing (7475)	$ 583.44	$ 2,324.71	$ 2,908.15	$ 2,687.55
Total Monies Received	**$ 27,906.24**	**$ 78,685.31**	**$ 106,591.55**	**$ 122,831.74**

July monies for 7461, 7463, and 7470 were not deposited during August. They were deposited on September 10th.

Prepared by Caroline Aquino & Jennifer Silveira

Automotive Services
Monthly Activity Report
Fiscal Year 2014-15

August 2014

ACQUISITIONS

	Current Month	Fiscal Year-to-Date
# of Units Purchased as Replacement	2	5
# of Unites Purchased as Addition to Fleet	0	0

FUEL USAGE

	Current Month	Fiscal Year-to-Date
Unleaded Fuel Quantity Consumed (Gallons)	17,267	35,751
Diesel Fuel Quantity Consumed (Gallons)	7,886	15,477

SHOP ACTIVITY

	Current Month	Fiscal Year-to-Date
Total Work Days for August	21	43
Quantity of Scheduled Repairs	93	188
Quantity Unscheduled Repairs	495	1,073
Average Quantity of Work Orders / Day	13	14
Total Technician Labor Hours	859	1,968
Total Quantity of Work Orders	274	583

# of Repair Lines by Repair Type		
	Current Month	Fiscal Year-to-Date
General Repair	324	699
Road Call	18	38
Transport	2	3
PM Service	203	399
Recalls	0	6
Sublet	33	100
Warranty	8	16
TOTAL Repair Lines	588	1,261

ALTERNATIVE FUEL / CALIFORNIA "CERTIFIED CLEAN IDLE" DIESEL

	Current Status
Quantity of Hybrid Vehicles	61
Quantity of California "Certified Clean Idle" Diesel Vehicles	22

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
August 2014

Division: Support Services
Program: Division Administration
Number: 001/4411

Performance Measures	August Actuals	YTD Actuals	2014-2015 Budget
1. Percentage of Agenda Reports completed on time.	67%	62%	95%
2. Percentage of Agenda Reports completed satisfactorily.	100%	77%	95%
3. Percent of City Manager assignment requests responded within time requested.	-	#DIV/0!	95%
4. Percentage of customers surveyed that are very satisfied.	-	#DIV/0!	95%

Division: Support Services
Program: Development Support
Number: 001/4412

Performance Measures	August Actuals	YTD Actuals	2014-2015 Budget
1. This Program has no reportable performance measures.	N/A	N/A	N/A

Division: Support Services
Program: Capital Improvement Projects
Number: 001/4413

Performance Measures	August Actuals	YTD Actuals	2014-2015 Budget
1. This Program has no reportable performance measures.	N/A	N/A	N/A

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
August 2014

Division: Building Maintenance
Program: Maintenance / Repair
Number: 001/2222

Performance Measures	August Actuals	YTD Actuals	2014-2015 Budget
1. Percent of all requests for service responded to within four business days.	100%	100%	100%

Division: Building Maintenance
Program: Janitorial
Number: 001/2223

Performance Measures	August Actuals	YTD Actuals	2014-2015 Budget
1. Respond to all service requests within two hours.	100%	100%	100%
2. Clean all restrooms in all major buildings daily.	100%	100%	100%

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
August 2014

Division: Design
Program: Division Administration **Number:** 001/4441

Performance Measures	August Actuals	YTD Actuals	2014-2015 Budget
1. This Program has no reportable performance measures.	N/A	N/A	N/A

Division: Design
Program: Development Support **Number:** 001/4442

Performance Measures	August Actuals	YTD Actuals	2014-2015 Budget
1. This Program has no reportable performance measures.	N/A	N/A	N/A

Division: Design
Program: Capital Improvement Projects **Number:** 001/4443

Performance Measures	August Actuals	YTD Actuals	2014-2015 Budget
1. Percent of Capital Improvement Projects designed within budget.	-	100%	80%
2. Percent of Capital Improvement Projects designed within approved schedule.	-	100%	80%

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
August 2014

Division: Field Services
Program: Division Administration **Number:** 001/4461

Performance Measures	August Actuals	YTD Actuals	2014-2015 Budget
1. Percentage of complaints responded to within one business day.	75%	93%	90%
2. Number of construction activity complaints.	4	16	25

Division: Field Services
Program: Development Support **Number:** 001/4462

Performance Measures	August Actuals	YTD Actuals	2014-2015 Budget
1. Percent of inspection requests responded to within one business day.	100%	100%	90%

Division: Field Services
Program: Capital Improvement Projects Inspection **Number:** 001/4463

Performance Measures	August Actuals	YTD Actuals	2014-2015 Budget
1. Percent of Capital Improvement Projects that reached substantial completion within the construction contract time.	-	100%	75%
2. Percentage of Capital Improvement Projects completed within approved budget.	-	#DIV/0!	100%
3. Percentage of customers rating services as satisfactory.	100%	100%	100%
4. Percentage of Capital Improvement Projects completed with Change Orders under 5% of construction cost.	-	#DIV/0!	90%

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
August 2014

Division: Land & Property Development
Program: Division Administration **Number:** 001/4451

Performance Measures	August Actuals	YTD Actuals	2014-2015 Budget
1. This Program has no reportable performance measures.	N/A	N/A	N/A

Division: Land & Property Development
Program: Development Support & Review **Number:** 001/4452

Performance Measures	August Actuals	YTD Actuals	2014-2015 Budget
1. Percent of subdivision maps first submittals reviewed within 15 business days.	-	100%	95%
2. Percent of subdivision maps subsequent submittals reviewed within 10 business days.	50%	60%	95%
3. Percent of Title documents drafted within 10 business days.	100%	71%	95%
4. Percent of private development plans reviewed on first review within 20 business days.	50%	50%	95%
5. Percent of private development plans reviewed on subsequent reviews within 15 business days.	75%	67%	95%

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
August 2014

Division: Traffic
Program: Division Administration
Number: 001/4431

Performance Measures	August Actuals	YTD Actuals	2014-2015 Budget
1. Number of grants applied for or being processed.	0	0	12
2. Number of special transportation permits issued.	67	121	350
3. Number of citizen/customer requested studies completed.	5	8	30

Division: Traffic
Program: Development Support
Number: 001/4432

Performance Measures	August Actuals	YTD Actuals	2014-2015 Budget
1. Number of preliminary site and development plans for Project Clearance and Subdivision Committee reviewed.	10	19	200
2. Number of encroachment permits, Capital Improvement Projects, and traffic control plans reviewed within agreed time frame.	32	50	145

Division: Traffic
Program: Capital Improvement Projects
Number: 001/4433

Performance Measures	August Actuals	YTD Actuals	2014-2015 Budget
1. Number of traffic projects under design.	0	0	12
2. Number of projects under construction requiring Traffic division support.	0	0	12

Division: Traffic
Program: Traffic Signal Management
Number: 001/4434

Performance Measures	August Actuals	YTD Actuals	2014-2015 Budget
1. Number of timing, coordination, detection, equipment, or other signal management requeests responded to.	26	45	150

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
August 2014

Division: Traffic
Program: Traffic Striping and Signing
Number: 001/4435

Performance Measures	August Actuals	YTD Actuals	2014-2015 Budget
1. Number of work orders created for Street Department action.	5	14	150

STREET AND AUTOMOTIVE SERVICES DEPARTMENT

MONTHLY ACTIVITY REPORT - Aug 2014

			THIS MONTH	THIS FY TO DATE	LAST FY TO DATE
A.	**STREET MAINTENANCE**				
1.	Deeplift AC R&R (In-House)	(ton)	0	24	1,781
2.	AC Restorations (Permits) (In-House)	(ton)	121	202	51
3.	Miscellaneous AC Repair (In-House)	(ton)	145	242	17
3.1.	Total AC Placed (In-House)	(ton)	265	468	1,848
4.	Crack Sealing (In-House)	(lf)	26	12,836	0
5.	Area of Streets Prepared for Slurry (In-House)*	(sy)	0	0	0
6.	Area of Streets Prepared for Fog Seal (In-House)*	(sy)	0	0	0
7.	Deeplift AC R&R (Contract)	(ton)	0	0	0
8.	AC Restorations (Permits) (Contract)	(ton)	0	0	0
9.	AC Overlay (Contract)	(ton)	0	0	0
10.	Slurry/Cape Seal (Contract)*	(sy)	0	0	0
11.	Miscellaneous AC Repair (Contract)	(ton)	0	0	0
11.1.	Total AC Placed (Contract)	(ton)	0	0	0
12.	Miscellaneous Activities	(hr)	731	1,884	1,617
	SIDEWALK MAINTENANCE				
13.	Sidewalk R&R (In-House)	(sf)	0	0	0
14.	Curb & Gutter R&R (In-House)	(lf)	0	0	0
15.	Sidewalk Grinding	(hr)	38	65	39
16.	Sidewalk R&R (Contract)	(sf)	1,817	3,692	5,666
17.	Curb & Gutter R&R (Contract)	(lf)	123	479	440
18.	Valley Gutter (Contract)	(sf)	0	208	0
19.	Wheelchair Ramp (Contract)	(ea)	0	0	0
20.	Median Curbs (Contract)	(lf)	0	0	0
21.	Miscellaneous Activities	(hr)	0	0	0
22.	Illegally Dumped Materials	(gal)	1,950	8,050	3,870
B.	**STORM DRAIN SYSTEM MAINTENANCE**				
1.	Catch Basins Cleaned	(ea)	163	358	747
2.	Main & Lateral Flushing	(ft)	4,075	8,275	1,350
2.1.	Main & Lateral Flushing	(cy)	2	4	7
3.	Illicit/Illegal Discharge Incidents	(ea)	12	35	26
4.	Illicit/Illegal Discharge Incidents	(hr)	27	73	93
5.	Other Non-Point Source Activities	(hr)	1	3	1
6.	Pump Stn. Mtce./Wet Well/Trash Rack Cleaning	(hr)	90	124	212
6.1.	Pump Stn. Mtce./Wet Well/Trash Rack Cleaning	(cy)	18	21	14
7.	Pump Station/Outfall Monitoring	(hr)	123	238	537
8.	Creek Clean-Up/Trash Abatement	(hr)	0	0	0
9.	Construction Site Inpections	(ea)	0	0	1
10.	Construction Site Inspections	(hr)	0	3	1
11.	Ind/Com Facility Inspections	(ea)	164	374	179
12.	Ind/Com Facility Inspections	(hr)	133	262	104
13.	Public Information Participation	(hr)	0	0	3
14.	Miscellaneous Activities	(hr)	390	863	273
C.	**TRAFFIC STRIPING & SIGNAGE MAINTENANCE**				
1.	Striping Installed	(mi)	0.0	0.0	28.2
2.	Curbs Painted	(lf)	1,044	5,928	6,884
3.	Vandalism	(hr)	1	353	7
4.	Services for Other Departments	(hr)	140	720	164
5.	Pavement Marking (messages & crosswalks)	(sf)	42	8,242	603
6.	Sign Fabrication	(ea)	78	145	89
7.	Sign Maintenance	(hr)	208	435	292
8.	Signs Installed, Upgraded or Repaired	(ea)	487	722	241
9.	Metal Beam Guardrails	(lf)	0	10	0
10.	Miscellaneous Activities	(hr)	129	439	511
11.	Striping Installed (Contract)	(mi)	0.0	0.0	0.0
12.	Pavement Marking (Contract)	(sf)	0	0	0
13.	Pavement Markers (Contract)	(ea)	0	0	0

STREET AND AUTOMOTIVE SERVICES DEPARTMENT

MONTHLY ACTIVITY REPORT - Aug 2014

				THIS MONTH	THIS FY TO DATE	LAST FY TO DATE
	14.	Inertial Barriers	(ea)	0	10	0
D.	**SPECIAL DEPARTMENTAL ACTIVITIES**					
	1.	Clean-Up Campaign - Hours	(hr)	0	3	0
	2.	Clean-Up Campaign - Debris Collected	(cy)	0	0	0
	3.	Crack Sealing (Contract)	(lf)	0	0	0
	4.	Fog Sealing (Contract)	(sy)	0	0	0
	5.	Leaf Vac Program - Debris Collected	(cy)	0	0	0
	6.	Christmas Tree Collection Program	(hr)	0	0	0
E.	**PARKWAYS & BOULEVARDS MAINTENANCE**					
	1.	Trees Planted	(ea)	6	11	16
	2.	Trees Sprayed/Trees Injected	(ea)	0	0	3
	3.	Root Pruning	(ea)	0	2	6
	4.	Bracing & Cabling	(ea)	1	9	14
	4.1.	Immediate Calls for H/B and B/D	(ea)	27	55	62
	5.	Trees & Stumps Removed	(ea)	12	18	21
	6.	Citizen Generated Tree Trim Requests	(ea)	122	264	194
	6.1.	Miscellaneous Generated Service Requests	(ea)	93	216	135
	7.	Trees Trimmed - City Crews	(ea)	42	51	100
	7.1.	Trees Trimmed - Contract	(ea)	55	70	77
	7.2.	Total Trees Trimmed	(ea)	97	120	177
	8.	Backlog of Citizen Trim Requests - In-House				
	8.1.	Current Month	(ea)	56		155
	8.2.	More than 30 days	(ea)	155		123
	8.3.	More than 60 days	(ea)	126		401
	8.4.	Total Backlog	(ea)	337		679
	9.	Backlog of Citizen Trim Requests - Contracted				
	9.1.	Current Month	(ea)	15		58
	9.2.	More than 30 days	(ea)	10		38
	9.3.	More than 60 days	(ea)	25		150
	9.4.	Total Backlog	(ea)	50		246
	10.	Miscellaneous Trash Pickup	(gal)	475	1000	810
	10.1	VTA Trash Pickup	(gal)	375	775	810
F.	**SOLID WASTE**					
	1.	Clean Green Collection				
	1.1.	Cubic Yards	(cy)	4,250	8,671	9,544
	1.2.	Tons	(ton)	850	1,734	1,909
	2.	Complaints Responded To:				
	2.1.	Clean Green	(ea)	0	0	0
	2.2.	Garbage	(ea)	3	5	0
	3.	Street Sweeping				
	3.1.	Miles Cleaned	(mi)	2,654	5,111	4,589
	3.2.	Man-Hrs per Curb-Mile	(hr/mi)	0.12	0.24	0.24
	4.	Illegal Sign/Graffitti Abatement				
	4.1.	Illegal Signs Removed	(ea)	288	821	1,028
	4.2.	Graffiti Loc. (Pri/Pub/Gar Bins) Reported	(ea)	363	1,166	2,743
	4.3.	Private Property Graffiti Letters Sent	(ea)	0	0	12
	4.4.	Private Property Graffiti City Clean Up	(ea)	3	10	1,558
	5.	No. of Violations				
	5.1.	For Containers Stored on Street	(ea)	23	35	26
	5.2.	For Containers with Lids Open	(ea)	0	0	2
	5.3.	For Overfilled Containers	(ea)	0	0	0
	5.4.	For Accumulation of Refuse	(ea)	1	18	2

* Partial street area not included.

Prepared by: _____ Approved by: _____

CITY OF SANTA CLARA SEWER DEPARTMENT
MONTHLY ACTIVITY REPORT AUGUST 2014

ACTIVITY	WORK UNIT	THIS MONTH	FISCAL YEAR
TOTAL Service Requests	Number	121	251
Cleanout Installations	Number	2	10
Lateral Stoppages	Number	114	230
Main Stoppages	Number	0	1
Misc. Requests/Complaints	Number	2	4
Roach Customer Complaints	Number	3	4
Lateral/Main Repairs	Number	0	2
Sewer Construction	Feet	0	0
Jet Cleanings	Feet	6,000	12,000
Roach Control (Manholes)	Number	1	1
Lateral Installations	Number	2	2
TV Inspections, Laterals	Each	2	2
TV Inspections, Main Lines	Feet	5,022	5022
Root Foaming, Main Line	Feet	0	0
Root Foaming, Lateral	Number	3	3
Pump Calls, Storm & Sewer	Number	0	1

SEWAGE PUMP STATIONS DATA	NORTHSIDE	RABELLO
Total pumped (MG) during August (28 days)	112	231.2
Total pumped (MG) since July 1, 2013	234.3	435.3
Average daily flow for the month (MGD)	4.0	8.3

SAN JOSE OUTFALL		MONTH	F.Y.
28 days			
Flow Total (MG)	Line A	49.28	49.8865
	Line B	2.9643	5.9862
Combined flow Lines A & B (MG)		52	56
Average Daily Flow (MGD),	Line A	1.8	
	Line B	0.1	
Total average flow		14.1 mgd	

Christopher L. de Groot
Director Water & Sewer Utilities

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Current FY Start 2014	Division/Program/Measure	2014-2015			2013-2014		
		Aug-14	Year To Date	Budget	This Month Last Year	Year To Date	Budget
Sewer System Administration	**094/1511**						
1.	Prepare annual Sewer Revenue Program (as required for Federal program and WPCP cost distribution) by due dates each year.	0	1	2	0	1	2
2.	Prepare monthly status reports and TPAC agenda reports.	1	2	12	1	2	12
Sewer System Maintenance	**094/1512**						
1.	Number of feet of mainline jetted.	6,000	12,000	350,000	50,862	75,561	350,000
2.	Percentage of sanitary sewer overflows reported to the State CIQWS database within the time frame required by regulations	100%	100%	100%	1	100%	100%
3	Number of reportable sewer spills	1	1	<3	1	1	<3
Sewer Operations	**094/1514**						
1.	Number of pump and metering stations inspected.	33	66	396	33	66	396
2.	Provide all preventative and routine maintenance as specified in operations and maintenance manuals.	100%	100%	100%	100%	100%	100%
San Jose/Santa Clara WPCP	**094/1515**						
1.	Support Treatment Plant Advisory Committee (TPAC) members to represent the City in matters relating to the WPCP at monthly meetings.	1	2	12	1	2	12
2.	Provide sufficient funding for all WPCP approved projects.	NA	75%	100%	NA	75%	100%
Sewer/Storm Pump Maintenance	**094/1516**						
1.	Number of storm pump stations inspected.	34	68	408	34	68	408
2.	Provide all preventative and routine maintenance as specified in operations and maintenance manuals.	100%	100%	100%	100%	100%	100%
3	Coordinate annual load test for generators.	0	0	10	0	0	10

Christopher L. de Groot
Director of Water & Sewer Utilities

CITY OF SANTA CLARA WATER DEPARTMENT MONTHLY REPORT

August - 2014

Installed Water System Components:

Mains				
SIZE (in)	MT'L	BY	TYP	FT
8	DIP	WD	DW	352
			TOTAL	352

Services			
SIZE (in)	BY	TYP	QTY
6	CT	DW	1
2	CT	DW	6
1	CT	DW	3
		TOTAL	10

Meters			
SIZE (in)	BY	TYP	QTY
4	CT	DW	2
2	CT	DW	6
1	CT	DW	3
		TOTAL	11

Backflows			
SIZE (in)	BY	TYP	QTY
1	CT	DW	2
2	CT	DW	6
4	CT	DW	2
		TOTAL	10

Fire Services			
SIZE (in)	BY	TYP	QTY
		TOTAL	0

WD = Water Dept - CT=Contractor - DW= Drinking Water (Potable) - RW = Recycled Water

TASK	QTY
WATER WASTE WARNINGS ISSUED	37
LOW FLOW SHOWER HEAD/CONSERVATION KITS DISTRIBUTED	70
COMPLAINTS & SERVICE REQUESTS RESOLVED	127
SOLAR POOL SYSTEM COMPLAINTS & SERVICES	17
SOLAR DOMESTIC HOT WATER COMPLAINTS & SERVICES	0
WATER QUALITY SAMPLES TAKEN	462
PLANS CHECKED	28
FIRE HYDRANTS REPAIRED	1
DAMAGED FIRE HYDRANTS REPAIRED	2
FIRE HYDRANTS PAINTED	13
FIRE HYDRANTS FLUSHED	5
MAIN BREAKS REPAIRED	9
MAINLINE VALVES TESTED AND EXERCISED	23
BROKEN VALVES REPLACED	0
AIR RELIEF VALVES TESTED AND REPAIRED	0
WELL SITE FACILITIES PAINTED	0
REGULATOR (ZONE) VALVES CHECKED/ADJUSTED	0
SOLAR POOL HEATERS INSTALLED	0
SOLAR DOMESTIC HOT WATER SYSTEMS INSTALLED	0

TASK	QTY
METERS CHANGED FOR REPAIR & TESTING, ROUTINE - POT & RCW	130
METERS TESTED IN SHOP - POT & RCW	56
METERS REPAIRED - POT & RCW	0
LARGE METERS TESTED & REPAIRED IN FIELD	0
LARGE WATER METERS/SERVICES PAINTED - > 2"	0
FIRE DETECTOR CHECK VALVES REPAIRED	1
FIRE DETECTOR CHECK VALVES READ	0
FIRE DETECTOR CHECK VALVES TESTED	0
BACKFLOW PREVENTERS TESTED	297
BACKFLOW PREVENTERS REPAIRED	18
SERVICE TAGS PROCESSED (SO1)	146
FIRE HYDRANTS INSTALLED	0
USA WATER LOCATES PERFORMED	423
Unused	
Unused	
Unused	
Unused	
Unused	
Unused	

WORK IN PROGRESS:

INSTALLATION OF SOLAR SYSTEMS AT VARIOUS LOCATIONS.
INSTALLATION OF FIRE SERVICES AT VARIOUS LOCATIONS.
INSTALLATION OF RP DEVICES AT VARIOUS LOCATIONS.
INSTALLATION OF FIRE HYDRANTS AT VARIOUS LOCATIONS.
Finish most of the saw cutting on the Bray mainline replacement
Fininsh Harrison mainline replacement
routine lage meters with the crew and meter shop
Start mailne and transfer services on the Bray project

WORK COMPLETED:

WATER SUPPLY DATA		QTY
Ground Water Pumped - MG	MG	526.9
Scvwd Treated Water Purchased - MG	MG	111.8
Hetch-Hetchy Water Purchased - MG	MG	40.2
Total Drinking Water Production This Month - MG	MG	678.9
Avg. Daily Drinking Water Production This Month - MGD	MGD	21.90

MISCELLANEOUS:

MAINTENANCE OF MAINS, HYDRANTS,SERVICES, WELLS, TANKS AND SOLAR SYSTEMS.

Christopher L. de Groot
Director of Water & Sewer Utilities

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Current FY Start 2014	Division/Program/Measure	2014-2015			2013-2014		
		Aug-14	Year To Date	Budget	This Month Last Year	Year To Date	Budget
Water Engineering/Design Engineering	**092/1411**						
1.	Number of plans reviewed.	28	63	220	33	72	220
2.	Complete review of plans by the required due dates.	93%	89%	90%	79%	89%	90%
Water Engineering/ Water Quality	**092/1412**						
1.	Create and publish the annual Consumer Confidence Report in accordance with the California Safe Drinking Water Act requirement.	0	0	1	0	0	1
2.	Number of water quality samples processed.	462	811	3,000	648	969	3,000
Water Engineering/Water Resources	**092/1413**						
1.	Promote water conservation at public events.	1	1	4	0	0	5
Water System Maintenance	**092/1422**						
1.	Maintain an industrial standard for unaccounted water of 5% or less.	<5%	< 5%	< 5%	< 5%	< 5%	< 5%
2.	Number of responses to customer service requests.	126	270	1,600	144	315	1,600
3.	Respond to customer service requests within 30 minutes of receipt of calls (excluding scheduled appointments and after hours call back requests).	90%	90%	80%	90%	90%	80%
4.	Number of backflow prevention devices tested.	297	537	2,000	259	536	2,000
5.	Number of meters changed for routine, repair and testing.	130	188	800	102	205	800
6.	Number of main break repairs/broken valve replacements performed.	9	16	95	10	22	95

Current FY Start 2014		2014-2015			2013-2014		
	Division/Program/Measure	Aug-14	Year To Date	Budget	This Month Last Year	Year To Date	Budget
Water System Construction	**092/1423**						
1.	Number of lineal feet of water mains installed.	352	702	7,500	0	740	5,000
2.	Number of new service installations.	4	8	50	10	26	50
3.	Number of underground utility locates performed.	423	812	2,000	296	636	2,000
Water System Operations	**092/1424**						
1.	Perform routine maintenance on City fire hydrants.	18	58	750	78	111	750
2.	Number of production meters read and recorded.	64	128	800	64	128	800
3.	Number of mainline water valves tested and exercised.	23	112	800	201	280	800
Solar System Maintenance	**092/1532**						
1.	Number of responses to customer service requests.	17	36	300	17	46	300
2.	Number of systems provided with semi-annual winterization service. twice each year.	0	0	110	0	0	50
3.	Number of removal and reinstallation requests.	5	12	12	4	11	12
4.	Percent of service requests responded to within one business day.	95%	95%	75%	90%	90%	75%
Recycled Water System Maintenance, City	**097/1522**						
1.	Number of recycled water meters greater than 2" tested annually.	0	0	18	0	0	18
South Bay Water Recycling System Maintenance	**097/1525**						
1.	Provide all O & M services as required in Agreement for Services.	100%	100%	100%	100%	100%	100%

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-5

Date: November 4, 2014

To: City Manager for Council Action

From: Director of Public Works/City Engineer

Subject: Set a Public Hearing Date to Consider a Resolution Granting a Non-Exclusive Franchise Agreement for Hauling of Industrial Refuse and Recyclables with Waste Connections of California Inc., dba GreenTeam of San Jose and Approve Associated Agreement

EXECUTIVE SUMMARY:

The City Council approved non-exclusive franchise agreements with eight (8) refuse haulers on June 11, 2013. The non-exclusive franchise agreements authorize haulers to charge for collection services at properties zoned for "Industrial" use. The current agreements are set to expire on June 30, 2016. Waste Connections of California Inc., dba GreenTeam of San Jose has requested to enter into a non-exclusive franchise with the City in accordance with Section 8.25.190 of the City Code. Sections 8.25.220 and 8.25.240 of the City Code state that the City Council, upon receipt of an application, must notice and hold a public hearing at which an agreement for non-exclusive franchise hauling of industrial refuse and recyclables may be approved. At the public hearing, staff will present any additional information with respect to this request, company performance, and recommendations for Council consideration.

This additional non-exclusive franchise agreement maintains the existing franchise fee structure, which incentivizes haulers to divert materials from landfills by permitting them to pay the City a smaller percentage of gross billings on customer accounts whose materials are recycled or composted. If granted, the term of this agreement would end on June 30, 2016, which is in line with the eight (8) existing agreements.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Granting an additional non-exclusive franchise to a company increases the amount of approved non-exclusive franchise haulers and allows businesses to select the hauler of their choice based on cost and quality of service.

ECONOMIC/FISCAL IMPACT:

None

RECOMMENDATION:

That the Council set a public hearing date on Tuesday, December 9, 2014 to consider a resolution granting a non-exclusive franchise agreement for the hauling of industrial refuse and recyclables with Waste Connections of California Inc., dba GreenTeam of San Jose and approve associated agreement.

Rajeev Batra

Rajeev Batra
Director of Public Works/City Engineer

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report:

1) ***None***

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-6

Santa Clara All-America City 2001

Date: November 13, 2014

To: City Manager for Council Action

From: Director of Finance/Assistant City Manager

Subject: Santa Clara Convention Center and Convention-Visitor's Bureau (SCCC-CVB) Activity Report for Fiscal Year 2014-15 First Quarter as Submitted by the Santa Clara Chamber of Commerce and Convention-Visitor's Bureau

EXECUTIVE SUMMARY:

Submitted for City Council review and acceptance in a combined format is the SCCC-CVB Activity Report for Fiscal Year 2014-15 First Quarter as submitted by the Santa Clara Chamber of Commerce and Convention-Visitor's Bureau. Submission of the report is required under the management agreement for the operation of the Santa Clara Convention Center and the agreement for convention and visitor services.

As mentioned in the attached report, the First Quarter Financial Results (Results) of the Santa Clara Convention Center (SCCC) show first quarter revenues at $36,441 greater than budget. Revenues were favorable in the telecommunications, audio-visual, and Space Rental categories, but below budget in the catering and event revenue categories. The Results also show first quarter expenses at $44,176 less than the budgeted. Of the $44,176 variance, labor expenses were $80,476 less than budgeted and operating expenses were $36,300 greater than budgeted. The above revenue and expense variances combined for a first quarter SCCC favorable budget variance of $80,617 as of September 30, 2014.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The SCCC-CVB Activity Report for Fiscal Year 2014-15 First Quarter provides current information on the business activities of the Santa Clara Convention Center and Convention-Visitor's Bureau.

ECONOMIC/FISCAL IMPACT:

Acceptance of this report will have no fiscal impact to the City other than administrative staff time and expense.

RECOMMENDATION:

That the Council accept the Santa Clara Convention Center and Convention-Visitor's Bureau Activity Report for Fiscal Year 2014-15 First Quarter as submitted by the Santa Clara Chamber of Commerce and Convention-Visitor's Bureau.

APPROVED:

Gary Ameling
Director of Finance/Assistant City Manager

Julio J. Fuentes
City Manager

Documents Related to this Report:
1) SCCC-CVB Activity Report for Fiscal Year 2014-15 First Quarter

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SANTA CLARA
SILICON VALLEY CENTRAL®
CHAMBER OF COMMERCE & CONVENTION – VISITORS BUREAU

October 31, 2014

The Honorable Mayor and City Council
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Mayor and Council:

The following is the Santa Clara Convention Center and Convention-Visitor's Bureau Activity Report for Fiscal Year 2014-15 First Quarter, encompassing the months of July, August and September.

SANTA CLARA CONVENTION CENTER				
Activity Summary for the First Quarter				
TYPE	**14/15**	**13/14**	**ATTENDEES**	**EVENTS HELD**
Conventions	10	16	20,350	State Bar of California, Green Sports Alliance, Ethiopia, American Contract Bridge, Bay Area Christian Church, Conference Concepts Flash Memory Summit, Bricks by the Bay, Scrapbook Expo, SENS and Flood Plan Assn.
Trade Shows	1	1	1,000	Northern California Facilities Expo
Public Shows	7	7	5,000	H&L Productions, Bytes and Notes, Home Show, Portsmouth, Hula Halau, GT Sports Marketing and Premiere Productions
Meetings	79	76	32,316	
Banquets	5	5	1,474	
Totals	**102**	**105**	**60,140**	

SANTA CLARA CONVENTION CENTER			
Revenue Summary for the First Quarter			
14/15	**13/14**	**Budget**	**Over (Under) Budget**
$890,690.44	$880,774.32	854,249.17	$36,441.27

Year-to-date catering revenue is below budget by $42,431.86, telecommunications is above budget by $21,074.78, audio-visual revenue is above budget by $4,739.30 and Space Rental is above budget by $56,626.14. Event revenue is below budget by $10,210.70.

SANTA CLARA CONVENTION CENTER			
Expenses Summary for the First Quarter			
Labor Expenses			
14/15	**13/14**	**Budget**	**Over (Under) Budget**
$1,146,853.61	$1,143,073.17	$1,227,330.23	($80,476.62)
Operating Expenses			
14/15	**13/14**	**Budget**	**Over (Under) Budget**
$377,753.51	$411,098.13	$341,453.08	$36,300.43
Total Labor and Operating Expenses			
14/15	**13/14**	**Budget**	**Over (Under) Budget**
$1,524,607.12	$1,554,171.30	$1,568,783.31	($44,176.19)
Net Income (Loss)			
14/15	**13/14**	**Budget**	**Over (Under) Budget**
($633,916.98)	($673,396.98)	($714,534.14)	$80,617.46

First Quarter, Year-to-Date revenues of $890,690.44 and expenses of $1,524,607.12 have produced a net loss of $633,916.68 or $80,617.46 **less than** the budgeted loss of ($714,534.14).

Projects: Installed new vinyl floor on theater stage, resurfaced kitchen floor and installed new equipment and completed quarterly sprinkler test.

Fiscal Year 2014-15 Second Quarter Projections

TYPE	NUMBER	ATTENDEES	EVENTS SCHEDULED
Conventions	13	22,800	CATESOL, Zend Technologies, Peninsula Pop Warner, Sankara Eye Foundation (2 events), IPS Learning, Printed Electronics, Faith Formation, Pop Warner, Self Help, Linux Foundation, Media Bistro and Yahoo Tech Pulse
Trade Shows	5	6,350	Pacific International Quilt Festival, Arm Techcon, Futton Inc., SC Realtors and Conference Concepts Open Server Summit
Public Shows	10	8,800	Mystic Events, South India Fine Arts, San Jose Art & Cultural Society, Target Job Fairs, Sterling Dance, Shor Media, North Valley Baptist Church, Miss AoDai Vietnam, Bay Area Christian Church and Multiple Financial Advising Services
Meetings	55	21,790	
Banquets	15	15,450	
Total	**98**	**75,190**	

CONVENTION AND VISITORS BUREAU

Convention Sales/Marketing Department: In the first quarter, the Convention Sales and Marketing staff made approximately 170 sales calls and conducted 17 site inspections of the City for meeting planners considering Santa Clara as a future site for their convention/meeting.

	1st Qtr 14/15	1st Qtr 13/14	% Difference		1st Qtr 14/15	1st Qtr 13/14	% Difference
Leads	93	117	-21%	**Bookings**	39	42	-7%
Attendees	64,644	174,493	-37%	**Attendees**	37,060	39,118	-5%
Room Nights*	49,776	86,674	-43%	**Room Nights***	18,931	18,030	5%

The information presented above is for the quarter only.

*Hotel room nights represent only those hotel rooms that are "blocked" and no projections are made of room nights that come in after the block is cut off by hotels or for those delegates or exhibitors who utilize hotels not included in the blocks.

Convention Services Department: The Convention Services Department serviced 22 groups with 48,900 delegates for the quarter.

Marketing and Communications Department:

V.P. of Marketing & Communications joined Levi's Stadium rep calling on San Francisco based Pacific Rim receptive tour operators regarding stadium tours, hosted a travel writer press trip, researched potential offsite parking locations for Convention Center delegates, attended the Great America Pavilion preview event, represented Santa Clara at WrestleMania 31/WWE Reception, and met with Visit California rep.

In addition, this department continued to publicize its "49 Awesome Things to Do in Santa Clara" blog, submitted copy to Smart Meetings Magazine for special Silicon Valley report, participated in City of Santa Clara Marketing Committee meetings, continued planning of pre-Super Bowl 50 events in conjunction with the City, and managed the Tourism Improvement District's Sacramento and Fresno Bee print and electronic ad campaign.

For the quarter, the SantaClara.org website garnered nearly 90,000 unique visitors. In addition, year-to-date, the CVB's "Visit Santa Clara" social media channels followers are up 34%.

This concludes our Santa Clara Convention Center and Convention-Visitor's Bureau (SCCC-CVB) Activity Report for Fiscal Year 2014-15 First Quarter. Thank you for your continued support of our activities.

Sincerely,

Steve Van Dorn
President/CEO

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-7

Santa Clara All-America City 2001

Date: November 18, 2014

To: City Manager for Council Action

From: Chief of Police

Subject: Approval to Accept a Gift to the City of a Police Canine (K-9) by Allowing the "Sean M. Walsh K-9 Memorial Foundation" to Pay the Vendor With Donated Funds; and Authorize Transmission of a Letter of Appreciation

EXECUTIVE SUMMARY: Sean Walsh was a California Army National Guard soldier and Santa Clara Police Department Explorer. Sean was killed on November 18, 2011 at age 21 while on active duty in Afghanistan. Sean joined the Explorer Program in 2007 and volunteered hundreds of hours at community events and other functions. Sean aspired to become a Santa Clara Police Officer and canine handler. Sean's mother, Cheryl Walsh, created the "Sean M. Walsh K-9 Memorial Foundation" as a fitting tribute to her son. Mrs. Walsh and the Memorial Foundation have raised money in Sean's honor and wish to donate $7,500.00 toward the purchase of a third canine. The Police Department would take possession of and full responsibility for the canine, including all future expenses and liability.

ADVANTAGES AND DISADVANTAGES OF ISSUE: Police Service Dog "Cezar" will retire on March 14, 2015 after several years of service. Acceptance of this donation will provide the Police Department with a replacement canine at no initial expense to the City. Keeping the canine unit at full strength is a significant benefit to the department and to the community.

ECONOMIC/FISCAL IMPACT: Costs for the ongoing training and maintenance of the canine are provided for in the Police Department's Operating Budget.

RECOMMENDATION: That the Council:

1. Accept a gift to the City of a police canine by allowing the Sean M. Walsh K-9 Memorial Foundation to pay the vendor with donated funds; and
2. Authorize the transmission of a letter of appreciation to Ms. Cheryl Walsh and the Sean M. Walsh K-9 Memorial Foundation.

Michael J. Sellers
Chief of Police

APPROVED:

Julio J. Fuentes
City Manager

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-8

Santa Clara All-America City 2001

Date: November 4, 2014

To: City Manager for Council Action

From: Director of Public Works / City Engineer

Subject: Bicycle and Pedestrian Advisory Committee Appointment of New Members

EXECUTIVE SUMMARY:

The Bicycle Advisory Committee (BAC) was established in May 1991 by City Council action to develop safe bicycle lanes on City streets. In March 2014, by City Council action, the BAC expanded its role to become a Bicycle and Pedestrian Advisory Committee (BPAC). It is a nine-member committee presently chaired by Councilmember O'Neill with Councilmember Gillmor as an alternate. The terms for members Edwin Maurer and James Lucas will expire on December 31, 2014. Member Lucas indicated that he was interested in serving another term. The open positions were advertised on the City's website and TV station (Channel 15). At the October 25, 2014 meeting, the BPAC voted to recommend that James Lucas be appointed to serve an additional three year term and that Abigail Shull be appointed to fill the other vacancy for a three year term.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The BPAC represents a cross section of Santa Clara's bicycling and pedestrian community, contributing their insight to the City regarding bicycle issues and projects to enhance bicycle safety. Mr. Lucas, bicycle shop owner and current member of the Silicon Valley Bicycle Coalition, will continue to bring a valuable perspective and knowledge of bicycle related issues. Ms. Shull, a resident of Santa Clara with years of bicycle and pedestrian advocacy related experience, will enhance the BPAC's pedestrian related perspective.

ECONOMIC/FISCAL IMPACT:

The City is required to have an established BPAC in order to be eligible for State grant funding for bicycle and pedestrian related projects. There is no fiscal impact to the City.

RECOMMENDATION:

That the City Council approve the Bicycle and Pedestrian Advisory Committee recommendation to appoint James Lucas and Abigail Shull to serve three year terms that will expire on December 31, 2017.

Rajeev Batra

Rajeev Batra
Director of Public Works / City Engineer

APPROVED:

Julio J. Fuentes
City Manager

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Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-9

Santa Clara All-America City 2001

Date: November 4, 2014

To: City Manager for Council Action

From: Director of Public Works / City Engineer

Subject: Site Acceptance: Site No. 6707, EP 13031
Tract 9972 - Public Improvements
Address: 90 N. Winchester Boulevard

Contractor: SummerHill Winchester, LLC
777 S. California Avenue
Palo Alto, CA, 94304

EXECUTIVE SUMMARY:

This project consisted of installation of water, electric, gas, communication, manhole, sanitary sewer, storm drain, driveway, sidewalk, curb & gutter, curb ramps, pavement and traffic signals for Worthington Circle, N. Winchester Blvd. and Forest Avenue.

This is to certify that all work in connection with the referenced site has been completed in accordance with the applicable plans and specifications and to the satisfaction of the City Engineer.

All fees have been paid and all bonds have been posted.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Completes requirements for these improvements as part of the development.

ECONOMIC/FISCAL IMPACT:

There is no additional cost to the City other than staff time and expense.

RECOMMENDATION:

That the Council:

1. Accept the public improvements including installation of water, electric, gas, communication, manhole, sanitary sewer, storm drain, driveway, sidewalk, curb & gutter, curb ramps, pavement and traffic signals for Worthington Circle and Forest Avenue performed by SummerHill Winchester, LLC for Site 6707, EP 13031, Tract 9972, APN 303-17-048 (Portion) located at 90 N. Winchester Boulevard; and
2. Authorize recordation of a Notice of Completion with the County Recorder.

Rajeev Batra

Rajeev Batra
Director of Public Works / City Engineer

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report: None

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Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-1

Santa Clara All-America City 2001

Date: October 28, 2014

To: City Manager for Council Action

From: Director of Electric Utility

Subject: Approval of an Agreement for the Performance of Services with Electrical Maintenance Consultants to Provide Generator Inspection Testing and Cleaning at the Donald Von Raesfeld Power Plant

EXECUTIVE SUMMARY:

The Donald Von Raesfeld Power Plant (DVR) has power generation equipment including GE LM6000 combustion turbines equipped with Brush Generators and a Mitsubishi Steam Turbine with a Mitsubishi Electric Corporation Generator which, at times, will require inspections, cleaning, testing and repairs. Electrical Maintenance Consultants (EMC) has the necessary experience and expertise to perform the required maintenance and repairs on the Brush generators and the Mitsubishi Generator installed at DVR. In March, 2014 the Mitsubishi Generator experienced a major failure that impacted the safety and reliability of the DVR Power Plant. EMC was called in to assist with the investigation and corrective actions for this event. Short term corrective actions have been implemented, however, Silicon Valley Power (SVP) continues to work with EMC and Mitsubishi Electric Corporation to provide a long term solution.

SVP staff proposes to enter into an Agreement for the Performance of Services with EMC to continue to provide assistance with this Mitsubishi Generator investigation and repair work. A copy of the Agreement for the Performance of Service can be viewed on the City's website or is available in the City Clerk's Office for review during normal business hours.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

It is important for SVP to continue to receive generator repair and maintenance services from EMC to maintain reliability of the DVR Power Plant. Failure to approve this Agreement for Services could cause availability and reliability issues with the plant and have a negative economic impact to the City of Santa Clara if an unexpected generator failure occurred during an unfavorable economic time in the energy market.

ECONOMIC/FISCAL IMPACT:

The total amount for this Agreement for Services shall not exceed $150,000.00 over the three year term of the contract. The first year of the three-year agreement is anticipated to be approximately $50,000.00; and sufficient funds are available in the Capital Project Generation Betterment and Maintenance account, 091-1377-87600-[I]9240-[F]55300. All future appropriations will be done through the budget process.

RECOMMENDATION:

That Council approve, and authorize the City Manager to execute, an Agreement for the Performance of Services with Electrical Maintenance Consultants, in an amount not to exceed $50,000.00 per year, or a three-year total of $150,000.00, to provide generator inspection, testing and cleaning at the Donald Von Raesfeld Power Plant.

John C. Roukema
Director of Electric Utility

Certified as to Availability of Funds:
091-1377-87600 $50,000.00

Gary Ameling
Director of Finance/Assistant City Manager

APPROVED:

Julio J. Fuentes
City Manager

MAJORITY VOTE OF COUNCIL

Documents Related to this Report:

1) ***Agreement for the Performance of Services with Electrical Maintenance Consultants***

AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA, AND ELECTRICAL MAINTENANCE CONSULTANTS, INC (EMC)

PREAMBLE

This agreement for the performance of services ("Agreement") is made and entered into on this _____ day of _____, 2014, ("Effective Date") by and between Electrical Maintenance Consultants, Inc., a California corporation, with its principal place of business located at 3785 Cincinnati Ave. Rocklin CA, 95765("Contractor"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

A. City desires to secure professional services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services"; and

B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,

C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. EMPLOYMENT OF CONTRACTOR.

City hereby employs Contractor to perform services set forth in this Agreement. To accomplish that end, City may assign a Project Manager to personally direct the Services to be provided by Contractor and will notify Contractor in writing of City's choice. City shall pay for all such materials and services provided which are consistent with the terms of this Agreement.

2. SERVICES TO BE PROVIDED.

Except as specified in this Agreement, Contractor shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work required by City at his/her own risk and expense. Services to be provided to City are

more fully described in Exhibit A entitled "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference.

3. COMMENCEMENT AND COMPLETION OF SERVICES.

A. Contractor shall begin providing the services under the requirements of this Agreement upon receipt of written Notice to Proceed from City. Such notice shall be deemed to have occurred three (3) calendar days after it has been deposited in the regular United States mail. Contractor shall complete the Services within the time limits set forth in the Scope of Services or as mutually determined in writing by the Parties.

B. When City determines that Contractor has satisfactorily completed the Services, City shall give Contractor written Notice of Final Acceptance. Upon receipt of such notice, Contractor shall not incur any further costs under this Agreement. Contractor may request this determination of completion be made when, in its opinion, the Services have been satisfactorily completed. If so requested by the contractor, City shall make this determination within fourteen (14) days of its receipt of such request.

4. QUALIFICATIONS OF CONTRACTOR - STANDARD OF WORKMANSHIP.

Contractor represents and maintains that it has the necessary expertise in the professional calling necessary to perform services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under Exhibit A shall be of a quality acceptable to City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by City for similar projects.

5. TERM OF AGREEMENT.

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate at the end of day three (3) years from the Effective Date.

6. MONITORING OF SERVICES.

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accord with applicable City, county, state, and federal requirements. If

any action of Contractor constitutes a breach, City may terminate this Agreement pursuant to the provisions described herein.

7. WARRANTY.

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect, and shall conform to the specifications, requirements, and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate, or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

8. PERFORMANCE OF SERVICES.

Contractor shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by City. Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it. Contractor will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

9. BUSINESS TAX LICENSE REQUIRED

Contractor must comply with Santa Clara City Code section 3.40.060, as that section may be amended from time to time or renumbered, which requires that any person who transacts or carries on any business in the City of Santa Clara pay business license tax to the City. A business tax certificate may be obtained by completing the Business Tax Affidavit Form and paying the applicable fee at the Santa Clara City Hall Municipal Services Division.

10. RESPONSIBILITY OF CONTRACTOR.

Contractor shall be responsible for the professional quality, technical accuracy and coordination of the Services furnished by it under this Agreement. Neither City's review, acceptance, nor payments for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and Contractor shall be and remain liable to City in accordance with applicable law for all damages to City caused by Contractor negligent performance of any of the Services furnished under this Agreement.

Any acceptance by City of plans, specifications, construction contract documents, reports, diagrams, maps and other material prepared by Contractor shall not in any respect absolve Contractor form the responsibility Contractor has in accordance with customary standards of good professional practice in compliance with applicable federal, state, county, and/or municipal laws, ordinances, regulations, rules and orders.

11. COMPENSATION AND PAYMENT.

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and services rendered by Contractor at the rate per hour for labor and cost per unit for materials as outlined in Exhibit B, entitled "SCHEDULE OF FEES."

Contractor will bill City on a monthly basis for Services provided by Contractor during the preceding month, subject to verification by City. City will pay Contractor within thirty (30) days of City's receipt of invoice.

12. TERMINATION OF AGREEMENT.

Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Contractor shall discontinue further services as of the effective date of termination, and City shall pay Contractor for all Services satisfactorily performed up to such date.

13. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

14. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

15. INDEPENDENT CONTRACTOR.

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights, however, to manage its employees in their performance of Services under this Agreement. Contractor is not authorized to bind City to any contracts or other obligations.

16. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall Contractor have the authority or power to pledge the credit of City or incur any obligation in the name of City. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor under this Agreement.

17. CONFIDENTIALITY OF MATERIAL.

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

18. USE OF CITY NAME OR EMBLEM.

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

19. OWNERSHIP OF MATERIAL.

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

20. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR.

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for three (3) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

21. CORRECTION OF SERVICES.

Contractor agrees to correct any incomplete, inaccurate or defective Services at no further costs to City, when such defects are due to the negligence, errors or omissions of Contractor.

22. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

23. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which City shall become liable arising from Contractor's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Contractor pursuant to this Agreement.

24. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall purchase and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the Performance of Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C.

25. AMENDMENTS.

This Agreement may be amended only with the written consent of both Parties.

26. INTEGRATED DOCUMENT.

This Agreement represents the entire agreement between City and Contractor. No other understanding, agreements, conversations, or otherwise, with any representative of City prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon City.

27. SEVERABILITY CLAUSE.

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

28. WAIVER.

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

29. NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: Electric Department
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 261-2717

And to Contractor addressed as follows:

Electrical Maintenance Consultants, Inc.
3785 Cincinnati Ave.
Rocklin CA, 95765
or by facsimile at (916) 408-4877

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

30. CAPTIONS.

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

31. LAW GOVERNING CONTRACT AND VENUE.

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

32. DISPUTE RESOLUTION.

A. Unless otherwise mutually agreed to by the Parties, any controversies between Contractor and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.

C. The costs of mediation shall be borne by the Parties equally.

D. For any contract dispute, mediation under this section is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit through mediation only. In the event of litigation, the prevailing Party shall recover its reasonable costs of suit, expert's fees, and attorney's fees. If mediation does not resolve the dispute, the Parties agree that the matter shall be litigated in a court of law, and not subject to the arbitration provisions of the Public Contracts Code.

33. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall:

A. Read Exhibit D, entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,

B. Execute Exhibit E, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

34. CONFLICT OF INTERESTS.

This Agreement does not prevent either Party from entering into similar agreements with other parties. To prevent a conflict of interest, Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

(Continued on Page 9 of 9)

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35. PROGRESS SCHEDULE.

The Progress Schedule will be as set forth in the attached Exhibit F, entitled "MILESTONE SCHEDULE" if applicable.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

ELECTRICAL MAINTENANCE CONSULTANTS, INC.
a California corporation

By: Sandra Keller
SANDRA KELLER
Title: President
Address: 3785 Cincinnati Ave.
Rocklin CA, 95765
Telephone: (916) 624-7977
Fax: (916) 408-4877

"CONTRACTOR"

AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
ELECTRICAL MAINTENANCE CONSULTANTS, INC

EXHIBIT A

SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are more fully described in the Contractor's proposal entitled, "Mitsubishi STG Visual Inspection" dated October 1, 2014 which is attached to this Exhibit A.

EMC will provide the necessary labor & tooling to visually inspect generator stator, rotor and neutral/line side buss on one Mitsubishi Steam Turbine-Generator at the DVR power station, located in Santa Clara, CA.

The aforementioned services can be completed for the lump sum price of.....$3,120.00

Note: any service provided outside work scope will be done on a time & materials basis.

Freight and Sales Tax has not been included in quotation.

This work can be completed working a (10) ten hour day shift.

Electrical Maintenance Consultants

QUOTATION FOR SERVICES

Date: 10/01/2014

Quotation Number: 14-1392

Richard Sandau

Silicon Valley Power

Division Manager Generation

City of Santa Clara

- ☐ **Installation/Repair/Maintenance**
- ☐ **Field Engineering Service**
- ☐ **Job Management Service**
- ☐ **Training Services**
- ☐ **Engineering Study/Inspection/Test**
- X **Power Generation Services**
- ☐ **Power Delivery Services**

Work Description, Completion, Price

We are pleased to provide you with our quotation as follows:

EMC will provide the necessary labor & tooling to visually inspect generator stator, rotor and neutral/line side buss on one Mitsubishi Steam Turbine-Generator at the DVR power station, Located in Santa Clara, CA.

The aforementioned services can be completed for the lump sum price of.....$3,120.00

Note: any service provided outside workscope will be done on a time & materials basis.

Freight and Sales Tax has not been included in quotation.

This work can be completed working a (10) ten hour day shift.

By: Phillip Keller

Title: Vice President

NOTICE: This quotation is void unless accepted within thirty (30) days of date hereof and is subject to change upon notice. However if EMC elects to perform the services covered by the quotation in response to an order placed thirty days or more after the date of the quotation, the terms of the quotation will apply along with EMC Inc.'s Terms and Conditions.

Electrical Maintenance Consultants
Office 916.624.7977 Fax 916.624.0680 Cell 916.833.8606 pkeller.emc@sbcglobal.net
Office/Service Shop: 3785 Cincinnati Ave. Rocklin CA. 95765

AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
ELECTRICAL MAINTENANCE CONSULTANTS, INC

EXHIBIT B

FEE SCHEDULE

Quotation for services dated October 1, 2014 is estimated at $3,120.00. The work will be performed at the Donald Von Raesfeld Power Plant (DVR).

Any additional work not included in the attached proposal will be time and materials in accordance with the attached rate sheet (Exhibit B). Payment for any additional services is allowed only if written authorization is given by the City in advance of the work to be performed

In no event shall the amount billed to City by Contractor for services under this Agreement exceed one hundred fifty thousand dollars ($150,000.00), subject to budget appropriations.

ELECTRICAL MAINTENANCE CONSULTANTS, INC.

Power Generation

SCHEDULE OF RATES AND CHARGES

	Straight Time	Overtime	Double Time
1.Specialized Engineer	**$120.00**	**$180.00**	**$240.00**
2.Project Supervisor	**$105.00**	**$157.50**	**$210.00**
3.Field Service Tech	**$95.00**	**$142.50**	**$190.00**
4. Winder	**$90.00**	**$135.00**	**$180.00**
5. Craftsman	**$85.00**	**$127.50**	**$170.00**
6. Shop Labor	**$85.00**	**$127.50**	**$170.00**

1. Straight time rates applies to all hours worked or traveled during a normal eight (8) hour workweek. Monday through Friday 7:00AM to 3:30PM excluding holidays. Time is based on portal to portal

2. Overtime rates apply to all hours worked or traveled after eight (8) hours and Saturdays up to twelve (12) hours.

3. Double time rates apply to holidays, Sundays and any hours worked or traveled After twelve (12) hours Monday through Saturday.

4. All travel and work from one (1) to four (4) hours will be billed as four hours plus expenses

5. All travel and work from four (4) to eight (8) hours will be billed as eight (8) hours plus expenses

EXPENSES
$180.00 a day living expenses per man . All other expenses including miscellaneous expenses such as parking, telephone, tolls and expendable materials will be billed at cost plus 30% handling charge,

OUTSIDE SERVICES
All outside services will be billed at cost plus 20%.

EQUIPMENT
Truck, Tooling, and Tool Trailer will be billed at $250.00 per day per vehicle. Specialist And Supervisor Vehicle will be an additional $3.00 per hour.
Special equipment will be billed at standard rental rates plus 20%.

MATERIALS
All materials will be billed at a minimum handling charge at cost plus 40%.

FREIGHT
All incoming and outgoing freight will be charged at a handling charge of cost plus 40%.

MIMIMUM BILLING
Minimum billing amount is $300.00

MILEAGE
Mileage will be charged at the rate of $0.75 per mile.
There will be a hazardous waste surcharge on all projects. Amount to be Determined based on individual project.

3785 Cincinnati Ave. Rocklin, Ca 95765 Phone (916) 408-4577 Fax (916) 408-4877

AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
ELECTRICAL MAINTENANCE CONSULTANTS, INC

EXHIBIT C

INSURANCE REQUIREMENTS

INSURANCE COVERAGE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

   $1,000,000 Each Occurrence
   $2,000,000 General Aggregate
   $2,000,000 Products/Completed Operations Aggregate
   $1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:

   a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

   b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

   c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars ($1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars ($2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars ($1,000,000) policy limit Bodily Injury by disease, one million dollars ($1,000,000) each accident/Bodily Injury and one million dollars ($1,000,000) each employee Bodily Injury by disease.

2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the

Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

   a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

   b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc. City of Santa Clara Electric Department P.O. 12010-S2 Hemet, CA 92546-8010	or	151 North Lyon Avenue Hemet, CA 92543

Telephone number:	951-766-2280
Fax number:	770-325-0409
Email address:	ctsantaclara@ebix.com

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
ELECTRICAL MAINTENANCE CONSULTANTS, INC.

EXHIBIT D

ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA

Termination of Agreement for Certain Acts.

A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If a Contractor[1] does any of the following:

   a. Is convicted[2] of operating a business in violation of any Federal, State or local law or regulation;

   b. Is convicted of a crime punishable as a felony involving dishonesty[3];

   c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;

   d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,

   e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

---

[1] For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

[2] For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

[3] As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

B. The City may also terminate this Agreement in the event any one or more of the following occurs:

1. The City determines that Contractor no longer has the financial capability[4] or business experience[5] to perform the terms of, or operate under, this Agreement; or,

2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.

C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

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[4] Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

[5] Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
ELECTRICAL MAINTENANCE CONSULTANTS, INC.

EXHIBIT E

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Contractor" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Contractor" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

ELECTRICAL MAINTENANCE CONSULTANTS, INC.
A California corporation

By: Sandra Keller
Name: SANDRA KELLER
Title: President

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of PLACER

On OCTOBER 16TH, 2014 (Date) before me, R. OHRENSCHALL, NOTARY PUBLIC (Here Insert Name and Title of the Officer)

personally appeared SANDRA KELLER (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.

R. OHRENSCHALL
Commission # 1929580
Notary Public - California
Placer County
My Comm. Expires Mar 21, 2015

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 of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: SERVICE AGREEMENT

Document Date: TYPED: 10/10/14 Number of Pages: 20

Signer(s) Other Than Named Above: NONE

Capacity(ies) Claimed by Signer(s)

Signer's Name: SANDRA KELLER
☑ Individual
☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:
Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name:
☐ Individual
☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:
Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
ELECTRICAL MAINTENANCE CONSULTANTS, INC.

EXHIBIT F

MILESTONE SCHEDULE

(If Applicable)

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-2

Santa Clara All-America City 2001

Date: November 18, 2014

To: City Manager for Council Action

From: Richard E. Nosky, Jr., City Attorney

Subject: Approval of Legal Services Agreement with Goldfarb & Lipman LLP related to providing legal services to the City of Santa Clara acting in its capacity as the Successor Agency to the Redevelopment Agency of the City of Santa Clara

EXECUTIVE SUMMARY:

The proposed agreement with Goldfarb & Lipman LLP is for legal services to the City of Santa Clara acting in its capacity as the Successor Agency to the Redevelopment Agency of the City of Santa Clara and for legal defense of the Successor Agency in the matter of *Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al.*, Sacramento County Superior Court Case No. 34-2013-80001396. A copy of the agreement is available in the City Clerk's office and on the City's website.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Goldfarb & Lipman LLP will provide legal services and will assist the City of Santa Clara acting in its capacity as the Successor Agency to the Redevelopment Agency of the City of Santa Clara, directed by the City Attorney, in the *Sharma* matter listed above, including the filing of necessary legal pleadings and related actions.

ECONOMIC/FISCAL IMPACT:

The agreement with Goldfarb & Lipman LLP is for a not to exceed amount of Fifty Thousand dollars ($50,000). Funds are appropriated in the Successor Agency account (001-1012-87870-02189(A)).

RECOMMENDATION:

That the Council approve and authorize the City Manager to execute the Legal Services Agreement with Goldfarb & Lipman LLP related to legal services to the City of Santa Clara acting in its capacity as the Successor Agency to the Redevelopment Agency of the City of Santa Clara.

Richard E. Nosky, Jr.
City Attorney

Certified as to Availability of Funds:

001-1012-87870-02189(A) $50,000.00

Gary Ameling
Asst. City Manager/Director of Finance

APPROVED:

Julio J. Fuentes
City Manager

MAJORITY VOTE OF COUNCIL

Documents Related to this Report:
1) Legal Services Agreement with Goldfarb & Lipman LLP

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LEGAL SERVICES AGREEMENT
BY AND BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA, ACTING IN ITS CAPACITY AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA
AND
GOLDFARB & LIPMAN LLP

PREAMBLE

This legal services agreement ("Agreement") is made and entered into on this _____ day of October, 2014 (the "Effective Date") by and between Goldfarb & Lipman LLP, comprised of attorneys licensed to practice law in the State of California with its primary place of business located at 1300 Clay Street, Eleventh Floor, Oakland, CA 94612 ("Firm") and the City of Santa Clara, California, a chartered California municipal corporation, acting as the Successor Agency for the Redevelopment Agency of the City of Santa Clara ("Successor Agency"), with its primary place of business located at 1500 Warburton Avenue, Santa Clara, CA 95050. Successor Agency and Firm may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

A. Successor Agency desires to secure professional services more fully described in this Agreement;

B. Firm represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide legal services of the quality and type which meet objectives and requirements of City; and,

C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. RETENTION OF FIRM.

A. Successor Agency hereby confirms, retains and authorizes Firm to represent Successor Agency and provide legal services as may be requested, from time to time, orally or in writing, by authorized representatives of Successor Agency on an as-needed basis. By this Agreement, Successor Agency is retaining Firm and not individual members of the Firm. Firm's client is the Successor Agency, as a public entity, and not any of its individual members, groups of individuals or any other entity. Firm shall report to and receive direction from the City Council, City Attorney and/or City Manager.

B. Firm shall perform such legal services for and on behalf of Successor Agency under the primary direction of the City Attorney. Firm shall undertake, subject to approval of Firm, such additional duties as may be authorized by Successor Agency from time to time under the terms and conditions of this Agreement.

2. DESCRIPTION OF SERVICES TO BE PROVIDED.

Firm shall provide advice and counsel on legal matters affecting Successor Agency, performing legal research, representing Successor Agency in judicial proceedings in state and/or federal court or other dispute resolution tribunals or before administrative agencies, negotiating contracts and drafting contracts, correspondence, resolutions and other legal documents as may become necessary. Such services shall also include the preparation and delivery of status reports to Successor Agency as specified in paragraph 8 of this Agreement.

3. COMMENCEMENT OF WORK.

Firm shall begin performing legal services under this Agreement when directed to do so by the City Attorney and shall complete said services within the time limits mutually determined to be acceptable by Firm and Successor Agency.

4. ASSIGNMENT OF DUTIES.

It is contemplated that Karen M. Tiedemann and Thomas H. Webber will be assigned from Firm. They may be assisted as they deem appropriate by the persons listed in Exhibit A, provided that multiple representation at meetings, depositions, hearings and court appearances shall require authorization from the City Attorney. In addition, should it be desirable for any other attorney not listed in Exhibit A to work under this Agreement, such attorney may only be added with the consent of the City Attorney. While Successor Agency expects the attorneys listed above to perform the tasks that require substantial experience, Firm shall attempt to minimize legal expenses by relying on junior attorneys, paralegals and law clerks for less demanding tasks.

5. PAYMENT FOR SERVICE.

In consideration for Firm's performance of legal services on behalf of Successor Agency under the terms of this Agreement, and upon review and approval of Firm's bill by the City Attorney, Firm shall be compensated at the preapproved hourly rates and for authorized expenses as set forth in Exhibit A entitled "Schedule of Fees and Charges" attached and incorporated by this reference. Fees for services performed by retained consultants, subcontractors, experts or other personnel may be billed to Successor Agency only if approved in writing by the City Attorney.

6. BILLING INVOICES.

Firm shall, within fifteen (15) days after the end of each calendar month in which services are performed under this Agreement, submit to the Successor Agency an itemized invoice, describing the specific services performed as set forth in this

Agreement. Firm shall adhere to the billing standards set forth in Exhibit B entitled "Billing Standards" attached and incorporated by this reference. The invoice shall be submitted to:

Santa Clara City Attorney's Office
1500 Warburton Avenue
Santa Clara, CA 95050

7. BILLING STANDARDS.

Firm shall not bill for hours other than those hours expressly devoted to the tasks approved in advance by the City Attorney and/or required under the terms of this Agreement. Firm agrees it will not bill for time which is not specifically devoted to said task(s). Firm shall not bill for secretarial or clerical tasks. The billing format utilized to provide bills shall be set forth in detailed format which readily permits review by City retained auditors.

8. STATUS REPORTS.

Firm shall, within fifteen (15) days of each calendar quarter, submit to Successor Agency a written report setting forth a summary of activities performed on behalf of Successor Agency during the preceding calendar quarter, the current status of each pending matter or proceeding, results obtained or expected to be obtained, a summary of invoices for the preceding quarter and such other information relating to the services rendered as Successor Agency may reasonably request. See Exhibit B for additional reporting requirements.

9. TERMINATION.

Either Party may terminate this Agreement by providing written notice to the other. Any termination hereunder shall become effective upon receipt of written notice of termination; provided, however, that Firm may exercise its right of termination only to the extent and under terms and conditions consistent with the obligations of Firm under the Rules of Professional Conduct of the State Bar of California; and provided, further, that in the event of termination, the amount due Firm for services rendered and costs and expenses incurred prior to termination shall remain due and payable. The City Attorney may exercise the power of Successor Agency to terminate this Agreement without prior City Council approval. Upon written request of the City Attorney, Firm agrees to turn over to any attorney substituted in its place, the entire file and attorney work product regarding any such matter within seven (7) calendar days of any such termination.

10. CONFLICTS OF INTEREST.

Periodically during the term of the Agreement, Firm shall make a good faith effort to identify and shall apprise Successor Agency of those possible conflicts of interest which could affect Firm's duties to Successor Agency or to the City Attorney under the California Rules of Professional Responsibility, or Firm's performance of the responsibilities reposed in Firm under this Agreement, or which Firm reasonably believes

are likely to affect future transactions by and between Successor Agency and third parties. Successor Agency retains those rights with respect to future conflicts as are vested in a client under the California Rules of Professional Responsibility, and may terminate Firm's services and withhold consent to such conflicts of interest under the California Rules of Professional Responsibility which Successor Agency deems in good faith not to be in the Successor Agency's best interest.

11. ASSIGNMENTS AND SUCCESSORS IN INTEREST.

Successor Agency and Firm bind themselves, their partners, successors, assigns, executors and administrators to the terms of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for in this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of the City Attorney.

12. INDEPENDENT CONTRACTOR.

In performing work required under this Agreement, Firm is not an agent nor employee of Successor Agency but an independent contractor. Firm shall at all times act as an independent contractor with respect to the performance of this Agreement, with full rights to manage its employees subject to the requirements of the law. Neither Firm nor any employees or agents of Firm shall be considered an employee of Successor Agency for any purpose.

13. RECORDS AND DOCUMENTATION.

Firm shall maintain complete and accurate records of the services provided to Successor Agency and expenses incurred on behalf of Successor Agency. Firm agrees to assist Successor Agency in meeting Successor Agency's reporting requirements to other agencies with respect to Firm's work under this Agreement. All records, reports and documentation relating to the work performed under this Agreement shall be made available to Successor Agency during the term of this Agreement, and for a period of six (6) years after termination of the Agreement.

14. FAIR EMPLOYMENT.

Firm shall not discriminate against any employee or applicant for employment in hiring, promotion or unlawfully discharge, on the basis of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law. In the State of California this requirement is an ethical obligation of attorneys in the management of their Firms. [Rules of Professional Conduct Section 2-400 (B).]

15. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Firm shall indemnify, protect, defend and hold harmless City of Santa Clara acting in its capacity as the Successor Agency to the Redevelopment Agency of the City of Santa Clara, City of Santa Clara, its City Council, officers,

employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim, arising from Firm's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the performance of the work by Firm, its agents, subcontractors and/or assigns under to this Agreement.

16. INSURANCE REQUIREMENTS.

Firm shall maintain in full force and effect the following insurance policies:

A. Commercial general liability policy (bodily injury and property damage);

B. Worker's compensation/employer's liability policy;

C. Business automobile liability insurance policy; and,

D. Professional liability policy.

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts, endorsements, certificates of insurance and coverage verifications as set forth in Exhibit C entitled "Insurance Requirements" attached and incorporated by this reference.

17. CONFIDENTIALITY AND DISCLOSURE.

The data, information and reports acquired or prepared by Firm in connection with matters upon which the Successor Agency has retained Firm shall not be shown or distributed to any other public or private person or entity except as authorized by the City Attorney and in no event prior to having been first disclosed to the City Attorney. All information, documents, records, reports, data or other materials furnished by Successor Agency to Firm or other such information, documents, records, data or other materials to which the Firm has access during its performance pursuant to this Agreement are deemed confidential and shall remain the property of Successor Agency. Firm shall not make oral or written disclosure of such documents or materials, other than as necessary for its performance under this Agreement, without the prior written approval of the City Attorney.

18. AMENDMENTS.

This Agreement, including any Exhibits attached to it, represents the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may be modified only by a written amendment duly executed by the Parties to this Agreement.

19. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties. No third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

20. NOTICES.

All notices, invoices, reports or other communication to the Parties shall be properly given if delivered in person or sent by First Class mail, facsimile or overnight delivery and addressed as follows:

Santa Clara City Attorney's Office
1500 Warburton Avenue
Santa Clara, CA 95050
Fax Number: (408) 249-7846

And to Firm addressed as follows:

Goldfarb & Lipman LLP
1300 Clay Street, 11th Floor
Oakland, CA 94612
Fax Number: (510) 836-1035

Either Party may change its address for receipt of notices under this Agreement by notice given in the manner provided herein.

21. LAW GOVERNING AGREEMENT.

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California.

22. INVALID PROVISIONS.

If any provision of this Agreement is held to be illegal, invalid or unenforceable, in full or in part, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid and enforceable, and the other provisions of this Agreement shall not be affected thereby.

[Paragraph 23 and signatures follow on page 7]

23. LICENSE REQUIREMENTS.

Firm shall demonstrate that the attorney(s) who provide legal services to City under this Agreement are licensed to practice law in the State of California and, if not, indicate to the satisfaction of the City Attorney why such license is not required to perform the services required.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties. The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA
A CHARTERED CALIFORNIA MUNICIPAL CORPORATION
ACTING IN ITS CAPACITY AS THE SUCCESSOR AGENCY
TO THE REDEVELOPMENT AGENCY OF
THE CITY OF SANTA CLARA

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 249-7846

"SUCCESSOR AGENCY"

GOLDFARB & LIPMAN, LLP
a California limited liability partnership

By: _____
(Signature of Person executing the Agreement on behalf of Contractor)
Name: Karen M. Tiedemann, Partner
Local Address: 1300 Clay Street, 11th Floor
Oakland, CA 94612
Telephone (510) 836-6336
Fax: (510) 836-1035

"FIRM"

I:\AGREEMENTS\LEGAL SERVICES\GOLDFARB LIPMAN\GOLDFARB & LIPMAN CITY SUCCESSOR AGENCY 10-06-14.DOC

LEGAL SERVICES AGREEMENT
BY AND BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA,
ACTING IN ITS CAPACITY AS THE SUCCESSOR AGENCY
TO THE REDEVELOPMENT AGENCY OF
THE CITY OF SANTA CLARA
AND
GOLDFARB & LIPMAN LLP

EXHIBIT A

SCHEDULE OF FEES AND CHARGES

A. Billable Rates

The Firm shall bill its time by the hour at the hourly billable rate assigned to each attorney. The Firm shall bill Successor Agency for its services at its current hourly rates, which are $275 per hour for attorney time. A review of hourly rates may be conducted annually and adjustments may be made so long as the rates fall within the range set forth in this Agreement.

It is anticipated that most of the legal work provided under this Agreement shall be performed by the following attorneys at the designated hourly billing rates:

Karen M. Tiedemann	$275.00 per hour
Thomas H. Webber	$275.00 per hour

Notice of any proposed increase in the approved hourly rates for services rendered under this Agreement will be given to Successor Agency in writing no later than thirty (30) days prior to the effective date of subject increase. No proposed increase will become effective if, prior to its effective date, Successor Agency notifies Firm in writing of objections thereto. In the event a timely notice of objection to any proposed increase is given, Firm and Successor Agency shall attempt to reach agreement concerning future hourly rates. If agreement is reached, the rates agreed upon shall be applicable as of the date agreed upon. In the event that after a reasonable period the parties are unable to reach agreement, either party may advise the other in writing that this Agreement is terminated.

Firm will be reimbursed for all out-of-pocket costs and expenses actually incurred by Firm in the above-described representation of Successor Agency. Reimbursable out-of-pocket expenses include, but are not limited to, all travel expenses, (i.e., local travel including taxis), lodging, long distance telephone calls, reproduction and printing costs, postage, filing fees, word processing costs paid to third parties after prior Successor Agency approval, transcript costs, staff (non-attorney) overtime after prior Successor Agency approval and notary fees, to the extent that any such costs are incurred on behalf of Successor Agency.

B. Maximum Not to Exceed Contract Amount

In no event shall the total amount paid to the Firm for services, including all fees, cost and/or expenses, under this Agreement exceed Fifty thousand dollars ($50,000.00).

LEGAL SERVICES AGREEMENT
BY AND BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA,
ACTING IN ITS CAPACITY AS THE SUCCESSOR AGENCY
TO THE REDEVELOPMENT AGENCY OF
THE CITY OF SANTA CLARA
AND
GOLDFARB & LIPMAN LLP

EXHIBIT B

BILLING STANDARDS

A. All cases shall be billed monthly pursuant to paragraph 7 of this Agreement.

B. The fee portion of each invoice shall include the attorney's name (or initials, if full name is noted elsewhere on invoice), amount, date work was performed, the amount of time expended, rate per hour, and a brief description of the services rendered as a basis for fee calculation, or other method of determining the fees. All tasks set forth in Firm's billing documentation shall be specific and detailed. Examples of unacceptable billing entries include but are not limited to: overly generalized listings of task descriptions (e.g., "review contract" or "prepare for negotiations"); double staff or attorney time on any task, unless expressly authorized by the City Attorney; block billing; time billed for additional newly assigned attorney(s) to learn case file; assigned work by law clerks; administrative costs; word processing charges; secretarial or clerical charges; time spent on researching and/or drafting work that Firm has done and billed another client for in the past.

C. Billings under this Agreement shall not be provided in more than six (6) minute increments and shall represent the devotion of a full six minutes before an increment is billed.

D. The cost and expense portion of the invoice shall clearly identify the nature and amount and any other cost(s) billed to Successor Agency must be separately itemized with prior written approval of the City Attorney. Any experts or contractors hired by Firm on behalf of Successor Agency whose charges are billed through the Firm must also provide such billing itemization and such billing shall be attached to the billing provided to Successor Agency by Firm. Professional fees and expenses invoiced to Successor Agency shall be due and payable within thirty (30) days after receipt of Firm's statement.

E. In support of payment for such bill, Firm shall furnish payroll records, bills, invoices, receipts or other evidence of reimbursable expenses incurred as reasonably requested by the City Attorney. Successor Agency reserves the right to require additional substantiation of any item of claimed expense.

F. Firms representing Successor Agency in active litigation shall prepare a brief summary of activity on each case on a monthly basis.

G. Each month's bill should include the total billable hours and expenses to date for each matter.

H. Successor Agency encourages the use of paralegals for any task that can be delegated. However, similar to attorneys, no more than two paralegals (but preferably one) should work on each case.

I. The maximum charge for photocopying is twenty-five cents ($.25) per page.

J. Fax charges should be one dollar ($1.00) or less per fax. Successor Agency encourages the use of email correspondence where appropriate.

K. Messenger and other charges in excess of actual costs are not permitted.

L. Telephone, cellular telephone and postage charges are billable at actual cost.

M. Meals are not billable to Successor Agency without prior authorization.

N. Expert witness fees are not automatically authorized. Firm shall obtain approval for each expert witness from the City Attorney.

O. Firm shall maintain at least the insurance coverage set forth in Exhibit C at all times.

P. Work performed on a not-to-exceed basis may not be increased without prior approval by the City Attorney and/or City Council, depending upon the amount in question.

Q. If Firm is provided with a new case directly from Successor Agency staff or if a matter arises that requires Firm to open a new file, the City Attorney should be informed immediately.

R. Successor Agency expects that Firm will resolve all discovery disputes without court intervention. If this is impossible due to the conduct of others, please inform the City Attorney immediately.

S. The City of Santa Clara's Finance Department will send a request for an auditor response letter annually. Firm will respond to these requests timely and will provide a copy of Firm's response letter to the City Attorney.

T. Firm will provide copies of all motions or briefs which are filed related to Successor Agency's matter. Unless previously requested, Firm does not need to send drafts or miscellaneous correspondence. Copies of significant pieces of correspondence should be provided to the City Attorney.

U. Successor Agency expects early and frequent evaluation of its cases. If the likelihood of success on a particular case is low, Successor Agency needs to know up front in order to minimize litigation costs and make reasonable attempts to settle the case.

LEGAL SERVICES AGREEMENT
BY AND BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA,
ACTING IN ITS CAPACITY AS THE SUCCESSOR AGENCY
TO THE REDEVELOPMENT AGENCY OF
THE CITY OF SANTA CLARA
AND
GOLDFARB & LIPMAN LLP

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Firm's indemnification of the Successor Agency, and prior to commencing any of the services required under this Agreement, Firm shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

$1,000,000 Each Occurrence

$1,000,000 General Aggregate

$1,000,000 Products/Completed Operations Aggregate

$1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Firm; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Firm to comply with the insurance requirements of this Agreement:

a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another;

c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars ($1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars ($1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars ($1,000,000) policy limit Bodily Injury by disease, one million dollars ($1,000,000) each accident/Bodily Injury and one million dollars ($1,000,000) each employee Bodily Injury by disease.

2. The indemnification and hold harmless obligations of Firm included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Firm or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara acting in its capacity as the Successor Agency to the Redevelopment Agency of the City of Santa Clara, City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than two million dollars ($2,000,000) per occurrence/aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara acting in its capacity as the Successor Agency to the Redevelopment Agency of the City of Santa Clara, City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Firm's work for Successor Agency, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and
CG 20 37 10 01, or its equivalent.

2. Primary and non-contributing. Each insurance policy provided by Firm shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Firm's insurance.

3. Cancellation.

   a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided shall be effective until written notice has been given to Successor Agency at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

   b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to Successor Agency at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Firm and Successor Agency agree as follows:

1. Firm agrees to ensure that subcontractors, and any other party involved with the performance of Services, who is brought into or involved in the performance of the Services by Firm, provide the same minimum insurance coverage required of Firm,

except as with respect to limits Firm agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Firm agrees that upon request by Successor Agency, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to Successor Agency for review.

2. Firm agrees to be responsible for ensuring that no contract used by any party involved in any way with the Services reserves the right to charge Successor Agency or Firm for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to Successor Agency. It is not the intent of Successor Agency to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against Successor Agency for payment of premiums or other amounts with respect thereto.

3. Successor Agency reserves the right to withhold payments from the Firm in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Firm and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to Successor Agency and as described in this Agreement. Firm shall file with Successor Agency, or its designated representative as set forth below, all certificates and endorsements for the required insurance policies for Successor Agency's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

Firm or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to Successor Agency, or its representative as set forth below, at or prior to execution of this Agreement. Upon Successor Agency's request, Firm shall submit to Successor Agency copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to Successor Agency pursuant to this Agreement shall be mailed to:

City of Santa Clara City Attorney's Office
c/o EBIX Inc.

P.O. 12010-S2	or	151 North Lyon Avenue
Hemet, CA 92546-8010		Hemet, CA 92543

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: CTSantaClara@Ebix.com (Preferred Method)

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Firm shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the Successor Agency or its insurance compliance representatives.

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-3

Santa Clara All-America City 2001

Date: November 18, 2014

To: City Manager for Council Action

From: Richard E. Nosky, Jr., City Attorney

Subject: Approval of Legal Services Agreement with Goldfarb & Lipman LLP related to providing legal services to the City of Santa Clara

EXECUTIVE SUMMARY:

The proposed agreement with Goldfarb & Lipman LLP is for legal services to the City of Santa Clara and for legal defense of the City in the matter of *Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al.*, Sacramento County Superior Court Case No. 34-2013-80001396. A copy of the agreement is available in the City Clerk's office and on the City's website.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Goldfarb & Lipman LLP will provide legal services to the City of Santa Clara, directed by the City Attorney, and a legal defense of the City in the *Sharma* matter listed above, including the filing of necessary legal pleadings and related actions.

ECONOMIC/FISCAL IMPACT:

The agreement with Goldfarb & Lipman LLP is for a not to exceed amount of Fifty Thousand dollars ($50,000). Funds are appropriated in the City's Manager's consultant services account (001-1012-87870-03100(A)).

RECOMMENDATION:

That the Council approve and authorize the City Manager to execute the Legal Services Agreement with Goldfarb & Lipman LLP related to providing legal services to the City of Santa Clara.

Richard E. Nosky, Jr.
City Attorney

Certified as to Availability of Funds: JA

001-1012-87870-03100(A) $50,000.00

Gary Ameling
Director of Finance/
Assistant City Manager

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report:

1) Legal Services Agreement with Goldfarb & Lipman LLP

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MAJORITY VOTE OF COUNCIL

LEGAL SERVICES AGREEMENT
BY AND BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
GOLDFARB & LIPMAN LLP

PREAMBLE

This legal services agreement ("Agreement") is made and entered into on this _____ day of October, 2014, (the "Effective Date") by and between Goldfarb & Lipman LLP, comprised of attorneys licensed to practice law in the State of California with its primary place of business located at 1300 Clay Street, Eleventh Floor, Oakland, CA 94612 ("Firm") and the City of Santa Clara, California, a chartered California municipal corporation ("City"), with its primary place of business located at 1500 Warburton Avenue, Santa Clara, CA 95050. City and Firm may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

A. City desires to secure professional services more fully described in this Agreement;

B. Firm represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide legal services of the quality and type which meet objectives and requirements of City; and,

C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. RETENTION OF FIRM.

A. City hereby confirms, retains and authorizes Firm to represent City and provide legal services as may be requested, from time to time, orally or in writing, by authorized representatives of City on an as-needed basis. By this Agreement, City is retaining Firm and not individual members of the Firm. Firm's client is the City, as a public entity, and not any of its individual members, groups of individuals or any other entity. Firm shall report to and receive direction from the City Council, City Attorney and/or City Manager.

B. Firm shall perform such legal services for and on behalf of City under the primary direction of the City Attorney. Firm shall undertake, subject to approval of Firm, such additional duties as may be authorized by City from time to time under the terms and conditions of this Agreement.

2. DESCRIPTION OF SERVICES TO BE PROVIDED.

Firm shall advise City, providing advice and counsel on legal matters affecting City, performing legal research, representing City in judicial proceedings in state and/or federal court or other dispute resolution tribunals or before administrative agencies, negotiating contracts and drafting contracts, correspondence, resolutions and other legal documents as may become necessary. Such services shall also include the preparation and delivery of status reports to City as specified in paragraph 8 of this Agreement.

3. COMMENCEMENT OF WORK.

Firm shall begin performing legal services under this Agreement when directed to do so by the City Attorney and shall complete said services within the time limits mutually determined to be acceptable by Firm and City.

4. ASSIGNMENT OF DUTIES.

It is contemplated that Karen M. Tiedemann and Thomas H. Webber will be assigned from Firm. They may be assisted as appropriate by the persons listed in Exhibit A, provided that multiple representation at meetings, depositions, hearings and court appearances shall require authorization from the City Attorney. In addition, should it be desirable for any other attorney not listed in Exhibit A to work under this Agreement, such attorney may only be added with the consent of the City Attorney. While City expects the attorneys listed above to perform the tasks that require substantial experience, Firm shall attempt to minimize legal expenses by relying on junior attorneys, paralegals and law clerks for less demanding tasks.

5. PAYMENT FOR SERVICE.

In consideration for Firm's performance of legal services on behalf of City under the terms of this Agreement, and upon review and approval of Firm's bill by the City Attorney, Firm shall be compensated at the preapproved hourly rates and for authorized expenses as set forth in Exhibit A entitled "Schedule of Fees and Charges" attached and incorporated by this reference. Fees for services performed by retained consultants, subcontractors, experts or other personnel may be billed to City only if approved in writing by the City Attorney.

6. BILLING INVOICES.

Firm shall, within fifteen (15) days after the end of each calendar month in which services are performed under this Agreement, submit to the City an itemized invoice, describing the specific services performed as set forth in this Agreement. Firm shall adhere to the billing standards set forth in Exhibit B entitled "Billing Standards" attached and incorporated by this reference. The invoice shall be submitted to:

Santa Clara City Attorney's Office
1500 Warburton Avenue
Santa Clara, CA 95050

7. BILLING STANDARDS.

Firm shall not bill for hours other than those hours expressly devoted to the tasks approved in advance by the City Attorney and/or required under the terms of this Agreement. Firm agrees it will not bill for time which is not specifically devoted to said task(s). Firm shall not bill for secretarial or clerical tasks. The billing format utilized to provide bills shall be set forth in detailed format which readily permits review by City retained auditors.

8. STATUS REPORTS.

Firm shall, within fifteen (15) days of each calendar quarter, submit to City a written report setting forth a summary of activities performed on behalf of City during the preceding calendar quarter, the current status of each pending matter or proceeding, results obtained or expected to be obtained, a summary of invoices for the preceding quarter and such other information relating to the services rendered as City may reasonably request. See Exhibit B for additional reporting requirements.

9. TERMINATION.

Either Party may terminate this Agreement by providing written notice to the other. Any termination hereunder shall become effective upon receipt of written notice of termination; provided, however, that Firm may exercise its right of termination only to the extent and under terms and conditions consistent with the obligations of Firm under the Rules of Professional Conduct of the State Bar of California; and provided, further, that in the event of termination, the amount due Firm for services rendered and costs and expenses incurred prior to termination shall remain due and payable. The City Attorney may exercise the power of City to terminate this Agreement without prior City Council approval. Upon written request of the City Attorney, Firm agrees to turn over to any attorney substituted in its place, the entire file and attorney work product regarding any such matter within seven (7) calendar days of any such termination.

10. CONFLICTS OF INTEREST.

Periodically during the term of the Agreement, Firm shall make a good faith effort to identify and shall apprise City of those possible conflicts of interest which could affect Firm's duties to City or to the City Attorney under the California Rules of Professional Responsibility, or Firm's performance of the responsibilities reposed in Firm under this Agreement, or which Firm reasonably believes are likely to affect future transactions by and between City and third parties. City retains those rights with respect to future conflicts as are vested in a client under the California Rules of Professional Responsibility, and may terminate Firm's services and withhold consent to such conflicts of interest under the California Rules of Professional Responsibility which City deems in good faith not to be in the City's best interest.

11. ASSIGNMENTS AND SUCCESSORS IN INTEREST.

City and Firm bind themselves, their partners, successors, assigns, executors and administrators to the terms of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for in this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of the City Attorney.

12. INDEPENDENT CONTRACTOR.

In performing work required under this Agreement, Firm is not an agent nor employee of City but an independent contractor. Firm shall at all times act as an independent contractor with respect to the performance of this Agreement, with full rights to manage its employees subject to the requirements of the law. Neither Firm nor any employees or agents of Firm shall be considered an employee of City for any purpose.

13. RECORDS AND DOCUMENTATION.

Firm shall maintain complete and accurate records of the services provided to City and expenses incurred on behalf of City. Firm agrees to assist City in meeting City's reporting requirements to other agencies with respect to Firm's work under this Agreement. All records, reports and documentation relating to the work performed under this Agreement shall be made available to City during the term of this Agreement, and for a period of six (6) years after termination of the Agreement.

14. FAIR EMPLOYMENT.

Firm shall not discriminate against any employee or applicant for employment in hiring, promotion or unlawfully discharge, on the basis of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law. In the State of California this requirement is an ethical obligation of attorneys in the management of their Firms. [Rules of Professional Conduct Section 2-400 (B).]

15. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Firm shall indemnify, protect, defend and hold harmless City, its City Council, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim, arising from Firm's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the performance of the work by Firm, its agents, subcontractors and/or assigns under to this Agreement.

16. INSURANCE REQUIREMENTS.

Firm shall maintain in full force and effect the following insurance policies:

A. Commercial general liability policy (bodily injury and property damage);

B. Worker's compensation/employer's liability policy;

C. Business automobile liability insurance policy; and,

D. Professional liability policy.

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts, endorsements, certificates of insurance and coverage verifications as set forth in Exhibit C entitled "Insurance Requirements" attached and incorporated by this reference.

17. CONFIDENTIALITY AND DISCLOSURE.

The data, information and reports acquired or prepared by Firm in connection with matters upon which the City has retained Firm shall not be shown or distributed to any other public or private person or entity except as authorized by the City Attorney and in no event prior to having been first disclosed to the City Attorney. All information, documents, records, reports, data or other materials furnished by City to Firm or other such information, documents, records, data or other materials to which the Firm has access during its performance pursuant to this Agreement are deemed confidential and shall remain the property of City. Firm shall not make oral or written disclosure of such documents or materials, other than as necessary for its performance under this Agreement, without the prior written approval of the City Attorney.

18. AMENDMENTS.

This Agreement, including any Exhibits attached to it, represents the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may be modified only by a written amendment duly executed by the Parties to this Agreement.

19. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties. No third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

20. NOTICES.

All notices, invoices, reports or other communication to the Parties shall be properly given if delivered in person or sent by First Class mail, facsimile or overnight delivery and addressed as follows:

Santa Clara City Attorney's Office
1500 Warburton Avenue
Santa Clara, CA 95050
Fax Number: (408) 249-7846

And to Firm addressed as follows:

Goldfarb & Lipman LLP
1300 Clay Street, 11th Floor
Oakland, CA 94612
Fax Number: (510) 836-1035

Either Party may change its address for receipt of notices under this Agreement by notice given in the manner provided herein.

21. LAW GOVERNING AGREEMENT.

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California.

22. INVALID PROVISIONS.

If any provision of this Agreement is held to be illegal, invalid or unenforceable, in full or in part, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid and enforceable, and the other provisions of this Agreement shall not be affected thereby.

23. LICENSE REQUIREMENTS.

Firm shall demonstrate that the attorney(s) who provide legal services to City under this Agreement are licensed to practice law in the State of California and, if not, indicate to the satisfaction of the City Attorney why such license is not required to perform the services required.

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24. COUNTERPARTS.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 249-7846

"CITY"

GOLDFARB & LIPMAN LLP
A California Limited Liability Partnership

By: _____
(Signature of Person executing the Agreement on behalf of Firm)
Name: Karen M. Tiedemann, Partner
Local Address: 1300 Clay Street, 11th Floor, Oakland, CA 94612
Telephone (510) 836-6336
Fax: (510) 836-1035
Email: ktiedemann@goldfarblipman.com

"FIRM"

I:\AGREEMENTS\LEGAL SERVICES\GOLDFARB LIPMAN\GOLDFARB & LIPMAN CITY OF SANTA CLARA 10-06-14.DOC

LEGAL SERVICES AGREEMENT
BY AND BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
GOLDFARB & LIPMAN LLP

EXHIBIT A

SCHEDULE OF FEES AND CHARGES

A. Billable Rates

Firm shall bill its time by the hour at the hourly billable rate assigned to each attorney. Firm shall bill City for its services at its current hourly rates, which is $275 per hour for attorney time. A review of hourly rates may be conducted annually and adjustments may be made so long as the rates fall within the range set forth in this Agreement.

It is anticipated that most of the legal work provided under this Agreement shall be performed by the following attorneys at the designated hourly billing rates:

Karen M. Tiedemann	$275.00 per hour
Thomas H. Webber	$275.00 per hour

Notice of any proposed increase in the approved hourly rates for services rendered under this Agreement will be given to City in writing no later than thirty (30) days prior to the effective date of subject increase. No proposed increase will become effective if, prior to its effective date, City notifies Firm in writing of objections thereto. In the event a timely notice of objection to any proposed increase is given, Firm and City shall attempt to reach agreement concerning future hourly rates. If agreement is reached, the rates agreed upon shall be applicable as of the date agreed upon. In the event that after a reasonable period the parties are unable to reach agreement, either party may advise the other in writing that this Agreement is terminated.

Firm will be reimbursed for all out-of-pocket costs and expenses actually incurred by Firm in the above-described representation of City. Reimbursable out-of-pocket expenses include, but are not limited to, all travel expenses, (i.e., local travel including taxis), lodging, long distance telephone calls, reproduction and printing costs, postage, filing fees, word processing costs paid to third parties after prior City approval, transcript costs, staff (non-attorney) overtime after prior City approval and notary fees, to the extent that any such costs are incurred on behalf of City.

B. Maximum Not to Exceed Contract Amount

In no event shall the total amount paid to the Firm for services, including all fees, costs and/or expenses, under this Agreement exceed Fifty thousand dollars ($50,000.00) subject to budgetary appropriations.

LEGAL SERVICES AGREEMENT
BY AND BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
GOLDFARB & LIPMAN LLP

EXHIBIT B

BILLING STANDARDS

A. All cases shall be billed monthly pursuant to paragraph 7 of this Agreement.

B. The fee portion of each invoice shall include the attorney's name (or initials, if full name is noted elsewhere on invoice), amount, date work was performed, the amount of time expended, rate per hour, and a brief description of the services rendered as a basis for fee calculation, or other method of determining the fees. All tasks set forth in Firm's billing documentation shall be specific and detailed. Examples of unacceptable billing entries include but are not limited to: overly generalized listings of task descriptions (e.g., "review contract" or "prepare for negotiations"); double staff or attorney time on any task, unless expressly authorized by the City Attorney; block billing; time billed for additional newly assigned attorney(s) to learn case file; assigned work by law clerks; administrative costs; word processing charges; secretarial or clerical charges; time spent on researching and/or drafting work that Firm has done and billed another client for in the past.

C. Billings under this Agreement shall not be provided in more than six (6) minute increments and shall represent the devotion of a full six minutes before an increment is billed.

D. The cost and expense portion of the invoice shall clearly identify the nature and amount and any other cost(s) billed to City must be separately itemized with prior written approval of the City Attorney. Any experts or contractors hired by Firm on behalf of City whose charges are billed through the Firm must also provide such billing itemization and such billing shall be attached to the billing provided to City by Firm. Professional fees and expenses invoiced to City shall be due and payable within thirty (30) days after receipt of Firm's statement.

E. In support of payment for such bill, Firm shall furnish payroll records, bills, invoices, receipts or other evidence of reimbursable expenses incurred as reasonably requested by the City Attorney. City reserves the right to require additional substantiation of any item of claimed expense.

F. Firms representing City in active litigation shall prepare a brief summary of activity on each case on a monthly basis.

G. Each month's bill should include the total billable hours and expenses to date for each matter.

H. City encourages the use of paralegals for any task that can be delegated. However, similar to attorneys, no more than two paralegals (but preferably one) should work on each case.

I. The maximum charge for photocopying is twenty-five cents ($.25) per page.

J. Fax charges should be one dollar ($1.00) or less per fax. City encourages the use of email correspondence where appropriate.

K. Messenger and other charges in excess of actual costs are not permitted.

L. Telephone, cellular telephone and postage charges are billable at actual cost.

M. Meals are not billable to City without prior authorization.

N. Expert witness fees are not automatically authorized. Firm shall obtain approval for each expert witness from the City Attorney.

O. Firm shall maintain at least the insurance coverage set forth in Exhibit C at all times.

P. Work performed on a not-to-exceed basis may not be increased without prior approval by the City Attorney and/or City Council, depending upon the amount in question.

Q. If Firm is provided with a new case directly from City staff or if a matter arises that requires Firm to open a new file, the City Attorney should be informed immediately.

R. City expects that Firm will resolve all discovery disputes without court intervention. If this is impossible due to the conduct of others, please inform the City Attorney immediately.

S. City's Finance Department will send a request for an auditor response letter annually. Firm will respond to these requests timely and will provide a copy of Firm's response letter to the City Attorney.

T. Firm will provide copies of all motions or briefs which are filed related to City's matter. Unless previously requested, Firm does not need to send drafts or miscellaneous correspondence. Copies of significant pieces of correspondence should be provided to the City Attorney.

U. City expects early and frequent evaluation of its cases. If the likelihood of success on a particular case is low, City needs to know up front in order to minimize litigation costs and make reasonable attempts to settle the case.

LEGAL SERVICES AGREEMENT
BY AND BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
GOLDFARB & LIPMAN LLP

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Firm's indemnification of the City, and prior to commencing any of the services required under this Agreement, the Firm shall purchase and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Firm's insurance. The minimum coverages, provisions and endorsements are as follows:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

   $1,000,000 Each Occurrence
   $2,000,000 General Aggregate
   $2,000,000 Products/Completed Operations Aggregate
   $1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:

   a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

   b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

   c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars ($1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Consultant and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars ($1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars ($1,000,000) policy limit Bodily Injury by disease, one million dollars ($1,000,000) each accident/Bodily Injury and one million dollars ($1,000,000) each employee Bodily Injury by disease.

2. The indemnification and hold harmless obligations of Consultant included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Consultant. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars ($1,000,000) per occurrence or two million dollars ($2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Consultant's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

2. Primary and non-contributing. Each insurance policy provided by Consultant shall **contain language or be endorsed to contain wording making it primary insurance** as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Consultant's insurance.

3. Cancellation.

   a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

   b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and City agree as follows:

1. Consultant agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Consultant agrees that upon request by City, all agreements with, and insurance

compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Consultant in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Consultant, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Consultant shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

Consultant or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Consultant shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.
City of Santa Clara City Attorney's Office

P.O. 12010-S2	or	151 North Lyon Avenue
Hemet, CA 92546-8010		Hemet, CA 92543

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com (Preferred method)

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Consultant shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-4

Santa Clara All-America City 2001

Date: November 4, 2014

To: City Manager for Council Action

From: Director of Electric Utility

Subject: Approval of an Agreement for the Performance of Services with Flexible Lifeline Systems, Inc. to Provide Fall Protection Systems on Four Rooftops at the Donald Von Raesfeld Power Plant

EXECUTIVE SUMMARY:

The City of Santa Clara's Electric Department, Silicon Valley Power (SVP), has four buildings at the Donald Von Raesfeld Power Plant (DVR) with mechanical Heating Ventilating Air Conditioning (HVAC) equipment located on the rooftops. These HVAC systems require roof access for routine servicing for maintenance and repairs. Adding fall protection systems to these rooftops will adequately protect workers from a fall, which will comply with applicable Federal and State regulations governing fall protection.

Staff prepared specifications for a public works project to provide this protection on the rooftops which resulted in no bids. As a result of no bids, SVP staff sought out three fall protection vendors to submit proposals to SVP staff for vendor selection. Only two out of the three vendors were responsive by submitting a proposal. From the two responsive bids received, SVP staff recommends contracting with Flexible Lifeline Systems to provide fall protection on DVR rooftops. A copy of the Agreement for the Performance of Services with Flexible Lifeline Systems, Inc. can be viewed on the City's website or is available in the City Clerk's Office for review during normal business hours.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The advantages of entering in the Agreement with Flexible Lifeline Systems, Inc. are increased safety of workers performing maintenance work on rooftop equipment by significantly reducing the risk of a fall, and compliance with applicable Federal and State regulations governing fall protection. This rooftop fall protection will allow easier access for equipment repairs and improve worker productivity and performance.

ECONOMIC/FISCAL IMPACT:

The total cost of this Agreement shall not exceed $149,343.00. Sufficient funds are available in Electric Department Capital Project 2119, Generation Capital Maintenance and Betterments, account 591-1377-80300-2119-[I]9240-[F]34100.

RECOMMENDATION:

That Council approve, and authorize the City Manager to execute, an Agreement for the Performance of Services with Flexible Lifeline Systems, Inc., in the amount of $149,343.00, to provide fall protection systems on four rooftops at the Donald Von Raesfeld Power Plant.

John C. Roukema
Director of Electric Utility

Certified as to Availability of Funds:
591-1377-80300-2119 $149,343.00

Gary Ameling
Director of Finance/Assistant City Manager

APPROVED:

Julio J. Fuentes
City Manager

MAJORITY VOTE OF COUNCIL

Documents Related to this Report:

1) Agreement for the Performance of Services with Flexible Lifeline Systems, Inc.

EBIX Insurance No. S200002958

AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA, AND FLEXIBLE LIFELINE SYSTEMS, INC.

PREAMBLE

This agreement for the performance of services ("Agreement") is made and entered into on this 4th day of Novemver , 2014, ("Effective Date") by and between Flexible Lifeline Systems, Inc. a Texas corporation, with its principal place of business located at 14325 West Hardy, Houston, TX 77060 ("Contractor"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

A. City desires to secure professional services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services"; and

B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,

C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. EMPLOYMENT OF CONTRACTOR.

City hereby employs Contractor to perform services set forth in this Agreement. To accomplish that end, City may assign a Project Manager to personally direct the Services to be provided by Contractor and will notify Contractor in writing of City's choice. City shall pay for all such materials and services provided which are consistent with the terms of this Agreement.

2. SERVICES TO BE PROVIDED.

Except as specified in this Agreement, Contractor shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work required by City at his/her own risk and expense. Services to be provided to City are

more fully described in Exhibit A entitled "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference.

3. COMMENCEMENT AND COMPLETION OF SERVICES.

A. Contractor shall begin providing the services under the requirements of this Agreement upon receipt of written Notice to Proceed from City. Such notice shall be deemed to have occurred three (3) calendar days after it has been deposited in the regular United States mail. Contractor shall complete the Services within the time limits set forth in the Scope of Services or as mutually determined in writing by the Parties.

B. When City determines that Contractor has satisfactorily completed the Services, City shall give Contractor written Notice of Final Acceptance. Upon receipt of such notice, Contractor shall not incur any further costs under this Agreement. Contractor may request this determination of completion be made when, in its opinion, the Services have been satisfactorily completed. If so requested by the contractor, City shall make this determination within fourteen (14) days of its receipt of such request.

4. QUALIFICATIONS OF CONTRACTOR - STANDARD OF WORKMANSHIP.

Contractor represents and maintains that it has the necessary expertise in the professional calling necessary to perform services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under Exhibit A shall be of a quality acceptable to City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by City for similar projects.

5. TERM OF AGREEMENT.

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate at the end of the day one (1) year from the effective date.

6. MONITORING OF SERVICES.

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accord with applicable City, county, state, and federal requirements. If

any action of Contractor constitutes a breach, City may terminate this Agreement pursuant to the provisions described herein.

7. WARRANTY.

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect, and shall conform to the specifications, requirements, and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate, or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

8. PERFORMANCE OF SERVICES.

Contractor shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by City. Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it. Contractor will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

9. RESPONSIBILITY OF CONTRACTOR.

Contractor shall be responsible for the professional quality, technical accuracy and coordination of the Services furnished by it under this Agreement. Neither City's review, acceptance, nor payments for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and Contractor shall be and remain liable to City in accordance with applicable law for all damages to City caused by Contractor negligent performance of any of the Services furnished under this Agreement.

Any acceptance by City of plans, specifications, construction contract documents, reports, diagrams, maps and other material prepared by Contractor shall not in any respect absolve Contractor form the responsibility Contractor has in accordance with customary standards of good professional practice in compliance with applicable federal, state, county, and/or municipal laws, ordinances, regulations, rules and orders.

10. COMPENSATION AND PAYMENT.

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and services rendered by Contractor at the rate per hour for labor and cost per unit for materials as outlined in Exhibit B, entitled "SCHEDULE OF FEES."

Contractor will bill City on a monthly basis for Services provided by Contractor during the preceding month, subject to verification by City. City will pay Contractor within thirty (30) days of City's receipt of invoice.

11. TERMINATION OF AGREEMENT.

Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Contractor shall discontinue further services as of the effective date of termination, and City shall pay Contractor for all Services satisfactorily performed up to such date.

12. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

13. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

14. INDEPENDENT CONTRACTOR.

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights, however, to manage its employees in their performance of Services under this Agreement. Contractor is not authorized to bind City to any contracts or other obligations.

15. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall Contractor have the authority or power to pledge the credit of City or incur any obligation in the name of City. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor under this Agreement.

16. CONFIDENTIALITY OF MATERIAL.

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

17. USE OF CITY NAME OR EMBLEM.

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

18. OWNERSHIP OF MATERIAL.

Contractor shall retain all right, title and interest in and to all material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared under this Agreement (the "Work" or "Work Product"). Contractor hereby grants the City an irrevocable, world-wide, non-excusive, perpetual, fully-transferable, royalty-free right and license, including the right to grant sub-licenses, to use the Work or Work Product including the right to copy, perform, display, execute, reproduce, modify, enhance, improve and create derivative works of the Work and Work Product, solely in support of any materials or apparatus installed as part of the Work described in Schedule A at the location specifically set forth in such Schedule A".

19. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR.

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for three (3) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

20. CORRECTION OF SERVICES.

Contractor agrees to correct any incomplete, inaccurate or defective Services at no further costs to City, when such defects are due to the negligence, errors or omissions of Contractor.

21. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

22. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which City shall become liable arising from Contractor's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Contractor pursuant to this Agreement.

23. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall purchase and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the Performance of Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C.

24. AMENDMENTS.

This Agreement may be amended only with the written consent of both Parties.

25. INTEGRATED DOCUMENT.

This Agreement represents the entire agreement between City and Contractor. No other understanding, agreements, conversations, or otherwise, with any representative of City prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon City.

26. SEVERABILITY CLAUSE.

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

27. WAIVER.

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

28. NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: Electric Department
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 261-2717

And to Contractor addressed as follows:
Flexible Lifeline Systems, Inc.
14325 West Hardy
Houston, TX 77060
or by facsimile at (832) 448-2900

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

29. CAPTIONS.

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

30. LAW GOVERNING CONTRACT AND VENUE.

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

31. DISPUTE RESOLUTION.

A. Unless otherwise mutually agreed to by the Parties, any controversies between Contractor and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day

(eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.

C. The costs of mediation shall be borne by the Parties equally.

D. For any contract dispute, mediation under this section is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit through mediation only. In the event of litigation, the prevailing Party shall recover its reasonable costs of suit, expert's fees, and attorney's fees. If mediation does not resolve the dispute, the Parties agree that the matter shall be litigated in a court of law, and not subject to the arbitration provisions of the Public Contracts Code.

32. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall:

A. Read Exhibit D, entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,

B. Execute Exhibit E, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

33. CONFLICT OF INTERESTS.

This Agreement does not prevent either Party from entering into similar agreements with other parties. To prevent a conflict of interest, Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

(Continued on Page 9 of 9)

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34. PROGRESS SCHEDULE.

The Progress Schedule will be as set forth in the attached Exhibit F, entitled "MILESTONE SCHEDULE" if applicable.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

FLEXIBLE LIFELINE SYSTEMS, INC.
a Texas corporation

By: Andrew Townend
ANDREW TOWNEND
Title: President
Address: 14325 West Hardy Road
Houston, TX 77060
Telephone: (532) 448-2905
Fax: (532) 448-2990

"CONTRACTOR"

AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA, AND FLEXIBLE LIFELINE SYSTEMS, INC.

EXHIBIT A

SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are more fully described in the Contractor's proposal entitled, "New Rooftop Fall Protection Systems" dated January 24, 2014, which is attached to this Exhibit A.

FLEXIBLE LIFELINE SYSTEMS

TURNKEY PROVIDERS OF INNOVATIVE FALL PROTECTION SOLUTIONS

FLSWORKS

January 24, 2014
FLS Quote No. 18649-3

City of Santa Clara
Silicon Valley Power
1500 Warburton Ave.
Santa Clara, CA 95050

Phone: (408) 615-6555
E-Mail: DBeck@SantaClaraCA.gov

Attn: Damon Beck
Subject: 850 Duane Avenue, New Rooftop Fall Protection Systems
Santa Clara, CA

Dear Mr. Beck,

Flexible Lifeline Systems would like to thank you for the opportunity to furnish the following proposal for the design and installation of FlexWalk Fall Protection Walkways, Perimeter Guardrails and Fixed Ladders for this project.

This proposal details the national capabilities, experience and resources of Flexible Lifeline Systems to provide turnkey fall protection services.

Engineering and Design Services - We can provide engineering analysis of your existing structures to ensure that the structures to which we are attaching are capable of supporting the loads imposed upon it by the fall protection systems. With over 50 years of combined structural engineering experience, FLS has extensive knowledge of fall protection engineering.

Total Control of the Project - FLS's turnkey approach to projects means that we are in total control of every aspect. From engineering and design to fabrication and installation to certification and training, FLS maintains strict control to ensure a quality product delivered on time and on budget.

National Experience - FLS has designed and installed thousands of similar type projects across North America for customers in a variety of industries.

Thank you for taking the time to review our credentials and this proposal. We look forward to working with you in the future.

Sincerely,
Flexible Lifeline Systems

Carl Cooper
Systems Specialist – Western Region
Phone: (832) 448-2964
E-mail: carl.cooper@flexiblelifeline.com

1. Company Profile

1.1. Corporate Headquarters

14325 West Hardy
Houston, TX 77060
T - 281-448-8821
F - 281-448-9225
E - info@fall-arrest.com
W - www.fall-arrest.com

1.2. Company History

Formed, in 1996, FLS quickly became a leader in the fall protection industry. In 1999, FLS completed the acquisition of a fabrication and construction company to complete our turnkey package. This allows FLS to provide a complete package of fall protection services to our customers. Offering site assessment, engineering and design, in-house fabrication, installation, system certification and comprehensive training, FLS is the only TRUE TURNKEY provider of innovative fall protection solutions.

1.3. Custom Total Solutions

Every fall arrest system application is unique and has its own characteristics. Our comprehensive range of products can meet the requirements of the most challenging environments. FLS offers a custom design service that addresses the demands imposed by unusual structures or extreme conditions and ensures that worker safety @height can be protected in any situation. FLS will work with you to help define the most suitable fall arrest solution for your needs. Our awareness of fabrication and construction techniques and material, in addition to our specialized knowledge of fall arrest systems, ideally positions us to contribute ideas from the earliest design and planning stages. One of our experienced project engineers will oversee every aspect of the project to ensure that the system meets all the technical and safety criteria and is delivered on schedule ready for installation by our experienced crews.

1.4. Industry Leader

FLS is the industry leader in the design and installation of fall arrest systems. Our products exceed the highest regulatory and legislative standards and are installed throughout North America to provide dependable continuous fall protection for individuals working @height.

1.5. Success Story

FLS is a client-driven company that values its employees, as well as the strong relationships built with clients. By providing multiple related service lines, we provide clients an easier way of doing business that saves time and money.

2. Services

2.1. Design & Consultation

Our trained fall protection specialists will visit your facility to identify fall hazards and determine your site-specific fall protection requirements

2.2. Engineering

Our professional engineering staff will work hand-in-hand with our customers to design the systems to ensure compliance with local and federal regulations and manufacturers critical specifications and design criteria.

2.3. Fabrication

Our in-house fabrication facility and quality assurance programs ensure strict adherence to procedures and specifications and full material traceability thus guaranteeing a quality product to the end user.

2.4. Installation

FLS offers a full range of installation options allowing the customer the flexibility to tailor the installation of the fall protection systems specifically to their individual requirements from supervision to full turnkey construction and project management. Installation of a fall protection system often necessitates working at heights requiring highly skilled installers knowledgeable in identifying hazards, use of temporary fall protection and rescue systems. Our field technicians are trained and retrained annually by a certified OSHA 311 fall protection instructor, as "Competent Persons" and are trained and certified to operate the various pieces of equipment required to complete our projects.

2.5. Certification

Each system is certified for use and comes complete with a Use, Care and Maintenance Manual. The manual is a comprehensive document containing the serial numbers of each individual component used in your system and the certificates of installation and testing. Annual recertification programs are also available to ensure continuous compliance with all local and federal regulations.

2.6. Training

A sound working knowledge of the system is the key to increased safety and productivity. A formal training program will be held at your facility ensuring correct use of the systems thereby increasing worker safety, comfort and productivity. The need for continuing training and retraining is easily met by using our Maintenance Manual.

3. Scope of Work

3.1. **Engineering** - Flexible Lifeline Systems (FLS) will perform an engineering site visit to obtain site-specific measurements for the design of the system and preparation of plans and drawings. In addition, the Project Manager will:

3.1.1. Form the basis of the design of the proposed solution.

3.1.2. Obtain detailed measurements of the existing structure and foundations.

3.1.3. Gather available as-built and/or architectural drawings.

3.1.4. Discuss the proposed solution with the operators to ensure that the proposed solution will provide the required fall hazard abatement with the goal of a neutral or positive effect on productivity.

3.1.5. Review the schedule with the operators to ensure that the implementation of the solution provides as minimal impact to ongoing operations as possible.

3.1.6. Review any site-specific safety issues and obtain a list of site-specific pre-installation safety training requirements.

3.2. **Design** – FLS will design FlexWalk Rooftop Walkway Systems, Perimeter Guardrails and Fixed Ladders as described below and illustrated in the attached sketch.

3.2.1. **Plant Operations Building** – Approximately 267ft of FlexWalk Walkway plus one (1) ~4ftx5ft Platform Extension to the existing stairway platform on the South side of the building, one (1)~12ft tall Fixed Ladder with cage with Self Retracting Lifeline Davit, 12ft Self Retracting Lifeline and Self Closing Safety Gate. The FlexWalk Walkways will be designed for attachment to the steel standing seam roof via S-5 clamps.

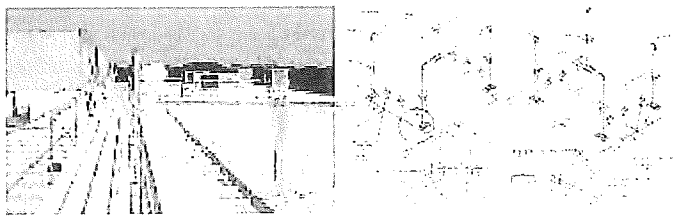
3.2.2. **Gas Compressor Building** - Approximately 184ft of FlexWalk Walkway plus one (1) ~19ft tall Fixed Ladder with one (1) Self Retracting Lifeline Davit, 23ft Self Retracting Lifeline and Self Closing Safety Gate. The FlexWalk Walkways will be designed for attachment to the steel standing seam roof via S-5 clamps.

3.2.3. **Water Treatment Building** - Approximately 50ft of Perimeter Guardrail plus one (1) ~11ft tall Fixed Ladder with one (1) Self Retracting Lifeline Davit, 12ft Self Retracting Lifeline and Self Closing Safety Gate. The guardrails will be designed for attachment to the steel shipping container rooftops via weld on base plates.

3.2.4. **Auxiliary Power Enclosure** - Approximately 94ft of Perimeter Guardrail plus one (1) ~10ft tall Fixed Ladder with Self Retracting Lifeline Davit and 23ft Self Retracting Lifeline. The guardrails will be designed for attachment to the steel standing seam roof via S-5 clamps.

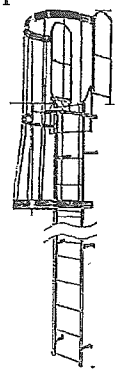
This proposal is based on the assumption that the existing structures to which the new fall protection systems are to be attached will be able to support the loads imposed upon them without re-enforcement. Flexible Lifeline Systems will determine the loads generated by the new fall protection systems in the event of a worst-case scenario fall. Flexible Lifeline Systems will provide these loads to the customer and make recommendations accordingly.

3.3. **FlexWalk System, Plant Operations and Gas Compressor Buildings** - The FlexWalk system consists of 18 gauge, Galvanized Steel, anti-skid grating sections mounted on splice channels and ledger angles along with guard railing consisting of a 42in tall top rail, 21in tall mid rail, assembled with structural slip-on pipe fittings, vertical posts are attached to integral railing support plates. The FlexWalk system facilitates restraint based safety for service personnel while providing protection to roof panels from dishing or puncturing due to foot traffic.

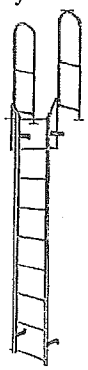


3.4. **Fixed Exterior Ladders With Self Retracting Lifeline Davit, Self Retracting Lifeline (SRL) and Self Closing Safety Gate** - Access Ladders include Boarding Rail, Gray Powder Coat Finish. 3/4in Corrugated Round Rungs on 12in Centers. Ladder Davits are designed as a clamp-on assembly in order to attach to the round, steel rungs without the need to penetrate or weld on the ladder.

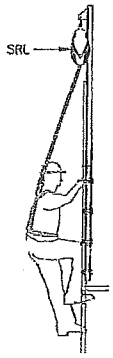
Ladder With Cage
Plant Operations Bldg



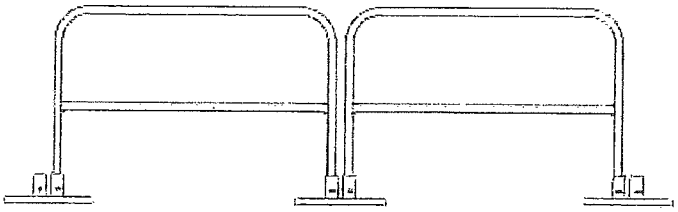
Ladder Less Cage
Gas Compressor Bldg,
Water Treatment Bldg
Auxiliary Power Enclosure



Ladder Davit
With SRL
All Ladders



3.5. **Perimeter Guardrail Systems, Water Treatment Building and Auxiliary Power Enclosure** – Galvanized steel rail sections consisting of a 42in tall top rail, 21in tall mid rail attached to weld on base plates.



3.6. **Materials Shipped to Site** - Our installation teams typically mobilize to/from other jobsites. In order to effectively schedule our installations, materials are pre-shipped to location in advance of the installation teams. This proposal assumes materials and components will be received, unloaded and securely stored by the customer, prior to mobilization of the installation team.

3.7. **Installation**

3.7.1. FLS' installation crew will mobilize to the site.

3.7.2. Lifting of materials and systems to the various roof levels will be performed by FLS during the first day of the installation phase. This proposal is specifically based on storing all materials on the roof during the project. If this is not permitted, FLS reserves the right to modify this proposal to offset additional costs associated with lost time.

3.7.3. This proposal is based on a single mobilization with a continuous workflow.

3.7.4. This proposal is based on working 10 hours per day for an approximate ten (10) continuous day installation duration.

3.7.5. FLS' installation crew will install the FlexWalk Fall Protection Walkways, Perimeter Guardrails and Fixed Ladders.

3.7.6. Any weather proofing related to the installation of the Fixed Ladders or Perimeter Guardrails will be the responsibility of others if required.

3.8. **Testing and Certification** - FLS will test and certify each system for use.

3.9. **Demonstration** - FLS will demonstrate to the customer's employees the correct use, care and maintenance of the system at the completion of the installation and will provide a manual for the customer's records.

3.10. **Qualifications**

3.10.1. **The following items are included in this quotation:**

3.10.1.1. Engineering Site Visit.
3.10.1.2. Design and installation drawings, issued for approval prior to construction.
3.10.1.3. Installation of the fall protection systems described above.
3.10.1.4. All travel expenses and per diem.
3.10.1.5. Rental of lifting equipment.
3.10.1.6. All applicable insurances.
3.10.1.7. Davis Bacon Prevailing Wage Rates.
3.10.1.8. Freight.
3.10.1.9. Use, Care and Maintenance Manual with CD.
3.10.1.10. One (1) training session for personnel in correct use and maintenance of the system; to be held at the completion of the installation.
3.10.1.11. Unless specifically noted otherwise herein, this proposal is subject to FLS Standard Terms and Conditions.

3.10.2. **The following items are not included in this quotation:**

3.10.2.1. Sales and Use Tax.
3.10.2.2. Payment and performance bonds, if required.
3.10.2.3. Building Permits, if required.
3.10.2.4. Full Body Harnesses. Full body harnesses are available from FLS in a variety of styles at an additional cost otherwise the customer may elect to utilize harnesses from their own inventory.
3.10.2.5. The extra cost caused by any obstructions, delays or shut downs by others.

4. **Project Pricing – New Rooftop Fall Protection Systems For the Plant Operations Building, Gas Compressor Building, Water Treatment Building And Auxiliary Power Enclosure**

4.1 – Option 1 Based On Single Installation To Install All Systems

Designed, Supplied & Installed As Described Above..... $149,343.00

4.2 – Option 2 Based On Single Installation To Install All Systems Except Walkways On The Upper Roof Level of The Gas Compressor Building

Designed, Supplied & Installed As Described Above..... $142,417.00

Estimated Budget Cost For 2nd Mobilization At A Later Date To Be Determined In Order To Install The Walkways On The Upper Roof Level of The Gas Compressor Building

..... $16,727.00

5. **Payment Terms** - FLS standard payment terms are 30% due upon award, Net 30 days for the balance based on progress billing.

5.1. Progress invoices will be submitted each month for work performed during that month in the following phases: Engineering and Design, Materials and Components, Fabrications and Installation.

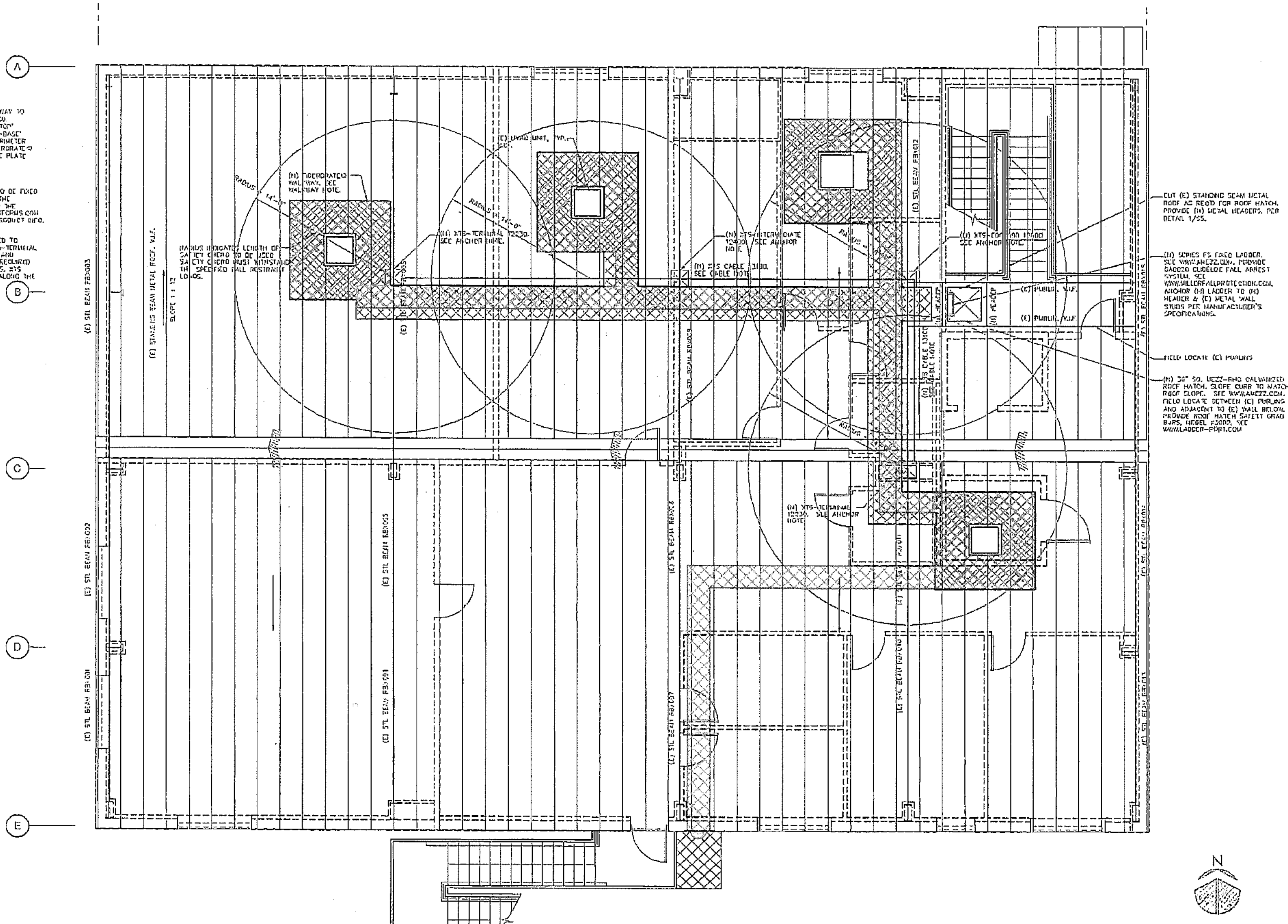
28-FEB-2013
REV1

VALUE ENGINEERED CONCEPT

WALKWAY NOTE: FIBERGRATE® WALKWAY TO BE 30" WIDE AND 1" DEEP BY 1½" SQ. PROVIDE 'INTEGRALLY APPLIED GRIT TOP' SURFACING. USE ADJUSTABLE 'MINI-BASE' PEDESTAL SUPPORTS ALONG THE PERIMETER AT 24" O.C. MAX. AS REQ'D BY FIBERGRATE® SPOT WELD THE S.S. PEDESTAL BASE PLATE TO VERCO METAL DECK. SEE WWW.FIBERGRATE.COM.

ANCHOR NOTE: ALL XTS ANCHORS TO BE FIXED TO (E) STANDING SEAM ROOF WITH THE XTS-STANDING SEAM KIT 1127D AND THE XTS-IMPACT 1110R. SEE WWW.XSPLATFORMS.COM FOR MANUFACTURERS SPECS AND PRODUCT INFO.

CABLE NOTE: XTS CABLE TO BE FIXED TO XTS-EXTREMITY ANCHORS USING XTS-TERMINAL 1220U. USE XTS-TENSIONER 12120 AND XTS-REGULATOR 12110 TO ACHIEVE REQUIRED TENSION PER MANUFACTURERS SPECS. XTS SLIDER SHALL BE USED TO TRAVEL ALONG THE LENGTH OF THE CABLE. SEE WWW.XSPLATFORMS.COM.



FLEXIBLE LIFELINE SYSTEMS
CARL COOPER
(206) 718-3764
carl.cooper@flexiblelifeline.com

NEW PLATFORM EXTENSION
NEW 3ft WIDE FLEXWALK WALKWAY WITH TOE BOARD
NEW 2ft WIDE FLEXWALK WALKWAY
WITH GUARDRAIL COVERAGE
NEW FIXED LADDER WITH CAGE AND SAFETY GATE

Enviro Safetech

C 61570
Exp. 6/30/13
CIVIL
STATE OF CALIFORNIA

PROJECT:

PLANT OPERATIONS BLDG
FALL ARREST ANCHOR SYSTEMS

PROJECT No:

DATE:

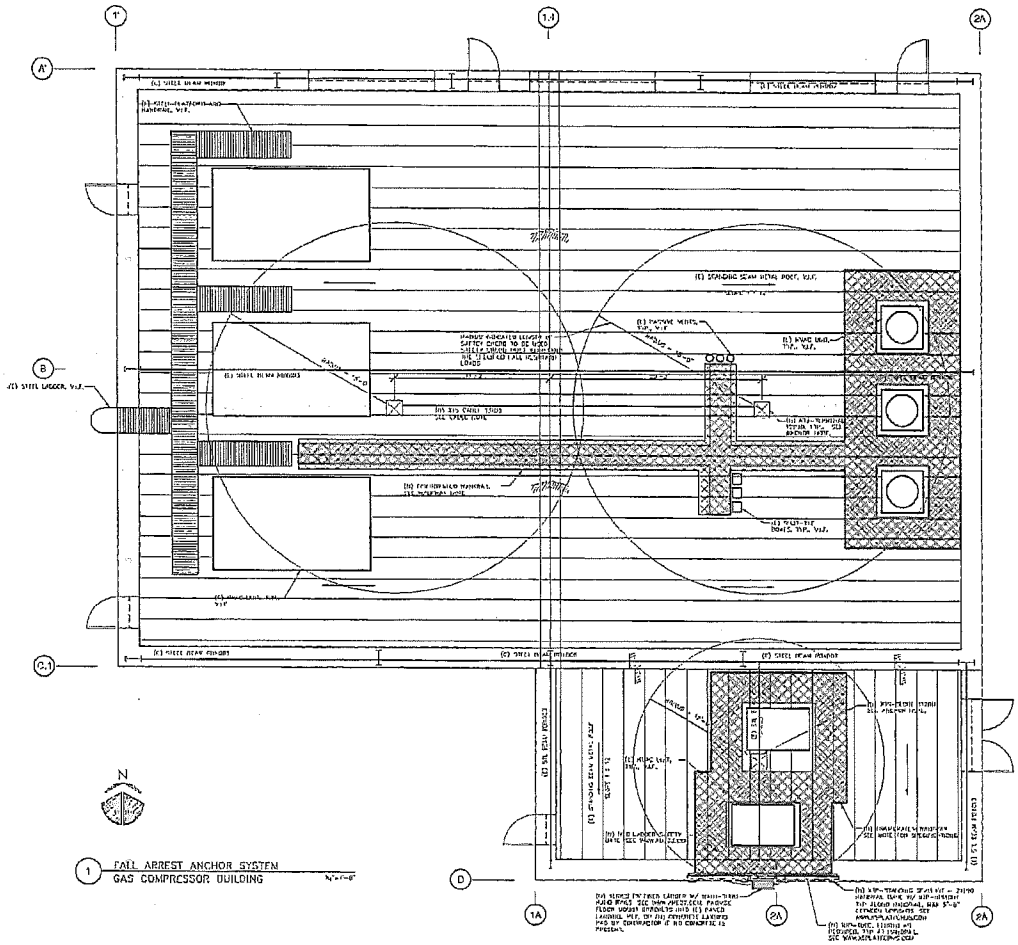
REVISIONS
No. DATE BY

SHEET

S2

28-FEB-2013
REV1

VALUE ENGINEERED CONCEPT



GAS COMPRESSOR BUILDING
FALL ARREST ANCHOR SYSTEMS

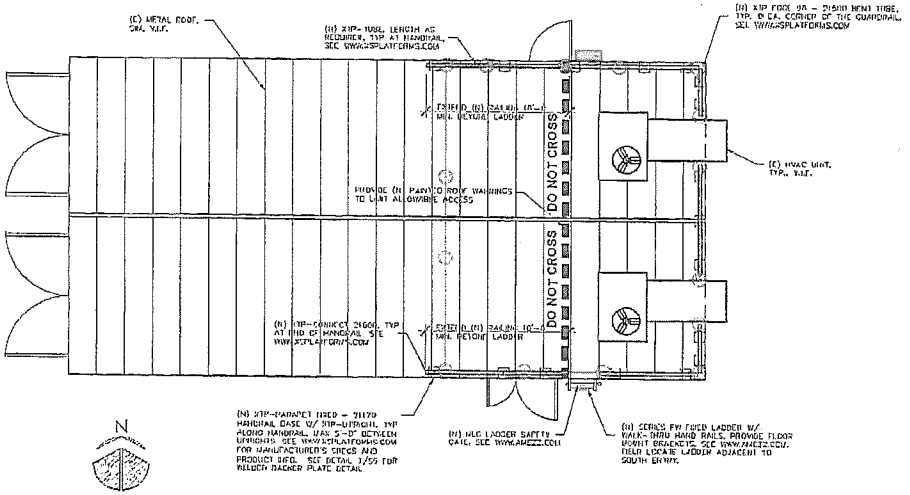
S3

NEW 3ft WIDE FLEXWALK WALKWAY WITH TOE BOARD
NEW 2ft WIDE FLEXWALK WALKWAY
WITH GUARDRAIL COVERAGE
NEW FIXED LADDER AND SAFETY GATE (NO CAGE)
NEW TRANSITION STEPS FROM EXISTING
PLATFORM TO NEW WALKWAY

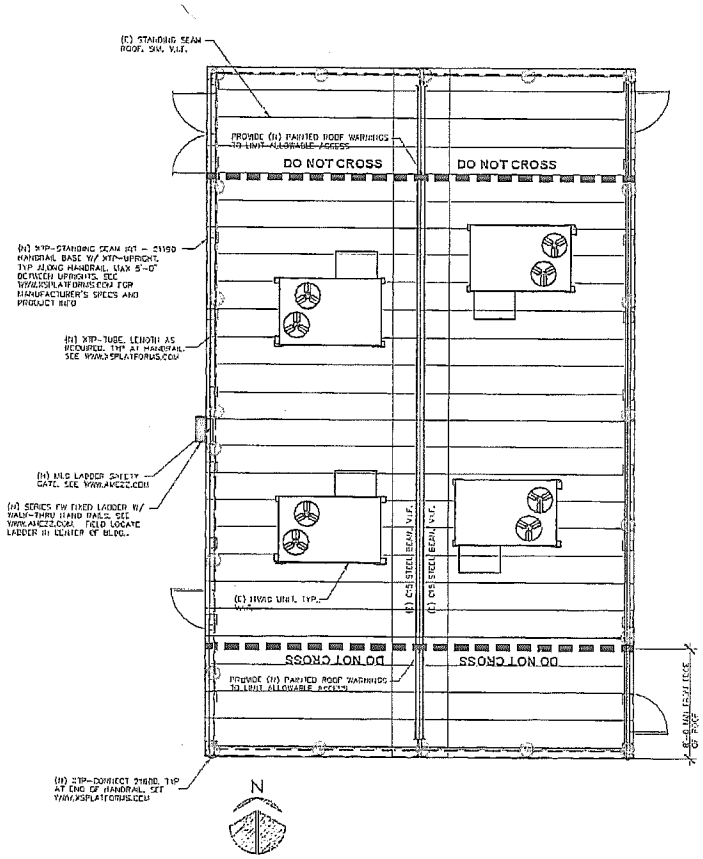
FLEXIBLE LIFELINE SYSTEMS
CARL COOPER
(206) 718-3764
carl.cooper@flexiblelifeline.com

28-FEB-2013
REV1

VALUE ENGINEERED CONCEPT



2 FALL ARREST ANCHOR SYSTEMS
WATER TREATMENT BUILDING 1/8"=1'-0"



1 FALL ARREST ANCHOR SYSTEMS
AUXILIARY POWER ENCLOSURE 1/8"=1'-0"

EnviroSafetech

ACCESSORY BUILDINGS
FALL ARREST ANCHOR SYSTEMS

S4

FLEXIBLE LIFELINE SYSTEMS
CARL COOPER
(206) 718-3764
carl.cooper@flexiblelifeline.com

NEW GUARDRAIL WELDED TO STEEL CONTAINER ROOF
NEW FIXED LADDER AND SAFETY GATE (NO CAGE)

AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA, AND FLEXIBLE LIFELINE SYSTEMS, INC.

EXHIBIT B

FEE SCHEDULE

In no event shall the amount billed to City by Contractor for services under this Agreement exceed one hundred forty nine thousand three hundred forty three dollars ($149,343.00), subject to budget appropriations.

New Rooftop Fall Protection Systems for the Plant Operations Building, Gas Compressor Building, Water Treatment Building and Auxiliary Power Enclosure.

Option 1 based on single installation to install all systems designed, supplied and installed as described above. $149,343.00

AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA, AND FLEXIBLE LIFELINE SYSTEMS, INC.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

   $1,000,000 Each Occurrence
   $2,000,000 General Aggregate
   $2,000,000 Products/Completed Operations Aggregate
   $1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:

   a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

   b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

   c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars ($1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars ($1,000,000) policy limit Bodily Injury by disease, one million dollars ($1,000,000) each accident/Bodily Injury and one million dollars ($1,000,000) each employee Bodily Injury by disease.

2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

   a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given

to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and

deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.
City of Santa Clara Electric Department
P.O. 12010-S2 or 151 North Lyon Avenue
Hemet, CA 92546-8010 Hemet, CA 92543

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA, AND FLEXIBLE LIFELINE SYSTEMS, INC.

EXHIBIT D

ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA

Termination of Agreement for Certain Acts.

A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If a Contractor[1] does any of the following:

   a. Is convicted[2] of operating a business in violation of any Federal, State or local law or regulation;

   b. Is convicted of a crime punishable as a felony involving dishonesty[3];

   c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;

   d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,

   e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

---

[1] For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

[2] For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

[3] As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

B. The City may also terminate this Agreement in the event any one or more of the following occurs:

1. The City determines that Contractor no longer has the financial capability[4] or business experience[5] to perform the terms of, or operate under, this Agreement; or,

2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.

C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

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[4] Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

[5] Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA, AND FLEXIBLE LIFELINE SYSTEMS, INC.

EXHIBIT E

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Contractor" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Contractor" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

FLEXIBLE LIFELINE SYSTEMS, INC.
a Texas corporation

By: _____

Name: ANDREW TOWNEND
Title: President

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA, AND FLEXIBLE LIFELINE SYSTEMS, INC.

EXHIBIT F

MILESTONE SCHEDULE

(NOT Applicable)

Texas

~~CALIFORNIA~~ ALL-PURPOSE ACKNOWLEDGMENT

State of ~~California~~ Texas

County of Harris

On Novermber 4, 2014 (Date) before me, Andrew Townend, President of Flexible Lifeline Systems, Inc. (Here Insert Name and Title of the Officer)

personally appeared Andrew Townend (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.

LAURA ZIMMER
Notary Public, State of Texas
My Commission Expires
July 23, 2016

Place Notary Seal Above

WITNESS my hand and official seal.

Signature (Signature of Notary Public)

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Agreement for the Performance of Services

Document Date: November 4, 2014 Number of Pages: 19

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: Andrew Townend
☐ Individual
☒ Corporate Officer — Title(s): President
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer Is Representing:
Flexible Lifeline Systems, Inc.

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name:
☐ Individual
☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-5

Date: November 6, 2014

To: City Manager for Council Action

From: Acting Housing and Community Services Division Manager

Subject: Affordable Housing Agreement between the City and 1460 Monroe, LLC for the Provision of Three (3) Below Market Purchase (BMP) Homes within a 28-Unit Housing Project at 1460 Monroe Street

EXECUTIVE SUMMARY:

On March 18, 2014, Council approved a 28-unit condominium residential development proposal submitted by Silicon Sage Builders, for the property located at 1460 Monroe Street. The land is being developed by 1460 Monroe, LLC (Developer). As a condition of the land use approval, the Developer is required to enter into an Affordable Housing Agreement (AHA) to designate 10-percent of the total units (i.e. 2.8 BMP units) as Below Market Purchase (BMP) units to be sold to qualified first-time homebuyers at an affordable price. Because the project received a density bonus, the affordability restrictions on these BMP units are set at the low-income limit (up to 80% of area median income).The Affordable Sales Price for each of the units ranges from $242,000 to $281,000. A copy of the AHA can be viewed on the City's website or is available in the City Clerk's Office during normal business hours.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

According to the terms of the AHA, 1460 Monroe, LLC will sell three BMP units at an affordable sales price ranging from $242,000 to $281,000 per unit. Under the BMP Program, an advantage is given to the homeowner to realize equity appreciation in their home after 5 years of ownership. The City will be able to recapture the value of its inclusionary requirement (the monetary difference between the initial market value and the affordable sales price) at the time the BMP unit converts to market rate.

ECONOMIC/FISCAL IMPACT:

According to procedures of the BMP Program, the City will realize a recapture of the inclusionary value of the BMP units when resold in the future.

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RECOMMENDATION:

That the Council approve and authorize the City Manager, or his designee, to execute the Affordable Housing Agreement between the City and 1460 Monroe, LLC for the provision of three (3) Below Market Purchase (BMP) units within a 28-unit housing project at 1460 Monroe Street.

Kevin L. Riley
Director of Planning and Inspection

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report:
1) Affordable Housing Agreement between the City and 1460 Monroe, LLC

F:\BMP-BMR Projects\Silicon Sage\1460 Monroe\Agenda Report 1460 Monroe 9-23-14.doc

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
1460 MONROE, LLC

PREAMBLE

This Affordable Housing Agreement (the "Agreement") is entered into on this _____ day of _____, 2014__, (the "Effective Date") between 1460 Monroe, LLC, a California limited liability company with its principal place of business located at 3255-2 Scott Boulevard, Santa Clara, CA 95054 (the "Developer"), and the City of Santa Clara, a chartered municipal organization, with its primary business address located at 1500 Warburton Avenue, Santa Clara, CA 95050 (the "City"). City and Developer may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

A. The purpose of this Agreement is to increase, improve and preserve the supply of moderate income housing in the City by ensuring the Developer's construction and sale of housing affordably priced for moderate-income households.

B. Developer owns certain real property (the "Property") located within the jurisdiction of the City, which is described in Attachment A attached hereto and incorporated herein.

C. Developer intends to construct Twenty-Eight (28) condominium housing units ("Units"), on the Property pursuant to the March 18, 2014 City Council land use approvals ("Project").

D. As a condition of Project entitlement by the City, and to satisfy the City's Inclusionary Housing Policy, the Developer is required to designate the three (3) condominium housing units, as shown on Attachment B attached hereto and incorporated herein, to be marketed and made available for sale exclusively to Low Income Household(s) for a Below Market Price (the "Below Market Price Units" or "BMP Units").

E. The BMP Units will be sold at a price not to exceed the amount established by the City ("Affordable Sales Price").

F. "Developer," for purposes of this Agreement, includes Developer and any assignee or successor in interest.

The Parties therefore agree as follows:

AGREEMENT PROVISIONS

1. DEVELOPER OBLIGATIONS. As provided in this Agreement, in compliance with the Project conditions of approval and subject to the approval of the City the Developer hereby designate THREE **(3)** of the condominium units to be completed on the Property as BMP Units. Developer agrees to complete the BMP Units in the initial construction phases of residential units at the Project. Such BMP Units shall be those units designated as such on Attachment B attached hereto and incorporated herein, and shall meet the following criteria:

a. The BMP Units shall have all the standard amenities available to market rate units, including equivalent parking facilities and shall be 2 and 3 bedrooms condominium units each with 2 baths and ranging from 1,163 square feet to 1493 square feet in total size (excluding garage), as specified below. The BMP units shall be offered for sale at the following Affordable Sales Prices:

i. Unit 1, 2Bedroom/ 2 Bath Plan B1-b $242,000
ii. Unit 2, 2 Bedroom/2 Bath Plan B1-a $242,000
iii. Unit 3, 3 Bedroom/2 Bath Plan C $281,000

b. The Affordable Housing Units shall be sold exclusively to and for occupancy by persons and families whose affordable housing cost is not less than 28 percent of the gross income of the household, nor which exceeds the product of 35 percent times 80 percent of area median income adjusted for family size, as established in California Health and Safety Code Section 50052.5(b)(4) and Title 25, California Code of Regulations Section 6910 et seq., as may be amended from time-to-time.

c. The Affordable Sales Price of each unit shall be equal to:

i. Unit 1, 2Bedroom/ 2 Bath Plan B1-b $242,000
ii. Unit 2, 2 Bedroom/2 Bath Plan B1-a $242,000
iii. Unit 3, 3 Bedroom/2 Bath Plan C $281,000

d. The Affordable Housing Units shall be marketed and made available for sale by the City or its designee to Moderate Income Households at the Designated Sales Price. The City reserves the right to use consultants as necessary to qualify eligible buyers and to market the Affordable Housing Units. Developer agrees not to engage in direct marketing of the Affordable Housing Units without prior approval of the City.

e. Developer agrees to abide by the City's Below Market Purchase Program Policies and Procedures Guidelines (the "BMP Program Policies & Procedures"), as may be amended from time to time. A true and correct copy of the current BMP Program Policies & Procedures is attached hereto and incorporated herein as Attachment C.

f. Unless otherwise released from this Agreement as provided herein, Developer agrees to include resale restrictions and related language and/or documents required by the City in any grant deed conveying a BMP Unit by including the forms attached hereto and incorporated herein as Exhibits A through C as part of the Covenants, Promissory Note, and Deed of Trust, and recording of the same. The City reserves the right, without any required approval of Developer, to amend the form of the resale restrictions and any related documents in the future to maintain consistency with the BMP Program Policies & Procedures that are in place at the time that a BMP Unit is proposed to be sold by Developer to an eligible buyer.

2. CITY OBLIGATIONS. The City agrees to make a good faith effort to initiate marketing of the Affordable Housing Units itself or thru its designee, within 30-days of the developer providing notice to the City of the Affordable Housing Units construction completion and availability for sale. The City, at its sole discretion, may consent to a developer request to conduct earlier marketing efforts.

3. TERM OF AGREEMENT. The term of this Agreement shall begin on the Effective Date set forth above, and shall terminate when all BMP Units have received Certificates of Occupancy and escrow has closed on all BMP Units, thereby transferring title to City-approved buyers.

4. NO ASSIGNMENT OF AGREEMENT; SUCCESSORS IN INTEREST. No interest in this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of the City, which approval shall not be unreasonably withheld.

5. RELATIONSHIP OF CITY AND DEVELOPER. No written or verbal statement, including but not limited to this Agreement, shall be deemed or construed to create a partnership, tenancy, joint venture or co-ownership between the City and the Developer. The City shall not be responsible or liable for the debts, losses, obligations or duties of the Developer with respect to the Property, the Project or otherwise.

6. NO THIRD PARTY BENEFICIARY. This Agreement shall not be construed to be an agreement for the benefit of any third party or parties other than the record owner of title to the Property, and no other third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

7. FAIR EMPLOYMENT. Developer shall not discriminate against any employee because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law in the performance of this Agreement.

8. HOLD HARMLESS/INDEMNIFICATION. Developer agrees to defend, hold harmless and indemnify the City, its Council members, officers, employees, volunteers and

agents from any claim, injury, liability, loss, cost, and/or expense or damage arising from or in any way connected with this Agreement and the performance thereof, including any such claim, etc., arising from the actual or alleged presence of hazardous substances on the Property, or any environmental claim relating in any way to the Property or Project.

9. COMPLIANCE WITH ENVIRONMENTAL LAWS. Developer shall comply with all environmental laws and environmental permits applicable to the operations of the Developer and the ownership or use of the Property and the Project, shall immediately pay or cause to be paid all costs and expenses incurred by reason of such compliance, shall keep the Property and Project free and clear of any environmental claims or liens imposed pursuant to any environmental law, and shall obtain and renew all environmental permits required for ownership or use of the Property and the Project.

10. INSURANCE REQUIREMENTS. During the term of this Agreement, and for any required time thereafter as set forth below, Developer shall purchase and maintain in full force and effect, at no cost to City, the following insurance policies:

1) Commercial general liability policy (bodily injury and property damage);
2) Comprehensive automobile liability policy; and
3) Workers' compensation and employer's liability policy

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as set forth in Attachment D, attached hereto and incorporated herein.

11. INTEGRATED DOCUMENT; AMENDMENT. This Agreement and the Project's condition of approval by City embody the entire agreement between Parties and its terms and conditions. No other understanding, agreements, or conversations with any officer, agent, or employee of City shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. It is mutually understood and agreed that, except for the City's periodic updates of its BMP Program Policies & Procedures and related documents, no amendment to this Agreement shall be valid unless made in writing and signed by the Parties.

12. SEVERABILITY CLAUSE. In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

13. WAIVER. Developer agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

14. NOTICES. All notices to the Parties shall, unless otherwise requested in writing, be addressed as follows:

City: Housing & Community Services Division
City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 248-3381

Developer:
Name: 1460 Monroe, LLC
Address: 3255-2 Scott Boulevard, Suite # 101
Santa Clara, California 95054
(408) 916 -3205

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

15. GOVERING LAW; VENUE. This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. In the event that suit shall be brought by either Party, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

16. COMPLIANCE WITH LAWS. Developer shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments, applicable to the Property and Project.

17. DISPUTE RESOLUTION.

a. Unless otherwise mutually agreed to by the Parties, any controversies between Developer and the City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party. Submission to mediation shall be a pre-condition to filing of any litigation.

b. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation

under this Agreement. The costs of mediation shall be borne by the Parties equally.

18. CONFLICTS OF INTEREST. Developer certifies that to the best of its knowledge no City employee or officer has any pecuniary interest in the business of Developer and that no person associated with Developer has any interest that would conflict in any manner or degree with the performance of this Agreement. Developer represents that it presently has no interest and shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the faithful performance of this Agreement. Developer is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts that constitute a violation of said provisions. Developer will advise City if a conflict arises.

19. TERMINATION OF AGREEMENT. This Agreement shall terminate when all BMP Units have received Certificates of Occupancy and escrow has closed on all BMP units.

20. BINDING ON SUCCESSORS IN INTEREST. This Agreement inures to the benefit of, and is binding upon, the City and the Developer, and their respective agents, representatives, successors, and assigns.

21. AFFORDABILITY COVENANTS. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that unless and to the extent released of record as provided herein, the Affordable Housing Units shall be subject to this Agreement for twenty (20) years.

22. COVENANTS RUNNING WITH THE LAND. The Parties agree that this Agreement shall run with the land, and, subject to the terms hereof, shall bind any and all successors in interest. The Parties agree that this Agreement shall be duly recorded with the County of Santa Clara.

23. COMPLIANCE WITH ETHICAL STANDARDS. As a condition precedent to entering into this Agreement, Developer shall review Attachment E, "Ethical Standards," attached hereto and incorporated herein, and execute the affidavit attached hereto and incorporated herein as Attachment F, entitled "Affidavit of Compliance with Ethical Standards."

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

JULIO J. FUENTES
City Manager

ATTEST:

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

ROD DIRIDON, JR.
City Clerk

"City"

1460 MONROE, LLC
a California limited liability company

Name: Sanjeev Acharya
Title: Manager
Address: 3255-2 Scott Boulevard, Suite 101, Santa Clara, CA 95054
Telephone: (408) 916-3205

"Developer"

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
1460 MONROE, LLC

ATTACHMENT A

LEGAL DESCRIPTION OF PROPERTY

ORDER NO. : 0616009665-SL

EXHIBIT A

The land referred to is situated in the unincorporated area of the County of Santa Clara, State of California, and is described as follows:

Tract One:

Parcel One:

COMMENCING at a point on the West side of Monroe Street, one hundred and sixty-two (162) feet North from the intersection of the West line of Monroe Street with the North line of Lewis Street; running thence North along the West line of Monroe Street, fifty (50) feet; thence West at right angles one hundred and fifty (150) feet; thence South at right angles fifty (50) feet; thence East at right angles one hundred and fifty (150) feet to Monroe Street, and place of beginning, it being a part of Block No. 5 North, Range 4 West, according to the Official Map of said City of Santa Clara.

EXCEPTING THEREFROM that certain portion of land as granted to the State of California in that certain Deed recorded July 1, 1991 in Book L769, page 1451, described as follows:

COMMENCING at the Northerly corner of said parcel; thence along the Westerly line of Monroe Street S. 23° 16' 41" E., 12.80 feet; thence S. 66° 43' 19" E., 7.00 feet; thence from a tangent that bears N. 23° 16' 41" W., along a curve to the left with a radius of 60.00 feet, through an angle of 12° 19' 56", an arc length of 12.91 feet; thence N. 66° 51' 08" E., 8.39 feet to the point of commencement.

Parcel Two:

BEGINNING at a point on the Westerly line of Monroe Street, distant thereon 156.00 feet Northerly from the Northerly line of Lewis Street, thence from said point of beginning North along the Westerly line of Monroe Street for a distance of 6.00 feet; thence West at right angles 150.00 feet; thence South and parallel with the Westerly line of Monroe Street 6.00 feet; thence East at right angles 150.00 feet to the point of beginning, being a portion of that certain 12 foot alley, now abandoned, and being a part of Block 5 North, Range 4 West, according to the Official Map of the City of Santa Clara.

Parcel Three:

A portion of each of those land described in the deeds to the City of Santa Clara filed for record in Book 7137 of Official Records, at Page 335, and Book H753 of Official Records, at Page 531, Santa Clara County Records, and being more particularly described as follows:

BEGINNING at the southerly corner of said parcel as described in Book H753, Page 531;

Thence, Northwesterly along the Southwesterly line of last said parcel a distance of 97.00 feet to the Southeasterly line of that certain parcel granted to the State of California as described in

that document filed for record as Document No.14023706, said County Records, said Southeasterly line also being the Southeasterly line of El Camino Real (120-foot R/W);

Thence, Northeasterly along said Southeasterly line a distance of 100.00 feet to Northeasterly line of that parcel as described in Book 7137, Page 335.

Thence, Southeasterly along said Northeasterly line a distance of 47.00 feet to the Southeasterly line of last said parcel as describes in Book 7137, Page 335;

Thence, Southwesterly along last said Southeasterly line a distance of 50.00 feet to the Northeasterly line of that parcel as described in Book H753, Page 531;

Thence, Southeasterly along last said Northeasterly line a distance of 50.00 feet of the Southeasterly line of said parcel;

Thence, Southwesterly along last said Southeasterly line a distance of 50.00 feet to the Point of Beginning.

Parcel Four:

COMMENCING at a point on the Westerly line of Monroe Street, distant thereon 65 feet Southerly from the point of intersection of the said Westerly line of Monroe Street with the Southerly line of Clay Street, and running thence Southerly along the said Westerly line of Monroe Street 32 feet; thence at right angles Westerly 100 feet; thence at right angles Northerly 32 feet; thence at right angles Easterly 100 feet to the said Westerly line of Monroe Street and point of commencement/ Being a portion of Block No. 4 North, Range 4 West, according to the official Map of the Town of Santa Clara.

EXCEPTING THEREFROM that portion conveyed to the State of California by Deed recorded July 1, 1991 as Instrument No. 10956234 of Official Records, described as follows:

A portion of that parcel of land described in that Deed to Antonio M. Avelar and Maria S. Avelar, as joint tenants, recorded June 3, 1980 in Book F358, Page 740, Official Records of Santa Clara County, described as follows:

COMMENCING at the Northerly corner of said parcel; thence along the Westerly line of Monroe Street S. 23° 16" 41" E., 32.02 feet; thence S. 66° 51' 08" W., 8.39 feet; thence from a tangent that bears N. 35° 36' 37" W., along a curve to the left with a radius of 60 feet, through an angle of 36° 04' 44", an arc length of 37.78 feet; thence N. 66° 51' 08" E., 27.18 feet to the point of commencement.

Parcel Five:

Portion of Block 5, North Range 4 West, as shown upon that certain Map entitled "Map of the Town and Sub Lots of Santa Clara, Santa Clara County, California", Surveyed by JJ. Bowen, County Surveyors, July 1866, which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, In Book "B" of Maps, Page 103, and more particularly described as follows:

BEGINNING at a point of intersection of the Westerly line of Monroe Street with the Southerly line of Clay Street, and running thence Southerly along the said Westerly line of Monroe Street 65 feet thence at right angles Westerly and parallel with Clay Street 100 feet thence at right angles Northerly and parallel with Monroe Street, 65 feet to the Southerly line of Clay Street; thence at right angles Easterly along the Southerly line of Clay Street 100 feet to the Westerly line of Monroe Street and the point of beginning.

EXCEPTING THEREFROM that portion conveyed to the State of California by Deed Recorded January 23, 1998 as Instrument No. 14023706 of Official Records, described as follows:

A portion of each of those parcels of land described in the Deeds to the City of Santa Clara recorded December 2, 1976, in Book C448, at Page 572; recorded October 13, 1965, in Book 7137, at Page 334, and recorded July 27, 1983, in Book H753, at Page 531, all of Official Records of Santa Clara County, described as a whole as follows:

COMMENCING at the Northerly corner of said parcel (C448 OR. 572); thence along the Northeasterly line of last said parcel S. 23° 16' 41" E., 65.04 feet to the Southeasterly line of last said parcel; thence along last said line S: 66° 51' 08" W., 27.18 feet; thence from a tangent that bears N. 71° 41' 2" W., along a curve to the left with a radius of 60.00 feet, through an angle of 41° 27' 31", an arc length of 43.42 feet; thence S. 66° 51' 08" W. 133.19 feet to the Southwesterly line of said parcel (H753 O.R. 531); thence along last said line N. 23° 17' 12" W., 50.00 feet to the Northwesterly line of last said parcel (H753 OR. 531); thence along last said line, the Northwesterly line of said parcel (7137 OR. 334) and the Northwesterly line of said parcel (C448 OR. 572) N. 66° 51' 08" E., 200.06 feet to the point of commencement.

APN: 269-03-068, 269-03-067, 269-03-142 & 269-03-143

Tract Two:

A portion of that parcel of land described as Exhibit "A" in State Deed No. 48415 to State of California, recorded March 7, 1991, in Book L636, Page 0509, Official Records under Recorders Serial No. 10826419 of Santa Clara County, being described as follows:

COMMENCING at the most Southerly corner of said parcel; thence along the Southeasterly line of said parcel North 66° 51' 08" East, 105.02 feet to the Northeasterly line of said parcel; thence along last said line North 23° 17' 12" West, 48.06 feet to the general Southeasterly right of way line of State Highway Route SCI-82; thence along last said line South 66° 51' 08" West, 84.97 feet and along a tangent curve to the left with a radius of 20.00 feet, through an angle of 90° 08' 55", an arc length of 31.47 feet to the Southwesterly line of said parcel; thence along last said line South 23° 17' 47" East, 28.00 feet to the point of commencement.

APN: 269-03-147

Tract Three:

Parcel One:

Portion of Block 5 North, Range 4 West, as shown on that certain Map entitled, "Map of the Town and Sub-Lots of Santa Clara, Santa Clara County, California", Surveyed by J. J. Bowen, County Surveyor, July 1866", which Map was filed for record in the Office of the Recorder of the

County of Santa Clara, State of California in Book B of Maps at Page 103 and more particularly described as follows:

COMMENCING at a point on the Easterly line of Madison Street; said point being distant thereon 147 feet Southerly from the point of intersection of the Easterly line of Madison Street with the Southerly line of Clay Street; and running thence Northerly and along the said Easterly line of Madison Street, 49 feet; thence at right angles Easterly 105 feet; thence at right angles Southerly 49 feet; and thence at right angles Westerly 105 feet to the Easterly line of Madison Street and point of commencement.

Parcel Two:

The Northerly one-half of that portion of the alley vacated by the City of Santa Clara by Order dated July 15,1958; a Certified Copy of which recorded July 18,1958 in Book 4125, Page 243, Santa Clara County Records, which portion lies Southerly of and adjacent to the Southerly line of the following described real property: Portion of Block 5 North, Range 4 West, as shown on that certain Map entitled, "Map of the Town and Sub Lots of Santa Clara, Santa Clara County, California, Surveyed by J. J. Bowen, County Surveyor, July 1866", which Map was filed for Record in the Office of the Recorder of the County of Santa Clara, State of California in Book B of Maps at Page 103 and more particularly described as follows:

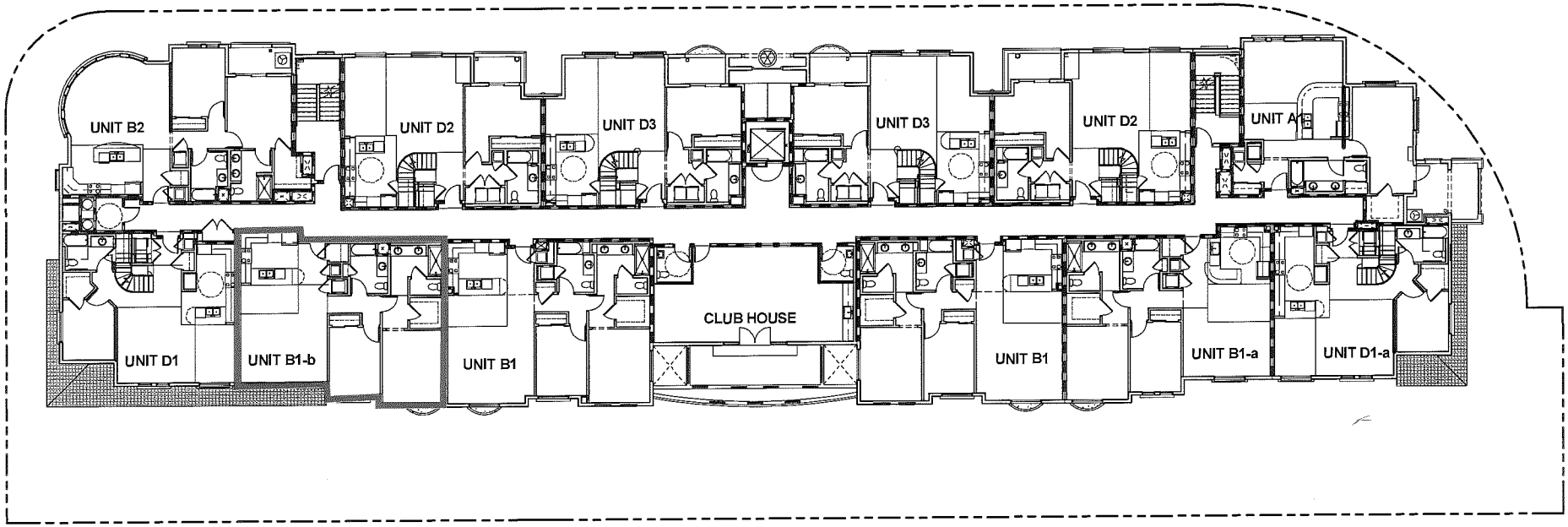
COMMENCING at a point on the Easterly line of Madison Street; said point being distant thereon, 147 feet Southerly from the point of intersection of the Easterly line of Madison Street, with the Southerly line of Clay Street; and running thence Northerly and along the said Easterly line of Madison Street, 49 feet; thence at right angles Easterly 105 feet; thence at right angles Southerly 49 feet; and thence at right angles Westerly 105 feet to the Easterly line of Madison Street and point of commencement.

APN: 269-03-075

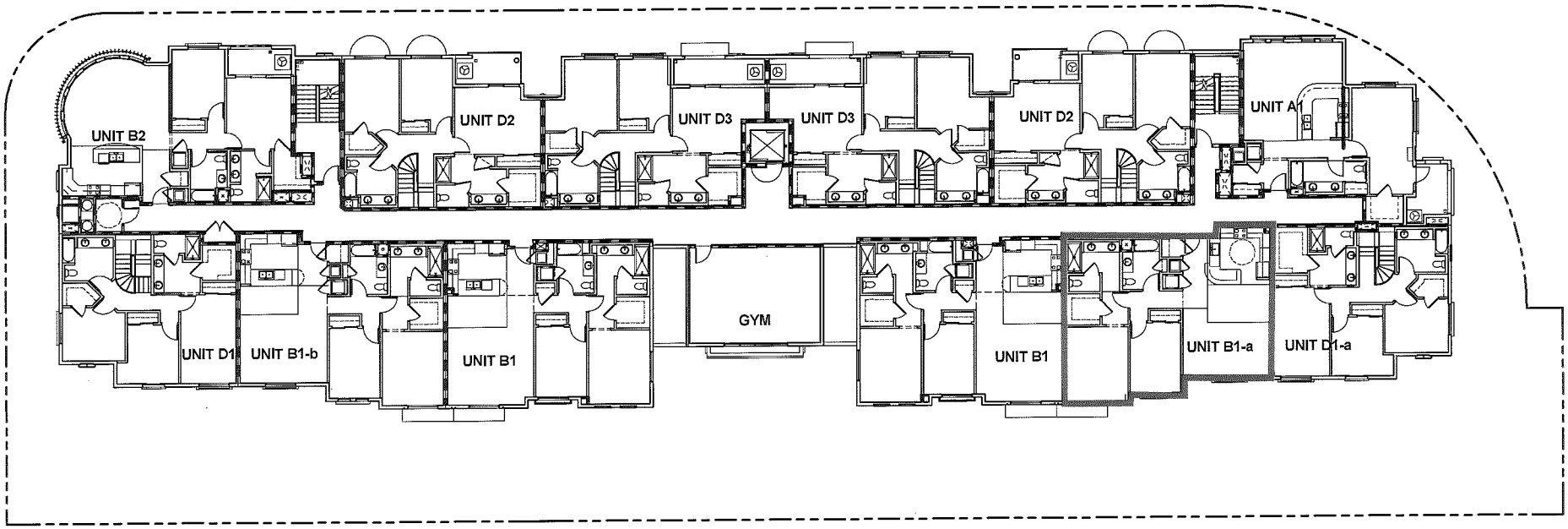
AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
1460 MONROE, LLC

ATTACHMENT B

PROJECT MAP



SECOND FLOOR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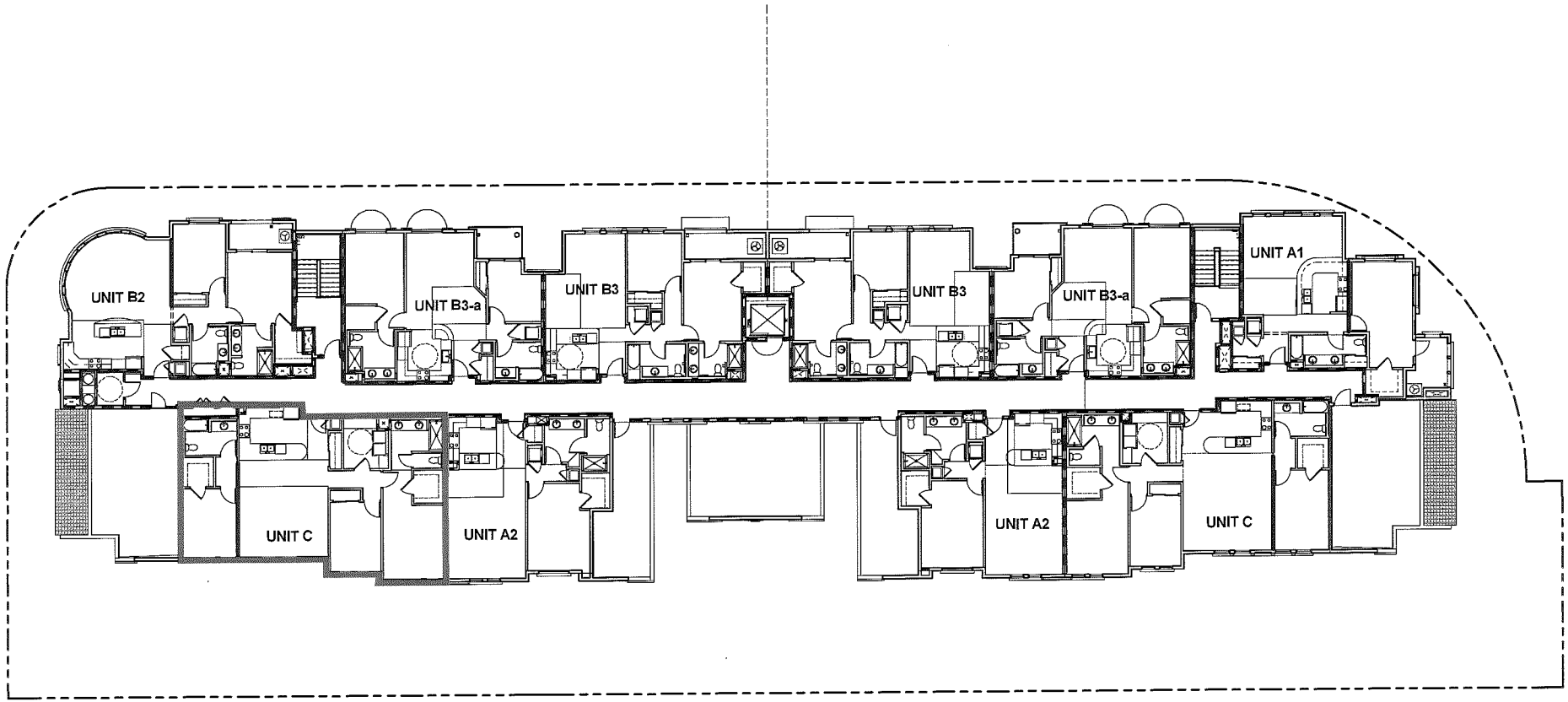
UNIT D2
UNIT D3
UNIT D3
UNIT D2
UNIT A1
GYM
UNIT D1
UNIT B1-b
UNIT B1
UNIT B1
UNIT B1-a
UNIT D1-a

THIRD FLOOR



FOURTH FLOOR

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
1460 MONROE, LLC

ATTACHMENT C

BMP PROGRAM POLICIES AND PROCEDURES

City of Santa Clara
Below-Market Price Purchase Program
Policies and Procedures

Table of Contents

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III. Homebuyer Eligibility Requirements and Obligations 6
V. Financing the Home Purchase 10
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I. Introduction

The City of Santa Clara (City) and its Redevelopment Agency (Agency) have operated a Below-Market Price Purchase Program (BMP) since 1995 to help low- and moderate-income families achieve the goal of homeownership and to fulfill State mandates for the production of housing for all income levels.

The City's Housing Element, certified by the State in 2002, includes an affordable housing policy that requires "developers of residential developments with ten or more units to provide at least ten percent of their units at rents or prices affordable to low-and moderate-income households." Specifically, for-sale housing developers are required to designate at least ten percent of the total units in an approved project as BMP units to be sold to qualified buyers.

In 2006, the City Council adopted significant enhancements to the original BMP program. A restrictive covenant (Covenant) period is enforced over 20 years. The resale restriction period within the Covenant has been decreased to five years, and the homeowner can resell the home at market price after five years. However, if the homeowner sells the BMP unit within the first five years, the BMP unit must be sold to another qualified, income-eligible homebuyer. An additional new requirement is that the City and the homeowner will share in the appreciation of the home (Appreciation Amount). The homeowner's share of any appreciation beyond the Initial Market Value (IMV) will increase by five percent per year for twenty years. After the Covenant expires in twenty years, the equity sharing requirement is exhausted, and the homeowner will realize full equity gain beyond the IMV.

However, if the BMP unit is sold at market price during the 20-year term of the Covenant, the seller must pay the City the difference between the original Affordable Sales Price (ASP) and the IMV, established as the principal amount (Principal) of the promissory note (City Promissory Note). The IMV is defined as the unit's unrestricted initial market value as shown in **Section II.B**. The calculation for determining the seller's pay-off obligation to the City is explained in **Section III.B**.

The intent of these changes is to further the City's strong commitment to producing and maintaining affordable housing while increasing the level of interest among prospective homebuyers in the BMP Program.

The BMP Program is administered by the City's Department of Planning and Inspection (Department), with certain functions delegated under a service contract to Neighborhood Housing Services Silicon Valley (NHSSV). The Department administers the City's approval process for each proposed housing development. The Housing and Community Services Division of the Department administers the Affordable Housing Agreement (AHA), the agreement between the buyer and developer to purchase the unit at an affordable price according to the Covenant. NHSSV is the City's exclusive sales and marketing agent for sale of the BMP units. NHSSV also manages the homebuyer qualification and selection process as well as facilitates the sale of the BMP units. NHSSV has ongoing responsibilities for monitoring developer and homebuyer compliance with the BMP Program terms and for managing resale of the BMP units.

The foregoing Policies and Procedures describe:

- The BMP Program requirements for developers of single-family, townhome, and condominium residential projects
- The BMP Program requirements for homebuyers of BMP units
- The procedures for administration of the BMP Program and the roles of each participant in the BMP Program
- The relationship between the BMP Program, the Agency's First Time Homebuyers Financing Program (FTHB), and subordinate financing programs offered by outside agencies
- The BMP Program's documents and other useful reference material

For further information, please contact:

City of Santa Clara Housing & Community Services Division
1500 Warburton Avenue, Santa Clara, CA 95050
Phone: (408)615-2490

II. BMP Requirements for Homeownership Projects

A. General

The BMP Program applies to any housing project of ten or more units for which an AHA was executed after July 18, 2006. Such projects include proposed new single-family detached, townhouse, or condominium developments as well as any proposed conversion of existing structures to condominiums. Each developer is required to enter into an AHA with the City.

The AHA describes the project and states current applicable zoning and land use requirements. It provides the ASP for each unit as discussed below. The AHA requires that BMP units shall be sold to eligible households whose incomes are at or below 110% of current Area Median Income.

B. Initial Market Value (IMV)

For each BMP unit, the City sets an IMV based upon an independent appraisal prior to the initial sale. The IMV reflects each unit's unrestricted initial market value. The IMV is used to establish the difference between the market value and the ASP for which the BMP unit will be sold. The IMV provides the basis for computing: 1) what the developer would owe the City if the developer chooses to pay an in-lieu fee for a fractional unit, as discussed below, and 2) the amounts that the homebuyer would owe the City if the home is resold at an unrestricted resale price, as discussed in **Section III.B**.

C. Affordable Sales Price (ASP)

For each BMP unit in a project, the City establishes an ASP as follows: (See illustration in **Attachment 1**.)

1. Calculates the assumed household size by counting the number of bedrooms in the subject BMP unit and adding one. For example, if the unit is a two-bedroom unit, the assumed household size is three persons.
2. Ascertains the current Area Median Income (AMI) for the assumed household size based on data set annually by the U. S. Department of Housing and Urban Development and the California Department of Housing and Community Development.
3. Multiplies the applicable AMI by 35% and divides the product by 12 to derive a maximum monthly Affordable Housing Cost (AHC).
4. Converts the AHC to an ASP as follows:
    a. Obtains the estimated amount available for first mortgage principal and interest payment by subtracting from the AHC the estimated cost of property taxes, insurance, homeowner association dues (if any), and allowances for utilities, maintenance and repairs.
    b. Utilizing the amount available for principal and interest, calculates the maximum principal amount of the first mortgage loan that can be borrowed, assuming the interest rate for a 30-year fixed-rate mortgage that would be reasonable for the City's housing program client base (typically first-time homebuyers).
    c. Sets the maximum sales price by dividing the first mortgage loan amount by one hundred percent minus the assumed percentage of the first mortgage that will be provided by the homebuyer as down payment. For example, if a three percent down payment is assumed, then the mortgage loan amount is divided by 97%.

In setting the ASP, the City will also consider the following:

1. Housing characteristics: Age of unit (new construction/conversion); type of unit (single-family detached/townhouse/condominium), based upon research of available comparable cost and sales price information.
2. Whether the developer will sustain a documented financial loss for basic production costs, based upon the *pro forma* that the developer has submitted to financial institutions for project financing purposes.
3. Whether the ASP exceeds the maximum sales price published by the California Housing Finance Agency.

D. In-Lieu Fee for a Fractional Unit

If the City determines that the required number of BMP units includes a fraction, the developer may either round up and provide an additional BMP unit within the project or pay an in-lieu fee for the fractional unit. The fee is determined by multiplying the fractional unit percentage (rounded to the nearest 1/10) by the difference between the Initial Market Value (IMV) and the Affordable Sales Price (ASP). For example, a developer of a 16-unit project would be required to provide 1.6 BMP units. The developer may either: 1) round up and provide two BMP units and pay no in-lieu fee, or 2) provide one unit and pay an in-lieu fee for the 0.6 units (0.6 X (IMV-ASP)).

III. Homebuyer Eligibility Requirements and Obligations

A. Eligibility

To be eligible for the program, the household must meet *all* of the following criteria:

1. Have a gross household income of not more than 110% of the AMI, adjusted for household size. The maximum amount of this income for Santa Clara County is set by the U.S. Department of Housing and Urban Development and published by the California Department of Housing and Community Development in *Title 25, California Code of Regulations, Section 6930.* The AMI limits are updated and published annually. **Attachment 2** lists the types of income that are included in or excluded from gross household income.

   Maximum Allowable Household Income Levels for 2010

Household Size	1	2	3	4	5	6
100% AMI	$72,450	$82,800	$93,150	$103,500	$111,800	$120,050
110% AMI	$76,695	$91,080	$102,465	$113,850	$122,980	$132,055

   Source: California Department of Housing and Community Development, Division of Housing Policy Development, 17 June 2010.

2. Be a first-time homebuyer, defined as an individual who meets any one of the following criteria:
   a) An individual who has had no ownership in a principal residence during the three-year period ending on the date of purchase of the property.
   b) An individual who is a displaced homemaker. Displaced homemaker means:
      1. Is an adult;
      2. Has not worked full-time in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and
      3. Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.
   c) An individual who has only owned a principal residence not permanently affixed to a permanent foundation.
3. Qualify to purchase a BMP unit with a fixed-rate, thirty-year conventional loan, applying prudent debt-to-income ratios for principal, interest, taxes, insurance and HOA and total debt.
4. Obtain a Homebuyer Education Certificate from NHSSV.
5. Have less than $100,000 in financial assets. Assets accumulated under a certified down-payment assistance program are excluded from this limit. **Attachment 2** defines those assets that are required to be included and those that may be excluded.
6. Agree to contribute to the purchase transaction any liquid assets in excess of $20,000, except for those excluded as indicated in **Attachment 2**.

B. Requirements and Obligations

Each BMP unit is subject to a twenty-year Covenant on the unit as follows: (See form legal documents attached as **Exhibits A-C**).

1. The unit must be owned and occupied by the homeowner as his or her principal residence and for no other purpose. The unit, or any parts thereof, shall not be leased or rented by the homebuyer to any person or entity.

2. For the first five years after the unit is purchased, if the unit is sold, it must be sold to a household whose income does not exceed 110% of AMI. If the initial BMP homebuyer sells his or her unit during the first five years after the close of escrow, he or she must sell to a BMP-qualified new homebuyer, as required by the City, at a newly established Restricted Resale Price (RSP). The RSP shall be the ASP adjusted by any percent change in the AMI from the date of the original BMP home purchase. The City may increase the RSP to account for any individual capital improvements valued at greater than $2,000. No amounts are owed by the homeowner to the City if the home is sold at the RSP. **Section II.C** above indicates the method for deriving the ASP.

3. After the five-year resale restriction period ends, the homeowner may sell the home at market rate, subject to the following conditions through Year Twenty at which time, the restriction expires:

   a) The homeowner will first pay-off the City Promissory Note held by the City. The City Promissory Note represents the difference between the ASP and the IMV that the City sets when the home is initially sold. The initial homebuyer executes the note and deed of trust in favor of the City. The City sets the IMV based upon an appraisal prior to the initial sale. If the BMP unit is sold at any time after the end of the sixtieth month after the close of escrow on the initial sale (Year Six and thereafter), the seller must pay to the City the full amount of the City Promissory Note.

   b) The homeowner will also pay the City the lesser of:

      1. A decreasing portion of the Appreciation Amount gained during the time of ownership. The Appreciation Amount is calculated as the difference between the IMV and the current market price at the time of resale (Unrestricted Resale Price). The homeowner pays the City a proportionate share of the Appreciation Amount that decreases at the rate of 5% per year during the 20-year term of the Note. The homeowner's share of the Appreciation Amount will increase 5% for each year the BMP unit is owned. After twenty years, the homeowner realizes the full, unrestricted appreciation amount of any equity gain in the market value of the unit, or

      2. Seven percent (7%) simple interest per year on the difference between the IMV and the ASP.

   Attachment 3 illustrates and compares how the amounts received by the City and the homeowner would be calculated under the shared appreciation or simple interest payment alternatives. **Attachment 5** illustrates the procedure for computing interest on the City Loan.

4. The owner may not refinance or encumber the unit without prior approval from the City. Any attempt to refinance or encumber without such approval are grounds for foreclosure against the property, and a breach of contract action against the homeowner. The City may consent to a refinancing or encumbrance of the unit in hardship situations or to allow the homeowner to access lower interest rates if the original loan amount is not exceeded and the borrower is receiving no cash out.

IV. Homebuyer Selection

The City has contracted with NHSSV to administer the BMP Program. The scope of services includes administering buyer applications, evaluating homebuyers during the selection processes, providing a homebuyer education program, offering mortgage counseling and financial services, and facilitating communication between buyer and developer to ensure that sale of the BMP unit is completed. NHSSV also provides on-going monitoring of units and unit resale services to the City.

NHSSV can be reached at:

1156 North Fourth Street
San Jose, CA 95112
Phone: (408) 279-2600
Web: www.nhssv.org

A. Qualifications

To be considered for a BMP unit, the prospective homebuyer must be pre-qualified by NHSSV and pre-approved for a first mortgage loan. The pre-qualified household will be considered for selection of a BMP unit in accordance with the Priority Criteria and Process specified in **Section IV.B**.

1. At the time a BMP unit within any given project is near completion, the City, directly and/or through NHSSV, will advertise availability. Prospective qualified homebuyers, who indicate an interest in buying a BMP unit, will be pooled according to the priorities set forth below. If the number of interested and qualified prospective homebuyers is greater than the number of units available in any one project, a lottery will be held, administered by NHSSV, to determine who will have the first opportunity to purchase.
2. Having one's name drawn in the lottery is not a guarantee by the City, NHSSV, or the BMP unit developer that the selected household will be able to avail itself of the opportunity to purchase a BMP unit. The prospective homebuyer must successfully complete his or her responsibilities under the purchase agreement, and, within the time constraints of the purchase agreement and the BMP Program, must obtain all financing needed to close the transaction.
3. Failure of the homebuyer to perform such requirements shall result in disqualification from the program. Application and qualification for a BMP unit in one project are not transferable to another project. A new application must be submitted for each project in accordance with the time constraints and application procedures as published for each project by the City and/or NHSSV.

B. Priority Criteria

The City Council has established the following Priority Criteria for the allocation of the BMP units as they become available to the community:

1st Priority Level	At least one household member who both lives within the City Limits of the City of Santa Clara *and* operates a business or is employed by a business or a public or quasi-public agency in Santa Clara.
2nd Priority Level	At least one household member lives within the City Limits of the City of Santa Clara.
3rd Priority Level	At least one household member operates a business or is employed by a business or a public or quasi-public agency in Santa Clara.
4th Priority Level	Any other qualified applicant household without regard to residency or employment.
Note:	The qualifying household member must be the person or a dependent of a person whose name will appear on title and who will use the unit as their primary residence.

NHSSV will verify residency and employment of each applicant. NHSSV will apply the above-described Priority Criteria to rank BMP Program applicants. Those selected for the highest priority level will be screened first and selected either through a lottery selection, if necessary, or without a lottery if the number of candidates In the priority level is less than or equal to the number of units available.

The list of pre-qualified buyers in a higher priority category must be exhausted before a BMP unit will be offered to someone who is in the next priority level. **Section VI** provides additional information on the selection process.

V. Financing the Home Purchase

Each homebuyer is responsible for arranging and qualifying for the mortgage financing that is required to purchase the BMP unit. The first mortgage must be a thirty or thirty-five-year, fixed-rate mortgage.

The proposed financing package is subject to review by NHSSV. Such package may include first-time homebuyer loan assistance from the City of Santa Clara Redevelopment Agency and other subordinate financing offered by other public agencies and/or nonprofit entities. **Attachment 4** indicates the documents that must be submitted for review.

The City has designated NHSSV as a preferred lender with respect to its BMP homes. As an approved California Housing Finance Agency (CalHFA) direct lender, NHSSV may originate and fund CalHFA loans for those borrowers who qualify for its products. For borrowers who do not qualify for CalHFA financing, NHSSV may provide first mortgage financing through Neighborhood Housing Services of America or through conventional mortgage financing sources. *It is understood that the buyer has the freedom to select his or her own lender.*

CalHFA financing may be combined with both the BMP Program and the Agency's FTHB Program. CalHFA financing is a valuable resource for assisting families in buying a home that they might not otherwise afford. One should be aware of the below-noted CalHFA requirements that differ from those established for Santa Clara's program. CalHFA currently offers two primary loan programs, Cal30, a conventional loan program that offers a conventional 30-year fixed loan and a CalHFA FHA loan program. *If CalHFA requirements conflict with those of other programs, the most restrictive limit applies.*

A. The home purchase price cannot exceed CalHFA's sales price limit: as of 7/27/10, CalHFA's limit for new homes in non-targeted areas of Santa Clara County was $656,755

B. The homebuyer(s) cannot exceed the maximum income limit in the Cal30 Conventional Loan Program: the maximum income for households buying a home in Santa Clara County in non-targeted areas is $88,600 for a one-person household; $101,300 for a two-person household; $113,950 for a three-person household and $126,600 for a household of four or more persons

C. The homebuyer(s) cannot exceed the maximum income limit in the CalHFA FHA Loan Program: the maximum income for households buying a home in Santa Clara County in non-targeted areas is $127,320 for a one- or two-person household and $148,540 for a household of three or more persons

D. The homebuyer may not have owned and occupied a home during the last three years

E. The borrower may be subject to a Federal "Recapture Tax." This is a Federal income tax that the borrower(s) may have to pay if they sell or transfer their CalHFA financed home within 9 years. CalHFA indicates that the purpose of recapture is to focus the benefits of its programs on families who need them most. CalHFA also states that most borrowers will not have to pay this tax and for those who do, the tax will never exceed one-half of the gain on the sale of the home or 6.25% of the original CalHFA mortgages, whichever is less.

F. For further information on CalHFA requirements, go to www.CalHFA.ca.gov.

VI. Operating Procedures

A. Developer and City Actions

The City imposes the BMP program requirements as a condition of approval for projects receiving new land use or subdivision entitlements. Prior to the City issuing building permits for a given project, the developer and the City shall have fully executed the Affordable Housing Agreement (AHA). At the time of project approval, the City will issue a preliminary notice to NHSSV. This notice will provide an estimated date for the delivery of the BMP units. It will also provide the location, size, bedroom mix, unit type (single-family, townhouse, condominium), amenities, and targeted income groups.

The Developer shall notify both the City and NHSSV no less than one hundred eighty (180) days prior to the estimated occupancy of the BMP units, to enable the start of marketing and homebuyer selection process. The developer shall provide current project and unit descriptive information as a basis for preparation of marketing materials.

At least 30 days prior to start of BMP unit sales, the City shall have set the IMV based upon an independent appraisal.

B. Marketing

NHSSV shall be responsible for preparing and implementing the BMP unit marketing plan.

C. Initial Inquiries

NHSSV will respond to inquiries from prospective homebuyers by providing a summary of the BMP Program, which will include the program's requirements and contact information.

NHSSV will invite prospective homebuyers who express an interest in a BMP unit to complete an intake form and to register for homebuyer education classes and (if needed) counseling. The purpose of the intake form is to conduct a preliminary assessment of the prospective homebuyer's mortgage readiness and to develop a plan of action designed to move the homebuyer through the homeownership process. NHSSV shall insure that interested persons receive an intake form and other program materials within a reasonable time after initial contact.

NHSSV shall serve as exclusive sales agent for the City. NHSSV will select the buyers in accordance with the City's policies and procedures, and will prepare the required purchase and sales agreement for execution by the buyer and the developer. NHSSV will facilitate the close of escrow. It will perform these functions in coordination with the Developer's project sales team.

D. Verifications/Selection Process

Interested buyers will be provided an application and a flyer describing the unit, sale price, amenities, deed restrictions, and selection process with submittal deadlines. Applicants shall be given at least a two-week period to file applications prior to any established submittal deadline.

Upon receipt of applications for the BMP Program, NHSSV will meet with each prospective homebuyer to complete an assessment of income and credit. If the client appears to be mortgage ready and has not been previously approved by another lender, he or she may be pre-approved for a first mortgage loan, and NHSSV will take a formal loan application. NHSSV will verify compliance with all BMP

program homebuyer requirements established by the City. It will follow standard mortgage lending procedures, underwriting the client in terms of income, credit, and applicable eligibility criteria.

NHSSV will also verify the applicant's residency and employment for purposes of ranking the applicant according to the City's Priority Criteria. An applicant is required to submit to NHSSV sufficient verification of residency (e.g., copies of rent receipts, utility bills, and/or landlord affidavits). In addition, the applicant must provide NHSSV with verification of employment or evidence of self-employment (e.g., copies of payroll stubs, tax returns, employer affidavits, and/or copies of City business licenses). The documents submitted will be for the time period from the initial application to close of escrow.

If, in the sale of BMP units, NHSSV finds that it has more qualified applicants than the number of readily available units, it will rank each qualified applicant according to the Priority Criteria established by the City. Prior to any selection, NHSSV may, if requested, review with City staff any application that was disqualified. NHSSV shall document the reasons for the applicant's disqualification. If NHSSV has more qualified prospective buyers in the highest priority level than the number of available units, it shall select by lottery, a "Designated Buyer" and two "Alternate Buyers" for each available unit. All "Designated Buyers" shall be selected first, followed by all First "Alternate Buyers" and then by all Second "Alternate Buyers."

If a Designated Buyer is unable to obtain financing at an affordable cost or is unable to meet the program requirement to purchase the BMP unit, the next highest ranked Alternate Buyer will be offered the unit. In the event that the Alternate Buyer is unable to purchase the BMP unit, the second highest ranked Alternate Buyer will be offered the unit. If no qualified applicants are able to purchase the BMP unit from the initial advertisement or notice, NHSSV shall re-advertise the unit.

E. Execution of BMP Home Purchase Agreement

Upon completion of the selection process, NHSSV will arrange for execution of a Purchase Agreement between the developer and the approved buyer. The Purchase Agreement will be subject to the buyer completing the arrangements for financing the home purchase, and the sale price shall be the ASP set by the City. The Purchase Agreement shall also reference IMV and the amount of the City Promissory Note. The Purchase Agreement shall be accompanied by a Disclosure Affidavit (**Attachment 6**), signed by the buyer, disclosing the Covenant and the amount and terms of the City Promissory Note.

Prior to proceeding with close of escrow, NHSSV must review the proposed financing package. **Attachment 4** indicates the financing documents that must be submitted for review.

F. Close of Escrow

NHSSV is responsible for coordinating the close of escrow with the title company, the developer, the City, the lender(s), and the homebuyer. The City shall provide NHSSV with Escrow Instructions to transmit to the Title Company. NHSSV will ensure that real estate purchase and financing documents are executed correctly and are recorded in the following order of priority:

1. First Deed of Trust
2. Second Deed of Trust for a CalHFA down-payment assistance loan (if applicable)
3. Covenants, Restrictions, and City Option to Purchase
4. Deed of Trust securing the City's Promissory Note
5. Deed of Trust securing a Redevelopment Agency First-Time Homebuyer loan (if applicable)
6. Deed(s) of Trust securing other secondary financing (if applicable)

7. Requests for Notice for the City and Redevelopment Agency loans.

G. Reports to County Assessor

The County Assessor has indicated that the base year value for real property tax purposes shall be the restricted price established by the government agency (the ASP for homes purchased under Santa Clara's BMP Program). No later than May 1 of each year, NHSSV shall prepare and provide to the City and the County Assessor an annual BMP report. This report will indicate for each BMP unit transaction recorded during the previous 12 month period, the APN and property address, the buyer(s) name, the ASP amount, and the terms and restrictions of the transactions. The Escrow Officer shall provide the County Assessor with a change of ownership form with each sale or resale of a BMP unit.

H. Post Purchase Counseling / Compliance Monitoring

NHSSV shall provide post purchase counseling services for each homebuyer. NHSSV is also responsible for ongoing administration of the BMP Program, including:

1. Facilitating resale of BMP units to eligible households at a RSP during the five-year resale restriction period;
2. Monitoring compliance with BMP requirements;
3. Reviewing requests for refinancing of the BMP units; and
4. Calculating payoff demands for any BMP unit that is to be resold at market value, after expiration of the resale restriction period and until the twenty-year restriction period expires.

Attachments and Exhibits

Attachments:

1. Illustrative Calculation of Affordable Sales Price
2. Income and Asset Definitions
3. Loan Payoff/Equity Share Illustration
3. Lender Document Checklist
4. Calculation of Interest on City Loan
5. Disclosure Affidavit
6. Homebuyer Test

Exhibits:

A. Covenants, Restrictions and Option to Purchase
B. City Promissory Note
C. Deed of Trust and Security Agreement
D. Request for Notice

Attachment 1.

Illustrative Calculation of Affordable Sales Price

(behind this page)

Attachment 1

Illustrative Calculation of the Affordable Sales Price

(Please note that these are illustrative only, and may not represent the actual costs, fees or mortgage rates actually applied to a particular unit or project.)

The calculation in this Attachment is based on the following definition of household size: The defined household size is equal to one person greater than the number of bedrooms in the unit.

Assumptions for calculating the Affordable Sales Price (ASP):

1. Unit Size = _____

2. Family Size = _____

3. Interest Rate* = _____

4. Property taxes and assessments (per month) = _____
   (based on actual tax rate with value based on the Affordable Sales Price (ASP) of the unit)

5. Actual insurance premiums (per month) = _____
   (if not included in homeowners' association dues)

6. Property maintenance and repair (per month) ** = _____
   (if not included in homeowners' association dues)

7. Project's budgeted homeowners' association dues (per month) = _____

8. Utility allowance (per month)*** = _____

9. Mortgage insurance premium, if any = _____

*The interest rate shall be based upon a 3% down, 30-year, fully amortizing fixed rate mortgage that would be reasonable for the City's housing program client base (typically first-time homebuyers).
** Amount is obtained from the City's Department of Planning and Inspection.
*** Amount is obtained from the Housing Authority of the County of Santa Clara's most recent schedule of allowances for tenant purchased utilities.

Attachment 1

Illustrative Calculation of the Affordable Sales Price

I. Calculate monthly Affordable Housing Cost:

$105,500.00 ((100% of Area median Income adjusted for family size (4 person household /3 bedroom unit))

X .35 (Affordable Housing Cost cannot exceed 35% times 100% of Area
$36,925 Median Income)

divided by 12 (To calculate the monthly Affordable Housing Cost)

$3,077 (As this hypothetical illustrates, no family with an income of 100% of Area Median Income with a family size of 4 shall spend more than $3,385 per month, as of the date hereof, on the sum of the items which make up the Affordable Housing Cost).

II. Calculation of the maximum amount to be spent on principal and interest of all mortgage loans:

A. $3,077 (Maximum monthly Affordable Housing Cost) ***less:***
B. (-)_____ Property taxes and assessments (per month)
C. (-)_____ Insurance premiums (per month)
D. (-)_____ Utility allowance (per month)
E. (-)_____ Mortgage insurance premiums (per month)
F. (-)_____ Property maintenance and repair (per month)
G. (-)_____ Homeowners' association dues (per month) ***equals:***
H. _____ Maximum Monthly Mortgage Payment

III. Calculation of Affordable Sales Price: The ASP is calculated by adding the Maximum Monthly Mortgage Amount to the down payment. The Maximum Mortgage Amount will be based upon a 3% down, 30-year, fully amortizing fixed rate mortgage at an interest rate that would be reasonable for the City's housing program client base (typically first-time homebuyers). The calculation is as follows:

1. At a _____% interest rate, and a loan term of 30 years, the Maximum Monthly Mortgage Payment (H.) of $_____will allow a Maximum Mortgage Amount of $_____.
   (Note: The above step requires the use of a financial calculator.)

2. The Maximum Mortgage Amount of $_____ divided by .97 (for an assumed 3% down payment) equals the Affordable Sales Price of $_____.

Attachment 2.

Income and Asset Definitions

(behind this page)

Attachment 2

Income and Asset Definitions

Determination of Gross Income:

1. In calculating gross income, the applicant shall present evidence of all household income including that of the applicant, and other individuals who have and will share the same dwelling unit or will share in ownership of the unit. All household income shall be considered as set forth below:

    a. Gross pay in the case of an employee, as determined by the employer before any payroll tax or other deductions are taken, whether voluntary or involuntary; and including salaries, overtime pay, commissions, fees, tips, and bonuses; and/or
    b. Net income from the operation of a professional business, the production and/or sale of goods, or the provision of a service as determined by calculating the average net income as reflected in the venture's federal income-tax return for the past three years; and/or
    c. Interest, dividends, and other net income derived from any kind from real or personal property; and/or
    d. The full amount of periodic payments actually received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum payment in lieu of a periodic payment; and/or
    e. Payments in lieu of earnings, such as unemployment, worker's compensation, severance pay, and welfare assistance. Although such payments may be excluded by the first mortgage lender for underwriting purposes, they shall be included in determining the applicant's eligibility for the BMP Program; and/or
    f. Periodic and determinable allowances such as alimony and child support payments, regular contributions or gifts received from persons not residing in the home; to the extent that such payments are reasonably expected to continue; and/or
    g. All regular pay, special pay and allowances due to an applicant or other household resident as a member of the Armed Forces (whether or not living in the dwelling) who is head of the family, spouse, or other person whose dependents are residing in the unit; and/or

h. Any earned income tax credit to the extent it exceeds income tax liability; and/or

i. Any other income that must be reported for federal and State Income tax purposes.

2. The following household income shall not be counted in the determination of gross household income:

a. Payments received for the care of foster children;

b. Amounts specifically excluded by any federal or state statute from consideration as income;

c. Casual, sporadic, or irregular gifts;

d. Amounts that are paid specifically for meeting medical expenses or are reimbursements for medical costs incurred;

e. Lump-sum supplements to family assets such as an inheritance, insurance payment (including payments under health care or accident insurance and Worker's Compensation); and settlement payments for personal injury or property losses.

Note: *Although not considered income, these payments will be considered in estimating total household assets, and may result in a determination that total assets exceed qualifying limits.*

f. Payments for educational scholarships made directly to the student or to the educational institution, including amounts paid by the government to veterans to cover the cost of tuition, fees, books, and equipment.

3. The applicant shall be required to provide federal and State income-tax returns for the prior three years and verification of current income in order to establish eligibility for the program.

Assets:

The applicant shall not possess liquid or non-liquid assets in excess of $100,000, excluding assets accumulated under a certified down payment assistance program.

For purposes of the BMP program, the following types of assets shall be considered in determining eligibility:

a. Cash savings:

b. Marketable securities, stocks, bonds, and other forms of capital investment, including tax-exempt securities *other than individual, tax-deferred retirement accounts;*

c. Inheritance or lump-sum insurance payments already received;
d. Settlements for personal or property damage already received;
e. Equity in real estate, except as stated below;
f. Personal property that is readily convertible to cash.

2. The following are *not* considered assets:

a. Ordinary household effects, including furniture, fixtures, and personal property;
b. Automobiles used for personal use;
c. Depreciable property used in a business that generates a significant portion of household income;
d. Individual tax-deferred retirement accounts.

Attachment 3.

Loan Payoff/Equity Share Illustration

(behind this page)

Attachment 3

Equity Share and 7% Simple Interest Illustration
The seller will pay the lesser of the City's Equity Share of the Appreciation Amount or 7% simple interest based on a 20-Year Promissory Note

Example:

Initial Market Value of the Unit	$500,000
Less Affordable Sales Price at time of initial sale	$385,000
equals Principal amount of City Note	$115,000

Equity Share Calculation of the Appreciation Amount (Equity Subject to Sharing):

	Year Resale Occurs		
	6	**10**	**15**
Assumed Unrestricted Resale Price	$600,000	$675,000	$750,000
Less capital improvements approved by City	5,000	7,500	10,000
Net Unrestricted Resale Price	595,000	667,500	740,000
Less Initial Market Value	500,000	500,000	500,000
Appreciation Amount	$ 95,000	$167,500	$240,000
City's Equity Share			
(20-6)/20 times the Appreciation Amount	($66,500)		
(20-10)/20 times the Appreciation Amount		($83,750)	
(20-15)/20 times the Appreciation Amount			($60,000)
Seller's Equity (Appreciation Amount less City's Share)	*$28,500*	*$83,750*	*$180,000*
(Seller gets 5%/yr increase in shared Appreciation Amount)			

OR

7% Simple Interest Illustration:

Appreciation Amount	$95,000	$167,500	$240,000
7% simple interest ($115,000 principal)	($48,300)	($80,500)	($120,750)
Seller's Equity (Appreciation Amount less City's Interest)	*$46,700*	*$87,000*	*$119,250*
Principal amount of City Note	$115,000	$115,000	$115,000

Borrower must pay principal amount of the City Note in addition to either the City's share of the Appreciation Amount or the 7% simple interest amount.

It is assumed that no further encumbering of the property has occurred since the initial sale. Further encumbering of the unit is prohibited without the written permission of the City. The City offers no assurances or guarantee whatsoever that the property will increase in value to any extent or that it will not decrease in value. This illustration is solely created to serve as an illustration of calculated equity share or interest that may be owed.

Attachment 4.

Lender Document Checklist

(behind this page)

Attachment 4

Document Transmittal Checklist

Lender/Mortgage Broker Name_____ Contact_____

Phone #_____ Fax#_____ E-mail_____

Title Company Name_____ Escrow Officer Name_____

Phone #_____ Purchase Price_____

Items Required for BMP Program or First-Time Homebuyer Program Commitment, Funding and Close of Escrow

___Signed original of Homebuyer Program Application
___Two current pay stubs
___Signed purchase and sale agreement
___Current appraisal*
___Preliminary title report (no more than 45 days old)
___Freddie Mac Form 65/Fannie Mae Form 1003 (Uniform Residential Loan Application)
___Freddie Mac Form 1077/Fannie Mae Form1008 (Uniform Underwriting Transmittal Summary)
___Federal income tax returns for past three years
___Senior lender loan commitment letter or equivalent
___Evidence of other proposed non-City financial commitments (CalHFA, Teacher MCC, regular MCC, HTSCC $6,500, HomeVenture Fund, etc.) if applicable
___Statement indicating vesting, correct corporate name of beneficiary and trustee (page 1 of 1st deed of trust, if available), and estimated close of escrow date
____Certificate of completion of homebuyer training course
____Wiring Instructions (First-Time Homebuyer Program Only)

**May be submitted after FTHB loan commitment is issued but at least 7 days before close of escrow.*

Attachment 5.

Calculation of Interest on City Loan

(behind this page)

Attachment 5

Calculation of Interest on City Loan

The method for calculating interest on the City BMP Program Loan is as follows:

Step 1-- Multiply the City loan amount by the annual interest amount and by the number of whole calendar years during the period that the loan is outstanding.

Step 2--For each fractional year during the loan period, divide the number of partial year days by 360, then multiply the result by the loan amount times the annual interest rate.

Step 3—Add *Step 1* and *Step 2* totals to obtain total interest that the borrower(s) owe the City.

Example –Loan that closes March 31, 2007 and is repaid June 30, 2017

Step 1 - $40,000 loan amount x 7% x 9 calendar years (2008-2116) = $25,200

Step 2 - For Fractional Year 2007 – (270 days/360) x $40,000 x 7% = $ 2,100
For Fractional Year 2117 - (180 days/360) x $40,000 x 7% = $ 1,400

Step 3 - Total of Step 2 and Step 3 Amounts $28,700

Attachment 6.

Disclosure Affidavit

(behind this page)

Attachment #6

AFFIRMATIVE BUYER DISCLOSURE & ACKNOWLEDGEMENT OF BELOW MARKET PURCHASE UNIT RESALE, REFINANCING & AFFORDABILITY RESTRICTIONS PRIOR TO PURCHASE

RECITALS

I/ We ***Mr. Jose S. Public*** and ***Mrs. Clara S. Public***
Currently residing at ***1156 N. Fourth Street, San Jose, CA 95112-4944***
the ("DESIGNATED BUYER(S)") who have been allowed an opportunity by the City of Santa Clara, ("CITY") to qualify to purchase the dwelling located at ***1500 Civic Center Drive, Santa Clara, CA 95050*** which has been designated by the CITY as a Below Market Purchase Unit (the "BMP UNIT").

I./ We have been informed by the CITY and their non-profit administrator, Neighborhood Housing Services Silicon Valley, Inc. "NHSSV", that the City has required the developer of the development project ("the DEVELOPER") to provide this dwelling (the BMP UNIT) at a sales price that is significantly lower than the other market rate units in the development.

I/ We fully understand that without the CITY'S assistance, I / we would not otherwise have the ability to purchase this dwelling (the BMP UNIT) with the same favorable terms or at the Affordable Sales Price noted by the CITY.

I/ We fully understand and have been informed by the CITY and NHSSV of the following facts related to the opportunity provided to purchase the dwelling (the BMP UNIT):

1. The unrestricted Initial Market Value (IMV) of the dwelling based on a recent appraisal is ***$ 425,000***;

2. I/ We are being allowed the opportunity to qualify to purchase the dwelling (the BMP UNIT) at the reduced sales price of ***$ 385,000***;
   (the "Affordable Sales Price recorded as the official transaction price)

3. This represents a reduction of ***$ 40,000*** from the Initial Market Value;

4. I/ We will sign a Promissory Note payable to the City for this amount (***$40,000***) and it will become a separate subordinate loan obligation and must be paid to the CITY with interest, if the dwelling (the BMP UNIT) is sold for a price higher than an Affordable Sales Price after the five-year resale restriction period (discussed in Item 8 below) expires.

5. The Appreciation Amount of the dwelling (the BMP UNIT) after 5 years of ownership is the difference of the Initial Market Value (IMV) appraised at ***$425,000*** and the future unrestricted market value determined at the time of resale.

6. The interest that must be paid to the City based on the City Promissory Note is the lesser of either 7% simple interest or a decreasing share of the Appreciation Amount due to the City calculated at a rate of -5% per year of ownership.

   Example A: In addition to the Promissory Note Value of ***$ 40,000*** after 6 years the City could receive interest equal to 70% of the Appreciation Amount gained above the Unrestricted Initial Market Value [100% of the equity - (6 years X 5%/year) = 70%] or 7% simple interest $ ***16,800*** , which ever is less.

   Example B: After 20 years, the City would receive only the Promissory Note Value of ***$ 40,000***, because the equity share would be less than 7% simple interest. [100% of the equity - (20 years X 5%/year) = 0%]

7. I/ We fully understand if I / we sell the dwelling (the BMP UNIT) during the first 5 years that I / we will not be able to sell the unit at a full market price because the Resale, Refinance, and Affordability Restrictions I / we will be signing give the City a right to buy the BMP UNIT (or designate another qualified buyer to buy the BMP UNIT) at a reduced purchase price that equals the Affordable Sales Price I / we paid adjusted overtime in accordance with the City's BMP Procedures. If the City or another designated buyer purchases the unit at the Affordable Sales Price, the City will forgive the City Promissory Note and I / we will not have to pay the ***$ 40,000*** to the City.

8. I/ We fully understand that only improvements that are consistent with the City's BMP Procedures and of at least **$** ***2,000*** in value will be eligible to increase the Affordable Sales Price of dwelling (the BMP UNIT) during the first 5 years of ownership.

9. I/ We fully understand that the original primary mortgage loan of ***$ 300,000*** used to purchase this property may not be refinanced without prior written approval from the City and that it may only be replaced with a loan of equal or lesser value.

10. I/ We fully understand that I / we must live in the dwelling (the BMP UNIT) until the end of the Resale, Refinancing, and Affordability Restrictions (i.e. 20 years from the date of purchase) or the property is sold, whichever comes first.

11. I/ We fully understand that the Santa Clara County Tax Assessor will use the restricted value of the dwelling (the BMP UNIT) as represented in the Affordable Sales Price of ***$ 385,000*** to calculate property taxes for the property and that this amount may be adjusted by the Santa Clara County Tax Assessor as allowed by California Law.

Prior to close of escrow, I / we acknowledge that I / we have read and fully understand and comprehend this disclosure and the buyer documents provided by the CITY and NHSSV (Attachments _____ thru_____). I / We have no reservations regarding the terms or conditions that limit our use and ability to resell or refinance the dwelling during the effective 20 year term of the Resale, Refinancing and Affordability Restrictions. I/ We accept the terms and conditions noted in these documents.

Accepted: 1500 Civic Center Drive Designated Buyer(s)

Jose S. Public	_____	_____
Buyer #1 Printed Name	Buyer #1 Signature	Date:
Clara S. Public	_____	_____
Buyer #2 Printed Name	Buyer #2 Signature	Date:

Return Original to NHSSV to be placed in BMP File with Copies of all Attachments
Provide 1 Copy to Buyer with Copies of all Attachments
Provide 1 Copy to City of Santa Clara RDA with Copies of all Attachments

Attachment 7.

Homebuyer Test

(behind this page)

VERIFICATION OF HOMEBUYER AWARENESS & COMPREHENSION OF THE SANTA CLARA BMP PROGRAM RESALE, REFINANCING, & AFFORDABILITY RESTRICTIONS

This is a test of your understanding of the Santa Clara Below Market Purchase (BMP) Program and the Resale, Refinancing, & Affordability Restrictions that will apply to the dwelling you may be given the opportunity to purchase. You must understand the concepts noted in each question and be able to answer all the questions correctly or you will not be allowed to purchase the designated BMP Unit.

1. What is the address of the dwelling (the BMP UNIT) that I may be given the opportunity to purchase? _____.

2. Given my / our current financial circumstances, I / we would not otherwise have the ability to purchase this dwelling (the BMP UNIT) with the same favorable terms or at the Affordable Sales Price noted by the CITY. True or False? _____.

3. The Initial Market Value (IMV) of the dwelling without the City's Resale, Refinancing, and Affordability Restrictions based on an appraisal is $ _____.

4. I / We are being allowed the opportunity to qualify to purchase the dwelling (the BMP UNIT) at the reduced sales price of $_____ which is also referred to as the "Affordable Sales Price and this is the official recorded transaction price.

5. The difference between the Initial Market Value and the Affordable Sales Prices is $_____.

6. The eventual buyer of the dwelling (the BMP UNIT) will record a second Promissory Note (a loan) payable to the City and it will become a separate loan from the primary mortgage loan used to purchase the unit and must be paid to the CITY with interest, if after the five-year resale restriction expires, the dwelling is sold for a price higher than the allowed Affordable Sales Price. What is the amount that will be on the City Promissory Note and when must it be paid to the City with interest? _____.
_____.

7. What is the Affordable Sales Price? $ _____.

8. In addition to the value on the City Promissory Note, what is the interest that must be paid to the City if the dwelling (the BMP UNIT) is sold for a price higher than the Affordable Sales Price? _____
_____.

9. Can improvements made to the dwelling (the BMP UNIT) during the first 5 years of ownership be used to adjust the Affordable Sales Price? If so what is the minimum value of the improvements eligible? _____.

10. Can the original mortgage loan used to purchase this property be refinanced and if so for what amount? _____
_____

11. Can I rent out the dwelling (the BMP UNIT)? _____
_____

12. What is the transaction price used by the Santa Clara County Tax Assessor to calculate property taxes for this property? _____

COMPLETED BY:

_____	_____	_____
Buyer #1 Printed Name	Buyer #1 Signature	Date:
_____	_____	_____
Buyer #2 Printed Name	Buyer #2 Signature	Date:

NEIGHBORHOOD HOUSING SERVICES VERIFICATION OF HOMEBUYER COMPREHENSION OF THE SANTA CLARA BMP PROGRAMRESALE, REFINANCING, & AFFORDABILITY RESTRICTIONS

_____	_____	_____
NHSSV Representative	Signature	Date:

Return Original to NHSSV to be placed in BMP File with Copies of all Attachments
Provide 1 Copy to Buyer with Copies of all Attachments
Provide 1 Copy to City of Santa Clara RDA with Copies of all Attachments

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
1460 MONROE, LLC

ATTACHMENT D
INSURANCE COVERAGE REQUIREMENTS

Without limiting the Developer's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Developer shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

   $1,000,000 Each Occurrence
   $2,000,000 General Aggregate
   $2,000,000 Products/Completed Operations aggregate
   $1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Developer; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Developer to comply with the insurance -requirements of this Agreement:

   a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

   b. There shall be no cross liability exclusion, which precludes coverage for claims or suits by one insured against another;

   c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability;

   d. Coverage shall contain no Contractor's' limitation endorsement limiting the scope of coverage for liability arising from pollution, personal injury, Owners' and Contractor's' protective Liability; and

e. Contractual Liability coverage shall expressly include all liability assumed under this Agreement.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars ($1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Developer and/or its sub-contractor's involved in such activities shall provide coverage with a limit of two million dollars ($2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars ($1,000,000) policy limit Bodily Injury by disease, one million dollars ($1,000,000) each accident/Bodily Injury and one million dollars ($1,000,000) each employee Bodily Injury by disease.

2. The indemnification and hold harmless obligations of Developer included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Developer or any sub-contractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. The City of Santa Clara, its officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Developer's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

2. Primary and non-contributing. Each insurance policy provided by Developer shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from any other insurance, which the indemnities may possess, including

any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Developer's insurance.

3. Cancellation. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Attachment D, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Developer and City agree as follows:

1. Developer agrees to ensure that sub-contractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Developer, provide the same minimum insurance coverage required of Developer, except as with respect to limits. Developer agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Developer agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such sub-contractors and others engaged in the project will be submitted to City for review.

2. Developer agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Developer for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Developer in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Developer, and each and every sub-contractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Developer shall file with the City all certificates and endorsements for the required insurance policies for City 's approval as to adequacy of the insurance protection.

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G. EVIDENCE OF COMPLIANCE

Developer or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City 's request, Developer shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

The City of Santa Clara
Housing & Community Services Division
c/o EBIX Inc.
P.O. 12010-S2 or 151 North Lyon Avenue
Hemet, CA 92546-8010 Hemet, CA 92543

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Developer shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
1460 MONROE, LLC

ATTACHMENT E
ETHICAL STANDARDS

Termination of Agreement for Certain Acts.

A. City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If Developer[1] does any of the following:

   a. Is convicted[2] of operating a business in violation of any Federal, State or local law or regulation;

   b. Is convicted of a crime punishable as a felony involving dishonesty[3];

   c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;

   d. Is convicted of an offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of Developer; and/or,

   e. Made (or makes) and false statement(s) or representation(s) with respect to this Agreement.

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[1] For purposes of this Agreement, the word "Developer" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of the corporation.

[2] For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

[3] As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with Developer can be imputed to Developer when the conduct occurred in connection with the individual's performance of duties for or on behalf of Developer, with Developer's knowledge, approval or acquiescence, Developer's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

B. City may also terminate this Agreement in the event any one or more of the following occurs:

1. If City determines that Developer no longer has the financial capability[4] or business experience[5] to perform the terms of, or operate under, this Agreement; or,

2. If City determines that Developer fails to submit information, or permits false information, which is required in order to perform or be awarded a contract with City , including, but not limited to, Developer's failure to maintain a required State license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.

C. In the event Developer, as an applicant or bidder, is ruled ineligible (debarred) to participate in a contract award process, or the Agreement is terminated pursuant to these provisions, Developer may appeal City 's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City of its action. The matter will be heard within thirty (30) days of the filing the appeal request with the City Clerk. Developer will have the burden of proof on the appeal. Developer shall have the opportunity to present evidence, both oral and documentary, and argument.

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[4]Developer becomes insolvent, transfers assets in fraud of creditors, makes an assignment for benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Developer.

[5] Loss of personnel deemed essential by the City for the successful performance of the obligations of the Developer to the City.

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
1460 MONROE, LLC

ATTACHMENT F
AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I, Sanjeev Acharya, being first duly sworn, depose and say that I am the Manager [title or capacity] of 1460 Monroe, LLC and I hereby state that I have read and understand the language, titled "Ethical Standards for Developers Seeking to Enter into an Agreement with the City of Santa Clara" (herein "Ethical Standards") set forth in Attachment E. I have authority to make these representations on my own behalf and on behalf of the legal entity identified herein. I have examined appropriate business records and I have made inquiry of those individuals potentially included within the definition of "Developer" contained in the Ethical Standards.

Based on the review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in Footnote #1 of Attachment E (1.e., owner or co-owner of a sole proprietorship, general partner, etc.) has been convicted of any one or more of the crimes identified in Attachment E within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

1460 Monroe, LLC
Developer Legal Name

S. Acharya
Signature

CEO
Title

NOTARY'S ACKNOWLEDGEMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgement of execution of the affidavit by the signatory. If the affidavit is on behalf of a Developer, partnership, or other legal entity, the entity's complete legal name and title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a Developer, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of **California**

County of **Santa Clara**

On 9/2/14 (Date) before me, **Sunita Singh**, Notary Public (Name and Title of Officer)

personally appeared Sanjeev Acharya,

(Name 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.

SUNITA SINGH
Commission # 1994918
Notary Public - California
Santa Clara County
My Comm. Expires Nov 18, 2016

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 of Notary Public

My Commission Expires: Nov 18, 2016

OPTIONAL INFORMATION

Description of Attached Document

Title or Type of Document: Affidavit of Compliance with ethical standard

Document Date: _____ Number of Pages: _____

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
1460 MONROE, LLC

EXHIBIT A

Form of City Covenants, Restrictions and Option to Purchase

(Attached hereto)

COMPLIMENTARY RECORDING
REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 27383

Recording Requested by and
When Recorded Mail To:
CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, California 95050
Attn: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

BELOW MARKET PURCHASE PROGRAM COVENANTS, RESTRICTIONS AND OPTION TO PURCHASE

This agreement, entitled Covenants, Restrictions and Option to Purchase (the "City Covenants") is entered into as of this DATE, by and between the City of Santa Clara (the "City") and OWNER (the "Owner").

RECITALS

WHEREAS, the City has determined that it is desirable to encourage the purchase of homes by Moderate Income Households, and,

WHEREAS, the City has established a Below Market Purchase Program to assist Moderate Income Households, and

WHEREAS, concurrently with the execution of these City Covenants, Owner is purchasing the Residence for a purchase price that is affordable to Owner in accordance with a certain Affordable Housing Agreement (the "AHA") by and between the City and DEVELOPER dated DATE OF THE AGREEMENT. Without the benefits afforded by the City's BMP Program, the purchase price of the Residence would exceed the amount that is affordable to Owner; and,

WHEREAS, accordingly, in order to preserve the affordability of the Residence for Moderate Income Households, and in return for and in consideration of the opportunity for the Owner to purchase the Residence under the above-referenced circumstances and for other good and valuable consideration, the receipt and legal sufficiency of which the undersigned hereby acknowledges, the Owner, has agreed to execute these City Covenants; and,

WHEREAS, these City Covenants place certain use restrictions on the Residence, establish resale controls with respect to the Residence, and reserve to the City an option to purchase or designate an Eligible Purchaser to purchase the Residence from the Owner in order to provide for the continued availability of the Residence to Moderate Income Households.

NOW, THEREFORE, in consideration of the benefits received by the Owner and the City, the Owner and the City agree, as follows:

1. **Definitions.** The terms set forth in this section shall have the following meanings when used herein:

"Affordable Housing Cost" shall mean a monthly housing cost not exceeding one-twelfth (1/12) of thirty-five percent (35%) of one hundred percent (100%) of Median Income, adjusted for household size appropriate for the size of the Residence.

"Affordable Sales Price" shall mean a sales price for a Residence that is derived from the Affordable Housing Cost, as determined by the City.

"Appreciation Amount" shall mean the difference between the Initial Market Value and the Unrestricted Resale Price less the Owner's "capital improvements" as this term is defined in these City Covenants, and which is approved by the City.

"City Covenants" shall mean these Covenants, Restrictions and Option to Purchase executed by and between the City and the Owner, of even date herewith, as amended, modified or supplemented from time to time.

"City Lien" shall mean that certain subordinate mortgage lien, made to the Owner by the City and evidenced by the City Note.

"City Lien Documents" shall collectively mean the City Note, these City Covenants and the City Subordinate Deed of Trust.

"City Manager" shall mean the City Manager of the City of Santa Clara or his/her designee.

"City Note" shall mean the promissory note from the Owner to the City, as amended from time to time, evidencing the City Lien, as amended, modified or supplemented from time to time.

"City Subordinate Deed of Trust" shall mean the deed of trust recorded against the Residence from the Owner in favor of the City, as amended, modified or supplemented from time to time, securing the City Note and these City Covenants.

"CalHFA" shall mean the California Housing Finance Agency.

"Eligible Household" shall mean a prospective purchaser of the Residence who meets the then current requirements established by the City, including, but not limited to, having a household income that does not exceed 110% of the Area Median Income.

"Fair Market Value" shall be determined by an appraisal of the Residence as provided hereunder.

"First Mortgage Deed of Trust" shall mean the Deed of Trust on the Home from the Homebuyer in favor of the First Mortgage Lender, securing the First Mortgage Lender Note.

"First Mortgage Lender" shall mean LENDER, its successors and assigns.

"First Mortgage Loan" shall mean the first mortgage loan provided by the First Mortgage Lender to the Owner and secured by the First Mortgage Deed of Trust.

"Initial Market Value" shall mean the unrestricted Fair Market Value of the Residence as determined by the City as of the date of these City Covenants.

"Moderate Income Household" shall be a household with a gross income which does not exceed one hundred and ten percent (110%) of the Median Income, adjusted for household size.

"Area Median Income" shall mean the median gross yearly income for households in Santa Clara County, California, as published periodically by the California Department of Housing and Community Development ("HCD"). In the event such income determinations are no longer published by HCD, or are not updated for a period of at least eighteen months, the City shall provide the First Mortgage Lender with other income determinations which are reasonably similar with respect to method of calculation to those previously published by HCD.

"Notice of Intended Transfer" shall mean the notice required under Section 5 of these City Covenants that shall specify all the terms of the intended Transfer.

"Program" shall mean the City's Below Market Purchase Program.

"Purchase Option" shall have the meaning ascribed thereto under Section 7 below.

"Resale Restriction Period" shall mean five years from the date of these City Covenants.

"Residence" shall mean the housing unit commonly known as ADDRESS, together with the land thereon, and any subparts thereof, which is more particularly described in Exhibit A attached to the City Subordinate Deed of Trust that secures the City Note, which is incorporated herein by reference.

"Restricted Resale Price"- see Section 6.

"Senior Lender" or "Senior Lenders" shall mean any of the following entities and their successors and assigns, which are the beneficiary of a recorded security instrument used to secure financing for the purchase of the Residence: (i) the First Mortgage Lender (ii) CalHFA; (iii) the City of Santa Clara; or (iv) a lender under a CalHFA first mortgage program.

"Senior Loan" or "Senior Loans" shall refer to loans made by Senior Lenders to the Owner.

"Senior Loan Deeds of Trust" shall refer to the deeds of trust securing each Senior Loan, which documents shall at all times be senior to the City Lien Documents.

"Transfer" shall mean any sale, assignment, transfer, encumbrance voluntary or involuntary, in part or in full, of any interest in the Residence, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, a lien or an interest evidenced by a land contract by which possession of the Residence is transferred and Owner retains title; provided, however, that Transfer shall not include transfers by gift, devise or inheritance to an existing spouse, surviving joint tenant, or transfers to a spouse in the course of a dissolution proceeding or in connection with marriage, or transfers by devise or inheritance to children, or a transfer into an inter vivos trust of which the Owner is the sole beneficiary.

"Unrestricted Resale Price" shall mean the actual unrestricted price of the Residence that the Owner transfers between the expiration of the Resale Restriction Period and the twentieth (20th) anniversary of this Agreement.

2. **Owner Representations and Warranties.** The Owner represents and warrants that:

(a) The financial and other information provided by Owner to the City, its contractors and agents, and all lenders in order to qualify to purchase the Residence is true and correct as of the date first written above;

(b) The Owner intends and shall occupy the Residence as the Owner's principal place of residence, except as otherwise provided in Paragraph (c) of Section 3 below.

3. **Owner-Occupancy.**

(a) Owner shall occupy the Residence as his or her or their primary residence, and the Residence shall be used as the primary residence of Owner and Owner's household and for no other purpose. The Residence shall not be leased or rented by Owner to any person or entity.

(b) The City shall have the right to monitor whether the Residence is Owner-occupied by requesting that Owner provide the City, not more frequently than annually, with a written certification under penalty of perjury that the Residence is Owner-occupied, accompanied by supporting documentation reasonably satisfactory to the City.

(c) These Owner-occupancy restrictions may be waived, modified or terminated only upon the prior written approval of the City Manager.

4. **Maintenance of Property.** Owner agrees it shall maintain the interior and exterior of the Residence and any landscaping on the Residence in good condition and repair and in a manner consistent with the community standards which will uphold the value of the Residence, and in accordance with all applicable City codes. Failure to maintain the Residence in accordance with this Section 4, including, but not limited to, any violations of applicable building, plumbing, electric, fire,

housing or other applicable City of Santa Clara Building Codes, shall be a default by the Owner under this Agreement.

5. **Notice of Intended Transfer.** In the event Owner vacates the Residence (e.g., to use the Residence as their primary residence) or Transfer any interest therein or any portion thereof, Owner shall give the City a Notice of Intended Transfer at least ninety (90) days prior to the intended date for vacating the Residence or executing the Transfer. Any Transfer in violation of this Section 5 or any other provision of these City Covenants is prohibited and shall be null and void.

In the case of a Transfer by sale, the Notice of Intended Transfer shall also be accompanied by a written certification by the Owner and the proposed purchaser, in a form that is reasonably acceptable to the City, that the Owner and the proposed purchaser have not paid, have no agreement to pay and will not pay, to the other such party, or to any other person, any money or other consideration in addition to the consideration described in the terms of the sale.

6. **Determination of Restricted Resale Price.** During the Resale Restriction Period, the maximum sales price that the Owner may receive from any source for any type of Transfer of the Residence ("Restricted Resale Price") shall be the lowest of the following: (a) the Increased Base Price (defined below); (b) the Fair Market Value (defined below); or (c) the Affordable Sales Price (as defined in Section 1.).

(a) Increased Base Price. The "Increased Base Price" means the purchase price that Owner paid for the Residence, increased by the percentage change in the Area Median Income, as published by the U.S. Department of Housing and Urban Development, from the purchase date to the date of notification stated in Section 5, above. In the event that such income determination is no longer published, or has not been updated for a period of at least eighteen (18) months, the City may use or develop such other reasonable method as it may choose to determine the Area Median Income for Santa Clara County.

The Increased Base Price shall also be adjusted for the "Value of Capital Improvements". The "Value of Capital Improvements" shall mean the value of substantial structural or permanent fixed improvements that cannot be removed without substantial damage to the Residence or substantial or total loss of value of said improvements. No such valuation shall be made except for improvements: (a) made or installed by or under the direction of the Owner; (b) with an initial cost of Two Thousand Dollars ($2,000) or more; and (c) which can be documented by the Owner to the reasonable satisfaction of the City Manager. The value of such improvements to be taken into account in calculation of the Increased Base Price shall be the appraised market value of the improvements when considered as additions or fixtures to the Residence (i.e., the amount by which said improvements enhance the market value of the Residence at the time of sale or valuation). The adjustment to the Increased Base Price for such improvements shall be limited to the increase in value, and shall be determined by the City Manager and the Owner, or in the event of a failure to agree, by an independent residential appraiser selected by the Owner from a list of appraisers established by the City. The cost of the appraisal shall be borne by the Owner.

(b) Fair Market Value. The "Fair Market Value" of the Residence shall be determined by an independent residential appraiser selected by the Owner from a list of appraisers established by the City. To the extent possible, the appraisal shall be based on the sales prices of comparable properties sold in the market area during the preceding three (3) month period. The cost of the appraisal shall be borne by the Owner. In the event the Owner has made capital improvements to the Residence which have individually cost more than Two Thousand Dollars ($2,000) and can be documented to the appraiser and which have increased the value of the Residence, or if damage or deferred maintenance have occurred while the Owner owned the Residence which have decreased the value of the Residence, the appraisal shall specifically determine the Value of Capital Improvements as set forth in Section 6.a. or the adjustment for damage and deferred maintenance and shall state what the fair market value of the Residence would be without such value or adjustments. Nothing in this Section shall preclude the Owner and the City from establishing the Fair Market Value of the Residence by mutual agreement in lieu of an appraisal pursuant to this Section.

7. **Purchase Option.**

(a) As a material part of the consideration for these City Covenants, Owner covenants and agrees for itself, its successors and its assigns and every successor in interest to the Residence that for the Resale Restriction Period of these City Covenants, Owner hereby grants to the City an exclusive option to purchase the Residence or designate an Eligible Household to purchase the Residence from Owner in the event of an uncured default under the First Mortgage Loan or the City Lien Documents (subject to the First Mortgage Lender and Senior Lender's rights to cure under Section 12 herein), or upon receipt by the City of a Notice of Intended Transfer (the "Purchase Option"); provided, however, that the City shall be deemed to have waived such Purchase Option unless it gives notice to the Owner, the First Mortgage Lender and the Senior Lenders of its intention to exercise the Purchase Option within thirty (30) days, and to the extent possible, subsequently completes the purchase of the Residence within one hundred twenty (120) days from earliest of: (i) the expiration of the applicable cure period in the event of a default by the Owner under the City Lien Documents; or (ii) receipt by the City of a notice of default under the First Mortgage Loan, a Senior Loan, or a Notice of Intended Transfer.

(b) Within thirty (30) days following the exercise of the Purchase Option, the parties agree that the City shall open, or cause to be opened, an escrow with a title insurance company or such other escrow agent reasonably acceptable to the City (the "Escrow Agent") and the parties agree to execute escrow instructions with Escrow Agent as may be required by Escrow Agent, or to implement or give effect to the terms and conditions of these City Covenants. The parties agree to the following escrow terms and conditions:

(1) The escrow shall be for a period of one hundred (120) days or sooner if mutually agreed by the parties;

(2) The City agrees that it will pay, or cause to be paid by an Eligible Household designated by the City, the Restricted Resale Price upon the close of escrow or as otherwise mutually agreed to by the parties. Notwithstanding the foregoing, prior to the close of escrow, the Owner hereby agrees that the Escrow Agent shall withhold that portion of the Restricted Resale Price

necessary to pay off the outstanding principal balance and interest due under the First Mortgage Loan, the Senior Loans and any outstanding liens or encumbrances against the Residence other than as due under the City Lien Documents. Any remaining funds shall be disbursed by the Escrow Agent to Owner;

(3) The Owner agrees that it shall pay the premium for a standard C.L.T.A. policy of Owner's title insurance issued by the Escrow Agent or title insurance company reasonably acceptable to the City in the amount of the Restricted Resale Price, insuring title to the Residence in the City's (or Eligible Household's, as the case may be) name, subject only to those matters approved by the City in writing. In the event the City (or Eligible Household, as the case may be) requests an A.L.T.A. policy of Owner's insurance and/or any title endorsements, the additional costs associated with the issuance of an A.L.T.A policy or the endorsements shall be paid by the City (or Eligible Household, as the case may be);

(4) In the event the City exercises its Purchase Option, the Owner and City agree that all costs and fees charged in connection with the closing and escrow shall be borne one-half (1/2) by the City (or Eligible Household, as the case may be) and one-half (1/2) by the Owner; provided, however, in the event the City exercises its Purchase Option upon default by the Owner under the City Lien, the First Mortgage Loan or a Senior Loan, the Owner agrees to pay all costs and fees charged in connection with the closing and escrow;

(5) The Owner agrees that it shall deposit in escrow for delivery to the City (or Eligible Household, as the case may be) a grant deed to the City (or Eligible Household, as the case maybe) in such form as may be reasonably acceptable to the City Manager in his or her sole discretion);

(6) Taxes and assessments shall be prorated at the close of escrow with Owner paying all such taxes and assessments due and payable prior to the close of escrow and City (or Eligible Household, as the case may be) paying all such taxes and assessments due and payable following the close of escrow;

(7) Owner agrees that title shall be conveyed by Owner at the close of escrow to the City (or Eligible Household, as the case may be) free and clear of all mortgages, deeds of trust, liens and encumbrances. Owner agrees that any costs to remove or satisfy any mortgages, deeds of trusts, liens or encumbrances shall be the responsibility of Owner, at Owner's sole cost and expense; and

(8) Any other terms or conditions mutually agreed to by the parties.

(c) Priority of Option. The Option granted pursuant to these City Covenants shall be senior in priority to any lien or encumbrance, with the exception of the First Mortgage Loan, the Senior Loans and the documents securing such loans.

(d) In no event shall the City become in any way liable or obligated to the Owner or any successor-in-interest to the Owner by reason of the exercise of, or the failure to exercise the Purchase Option.

8. **Appraisal; Fair Market Value.** Upon a Transfer of the Residence, the First Mortgage Lender shall conduct an appraisal of the Residence, subject to the City's right to have an independent appraisal conducted. The cost of the appraisal shall be borne by the Owner. Nothing in this Section shall preclude Owner and City from establishing the Fair Market Value of the Residence by mutual agreement in lieu of an appraisal.

9. **Transfer by Owner at an Unrestricted Resale Price.** If, after the expiration of the Resale Restriction Period, the Owner Transfers the Residence at an Unrestricted Resale Price, and such Transfer occurs prior to the twentieth (20th) anniversary of the date of this Agreement, the City shall be entitled to receive, and Owner shall pay to the City, an amount equal to the principal balance of the City Note. In addition to paying the entire outstanding balance of the City Note, Owner shall pay the City the lesser of either (i) simple interest at the rate of seven percent (7%) on the principal amount of the City Lien or (ii) an equity share, defined as the City's proportionate share of the Appreciation Amount decreased at the rate of five percent (5%) per year commencing from the date of this Agreement and the City Note until the twentieth (20th) anniversary. These obligations to pay the City shall be evidenced by a promissory note secured by a deed of trust recorded against the Residence.

10. **Restrictions on Transfer Proceeds.** The proceeds from any Transfer that ensues following the waiver or other failure by the City to exercise the Purchase Option under Section 7 above, after paying any and all superior liens and costs and fees relating to the transaction (such as any escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs), shall be applied in the following order of priority: (i) the outstanding balance on the City Note; and (ii) any excess proceeds shall belong to the Owner.

11. **Default.** The occurrence of any of the following shall be deemed a default hereunder:

(a) Failure or delay by Owner to perform any covenant or agreement of the Owner under these City Covenants; or

(b) Failure or delay by Owner to perform any other covenant or agreement of the City Lien Documents or any other lien recorded against the Residence.

12. **Notice of Default; Cure Periods.**

(a) Regardless of whether any notice is given, in the event of a failure or delay amounting to a default by the Owner in the performance of any term or provision of these City Covenants or any other City Lien Document, the Owner must immediately commence to cure, correct, or remedy such default and shall complete such cure, correction or remedy with reasonable diligence. In the event the Owner is unable or unwilling to implement the required cure, correction or remedy, the First Mortgage Lender and Senior Lenders shall have the right to cure, correct, or remedy any such default of the Owner, provided the First Mortgage Lender and Senior Lenders give notice to the City of its intention to cure, correct, or remedy the default within thirty (30) days after receipt of notice thereof. The City shall not exercise the Purchase Option, commence foreclosure proceedings or accept a deed

in lieu of foreclosure until it has given the First Mortgage Lender and Senior Lenders at least thirty (30) days' prior notice of the default in accordance with this Section 12.

(b) In the event of a non-monetary default by the Owner, the City shall give, or cause to be given, notice of default to the Owner, the First Mortgage Lender and the Senior Lenders, specifying: (1) the default complained of by the City; (2) the action required to cure such default; (3) a date by which such default is to be cured; (4) that failure to cure such default on or before the date specified in the notice may result in the exercise by the City of the Purchase Option pursuant to these City Covenants and such other remedies available to the City under the City Lien Documents or as provided by law; and (5) that Owner has the right to seek reinstatement and the right to bring a court action to assert the nonexistence of default or any other defense of the Owner to acceleration and sale. If the non-monetary default is reasonably capable of being cured within thirty (30) days, the City may grant the Owner, the First Mortgage Lender or the Senior Lenders such period after receipt of the notice to effect a cure. If such default is not reasonably capable of being cured within thirty (30) days, and the Owner, the First Mortgage Lenders or the Senior Lenders (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, the City may grant the Owner, the First Mortgage Lenders or the Senior Lenders such additional time as is reasonably necessary to cure the default.

(c) In the event of a monetary default, the Owner shall receive notice, and shall be accorded the appropriate period of time to effect a cure, in the manner and under the terms and conditions applicable to such default as provided under the City Lien Documents.

(d) Notwithstanding the cure periods established in this Section 12, in no event shall the City be precluded from sooner exercising any remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default or delinquency is given.

(e) Any omission or delay by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

13. **Notices.** Except as otherwise expressly provided in these City Covenants, in every case when, under the provisions of these City Covenants, it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served: (i) personally; or (ii) by independent, reputable, overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested; or (iv) by facsimile machine, with transmission and receipt confirmed, addressed as follows:

To Owner: _____
_____
_____
_____

To First Mortgage Lender: _____
_____
_____
_____

To Senior Lenders: _____
_____
_____
_____

To City The City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
Fax: (408) 249-7846
(Or such other address as may be provided by the City)

Any notice that is transmitted by electronic facsimile transmission during regular business hours of regular business days followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission by facsimile; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

14. **Binding on Successors and Assigns.** Notwithstanding any other provision of law, these City Covenants shall run with the land and shall be enforceable against the Owner and its successors in interest by the City. The requirements of these City Covenants shall remain in effect with respect to the Residence until the first to occur of the following:

(a) The end of twenty (20) years from the date hereof;

(b) The exercise by the City of the Purchase Option granted herein;

(c) A Transfer of the Residence and payment to the City of the full amount due on the City Note (including principal and the equity share or accrued interest);

(d) The acquisition of title to the Residence, by the First Mortgage Lender, a Senior Lender or other party, upon foreclosure of the First Mortgage Deed of Trust or a Senior Loan Deed of Trust;

(e) The acquisition of title to the Residence by the First Mortgage Lender or a Senior Lender or other party by a deed in lieu of foreclosure of the First Mortgage Deed of Trust or Senior Loan Deed of Trust, as applicable.

15. **Superiority of City Covenants/Subordination.** Upon close of escrow for the purchase of this Residence and the valid recordation of these Covenants, these Covenants shall supersede and replace the AHA, any other prior document restricting the unit, and all restrictions in such document are void and of no further effect.

The Owner covenants that he or she has not, and will not, execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that, in any event, these City Covenants is controlling as to the rights and obligations between and among the Owner, the City and their respective successors.

Notwithstanding anything to the contrary contained herein, these City Covenants shall, at all times, be subordinate to the First Mortgage Loan Documents and the Senior Loan Deeds of Trust.

16. **Right To Consent To Changes, Enforce.** No changes shall be made to these City Covenants without the prior written consent of the City. Only the City, the First Mortgage Lender, a Senior Lender, the Owner and their respective successors and assigns in and to the Residence shall have the right to consent and agree to changes in, or to eliminate in whole or in part, these City Covenants or to subject the Residence to additional covenants, easements, or other restrictions without the consent of any tenant, lessee, easement holder, licensee, trustee, beneficiary under a deed of trust (other than those securing the First Mortgage Loan, a Senior Loan or the City Lien) or any other person or entity having an interest less than a fee in the Residence. These City Covenants, without regard to technical classification or designation, shall not benefit or be enforceable by any person, or firm, or corporation, public or private, except the City of Santa Clara and the Owner and their respective successors and assigns.

17. **Invalid Provisions.** If any one or more of the provisions contained in these City Covenants shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in these City Covenants, and these City Covenants shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

18. **Controlling Law; Venue.** The terms of these City Covenants shall be interpreted under the laws of the State of California. Any lawsuit brought to enforce these covenants shall be brought in the Superior Court for this County of Santa Clara, and/or the federal district courts Northern District of California, San Jose.

19. **Exhibits.** Any exhibits referred to in these City Covenants are incorporated in these City Covenants by such reference. Owner agrees that he or she has had adequate opportunity to discuss these covenants with a representative of their choosing, and fully understand and accept all obligations assumed by execution of this Agreement.

[Signatures on following pages]

IN WITNESS WHEREOF, the Owner has executed these City Covenants as of the date first written above.

THE CITY OF SANTA CLARA, CA
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

JULIO J. FUENTES
City Manager

ATTEST:

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Facsimile: (408) 241-6771

ROD DIRIDON, JR.
City Clerk

"City"

By:_____
Name:_____

By:_____
Name:_____

"Owner"

EXHIBIT A

RESIDENCE DESCRIPTION

[To be added.]

State of California)
)
County of Santa Clara)

On _____, 20___, before me, _____,
a Notary Public, personally appeared _____,
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 _____ (SEAL)

State of California)
)
County of Santa Clara)

On _____, 20___, before me, _____,
a Notary Public, personally appeared _____,
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 _____ (SEAL)

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
1460 MONROE, LLC

EXHIBIT B
Form of City Promissory Note

[Behind this page]

NOTICE TO BORROWER:
This document contains provisions restricting resales and assumptions.

BELOW MARKET PURCHASE PROGRAM
PROMISSORY NOTE
Secured by City Subordinate Deed of Trust

Note Amount: $ Santa Clara, California
Loan Date: _____, 20__

FOR VALUE RECEIVED, the undersigned ("Borrower") promises to pay to the CITY OF SANTA CLARA ("City") at such place as the City may designate from time to time in writing, the principal sum of $_____. All sums hereunder shall be payable in lawful money of the United States of America.

1. **Definitions**. The terms set forth in this section shall have the following meanings in this Note.

"Affordable Housing Cost" shall mean a Monthly Housing Cost not exceeding one-twelfth (1/12) of thirty-five percent (35%) of one hundred percent (100%) of Median Income, adjusted for household size appropriate for the size of the Residence, but in no event less than one-twelfth (1/12) of twenty-eight percent (28%) of the Borrower's actual gross income.

"Affordable Sales Price" shall mean a below-market sales price for a Residence, as determined by the City as of the date of the City Covenant.

"Appreciation Amount" shall mean the difference between the Initial Market Value and the Unrestricted Resale Price (less Borrower's "capital improvements" as this term is defined in the City Covenants and approved by the City).

"City Covenants" shall mean those certain Covenants, Restrictions and Option to Purchase entered into by and between the Borrower and the City, as amended, modified or supplemented from time to time.

"City Lien" shall mean that certain secondary mortgage lien, made to the Borrower by the City and evidenced by this Note.

"City Lien Documents" shall collectively mean this City Note, the City Covenants and the City Deed of Trust.

"City Note" or "Note" shall mean this promissory note from the Borrower to the City evidencing the City Lien to the Borrower, as amended, modified or supplemented from time to time.

"City Subordinate Deed of Trust" shall mean the deed of trust against the Residence executed by the Borrower in favor of the City, securing the City Note, as amended, modified or supplemented from time to time.

"CalHFA" shall mean the California Housing Finance Agency.

"Eligible Household" shall mean a Moderate Income Household which: (i) is defined as a first-time homebuyer in the City Covenants; (ii) intends to owner-occupy the Residence; and, (iii) meets the Program's household income and liquid assets requirements.

"Initial Market Value" shall mean the fair market value of the Residence, as determined by the City as of the date of the City Covenants.

"Moderate Income Household" shall be a household with a gross income which does not exceed one hundred and ten percent (110%) of the Median Income, adjusted for household size.

"Notice of Intended Transfer" shall mean the notice required under Section 4 of the City Covenants that shall specify all the terms of the intended Transfer.

"Program" shall mean the City's Below Market Purchase Program.

"Resale Restriction Period" shall mean five years from the date of the City Covenants.

"Restricted Resale Price" shall mean that price determined by the City in accordance with the provisions in the City Covenants.

"Residence" shall mean the housing unit commonly known as _____, together with the land thereon and any subparts thereof, and more particularly described in Exhibit A attached to the City Subordinate Deed of Trust that secures this Note.

"Senior Lender" or "Senior Lenders" shall mean any of the following entities and their successors and assigns, which is the beneficiary of a recorded security instrument used to secure financing for the purchase of the Residence: (i) the First Mortgage Lender, (ii) CalHFA; (iii) the City of Santa Clara; or (iv) a lender under a CalHFA first mortgage program.

"Senior Loan" or "Senior Loans" shall refer to loans made by Senior Lenders to the Borrower.

"Senior Loan Deeds of Trust" shall refer to the deeds of trust securing each Senior Loan, which documents shall at all times be senior to the City Lien Documents.

"Term" shall mean the twenty (20) year period commencing upon the date of this Note.

"Transfer" shall mean any sale, assignment, transfer, or encumbrance voluntary or involuntary, in part or in full, of any interest in the Residence, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Residence is transferred and

Borrower retains title; provided, however, that Transfer shall not include transfers by gift, devise or inheritance to an existing spouse, surviving joint tenant, or transfers to a spouse in the course of a dissolution proceeding or in connection with marriage, or transfers by devise or inheritance to children, or a transfer into an inter vivos trust of which the Borrower is the sole beneficiary.

"Unrestricted Resale Price" shall mean the actual unrestricted price of the Residence that the Owner transfers between the expiration of the Resale Restriction Period and the twentieth (20th) anniversary of this Note.

2. **City Lien.** This Note is made and delivered pursuant to, and in implementation of, the City's Below Market Purchase Program, under which the City, in order to assist Borrower to purchase the Residence, is making the City Lien to Borrower in the amount set forth above. The amount of the City Lien consists of the difference between the Initial Market Value and the Affordable Sales Price for the Residence, as determined by the City as of the date of the City Covenants. Concurrently with the execution of this City Note, Borrower is executing the following instruments in connection with the purchase of the Residence:

   (a) The City Subordinate Deed of Trust that secures this Note; and
   (b) The City Covenants, recorded concurrently with the City Subordinate Deed of Trust.

3. **Loan Security.** This Note is secured by the City Subordinate Deed of Trust of even date herewith. Borrower shall purchase an ALTA lender's policy of title insurance, insuring such City Subordinate Deed of Trust as a secondary lien on the Residence, with no delinquent taxes or assessment liens that appear as exceptions to title.

4. **Repayment.**

   (a) Notwithstanding any other provision of this Note, the entire outstanding principal balance of this Note and the amount set forth in subsection (b) below, shall be due and payable upon the first to occur of the following:

      (i) a default by Borrower under the City Lien Documents;

      (ii) a Transfer that occurs after the expiration of the Resale Restriction Period and before the expiration date of this Note, except as otherwise provided herein;

      (iii) payment in full of the First Mortgage Loan;

      (iv) Borrower refinances all, or any part of, the First Mortgage Loan; provided, however, that the entire outstanding principal balance of this Note shall not be due and payable upon such a refinance if the amount refinanced does not exceed the outstanding balance of the First Mortgage Loan plus closing costs; or

      (v) twenty (20) years from the date of this Note.

(b) In addition to paying the entire outstanding principal balance of the Note, Borrower shall pay the City the lesser of either (i) simple interest at the rate of seven percent (7%) on the principal amount of the City Lien commencing from the date of this Note to the date all amounts due under this Note have been repaid in full, or (ii) an equity share, defined as the City's proportionate share of the Appreciation Amount decreased at the rate of five percent (5%) per year commencing from the date of this Note until the maturity date of this Note. See Equity Share/Interest Payment Example attached hereto as **Attachment A.**

c) After payment of the outstanding balance of the Note and any interest or equity share, the City shall then remove or cause to be removed the City Covenants as a lien on the Residence and the City Covenants shall cease to be covenants running with the land for the Residence.

5. **Repayment Deferral/Forgiveness.** Except as provided under Section 4 above, the Borrower is not obligated to repay this Note during the Resale Restriction Period if the Residence is transferred at a Restricted Resale Price pursuant to and in accordance with the City Covenants.

6. **Exception**. The City may, at its sole and absolute discretion, permit exceptions on a case-to-case basis to the accelerated repayment provisions under paragraph (a) of the preceding Section 4 of this Note.

7. **Prepayments.** Borrower may prepay all or part of the principal balance due under this Note. If prepayment occurs after the expiration of the Resale Restriction Period and prior to transfer of the Residence, Borrower shall also pay either interest or an equity share as specified in Section 4 (b). The City shall use Fair Market Value, as defined in the City Covenants in determining the Appreciation Amount. The City Covenants shall continue to remain in full force and effect until the 20th anniversary of this Note. Borrower shall not prepay the First Mortgage Loan unless this Note is paid in full.

8. **Application of Payments.** Any payments made pursuant to the terms of this Note shall be applied first to sums, other than principal, that are due to the City pursuant to this Note, and the balance, if any, to the payment of principal.

9. **Indemnification.** Without prejudice to the rights of the City hereunder or under any other City Lien Documents, Borrower shall indemnify defend and hold harmless the City against, and shall pay the City on demand, any expense or loss which City may sustain or incur as a result of the failure by Borrower to pay when due any installment of principal, interest, fees, or other amounts payable to the City under this Note or any other City Lien Documents.

10. **Restrictions on Transfer Proceeds.** Except as otherwise provided by the requirements of any Fannie Mae or CalHFA rules or guidelines applicable to the First Mortgage Loan, or by this Note, proceeds from any Transfer, after paying any and all superior liens against the Residence and costs and fees relating to the transaction, if any (such as escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs), shall be applied in the following order of priority: (i) accrued interest or shared equity under this Note; (ii) the

outstanding balance under this Note; and (iii) any excess proceeds shall belong to the Borrower.

11. **Junior Liens.** Borrower shall not encumber the Residence for the purpose of securing financing and excluding the Senior Loan, whether senior in priority or subordinated to the City Deed of Trust without the prior written approval of the City. Notwithstanding any other provision of this Note, the following shall apply in the case of junior liens:

(a) Borrower shall give written notice to the City at least 30 days prior to recording any junior lien against the Residence to secure any loan of funds, including documentation of the proposed use of the proceeds of such loan.

(b) Borrower shall give written notice to City of any notice of default under any junior lien.

(c) Failure to give any notice required under this Section 11 and any uncured default under the terms of the junior lien shall be a default under this Note.

12. **Default.** The occurrence of any of the following shall be deemed a default hereunder:

(a) Failure by Borrower to make timely payments as required under this Note; or

(b) Failure or delay in the performance, or any other violation by Borrower of any other covenant or agreement of Borrower under this Note; or

(c) Failure or delay by Borrower to perform any covenant or agreement of Borrower in the City Deed of Trust, the City Covenants or any other lien recorded against the Residence.

13. **Notice of Default; Cure Periods.**

(a) Regardless of whether any notice is given, in the event of a failure or delay that constitutes a default by the Borrower in the performance of any term or provision of this Note or any other City Lien Document, the Borrower must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence. In the event the Borrower is unable or unwilling to enter into a forbearance agreement or otherwise implement the required cure, correction or remedy, the Senior Lenders shall have the right to cure, correct, or remedy any such default of the Borrower provided the Senior Lenders give notice to the City of its intention to cure, correct, or remedy the default within thirty (30) days after receipt of notice thereof. The City shall not commence foreclosure proceedings or accept a deed in lieu of foreclosure until it has given the Senior Lenders at least thirty (30) days' prior written notice of the default in accordance with this Section 13.

(b) In the event of a non-monetary default by the Borrower, the City shall give, or cause to be given, written notice of default to the Borrower, the Senior Lenders, specifying: (1) the default complained of by the City; (2) the action required to cure such default; (3) a date by which such default is to be cured; and (4) that failure to cure such default on or

before the date specified in the notice may result in acceleration of the sums owing under this Note, the sale of the Residence or the exercise of such other remedies available to the City under the City Lien Documents or as provided by law; (5) that Borrower has the right to seek reinstatement after acceleration and the right to bring a court action to assert the nonexistence of default or any other defense of Borrower to such acceleration and sale. If the non-monetary default is reasonably capable of being cured within thirty (30) days, the City may grant the Borrower, the Senior Lenders such period after receipt of the notice to effect a cure. If such default is not reasonably capable of being cured within thirty (30) days, and the Borrower, the Senior Lender (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, the City may grant the Borrower, the Senior Lender such additional time as is reasonably necessary to cure the default.

(c) In the event of a monetary default by the Borrower under the terms of this Note or the City Deed of Trust, the procedures and time periods established in Section 13 (a) above shall govern.

(d) Notwithstanding the cure periods established in this Section 13, in no event shall the City be precluded from sooner exercising any remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or if the default is not cured within ninety (90) days after the first notice of default or delinquency is given.

(e) Any omission or delay by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

14. **Borrower's Waivers.** Borrower waives any right to require the City:

(a) To demand payment of amounts due (known as "presentment");

(b) To give notice that amounts due have not been paid (known as "notice of dishonor")

(c) To obtain an official certification of nonpayment (known as "protest").

15. **Remedies.** Upon the occurrence of a default, the giving of notice and the expiration of the applicable cure period, the City may, at its option: (a) Declare all of the sums owing hereunder and secured by the City Deed of Trust to be immediately due and payable without further demand, and invoke the power of sale and any other remedies permitted by California law; (b) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Residence and take possession thereof (or any part thereof), in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Residence, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Residence shall not cure or waive any breach hereunder or invalidate any act done in response

to such breach and, notwithstanding its continuance in possession of the Residence, the City shall be entitled to exercise every right provided for in this Note and the City Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale; (c) commence an action to foreclose the City Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; (d) deliver to one or more of the Trustees named in the City Deed of Trust, the trustee named in the deed of trust securing the Senior Loan, or any of them, a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found in California Civil Code Sections 2924, *et seq.*, as amended from time to time, which notice such trustee shall cause to be duly filed for record; (e) exercise its option to purchase pursuant to the City Covenants; or (f) exercise all other rights and remedies provided herein, in the instruments by which the Borrower acquires title to Residence, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law. No delay or omission on the part of the City in exercising any right under this City Note or the City Deed of Trust shall operate as a waiver of such right.

16. **City Assignment.** City may, at its option, assign its right to receive payment under this Note without obtaining the consent of the Borrower. City shall provide written notice of any such assignment to the Senior Lenders.

17. **Attorney Fees and Costs.**

    (a) Borrower agrees to pay the following costs, expenses, and attorneys' fees paid or incurred by City, or adjudged by a court: (i) reasonable costs of collection, costs, and expenses, and attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suite is filed; and (ii) costs of suit and such sum as the court may adjudge as attorneys' fees in any action to enforce payment of this Note or any part of it.

    (b) In addition to the foregoing award of attorneys' fees, City shall be entitled to its attorneys' fees incurred in any post judgment proceedings to enforce any judgment in connection with this Note. This provision is separate and several and shall survive the merger of this provision into any judgment.

18. **Amendments.** This Note may not be modified or amended except by an instrument in writing expressing such intention executed by the parties sought to be bound thereby, which writing must be so firmly attached to this Note so as to become a permanent part thereof.

19. **Severability.** The covenants of this Note are severable. Invalidation of any covenant or any part thereof by law, judgment, or court order shall not affect any other covenant.

20. **Notices.** Except as otherwise expressly provided in this Note, in every case when, under the provisions of this Note, it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served: (i) personally; or (ii) by independent, reputable, overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested; or (iv) by facsimile machine, with transmission and receipt confirmed, addressed as follows:

To Borrower: _____
_____
_____
_____

To Senior Lender: _____
_____
_____
_____

_____
_____
_____
_____

To City: The City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
Fax: (408) 248-3381
(Or such other address as may be provided by the City)

Any notice that is transmitted by electronic facsimile transmission during regular business hours of regular business days followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission by facsimile; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

21. **Non-Waiver.** Failure or delay in giving any notice required hereunder shall not constitute a waiver of any default or late payment, nor shall it change the time for any default or payment.

22. **Successors Bound.** This Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.

23. **Joint and Several Obligations.** This Note is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

[Signature on following page]

BORROWER

By: _____
Printed Name: _____

By: _____
Printed Name: _____

Address: _____

_____

Attachment A

Equity Share and 7% Simple Interest Illustration
The seller will pay the lesser of the City's Equity Share of the Appreciation Amount or 7% simple interest based on a 20-Year Promissory Note

Example:

Initial Market Value of the Unit	$500,000
Less Affordable Sales Price at time of initial sale	$385,000
equals Principal amount of City Note	$115,000

Equity Share Calculation of the Appreciation Amount (Equity Subject to Sharing):

	Year Resale Occurs		
	6	**10**	**15**
Assumed Unrestricted Resale Price	$600,000	$675,000	$750,000
Less capital improvements approved by City	5,000	7,500	10,000
Net Unrestricted Resale Price	595,000	667,500	740,000
Less Initial Market Value	500,000	500,000	500,000
Appreciation Amount	$ 95,000	$167,500	$240,000
City's Equity Share			
(20-6)/20 times the Appreciation Amount	($66,500)		
(20-10)/20 times the Appreciation Amount		($83,750)	
(20-15)/20 times the Appreciation Amount			($60,000)
Seller's Equity (Appreciation Amount less City's Share)	*$28,500*	*$83,750*	*$180,000*
(Seller gets 5%/yr increase in shared Appreciation Amount)			

OR

7% Simple Interest Illustration:

Appreciation Amount	$95,000	$167,500	$240,000
7% simple interest ($115,000 principal)	($48,300)	($80,500)	($120,750)
Seller's Equity (Appreciation Amount less City's Interest)	*$46,700*	*$87,000*	*$119,250*
Principal amount of City Note	$115,000	$115,000	$115,000

Borrower must pay principal amount of the City Note in addition to either the City's share of the Appreciation Amount or the 7% simple interest amount.

It is assumed that no further encumbering of the property has occurred since the initial sale. Further encumbering of the unit is prohibited without the written permission of the City. The City offers no assurances or guarantee whatsoever that the property will increase in value to any extent or that it will not decrease in value. This illustration is solely created to serve as an illustration of calculated equity share or interest that may be owed.

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
1460 MONROE, LLC

EXHIBIT C
Form of City Subordinate Deed of Trust

[Behind this page]

COMPLIMENTARY RECORDING
REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 27383

Recording Requested By and
When Recorded Mail To:
The City of Santa Clara
City Hall, 1500 Warburton Avenue
Santa Clara, California 95050
Attention: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

THIS DEED OF TRUST CONTAINS
PROVISIONS RESTRICTING ASSUMPTIONS

BELOW MARKET PURCHASE PROGRAM
DEED OF TRUST AND SECURITY AGREEMENT
(CITY SUBORDINATE DEED OF TRUST)

THIS DEED OF TRUST AND SECURITY AGREEMENT ("Deed of Trust") is made this ___ day of _____, 20__, among the trustor, BORROWER"S NAME ("Borrower") and TITLE COMPANY NAME, a Title Company ("Trustee"), and the CITY OF SANTA CLARA as Beneficiary (the "City").

The Borrower, in consideration of the promises herein recited and the trust herein created, irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with power of sale, the property located in the City of Santa Clara, State of California, described in the attached Exhibit "A" and more commonly known as: PROPERTY ADDRESS, Santa Clara, California (the "Property").

TOGETHER with all the improvements now or hereafter erected on the Property, and all easements, rights, appurtenances, and all fixtures now or hereafter attached to the Property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by this Deed of Trust; and

TOGETHER with all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected, or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all

renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner; and all of the foregoing, together with the Property, is herein collectively referred to as the "Security";

TO HAVE AND TO HOLD the Security, together with acquittances, to the Trustee, its successors and assigns forever;

TO SECURE to the City the performance of the covenants and agreements of Borrower contained in that certain Covenants, Restrictions and Option to Purchase executed by and between the Owner and the City and incorporated herein by this reference (the "City Covenants");

TO SECURE to the City the repayment of all sums evidenced by that certain promissory note to the City executed by Borrower, on or about the date hereof, in the principal amount of _____ Dollars ($_____.00) and incorporated herein by this reference ("City Note"), with interest or equity share as provided in the City Note; and

TO SECURE the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained.

BORROWER AND CITY COVENANT AND AGREE AS FOLLOWS:

1. **Borrower's Estate.** Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Security and other than this Deed of Trust, the Security is encumbered only by: (1) that deed of trust executed by Borrower in connection with a loan made to Borrower by _____, a _____, (the "First Mortgage Lender"), securing a promissory note executed by Borrower in favor of the First Mortgage Lender (the "First Mortgage Note") to assist in the purchase of the Property; (2) the Senior Loan Deeds of Trust (hereinafter defined); (3) the City Note; and (4) the City Covenants. Borrower agrees to warrant and defend generally the title to the Security against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring the City's interest in the Security. (As used in this Deed of Trust, the term "First Mortgage Lender" shall include all successors and assigns of the First Mortgage Lender.) For purposes of this Deed of Trust, "Senior Deeds of Trust" shall refer to the recordable instruments securing acquisition loans for the Security made for the benefit of the following entities, their successors and assigns: (i) First Mortgage Lender, (ii) California Housing Finance Agency; (iii) the City of Santa Clara; or (iv) a lender under a California Housing Finance Agency first mortgage program (collectively, the "Senior Lenders").

2. **Repayment of Debt.** Borrower will promptly repay, when due, the accrued interest or shared appreciation, plus principal required by the City Note.

3. **City Covenants.** Borrower will observe and perform all of the covenants and agreements of the City Covenants.

4. **Charges; Liens.** Borrower will pay all taxes, assessments and other charges, fines and impositions attributable to the Security which may attain a priority over this Deed of Trust, by Borrower making any payment, when due, directly to the payee thereof. Upon request by the City, Borrower will promptly furnish to the City all notices of amounts due under this paragraph. In the event Borrower makes payment directly, Borrower will promptly discharge any lien which has priority over this Deed of Trust; provided, that Borrower will not be required to discharge the lien of the Deed of Trust securing the First Mortgage Note (the "First Mortgage Lender Deed of Trust") or any other lien described in this paragraph so long as Borrower will agree in writing to the payment of the obligation secured by such lien in a manner acceptable to the City, or will, in good faith, contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Security or any part thereof.

5. **Hazard Insurance.** Borrower will keep the Security insured by a standard fire and extended coverage insurance policy in at least such amounts and for such periods as the City may require, which amounts shall be the lesser of (1) the sum of the loan amounts under the City Note and the First Mortgage Note, or (2) the replacement cost of the Security, but in no event less than (3) the amount necessary to prevent Borrower from becoming a co-insurer under the terms of the policy.

The insurance carrier providing this insurance shall be licensed to do business in the State of California and be chosen by Borrower subject to approval by the City; provided that such approval will not be withheld if the insurer is also approved by the Senior Lenders, the Federal Home Loan Mortgage Company, Fannie Mae, California Housing Finance Agency, or successors thereto.

All insurance policies and renewals thereof will be in a form acceptable to the City and will include a standard mortgagee clause with standard lender's endorsement in favor of the holder of the First Mortgage Note and the City as their interests may appear and in a form acceptable to the City. The City shall have the right to hold, or cause its designated agent to hold, the policies and renewals thereof, and Borrower shall promptly furnish to the City, or its designated agent, the original insurance policies or certificates of insurance, all renewal notices and all receipts of paid premiums. In the event of loss, Borrower will give prompt notice to the insurance carrier and the City or its designated agent. The City, or its designated agent, may make proof of loss if not made promptly by Borrower. The City shall receive thirty (30) days' advance notice of cancellation of any insurance policies required under this section.

Unless the City and Borrower otherwise agree in writing, insurance proceeds, subject to the rights of the First Mortgage Lender, will be applied to restoration or repair of the Security damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds will be used to repay the City Note secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Security is abandoned by Borrower, or if Borrower fails to respond to the City, or its designated agent, within thirty (30) days from the date notice is mailed by either of them to Borrower that the insurance carrier offers to settle a claim for insurance benefits, the City, or its designated agent, is authorized to collect and apply the insurance proceeds at the City's option either to restoration or repair of the Security or to repay the City Note.

If the Security is acquired by the City, all right, title and interest of Borrower in and to any insurance policy and in and to the proceeds thereof resulting from damage to the Security prior to the sale or acquisition will pass to the City to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition subject to the rights of the First Mortgage Lender.

6. **Preservation and Maintenance of Security.** Borrower will keep the Security in good repair and will not commit waste or permit impairment or deterioration of the Security.

7. **Protection of the City's Security.** If Borrower fails to perform the covenants and agreements contained in this Deed of Trust or if any action or proceeding is commenced which materially affects the City's interest in the Security, including, but not limited to, default under the deed of trust securing the First Mortgage Note, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving bankruptcy or a decedent, then the City, at the City's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as it determines necessary to protect the City's interest, including but not limited to, disbursement of reasonable attorneys' fees and entry upon the Security to make repairs.

Any amounts provided pursuant to this paragraph, with interest thereon, will become an indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and City agree to other terms of payment, such amount will be payable upon notice from the City to Borrower requesting payment thereof, and will bear interest from the date of disbursement at the highest interest rate permissible under applicable law. Nothing contained in this paragraph will require the City to insure any expense or take any action hereunder.

8. **Inspection.** The City may make, or cause to be made, reasonable entries upon and inspections of the Security; provided that the City will give Borrower reasonable notice of inspection.

9. **Forbearance by the City Not a Waiver.** Any forbearance by the City in exercising any right or remedy will not be a waiver of the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by the City will not be a waiver of the City's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

10. **Remedies Cumulative.** All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or any other document, or afforded by law or equity, and may be exercised concurrently, independently or successively.

11. **Successors and Assigns Bound.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the City and Borrower subject to the provisions of this Deed of Trust.

12. **Joint and Several Liability.** All covenants and agreements of Borrower shall be joint and several.

13. **Notice.** In every case under the provisions of this Deed of Trust when it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served: (i) personally; or (ii) by independent, reputable, overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested; or (iv) by facsimile machine, with transmission and receipt confirmed, addressed as follows:

To Owner: _____
_____
_____

To First Mortgage Lender: _____
_____
_____
_____
_____

To Senior Lenders: _____

_____
_____
_____
_____

To City: The City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
Fax: (408) 248-3381
(Or such other address as may be provided by the City)

Any notice that is transmitted by electronic facsimile transmission during regular business hours of regular business days followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission by facsimile; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

14. **Governing Law.** This Deed of Trust shall be governed by the laws of the State of California.

15. **Severability.** In the event that any provision or clause of this Deed of Trust or the City Note conflicts with applicable law, such conflict will not affect other provisions of this Deed of Trust or the City Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and the City Note are declared to be severable.

16. **Captions.** The captions and headings in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

17. **Default.** The occurrence of any of the following shall be deemed a Default hereunder:

(a) Failure or delay by Borrower to make any payments provided for in the City Note or herein; or

(b) Failure or delay by Borrower to perform any covenant or agreement of Borrower in the City Covenants; or

(c) Failure or delay by Borrower to perform any other covenant or agreement of Borrower in this Deed of Trust or the City Note.

18. **Notice of Default.**

(a) Regardless of whether any notice is given, in the event of a failure or delay that constitutes a default by the Borrower in the performance of any term or provision of this Deed of Trust, the Borrower must immediately commence to cure, correct, or remedy such default and shall complete such cure, correction or remedy with reasonable diligence.

(b) In the event of a non-monetary default by the Borrower, the City shall give, or cause to be given, notice of default to the Borrower, the First Mortgage Lender and the Senior Lenders, specifying: (1) the default complained of by the City; (2) the action required to cure such default; (3) a date by which such default is to be cured; (4) that failure to cure such default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust, sale of the Security or the exercise of such other remedies available to the City under this Deed of Trust or as provided by law; and (5) that Borrower has the right to seek reinstatement and the right to bring a court action to assert the nonexistence of default or any other defense of the Borrower to acceleration and sale. If the non-monetary default is reasonably capable of being cured within thirty (30) days, the City, in its sole and absolute discretion, may grant the Borrower, the First Mortgage Lender or the Senior Lender such period after receipt of the notice to effect a cure. If such default is not reasonably capable of being cured within thirty (30) days, and the Borrower or the First Mortgage Lender (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, the City, in its sole and absolute discretion, may grant the Borrower or the First Mortgage Lender such additional time as is reasonably necessary to cure the default.

(c) In the event of a monetary default by the Borrower, the notice provisions under Section 13 of the City Note shall govern, subject to any forbearance agreement that the City and Borrower may execute pursuant thereto.

(d) Notwithstanding the cure periods established in this Paragraph 18, in no event shall the City be precluded from sooner exercising any remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default or delinquency is given.

(e) Any omission or delay by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not

deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

19. **Acceleration; Remedies.** Upon the occurrence of a Default, the giving of notice thereof and the expiration of any applicable cure period, City may, at its option: (a) Declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by California law; (b) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding the continuance in possession of the Security, the City shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale; (c) commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; (d) deliver to one or more of the Trustees named in this Deed of Trust and the trustee named in the First Mortgage Deed of Trust, or any of them, a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found at California Civil Code Sections 2924, et seq., as amended from time to time, which notice such trustee shall cause to be duly filed for record; (e) exercise its option to purchase pursuant to the City Covenants; or (f) exercise all other rights and remedies provided herein, in the instruments by which the Borrower acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law. No delay or omission on the part of the City in exercising any right under the City Note, the City Covenants or this Deed of Trust shall operate as a waiver of such right. The City shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorneys' fees.

20. **Borrower's Right to Reinstate.** Notwithstanding the City's acceleration of the sums secured by this Deed of Trust, Borrower will have the right to have any proceedings begun by the City to enforce this Deed of Trust discontinued at any time prior to five (5) days before sale of the Security pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays City all sums which would be then due under this Deed of Trust and no acceleration under the City Note has occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by City and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing the City's and Trustee's remedies, including, but not limited to, reasonable

Attorneys' fees; and (d) Borrower takes such action as City may reasonably require to assure that the lien of this Deed of Trust, City's interest in the Security and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby will remain in full force and effect as if no acceleration had occurred.

21. **Due on Transfer of the Property or Repayment of the First Mortgage Loan.** Upon a Transfer (as defined in the City Note) of the Property or any interest in it or repayment in full of the amounts due under the First Mortgage Note, the City may, at its option, require immediate payment in full of all sums due and outstanding under the City Note and secured by this Deed of Trust. However, this option shall not be exercised by the City if applicable law as of the date of this Deed of Trust prohibits such exercise, or if the City has executed a separate written waiver of this option.

22. **Reconveyance.** Upon of satisfaction of all obligations secured by this Deed of Trust, the City will request Trustee to reconvey the Security and will surrender this Deed of Trust and the City Note to Trustee. Trustee will reconvey the Security without warranty and without charge to the person or persons legally entitled thereto. Such person or persons will pay all costs of recordation, if any.

23. **Substitute Trustee.** The City, at the City's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. The successor trustee will succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

24. **Subordination.** Notwithstanding any provision herein, this Deed of Trust shall not diminish or affect the rights of the First Mortgage Lender, and their successors and assigns, under the First Mortgage Deed of Trust or any subsequent First Mortgage deeds of trust or the Senior Lenders, and their successors and assigns, under the Senior Deeds of Trust or any subsequent Senior Lenders deeds of trust hereafter recorded against the Security. Further, this Deed of Trust, the City Covenants and the City Note are expressly subordinate to the First Mortgage Loan Documents and the Senior Loan Deeds of Trust.

Notwithstanding any provision in this Deed of Trust to the contrary, all of the provisions of this Deed of Trust shall terminate and have no further force and effect upon the occurrence of one of the following events:

(a) Title is acquired by First Mortgage Lender or another party upon foreclosure of the Senior Loan Deeds of Trust;

(b) Title is acquired by the First Mortgage Lender or another party by a deed in lieu of foreclosure of the Senior Loan Deeds of Trust.

25. **Request for Notice.** Borrower requests that copies of the notice of default and notice of sale be sent to Borrower at the address set forth in Section 13 above.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust as of the date first written above.

_____
Borrower

_____
Borrower

EXHIBIT A
Property Description

State of California)
)
County of Santa Clara)

On _____, 20___, before me, _____,
a Notary Public, personally appeared _____,
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 _____ (SEAL)

State of California)
)
County of Santa Clara)

On _____, 20___, before me, _____,
a Notary Public, personally appeared _____,
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 _____ (SEAL)

FULL RECONVEYANCE

THE CITY OF SANTA CLARA, the Beneficiary named in that Below Market Purchase Program Deed of Trust and Security Agreement (City Subordinate Deed of Trust) dated _____, 20__, in which _____ is named as Trustor and the undersigned _____Title Insurance Company, is named as Trustee [or appropriate language if successor trustee], and recorded on _____, as Instrument No. _____, in the Official Records, Santa Clara County, California, having declared that all obligations secured thereby have been discharged or performed and having requested the reconveyance thereof, _____Title Insurance Company, as said Trustee does hereby reconvey, without warranty, to the person or persons legally entitled thereto all right, title, interest and estate held by the undersigned as such Trustee, in and to the following real property described in the City Subordinate Deed of Trust:

[describe]

Dated: _____

[TRUSTEE]

By:_____

[ACKNOWLEDGMENT]

REQUEST FOR FULL RECONVEYANCE

A reconveyance will be issued only upon presentation to the _____Title Insurance Company, of this request properly signed and accompanied by the City Subordinate Deed of Trust, the original City Note secured by said City Subordinate Deed of Trust, and any receipt or document evidencing any other indebtedness secured thereby.

To _____, Trustee

The undersigned is the legal owner and holder of the Below Market Purchase Program Promissory Note ("City Note") for the total sum of $_____, and of all other indebtedness secured by City Subordinate Deed of Trust dated _____, 20__, made by _____, Trustor, to_____, Trustee, and recorded on _____, 20__, as Instrument No_____, in the Official Records in the Office of the County Recorder of Santa Clara County, California.

Said City Note, together with all other indebtedness and obligations secured by said City Subordinate Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, upon payment to you of any sums owing to you under the terms of said City Subordinate Deed of Trust, to cancel said City Note, above mentioned, and all other evidences of indebtedness secured by said City Second Deed of Trust delivered to you herewith, together with the said City Subordinate Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said City Subordinate Deed of Trust, all the estate now held by you and under the same.

Dated: _____, 20__

THE CITY OF SANTA CLARA

By:_____

Name:

Title:

Mail Reconveyance to:

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
1460 MONROE, LLC

EXHIBIT D
Form of Request for Notice

[Behind this page]

OFFICIAL BUSINESS.
Document entitled to free
recording per Government
Code Section 6103.

Recording Requested by and
When Recorded Mail to:
Housing and Community Services Division
CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, California 95050

SPACE ABOVE THIS LINE FOR RECORDER'S USE

REQUEST FOR NOTICE
Under Section 2924b Civil Code

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any NOTICE OF DEFAULT and a copy of any NOTICE OF SALE under the _____dated as of __/__/20__ and recorded as Instrument No. _____, in the Official Records of Santa Clara County on _____, 20____ executed by _____ and __ _____ as Borrowers, for the benefit of the City of Santa Clara and describing the following real property, located in Santa Clara County, California:

[See Exhibit A attached hereto and incorporated herein.]

be mailed to THE CITY OF SANTA CLARA at the following address:

1500 Warburton Avenue
Santa Clara, California 95050

NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

THE CITY OF SANTA CLARA,
a chartered California municipal corporation

By: _____
Julio J. Fuentes
City Manager

ATTEST:

By: _____
Rod Diridon, Jr.
City Clerk

APPROVED AS TO FORM:

City Attorney

By: _____
Richard E. Nosky, Jr.

State of California)
)
County of Santa Clara)

On _____, 20___, before me, _____
_____,a Notary Public, personally appeared
_____, personally known to me (or 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 _____ (SEAL)

Exhibit A

Legal Description

[TO BE ATTACHED]

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-6

Date: November 6, 2014

To: City Manager for Council Action

From: Acting Housing and Community Services Division Manager

Subject: Affordable Housing Agreement between the City and 2585 El Camino, LLC for the Provision of Six (6) Below Market Purchase (BMP) Homes within a 60-Unit Housing Project at 2585 El Camino Real

EXECUTIVE SUMMARY:

On August 27, 2013, Council approved a 60-unit condominium residential development proposal submitted by Silicon Sage Builders, for the property located at 2585 El Camino Real. The land is being developed by 2585 El Camino Real, LLC (Developer). As a condition of the land use approval, the Developer is required to enter into an Affordable Housing Agreement (AHA) to designate 10-percent of the total units (i.e. 6 BMP units) as Below Market Purchase (BMP) units to be sold to qualified first-time homebuyers at an affordable price. The housing units will be sold to households whose incomes do not exceed 110% of area median income. The Affordable Sales Price for each of the units ranges from $318,000 for a one-bedroom to $425,000 for a three-bedroom. A copy of the AHA can be viewed on the City's website or is available in the City Clerk's Office during normal business hours.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

According to the terms of the AHA, 2585 El Camino Real, LLC will sell six BMP units at an affordable sales price ranging from $318,000 to $425,000 per unit. Under the BMP Program, an advantage is given to the homeowner to realize equity appreciation in their home after 5 years of ownership. The City will be able to recapture the value of its inclusionary requirement (the monetary difference between the initial market value and the affordable sales price) at the time the BMP unit converts to market rate.

ECONOMIC/FISCAL IMPACT:

In accordance with the procedures of the BMP Program, the City will realize a recapture of the inclusionary value of the BMP units when resold in the future.

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RECOMMENDATION:

That the Council approve and authorize the City Manager, or his designee, to execute the Affordable Housing Agreement between the City and 2585 El Camino Real, LLC for the provision of six (6) Below Market Purchase (BMP) units within a 60-unit housing project at 2585 El Camino Real.

Kevin L. Riley
Director of Planning and Inspection

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report:

1) Affordable Housing Agreement between the City and 2585 El Camino Real, LLC

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AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
2585 EL CAMINO REAL, LLC

PREAMBLE

This Affordable Housing Agreement (the "Agreement") is entered into on this _____ day of _____, 2014__, (the "Effective Date") between 2585 El Camino Real, LLC, a California limited liability company with its principal place of business located at 3255-2 Scott Boulevard, Santa Clara, CA 95054 (the "Developer"), and the City of Santa Clara, a chartered municipal organization, with its primary business address located at 1500 Warburton Avenue, Santa Clara, CA 95050 (the "City"). City and Developer may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

A. The purpose of this Agreement is to increase, improve and preserve the supply of moderate income housing in the City by ensuring the Developer's construction and sale of housing affordably priced for moderate-income households.

B. Developer owns certain real property (the "Property") located within the jurisdiction of the City, which is described in Attachment A attached hereto and incorporated herein.

C. Developer intends to construct Sixty (60) condominium housing units ("Units"), on the Property pursuant to the August 27, 2013 City Council land use approvals ("Project").

D. As a condition of Project entitlement by the City, and to satisfy the City's Inclusionary Housing Policy, the Developer is required to designate the six (**6**) condominium housing units, as shown on Attachment B attached hereto and incorporated herein, to be marketed and made available for sale exclusively to Moderate Income Household(s) for a Below Market Price (the "Below Market Price Units" or "BMP Units").

E. The BMP Unit will be sold at a price not to exceed the amount established by the City ("Affordable Sales Price").

F. "Developer," for purposes of this Agreement, includes Developer and any assignee or successor in interest.

The Parties therefore agree as follows:

AGREEMENT PROVISIONS

1. DEVELOPER OBLIGATIONS. As provided in this Agreement, in compliance with the Project conditions of approval and subject to the approval of the City, the Developer hereby designate SIX **(6)** of the condominium units to be completed on the Property as BMP Units. Developer agrees to complete the BMP Units in the initial construction phases of residential units at the Project. Such BMP Units shall be those units designated as such on Attachment B, and shall meet the following criteria:

a. The BMP Units shall have all the standard amenities available to market rate units, including equivalent parking facilities and shall be 1,2, and 3 bedrooms condominium units each with 1 and 2 baths and ranging from 950 square feet to 1496 square feet in total size (excluding garage), as specified below. The BMP units shall be offered for sale at the following Affordable Sales Prices:

i. Unit 1, 1 Bedroom/1 Bath Plan A	**$318,000**
ii. Unit 2, 2 Bedroom/2 Bath Plan B4	**$371,000**
iii. Unit 3, 2 Bedroom/2 Bath Plan B4	**$371,000**
iv. Unit 4, 2 Bedroom/2 Bath Plan B6	**$371,000**
v. Unit 5, 3 Bedroom/2 Bath Plan C1	**$425,000**
vi. Unit 6, 3 Bedroom/2 Bath Plan C2	**$425,000**

b. The Affordable Housing Units shall be sold exclusively to and for occupancy by persons and families whose affordable housing cost is not less than 28 percent of the gross income of the household, nor which exceeds the product of 35 percent times 110 percent of area median income adjusted for family size, as established in California Health and Safety Code Section 50052.5(b)(4) and Title 25, California Code of Regulations Section 6910 et. Seq., as may be amended from time-to-time.

c. The Affordable Sales Price of each unit shall be equal to:

i. Unit 1, 1 Bedroom/1 Bath Plan A	**$318,000**
ii. Unit 2, 2 Bedroom/2 Bath Plan B4	**$371,000**
iii. Unit 3, 2 Bedroom/2 Bath Plan B4	**$371,000**
iv. Unit 4, 2 Bedroom/2 Bath Plan B6	**$371,000**
v. Unit 5, 3 Bedroom/2 Bath Plan C1	**$425,000**
vi. Unit 6, 3 Bedroom/2 Bath Plan C2	**$425,000**

d. The Affordable Housing Units shall be marketed and made available for sale by the City or its designee to Moderate Income Households at the Designated Sales Price. The City reserves the right to use consultants as necessary to qualify eligible buyers and to market the Affordable Housing Units. Developer agrees not to engage in direct marketing of the Affordable Housing Units without prior approval of the City.

e. Developer agrees to abide by the City's Below Market Purchase Program Policies and Procedures Guidelines (the "BMP Program Policies & Procedures"), as may be amended from time to time. A true and correct copy of the current BMP Program Policies & Procedures is attached hereto and incorporated herein as Attachment C.

f. Unless otherwise released from this Agreement as provided herein, Developer agrees to include resale restrictions and related language and/or documents required by the City in any grant deed conveying a BMP Unit by including the forms attached hereto and incorporated herein as Exhibits A through C as part of the Covenants, Promissory Note, and Deed of Trust, and recording of the same. The City reserves the right, without any required approval of Developer, to amend the form of the resale restrictions and any related documents in the future to maintain consistency with the BMP Program Policies & Procedures that are in place at the time that a BMP Unit is proposed to be sold by Developer to an eligible buyer.

2. CITY OBLIGATIONS. The City agrees to make a good faith effort to initiate marketing of the Affordable Housing Units itself or thru its designee, within 30-days of the developer providing notice to the City of the Affordable Housing Units construction completion and availability for sale. The City, at its sole discretion, may consent to a developer request to conduct earlier marketing efforts.

3. TERM OF AGREEMENT. The term of this Agreement shall begin on the Effective Date set forth above, and shall terminate when all BMP Units have received Certificates of Occupancy and escrow has closed on all BMP Units, thereby transferring title to City-approved buyers.

4. NO ASSIGNMENT OF AGREEMENT; SUCCESSORS IN INTEREST. No interest in this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of the City, which approval shall not be unreasonably withheld.

5. RELATIONSHIP OF CITY AND DEVELOPER. No written or verbal statement, including but not limited to this Agreement, shall be deemed or construed to create a partnership, tenancy, joint venture or co-ownership between the City and the Developer. The City shall not be responsible or liable for the debts, losses, obligations or duties of the Developer with respect to the Property, the Project or otherwise.

6. NO THIRD PARTY BENEFICIARY. This Agreement shall not be construed to be an agreement for the benefit of any third party or parties other than the record owner of title to the Property, and no other third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

7. FAIR EMPLOYMENT. Developer shall not discriminate against any employee because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion,

ethnic background, or marital status, in violation of state or federal law in the performance of this Agreement.

8. HOLD HARMLESS/INDEMNIFICATION. Developer agrees to defend, hold harmless and indemnify the City, its Council members, officers, employees, volunteers and agents from any claim, injury, liability, loss, cost, and/or expense or damage arising from or in any way connected with this Agreement and the performance thereof, including any such claim, etc., arising from the actual or alleged presence of hazardous substances on the Property, or any environmental claim relating in any way to the Property or Project.

9. COMPLIANCE WITH ENVIRONMENTAL LAWS. Developer shall comply with all environmental laws and environmental permits applicable to the operations of the Developer and the ownership or use of the Property and the Project, shall immediately pay or cause to be paid all costs and expenses incurred by reason of such compliance, shall keep the Property and Project free and clear of any environmental claims or liens imposed pursuant to any environmental law, and shall obtain and renew all environmental permits required for ownership or use of the Property and the Project.

10. INSURANCE REQUIREMENTS. During the term of this Agreement, and for any required time thereafter as set forth below, Developer shall purchase and maintain in full force and effect, at no cost to City, the following insurance policies:

1) Commercial general liability policy (bodily injury and property damage);
2) Comprehensive automobile liability policy; and
3) Workers' compensation and employer's liability policy

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as set forth in Attachment D, attached hereto and incorporated herein.

11. INTEGRATED DOCUMENT; AMENDMENT. This Agreement and the Project's condition of approval by City embody the entire agreement between Parties and its terms and conditions. No other understanding, agreements, or conversations with any officer, agent, or employee of City shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. It is mutually understood and agreed that, except for the City's periodic updates of its BMP Program Policies & Procedures and related documents, no amendment to this Agreement shall be valid unless made in writing and signed by the Parties.

12. SEVERABILITY CLAUSE. In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

13. WAIVER. Developer agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

14. NOTICES. All notices to the Parties shall, unless otherwise requested in writing, be addressed as follows:

City: Housing & Community Services Division
City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 248-3381

Developer:
Name: 2585 El Camino Real, LLC
Address: 3255-2 Scott Boulevard, Suite # 101
Santa Clara, California 95054
(408) 916 -3205

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

15. GOVERING LAW; VENUE. This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. In the event that suit shall be brought by either Party, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

16. COMPLIANCE WITH LAWS. Developer shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments, applicable to the Property and Project.

17. DISPUTE RESOLUTION.

a. Unless otherwise mutually agreed to by the Parties, any controversies between Developer and the City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party. Submission to mediation shall be a pre-condition to filing of any litigation.

b. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement. The costs of mediation shall be borne by the Parties equally.

18. CONFLICTS OF INTEREST. Developer certifies that to the best of its knowledge no City employee or officer has any pecuniary interest in the business of Developer and that no person associated with Developer has any interest that would conflict in any manner or degree with the performance of this Agreement. Developer represents that it presently has no interest and shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the faithful performance of this Agreement. Developer is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts that constitute a violation of said provisions. Developer will advise City if a conflict arises.

19. TERMINATION OF AGREEMENT. This Agreement shall terminate when all BMP Units have received Certificates of Occupancy and escrow has closed on all BMP units.

20. BINDING ON SUCCESSORS IN INTEREST. This Agreement inures to the benefit of, and is binding upon, the City and the Developer, and their respective agents, representatives, successors, and assigns.

21. AFFORDABILITY COVENANTS. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that unless and to the extent released of record as provided herein, the Affordable Housing Units shall be subject to this Agreement for twenty (20) years.

22. COVENANTS RUNNING WITH THE LAND. The Parties agree that this Agreement shall run with the land, and, subject to the terms hereof, shall bind any and all successors in interest. The Parties agree that this Agreement shall be duly recorded with the County of Santa Clara.

23. COMPLIANCE WITH ETHICAL STANDARDS. As a condition precedent to entering into this Agreement, Developer shall review Attachment E, "Ethical Standards," attached hereto and incorporated herein, and execute the affidavit attached hereto and incorporated herein as Attachment F, entitled "Affidavit of Compliance with Ethical Standards."

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

JULIO J. FUENTES
City Manager

ATTEST:

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

ROD DIRIDON, JR.
City Clerk

"City"

2585 EL CAMINO REAL, LLC
a California limited liability company

Name: Sanjeev Acharya
Title: Manager
Address: 3255-2 Scott Boulevard, Suite 101, Santa Clara, CA 95054
Telephone: (408) 916-3205

"Developer"

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
2585 EL CAMINO REAL, LLC

ATTACHMENT A

LEGAL DESCRIPTION OF PROPERTY

ORDER NO. : 0616010412-SL

EXHIBIT A

The land referred to is situated in the County of Santa Clara, City of Santa Clara, State of California, and is described as follows:

PARCEL ONE

Portion of Lots 4 and 3, as shown upon that certain Map entitled, "Map of the Subdivision of the Morse Tract," which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on October 26, 1903 in Book F-2 of Maps, Page 20, and more particularly described as follows:

Beginning at a point on the Northerly line of the San Francisco-San Jose Road, 100.00 feet in width, distant thereon South 89° 47' East 52.34 feet from the Southwesterly corner of Lot 4 in the center line of Campbell Creek, as said road, Lot and Creek are shown on the Map above referred to; said point of beginning also being the Southeasterly corner of that certain Parcel of land thirdly described in the Deed from George E. Hamilton et ux, to George D. Worswick, dated July 17, 1915 and recorded July 19, 1915 in Book 431 of Deeds, Page 417, Santa Clara county Record; running thence South 89° 47' East along the said Northerly line of the San Francisco-San Jose Road, 200.00 feet; thence at right angles North 0° 13' East 300.00 feet to a point on the Southerly line of "Tract No. 1220 Walnut Acres" a Map of which Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on September 10, 1953 in Book 46 of Maps, Page 5; thence North 89° 47' West along the Southerly line of said "Tract No. 1220" for a distance of 244.05 feet to a point on the Westerly line of said Lot 4 in the center line of Campbell Creek; thence South 1° 48' West along said last named line, 251.28 feet to the Northwesterly corner of Said Parcel of land described in the Deed to George D. Worswick; thence South 89° 47' East along the Northerly line of said Parcel of land described in the Deed to Worswick 54.78 feet to the Northeasterly corner thereof; thence South 3° 50' West along the Easterly line of said Parcel of land described in the deed to Worswick, 48.84 feet to the point of beginning.

Excepting therefrom: A strip of land from the City of Santa Clara to the Santa Clara County Flood Control and Water District recorded July 21, 1970 in Book 8993 Page 500 Official Records, described as follows:

Beginning in the Northerly line of said lands conveyed to Kerley et al at the most Westerly corner of Lot 11 Tract 1220 a Map of which is filed for record in the Office of the County Recorder, said County, in Book 46 of Maps at Page 5 therein; thence s. 1° 48' W. 290.12 feet parallel with the West line of said lands to a point on a line drawn parallel to and distant Northerly 60 feet measured at right angles from the centerline of El Camino Real; thence following said line so drawn parallel n. 89° 47' W, 40.02 feet to the West line of said lands conveyed to Kerley et al coincident herewith the centerline of Saratoga Creek, as same is mentioned in said deed; thence following said West line N. 1° 48' E. 290.12 feet to the Northwest corner of said lands conveyed to Kerley et al; said Northwest corner lies in the Westerly prolongation of the South line of said Lot 11; thence following said Westerly prolongation S. 89° 47' E. 40.02 feet to the point of beginning.

Also excepting therefrom that portion described in the deed to the City of Santa Clara recorded November 13, 1963 as Instrument no. 2518272, Santa Clara County Records, as follows:

A strip of land 10 feet wide and 252.48 feet long lying contiguous to and Southerly of a line parallel to and 60 feet Northerly measured at right angles from the centerline of El Camino real (100 feet wide), being further described as follows:

The Southerly 10 feet of those certain lands conveyed to Joe Kerley, et al, by deed filed for record in the Office of the County Recorder of Santa Clara County, California in Book 5478 of Official Records at Page 394 therein.

PARCEL TWO

Portion of Lot 4, as shown upon the certain Map entitled, "Map of the Subdivision of the more Tract", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, Sate of California on October 26, 1903 in Book F-2 of Maps, Page 20, and more particularly described as follow:

Beginning at a point on the Northerly line of the San Francisco-San Jose Road 100.00 feet in width, at the Southwesterly corner of Lot 4 in the center line of Campbell Creek, as said road, Lot and Creek are shown on the Map above referred to; thence South 89° 47' East along the said Northerly line of the San Francisco-San Jose Road, 52.34 feet; thence North 3° 50' 48.84 feet; thence North 89° 47' West and parallel with the said Northerly line of the San Francisco-San Jose Road, 54.78 feet to a point on the Westerly line of said Lot 4 in the said center line of Campbell Creek; thence South 1° 48' West along said last named line, 48.84 feet to the point of beginning.

Excepting therefrom: A strip of land from the City of Santa Clara to the Santa Clara County Flood Control and Water District recorded July 21, 1970 in Book 8993 Page 500 Official Records, described as follows:

Beginning in the Northerly line of said lands conveyed to Kerley et al at the most Westerly corner of Lot 11 Tract 1220 a Map of which is filed for record in the Office of the County Recorder, said County, in Book 46 of Maps at Page 5 therein; thence S. 1° 48' W. 290.12 feet parallel with the West line of said lands to a point on a line drawn parallel to and distant Northerly 60 feet measured at right angles form the centerline of el Camino Real; thence following said line so drawn parallel N. 89° 47' W, 40.02 feet to the West line of said lands conveyed to Kerley et al coincident herewith the centerline of Saratoga Creek, as same is mentioned in said deed; thence following said West line N. 1° 48' E. 290.12 feet to the Northwest corner of said lands conveyed to Kerley et al; said Northwest corner lies in the Westerly prolongation of the South line of said Lot 11; thence following said Westerly prolongation S. 89° 47' E. 40.02 feet to the point of beginning.

Also excepting therefrom that portion described in the Deed to the City of Santa Clara recorded November 13, 1963 as Instrument No. 2518272, Santa Clara County Records, as follows:

A strip of land 10 feet wide and 252.48 feet long lying contiguous to and Southerly of a line parallel to and 60 feet Northerly measured at right angles from the centerline of El Camino Real (100 feet wide), being further described as follows:

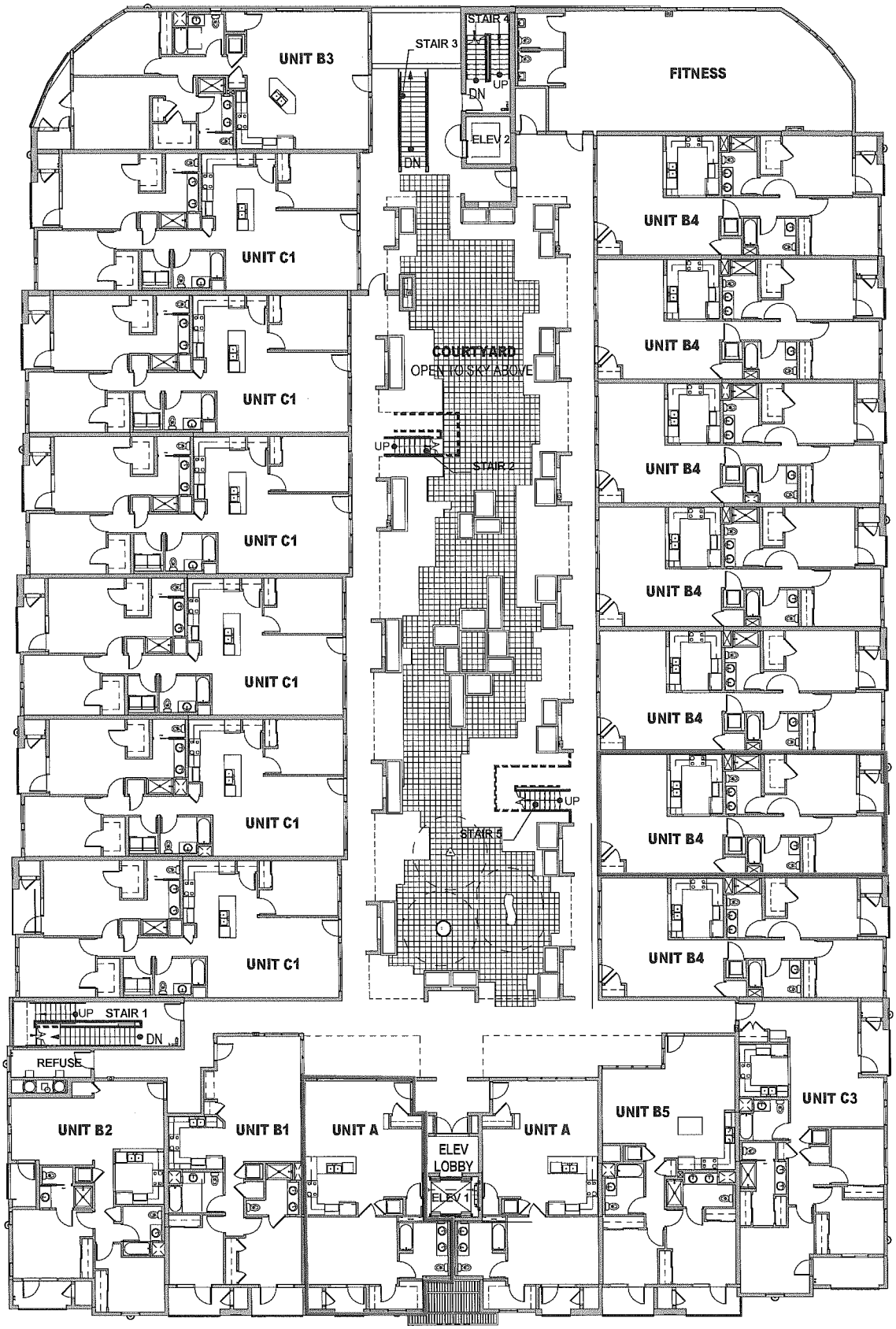
The Southerly 10 feet of those certain lands conveyed to Joe Kerley, et al, by deed filed for record in the Office of the County Recorder of Santa Clara County, California in Book 5478 of Official Records at Page 394 therein.

APN: 216-01-008

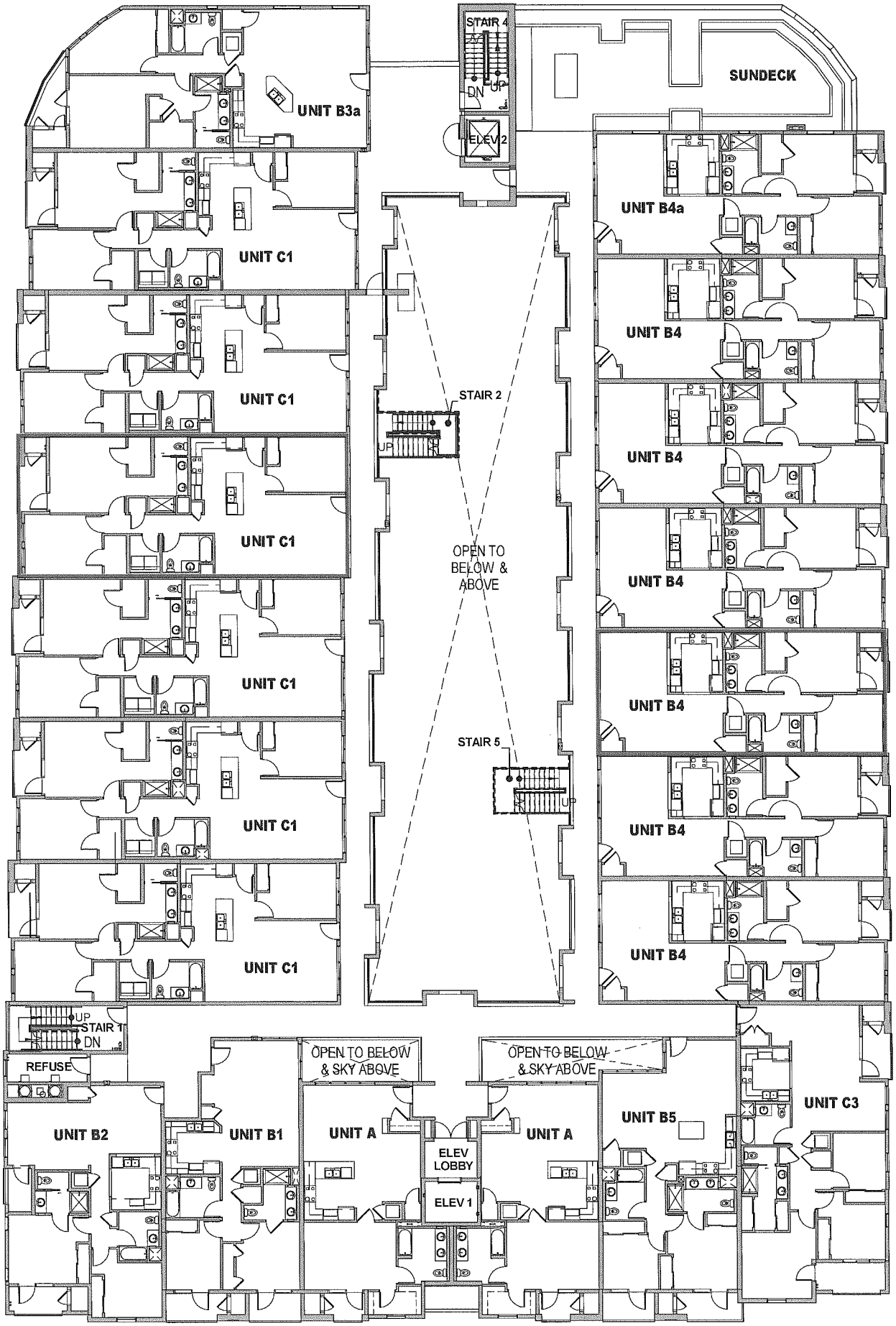
AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
2585 EL CAMINO REAL, LLC

ATTACHMENT B

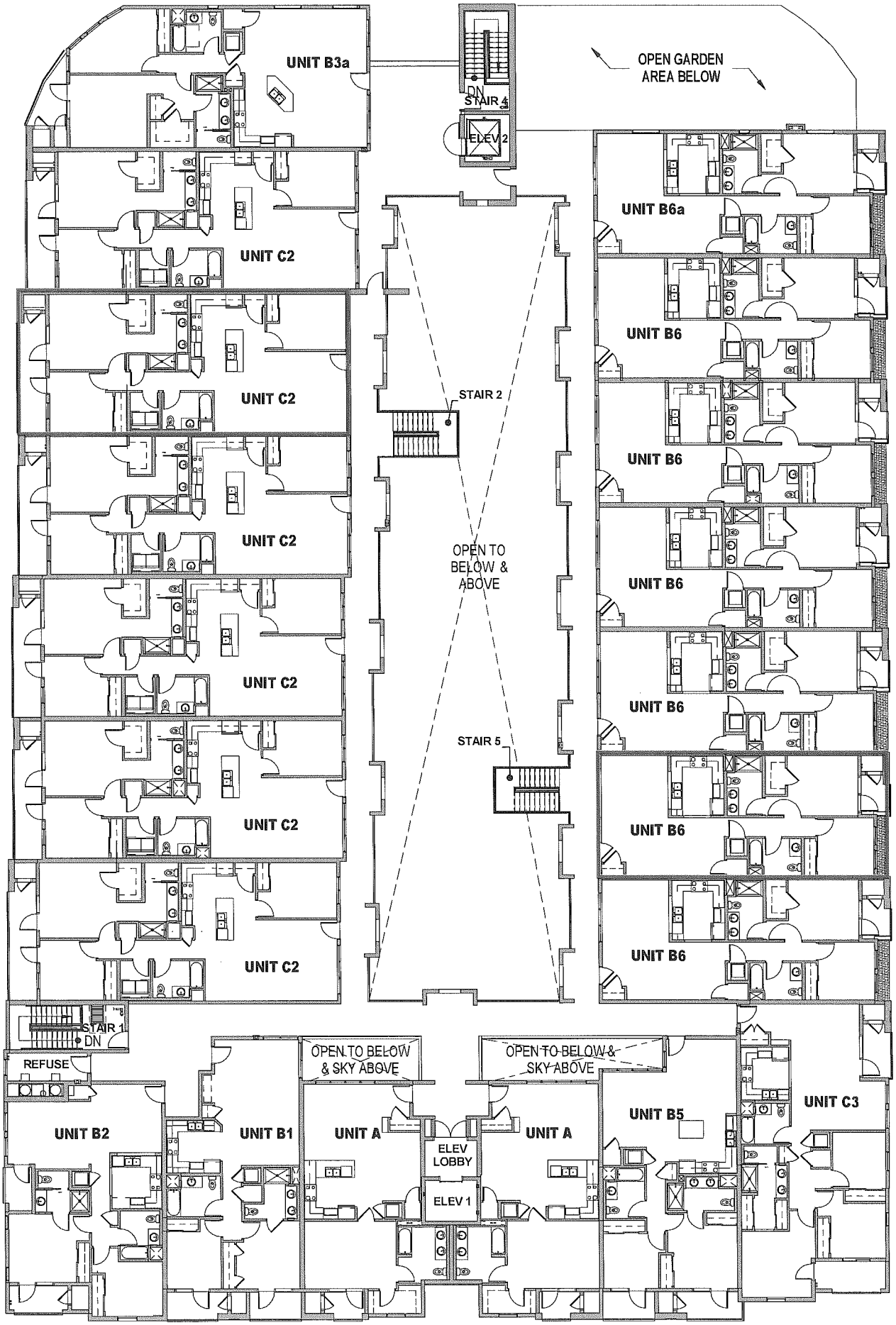
PROJECT MAP



SECOND FLOOR PLAN



THIRD FLOOR PLAN



FOURTH FLOOR PLAN

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
2585 EL CAMINO REAL, LLC

ATTACHMENT C

BMP PROGRAM POLICIES AND PROCEDURES

City of Santa Clara
Below-Market Price Purchase Program
Policies and Procedures

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II. BMP Requirements for Homeownership Projects 4
III. Homebuyer Eligibility Requirements and Obligations 6
V. Financing the Home Purchase 10
VI. Operating Procedures 11

I. Introduction

The City of Santa Clara (City) and its Redevelopment Agency (Agency) have operated a Below-Market Price Purchase Program (BMP) since 1995 to help low- and moderate-income families achieve the goal of homeownership and to fulfill State mandates for the production of housing for all income levels.

The City's Housing Element, certified by the State in 2002, includes an affordable housing policy that requires "developers of residential developments with ten or more units to provide at least ten percent of their units at rents or prices affordable to low-and moderate-income households." Specifically, for-sale housing developers are required to designate at least ten percent of the total units in an approved project as BMP units to be sold to qualified buyers.

In 2006, the City Council adopted significant enhancements to the original BMP program. A restrictive covenant (Covenant) period is enforced over 20 years. The resale restriction period within the Covenant has been decreased to five years, and the homeowner can resell the home at market price after five years. However, if the homeowner sells the BMP unit within the first five years, the BMP unit must be sold to another qualified, income-eligible homebuyer. An additional new requirement is that the City and the homeowner will share in the appreciation of the home (Appreciation Amount). The homeowner's share of any appreciation beyond the Initial Market Value (IMV) will increase by five percent per year for twenty years. After the Covenant expires in twenty years, the equity sharing requirement is exhausted, and the homeowner will realize full equity gain beyond the IMV.

However, if the BMP unit is sold at market price during the 20-year term of the Covenant, the seller must pay the City the difference between the original Affordable Sales Price (ASP) and the IMV, established as the principal amount (Principal) of the promissory note (City Promissory Note). The IMV is defined as the unit's unrestricted initial market value as shown in **Section II.B**. The calculation for determining the seller's pay-off obligation to the City is explained in **Section III.B**.

The intent of these changes is to further the City's strong commitment to producing and maintaining affordable housing while increasing the level of interest among prospective homebuyers in the BMP Program.

The BMP Program is administered by the City's Department of Planning and Inspection (Department), with certain functions delegated under a service contract to Neighborhood Housing Services Silicon Valley (NHSSV). The Department administers the City's approval process for each proposed housing development. The Housing and Community Services Division of the Department administers the Affordable Housing Agreement (AHA), the agreement between the buyer and developer to purchase the unit at an affordable price according to the Covenant. NHSSV is the City's exclusive sales and marketing agent for sale of the BMP units. NHSSV also manages the homebuyer qualification and selection process as well as facilitates the sale of the BMP units. NHSSV has ongoing responsibilities for monitoring developer and homebuyer compliance with the BMP Program terms and for managing resale of the BMP units.

The foregoing Policies and Procedures describe:

- The BMP Program requirements for developers of single-family, townhome, and condominium residential projects
- The BMP Program requirements for homebuyers of BMP units
- The procedures for administration of the BMP Program and the roles of each participant in the BMP Program
- The relationship between the BMP Program, the Agency's First Time Homebuyers Financing Program (FTHB), and subordinate financing programs offered by outside agencies
- The BMP Program's documents and other useful reference material

For further information, please contact:

City of Santa Clara Housing & Community Services Division
1500 Warburton Avenue, Santa Clara, CA 95050
Phone: (408)615-2490

II. BMP Requirements for Homeownership Projects

A. General

The BMP Program applies to any housing project of ten or more units for which an AHA was executed after July 18, 2006. Such projects include proposed new single-family detached, townhouse, or condominium developments as well as any proposed conversion of existing structures to condominiums. Each developer is required to enter into an AHA with the City.

The AHA describes the project and states current applicable zoning and land use requirements. It provides the ASP for each unit as discussed below. The AHA requires that BMP units shall be sold to eligible households whose incomes are at or below 110% of current Area Median Income.

B. Initial Market Value (IMV)

For each BMP unit, the City sets an IMV based upon an independent appraisal prior to the initial sale. The IMV reflects each unit's unrestricted initial market value. The IMV is used to establish the difference between the market value and the ASP for which the BMP unit will be sold. The IMV provides the basis for computing: 1) what the developer would owe the City if the developer chooses to pay an in-lieu fee for a fractional unit, as discussed below, and 2) the amounts that the homebuyer would owe the City if the home is resold at an unrestricted resale price, as discussed in **Section III.B**.

C. Affordable Sales Price (ASP)

For each BMP unit in a project, the City establishes an ASP as follows: (See illustration in **Attachment 1**.)

1. Calculates the assumed household size by counting the number of bedrooms in the subject BMP unit and adding one. For example, if the unit is a two-bedroom unit, the assumed household size is three persons.
2. Ascertains the current Area Median Income (AMI) for the assumed household size based on data set annually by the U. S. Department of Housing and Urban Development and the California Department of Housing and Community Development.
3. Multiplies the applicable AMI by 35% and divides the product by 12 to derive a maximum monthly Affordable Housing Cost (AHC).
4. Converts the AHC to an ASP as follows:
    a. Obtains the estimated amount available for first mortgage principal and interest payment by subtracting from the AHC the estimated cost of property taxes, insurance, homeowner association dues (if any), and allowances for utilities, maintenance and repairs.
    b. Utilizing the amount available for principal and interest, calculates the maximum principal amount of the first mortgage loan that can be borrowed, assuming the interest rate for a 30-year fixed-rate mortgage that would be reasonable for the City's housing program client base (typically first-time homebuyers).
    c. Sets the maximum sales price by dividing the first mortgage loan amount by one hundred percent minus the assumed percentage of the first mortgage that will be provided by the homebuyer as down payment. For example, if a three percent down payment is assumed, then the mortgage loan amount is divided by 97%.

In setting the ASP, the City will also consider the following:

1. Housing characteristics: Age of unit (new construction/conversion); type of unit (single-family detached/townhouse/condominium), based upon research of available comparable cost and sales price information.
2. Whether the developer will sustain a documented financial loss for basic production costs, based upon the *pro forma* that the developer has submitted to financial institutions for project financing purposes.
3. Whether the ASP exceeds the maximum sales price published by the California Housing Finance Agency.

D. In-Lieu Fee for a Fractional Unit

If the City determines that the required number of BMP units includes a fraction, the developer may either round up and provide an additional BMP unit within the project or pay an in-lieu fee for the fractional unit. The fee is determined by multiplying the fractional unit percentage (rounded to the nearest 1/10) by the difference between the Initial Market Value (IMV) and the Affordable Sales Price (ASP). For example, a developer of a 16-unit project would be required to provide 1.6 BMP units. The developer may either: 1) round up and provide two BMP units and pay no in-lieu fee, or 2) provide one unit and pay an in-lieu fee for the 0.6 units (0.6 X (IMV-ASP)).

III. Homebuyer Eligibility Requirements and Obligations

A. Eligibility

To be eligible for the program, the household must meet *all* of the following criteria:

1. Have a gross household income of not more than 110% of the AMI, adjusted for household size. The maximum amount of this income for Santa Clara County is set by the U.S. Department of Housing and Urban Development and published by the California Department of Housing and Community Development in *Title 25, California Code of Regulations, Section 6930.* The AMI limits are updated and published annually. **Attachment 2** lists the types of income that are included in or excluded from gross household income.

   Maximum Allowable Household Income Levels for 2010

Household Size	1	2	3	4	5	6
100% AMI	$72,450	$82,800	$93,150	$103,500	$111,800	$120,050
110% AMI	$76,695	$91,080	$102,465	$113,850	$122,980	$132,055

   Source: California Department of Housing and Community Development, Division of Housing Policy Development, 17 June 2010.

2. Be a first-time homebuyer, defined as an individual who meets any one of the following criteria:
   a) An individual who has had no ownership in a principal residence during the three-year period ending on the date of purchase of the property.
   b) An individual who is a displaced homemaker. Displaced homemaker means:
      1. Is an adult;
      2. Has not worked full-time in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and
      3. Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.
   c) An individual who has only owned a principal residence not permanently affixed to a permanent foundation.
3. Qualify to purchase a BMP unit with a fixed-rate, thirty-year conventional loan, applying prudent debt-to-income ratios for principal, interest, taxes, insurance and HOA and total debt.
4. Obtain a Homebuyer Education Certificate from NHSSV.
5. Have less than $100,000 in financial assets. Assets accumulated under a certified down-payment assistance program are excluded from this limit. **Attachment 2** defines those assets that are required to be included and those that may be excluded.
6. Agree to contribute to the purchase transaction any liquid assets in excess of $20,000, except for those excluded as indicated in **Attachment 2**.

B. Requirements and Obligations

Each BMP unit is subject to a twenty-year Covenant on the unit as follows: (See form legal documents attached as **Exhibits A-C**).

1. The unit must be owned and occupied by the homeowner as his or her principal residence and for no other purpose. The unit, or any parts thereof, shall not be leased or rented by the homebuyer to any person or entity.

2. For the first five years after the unit is purchased, if the unit is sold, it must be sold to a household whose income does not exceed 110% of AMI. If the initial BMP homebuyer sells his or her unit during the first five years after the close of escrow, he or she must sell to a BMP-qualified new homebuyer, as required by the City, at a newly established Restricted Resale Price (RSP). The RSP shall be the ASP adjusted by any percent change in the AMI from the date of the original BMP home purchase. The City may increase the RSP to account for any individual capital improvements valued at greater than $2,000. No amounts are owed by the homeowner to the City if the home is sold at the RSP. **Section II.C** above indicates the method for deriving the ASP.

3. After the five-year resale restriction period ends, the homeowner may sell the home at market rate, subject to the following conditions through Year Twenty at which time, the restriction expires:

   a) The homeowner will first pay-off the City Promissory Note held by the City. The City Promissory Note represents the difference between the ASP and the IMV that the City sets when the home is initially sold. The initial homebuyer executes the note and deed of trust in favor of the City. The City sets the IMV based upon an appraisal prior to the initial sale. If the BMP unit is sold at any time after the end of the sixtieth month after the close of escrow on the initial sale (Year Six and thereafter), the seller must pay to the City the full amount of the City Promissory Note.

   b) The homeowner will also pay the City the lesser of:

      1. A decreasing portion of the Appreciation Amount gained during the time of ownership. The Appreciation Amount is calculated as the difference between the IMV and the current market price at the time of resale (Unrestricted Resale Price). The homeowner pays the City a proportionate share of the Appreciation Amount that decreases at the rate of 5% per year during the 20-year term of the Note. The homeowner's share of the Appreciation Amount will increase 5% for each year the BMP unit is owned. After twenty years, the homeowner realizes the full, unrestricted appreciation amount of any equity gain in the market value of the unit, or

      2. Seven percent (7%) simple interest per year on the difference between the IMV and the ASP.

   Attachment 3 illustrates and compares how the amounts received by the City and the homeowner would be calculated under the shared appreciation or simple interest payment alternatives. **Attachment 5** illustrates the procedure for computing interest on the City Loan.

4. The owner may not refinance or encumber the unit without prior approval from the City. Any attempt to refinance or encumber without such approval are grounds for foreclosure against the property, and a breach of contract action against the homeowner. The City may consent to a refinancing or encumbrance of the unit in hardship situations or to allow the homeowner to access lower interest rates if the original loan amount is not exceeded and the borrower is receiving no cash out.

IV. Homebuyer Selection

The City has contracted with NHSSV to administer the BMP Program. The scope of services includes administering buyer applications, evaluating homebuyers during the selection processes, providing a homebuyer education program, offering mortgage counseling and financial services, and facilitating communication between buyer and developer to ensure that sale of the BMP unit is completed. NHSSV also provides on-going monitoring of units and unit resale services to the City.

NHSSV can be reached at:

1156 North Fourth Street
San Jose, CA 95112
Phone: (408) 279-2600
Web: www.nhssv.org

A. Qualifications

To be considered for a BMP unit, the prospective homebuyer must be pre-qualified by NHSSV and pre-approved for a first mortgage loan. The pre-qualified household will be considered for selection of a BMP unit in accordance with the Priority Criteria and Process specified in **Section IV.B**.

1. At the time a BMP unit within any given project is near completion, the City, directly and/or through NHSSV, will advertise availability. Prospective qualified homebuyers, who indicate an interest in buying a BMP unit, will be pooled according to the priorities set forth below. If the number of interested and qualified prospective homebuyers is greater than the number of units available in any one project, a lottery will be held, administered by NHSSV, to determine who will have the first opportunity to purchase.
2. Having one's name drawn in the lottery is not a guarantee by the City, NHSSV, or the BMP unit developer that the selected household will be able to avail itself of the opportunity to purchase a BMP unit. The prospective homebuyer must successfully complete his or her responsibilities under the purchase agreement, and, within the time constraints of the purchase agreement and the BMP Program, must obtain all financing needed to close the transaction.
3. Failure of the homebuyer to perform such requirements shall result in disqualification from the program. Application and qualification for a BMP unit in one project are not transferable to another project. A new application must be submitted for each project in accordance with the time constraints and application procedures as published for each project by the City and/or NHSSV.

B. Priority Criteria

The City Council has established the following Priority Criteria for the allocation of the BMP units as they become available to the community:

1st Priority Level	At least one household member who both lives within the City Limits of the City of Santa Clara *and* operates a business or is employed by a business or a public or quasi-public agency in Santa Clara.
2nd Priority Level	At least one household member lives within the City Limits of the City of Santa Clara.
3rd Priority Level	At least one household member operates a business or is employed by a business or a public or quasi-public agency in Santa Clara.
4th Priority Level	Any other qualified applicant household without regard to residency or employment.
Note:	The qualifying household member must be the person or a dependent of a person whose name will appear on title and who will use the unit as their primary residence.

NHSSV will verify residency and employment of each applicant. NHSSV will apply the above-described Priority Criteria to rank BMP Program applicants. Those selected for the highest priority level will be screened first and selected either through a lottery selection, if necessary, or without a lottery if the number of candidates in the priority level is less than or equal to the number of units available.

The list of pre-qualified buyers in a higher priority category must be exhausted before a BMP unit will be offered to someone who is in the next priority level. **Section VI** provides additional information on the selection process.

V. Financing the Home Purchase

Each homebuyer is responsible for arranging and qualifying for the mortgage financing that is required to purchase the BMP unit. The first mortgage must be a thirty or thirty-five-year, fixed-rate mortgage.

The proposed financing package is subject to review by NHSSV. Such package may include first-time homebuyer loan assistance from the City of Santa Clara Redevelopment Agency and other subordinate financing offered by other public agencies and/or nonprofit entities. **Attachment 4** indicates the documents that must be submitted for review.

The City has designated NHSSV as a preferred lender with respect to its BMP homes. As an approved California Housing Finance Agency (CalHFA) direct lender, NHSSV may originate and fund CalHFA loans for those borrowers who qualify for its products. For borrowers who do not qualify for CalHFA financing, NHSSV may provide first mortgage financing through Neighborhood Housing Services of America or through conventional mortgage financing sources. *It is understood that the buyer has the freedom to select his or her own lender.*

CalHFA financing may be combined with both the BMP Program and the Agency's FTHB Program. CalHFA financing is a valuable resource for assisting families in buying a home that they might not otherwise afford. One should be aware of the below-noted CalHFA requirements that differ from those established for Santa Clara's program. CalHFA currently offers two primary loan programs, Cal30, a conventional loan program that offers a conventional 30-year fixed loan and a CalHFA FHA loan program. *If CalHFA requirements conflict with those of other programs, the most restrictive limit applies.*

A. The home purchase price cannot exceed CalHFA's sales price limit: as of 7/27/10, CalHFA's limit for new homes in non-targeted areas of Santa Clara County was $656,755

B. The homebuyer(s) cannot exceed the maximum income limit in the Cal30 Conventional Loan Program: the maximum income for households buying a home in Santa Clara County in non-targeted areas is $88,600 for a one-person household; $101,300 for a two-person household; $113,950 for a three-person household and $126,600 for a household of four or more persons

C. The homebuyer(s) cannot exceed the maximum income limit in the CalHFA FHA Loan Program: the maximum income for households buying a home in Santa Clara County in non-targeted areas is $127,320 for a one- or two-person household and $148,540 for a household of three or more persons

D. The homebuyer may not have owned and occupied a home during the last three years

E. The borrower may be subject to a Federal "Recapture Tax." This is a Federal income tax that the borrower(s) may have to pay if they sell or transfer their CalHFA financed home within 9 years. CalHFA indicates that the purpose of recapture is to focus the benefits of its programs on families who need them most. CalHFA also states that most borrowers will not have to pay this tax and for those who do, the tax will never exceed one-half of the gain on the sale of the home or 6.25% of the original CalHFA mortgages, whichever is less.

F. For further information on CalHFA requirements, go to www.CalHFA.ca.gov.

VI. Operating Procedures

A. Developer and City Actions

The City imposes the BMP program requirements as a condition of approval for projects receiving new land use or subdivision entitlements. Prior to the City issuing building permits for a given project, the developer and the City shall have fully executed the Affordable Housing Agreement (AHA). At the time of project approval, the City will issue a preliminary notice to NHSSV. This notice will provide an estimated date for the delivery of the BMP units. It will also provide the location, size, bedroom mix, unit type (single-family, townhouse, condominium), amenities, and targeted income groups.

The Developer shall notify both the City and NHSSV no less than one hundred eighty (180) days prior to the estimated occupancy of the BMP units, to enable the start of marketing and homebuyer selection process. The developer shall provide current project and unit descriptive information as a basis for preparation of marketing materials.

At least 30 days prior to start of BMP unit sales, the City shall have set the IMV based upon an independent appraisal.

B. Marketing

NHSSV shall be responsible for preparing and implementing the BMP unit marketing plan.

C. Initial Inquiries

NHSSV will respond to inquiries from prospective homebuyers by providing a summary of the BMP Program, which will include the program's requirements and contact information.

NHSSV will invite prospective homebuyers who express an interest in a BMP unit to complete an intake form and to register for homebuyer education classes and (if needed) counseling. The purpose of the intake form is to conduct a preliminary assessment of the prospective homebuyer's mortgage readiness and to develop a plan of action designed to move the homebuyer through the homeownership process. NHSSV shall insure that interested persons receive an intake form and other program materials within a reasonable time after initial contact.

NHSSV shall serve as exclusive sales agent for the City. NHSSV will select the buyers in accordance with the City's policies and procedures, and will prepare the required purchase and sales agreement for execution by the buyer and the developer. NHSSV will facilitate the close of escrow. It will perform these functions in coordination with the Developer's project sales team.

D. Verifications/Selection Process

Interested buyers will be provided an application and a flyer describing the unit, sale price, amenities, deed restrictions, and selection process with submittal deadlines. Applicants shall be given at least a two-week period to file applications prior to any established submittal deadline.

Upon receipt of applications for the BMP Program, NHSSV will meet with each prospective homebuyer to complete an assessment of income and credit. If the client appears to be mortgage ready and has not been previously approved by another lender, he or she may be pre-approved for a first mortgage loan, and NHSSV will take a formal loan application. NHSSV will verify compliance with all BMP

program homebuyer requirements established by the City. It will follow standard mortgage lending procedures, underwriting the client in terms of income, credit, and applicable eligibility criteria.

NHSSV will also verify the applicant's residency and employment for purposes of ranking the applicant according to the City's Priority Criteria. An applicant is required to submit to NHSSV sufficient verification of residency (e.g., copies of rent receipts, utility bills, and/or landlord affidavits). In addition, the applicant must provide NHSSV with verification of employment or evidence of self-employment (e.g., copies of payroll stubs, tax returns, employer affidavits, and/or copies of City business licenses). The documents submitted will be for the time period from the initial application to close of escrow.

If, in the sale of BMP units, NHSSV finds that it has more qualified applicants than the number of readily available units, it will rank each qualified applicant according to the Priority Criteria established by the City. Prior to any selection, NHSSV may, if requested, review with City staff any application that was disqualified. NHSSV shall document the reasons for the applicant's disqualification. If NHSSV has more qualified prospective buyers in the highest priority level than the number of available units, it shall select by lottery, a "Designated Buyer" and two "Alternate Buyers" for each available unit. All "Designated Buyers" shall be selected first, followed by all First "Alternate Buyers" and then by all Second "Alternate Buyers."

If a Designated Buyer is unable to obtain financing at an affordable cost or is unable to meet the program requirement to purchase the BMP unit, the next highest ranked Alternate Buyer will be offered the unit. In the event that the Alternate Buyer is unable to purchase the BMP unit, the second highest ranked Alternate Buyer will be offered the unit. If no qualified applicants are able to purchase the BMP unit from the initial advertisement or notice, NHSSV shall re-advertise the unit.

E. Execution of BMP Home Purchase Agreement

Upon completion of the selection process, NHSSV will arrange for execution of a Purchase Agreement between the developer and the approved buyer. The Purchase Agreement will be subject to the buyer completing the arrangements for financing the home purchase, and the sale price shall be the ASP set by the City. The Purchase Agreement shall also reference IMV and the amount of the City Promissory Note. The Purchase Agreement shall be accompanied by a Disclosure Affidavit (**Attachment 6**), signed by the buyer, disclosing the Covenant and the amount and terms of the City Promissory Note.

Prior to proceeding with close of escrow, NHSSV must review the proposed financing package. **Attachment 4** indicates the financing documents that must be submitted for review.

F. Close of Escrow

NHSSV is responsible for coordinating the close of escrow with the title company, the developer, the City, the lender(s), and the homebuyer. The City shall provide NHSSV with Escrow Instructions to transmit to the Title Company. NHSSV will ensure that real estate purchase and financing documents are executed correctly and are recorded in the following order of priority:

1. First Deed of Trust
2. Second Deed of Trust for a CalHFA down-payment assistance loan (if applicable)
3. Covenants, Restrictions, and City Option to Purchase
4. Deed of Trust securing the City's Promissory Note
5. Deed of Trust securing a Redevelopment Agency First-Time Homebuyer loan (if applicable)
6. Deed(s) of Trust securing other secondary financing (if applicable)

7. Requests for Notice for the City and Redevelopment Agency loans.

G. Reports to County Assessor

The County Assessor has indicated that the base year value for real property tax purposes shall be the restricted price established by the government agency (the ASP for homes purchased under Santa Clara's BMP Program). No later than May 1 of each year, NHSSV shall prepare and provide to the City and the County Assessor an annual BMP report. This report will indicate for each BMP unit transaction recorded during the previous 12 month period, the APN and property address, the buyer(s) name, the ASP amount, and the terms and restrictions of the transactions. The Escrow Officer shall provide the County Assessor with a change of ownership form with each sale or resale of a BMP unit.

H. Post Purchase Counseling / Compliance Monitoring

NHSSV shall provide post purchase counseling services for each homebuyer. NHSSV is also responsible for ongoing administration of the BMP Program, including:

1. Facilitating resale of BMP units to eligible households at a RSP during the five-year resale restriction period;
2. Monitoring compliance with BMP requirements;
3. Reviewing requests for refinancing of the BMP units; and
4. Calculating payoff demands for any BMP unit that is to be resold at market value, after expiration of the resale restriction period and until the twenty-year restriction period expires.

Attachments and Exhibits

Attachments:

1. Illustrative Calculation of Affordable Sales Price
2. Income and Asset Definitions
3. Loan Payoff/Equity Share Illustration
3. Lender Document Checklist
4. Calculation of Interest on City Loan
5. Disclosure Affidavit
6. Homebuyer Test

Exhibits:

A. Covenants, Restrictions and Option to Purchase
B. City Promissory Note
C. Deed of Trust and Security Agreement
D. Request for Notice

Attachment 1.

Illustrative Calculation of Affordable Sales Price

(behind this page)

Attachment 1

Illustrative Calculation of the Affordable Sales Price

(Please note that these are illustrative only, and may not represent the actual costs, fees or mortgage rates actually applied to a particular unit or project.)

The calculation in this Attachment is based on the following definition of household size: The defined household size is equal to one person greater than the number of bedrooms in the unit.

Assumptions for calculating the Affordable Sales Price (ASP):

1. Unit Size = _____

2. Family Size = _____

3. Interest Rate* = _____

4. Property taxes and assessments (per month) = _____
   (based on actual tax rate with value based on the Affordable Sales Price (ASP) of the unit)

5. Actual insurance premiums (per month) = _____
   (if not included in homeowners' association dues)

6. Property maintenance and repair (per month) ** = _____
   (if not included in homeowners' association dues)

7. Project's budgeted homeowners' association dues (per month) = _____

8. Utility allowance (per month)*** = _____

9. Mortgage insurance premium, if any = _____

*The interest rate shall be based upon a 3% down, 30-year, fully amortizing fixed rate mortgage that would be reasonable for the City's housing program client base (typically first-time homebuyers).
** Amount is obtained from the City's Department of Planning and Inspection.
*** Amount is obtained from the Housing Authority of the County of Santa Clara's most recent schedule of allowances for tenant purchased utilities.

Attachment 1

Illustrative Calculation of the Affordable Sales Price

I. Calculate monthly Affordable Housing Cost:

$105,500.00	((100% of Area median Income adjusted for family size (4 person household /3 bedroom unit))
X .35 $36,925	(Affordable Housing Cost cannot exceed 35% times 100% of Area Median Income)
divided by 12	(To calculate the monthly Affordable Housing Cost)
$3,077	(As this hypothetical illustrates, no family with an income of 100% of Area Median Income with a family size of 4 shall spend more than $3,385 per month, as of the date hereof, on the sum of the items which make up the Affordable Housing Cost).

II. Calculation of the maximum amount to be spent on principal and interest of all mortgage loans:

A. $3,077 (Maximum monthly Affordable Housing Cost) ***less:***
B. (-)_____ Property taxes and assessments (per month)
C. (-)_____ Insurance premiums (per month)
D. (-)_____ Utility allowance (per month)
E. (-)_____ Mortgage insurance premiums (per month)
F. (-)_____ Property maintenance and repair (per month)
G. (-)_____ Homeowners' association dues (per month) ***equals:***
H. _____ Maximum Monthly Mortgage Payment

III. Calculation of Affordable Sales Price: The ASP is calculated by adding the Maximum Monthly Mortgage Amount to the down payment. The Maximum Mortgage Amount will be based upon a 3% down, 30-year, fully amortizing fixed rate mortgage at an interest rate that would be reasonable for the City's housing program client base (typically first-time homebuyers). The calculation is as follows:

1. At a _____% interest rate, and a loan term of 30 years, the Maximum Monthly Mortgage Payment (H.) of $_____will allow a Maximum Mortgage Amount of $_____.
   (Note: The above step requires the use of a financial calculator.)

2. The Maximum Mortgage Amount of $_____ divided by .97 (for an assumed 3% down payment) equals the Affordable Sales Price of $_____.

Attachment 2.

Income and Asset Definitions

(behind this page)

Attachment 2

Income and Asset Definitions

Determination of Gross Income:

1. In calculating gross income, the applicant shall present evidence of all household income including that of the applicant, and other individuals who have and will share the same dwelling unit or will share in ownership of the unit. All household income shall be considered as set forth below:

    a. Gross pay in the case of an employee, as determined by the employer before any payroll tax or other deductions are taken, whether voluntary or involuntary; and including salaries, overtime pay, commissions, fees, tips, and bonuses; and/or
    b. Net income from the operation of a professional business, the production and/or sale of goods, or the provision of a service as determined by calculating the average net income as reflected in the venture's federal income-tax return for the past three years; and/or
    c. Interest, dividends, and other net income derived from any kind from real or personal property; and/or
    d. The full amount of periodic payments actually received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum payment in lieu of a periodic payment; and/or
    e. Payments in lieu of earnings, such as unemployment, worker's compensation, severance pay, and welfare assistance. Although such payments may be excluded by the first mortgage lender for underwriting purposes, they shall be included in determining the applicant's eligibility for the BMP Program; and/or
    f. Periodic and determinable allowances such as alimony and child support payments, regular contributions or gifts received from persons not residing in the home; to the extent that such payments are reasonably expected to continue; and/or
    g. All regular pay, special pay and allowances due to an applicant or other household resident as a member of the Armed Forces (whether or not living in the dwelling) who is head of the family, spouse, or other person whose dependents are residing in the unit; and/or

h. Any earned income tax credit to the extent it exceeds income tax liability; and/or

i. Any other income that must be reported for federal and State Income tax purposes.

2. The following household income shall not be counted in the determination of gross household income:

a. Payments received for the care of foster children;

b. Amounts specifically excluded by any federal or state statute from consideration as income;

c. Casual, sporadic, or irregular gifts;

d. Amounts that are paid specifically for meeting medical expenses or are reimbursements for medical costs incurred;

e. Lump-sum supplements to family assets such as an inheritance, insurance payment (including payments under health care or accident insurance and Worker's Compensation); and settlement payments for personal injury or property losses.

Note: *Although not considered income, these payments will be considered in estimating total household assets, and may result in a determination that total assets exceed qualifying limits.*

f. Payments for educational scholarships made directly to the student or to the educational institution, including amounts paid by the government to veterans to cover the cost of tuition, fees, books, and equipment.

3. The applicant shall be required to provide federal and State income-tax returns for the prior three years and verification of current income in order to establish eligibility for the program.

Assets:

The applicant shall not possess liquid or non-liquid assets in excess of $100,000, excluding assets accumulated under a certified down payment assistance program.

For purposes of the BMP program, the following types of assets shall be considered in determining eligibility:

a. Cash savings:

b. Marketable securities, stocks, bonds, and other forms of capital investment, including tax-exempt securities *other than individual, tax-deferred retirement accounts;*

c. Inheritance or lump-sum insurance payments already received;
d. Settlements for personal or property damage already received;
e. Equity in real estate, except as stated below;
f. Personal property that is readily convertible to cash.

2. The following are *not* considered assets:

a. Ordinary household effects, including furniture, fixtures, and personal property;
b. Automobiles used for personal use;
c. Depreciable property used in a business that generates a significant portion of household income;
d. Individual tax-deferred retirement accounts.

Attachment 3.

Loan Payoff/Equity Share Illustration

(behind this page)

Attachment 3

Equity Share and 7% Simple Interest Illustration
The seller will pay the lesser of the City's Equity Share of the Appreciation Amount or 7% simple interest based on a 20-Year Promissory Note

Example:

Initial Market Value of the Unit	$500,000
Less Affordable Sales Price at time of initial sale	$385,000
equals Principal amount of City Note	$115,000

Equity Share Calculation of the Appreciation Amount (Equity Subject to Sharing):

	Year Resale Occurs		
	6	**10**	**15**
Assumed Unrestricted Resale Price	$600,000	$675,000	$750,000
Less capital improvements approved by City	5,000	7,500	10,000
Net Unrestricted Resale Price	595,000	667,500	740,000
Less Initial Market Value	500,000	500,000	500,000
Appreciation Amount	$ 95,000	$167,500	$240,000
City's Equity Share			
(20-6)/20 times the Appreciation Amount	($66,500)		
(20-10)/20 times the Appreciation Amount		($83,750)	
(20-15)/20 times the Appreciation Amount			($60,000)
Seller's Equity (Appreciation Amount less City's Share)	*$28,500*	*$83,750*	*$180,000*
(Seller gets 5%/yr increase in shared Appreciation Amount)			

OR

7% Simple Interest Illustration:

Appreciation Amount	$95,000	$167,500	$240,000
7% simple interest ($115,000 principal)	($48,300)	($80,500)	($120,750)
Seller's Equity (Appreciation Amount less City's Interest)	*$46,700*	*$87,000*	*$119,250*
Principal amount of City Note	$115,000	$115,000	$115,000

Borrower must pay principal amount of the City Note in addition to either the City's share of the Appreciation Amount or the 7% simple interest amount.

It is assumed that no further encumbering of the property has occurred since the initial sale. Further encumbering of the unit is prohibited without the written permission of the City. The City offers no assurances or guarantee whatsoever that the property will increase in value to any extent or that it will not decrease in value. This illustration is solely created to serve as an illustration of calculated equity share or interest that may be owed.

Attachment 4.

Lender Document Checklist

(behind this page)

Attachment 4

Document Transmittal Checklist

Lender/Mortgage Broker Name_____ Contact_____

Phone #_____ Fax#_____ E-mail_____

Title Company Name_____ Escrow Officer Name_____

Phone #_____ Purchase Price_____

Items Required for BMP Program or First-Time Homebuyer Program Commitment, Funding and Close of Escrow

___Signed original of Homebuyer Program Application
___Two current pay stubs
___Signed purchase and sale agreement
___Current appraisal*
___Preliminary title report (no more than 45 days old)
___Freddie Mac Form 65/Fannie Mae Form 1003 (Uniform Residential Loan Application)
___Freddie Mac Form 1077/Fannie Mae Form1008 (Uniform Underwriting Transmittal Summary)
___Federal income tax returns for past three years
___Senior lender loan commitment letter or equivalent
___Evidence of other proposed non-City financial commitments (CalHFA, Teacher MCC, regular MCC, HTSCC $6,500, HomeVenture Fund, etc.) if applicable
___Statement indicating vesting, correct corporate name of beneficiary and trustee (page 1 of 1st deed of trust, if available), and estimated close of escrow date
____Certificate of completion of homebuyer training course
____Wiring Instructions (First-Time Homebuyer Program Only)

**May be submitted after FTHB loan commitment is issued but at least 7 days before close of escrow.*

Attachment 5.

Calculation of Interest on City Loan

(behind this page)

Attachment 5

Calculation of Interest on City Loan

The method for calculating interest on the City BMP Program Loan is as follows:

Step 1-- Multiply the City loan amount by the annual interest amount and by the number of whole calendar years during the period that the loan is outstanding.

Step 2--For each fractional year during the loan period, divide the number of partial year days by 360, then multiply the result by the loan amount times the annual interest rate.

Step 3—Add *Step 1* and *Step 2* totals to obtain total interest that the borrower(s) owe the City.

Example –Loan that closes March 31, 2007 and is repaid June 30, 2017

Step 1 - $40,000 loan amount x 7% x 9 calendar years (2008-2116) = $25,200

Step 2 - For Fractional Year 2007 – (270 days/360) x $40,000 x 7% = $ 2,100
For Fractional Year 2117 - (180 days/360) x $40,000 x 7% = $ 1,400

Step 3 - Total of Step 2 and Step 3 Amounts $28,700

Attachment 6.

Disclosure Affidavit

(behind this page)

Attachment #6

AFFIRMATIVE BUYER DISCLOSURE & ACKNOWLEDGEMENT OF BELOW MARKET PURCHASE UNIT RESALE, REFINANCING & AFFORDABILITY RESTRICTIONS PRIOR TO PURCHASE

RECITALS

I/ We ***Mr. Jose S. Public*** and ***Mrs. Clara S. Public***
Currently residing at ***1156 N. Fourth Street, San Jose, CA 95112-4944***
the ("DESIGNATED BUYER(S)") who have been allowed an opportunity by the City of Santa Clara, ("CITY") to qualify to purchase the dwelling located at ***1500 Civic Center Drive, Santa Clara, CA 95050*** which has been designated by the CITY as a Below Market Purchase Unit (the "BMP UNIT").

I./ We have been informed by the CITY and their non-profit administrator, Neighborhood Housing Services Silicon Valley, Inc. "NHSSV", that the City has required the developer of the development project ("the DEVELOPER") to provide this dwelling (the BMP UNIT) at a sales price that is significantly lower than the other market rate units in the development.

I/ We fully understand that without the CITY'S assistance, I / we would not otherwise have the ability to purchase this dwelling (the BMP UNIT) with the same favorable terms or at the Affordable Sales Price noted by the CITY.

I/ We fully understand and have been informed by the CITY and NHSSV of the following facts related to the opportunity provided to purchase the dwelling (the BMP UNIT):

1. The unrestricted Initial Market Value (IMV) of the dwelling based on a recent appraisal is ***$ 425,000***;

2. I/ We are being allowed the opportunity to qualify to purchase the dwelling (the BMP UNIT) at the reduced sales price of ***$ 385,000***;
   (the "Affordable Sales Price recorded as the official transaction price)

3. This represents a reduction of ***$ 40,000*** from the Initial Market Value;

4. I/ We will sign a Promissory Note payable to the City for this amount (***$40,000***) and it will become a separate subordinate loan obligation and must be paid to the CITY with interest, if the dwelling (the BMP UNIT) is sold for a price higher than an Affordable Sales Price after the five-year resale restriction period (discussed in Item 8 below) expires.

5. The Appreciation Amount of the dwelling (the BMP UNIT) after 5 years of ownership is the difference of the Initial Market Value (IMV) appraised at ***$425,000*** and the future unrestricted market value determined at the time of resale.

6. The interest that must be paid to the City based on the City Promissory Note is the lesser of either 7% simple interest or a decreasing share of the Appreciation Amount due to the City calculated at a rate of -5% per year of ownership.

   Example A: In addition to the Promissory Note Value of ***$ 40,000*** after 6 years the City could receive interest equal to 70% of the Appreciation Amount gained above the Unrestricted Initial Market Value [100% of the equity - (6 years X 5%/year) = 70%] or 7% simple interest $ ***16,800*** , which ever is less.

   Example B: After 20 years, the City would receive only the Promissory Note Value of ***$ 40,000***, because the equity share would be less than 7% simple interest. [100% of the equity - (20 years X 5%/year) = 0%]

7. I/ We fully understand if I / we sell the dwelling (the BMP UNIT) during the first 5 years that I / we will not be able to sell the unit at a full market price because the Resale, Refinance, and Affordability Restrictions I / we will be signing give the City a right to buy the BMP UNIT (or designate another qualified buyer to buy the BMP UNIT) at a reduced purchase price that equals the Affordable Sales Price I / we paid adjusted overtime in accordance with the City's BMP Procedures. If the City or another designated buyer purchases the unit at the Affordable Sales Price, the City will forgive the City Promissory Note and I / we will not have to pay the ***$ 40,000*** to the City.

8. I/ We fully understand that only improvements that are consistent with the City's BMP Procedures and of at least $ ***2,000*** in value will be eligible to increase the Affordable Sales Price of dwelling (the BMP UNIT) during the first 5 years of ownership.

9. I/ We fully understand that the original primary mortgage loan of ***$ 300,000*** used to purchase this property may not be refinanced without prior written approval from the City and that it may only be replaced with a loan of equal or lesser value.

10. I/ We fully understand that I / we must live in the dwelling (the BMP UNIT) until the end of the Resale, Refinancing, and Affordability Restrictions (i.e. 20 years from the date of purchase) or the property is sold, whichever comes first.

11. I/ We fully understand that the Santa Clara County Tax Assessor will use the restricted value of the dwelling (the BMP UNIT) as represented in the Affordable Sales Price of ***$ 385,000*** to calculate property taxes for the property and that this amount may be adjusted by the Santa Clara County Tax Assessor as allowed by California Law.

Prior to close of escrow, I / we acknowledge that I / we have read and fully understand and comprehend this disclosure and the buyer documents provided by the CITY and NHSSV (Attachments _____ thru_____). I / We have no reservations regarding the terms or conditions that limit our use and ability to resell or refinance the dwelling during the effective 20 year term of the Resale, Refinancing and Affordability Restrictions. I/ We accept the terms and conditions noted in these documents.

Accepted: 1500 Civic Center Drive Designated Buyer(s)

Jose S. Public	_____	_____
Buyer #1 Printed Name	Buyer #1 Signature	Date:
Clara S. Public	_____	_____
Buyer #2 Printed Name	Buyer #2 Signature	Date:

Return Original to NHSSV to be placed in BMP File with Copies of all Attachments
Provide 1 Copy to Buyer with Copies of all Attachments
Provide 1 Copy to City of Santa Clara RDA with Copies of all Attachments

Attachment 7.

Homebuyer Test

(behind this page)

VERIFICATION OF HOMEBUYER AWARENESS & COMPREHENSION OF THE SANTA CLARA BMP PROGRAM RESALE, REFINANCING, & AFFORDABILITY RESTRICTIONS

This is a test of your understanding of the Santa Clara Below Market Purchase (BMP) Program and the Resale, Refinancing, & Affordability Restrictions that will apply to the dwelling you may be given the opportunity to purchase. You must understand the concepts noted in each question and be able to answer all the questions correctly or you will not be allowed to purchase the designated BMP Unit.

1. What is the address of the dwelling (the BMP UNIT) that I may be given the opportunity to purchase? _____.

2. Given my / our current financial circumstances, I / we would not otherwise have the ability to purchase this dwelling (the BMP UNIT) with the same favorable terms or at the Affordable Sales Price noted by the CITY. True or False? _____.

3. The Initial Market Value (IMV) of the dwelling without the City's Resale, Refinancing, and Affordability Restrictions based on an appraisal is $ _____.

4. I / We are being allowed the opportunity to qualify to purchase the dwelling (the BMP UNIT) at the reduced sales price of $_____ which is also referred to as the "Affordable Sales Price and this is the official recorded transaction price.

5. The difference between the Initial Market Value and the Affordable Sales Prices is $_____.

6. The eventual buyer of the dwelling (the BMP UNIT) will record a second Promissory Note (a loan) payable to the City and it will become a separate loan from the primary mortgage loan used to purchase the unit and must be paid to the CITY with interest, if after the five-year resale restriction expires, the dwelling is sold for a price higher than the allowed Affordable Sales Price. What is the amount that will be on the City Promissory Note and when must it be paid to the City with interest? _____.
_____.

7. What is the Affordable Sales Price? $ _____.

8. In addition to the value on the City Promissory Note, what is the interest that must be paid to the City if the dwelling (the BMP UNIT) is sold for a price higher than the Affordable Sales Price? _____
_____.

9. Can improvements made to the dwelling (the BMP UNIT) during the first 5 years of ownership be used to adjust the Affordable Sales Price? If so what is the minimum value of the improvements eligible? _____.

10. Can the original mortgage loan used to purchase this property be refinanced and if so for what amount? _____
_____

11. Can I rent out the dwelling (the BMP UNIT)? _____
_____

12. What is the transaction price used by the Santa Clara County Tax Assessor to calculate property taxes for this property? _____

COMPLETED BY:

_____	_____	_____
Buyer #1 Printed Name	Buyer #1 Signature	Date:
_____	_____	_____
Buyer #2 Printed Name	Buyer #2 Signature	Date:

NEIGHBORHOOD HOUSING SERVICES VERIFICATION OF HOMEBUYER COMPREHENSION OF THE SANTA CLARA BMP PROGRAMRESALE, REFINANCING, & AFFORDABILITY RESTRICTIONS

_____	_____	_____
NHSSV Representative	Signature	Date:

Return Original to NHSSV to be placed in BMP File with Copies of all Attachments
Provide 1 Copy to Buyer with Copies of all Attachments
Provide 1 Copy to City of Santa Clara RDA with Copies of all Attachments

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
2585 EL CAMINO REAL, LLC

ATTACHMENT D
INSURANCE COVERAGE REQUIREMENTS

Without limiting the Developer's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Developer shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

   $1,000,000 Each Occurrence
   $2,000,000 General Aggregate
   $2,000,000 Products/Completed Operations aggregate
   $1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Developer; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Developer to comply with the insurance -requirements of this Agreement:

   a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

   b. There shall be no cross liability exclusion, which precludes coverage for claims or suits by one insured against another;

   c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability;

   d. Coverage shall contain no Contractor's' limitation endorsement limiting the scope of coverage for liability arising from pollution, personal injury, Owners' and Contractor's' protective Liability; and

e. Contractual Liability coverage shall expressly include all liability assumed under this Agreement.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars ($1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Developer and/or its sub-contractor's involved in such activities shall provide coverage with a limit of two million dollars ($2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars ($1,000,000) policy limit Bodily Injury by disease, one million dollars ($1,000,000) each accident/Bodily Injury and one million dollars ($1,000,000) each employee Bodily Injury by disease.

2. The indemnification and hold harmless obligations of Developer included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Developer or any sub-contractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. The City of Santa Clara, its officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Developer's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

2. Primary and non-contributing. Each insurance policy provided by Developer shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from any other insurance, which the indemnities may possess, including

any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Developer's insurance.

3. Cancellation. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Attachment D, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Developer and City agree as follows:

1. Developer agrees to ensure that sub-contractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Developer, provide the same minimum insurance coverage required of Developer, except as with respect to limits. Developer agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Developer agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such sub-contractors and others engaged in the project will be submitted to City for review.

2. Developer agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Developer for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Developer in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Developer, and each and every sub-contractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Developer shall file with the City all certificates and endorsements for the required insurance policies for City 's approval as to adequacy of the insurance protection.

///

G. EVIDENCE OF COMPLIANCE

Developer or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City 's request, Developer shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

The City of Santa Clara
Housing & Community Services Division
c/o EBIX Inc.
P.O. 12010-S2 or 151 North Lyon Avenue
Hemet, CA 92546-8010 Hemet, CA 92543

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Developer shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
2585 EL CAMINO REAL, LLC

ATTACHMENT E
ETHICAL STANDARDS

Termination of Agreement for Certain Acts.

A. City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If Developer[1] does any of the following:

   a. Is convicted[2] of operating a business in violation of any Federal, State or local law or regulation;

   b. Is convicted of a crime punishable as a felony involving dishonesty[3];

   c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;

   d. Is convicted of an offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of Developer; and/or,

   e. Made (or makes) and false statement(s) or representation(s) with respect to this Agreement.

---

[1] For purposes of this Agreement, the word "Developer" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of the corporation.

[2] For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

[3] As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with Developer can be imputed to Developer when the conduct occurred in connection with the individual's performance of duties for or on behalf of Developer, with Developer's knowledge, approval or acquiescence, Developer's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

B. City may also terminate this Agreement in the event any one or more of the following occurs:

1. If City determines that Developer no longer has the financial capability[4] or business experience[5] to perform the terms of, or operate under, this Agreement; or,

2. If City determines that Developer fails to submit information, or permits false information, which is required in order to perform or be awarded a contract with City , including, but not limited to, Developer's failure to maintain a required State license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.

C. In the event Developer, as an applicant or bidder, is ruled ineligible (debarred) to participate in a contract award process, or the Agreement is terminated pursuant to these provisions, Developer may appeal City 's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City of its action. The matter will be heard within thirty (30) days of the filing the appeal request with the City Clerk. Developer will have the burden of proof on the appeal. Developer shall have the opportunity to present evidence, both oral and documentary, and argument.

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[4] Developer becomes insolvent, transfers assets in fraud of creditors, makes an assignment for benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Developer.

[5] Loss of personnel deemed essential by the City for the successful performance of the obligations of the Developer to the City.

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
2585 EL CAMINO REAL, LLC

ATTACHMENT F
AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I, Sanjeev Acharya, being first duly sworn, depose and say that I am the Manager of 2585 El Camino Real, LLC and I hereby state that I have read and understand the language, titled "Ethical Standards for Developers Seeking to Enter into an Agreement with the City of Santa Clara" (herein "Ethical Standards") set forth in Attachment E. I have authority to make these representations on my own behalf and on behalf of the legal entity identified herein. I have examined appropriate business records and I have made inquiry of those individuals potentially included within the definition of "Developer" contained in the Ethical Standards.

Based on the review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in Footnote #1 of Attachment E (1.e., owner or co-owner of a sole proprietorship, general partner, etc.) has been convicted of any one or more of the crimes identified in Attachment E within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

2585 El Camino Real, LLC
Developer Legal Name

S. Acharya
Signature

CEO
Title

NOTARY'S ACKNOWLEDGEMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgement of execution of the affidavit by the signatory. If the affidavit is on behalf of a Developer, partnership, or other legal entity, the entity's complete legal name and title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a Developer, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of **California**

County of **Santa Clara**

On 9/2/14 (Date) before me, **Sunita Singh**, Notary Public (Name and Title of Officer)

personally appeared Sanjeev Acharya,

(Name 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.

SUNITA SINGH
Commission # 1994918
Notary Public - California
Santa Clara County
My Comm. Expires Nov 18, 2016

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 of Notary Public

My Commission Expires: Nov 18, 2016

OPTIONAL INFORMATION

Description of Attached Document

Title or Type of Document: Affidavit of compliance with Material Standard.

Document Date: _____ Number of Pages: _____

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
2585 EL CAMINO REAL, LLC

EXHIBIT A

Form of City Covenants, Restrictions and Option to Purchase

(Attached hereto)

COMPLIMENTARY RECORDING
REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 27383

Recording Requested by and
When Recorded Mail To:
CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, California 95050
Attn: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

BELOW MARKET PURCHASE PROGRAM COVENANTS, RESTRICTIONS AND OPTION TO PURCHASE

This agreement, entitled Covenants, Restrictions and Option to Purchase (the "City Covenants") is entered into as of this DATE, by and between the City of Santa Clara (the "City") and OWNER (the "Owner").

RECITALS

WHEREAS, the City has determined that it is desirable to encourage the purchase of homes by Moderate Income Households, and,

WHEREAS, the City has established a Below Market Purchase Program to assist Moderate Income Households, and

WHEREAS, concurrently with the execution of these City Covenants, Owner is purchasing the Residence for a purchase price that is affordable to Owner in accordance with a certain Affordable Housing Agreement (the "AHA") by and between the City and DEVELOPER dated DATE OF THE AGREEMENT. Without the benefits afforded by the City's BMP Program, the purchase price of the Residence would exceed the amount that is affordable to Owner; and,

WHEREAS, accordingly, in order to preserve the affordability of the Residence for Moderate Income Households, and in return for and in consideration of the opportunity for the Owner to purchase the Residence under the above-referenced circumstances and for other good and valuable consideration, the receipt and legal sufficiency of which the undersigned hereby acknowledges, the Owner, has agreed to execute these City Covenants; and,

WHEREAS, these City Covenants place certain use restrictions on the Residence, establish resale controls with respect to the Residence, and reserve to the City an option to purchase or designate an Eligible Purchaser to purchase the Residence from the Owner in order to provide for the continued availability of the Residence to Moderate Income Households.

NOW, THEREFORE, in consideration of the benefits received by the Owner and the City, the Owner and the City agree, as follows:

1. **Definitions.** The terms set forth in this section shall have the following meanings when used herein:

"Affordable Housing Cost" shall mean a monthly housing cost not exceeding one-twelfth (1/12) of thirty-five percent (35%) of one hundred percent (100%) of Median Income, adjusted for household size appropriate for the size of the Residence.

"Affordable Sales Price" shall mean a sales price for a Residence that is derived from the Affordable Housing Cost, as determined by the City.

"Appreciation Amount" shall mean the difference between the Initial Market Value and the Unrestricted Resale Price less the Owner's "capital improvements" as this term is defined in these City Covenants, and which is approved by the City.

"City Covenants" shall mean these Covenants, Restrictions and Option to Purchase executed by and between the City and the Owner, of even date herewith, as amended, modified or supplemented from time to time.

"City Lien" shall mean that certain subordinate mortgage lien, made to the Owner by the City and evidenced by the City Note.

"City Lien Documents" shall collectively mean the City Note, these City Covenants and the City Subordinate Deed of Trust.

"City Manager" shall mean the City Manager of the City of Santa Clara or his/her designee.

"City Note" shall mean the promissory note from the Owner to the City, as amended from time to time, evidencing the City Lien, as amended, modified or supplemented from time to time.

"City Subordinate Deed of Trust" shall mean the deed of trust recorded against the Residence from the Owner in favor of the City, as amended, modified or supplemented from time to time, securing the City Note and these City Covenants.

"CalHFA" shall mean the California Housing Finance Agency.

"Eligible Household" shall mean a prospective purchaser of the Residence who meets the then current requirements established by the City, including, but not limited to, having a household income that does not exceed 110% of the Area Median Income.

"Fair Market Value" shall be determined by an appraisal of the Residence as provided hereunder.

"First Mortgage Deed of Trust" shall mean the Deed of Trust on the Home from the Homebuyer in favor of the First Mortgage Lender, securing the First Mortgage Lender Note.

"First Mortgage Lender" shall mean LENDER, its successors and assigns.

"First Mortgage Loan" shall mean the first mortgage loan provided by the First Mortgage Lender to the Owner and secured by the First Mortgage Deed of Trust.

"Initial Market Value" shall mean the unrestricted Fair Market Value of the Residence as determined by the City as of the date of these City Covenants.

"Moderate Income Household" shall be a household with a gross income which does not exceed one hundred and ten percent (110%) of the Median Income, adjusted for household size.

"Area Median Income" shall mean the median gross yearly income for households in Santa Clara County, California, as published periodically by the California Department of Housing and Community Development ("HCD"). In the event such income determinations are no longer published by HCD, or are not updated for a period of at least eighteen months, the City shall provide the First Mortgage Lender with other income determinations which are reasonably similar with respect to method of calculation to those previously published by HCD.

"Notice of Intended Transfer" shall mean the notice required under Section 5 of these City Covenants that shall specify all the terms of the intended Transfer.

"Program" shall mean the City's Below Market Purchase Program.

"Purchase Option" shall have the meaning ascribed thereto under Section 7 below.

"Resale Restriction Period" shall mean five years from the date of these City Covenants.

"Residence" shall mean the housing unit commonly known as ADDRESS, together with the land thereon, and any subparts thereof, which is more particularly described in Exhibit A attached to the City Subordinate Deed of Trust that secures the City Note, which is incorporated herein by reference.

"Restricted Resale Price"- see Section 6.

"Senior Lender" or "Senior Lenders" shall mean any of the following entities and their successors and assigns, which are the beneficiary of a recorded security instrument used to secure financing for the purchase of the Residence: (i) the First Mortgage Lender (ii) CalHFA; (iii) the City of Santa Clara; or (iv) a lender under a CalHFA first mortgage program.

"Senior Loan" or "Senior Loans" shall refer to loans made by Senior Lenders to the Owner.

"Senior Loan Deeds of Trust" shall refer to the deeds of trust securing each Senior Loan, which documents shall at all times be senior to the City Lien Documents.

"Transfer" shall mean any sale, assignment, transfer, encumbrance voluntary or involuntary, in part or in full, of any interest in the Residence, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, a lien or an interest evidenced by a land contract by which possession of the Residence is transferred and Owner retains title; provided, however, that Transfer shall not include transfers by gift, devise or inheritance to an existing spouse, surviving joint tenant, or transfers to a spouse in the course of a dissolution proceeding or in connection with marriage, or transfers by devise or inheritance to children, or a transfer into an inter vivos trust of which the Owner is the sole beneficiary.

"Unrestricted Resale Price" shall mean the actual unrestricted price of the Residence that the Owner transfers between the expiration of the Resale Restriction Period and the twentieth (20th) anniversary of this Agreement.

2. **Owner Representations and Warranties.** The Owner represents and warrants that:

(a) The financial and other information provided by Owner to the City, its contractors and agents, and all lenders in order to qualify to purchase the Residence is true and correct as of the date first written above;

(b) The Owner intends and shall occupy the Residence as the Owner's principal place of residence, except as otherwise provided in Paragraph (c) of Section 3 below.

3. **Owner-Occupancy.**

(a) Owner shall occupy the Residence as his or her or their primary residence, and the Residence shall be used as the primary residence of Owner and Owner's household and for no other purpose. The Residence shall not be leased or rented by Owner to any person or entity.

(b) The City shall have the right to monitor whether the Residence is Owner-occupied by requesting that Owner provide the City, not more frequently than annually, with a written certification under penalty of perjury that the Residence is Owner-occupied, accompanied by supporting documentation reasonably satisfactory to the City.

(c) These Owner-occupancy restrictions may be waived, modified or terminated only upon the prior written approval of the City Manager.

4. **Maintenance of Property.** Owner agrees it shall maintain the interior and exterior of the Residence and any landscaping on the Residence in good condition and repair and in a manner consistent with the community standards which will uphold the value of the Residence, and in accordance with all applicable City codes. Failure to maintain the Residence in accordance with this Section 4, including, but not limited to, any violations of applicable building, plumbing, electric, fire,

housing or other applicable City of Santa Clara Building Codes, shall be a default by the Owner under this Agreement.

5. **Notice of Intended Transfer.** In the event Owner vacates the Residence (e.g., to use the Residence as their primary residence) or Transfer any interest therein or any portion thereof, Owner shall give the City a Notice of Intended Transfer at least ninety (90) days prior to the intended date for vacating the Residence or executing the Transfer. Any Transfer in violation of this Section 5 or any other provision of these City Covenants is prohibited and shall be null and void.

In the case of a Transfer by sale, the Notice of Intended Transfer shall also be accompanied by a written certification by the Owner and the proposed purchaser, in a form that is reasonably acceptable to the City, that the Owner and the proposed purchaser have not paid, have no agreement to pay and will not pay, to the other such party, or to any other person, any money or other consideration in addition to the consideration described in the terms of the sale.

6. **Determination of Restricted Resale Price.** During the Resale Restriction Period, the maximum sales price that the Owner may receive from any source for any type of Transfer of the Residence ("Restricted Resale Price") shall be the lowest of the following: (a) the Increased Base Price (defined below); (b) the Fair Market Value (defined below); or (c) the Affordable Sales Price (as defined in Section 1.).

(a) Increased Base Price. The "Increased Base Price" means the purchase price that Owner paid for the Residence, increased by the percentage change in the Area Median Income, as published by the U.S. Department of Housing and Urban Development, from the purchase date to the date of notification stated in Section 5, above. In the event that such income determination is no longer published, or has not been updated for a period of at least eighteen (18) months, the City may use or develop such other reasonable method as it may choose to determine the Area Median Income for Santa Clara County.

The Increased Base Price shall also be adjusted for the "Value of Capital Improvements". The "Value of Capital Improvements" shall mean the value of substantial structural or permanent fixed improvements that cannot be removed without substantial damage to the Residence or substantial or total loss of value of said improvements. No such valuation shall be made except for improvements: (a) made or installed by or under the direction of the Owner; (b) with an initial cost of Two Thousand Dollars ($2,000) or more; and (c) which can be documented by the Owner to the reasonable satisfaction of the City Manager. The value of such improvements to be taken into account in calculation of the Increased Base Price shall be the appraised market value of the improvements when considered as additions or fixtures to the Residence (i.e., the amount by which said improvements enhance the market value of the Residence at the time of sale or valuation). The adjustment to the Increased Base Price for such improvements shall be limited to the increase in value, and shall be determined by the City Manager and the Owner, or in the event of a failure to agree, by an independent residential appraiser selected by the Owner from a list of appraisers established by the City. The cost of the appraisal shall be borne by the Owner.

(b) Fair Market Value. The "Fair Market Value" of the Residence shall be determined by an independent residential appraiser selected by the Owner from a list of appraisers established by the City. To the extent possible, the appraisal shall be based on the sales prices of comparable properties sold in the market area during the preceding three (3) month period. The cost of the appraisal shall be borne by the Owner. In the event the Owner has made capital improvements to the Residence which have individually cost more than Two Thousand Dollars ($2,000) and can be documented to the appraiser and which have increased the value of the Residence, or if damage or deferred maintenance have occurred while the Owner owned the Residence which have decreased the value of the Residence, the appraisal shall specifically determine the Value of Capital Improvements as set forth in Section 6.a. or the adjustment for damage and deferred maintenance and shall state what the fair market value of the Residence would be without such value or adjustments. Nothing in this Section shall preclude the Owner and the City from establishing the Fair Market Value of the Residence by mutual agreement in lieu of an appraisal pursuant to this Section.

7. **Purchase Option.**

(a) As a material part of the consideration for these City Covenants, Owner covenants and agrees for itself, its successors and its assigns and every successor in interest to the Residence that for the Resale Restriction Period of these City Covenants, Owner hereby grants to the City an exclusive option to purchase the Residence or designate an Eligible Household to purchase the Residence from Owner in the event of an uncured default under the First Mortgage Loan or the City Lien Documents (subject to the First Mortgage Lender and Senior Lender's rights to cure under Section 12 herein), or upon receipt by the City of a Notice of Intended Transfer (the "Purchase Option"); provided, however, that the City shall be deemed to have waived such Purchase Option unless it gives notice to the Owner, the First Mortgage Lender and the Senior Lenders of its intention to exercise the Purchase Option within thirty (30) days, and to the extent possible, subsequently completes the purchase of the Residence within one hundred twenty (120) days from earliest of: (i) the expiration of the applicable cure period in the event of a default by the Owner under the City Lien Documents; or (ii) receipt by the City of a notice of default under the First Mortgage Loan, a Senior Loan, or a Notice of Intended Transfer.

(b) Within thirty (30) days following the exercise of the Purchase Option, the parties agree that the City shall open, or cause to be opened, an escrow with a title insurance company or such other escrow agent reasonably acceptable to the City (the "Escrow Agent") and the parties agree to execute escrow instructions with Escrow Agent as may be required by Escrow Agent, or to implement or give effect to the terms and conditions of these City Covenants. The parties agree to the following escrow terms and conditions:

(1) The escrow shall be for a period of one hundred (120) days or sooner if mutually agreed by the parties;

(2) The City agrees that it will pay, or cause to be paid by an Eligible Household designated by the City, the Restricted Resale Price upon the close of escrow or as otherwise mutually agreed to by the parties. Notwithstanding the foregoing, prior to the close of escrow, the Owner hereby agrees that the Escrow Agent shall withhold that portion of the Restricted Resale Price

necessary to pay off the outstanding principal balance and interest due under the First Mortgage Loan, the Senior Loans and any outstanding liens or encumbrances against the Residence other than as due under the City Lien Documents. Any remaining funds shall be disbursed by the Escrow Agent to Owner;

(3) The Owner agrees that it shall pay the premium for a standard C.L.T.A. policy of Owner's title insurance issued by the Escrow Agent or title insurance company reasonably acceptable to the City in the amount of the Restricted Resale Price, insuring title to the Residence in the City's (or Eligible Household's, as the case may be) name, subject only to those matters approved by the City in writing. In the event the City (or Eligible Household, as the case may be) requests an A.L.T.A. policy of Owner's insurance and/or any title endorsements, the additional costs associated with the issuance of an A.L.T.A policy or the endorsements shall be paid by the City (or Eligible Household, as the case may be);

(4) In the event the City exercises its Purchase Option, the Owner and City agree that all costs and fees charged in connection with the closing and escrow shall be borne one-half (1/2) by the City (or Eligible Household, as the case may be) and one-half (1/2) by the Owner; provided, however, in the event the City exercises its Purchase Option upon default by the Owner under the City Lien, the First Mortgage Loan or a Senior Loan, the Owner agrees to pay all costs and fees charged in connection with the closing and escrow;

(5) The Owner agrees that it shall deposit in escrow for delivery to the City (or Eligible Household, as the case may be) a grant deed to the City (or Eligible Household, as the case maybe) in such form as may be reasonably acceptable to the City Manager in his or her sole discretion);

(6) Taxes and assessments shall be prorated at the close of escrow with Owner paying all such taxes and assessments due and payable prior to the close of escrow and City (or Eligible Household, as the case may be) paying all such taxes and assessments due and payable following the close of escrow;

(7) Owner agrees that title shall be conveyed by Owner at the close of escrow to the City (or Eligible Household, as the case may be) free and clear of all mortgages, deeds of trust, liens and encumbrances. Owner agrees that any costs to remove or satisfy any mortgages, deeds of trusts, liens or encumbrances shall be the responsibility of Owner, at Owner's sole cost and expense; and

(8) Any other terms or conditions mutually agreed to by the parties.

(c) Priority of Option. The Option granted pursuant to these City Covenants shall be senior in priority to any lien or encumbrance, with the exception of the First Mortgage Loan, the Senior Loans and the documents securing such loans.

(d) In no event shall the City become in any way liable or obligated to the Owner or any successor-in-interest to the Owner by reason of the exercise of, or the failure to exercise the Purchase Option.

8. **Appraisal; Fair Market Value.** Upon a Transfer of the Residence, the First Mortgage Lender shall conduct an appraisal of the Residence, subject to the City's right to have an independent appraisal conducted. The cost of the appraisal shall be borne by the Owner. Nothing in this Section shall preclude Owner and City from establishing the Fair Market Value of the Residence by mutual agreement in lieu of an appraisal.

9. **Transfer by Owner at an Unrestricted Resale Price.** If, after the expiration of the Resale Restriction Period, the Owner Transfers the Residence at an Unrestricted Resale Price, and such Transfer occurs prior to the twentieth (20th) anniversary of the date of this Agreement, the City shall be entitled to receive, and Owner shall pay to the City, an amount equal to the principal balance of the City Note. In addition to paying the entire outstanding balance of the City Note, Owner shall pay the City the lesser of either (i) simple interest at the rate of seven percent (7%) on the principal amount of the City Lien or (ii) an equity share, defined as the City's proportionate share of the Appreciation Amount decreased at the rate of five percent (5%) per year commencing from the date of this Agreement and the City Note until the twentieth (20th) anniversary. These obligations to pay the City shall be evidenced by a promissory note secured by a deed of trust recorded against the Residence.

10. **Restrictions on Transfer Proceeds.** The proceeds from any Transfer that ensues following the waiver or other failure by the City to exercise the Purchase Option under Section 7 above, after paying any and all superior liens and costs and fees relating to the transaction (such as any escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs), shall be applied in the following order of priority: (i) the outstanding balance on the City Note; and (ii) any excess proceeds shall belong to the Owner.

11. **Default.** The occurrence of any of the following shall be deemed a default hereunder:

(a) Failure or delay by Owner to perform any covenant or agreement of the Owner under these City Covenants; or

(b) Failure or delay by Owner to perform any other covenant or agreement of the City Lien Documents or any other lien recorded against the Residence.

12. **Notice of Default; Cure Periods.**

(a) Regardless of whether any notice is given, in the event of a failure or delay amounting to a default by the Owner in the performance of any term or provision of these City Covenants or any other City Lien Document, the Owner must immediately commence to cure, correct, or remedy such default and shall complete such cure, correction or remedy with reasonable diligence. In the event the Owner is unable or unwilling to implement the required cure, correction or remedy, the First Mortgage Lender and Senior Lenders shall have the right to cure, correct, or remedy any such default of the Owner, provided the First Mortgage Lender and Senior Lenders give notice to the City of its intention to cure, correct, or remedy the default within thirty (30) days after receipt of notice thereof. The City shall not exercise the Purchase Option, commence foreclosure proceedings or accept a deed

in lieu of foreclosure until it has given the First Mortgage Lender and Senior Lenders at least thirty (30) days' prior notice of the default in accordance with this Section 12.

(b) In the event of a non-monetary default by the Owner, the City shall give, or cause to be given, notice of default to the Owner, the First Mortgage Lender and the Senior Lenders, specifying: (1) the default complained of by the City; (2) the action required to cure such default; (3) a date by which such default is to be cured; (4) that failure to cure such default on or before the date specified in the notice may result in the exercise by the City of the Purchase Option pursuant to these City Covenants and such other remedies available to the City under the City Lien Documents or as provided by law; and (5) that Owner has the right to seek reinstatement and the right to bring a court action to assert the nonexistence of default or any other defense of the Owner to acceleration and sale. If the non-monetary default is reasonably capable of being cured within thirty (30) days, the City may grant the Owner, the First Mortgage Lender or the Senior Lenders such period after receipt of the notice to effect a cure. If such default is not reasonably capable of being cured within thirty (30) days, and the Owner, the First Mortgage Lenders or the Senior Lenders (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, the City may grant the Owner, the First Mortgage Lenders or the Senior Lenders such additional time as is reasonably necessary to cure the default.

(c) In the event of a monetary default, the Owner shall receive notice, and shall be accorded the appropriate period of time to effect a cure, in the manner and under the terms and conditions applicable to such default as provided under the City Lien Documents.

(d) Notwithstanding the cure periods established in this Section 12, in no event shall the City be precluded from sooner exercising any remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default or delinquency is given.

(e) Any omission or delay by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

13. **Notices.** Except as otherwise expressly provided in these City Covenants, in every case when, under the provisions of these City Covenants, it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served: (i) personally; or (ii) by independent, reputable, overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested; or (iv) by facsimile machine, with transmission and receipt confirmed, addressed as follows:

To Owner: _____
_____
_____
_____

To First Mortgage Lender: _____
_____
_____
_____

To Senior Lenders: _____
_____
_____
_____

To City The City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
Fax: (408) 249-7846
(Or such other address as may be provided by the City)

Any notice that is transmitted by electronic facsimile transmission during regular business hours of regular business days followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission by facsimile; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

14. **Binding on Successors and Assigns.** Notwithstanding any other provision of law, these City Covenants shall run with the land and shall be enforceable against the Owner and its successors in interest by the City. The requirements of these City Covenants shall remain in effect with respect to the Residence until the first to occur of the following:

(a) The end of twenty (20) years from the date hereof;

(b) The exercise by the City of the Purchase Option granted herein;

(c) A Transfer of the Residence and payment to the City of the full amount due on the City Note (including principal and the equity share or accrued interest);

(d) The acquisition of title to the Residence, by the First Mortgage Lender, a Senior Lender or other party, upon foreclosure of the First Mortgage Deed of Trust or a Senior Loan Deed of Trust;

(e) The acquisition of title to the Residence by the First Mortgage Lender or a Senior Lender or other party by a deed in lieu of foreclosure of the First Mortgage Deed of Trust or Senior Loan Deed of Trust, as applicable.

15. **Superiority of City Covenants/Subordination.** Upon close of escrow for the purchase of this Residence and the valid recordation of these Covenants, these Covenants shall supersede and replace the AHA, any other prior document restricting the unit, and all restrictions in such document are void and of no further effect.

The Owner covenants that he or she has not, and will not, execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that, in any event, these City Covenants is controlling as to the rights and obligations between and among the Owner, the City and their respective successors.

Notwithstanding anything to the contrary contained herein, these City Covenants shall, at all times, be subordinate to the First Mortgage Loan Documents and the Senior Loan Deeds of Trust.

16. **Right To Consent To Changes, Enforce.** No changes shall be made to these City Covenants without the prior written consent of the City. Only the City, the First Mortgage Lender, a Senior Lender, the Owner and their respective successors and assigns in and to the Residence shall have the right to consent and agree to changes in, or to eliminate in whole or in part, these City Covenants or to subject the Residence to additional covenants, easements, or other restrictions without the consent of any tenant, lessee, easement holder, licensee, trustee, beneficiary under a deed of trust (other than those securing the First Mortgage Loan, a Senior Loan or the City Lien) or any other person or entity having an interest less than a fee in the Residence. These City Covenants, without regard to technical classification or designation, shall not benefit or be enforceable by any person, or firm, or corporation, public or private, except the City of Santa Clara and the Owner and their respective successors and assigns.

17. **Invalid Provisions**. If any one or more of the provisions contained in these City Covenants shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in these City Covenants, and these City Covenants shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

18. **Controlling Law; Venue.** The terms of these City Covenants shall be interpreted under the laws of the State of California. Any lawsuit brought to enforce these covenants shall be brought in the Superior Court for this County of Santa Clara, and/or the federal district courts Northern District of California, San Jose.

19. **Exhibits.** Any exhibits referred to in these City Covenants are incorporated in these City Covenants by such reference. Owner agrees that he or she has had adequate opportunity to discuss these covenants with a representative of their choosing, and fully understand and accept all obligations assumed by execution of this Agreement.

[Signatures on following pages]

IN WITNESS WHEREOF, the Owner has executed these City Covenants as of the date first written above.

THE CITY OF SANTA CLARA, CA
a chartered California municipal corporation

APPROVED AS TO FORM:

_____
RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

_____
ROD DIRIDON, JR.
City Clerk

_____
JULIO J. FUENTES
City Manager

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Facsimile: (408) 241-6771

"City"

By:_____
Name:_____

By:_____
Name:_____

"Owner"

EXHIBIT A

RESIDENCE DESCRIPTION

[To be added.]

State of California)
)
County of Santa Clara)

On _____, 20___, before me, _____,
a Notary Public, personally appeared _____,
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 _____ (SEAL)

State of California)
)
County of Santa Clara)

On _____, 20___, before me, _____,
a Notary Public, personally appeared _____,
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 _____ (SEAL)

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
2585 EL CAMINO REAL, LLC

EXHIBIT B
Form of City Promissory Note

[Behind this page]

NOTICE TO BORROWER:
This document contains provisions restricting resales and assumptions.

BELOW MARKET PURCHASE PROGRAM
PROMISSORY NOTE
Secured by City Subordinate Deed of Trust

Note Amount: $ Santa Clara, California
Loan Date: _____, 20__

FOR VALUE RECEIVED, the undersigned ("Borrower") promises to pay to the CITY OF SANTA CLARA ("City") at such place as the City may designate from time to time in writing, the principal sum of $_____. All sums hereunder shall be payable in lawful money of the United States of America.

1. **Definitions**. The terms set forth in this section shall have the following meanings in this Note.

"Affordable Housing Cost" shall mean a Monthly Housing Cost not exceeding one-twelfth (1/12) of thirty-five percent (35%) of one hundred percent (100%) of Median Income, adjusted for household size appropriate for the size of the Residence, but in no event less than one-twelfth (1/12) of twenty-eight percent (28%) of the Borrower's actual gross income.

"Affordable Sales Price" shall mean a below-market sales price for a Residence, as determined by the City as of the date of the City Covenant.

"Appreciation Amount" shall mean the difference between the Initial Market Value and the Unrestricted Resale Price (less Borrower's "capital improvements" as this term is defined in the City Covenants and approved by the City).

"City Covenants" shall mean those certain Covenants, Restrictions and Option to Purchase entered into by and between the Borrower and the City, as amended, modified or supplemented from time to time.

"City Lien" shall mean that certain secondary mortgage lien, made to the Borrower by the City and evidenced by this Note.

"City Lien Documents" shall collectively mean this City Note, the City Covenants and the City Deed of Trust.

"City Note" or "Note" shall mean this promissory note from the Borrower to the City evidencing the City Lien to the Borrower, as amended, modified or supplemented from time to time.

"City Subordinate Deed of Trust" shall mean the deed of trust against the Residence executed by the Borrower in favor of the City, securing the City Note, as amended, modified or supplemented from time to time.

"CalHFA" shall mean the California Housing Finance Agency.

"Eligible Household" shall mean a Moderate Income Household which: (i) is defined as a first-time homebuyer in the City Covenants; (ii) intends to owner-occupy the Residence; and, (iii) meets the Program's household income and liquid assets requirements.

"Initial Market Value" shall mean the fair market value of the Residence, as determined by the City as of the date of the City Covenants.

"Moderate Income Household" shall be a household with a gross income which does not exceed one hundred and ten percent (110%) of the Median Income, adjusted for household size.

"Notice of Intended Transfer" shall mean the notice required under Section 4 of the City Covenants that shall specify all the terms of the intended Transfer.

"Program" shall mean the City's Below Market Purchase Program.

"Resale Restriction Period" shall mean five years from the date of the City Covenants.

"Restricted Resale Price" shall mean that price determined by the City in accordance with the provisions in the City Covenants.

"Residence" shall mean the housing unit commonly known as _____, together with the land thereon and any subparts thereof, and more particularly described in Exhibit A attached to the City Subordinate Deed of Trust that secures this Note.

"Senior Lender" or "Senior Lenders" shall mean any of the following entities and their successors and assigns, which is the beneficiary of a recorded security instrument used to secure financing for the purchase of the Residence: (i) the First Mortgage Lender, (ii) CalHFA; (iii) the City of Santa Clara; or (iv) a lender under a CalHFA first mortgage program.

"Senior Loan" or "Senior Loans" shall refer to loans made by Senior Lenders to the Borrower.

"Senior Loan Deeds of Trust" shall refer to the deeds of trust securing each Senior Loan, which documents shall at all times be senior to the City Lien Documents.

"Term" shall mean the twenty (20) year period commencing upon the date of this Note.

"Transfer" shall mean any sale, assignment, transfer, or encumbrance voluntary or involuntary, in part or in full, of any interest in the Residence, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Residence is transferred and

Borrower retains title; provided, however, that Transfer shall not include transfers by gift, devise or inheritance to an existing spouse, surviving joint tenant, or transfers to a spouse in the course of a dissolution proceeding or in connection with marriage, or transfers by devise or inheritance to children, or a transfer into an inter vivos trust of which the Borrower is the sole beneficiary.

"Unrestricted Resale Price" shall mean the actual unrestricted price of the Residence that the Owner transfers between the expiration of the Resale Restriction Period and the twentieth (20th) anniversary of this Note.

2. **City Lien.** This Note is made and delivered pursuant to, and in implementation of, the City's Below Market Purchase Program, under which the City, in order to assist Borrower to purchase the Residence, is making the City Lien to Borrower in the amount set forth above. The amount of the City Lien consists of the difference between the Initial Market Value and the Affordable Sales Price for the Residence, as determined by the City as of the date of the City Covenants. Concurrently with the execution of this City Note, Borrower is executing the following instruments in connection with the purchase of the Residence:

   (a) The City Subordinate Deed of Trust that secures this Note; and
   (b) The City Covenants, recorded concurrently with the City Subordinate Deed of Trust.

3. **Loan Security.** This Note is secured by the City Subordinate Deed of Trust of even date herewith. Borrower shall purchase an ALTA lender's policy of title insurance, insuring such City Subordinate Deed of Trust as a secondary lien on the Residence, with no delinquent taxes or assessment liens that appear as exceptions to title.

4. **Repayment.**

   (a) Notwithstanding any other provision of this Note, the entire outstanding principal balance of this Note and the amount set forth in subsection (b) below, shall be due and payable upon the first to occur of the following:

      (i) a default by Borrower under the City Lien Documents;

      (ii) a Transfer that occurs after the expiration of the Resale Restriction Period and before the expiration date of this Note, except as otherwise provided herein;

      (iii) payment in full of the First Mortgage Loan;

      (iv) Borrower refinances all, or any part of, the First Mortgage Loan; provided, however, that the entire outstanding principal balance of this Note shall not be due and payable upon such a refinance if the amount refinanced does not exceed the outstanding balance of the First Mortgage Loan plus closing costs; or

      (v) twenty (20) years from the date of this Note.

(b) In addition to paying the entire outstanding principal balance of the Note, Borrower shall pay the City the lesser of either (i) simple interest at the rate of seven percent (7%) on the principal amount of the City Lien commencing from the date of this Note to the date all amounts due under this Note have been repaid in full, or (ii) an equity share, defined as the City's proportionate share of the Appreciation Amount decreased at the rate of five percent (5%) per year commencing from the date of this Note until the maturity date of this Note. See Equity Share/Interest Payment Example attached hereto as **Attachment A.**

c) After payment of the outstanding balance of the Note and any interest or equity share, the City shall then remove or cause to be removed the City Covenants as a lien on the Residence and the City Covenants shall cease to be covenants running with the land for the Residence.

5. **Repayment Deferral/Forgiveness.** Except as provided under Section 4 above, the Borrower is not obligated to repay this Note during the Resale Restriction Period if the Residence is transferred at a Restricted Resale Price pursuant to and in accordance with the City Covenants.

6. **Exception.** The City may, at its sole and absolute discretion, permit exceptions on a case-to-case basis to the accelerated repayment provisions under paragraph (a) of the preceding Section 4 of this Note.

7. **Prepayments.** Borrower may prepay all or part of the principal balance due under this Note. If prepayment occurs after the expiration of the Resale Restriction Period and prior to transfer of the Residence, Borrower shall also pay either interest or an equity share as specified in Section 4 (b). The City shall use Fair Market Value, as defined in the City Covenants in determining the Appreciation Amount. The City Covenants shall continue to remain in full force and effect until the 20th anniversary of this Note. Borrower shall not prepay the First Mortgage Loan unless this Note is paid in full.

8. **Application of Payments.** Any payments made pursuant to the terms of this Note shall be applied first to sums, other than principal, that are due to the City pursuant to this Note, and the balance, if any, to the payment of principal.

9. **Indemnification.** Without prejudice to the rights of the City hereunder or under any other City Lien Documents, Borrower shall indemnify defend and hold harmless the City against, and shall pay the City on demand, any expense or loss which City may sustain or incur as a result of the failure by Borrower to pay when due any installment of principal, interest, fees, or other amounts payable to the City under this Note or any other City Lien Documents.

10. **Restrictions on Transfer Proceeds.** Except as otherwise provided by the requirements of any Fannie Mae or CalHFA rules or guidelines applicable to the First Mortgage Loan, or by this Note, proceeds from any Transfer, after paying any and all superior liens against the Residence and costs and fees relating to the transaction, if any (such as escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs), shall be applied in the following order of priority: (i) accrued interest or shared equity under this Note; (ii) the

outstanding balance under this Note; and (iii) any excess proceeds shall belong to the Borrower.

11. **Junior Liens.** Borrower shall not encumber the Residence for the purpose of securing financing and excluding the Senior Loan, whether senior in priority or subordinated to the City Deed of Trust without the prior written approval of the City. Notwithstanding any other provision of this Note, the following shall apply in the case of junior liens:

(a) Borrower shall give written notice to the City at least 30 days prior to recording any junior lien against the Residence to secure any loan of funds, including documentation of the proposed use of the proceeds of such loan.

(b) Borrower shall give written notice to City of any notice of default under any junior lien.

(c) Failure to give any notice required under this Section 11 and any uncured default under the terms of the junior lien shall be a default under this Note.

12. **Default.** The occurrence of any of the following shall be deemed a default hereunder:

(a) Failure by Borrower to make timely payments as required under this Note; or

(b) Failure or delay in the performance, or any other violation by Borrower of any other covenant or agreement of Borrower under this Note; or

(c) Failure or delay by Borrower to perform any covenant or agreement of Borrower in the City Deed of Trust, the City Covenants or any other lien recorded against the Residence.

13. **Notice of Default; Cure Periods.**

(a) Regardless of whether any notice is given, in the event of a failure or delay that constitutes a default by the Borrower in the performance of any term or provision of this Note or any other City Lien Document, the Borrower must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence. In the event the Borrower is unable or unwilling to enter into a forbearance agreement or otherwise implement the required cure, correction or remedy, the Senior Lenders shall have the right to cure, correct, or remedy any such default of the Borrower provided the Senior Lenders give notice to the City of its intention to cure, correct, or remedy the default within thirty (30) days after receipt of notice thereof. The City shall not commence foreclosure proceedings or accept a deed in lieu of foreclosure until it has given the Senior Lenders at least thirty (30) days' prior written notice of the default in accordance with this Section 13.

(b) In the event of a non-monetary default by the Borrower, the City shall give, or cause to be given, written notice of default to the Borrower, the Senior Lenders, specifying: (1) the default complained of by the City; (2) the action required to cure such default; (3) a date by which such default is to be cured; and (4) that failure to cure such default on or

before the date specified in the notice may result in acceleration of the sums owing under this Note, the sale of the Residence or the exercise of such other remedies available to the City under the City Lien Documents or as provided by law; (5) that Borrower has the right to seek reinstatement after acceleration and the right to bring a court action to assert the nonexistence of default or any other defense of Borrower to such acceleration and sale. If the non-monetary default is reasonably capable of being cured within thirty (30) days, the City may grant the Borrower, the Senior Lenders such period after receipt of the notice to effect a cure. If such default is not reasonably capable of being cured within thirty (30) days, and the Borrower, the Senior Lender (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, the City may grant the Borrower, the Senior Lender such additional time as is reasonably necessary to cure the default.

(c) In the event of a monetary default by the Borrower under the terms of this Note or the City Deed of Trust, the procedures and time periods established in Section 13 (a) above shall govern.

(d) Notwithstanding the cure periods established in this Section 13, in no event shall the City be precluded from sooner exercising any remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or if the default is not cured within ninety (90) days after the first notice of default or delinquency is given.

(e) Any omission or delay by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

14. **Borrower's Waivers.** Borrower waives any right to require the City:

(a) To demand payment of amounts due (known as "presentment");

(b) To give notice that amounts due have not been paid (known as "notice of dishonor")

(c) To obtain an official certification of nonpayment (known as "protest").

15. **Remedies.** Upon the occurrence of a default, the giving of notice and the expiration of the applicable cure period, the City may, at its option: (a) Declare all of the sums owing hereunder and secured by the City Deed of Trust to be immediately due and payable without further demand, and invoke the power of sale and any other remedies permitted by California law; (b) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Residence and take possession thereof (or any part thereof), in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Residence, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Residence shall not cure or waive any breach hereunder or invalidate any act done in response

to such breach and, notwithstanding its continuance in possession of the Residence, the City shall be entitled to exercise every right provided for in this Note and the City Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale; (c) commence an action to foreclose the City Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; (d) deliver to one or more of the Trustees named in the City Deed of Trust, the trustee named in the deed of trust securing the Senior Loan, or any of them, a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found in California Civil Code Sections 2924, *et seq.*, as amended from time to time, which notice such trustee shall cause to be duly filed for record; (e) exercise its option to purchase pursuant to the City Covenants; or (f) exercise all other rights and remedies provided herein, in the instruments by which the Borrower acquires title to Residence, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law. No delay or omission on the part of the City in exercising any right under this City Note or the City Deed of Trust shall operate as a waiver of such right.

16. **City Assignment.** City may, at its option, assign its right to receive payment under this Note without obtaining the consent of the Borrower. City shall provide written notice of any such assignment to the Senior Lenders.

17. **Attorney Fees and Costs.**

    (a) Borrower agrees to pay the following costs, expenses, and attorneys' fees paid or incurred by City, or adjudged by a court: (i) reasonable costs of collection, costs, and expenses, and attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suite is filed; and (ii) costs of suit and such sum as the court may adjudge as attorneys' fees in any action to enforce payment of this Note or any part of it.

    (b) In addition to the foregoing award of attorneys' fees, City shall be entitled to its attorneys' fees incurred in any post judgment proceedings to enforce any judgment in connection with this Note. This provision is separate and several and shall survive the merger of this provision into any judgment.

18. **Amendments.** This Note may not be modified or amended except by an instrument in writing expressing such intention executed by the parties sought to be bound thereby, which writing must be so firmly attached to this Note so as to become a permanent part thereof.

19. **Severability.** The covenants of this Note are severable. Invalidation of any covenant or any part thereof by law, judgment, or court order shall not affect any other covenant.

20. **Notices.** Except as otherwise expressly provided in this Note, in every case when, under the provisions of this Note, it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served: (i) personally; or (ii) by independent, reputable, overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested; or (iv) by facsimile machine, with transmission and receipt confirmed, addressed as follows:

To Borrower: _____
_____
_____
_____

To Senior Lender: _____
_____
_____
_____

_____
_____
_____
_____

To City: The City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
Fax: (408) 248-3381
(Or such other address as may be provided by the City)

Any notice that is transmitted by electronic facsimile transmission during regular business hours of regular business days followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission by facsimile; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

21. **Non-Waiver.** Failure or delay in giving any notice required hereunder shall not constitute a waiver of any default or late payment, nor shall it change the time for any default or payment.

22. **Successors Bound.** This Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.

23. **Joint and Several Obligations.** This Note is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

[Signature on following page]

BORROWER

By: _____
Printed Name: _____

By: _____
Printed Name: _____

Address: _____

_____

Attachment A

Equity Share and 7% Simple Interest Illustration
The seller will pay the lesser of the City's Equity Share of the Appreciation Amount or 7% simple interest based on a 20-Year Promissory Note

Example:

Initial Market Value of the Unit	$500,000
Less Affordable Sales Price at time of initial sale	$385,000
equals Principal amount of City Note	$115,000

Equity Share Calculation of the Appreciation Amount (Equity Subject to Sharing):

	Year Resale Occurs		
	6	**10**	**15**
Assumed Unrestricted Resale Price	$600,000	$675,000	$750,000
Less capital improvements approved by City	5,000	7,500	10,000
Net Unrestricted Resale Price	595,000	667,500	740,000
Less Initial Market Value	500,000	500,000	500,000
Appreciation Amount	$ 95,000	$167,500	$240,000
City's Equity Share			
(20-6)/20 times the Appreciation Amount	($66,500)		
(20-10)/20 times the Appreciation Amount		($83,750)	
(20-15)/20 times the Appreciation Amount			($60,000)
Seller's Equity (Appreciation Amount less City's Share)	*$28,500*	*$83,750*	*$180,000*
(Seller gets 5%/yr increase in shared Appreciation Amount)			

OR

7% Simple Interest Illustration:

Appreciation Amount	$95,000	$167,500	$240,000
7% simple interest ($115,000 principal)	($48,300)	($80,500)	($120,750)
Seller's Equity (Appreciation Amount less City's Interest)	*$46,700*	*$87,000*	*$119,250*
Principal amount of City Note	$115,000	$115,000	$115,000

Borrower must pay principal amount of the City Note in addition to either the City's share of the Appreciation Amount or the 7% simple interest amount.

It is assumed that no further encumbering of the property has occurred since the initial sale. Further encumbering of the unit is prohibited without the written permission of the City. The City offers no assurances or guarantee whatsoever that the property will increase in value to any extent or that it will not decrease in value. This illustration is solely created to serve as an illustration of calculated equity share or interest that may be owed.

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
2585 EL CAMINO REAL, LLC

EXHIBIT C
Form of City Subordinate Deed of Trust

[Behind this page]

COMPLIMENTARY RECORDING
REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 27383

Recording Requested By and
When Recorded Mail To:
The City of Santa Clara
City Hall, 1500 Warburton Avenue
Santa Clara, California 95050
Attention: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

THIS DEED OF TRUST CONTAINS
PROVISIONS RESTRICTING ASSUMPTIONS

BELOW MARKET PURCHASE PROGRAM
DEED OF TRUST AND SECURITY AGREEMENT
(CITY SUBORDINATE DEED OF TRUST)

THIS DEED OF TRUST AND SECURITY AGREEMENT ("Deed of Trust") is made this ___ day of _____, 20__, among the trustor, BORROWER"S NAME ("Borrower") and TITLE COMPANY NAME, a Title Company ("Trustee"), and the CITY OF SANTA CLARA as Beneficiary (the "City").

The Borrower, in consideration of the promises herein recited and the trust herein created, irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with power of sale, the property located in the City of Santa Clara, State of California, described in the attached Exhibit "A" and more commonly known as: PROPERTY ADDRESS, Santa Clara, California (the "Property").

TOGETHER with all the improvements now or hereafter erected on the Property, and all easements, rights, appurtenances, and all fixtures now or hereafter attached to the Property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by this Deed of Trust; and

TOGETHER with all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected, or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all

renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner; and all of the foregoing, together with the Property, is herein collectively referred to as the "Security";

TO HAVE AND TO HOLD the Security, together with acquittances, to the Trustee, its successors and assigns forever;

TO SECURE to the City the performance of the covenants and agreements of Borrower contained in that certain Covenants, Restrictions and Option to Purchase executed by and between the Owner and the City and incorporated herein by this reference (the "City Covenants");

TO SECURE to the City the repayment of all sums evidenced by that certain promissory note to the City executed by Borrower, on or about the date hereof, in the principal amount of _____ Dollars ($_____.00) and incorporated herein by this reference ("City Note"), with interest or equity share as provided in the City Note; and

TO SECURE the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained.

BORROWER AND CITY COVENANT AND AGREE AS FOLLOWS:

1. **Borrower's Estate.** Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Security and other than this Deed of Trust, the Security is encumbered only by: (1) that deed of trust executed by Borrower in connection with a loan made to Borrower by _____, a _____, (the "First Mortgage Lender"), securing a promissory note executed by Borrower in favor of the First Mortgage Lender (the "First Mortgage Note") to assist in the purchase of the Property; (2) the Senior Loan Deeds of Trust (hereinafter defined); (3) the City Note; and (4) the City Covenants. Borrower agrees to warrant and defend generally the title to the Security against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring the City's interest in the Security. (As used in this Deed of Trust, the term "First Mortgage Lender" shall include all successors and assigns of the First Mortgage Lender.) For purposes of this Deed of Trust, "Senior Deeds of Trust" shall refer to the recordable instruments securing acquisition loans for the Security made for the benefit of the following entities, their successors and assigns: (i) First Mortgage Lender, (ii) California Housing Finance Agency; (iii) the City of Santa Clara; or (iv) a lender under a California Housing Finance Agency first mortgage program (collectively, the "Senior Lenders").

2. **Repayment of Debt.** Borrower will promptly repay, when due, the accrued interest or shared appreciation, plus principal required by the City Note.

3. **City Covenants.** Borrower will observe and perform all of the covenants and agreements of the City Covenants.

4. **Charges; Liens.** Borrower will pay all taxes, assessments and other charges, fines and impositions attributable to the Security which may attain a priority over this Deed of Trust, by Borrower making any payment, when due, directly to the payee thereof. Upon request by the City, Borrower will promptly furnish to the City all notices of amounts due under this paragraph. In the event Borrower makes payment directly, Borrower will promptly discharge any lien which has priority over this Deed of Trust; provided, that Borrower will not be required to discharge the lien of the Deed of Trust securing the First Mortgage Note (the "First Mortgage Lender Deed of Trust") or any other lien described in this paragraph so long as Borrower will agree in writing to the payment of the obligation secured by such lien in a manner acceptable to the City, or will, in good faith, contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Security or any part thereof.

5. **Hazard Insurance.** Borrower will keep the Security insured by a standard fire and extended coverage insurance policy in at least such amounts and for such periods as the City may require, which amounts shall be the lesser of (1) the sum of the loan amounts under the City Note and the First Mortgage Note, or (2) the replacement cost of the Security, but in no event less than (3) the amount necessary to prevent Borrower from becoming a co-insurer under the terms of the policy.

The insurance carrier providing this insurance shall be licensed to do business in the State of California and be chosen by Borrower subject to approval by the City; provided that such approval will not be withheld if the insurer is also approved by the Senior Lenders, the Federal Home Loan Mortgage Company, Fannie Mae, California Housing Finance Agency, or successors thereto.

All insurance policies and renewals thereof will be in a form acceptable to the City and will include a standard mortgagee clause with standard lender's endorsement in favor of the holder of the First Mortgage Note and the City as their interests may appear and in a form acceptable to the City. The City shall have the right to hold, or cause its designated agent to hold, the policies and renewals thereof, and Borrower shall promptly furnish to the City, or its designated agent, the original insurance policies or certificates of insurance, all renewal notices and all receipts of paid premiums. In the event of loss, Borrower will give prompt notice to the insurance carrier and the City or its designated agent. The City, or its designated agent, may make proof of loss if not made promptly by Borrower. The City shall receive thirty (30) days' advance notice of cancellation of any insurance policies required under this section.

Unless the City and Borrower otherwise agree in writing, insurance proceeds, subject to the rights of the First Mortgage Lender, will be applied to restoration or repair of the Security damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds will be used to repay the City Note secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Security is abandoned by Borrower, or if Borrower fails to respond to the City, or its designated agent, within thirty (30) days from the date notice is mailed by either of them to Borrower that the insurance carrier offers to settle a claim for insurance benefits, the City, or its designated agent, is authorized to collect and apply the insurance proceeds at the City's option either to restoration or repair of the Security or to repay the City Note.

If the Security is acquired by the City, all right, title and interest of Borrower in and to any insurance policy and in and to the proceeds thereof resulting from damage to the Security prior to the sale or acquisition will pass to the City to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition subject to the rights of the First Mortgage Lender.

6. **Preservation and Maintenance of Security.** Borrower will keep the Security in good repair and will not commit waste or permit impairment or deterioration of the Security.

7. **Protection of the City's Security.** If Borrower fails to perform the covenants and agreements contained in this Deed of Trust or if any action or proceeding is commenced which materially affects the City's interest in the Security, including, but not limited to, default under the deed of trust securing the First Mortgage Note, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving bankruptcy or a decedent, then the City, at the City's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as it determines necessary to protect the City's interest, including but not limited to, disbursement of reasonable attorneys' fees and entry upon the Security to make repairs.

Any amounts provided pursuant to this paragraph, with interest thereon, will become an indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and City agree to other terms of payment, such amount will be payable upon notice from the City to Borrower requesting payment thereof, and will bear interest from the date of disbursement at the highest interest rate permissible under applicable law. Nothing contained in this paragraph will require the City to insure any expense or take any action hereunder.

8. **Inspection.** The City may make, or cause to be made, reasonable entries upon and inspections of the Security; provided that the City will give Borrower reasonable notice of inspection.

9. **Forbearance by the City Not a Waiver.** Any forbearance by the City in exercising any right or remedy will not be a waiver of the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by the City will not be a waiver of the City's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

10. **Remedies Cumulative.** All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or any other document, or afforded by law or equity, and may be exercised concurrently, independently or successively.

11. **Successors and Assigns Bound.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the City and Borrower subject to the provisions of this Deed of Trust.

12. **Joint and Several Liability.** All covenants and agreements of Borrower shall be joint and several.

13. **Notice.** In every case under the provisions of this Deed of Trust when it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served: (i) personally; or (ii) by independent, reputable, overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested; or (iv) by facsimile machine, with transmission and receipt confirmed, addressed as follows:

To Owner: _____
_____
_____

To First Mortgage Lender: _____
_____
_____
_____
_____

To Senior Lenders: _____

_____
_____
_____
_____

To City: The City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
Fax: (408) 248-3381
(Or such other address as may be provided by the City)

Any notice that is transmitted by electronic facsimile transmission during regular business hours of regular business days followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission by facsimile; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

14. **Governing Law.** This Deed of Trust shall be governed by the laws of the State of California.

15. **Severability.** In the event that any provision or clause of this Deed of Trust or the City Note conflicts with applicable law, such conflict will not affect other provisions of this Deed of Trust or the City Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and the City Note are declared to be severable.

16. **Captions.** The captions and headings in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

17. **Default.** The occurrence of any of the following shall be deemed a Default hereunder:

(a) Failure or delay by Borrower to make any payments provided for in the City Note or herein; or

(b) Failure or delay by Borrower to perform any covenant or agreement of Borrower in the City Covenants; or

(c) Failure or delay by Borrower to perform any other covenant or agreement of Borrower in this Deed of Trust or the City Note.

18. **Notice of Default.**

(a) Regardless of whether any notice is given, in the event of a failure or delay that constitutes a default by the Borrower in the performance of any term or provision of this Deed of Trust, the Borrower must immediately commence to cure, correct, or remedy such default and shall complete such cure, correction or remedy with reasonable diligence.

(b) In the event of a non-monetary default by the Borrower, the City shall give, or cause to be given, notice of default to the Borrower, the First Mortgage Lender and the Senior Lenders, specifying: (1) the default complained of by the City; (2) the action required to cure such default; (3) a date by which such default is to be cured; (4) that failure to cure such default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust, sale of the Security or the exercise of such other remedies available to the City under this Deed of Trust or as provided by law; and (5) that Borrower has the right to seek reinstatement and the right to bring a court action to assert the nonexistence of default or any other defense of the Borrower to acceleration and sale. If the non-monetary default is reasonably capable of being cured within thirty (30) days, the City, in its sole and absolute discretion, may grant the Borrower, the First Mortgage Lender or the Senior Lender such period after receipt of the notice to effect a cure. If such default is not reasonably capable of being cured within thirty (30) days, and the Borrower or the First Mortgage Lender (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, the City, in its sole and absolute discretion, may grant the Borrower or the First Mortgage Lender such additional time as is reasonably necessary to cure the default.

(c) In the event of a monetary default by the Borrower, the notice provisions under Section 13 of the City Note shall govern, subject to any forbearance agreement that the City and Borrower may execute pursuant thereto.

(d) Notwithstanding the cure periods established in this Paragraph 18, in no event shall the City be precluded from sooner exercising any remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default or delinquency is given.

(e) Any omission or delay by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not

deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

19. **Acceleration; Remedies.** Upon the occurrence of a Default, the giving of notice thereof and the expiration of any applicable cure period, City may, at its option: (a) Declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by California law; (b) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding the continuance in possession of the Security, the City shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale; (c) commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; (d) deliver to one or more of the Trustees named in this Deed of Trust and the trustee named in the First Mortgage Deed of Trust, or any of them, a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found at California Civil Code Sections 2924, et seq., as amended from time to time, which notice such trustee shall cause to be duly filed for record; (e) exercise its option to purchase pursuant to the City Covenants; or (f) exercise all other rights and remedies provided herein, in the instruments by which the Borrower acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law. No delay or omission on the part of the City in exercising any right under the City Note, the City Covenants or this Deed of Trust shall operate as a waiver of such right. The City shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorneys' fees.

20. **Borrower's Right to Reinstate.** Notwithstanding the City's acceleration of the sums secured by this Deed of Trust, Borrower will have the right to have any proceedings begun by the City to enforce this Deed of Trust discontinued at any time prior to five (5) days before sale of the Security pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays City all sums which would be then due under this Deed of Trust and no acceleration under the City Note has occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by City and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing the City's and Trustee's remedies, including, but not limited to, reasonable

Attorneys' fees; and (d) Borrower takes such action as City may reasonably require to assure that the lien of this Deed of Trust, City's interest in the Security and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby will remain in full force and effect as if no acceleration had occurred.

21. **Due on Transfer of the Property or Repayment of the First Mortgage Loan.** Upon a Transfer (as defined in the City Note) of the Property or any interest in it or repayment in full of the amounts due under the First Mortgage Note, the City may, at its option, require immediate payment in full of all sums due and outstanding under the City Note and secured by this Deed of Trust. However, this option shall not be exercised by the City if applicable law as of the date of this Deed of Trust prohibits such exercise, or if the City has executed a separate written waiver of this option.

22. **Reconveyance.** Upon of satisfaction of all obligations secured by this Deed of Trust, the City will request Trustee to reconvey the Security and will surrender this Deed of Trust and the City Note to Trustee. Trustee will reconvey the Security without warranty and without charge to the person or persons legally entitled thereto. Such person or persons will pay all costs of recordation, if any.

23. **Substitute Trustee.** The City, at the City's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. The successor trustee will succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

24. **Subordination.** Notwithstanding any provision herein, this Deed of Trust shall not diminish or affect the rights of the First Mortgage Lender, and their successors and assigns, under the First Mortgage Deed of Trust or any subsequent First Mortgage deeds of trust or the Senior Lenders, and their successors and assigns, under the Senior Deeds of Trust or any subsequent Senior Lenders deeds of trust hereafter recorded against the Security. Further, this Deed of Trust, the City Covenants and the City Note are expressly subordinate to the First Mortgage Loan Documents and the Senior Loan Deeds of Trust.

Notwithstanding any provision in this Deed of Trust to the contrary, all of the provisions of this Deed of Trust shall terminate and have no further force and effect upon the occurrence of one of the following events:

(a) Title is acquired by First Mortgage Lender or another party upon foreclosure of the Senior Loan Deeds of Trust;

(b) Title is acquired by the First Mortgage Lender or another party by a deed in lieu of foreclosure of the Senior Loan Deeds of Trust.

25. **Request for Notice.** Borrower requests that copies of the notice of default and notice of sale be sent to Borrower at the address set forth in Section 13 above.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust as of the date first written above.

_____
Borrower

_____
Borrower

EXHIBIT A
Property Description

State of California)
)
County of Santa Clara)

On _____, 20___, before me, _____,
a Notary Public, personally appeared _____,
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 _____ (SEAL)

State of California)
)
County of Santa Clara)

On _____, 20___, before me, _____,
a Notary Public, personally appeared _____,
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 _____ (SEAL)

FULL RECONVEYANCE

THE CITY OF SANTA CLARA, the Beneficiary named in that Below Market Purchase Program Deed of Trust and Security Agreement (City Subordinate Deed of Trust) dated _____, 20__, in which _____ is named as Trustor and the undersigned _____Title Insurance Company, is named as Trustee [or appropriate language if successor trustee], and recorded on _____, as Instrument No. _____, in the Official Records, Santa Clara County, California, having declared that all obligations secured thereby have been discharged or performed and having requested the reconveyance thereof, _____Title Insurance Company, as said Trustee does hereby reconvey, without warranty, to the person or persons legally entitled thereto all right, title, interest and estate held by the undersigned as such Trustee, in and to the following real property described in the City Subordinate Deed of Trust:

[describe]

Dated: _____

[TRUSTEE]

By:_____

[ACKNOWLEDGMENT]

REQUEST FOR FULL RECONVEYANCE

A reconveyance will be issued only upon presentation to the _____Title Insurance Company, of this request properly signed and accompanied by the City Subordinate Deed of Trust, the original City Note secured by said City Subordinate Deed of Trust, and any receipt or document evidencing any other indebtedness secured thereby.

To _____, Trustee

The undersigned is the legal owner and holder of the Below Market Purchase Program Promissory Note ("City Note") for the total sum of $_____, and of all other indebtedness secured by City Subordinate Deed of Trust dated _____, 20__, made by _____, Trustor, to_____, Trustee, and recorded on _____, 20__, as Instrument No_____, in the Official Records in the Office of the County Recorder of Santa Clara County, California.

Said City Note, together with all other indebtedness and obligations secured by said City Subordinate Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, upon payment to you of any sums owing to you under the terms of said City Subordinate Deed of Trust, to cancel said City Note, above mentioned, and all other evidences of indebtedness secured by said City Second Deed of Trust delivered to you herewith, together with the said City Subordinate Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said City Subordinate Deed of Trust, all the estate now held by you and under the same.

Dated: _____, 20__

THE CITY OF SANTA CLARA

By:_____

Name:

Title:

Mail Reconveyance to:

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
2585 EL CAMINO REAL, LLC

EXHIBIT D
Form of Request for Notice

[Behind this page]

OFFICIAL BUSINESS.
Document entitled to free
recording per Government
Code Section 6103.

Recording Requested by and
When Recorded Mail to:
Housing and Community Services Division
CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, California 95050

SPACE ABOVE THIS LINE FOR RECORDER'S USE

REQUEST FOR NOTICE
Under Section 2924b Civil Code

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any NOTICE OF DEFAULT and a copy of any NOTICE OF SALE under the _____dated as of __/__/20__ and recorded as Instrument No. _____, in the Official Records of Santa Clara County on _____, 20____ executed by _____ and __ _____ as Borrowers, for the benefit of the City of Santa Clara and describing the following real property, located in Santa Clara County, California:

[See Exhibit A attached hereto and incorporated herein.]

be mailed to THE CITY OF SANTA CLARA at the following address:

1500 Warburton Avenue
Santa Clara, California 95050

NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

THE CITY OF SANTA CLARA,
a chartered California municipal corporation

By: _____
Julio J. Fuentes
City Manager

ATTEST:

By: _____
Rod Diridon, Jr.
City Clerk

APPROVED AS TO FORM:

City Attorney

By: _____
Richard E. Nosky, Jr.

State of California)
)
County of Santa Clara)

On _____, 20___, before me, _____
_____,a Notary Public, personally appeared
_____, personally known to me (or 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 _____ (SEAL)

Exhibit A

Legal Description

[TO BE ATTACHED]

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-7

Date: November 13, 2014

To: City Manager for Council Action

From: Director of Parks & Recreation

Subject: Approval of Agreement with ELS Architecture and Urban Design for Schematic Architectural Design, Engineering, Strategic Communication, Financial Analysis, and CEQA Services in the Amount of $850,000.00

EXECUTIVE SUMMARY:

On September 24, 2013, Council adopted a two year goal to "Enhance Community Sports and Recreational Assets" including a specific strategic objective to complete a feasibility study of the George F. Haines International Swim Center (ISC) including the International Swimming Hall of Fame (ISHOF). In spring 2014, the City of Santa Clara completed the feasibility study, public opinion research and conceptual design in collaboration with its consultants The Sports Management Group, Strategic Research Associates and ELS Architecture & Urban Design. In June 2014, Council renewed its objective and directed staff to initiate completion of the schematic architectural design and engineering documents, a proposed project budget, phasing strategy options, an operational financial/business plan (capital and annual operations), strategic communications, and CEQA for a new ISC inclusive of ISHOF and renovation of the Community Recreation Center in Central Park.

The City issued a request for proposals (RFP) on August 11, 2014 and held a well-attended pre-proposal conference on Friday, August 22, 2014 at the Community Recreation Center, adjacent to the proposed site. The RFP sought qualifications and quotes from firms, or teams of firms, due to the size and complexity of the project. While the City of Santa Clara will be the lead client, extensive coordination will be needed among the City's project partners including the community, Silicon Valley Aquatics Initiative (SVAI), International Swimming Hall of Fame (ISHOF), and others as needed. As part of the selection process, the City of Santa Clara included the option to retain the selected primary architectural and engineering firm for the remaining phases of the project through construction and close out, including the warranty period.

Background. Proposals were received from three qualified firm/teams by the September 15, 2014 deadline. Submissions included teams led by: Harley Ellis Deveraux, BCA Architects, and ELS Architecture and Urban Design. Staff from the Parks & Recreation Department, the Public Works Department, and community stakeholder SVAI evaluated the proposals based on criteria including: overall qualifications; key staffs' recent experience, sub-consultants' capabilities; a demonstrated understanding of the project requirements, budget constraints, and potential challenges; approach to the project and quality assurance; project schedule; responsiveness, quality and completeness of the submittal; conformance with RFP guidelines and format. Two preferred firms were selected to provide a comprehensive team presentation/interview for further review and clarification of proposal inclusions/exceptions, pricing, and project references. The specific qualifications and previous experience sought included:

A. prime architect on a minimum of three (3) outdoor competitive world-class aquatic venues for swimming, diving (including platform and springboard diving), water polo and synchronized swimming designed and constructed in California;
B. prime architect on a minimum of three (3) community theatre, and museum/exhibit spaces designed and constructed in California;
C. prime architect on a minimum of three (3) community recreation facilities designed and constructed in California including multiple community stakeholders, and both basic/instructional and high end/competitive recreation activities incorporated into the facilities;
D. a minimum of three (3) projects that included strategic communications and including research, outreach, and media relations coordination in support of the proposed project;
E. a minimum of three (3) projects that included financial analysis and facility business plans providing "close to actual" modeling of the facility operations;
F. a minimum of three (3) projects that included CEQA and overcame major planning obstacles, and planned for necessary mitigations.

Based on all factors evaluated, and the team's project specific related qualifications and experience, staff recommends award of a contract to ELS Architecture and Urban Design for a "not to exceed" amount of $850,000 for the schematic architectural design and engineering documents, a proposed project budget, phasing strategy options, an operational financial/business plan (capital and annual operations), strategic communications, and coordination with City consultants under separate agreements for CEQA, geotechnical engineering and land survey. Funding of approximately $1 million dollars for the Project Scope of Work is currently allocated in the Parks & Recreation Department's Capital Improvement Project (CIP) budget item #3172. Subsequent Project construction phase(s) are currently not budgeted. If the Project were to continue through subsequent phases of design, construction, close out and the warranty period, then an amendment to the contract would be necessary and, subject to budget appropriations, an estimated additional $5,340,000 would need to be appropriated based on an agreed limit of 8.9% of the total construction budget (estimated $60 million dollars).

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Award of the contract will provide a lead firm to coordinate and complete schematic architectural design and engineering documents, a proposed Project budget, phasing strategy options, an operational financial/business plan (capital and annual operations), ongoing strategic communications, and assistance with CEQA study for a new ISC inclusive of ISHOF and renovation of the Community Recreation Center in Central Park. The ELS Architecture and Urban Design team provides the full expertise and capabilities sought as well as a familiarity with the site, key stakeholders and project concerns. There are no known disadvantages with the proposed Contractor.

ECONOMIC/FISCAL IMPACT:

The total cost for the agreed upon contract project scope of work is a "not to exceed" amount of $850,000. Funding for this project is allocated in the Parks & Recreation Department CIP project #3172 (532-1132-80300-3172) International Swim Center. Additional funding for construction phase costs if needed will be requested at a later date subject to Council direction.

RECOMMENDATION:

That Council:
1) Approve an agreement with ELS Architecture and Urban Design for schematic architectural design, engineering, strategic communication, financial analysis, CEQA services in the amount of $850,000.00; and,
2) Authorize the City Manager to execute all necessary documents and to make minor, non-substantive modifications, as necessary.

James Teixeira
Director of Parks & Recreation

APPROVED:

Julio J. Fuentes
City Manager

Certified as to Availability of Funds: OK JH
532-1132-80300-3172 $850,000.00

Gary Ameling
Director of Finance/
Assistant City Manager

MAJORITY VOTE OF COUNCIL

Documents Related to this Report:
1) Agreement for Services with ELS Architecture and Urban Design.

I:\Parks\Agendas\Approval of Agreement\ELS - ISC ISHOF Schematic Design Engineering 2014.doc

AGREEMENT FOR DESIGN PROFESSIONAL SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA AND ELS ARCHITECTURE AND URBAN DESIGN

PREAMBLE

This agreement for the performance of services ("Agreement") is made and entered into on this _____ day of _____, 201__, ("Effective Date") by and between ELS Architecture and Urban Design, a California corporation, with its principal place of business located at 2040 Addison Street, Berkeley, California 94704 ("Consultant"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

A. City desires to secure design professional services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services"; and,

B. "Design professional" includes licensed architects, licensed landscape architects, registered professional engineers, and licensed professional land surveyors; and,

C. Consultant represents that it, and its subcontractors, if any, have the professional qualifications, experience, necessary licenses and desire to provide certain services as outlined in the Scope of Services; and,

D. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. SERVICES TO BE PROVIDED.

Except as specified in this Agreement, Consultant shall furnish all technical and design professional services, including labor, material, equipment, transportation, supervision and experience (collectively referred to as "Services") to satisfactorily complete the services outlined in the Scope of Services at his/her own risk and expense. Services to be provided to City are more fully described in Exhibit A entitled "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference. Consultant acknowledges that the execution of this Agreement by City is predicated upon representations made by Consultant in that certain document entitled "Architectural and Engineering Services for the new Santa Clara International Swim

Center (ISC) and International Swimming Hall of Fame" dated September 15, 2014 ("Proposal") set forth in Exhibit A, which constitutes the basis for this Agreement.

2. TERM OF AGREEMENT.

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate on December 31, 2017.

3. CONSULTANT'S SERVICES TO BE APPROVED BY A LICENSED DESIGN PROFESSIONAL.

A. All reports, costs estimates, plans and other documentation which may be submitted or furnished by Consultant shall be approved and signed by an appropriate qualified licensed professional in the State of California.

B. The title sheet for specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the design professional responsible for their preparation.

4. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE.

Consultant represents and maintains that it has the necessary experience in the professional calling necessary to perform services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Consultant's representations regarding its skills and knowledge. Consultant shall perform such services and duties in conformance to and consistent with the professional standards of skill and care ordinarily exercised by practicing professionals in the same discipline performing similar services under the same or similar conditions and circumstances in the same locality in the State of California. The Consultant makes no other representations or warranties, whether expressed or implied, with respect to the services rendered hereunder.

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under Exhibit A shall be performed in accordance with the foregoing standard of professional skill and care. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by City for similar projects.

5. MONITORING OF SERVICES.

City may monitor the Services performed under this Agreement to determine whether Consultant's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accord with applicable City, county, state, and federal requirements. If

any action of Consultant constitutes a breach, City may terminate this Agreement pursuant to the provisions described herein.

6. WARRANTY.

Consultant expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect, and shall conform to the specifications, requirements, and instructions upon which this Agreement is based. Consultant agrees to promptly replace or correct any incomplete, inaccurate, or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Consultant. If Consultant fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Consultant for the cost incurred by City.

7. PERFORMANCE OF SERVICES.

Consultant shall, as is consistent with the generally accepted standard of professional skill and care, perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by City. Consultant shall be as fully responsible to City for the acts and omissions of its subconsultants, and of persons employed by them, as Consultant is for the acts and omissions of persons directly employed by it. Consultant will exercise usual and customary professional care in its efforts to perform all Services in accordance with applicable federal, state and local operation and safety regulations. Nothing herein shall be construed as establishing any responsibility or obligation on the part of the Consultant for jobsite safety issues, programs, or precautions of anyone but its own employees and subconsultants for whom it is legally responsible.

8. RESPONSIBILITY OF CONSULTANT.

Consultant shall, as is consistent with the generally accepted standard of professional skill and care, be responsible for the professional quality, technical accuracy and coordination of the Services furnished by it under this Agreement. Neither City's review, acceptance, nor payments for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and Consultant shall be and remain liable to City in accordance with applicable law for damages to City to the extent caused by Consultant's negligent performance of any of the Services furnished under this Agreement.

Any acceptance by City of plans, specifications, construction contract documents, reports, diagrams, maps and other material prepared by Consultant shall not in any respect absolve Consultant from the responsibility Consultant has to exercise usual professional care in accordance with customary standards of good professional practice in compliance with applicable federal, state, county, and/or municipal laws, ordinances, regulations, rules and orders. It is understood, however, that various laws, ordinances, rules, codes and regulations are subject to varying and sometimes contradictory interpretation. Consultant shall exercise its professional skill and care consistent with the generally accepted standard of care to provide a design that complies with such laws, ordinances, rules, regulations and codes.

9. COMPENSATION AND PAYMENT.

In consideration for Consultant's performance of Services, City shall pay Consultant for all materials provided and services rendered by Consultant at the rate per hour for labor and cost per unit for materials as outlined in Exhibit B, entitled "SCHEDULE OF FEES."

Consultant will bill City on a monthly basis for Services provided by Consultant during the preceding month, subject to verification by City. City will pay Consultant within thirty (30) days of City's receipt of invoice.

If City does not pay invoices within thirty (30) days of submission of invoice, Consultant may, upon written notice to the City, suspend further work until payments are brought current. The City agrees to indemnify and hold Consultant harmless from any claim or liability resulting from such suspension.

10. PROGRESS SCHEDULE.

The Progress Schedule will be as set forth in the attached Exhibit F, entitled "MILESTONE SCHEDULE" as applicable and may be amended in writing only by mutual agreement.

11. TERMINATION OF AGREEMENT.

Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Consultant shall discontinue further services as of the effective date of termination, and City shall pay Consultant for all Services satisfactorily performed up to such date.

12. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.

City and Consultant bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Consultant shall not hire subcontractors without express written permission from City.

13. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

14. INDEPENDENT CONSULTANT.

Consultant and all person(s) employed by or contracted with Consultant to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Consultant has full rights, however, to manage its

employees in their performance of Services under this Agreement. Consultant is not authorized to bind City to any contracts or other obligations.

15. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall Consultant have the authority or power to pledge the credit of City or incur any obligation in the name of City. Consultant shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Consultant under this Agreement.

16. CONFIDENTIALITY OF MATERIAL.

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services, nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Consultant which is otherwise known to Consultant or becomes generally known to the related industry shall be deemed confidential. Further, this section shall not restrict the Consultant from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the Consultant to defend itself from any suit or claim.

17. USE OF CITY NAME OR EMBLEM.

Consultant shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

18. OWNERSHIP OF MATERIAL.

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared under this Agreement shall, upon full payment to Consultant for services rendered, become the property of City for use solely in connection with the project for which they are prepared, but Consultant may retain and use copies thereof. Any other use by City shall be at City's sole risk and Consultant shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

19. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT.

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for three (3) years from the date of final payment for services provided under this Agreement, to audit the books and records of Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City.

Consultant shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Consultant agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Consultant's Services hereunder.

20. CORRECTION OF SERVICES.

Consultant agrees to correct any incomplete, inaccurate or defective Services at no further costs to City, when such defects are due to the negligence, errors or omissions of Consultant.

21. FAIR EMPLOYMENT.

Consultant shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

22. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Consultant agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Consultant, its employees, sub-consultants, or its agents in the performance, or non-performance, of services under this Agreement. Consultant's duty as described in the preceding sentence shall be construed to mean that Consultant will reimburse the City for its reasonable costs of defense and attorneys' fees and provide indemnity to the extent a court or other forum of competent jurisdiction has determined that such costs and fees are directly attributable to Consultant's negligence, recklessness or willful misconduct.

23. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit C, Consultant shall purchase and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the Performance of

Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C.

24. AMENDMENTS.

This Agreement may be amended only with the written consent of both Parties.

25. INTEGRATED DOCUMENT.

This Agreement represents the entire agreement between City and Consultant. No other understanding, agreements, conversations, or otherwise, with any representative of City prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon City or Consultant.

26. SEVERABILITY CLAUSE.

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

27. WAIVER.

Consultant agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

28. NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: Parks & Recreation Department
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 260-9719

And to Consultant addressed as follows:

Name: Clarence Mamuyac, Jr.
Address: 2040 Addison Street
Berkeley, CA 94704
or by facsimile at (510) 549-2929

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile

transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

29. CAPTIONS.

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

30. LAW GOVERNING CONTRACT AND VENUE.

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

31. DISPUTE RESOLUTION.

A. Unless otherwise mutually agreed to by the Parties, any controversies between Consultant and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.

C. The costs of mediation shall be borne by the Parties equally.

D. For any contract dispute, mediation under this section is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, through mediation only. In the event of litigation, the prevailing party shall recover its reasonable costs of suit, expert's fees and attorney's fees.

32. COMPLIANCE WITH ETHICAL STANDARDS.

Consultant shall:

A. Read Exhibit D, entitled "ETHICAL STANDARDS FOR CONSULTANTS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,

B. Execute Exhibit E, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

33. CONFLICT OF INTERESTS.

This Agreement does not prevent either Party from entering into similar agreements with other parties. To prevent a conflict of interest, Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Consultant will advise City if a conflict arises.

34. CONSTRUCTION PHASE SERVICES

If consultant performs any services during the construction phase of the project, Consultant shall not supervise, direct, or have control over Contractor's work. Consultant shall not have authority over or responsibility for the construction means, methods, techniques, sequences or procedures or the safety precautions and programs in connection with the work of the Contractor. Consultant does not guarantee the performance of the construction contract by the Contractor and does not assume responsibility for the Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

35. INFORMATION RELIANCE

Consultant shall be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by the City, City's consultants and contractors, and information from public records, without the need for independent verification.

36. CONSEQUENTIAL DAMAGES

Neither the City nor the Consultant shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages relative to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

[Signatures follow on page 10]

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

ELS ARCHITECTURE AND URBAN DESIGN
a California corporation

By: _____
(Signature of Person executing the Agreement on behalf of Consultant)

Name: Clarence Mamuyac, Jr.

Title: Principal

Local Address: 2040 Addison Street
Berkeley, CA 94704

Telephone: (510) 549-2929

Fax: (510) 549-2929

"CONSULTANT"

I:\Parks\Park Site Files\International Swim Center\ISC-ISHOF RFP\DESIGN PROFESSIONAL SERVICE AGREEMENT ELS 2014(v5Final).doc

AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
ELS ARCHITECTURE AND URBAN DESIGN

EXHIBIT A

SCOPE OF SERVICES

The Services to be performed for the City by the Consultant under this Agreement are more fully described in the Consultant's proposal entitled, "Architectural and Engineering Services for the new Santa Clara International Swim Center (ISC) and International Swimming Hall of Fame (ISHOF)" dated September 15, 2014, which is attached to this Exhibit A and incorporated by this reference.

- EXHIBIT A-1 Scope of Services – Product Description, Work Plan or Proposal
- EXHIBIT A-2 Scope of Services – Project Staffing

EXHIBIT A-1
Scope of Services—Product Description, Work Plan or Proposal

4. Product Description, Work Plan or Proposal

REQUIRED SERVICE I - SCHEMATIC DESIGN
(ELS and Consultants)

1.1 PRE-SCHEMATIC KICK-OFF

Define City of Santa Clara Project Management and Communications Protocols

Meeting: Project Kick-Off

Participants: City of Santa Clara: City's PM, City Planning and City's CEQA Consultant
ELS Team: ELS, Berg/Davis, The Sports Management Group

City of Santa Clara establishes PM/Point-of-Contact for ELS.
City of Santa Clara, with assistance from the ELS team, establishes an ISC/ISHOF/CRC Stakeholder Project Committee (SPC) for milestone programming, planning and design consultation with ELS team, as well as important milestone reviews.

City of Santa Clara, with assistance from the ELS team, establishes a City Technical Committee (CTC) for milestone reviews and assistance with planning, zoning, fire, police, utilities (Silicon Valley Power). This committee could also be the **Project Clearance Committee** or some variation thereof.

1.2 PRE-SCHEMATIC PROGRAMMING AND CONCEPT DESIGN CONFIRMATION

Research and Gather Relevant Background Documentation and Perform Site Reconnaissance

Meeting: Previous Programming and Concept Review (As an important step toward determining parking demand, the ELS team will meet with key stakeholders to confirm general programming and uses to aid in determining maximum peak parking demands as well as general direction of previous ELS concept effort.)

Participants: City of Santa Clara: City's PM, City Planning and City's CEQA Consultant
ELS Team: ELS, Berg/Davis, The Sports Management Group

Meetings: Meeting with Stakeholder Project Committee (SPC)
It may be more efficient to schedule three working sessions as follows:

- Meet with SVAI (Swimming, Diving and Synchronized Swimming Representatives)
- Meet with ISHOF Representatives
- Meet with Parks and Recreation/CRC Representatives

Participants: City Technical Committee (CTC) or Project Clearance Committee
City of Santa Clara: City's PM, City Planning and City's CEQA Consultant
ELS Team: ELS, Berg/Davis, The Sports Management Group

Request City-Sponsored Reports:

- Surveys - Topographic, Boundary and Utilities
- Geotechnical Report
- Hazardous Materials Survey
- Utility information on all city buildings within Central Park: Power, Gas, Water and Sewer consumption/service and rates.
- All other relevant miscellaneous reports/surveys/site data

1.3 PRE-SCHEMATIC PARKING ISSUES AND GOALS

Define project parking issues and goals, as well as develop parking solutions, as one of the critical initial steps toward completing the Project Description for CEQA, and for initiating the Schematic Design effort.

Meeting: Parking - Existing Conditions and Anticipated Demands (Issues and Goals)

Participants: City of Santa Clara: City's PM, City Planning and City's CEQA Consultant (CTC as needed)

ELS Team: ELS, Berg/Davis, The Sports Management Group, Kimley-Horn

(Coordinated effort with Service 4 - CEQA and Planning Assistance), (Coordinated effort with Service 2 - Strategic Communications and Commu nity Engagement)

Meeting: Parking - Draft Parking Demand Scenarios

Participants: City of Santa Clara: City's PM, City Planning and City's CEQA Consultant (CTC as needed)

ELS Team: ELS, Berg/Davis, The Sports Management Group, Kimley-Horn

(Coordinated effort with Service 4 - CEQA and Planning Assistance) and (Co ordinated effort with Service 2 - Strategic Communications and Community Engagement)

Meeting: Parking - Planning and Design Options for Parking Demand Scenarios

Participants: City of Santa Clara: City's PM, City Planning and City's CEQA Consultant (CTC as needed)

ELS Team: ELS, Berg/Davis, The Sports Management Group, Kimley-Horn

(Coordinated effort with Service 4 - CEQA and Planning Assistance) and (Co ordinated effort with Service 2 - Strategic Communications and Community Engagement)

1.4 PRE-SCHEMATIC ALTERNATIVES AND FINAL PRE-SCHEMATIC SELECTION

Based upon agreed direction regarding initial ELS concept and programming, as well as identified parking concepts, the ELS team will initiate a series of pre-schematic alterna-tives for review, which will form the basis for advancement to a singular Schematic Design effort.

Meeting: ELS presents a range of pre-schematic alternatives for review and comment.

Participants: City of Santa Clara: City's PM, City Planning and City's CEQA Consultant Project Stakeholder Committee: SVAI/ISHOF/CRC

ELS Team: ELS, Berg/Davis, The Sports Management Group, Kimley-Horn (other consultants as needed)

ELS team presents 3 - 5 alternatives that include comments from previous meetings with stakeholders, planning and CEQA consultants. The goal is to solicit comments and gain further direction for continued pre-schematic de velopment and refinement, as well as to narrow the range of pre-schematic alternatives to a single approach.

Meeting: ELS presents a single pre-schematic alternative for review and comment.

Participants: City of Santa Clara: City's PM, City Planning and City's CEQA Consultant Project Stakeholder Committee: SVAI/ISHOF/CRC

ELS Team: ELS, Berg/Davis, The Sports Management Group, Kimley-Horn (other consul tants as needed)

ELS team presents a single alternative that addresses review and comments from previous meeting, and collects any additional comments and incorpo rates them into the Final Pre-Schematic Alternative.

Meeting: ELS presents Final Pre-Schematic Alternative

Participants: City of Santa Clara: City's PM, City Planning and City's CEQA Consultant (CTC as needed)
Project Stakeholder Committee: SVAI/ISHOF/CRC

bus, bicycle or on foot.

Develop strategies for "good neighbor" development with the school to the north and with businesses and multifamily housing along Kiely Boulevard.

Develop security and safety systems in collaboration with Santa Clara Fire and Police.

BUILDING

Develop and explore a range of pool construction technologies from pre-fab, stainless steel in-ground and elevated pools (e.g., Myrtha Technology), as well as conventional shot-crete and/or cast-in-place concrete systems. Life-cycle costing will be included for easy comparisons over 10-, 20-, 30-, 40- and 50-year projections.

Develop a state-of-the-art museum/exhibit space for the International Swimming Hall of Fame (ISHOF). Integrate and blend the "ISHOF" message with the greater International Swim Center.

Develop a new and expanded community recreation center that becomes a city-wide resource for fitness, wellness, passive recreation, community gatherings and theatre.

Develop alternative energy sources and the integration of these sources with the building design. Collaborate with Silicon Valley Power on the use of photovoltaic, cogeneration/mini-turbine and solar thermal technologies.

Develop climate-responsive designs that take advantage of onsite natural resources and minimize the need for external inputs.

Develop preliminary structural, mechanical, electrical, communications, and lighting systems design. Systems using energy to be minimized.

Develop interiors - Fixtures, Furnishings and Equipment (FF&E) in concert with all stakeholder participants and with assistance from the City in terms of long-term purchasing contracts and FF&E types that may be required.

- ISC - Develop floor plans, overall building sections, elevations, reflected ceiling plans showing pools, dive tower, dryland training, spectator areas, equipment and furnishings.
- ISHOF - Develop floor plans, interior elevations and sections showing the layout of exhibit and teaching spaces, storage, support areas, equipment and furnishings.
- CRC - Develop floor plans, overall building sections and elevations showing the layout of gym, fitness center, rec spaces, theater, storage, support areas, equipment and furnishings.
- Parking Garage - Develop floor plans, overall building sections, elevations showing the layout of parking levels, elevator and stair locations.

1.8 SCHEMATIC DESIGN UPDATE/WORK SESSION AT 33% COMPLETE

Meeting: ELS presents progress Schematic Design

Participants: City of Santa Clara: City's PM, CTC (or Project Clearance Com mittee) and CEQA Consultant
ELS Team: ELS, Berg/Davis, The Sports Management Group, Kimley-Horn (other consultants as needed)

ELS team presents Progress Schematic Design that addresses review com ments from previous meeting. ELS collects any additional comments and incorporates them into the continuing Schematic Design process.

1.9 PUBLIC MEETING #2, SCHEMATIC DESIGN UPDATE AT 33% COMPLETE

Meeting: ELS presents progress Schematic Design effort in response to comments and questions raised during Public Meeting #1.
(Coordinated effort with Service 2 - Strategic Communications and Community Engagement)

Participants: City of Santa Clara: City's PM, CEQA Consultant
ELS Team: ELS, Berg/Davis, The Sports Management Group, Kimley-Horn (other consultants as needed)

ELS collects additional comments and incorporates them into the continuing Schematic Design process.

1.10 SCHEMATIC DESIGN UPDATE/WORK SESSION AT 66% COMPLETE

Meeting: ELS presents updated progress Schematic Design

Participants: City of Santa Clara: City's PM, CTC (or Project Clearance Committee) and CEQA Consultant
ELS Team: ELS, Berg/Davis, The Sports Management Group, Kimley-Horn (other consultants as needed)

ELS team presents Progress Schematic Design that addresses review comments from previous meeting. ELS collects any additional comments and incorporates them into the continuing Schematic Design process.

1.11 SCHEMATIC DESIGN UPDATE/WORK SESSION AT 100% COMPLETE

Meeting: ELS presents updated progress Schematic Design

Participants: City of Santa Clara: City's PM, CTC (or Project Clearance Committee) and CEQA Consultant
ELS Team: ELS, Berg/Davis, The Sports Management Group, Kimley-Horn (other consultants as needed)

ELS team presents Final Schematic Design that addresses review comments from previous meeting. ELS collects any additional comments and incorporates them into the continuing Schematic Design process.

1.12 SCHEMATIC DESIGN - FINAL ADJUSTMENTS BEFORE COST ESTIMATING

ELS incorporates comments from 100% presentation before issuing for cost estimating, CEQA consultant and Sports Management Group.

1.13 SCHEMATIC DESIGN COST ESTIMATE

ELS issues Schematic Design package to cost estimators (Rudolf & Sletten). The R&S group, over a four week period, will review in-house with their estimating team, and will engage the subcontracting community for input and pricing consultation on the Schematic Design documents.

In addition to the R&S effort, ELS proposes that a second peer estimator/quantity surveyor be engaged to commence a separate and parallel estimating effort. The purpose of the parallel effort will allow ELS/R&S team to gain valuable information from a peer review process.

Upon completion of both estimates, ELS/R&S and the peer estimator will meet to reconcile differences; the final product will be a peer-tested and reconciled construction cost estimate, with appropriate contingencies and escalation that will be presented to the City as the proposed Project Construction Budget.

1.14 SCHEMATIC DESIGN REPORT

Final Schematic Report Contents will be presented to City Council

ARCHITECTURE AND ENGINEERING

- Schematic Design Drawings and Outline Specifications
- Summary description of the Schematic Design
- Preliminary building systems descriptions

- Expected energy use and renewable energy production
- Propose a list of additive and deductive alternatives to keep the project within budget; strategies may include program adjustment, phased development ideas, and value engineering.

CONSTRUCTION COST

- Detailed construction cost estimate by Rudolf & Sletten
- Detailed peer construction cost estimate
- Reconciliation report of both estimates and a recommended construction cost estimate escalated to the mid-point of construction.

OPERATIONAL MODEL- EXPENSE AND REVENUE MODEL

- Detailed report on the expense and revenue analysis based upon the pre-schematic programming effort and confirmation meetings, and the pre-schematic selected alternative.

PUBLIC OUTREACH RECORD

- Summary of approach and strategy employed over a six-month period to both inform and collect input from a cross-section of the Santa Clara community.
- Detailed report on the various forms of public outreach, including pubic notices, agenda and minutes from all publicly advertised meetings and work sessions.
- Detailed methodology and results from all polling efforts
- Summary of social media analytics used to gain community input and reaction to a range of issues related to the ISC/ISHOF/CRC project proposal.

CEQA – INITIAL STUDY / MITIGATED NEGATIVE DECLARATION OR EIR

- The final Schematic Design Report will reference the Initial Study (or EIR).
- The Initial Study will be presented to Santa Clara City Council for Certification following the presentation of the Schematic Design Report. If the CEQA process requires an EIR, that EIR will be presented to City Council approximately three months later for certification.

REQUIRED SERVICE 2 - STRATEGIC COMMUNICATIONS AND COMMUNITY ENGAGEMENT (Berg/Davis with ELS)

The ELS team will rely upon seasoned public affairs professionals, BergDavis Public Affairs, to provide strategic communications and outreach services. BergDavis brings a wealth of experience in land use entitlement public affairs for multi-use, entertainment, recreational, residential, retail, office and institutional land use proposals throughout Northern California.

Our team proposes a methodology which relies upon strong messaging, targeted outreach and strategic campaign tactics.

2.1 STRATEGIC PLAN DEVELOPMENT

BergDavis will work with the City, the consultant team, and aquatics leaders to create a timeline, methodology and process designed to communicate with stakeholders, elicit their feedback, and develop support for the new swim center. The communications program would be closely aligned with the CEQA process, the design process and the operational analysis.

2.2 RESEARCH / MESSAGE CREATION

It is important to understand the community members' level of support for a new swim center, their thoughts on public investment in the center, and the reasons for these views. BergDavis will manage engagement of a professional polling firm to create a scientific survey designed to understand these issues and to test both positive and negative messages. This data will allow us to refine the project, if necessary, to create key messages and communicate clearly and effectively with stakeholders and decision makers.

2.3 RISK ASSESSMENT AND STAKEHOLDER MAPPING

No two cities are created alike, and no two projects are created alike. Some communities are eager for new development and open to change while others have a strong aversion to change. BergDavis will conduct a political and community affairs analysis to outline the political risks related to the proposed project, including research insight into the neighborhood, community leaders, recent land use debates, and germane City Hall activities, as well as any other relevant data. This exercise will allow us to create a list of stakeholders and to create communication tools appropriate for each stakeholder group. Stakeholders will include everyone from neighbors and other park facility staff, to the aquatics community and the general public.

2.4 OUTREACH MATERIALS

BergDavis will create a set of outreach materials incorporating research and key messages tested in the poll. Project materials may include fact sheets, frequently asked questions, news articles, letters of endorsement, etc. Information found in these kits is used in meetings with neighborhood groups, key stakeholders, the media and members of the public.

2.5 WEBSITE AND SOCIAL MEDIA

BergDavis will create a project website to support the swim center's communication and advocacy goals. Websites are a great tool for disseminating information and for grassroots outreach, data collection and database management. BergDavis can work with the City's internal team to create a project-specific web link connected to the City's existing website, or create a stand-alone web presence. BergDavis is also expert in creating Facebook and Twitter links and populating YouTube channels in connection with an online presence.

2.6 COMMUNITY OUTREACH AND SUPPORT

BergDavis will work with the project team to map out the targeted city and create a focused outreach plan and timeline for communicating with residents, community groups, the aquatics community and other key stakeholders. Activities may include the following:

- Work with locally elected officials, City staff and aquatics leaders to introduce the project to the general public.
- Open houses, meetings or presentations to neighborhood groups
- Placing articles in local media sources
- Create direct mail, door hangers or flyers to distribute to residents, aquatics users, park users and other interested parties.

2.7 NEIGHBORHOOD EVENTS AND LOGISTICS

BergDavis takes full responsibility for any events required as part of a public outreach campaign. The firm will help select a meeting site and make all other logistical arrangements, from creating the invitation to inviting neighbors and VIPs, to arranging for audio visual services. Prior to the meeting, BergDavis staff will work with the team to c.eate display boards, a PowerPoint presentation, handouts and talking points for meeting presenters.

BergDavis anticipates organizing a fall community workshop to unveil plans to neighbors, park users, the aquatics community and other interested stakeholders, and potentially a winter community workshop to discuss response to feedback and changes to the initial project design. Based on a six-month CEQA and design timeline, we anticipate the first meeting to take place in early December and the second meeting to take place in early February.

2.8 GOVERNMENT RELATIONS

BergDavis is prepared to work with the team to facilitate communication with elected and appointed officials, as appropriate. It's important that these decision makers have an opportunity to ask questions and be informed as the project progresses.

2.9 SUPPORTER DEVELOPMENT / PUBLIC HEARING MANAGEMENT

For any land use approval, public hearings present are critical opportunities for supporters to have their voices heard. It's important to educate and nurture supporters throughout

the project process so that they are willing to express their support at the appropriate juncture. BergDavis manages this process soup to nuts and has a strong track record of getting the right people in the public hearing room when it counts.

2.10 MEDIA RELATIONS

BergDavis can assist with media relations including the following:

- Drafting news releases
- Pitching stories to columnists or reporters
- Responding to interview requests
- Acting as project spokesperson, or training spokesperson(s)
- Writing/facilitating third party opinion editorials and letters to the editor
- Client media training and counseling

REQUIRED SERVICE 3 - OPERATIONAL EXPENSE AND REVENUE ANALYSIS (The Sports Management Group with ELS)

The Sports Management Group appreciates this opportunity to team with ELS Architecture for the next phase of planning for the Santa Clara International Swim Center and Community Recreation Center. Our proposed scope includes Program Refinement, development of an Operational Model, and Financial Analysis of the operational costs and revenue potential for the combined International Swim Center and Community Recreation Center.

The Scope of Services that follows identifies critical study tasks. The final work plan, schedule, and number of meetings will be tailored to the needs of the City of Santa Clara, based on consultation with the Architectural Project Team and the City.

3.1 PROJECT INITIATION

Participate in ELS and City Project Team meeting to discuss study goals and objectives and refine the scope of services to meet those goals, within the project budget. This meeting will identify potential constraints and parameters that might impact the project.

Confirm lines of communication and identify critical milestones, verify review processes and other administrative procedures, and schedule dates for workshops, public involvement process, and presentations.

3.2 PROGRAM REFINEMENT

Refine the space program to meet the programmatic intent and financial objectives of the City, SVAI, International Hall of Fame, and potential partners.

3.3 FINANCIAL ANALYSIS

Prepare a program document that outlines the square footage, intended uses, hours of operation, distribution of time for shared use opportunities for the ISC and CRC primary spaces.

- Space program confirmation
- Confirm public/shared spaces and community access: hospitality area, catering kitchen, media support
- SVAI support of program
- Reconciliation of space program with the City, SVAI, ISHOF

One meeting with the City to review space program assumptions
One meeting with partners and City to confirm space program
Deliverable: Program Statement with ISC, CRC, Gym, and ISHOF requirements

3.4 INTERNATIONAL SWIMMING HALL OF FAME OPERATIONAL AND FINANCIAL ANALYSIS

International Swim Center Operating Cost Analysis

- Operating Expense Analysis
- Establish hours of operation

- Program and special event expenses
- Identify utilities costs for the buildings and pools
- Maintenance
- Capital reserves
- Building maintenance deferred fund

International Swim Center Revenue Analysis

- Work with the City staff develop fee policy necessary to achieve cost recovery objectives
- Confirm program offerings, fees, likely enrollment and revenue
- Recommend rental rates that will serve as the basis for revenue calculations
- Work with City staff and SVAI to establish Partner financial obligations and revenue generated
- Identify potential revenue streams from events such as water shows, food and beverage, endowment contributions, rentals, membership and other activities

One meeting with Silcon Valley Power
Three (3) meetings with SVAI and City to confirm program

Operational Analysis and Recommendations

- Meet with ISHOF Representative to define space program needs in relation to overall center
- Analysis of potential partnership and role of ISHOF
- Determine operational synergies and recommend role, if any, in providing operational support
- Research comparable business models//best practices for museums and sports attractions
- Evaluation the proposed partnership based on compatibility of mission and goals and community and/or project benefit

Financial Analysis Contributions

- Recommendation for capital campaign responsibility
- Analysis of proposed ISHOF business model with recommendations
- Identify financial commitment for special events (ie: watershows) with a timeline of anticipated increases over time
- Identify goal for endowment contributions

One meeting with ISHOF Representative
One meeting with City staff to discuss proposal
Deliverable: Findings and recommendations regarding ISHOF partnership proposal and model

3.5 COMMUNITY RECREATION CENTER PROGRAM AND FINANCIAL ANALYSIS

Definition of Program and Financial Objectives for the CRC

- Work with City staff to define programmatic objectives and space requirements
- Define expanded community programming opportunities
- Gym integration - how it may support elements of both plans

Develop CRC Plan

- Determine shared use and expansion opportunities with CRC and the ISC
- Evaluate community program elements
- Assign dedicated spaces, shared spaces, and public space to determine cost and fees to each partner

CRC Financial Analysis

- Analysis of fitness component and target audience with projection of market capture and revenue
- Project market capture for swim and fitness package

- Identify market for a sport conditioning room/rental component
- Identify market for an elite athlete/weekend warrior/triathlete fitness package

Two Meetings with Staff

3.6 OPERATING MODEL AND OPERATING COSTS, REVENUE POTENTIAL AND COST RECOVERY

Establish operational budget based on operational plan, cost recovery objectives, funding resources, and partnership agreements.

Define Partnership Model

- Develop operational plan defining roles and responsibilities of each partner
- Address relationships, synergies, with facility elements
- Swim teams role/event sponsorship/program priorities
- Recommend financial contributions of each club
- Allocation of scheduled pool and dry land facilities
- Community scheduling opportunities

Define management structure

Develop Operational Budget

Define operational cost recovery goal

Develop Business Plan

- Include proposed fee structure for community users, rentals, daily admissions, monthly passes, and other fees and charges
- Identify Funding Strategies and Target Funding
- Determine appropriate level of set aside of capital costs to defray operating deficiencies and provide additional programs
- Determine fees to be paid by partners for lease space and program use

Work with City to develop target amounts for endowments

- Capital Endowment
- Program Endowment
- Operations Endowment

Develop Sponsorship Revenue Estimates

Develop agreements with the partners that define roles, financial commitments, and requirements to launch the project. Roles should include facility management, scheduling, and the program priorities and confirmed.

Partner Workshop with SVAI, ISHOF and City

Meetings to confirm operating model, operational costs, management structure, and funding obligations. The partners will be asked to review and refine the fee assumptions, operational assumptions, and financial analysis. Based on the feedback provided, The Sports Management Group will revise the operational model and financial analysis as necessary.

The workshop will provide final space program, cost estimates, operating costs, funding strategies, and business plan.

Two meetings with SVAI, ISHOF and City
Deliverable: defined space program, operating role and financial obligations of all partners in a proposed business plan.

3.7 FINAL REPORT AND PRESENTATION OF FINDINGS

The Sports Management Group will develop a written final report summarizing findings, conclusions, and recommendations. The draft report will be submitted for review by City staff, and then to SVAI; a final report will be issued upon review and comment. A PowerPoint presentation and other graphic materials summarizing the Study will be created for presentation to the City Council.

Three Meetings: City Project Team, SVAI and City Council presentation
Deliverable: Final report in both print and electronic formats and a PowerPoint presentation

REQUIRED SERVICE 4 - PLANNING SUPPORT AND CEQA COORDINATION (ELS with Berg/Davis)

4.1 MEETING WITH CEQA CONSULTANT AND PLANNING

- Project briefing by ELS and Strategic Communications Consultant
- "What If" discussion regarding Initial Study/MND vs. EIR
- Provide pre-schematic documentation (Drawings and Data) to CEQA Consultant

4.2 INITIAL WORKING SESSION WITH PROJECT CLEARANCE COMMITTEE

- Project briefing by ELS and Strategic Communications Consultant
- Parks and Recreation, City of Santa Clara
- Planning, City of Santa Clara
- Public Works, City of Santa Clara
- Santa Clara Police
- Santa Clara Fire
- Silicon Valley Power

4.3 INITIAL WORKING SESSSION WITH CEQA SUB-CONSULTANTS

- Traffic
- Noise
- Air Quality
- Archeology
- Civil
- Geotechnical
- Hazardous Materials

4.4 DETERMINATION OF INITIAL STUDY-MND OR EIR

If Initial Study - Mitigated Negative Declaration (IS/MND)

- Receipt of Authorization to Proceed and Project details
- Receipt of technical reports from subconsultants (assumes Traffic Report - Save 4 weeks without Traffic Report)
- PUBLIC MEETING #1 – PRE-SCHEMATIC
- Preparation and submittal of the Administrative Draft Initial Study to City
- Review of Administrative Draft Initial Study by City staff
- Revise Initial Study, prepare Screen-check Initial Study
- Review Screen-check Initial Study by City staff
- Revise Screen-check Initial Study and Print Initial Study for circulation
- NOTICE OF AVAILABILITY
- Initial Study 20-day circulation period
- PUBLIC MEETING #2 - POST SCHEMATIC
- PLANNING COMMISSION
- CITY COUNCIL - Certification of Initial Study/MND

If Environmental Impact Report (EIR)

- Receipt of Authorization to Proceed and Project details
- Receipt of technical reports from subconsultants (assumes Traffic Report - Save 4 weekswithout Traffic Report)
- PUBLIC MEETING #1 – PRE-SCHEMATIC
- Notice of preparation
- Posting of full project description
- 30-Day comment period
- Preparation and submittal of Administrative Draft EIR to City

* Notice of Availability - Draft EIR
* Review of Administrative Draft EIR by City staff
* Revise EIR, prepare Screen-check EIR
* Review of Screen-check EIR by City staff
* Revise Screen-check EIR and Print EIR for circulation
* Notice of Availability - Draft EIR
* DEIR circulates for 45-Day public review
* CEQA consultant prepares Administrative Draft Final EIR
* City staff reviews Administrative Draft Final EIR
* CEQA consultant revises and submits Screen-check Final EIR
* City staff reviews and approves Screen-check Final EIR
* Revise Screen-check EIR and Print EIR for circulation
* Notice of Availability - Final EIR
* City circulates Final EIR for 10 days
* Mitigation monitoring and reporting program
* PLANNING COMMISSION
* CITY COUNCIL - Certification of EIR
* Mitigation monitoring and reporting program

EXHIBIT A-2
Scope of Services – Project Staffing

ELS

CITY OF SANTA CLARA - NEW SANTA CLARA INTERNATIONAL SWIM CENTER & SWIMMING HALL OF FAME

6. Project Staffing

ELS Architecture and Urban Design:

Clarence D. Mamuyac, Jr., FAIA, LEED AP BD+C, Principal Design Leader & Project Director

David Petta, FAIA, LEED AP BD+C, Community Recreation Leader

Diana Hayton, AIA, LEED AP BD+C, Sustainable Design Leader

Jeffrey Zieba, AIA, LEED AP BD+C, CASp Candidate, Theatre and Spectator Venue Leader

Christopher Jung, LEED AP BD+C, Senior Project Designer

Connie Curtis, LEED AP BD+C, Senior Project Technical Coordinator

Subconsultants:

BergDavis Public Affairs - Public Affairs/Communications
Jessica Berg

The Sports Management Group
Lauren Livingston

Cambridge Seven Associates - Exhibit Designer
Peter Sollogub - psollogub@c7a.com

Kimley-Horn and Associates, Inc. - Parking Consultant
Sanjay Pandya, P.E.

Aquatic Design Group - Aquatics Consultant
Dennis Berkshire

Sandis - Civil Engineer
Jeff Setera

Forell/Elsesser Engineers - Structural Engineer
Allen Nudel

Integral Group - M/E/P and LEED Commissioning
David Kaneda

Keller Mitchell & Co. - Landscape Architect
Jaque Keller

Advent - Exhibit Design, Graphics and Branding
John Roberson

Guidepost Solutions - Security and A/V
Kelly Miller

Charles M. Salter Associates - Acoustical Consultant
Philip Sanders

The Preview Group - Fire and Life Safety
Steven Winkel

Rudolph and Sletten - Cost
John Elwood

AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
ELS ARCHITECTURE AND URBAN DESIGN

EXHIBIT B

SCHEDULE OF FEES

The fees for Services performed for the City by the Contractor includes providing professional lead/primary architectural design and engineering, strategic communications, financial analysis/business plan, and coordination of planning/CEQA services for a new International Swim Center, Swimming Hall of Fame, and renovation of the Community Recreation Center in Central Park. The Contractor will prepare and provide the City of Santa Clara with complete schematic design documents, a proposed project budget, phasing strategy options, a financial/business plan (capital and operations), strategic communications, and CEQA assistance.

A. For completion of the Schematic Design Phase and based on the proposed work plan, in no event shall the amount billed to City by Consultant for Services under this Agreement exceed a fixed fee amount of eight hundred fifty thousand dollars and zero cents ($850,000.00), subject to budget appropriations. The fixed fee will include all expenses incurred during the course of work including but not limited to time, materials, travel expenses, and support services. The fee includes meetings.

B. Based on the total above, the itemized fee amounts for the required Scope of Work areas are:

Required Services	**Fee Amount**
(1) Architecture and Engineering Services	**$550,000.00**
(2) Strategic Communications Services	**$125,000.00**
(3) Financial Analysis and Operational Business Plan	**$125,000.00**
(4) Planning and CEQA assistance	**$50,000.00**

C. Additional Services. Additional services will be authorized at the City's sole discretion and will be billed at the hourly consulting rates listed in the schedules of rates and fees provided below for Consultant and sub-consultants which are hereby included by reference.

- EXHIBIT B-1 Schedule of Fees – ELS Architecture and Urban Design
- EXHIBIT B-2 Schedule of Fees – Aquatic Design Group
- EXHIBIT B-3 Schedule of Fees – Cambridge Seven Associates
- EXHIBIT B-4 Schedule of Fees – The Sports Management Group
- EXHIBIT B-5 Schedule of Fees – Forell/Elsesser Engineers, Inc.
- EXHIBIT B-6 Schedule of Fees – Integral Group
- EXHIBIT B-7 Schedule of Fees – Advent
- EXHIBIT B-8 Schedule of Fees – Rudolph and Sletten

- EXHIBIT B-9 Schedule of Fees – BergDavis Public Affairs
- EXHIBIT B-10 Schedule of Fees – Sandis
- EXHIBIT B-11 Schedule of Fees – Keller Mitchell & Co.
- EXHIBIT B-12 Schedule of Fees – Guidepost Solutions
- EXHIBIT B-13 Schedule of Fees – The Preview Group
- EXHIBIT B-14 Schedule of Fees – Charles M. Salter Associates
- EXHIBIT B-15 Schedule of Fees – Kimley-Horn and Associates, Inc.

Consultant will be responsible for coordination of billing City for services by subconsultants. Payments will be made only on valid invoice(s), and as reviewed and approved by the City, for actual time and materials provided.

D. Other additional cost information pertinent to the Proposal. Additional Services are:

1. Making revisions in drawings, specifications or other documents when such revisions are:
   a. Inconsistent with approvals or instructions previously given by the City, including revisions made necessary by adjustments in the City's program or project budget;
   b. Required by the enactment or revision of codes, law or regulations subsequent to the preparation of such document; or
   c. Due to changes required as a result of the City's failure to render decisions in a timely manner.
   d. Due to Contractor's recommendations to vary from Schematic Design Documents.

2. Providing services required because of significant changes in the Project including, but not limited to size, quality, complexity, the city's schedule or the method of bidding or negotiating and contracting for construction.

3. Parking demand and trip generation studies, website design, physical models and computer renderings.

E. At the City's sole discretion, upon completion of the Schematic Design Phase and based on a negotiated supplemental work plan, the City may retain the design and engineering Consultant for completion of subsequent phases of work. Based on the proposed supplemental work plan (design development through construction and close-out phases including the warranty period), Contractor proposes a not to exceed, fixed fee amount of $5,340,000 contingent upon budget appropriations. This would equate to **8.9%** of total construction costs based on an estimated total construction budget of **$60,000,000**.

Required Services	**Fee Amount**
Architectural and Engineering Services: Design Development Plans & Specifications; Final Construction Documents Project Bidding; Construction, Close out & Warranty Phase.	**$5,340,000.00**

F. Any reimbursable expenses billed by ELS or any subcontractor shall not exceed Five hundred dollars ($500.00), unless City has provided approval for such charge in writing prior to its inclusion in any invoice.

EXHIBIT B-1
Schedule of Fees—ELS ARCHITECTURE AND URBAN DESIGN

ELS

RATE AND EXPENSE SCHEDULE

HOURLY BILLING RATES BY CLASSIFICATION:

PRINCIPALS	$175.00 - 300.00
ASSOCIATE PRINCIPALS	145.00 - 190.00
ASSOCIATES	100.00 - 180.00
PROFESSIONAL STAFF	100.00 - 180.00
TECHNICAL/SUPPORT STAFF	60.00 - 145.00

Rates are subject to revision on January 1, 2015 in accordance with cost of living adjustments. Individual billing rates and/or classifications may change during the year to reflect a change in status and/or merit salary adjustments.

REIMBURSABLE EXPENSES:

Reimbursable expenses shall be billed at cost times 1.1 and shall include actual expenditures made in the interest of the project, in the following categories:

1) Outside consultants
2) Expense of transportation and living expenses in connection with out-of-town travel, as authorized by the Client (international flights shall be business class)
3) Long distance communications and facsimiles
4) Reproduction and photography
5) Postage, shipping and delivery
6) Fees paid for securing approval of authorities having jurisdiction over the project
7) Professional renderings and models as requested by the Client

Invoices will be submitted monthly and are due upon receipt. Invoices more than 60 days overdue will be subject to a handling charge of 1.5 percent per month. If the Owner fails to make payment when due, the Architect may, at its option, upon seven days' written notice to the Owner, suspend performance of services.

EXHIBIT B-2
Schedule of Fees—Aquatic Design Group

AQUATIC
DESIGN GROUP

2014 HOURLY RATES

1.	Principal	$195.00	Per Hour
2.	Project Architect / Engineer	$165.00	Per Hour
3.	Project Manager	$135.00	Per Hour
4.	Construction Manager	$125.00	Per Hour
5.	CADD Technician	$100.00	Per Hour
6.	Graphics Technician	$85.00	Per Hour
7.	Clerical	$50.00	Per Hour

EXHIBIT B-3
Schedule of Fees—Cambridge Seven Associates

Cambridge Seven Associates, Inc.

Schedule A

Standard Hourly Billing Rates
Effective 1 January 2014

These rates may be adjusted annually in conjunction with normal salary adjustments by Cambridge Seven Associates, Inc.

Professional Category	Hourly Rates:
Principal	$260
Senior Architect Level I	$185
Senior Architect Level II	$160
Senior Designer Level I	$140
Senior Designer Level II	$110
Designer Level I	$90
Designer Level II	$75
Designer Level III	$60
Senior Exhibit Designer	$170
Exhibit Designer Level I	$135
Exhibit Designer Level II	$100
Exhibit Designer Level III	$70
Senior Graphic Designer	$115
Graphic Designer	$90
Technical Support	$75
Court Testimony, waiting in court, and Preparation Time:	$300

Re: Additional Services--Requests for additional services must be authorized by client in writing before additional services can begin.

EXHIBIT B-4
Schedule of Fees—The Sports Management Group

Hourly Rates

Lauren Livingston, Project Manager $170

Julie Spier, Senior Associate $140

EXHIBIT B-5
Schedule of Fees—Forell Elsesser Engineers, Inc.

FORELL/ELSESSER ENGINEERS, INC.
Structural Engineers

Forell/Elsesser Engineers
Hourly Billing Rates and Project Expenses
Effective January 1, 2014*

Labor:

STAFF TYPE	RATE PER HOUR
Senior Principal:	$ 205
Principal:	$ 190
Senior Engineer:	$ 145 - $ 175
Engineer:	$ 130 - $ 140
Designer:	$ 120
CADD/Revit Manager:	$ 120
CADD/Revit Operator:	$ 105
Senior Project Administration:	$ 125
Project Administration:	$ 75

Project Expenses:

Mileage	Authorized IRS Rate
Reproduction	Actual cost plus 10%
Postage	Actual cost plus 10%
Delivery	Actual cost plus 10%
Other Project Expenses	Actual cost plus 10%

*Note: Billing rates are subject to annual increases effective January 1.

160 Pine Street, San Francisco, California, 94111
Telephone: 415/837-0700-www.forell.com

O:\Administration\F-E Rates\2014\Rates-2014 lhead.doc

EXHIBIT B-6
Schedule of Fees—Integral Group

Oakland, CA
Los Angeles, CA
Seattle, WA
New York, NY
Washington, DC
Richmond, VA
Vancouver, BC
Calgary, AB
Toronto, ON
London, UK

INTEGRAL GROUP

2014 Billing Rates

	Hourly Rates*
Managing Principal / CEO	$ 270
Principal	$ 245
Engineering Fellow	$ 220
Senior Energy Consultant	$ 220
Associate Principal / Senior Engineer	$ 180
Senior Sustainability Consultant II	$ 180
Senior Associate / Engineer V	$ 165
Associate Engineer IV	$ 160
Engineer III	$ 140
Senior Sustainability Consultant	$ 140
Engineer II	$ 130
Senior Lighting Designer	$ 125
Engineer I	$ 115
CAD Designer IV	$ 115
CAD Designer III	$ 105
CAD Designer II	$ 90
Junior Engineer	$ 85
Project Coordinator	$ 85
CAD Designer I	$ 80
Administration	$ 70
Intern	$ 40

*Travel time outside of the San Francisco Bay Area will be billed at one half of the applicable hourly rate.

*Rates are valid through December 31, 2014.

Reimbursable Expenses

Reimbursable expenses associated with a project include travel and all travel related expenses, parking, shipping, reproduction, in-house plotting of electronic files, models and mock-ups, and long distance telephone normal to the conduct of the project. Unless stated otherwise, these are billed in addition to our consulting fees. They are itemized separately and are billed at cost plus 10% handling charge.

EXHIBIT B-7
Schedule of Fees—Advent

Advent Overview

ADVENT

Consulting / Planning $250 / hr

Conceptual Design $200 / hr

Production Design $125 / hr

Labor $75 / hr

EXHIBIT B-8
Schedule of Fees--Rudolph and Sletten, Inc.

Rudolph and Sletten, Inc.
Hourly Rates for Estimating Services
International Swimming Hall of Fame
August 18, 2014

Position	$/Hr (Straight Time)	$/Hr (Overtime)
Preconstruction Rate/Hour	Good From July 2014 - July 2015	Good From July 2014 - July 2015
Vice President, Preconstruction	$310.00	Exempt
Preconstruction Executive	$250.00	Exempt
Senior Estimator	$200.00	Exempt
Project Estimator	$170.00	Exempt
VDC Manager	$175.00	Exempt
VDC Modeler	$75.00	Exempt
Senior Cost Engineer	$90.00	$135.00
Cost Engineer	$60.00	$90.00
Cost Engineer Intern	$43.68	$65.52
Sr. Mechanical Estimator	$195.00	Exempt
Sr. Electrical Estimator	$195.00	Exempt
MEP Coordinator	$120.00	Exempt
Pre-Qual Manager	$60.00	$90.00
Pre-Qual Specialist	$50.00	$75.00
Administrative Assistant	$70.00	$105.00

EXHIBIT B-9
Schedule of Fees—BergDavis Public Affairs

BergDavis Public Affairs

Billing Rates

BergDavis Public Affairs bills its clients by the hour unless a specific monthly retainer or project fee is negotiated in advance. Rates are as follows:

Principal	$300/hour
Vice President	$250/hour
Account Supervisor	$200/hour
Senior Account Executive	$175/hour
Account Executive	$125/hour
Junior Account Executive	$100/hour
Administrative Assistant	$75/hour

BergDavis Public Affairs does not bill clients for routine out of pocket expenses or mileage. The firm seeks prior client approval for expenses in excess of $250 and provides separate budgets for large projects that require outside vendors.

EXHIBIT B-10
Schedule of Fees--Sandis

SANDIS | CIVIL ENGINEERS SURVEYORS PLANNERS

SANDIS STANDARD HOURLY CHARGE RATES
OAKLAND OFFICE
Effective September 1, 2013 through August 31, 2014

HIGH DEFINITION SCANNING / 3-D MODELING SERVICES

Laser Scanning Field: 2-Person		$245.00
Laser Scanning Field: 1-Person		$215.00
3-D Model / Scan Post Processing Project Manager		$135.00
3-D Scanning Technician	Level I	$105.00
3-D Scanning Technician	Level II	$115.00
3-D Scanning Technician	Level III	$125.00

ENGINEERING SERVICES / QSD & QSP SERVICES

Clerical		$60.00
Computer / Field / Engineer Technician	Level I	$60.00
	Level II	$70.00
	Level III	$85.00
Design Engineer	Level I	$70.00
	Level II	$80.00
	Level III	$90.00
Project Engineer / Traffic Engineer	Level I	$95.00
	Level II	$105.00
	Level III	$115.00
Project Manager		$140.00
Associate Principal /Senior Project Manager / Senior Traffic Engineer		$175.00
Principal		$250.00

SURVEYING SERVICES

Computer / Surveying Technician	Level I	$60.00
	Level II	$70.00
	Level III	$85.00
Project Surveyor	Level I	$95.00
	Level II	$105.00
	Level III	$115.00
Senior Project Surveyor		$140.00
Survey Manager		$175.00
1-Person Survey Crew		$170.00
2-Person Survey Crew		$220.00
2-Person Survey Crew with Apprentice		$250.00
3-Person Survey Crew		$290.00
Utility Locating Field Crew		$150.00
Utility Locating Office Staff		$105.00

REIMBURSABLE COSTS: Printing, Monuments, Materials, Outside Services and Consultants, Courier/Delivery Services, Express/Overnight Mail, Travel/per diem, Agency Fees Advanced, etc., at Cost Plus 15%.

OVERTIME: All overtime charges are invoiced on the basis of one and one-half times the above rates.

EXHIBIT B-11
Schedule of Fee--Keller Mitchell & Co.

Keller Mitchell & Co.
Landscape Architecture

Keller Mitchell & Co. Hourly Rate Schedule
These rates are effective 2013-2015

Principals	$175.00
Landscape Architect	$135.00
CAD/Technical Support	$110.00
Irrigation Design	$ 85.00 - $100.00
Admin/Clerical Support	$50.00 - $ 65.00

Reimbursable direct costs: The following shall be reimbursed at cost plus 10% to the Landscape Architect in addition to the negotiated fee:

- Printing and reproduction
- Messenger and Delivery services
- CAD plotting
- Cost of additional insurance coverage or limits, including professional liability insurance, in excess of that normally carried by the consultant, if requested by the Client.
- Mileage at the current IRS rate

EXHIBIT B-12
Schedule of Fees—Guidepost Solutions

Guidepost Solutions LLC

Security & Technology Consulting Group
2014 Hourly Billing Rates*

Principal	$205/hr
Senior Team Leader	$190/hr
Project Manager	$185/hr
Sr. Designer	$185/hr
Project Research Analyst	$185/hr
Project Coordinator	$160/hr
Drafting	$115/hr
Technical Support	$115/hr

*These rates are evaluated annually. Any changes in project completion may result in an increase in rates and total compensation.

EXHIBIT B-13
Schedule of Fees—The Preview Group

PREVIEW
ARCHITECTS PROVIDING REGULATORY SOLUTIONS...

2014 Rate Schedule
Consulting Services
West Coast Office

Charges for basic consulting services shall be based on the following rates and subject to revision annually:

Basic Consulting Services

Code consulting and quality assurance reviews	$200 per hour
Out of town meetings or site visits	$2000 per day
Technical support	$100 per hour
Administrative support	$50 per hour

Additional Services

Additional consultants	1.15 times consultant rate
Subcontractors	1.15 time subcontractor rate
Automobile travel	Charged at time spent

Reimbursable Expenses

All reimbursable expenses	Direct reimbursement

Reimbursable expenses are in addition to compensation for basic and additional services and include expenditures made by the firm or its professional consultants in the interest of the services provided (e.g., travel expenses, reproduction charges, overnight shipping costs, etc.).

EXHIBIT B-14
Schedule of Fees—Charles M. Salter Associates

Acoustics
Audiovisual
Telecommunications
Security

130 Sutter Street
Floor 5
San Francisco, CA
94104
T 415.397.0442
F 415.397.0454
www.cmsalter.com

SCHEDULE OF HOURLY RATES

President and Senior Vice President	$300
Vice President	$270
Principal Consultant	$225
Senior Consultant	$170
Consultant	$150
Technical Assistant	$100

Charles M. Salter
ASSOCIATES INC

EXHIBIT B-15
Schedule of Fees 15--Kimley-Horn and Associates, Inc.

Kimley»Horn

SCHEDULE *of Billing Rates*

STAFF CATEGORY	HOURLY RATE
Analyst	$100.00 - $125.00
Engineer/Planner	$135.00 - $185.00
Senior Engineer/Planner	$185.00 - $275.00
CADD Operator / Designer	$100.00 - $110.00
Administrator / Accountant	$ 70.00 - $130.00

AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
ELS ARCHITECTURE AND URBAN DESIGN

EXHIBIT C

INSURANCE COVERAGE REQUIREMENTS
FOR PROFESSIONAL SERVICES

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant shall purchase and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Consultant's insurance. The minimum coverages, provisions and endorsements are as follows:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

   $1,000,000 Each Occurrence
   $2,000,000 General Aggregate
   $2,000,000 Products/Completed Operations Aggregate
   $1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:

   a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

   b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars ($1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Consultant and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars ($1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars ($1,000,000) policy limit Bodily Injury by disease, one million dollars ($1,000,000) each accident/Bodily Injury and one million dollars ($1,000,000) each employee Bodily Injury by disease.

2. The indemnification and hold harmless obligations of Consultant included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Consultant. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars ($1,000,000) per occurrence or two million dollars ($2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Consultant's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

2. Primary and non-contributing. Each insurance policy provided by Consultant shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Consultant's insurance.

3. Cancellation.

   a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

   b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and City agree as follows:

1. Consultant agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services

by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Consultant in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Consultant, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Consultant shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

Consultant or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Consultant shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.
City of Santa Clara [Parks & Recreation Department]

P.O. 12010-S2	or	151 North Lyon Avenue
Hemet, CA 92546-8010		Hemet, CA 92543

Telephone number:	951-766-2280
Fax number:	770-325-0409
Email address:	ctsantaclara@ebix.com

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Consultant shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

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AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
ELS ARCHITECTURE AND URBAN DESIGN

EXHIBIT D

ETHICAL STANDARDS FOR CONSULTANTS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA

Termination of Agreement for Certain Acts.

A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If a Consultant[1] does any of the following:

   a. Is convicted of operating a business in violation of any Federal, State or local law or regulation;

   b. Is convicted[2] of a crime punishable as a felony involving dishonesty[3];

   c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;

   d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City consultant or subcontractor; and/or,

   e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

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[1] For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

[2] For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

[3] As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Consultant can be imputed to the Consultant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Consultant, with the Consultant's knowledge, approval or acquiescence, the Consultant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

B. The City may also terminate this Agreement in the event any one or more of the following occurs:

1. The City determines that Consultant no longer has the financial capability[4] or business experience[5] to perform the terms of, or operate under, this Agreement; or,

2. If City determines that the Consultant fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Consultant's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.

C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

---

[4] Consultant becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Consultant.

[5] Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
ELS ARCHITECTURE AND URBAN DESIGN

EXHIBIT E

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Consultant" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Consultant" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

ELS ARCHITECTURE AND URBAN DESIGN
A CALIFORNIA CORPORATION

By: _____
Signature of Authorized Person or Representative

Name: Clarence Mamuyac, Jr.

Title: Principal

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
ELS ARCHITECTURE AND URBAN DESIGN

EXHIBIT F

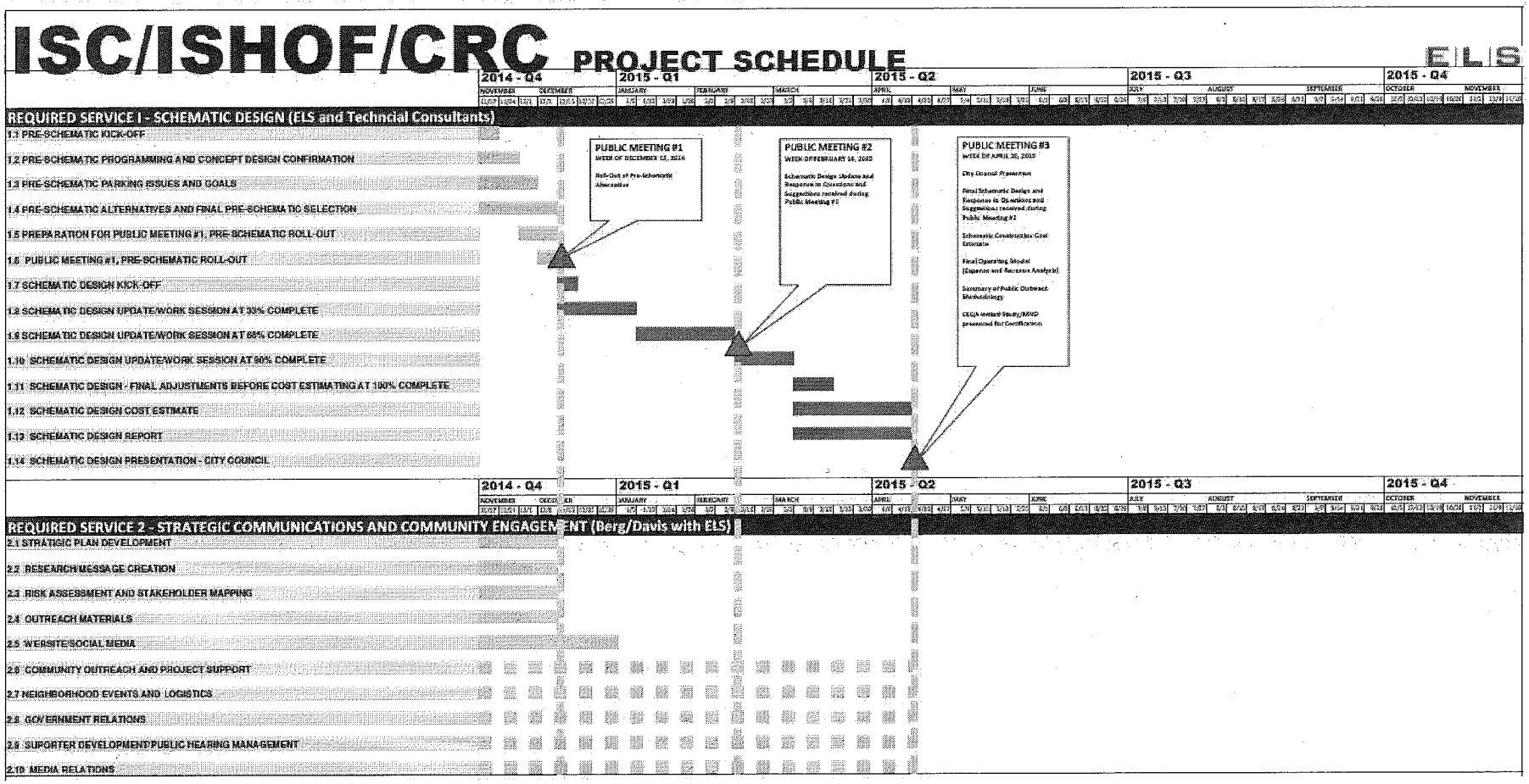
MILESTONE SCHEDULE

See attached:

EXHIBIT F-1 Milestone Schedule – ISC/ISHOF/CRC Project Schedule

EXHIBIT F-1 Milestone Schedule – ISC/ISHOF/CRC Project Schedule

CITY OF SANTA CLARA: INTERNATIONAL SWIM CENTER, INTERNATIONAL SWIMMING HALL OF FAME, COMMUNITY RECREATION CENTER



Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-8

Santa Clara All-America City 2001

Date: November 4, 2014

To: City Manager for Council Action

From: Director of Public Works/City Engineer

Subject: Approval of an Agreement with RMC Water and Environment for Consulting Services for the Sanitary Sewer Master Plan (Update) Project

EXECUTIVE SUMMARY:

In 2006, a sanitary sewer hydraulic model was developed to evaluate conveyance capacity of the City's sanitary sewer mains. Using this model, a Sanitary Sewer Capacity Assessment (SSCA) Report, also known as the Sanitary Sewer Master Plan, was prepared in compliance with Regional Water Quality Control Board (RWQCB) requirements. Since the Master Plan was prepared in May 2007, there have been a number of new developments with higher than projected sanitary sewer flows. To comply with the RWQCB requirements and accurately assess the capacity of the sanitary sewer system, the sanitary sewer model and the Master Plan need to be updated.

On September 3, 2014, the City issued a request for proposal for professional services to select a qualified consultant to update the Sanitary Sewer Master Plan. One proposal was received. Based on staff's evaluation of the proposal, RMC Water and Environment (RMC) is recommended to provide professional services for the Project. Since consultant prepared the City's Master Plan in 2007, RMC has in-depth knowledge in sanitary sewer capacity assessment and familiarity with the City of Santa Clara's sanitary sewer system.

The proposed agreement is to update the Sanitary Sewer Master Plan to reflect current water use data and up-to-date land use planning information, conduct sewer flow and rainfall monitoring, update and calibrate sewer hydraulic model, perform capacity analysis, and recommend the sewer improvement projects to address identified capacity deficiencies.

Staff and the RMC have negotiated the agreement to include the scope of services along with a reasonable fee for the professional services. A copy of the agreement can be viewed on the City's website or is available in the City Clerk's office for review during normal business hours.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Approval of this agreement will provide consulting services to prepare the Sanitary Sewer Master Plan updates and conduct sewer flow monitoring during winter months.

ECONOMIC/FISCAL IMPACT:

The cost for this proposed agreement is for an amount not to exceed $309,007. This amount includes $278,007 for basic services, $3,000 for reimbursable expenses, and $28,000 for additional services. Funding for this Project has been provided for in the Sanitary Sewer Capacity Improvements (594-4443-80300-1909). Since the funding source is from the Sewer Enterprise Fund, there will be no impact to the General Fund.

RECOMMENDATION:

That the Council:

1) Approve the agreement with RMC Water and Environment to provide consulting services for the Sanitary Sewer Master Plan (Update) Project in an amount not-to-exceed $309,007; and
2) Authorize the City Manager to execute and to make minor, non-substantive modifications, if necessary.

for Rajeev Batra
Director of Public Works/City Engineer

Certified as to Availability of Funds: NE
594-4443-80300-1909 $ 309,007.00

for Gary Ameling
Director of Finance/Assistant City Manager

APPROVED:

Julio J. Fuentes
City Manager

MAJORITY VOTE OF COUNCIL

Documents Related to this Report:
1) Agreement

AGREEMENT FOR PROFESSIONAL SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA AND RMC WATER AND ENVIRONMENT FOR SANITARY SEWER MASTER PLAN (UPDATE)

PREAMBLE

This agreement for the performance of services ("Agreement") is made and entered into on this _____ day of _____, 2014, ("Effective Date") by and between RMC Water and Environment, a California corporation, with its principal place of business located at 100 West San Fernando Street, Suite 320, San Jose, CA 95113 ("Consultant"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

A. City desires to secure professional services more fully described in this Agreement, at Exhibit A, entitled "SCOPE OF SERVICES"; and

B. Consultant represents that it, and its subconsultants, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,

C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. SERVICES TO BE PROVIDED.

Except as specified in this Agreement, Consultant shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work required by City at his/her own risk and expense. Services to be provided to City are more fully described in Exhibit A entitled "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference.

2. TERM OF AGREEMENT.

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate on December 31, 2016.

3. CONSULTANT'S SERVICES TO BE APPROVED BY A LICENSED PROFESSIONAL.

A. All reports, costs estimates, plans and other documentation which may be submitted or furnished by Consultant shall be approved and signed by a qualified licensed professional in the State of California.

B. The title sheet for reports shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the professional responsible for their preparation.

4. QUALIFICATIONS OF CONSULTANT - STANDARD OF WORKMANSHIP.

Consultant represents and maintains that it has the necessary expertise in the professional calling necessary to perform services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Consultant's representations regarding its skills and knowledge. Consultant shall perform such services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

The estimates, calculations, reports and other documents furnished under Exhibit A shall be of a quality acceptable to City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by City for similar projects.

5. MONITORING OF SERVICES.

City may monitor the Services performed under this Agreement to determine whether Consultant's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accord with applicable City, county, state, and federal requirements. If any action of Consultant constitutes a breach, City may terminate this Agreement pursuant to the provisions described herein.

6. WARRANTY.

Consultant expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect, and shall conform to the specifications, requirements, and instructions upon which this Agreement is based. Consultant agrees to promptly replace or correct any incomplete, inaccurate, or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Consultant. If Consultant fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Consultant for the cost incurred by City.

7. PERFORMANCE OF SERVICES.

Consultant shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by City. Consultant shall be as fully responsible to City for the acts and omissions of its subconsultants, and of persons either directly or indirectly employed by them, as cis for the acts and omissions of persons directly employed by it. Consultant will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

8. BUSINESS TAX LICENSE REQUIRED

Consultant must comply with Santa Clara City Code section 3.40.060, as that section may be amended from time to time or renumbered, which requires that any person who transacts or carries on any business in the City of Santa Clara pay business license tax to the City. A business tax certificate may be obtained by completing the Business Tax Affidavit Form and paying the applicable fee at the Santa Clara City Hall Municipal Services Division.

9. RESPONSIBILITY OF CONSULTANT.

Consultant shall be responsible for the professional quality, technical accuracy and coordination of the Services furnished by it under this Agreement. Neither City's review, acceptance, nor payments for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and Consultant shall be and remain liable to City in accordance with applicable law for all damages to City caused by Consultant's negligent performance of any of the Services furnished under this Agreement.

Any acceptance by City of reports, diagrams, maps and other material prepared by Consultant shall not in any respect absolve Consultant from the responsibility Consultant has in accordance with customary standards of good professional practice in compliance with applicable federal, state, county, and/or municipal laws, ordinances, regulations, rules and orders.

10. COMPENSATION AND PAYMENT.

In consideration for Consultant's complete performance of Services, City shall pay Consultant for all materials provided and services rendered by Consultant at the rate per hour for labor and cost per unit for materials as outlined in Exhibit B, entitled "SCHEDULE OF FEES."

Consultant will bill City on a monthly basis for Services provided by Consultant during the preceding month, subject to verification by City. City will pay Consultant within thirty (30) days of City's receipt of invoice.

11. PROGRESS SCHEDULE.

The Progress Schedule will be as set forth in the attached Exhibit F, entitled "MILESTONE SCHEDULE" if applicable.

12. TERMINATION OF AGREEMENT.

Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Consultant shall discontinue further services as of the effective date of termination, and City shall pay Consultant for all Services satisfactorily performed up to such date.

13. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.

City and Consultant bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Consultant shall not hire subconsultants without express written permission from City.

14. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

15. INDEPENDENT CONSULTANT.

Consultant and all person(s) employed by or contracted with Consultant to furnish labor and/or materials under this Agreement are independent Consultants and do not act as agent(s) or employee(s) of City. Consultant has full rights, however, to manage its employees in their performance of Services under this Agreement. Consultant is not authorized to bind City to any contracts or other obligations.

16. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall Consultant have the authority or power to pledge the credit of City or incur any obligation in the name of City. Consultant shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Consultant under this Agreement.

17. CONFIDENTIALITY OF MATERIAL.

All ideas, memoranda, reports, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services, nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Consultant which is otherwise known to Consultant or becomes generally known to the related industry shall be deemed confidential.

18. USE OF CITY NAME OR EMBLEM.

Consultant shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

19. OWNERSHIP OF MATERIAL.

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, diagrams, quantities, estimates, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Consultant may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Consultant shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

20. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT.

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for three (3) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City.

Consultant shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Consultant agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Consultant's Services hereunder.

21. CORRECTION OF SERVICES.

Consultant agrees to correct any incomplete, inaccurate or defective Services at no further costs to City, when such defects are due to the negligence, errors or omissions of Consultant.

22. FAIR EMPLOYMENT.

Consultant shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

23. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Consultant agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which City shall become liable arising from Consultant's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Consultant pursuant to this Agreement.

24. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit C, Consultant shall purchase and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the Performance of Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C.

25. AMENDMENTS.

This Agreement may be amended only with the written consent of both Parties.

26. INTEGRATED DOCUMENT.

This Agreement represents the entire agreement between City and Consultant. No other understanding, agreements, conversations, or otherwise, with any representative of City prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon City.

27. SEVERABILITY CLAUSE.

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

28. WAIVER.

Consultant agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

29. NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

Rajeev Batra, Director of Public Works/City Engineer
City of Santa Clara
Public Works Department
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 985-7936

And to Consultant addressed as follows:

Steve Bui, Vice President
RMC Water and Environment
100 West San Fernando Street, Suite 320
San Jose, CA 95113
or by facsimile at (408) 831-4801

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

30. CAPTIONS.

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

31. LAW GOVERNING CONTRACT AND VENUE.

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

32. DISPUTE RESOLUTION.

A. Unless otherwise mutually agreed to by the Parties, any controversies between Consultant and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.

C. The costs of mediation shall be borne by the Parties equally.

D. For any contract dispute, mediation under this section is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, through mediation only. In the event of litigation, the prevailing party shall recover its reasonable costs of suit, expert's fees and attorney's fees.

33. COMPLIANCE WITH ETHICAL STANDARDS.

Consultant shall:

A. Read Exhibit D, entitled "ETHICAL STANDARDS FOR CONSULTANTS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,

B. Execute Exhibit E, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

34. CONFLICT OF INTERESTS.

This Agreement does not prevent either Party from entering into similar agreements with other parties. To prevent a conflict of interest, Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Consultant will advise City if a conflict arises.

(Signatures follow on Page 9)

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

RMC WATER AND ENVIRONMENT,
a California corporation

By:
Name: Steve Bui
Title: Vice President
Local Address: 100 West San Fernando, Suite 320
San Jose, CA 95113
Email Address: SBui@rmcwater.com
Telephone: (408) 831-4800
Fax: (408) 831-4801

"CONSULTANT"

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AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
RMC WATER AND ENVIRONMENT
FOR
SANITARY SEWER MASTER PLAN (UPDATE)

EXHIBIT A

SCOPE OF SERVICES

THE FOLLOWING SCOPE OF SERVICES ARE TO BE PROVIDED TO CITY BY CONSULTANT UNDER THIS AGREEMENT:

I. GENERAL

The City desires to engage a Consultant to provide the professional services described in this SCOPE OF SERVICES.

Consultant shall provide complete, professional, high-quality services and work products, provide consultation and work with the City staff and others who are involved with the Project, and provide the expertise, guidance, advice, and assistance in accomplishing the work.

II. PROJECT BACKGROUND

The City has approximately 270 miles of sewer pipelines and six sewage pump stations in its wastewater collection system. The City also receives flows from the Cupertino Sanitation District (CuSD) under an agreement with the City. The collection system conveys wastewater flows to the Regional Wastewater Facility (RWF), located north of Highway 237 in San Jose, via pump stations at northeast corner of the City and City of San Jose's interceptor at east side of the City.

RMC Water and Environment completed the Sanitary Sewer System Capacity Assessment (SSCA), also known and referred to as the Sanitary Sewer Master Plan, for the City in May 2007. RMC subsequently updated the SSCA, to incorporate the City's 2035 General Plan growth projections in 2009. The Master Plan is a proactive approach to determine needs, cost and priorities associated with sanitary sewer improvements for staff to program future capital improvement projects.

The service of Consultant shall include professional services to provide flow monitoring, hydraulic modeling, system performance evaluation, and to develop capital improvement projects for the Sanitary Sewer Master Plan (Update).

III. SCOPE OF WORK

BASIC SERVICES

NOTE: All deliverables shall be provided to the City in both hard and soft (computer files) formats.

This article describes the Scope of Services for developing and updating hydraulic model of the sanitary sewer system and wastewater flow projections; using the model to identify future capacity requirements and capacity deficiencies in the City's sanitary sewer system; and preparing a Master Plan Update of recommended capital improvement projects including budget estimate for implementing the required capacity improvements to the sanitary sewer system.

TASK 1: PROJECT MANAGEMENT AND CORRDINATION

1.1 **Project Administration.** The Consultant shall establish internal project controls to monitor project status, budget, staffing, and schedule on a regular basis. The consultant will review the budget and schedule status with the City monthly, and submit monthly status reports within 10 working days after the close of Consultant's accounting month. The status reports will describe the work completed during the previous month, anticipated work for the following month, current budget and schedule status, and any project issues requiring discussion or resolution.

Prepare a work plan phase Gantt chart schedule in MS Project 2013 format. Schedule shall show significant milestones for the project. Update the project schedule monthly and notify the City if there are delays in any phase of the project. In such cases, Consultant shall make up the schedule in subsequent tasks of the project or provide information to the City substantiating a time extension.

1.2 **Workshops and Progress Meetings.** The Consultant shall meet with City staff approximately once per month during the course of the project to review project progress and data collected to date. Some of the meetings will be structured as workshops on specific project issues. The Consultant shall prepare an agenda and minutes for each meeting, and shall distribute materials for discussion as needed prior to the meetings. The Consultant's Project Manager will attend each meeting, along with key project technical staff, depending on the specific topics of discussion.

The meetings shall include, kick-off meeting, a workshop following the initial review of maps and pertinent documents and data that provides information required for Sanitary Sewer Master Plan (Update), and monthly status meetings with the City.

1.3 **Project QA/QC Activities.** The Consultant shall provide a copy of its QA/QC Program guidelines; perform internal quality assurance and quality control (QA/QC) activities in accordance with its QA/QC program on project methodology and criteria; review project deliverables; and perform checks of engineering calculations and cost estimates. A QC report shall be submitted at the end of each Task.

Deliverables:

1. Monthly progress reports and invoices.
2. Monthly progress Gantt chart schedule in MS Project 2013 format.
3. Workshop and meeting agendas, preparation materials, and meeting minutes.
4. QA/QC Program guidelines and QC reports for each task.

TASK 2: DATA COLLECTION AND REVIEW

Consultant shall review, organize, and compile the existing documents and data required for sewer capacity evaluation to update the Sanitary Sewer Master Plan. The documents and data to be provided by the City (except for the 2007 SSCA model database and latest system model) will include the items as listed below:

- Sanitary sewer database from the 2007 Sanitary Sewer Capacity Assessment Report and inventory data (manhole ID numbers and rim elevations, pipe upstream and downstream manhole IDs, diameters, lengths, and invert elevations).
- Previous temporary meter locations and data.
- Available data from permanent meters.
- Sewer record drawings for sewer system to be added into the model pipe network.
- Sanitary sewer block book.
- Flow data from Northside and Rabello Pump Stations.
- GIS files of up-to-date land use mapping, parcel and street base mapping and associated parcel data
- Available current water billing data to update the parcel loads for the model.
- Other available current water use records including but not limited to well water and recycled water usages to update the model loads and unit flow criteria.
- Available current pertinent flow data as applicable for any City-maintained meter sites, pump stations, etc., and data from tributary agencies (e.g., Cupertino Sanitary District).
- Additional available computerized maintenance management system data if available and as needed for study tasks, including pipe materials, date of construction, and maintenance schedules and history.
- Up-to-date sewer inspection records if available and as needed for study tasks.

Deliverables:

1. List and Summary of existing information (electronic file).

TASK 3: FLOWS MONITORING

3.1 Develop Flow Monitoring Program

Consultant shall prepare a Wastewater Flow Monitoring Program designed to verify existing base wastewater flows and infiltration/inflow characteristics, and confirm the hydraulic performance of the system.

The program shall include:

3.1.1 Two-month system wide monitoring at twenty three (23) flow monitoring sites. Consultant shall identify 23 flow monitoring sites and alternative sites if any of the 23 sites are not available to provide adequate coverage for the Sanitary Sewer Master Plan Update. Consultant shall identify additional flow monitoring sites as an option to provide further necessary flows and I/I verifications for specific areas of the system. Consultant will submit additional sites for City's review and approval prior to conducting monitoring.

3.1.2 One-week early monitoring at four (4) of the 23 flow monitoring sites identified in Task 3.1.1. Early monitoring of Levi's Stadium flows to capture the 2014 Thanksgiving Day football game, and at the three most downstream meters to capture total flows to the Rabello and Northside Pump Stations on Thanksgiving weekend.

3.1.3 Cupertino Sanitary District (CuSD) flow verification. Consultant shall review flow data from the CuSD meter on Homestead Road to determine if additional metering is needed. If deemed necessary, two of the 23 flow monitoring sites identified in Task 3.1.1 shall be located to specifically measure the dry and wet weather inflow from CuSD. Consultant will provide data of CuSD flows to support cost-share discussion between the City and CuSD.

3.1.4 Pump stations inflow verification. Inflows to the Northside and Rabello pump stations shall be isolated and monitored to the extent possible. If deemed necessary and a suitable site can be found, one of the 23 flow monitoring sites identified in Task 3.1.1 shall be located downstream of the control structure but upstream of the Northside pump station.

3.1.5 Four rain gauge sites and alternative sites if any of the four sites are not available.

Consultant shall:

3.1.6 Perform site investigation for each of the identified flow monitoring and rain gage sites.

3.1.7 Prepare a listing and map of flow meter and rain gauge sites, schedule for the field work, basic Traffic Control Plans for each monitoring site, and Health and Safety Plan for the flow monitoring field work for City's review and approval. At the preliminary monitoring locations identified, it is assumed that traffic control will not require extra personnel (i.e. flaggers, police officers, etc.), more than standard equipment such as truck-mounted light boards and cones, or traffic detouring through other streets.

3.1.8 If a flow monitoring site is located within another agency's right-of-way or impacts a county expressway, the Consultant shall obtain a "no fee or paid by City" encroachment permit from the agency or the county.

Deliverables:

1. A listing and map of flow meter and rain gauge locations.
2. Basic Traffic Control Plan for each work site.
3. Health and Safety Plan for the flow monitoring field work.
4. Encroachment permit(s) from other agencies/county, if required.

3.2 Conduct Flow and Rainfall Monitoring

Consultant shall:

3.2.1 Perform early monitoring of Levi's Stadium flows to capture the 2014 Thanksgiving Day football game, and total flow to the Rabello and Northside Pump Stations on Thanksgiving weekend.

3.2.2 Conduct system wide flow monitoring at the approved 23 metering sites and 4 rain gauge sites for a period of 60 days. It is anticipated the monitoring will take place from late December 2014 to late February 2015. The exact dates for meter installation will be determined jointly by City and Consultant depending on weather forecasts.

3.2.3 Provide all necessary equipment including, but not limited to flow meters, rain gauges, materials, and experienced personnel to perform the flow and rainfall monitoring work.

3.2.4 The flow monitors shall be depth-velocity type meters capable of recording measurements in at least 5-minute intervals and reporting data in 15-minute intervals. The rain gauges shall be tipping-bucket type. Precipitation data shall be recorded at a maximum of 15-minute intervals. Remove the flow meters and rain gauges at the end of the flow monitoring period.

3.2.5 Field calibrate and verify accuracy and consistency of each flow meter in depth and velocity readings upon time of installation and at each site visit. Independent measurements of flow depth and velocity shall be taken for a full range of diurnal flow depths to obtain data to verify or adjust meter calibration as necessary.

3.2.6 The meters and rain gauges shall be checked and interrogated at one- to two-week intervals, and review data collected within one week of each interrogation throughout the monitoring period. Identify needs for any additional calibration or other actions necessary to provide accurate data. Notify City within one day of any observed irregularities in data or problems or unusual conditions encountered in the field or during meter maintenance and calibration and identify causes of the irregularities. If the conditions at the meter site change during the flow monitoring period such that the Consultant determines that the site is no longer suitable for flow monitoring, City may authorize Consultant to relocate the meter as an additional service. Consultant shall conduct the remainder of the two-month monitoring at the relocated metering site under the base scope of service.

3.2.7 If, in the judgment of Consultant and City, the rainfall during the flow monitoring period is considered to be insufficient for obtaining the flow data necessary for the City's future master plan, the City may authorize extension of the flow monitoring on a weekly basis in accordance with Consultant's rate set forth in Exhibit B.

3.3 Flow Monitoring Report

Consultant shall:

3.3.1 Review the flow data collected in the field throughout the monitoring period. Evaluate data trends, consistency in daily flow patterns, responses to storm events, and balance between upstream and downstream monitoring sites.

3.3.2 Prepare a Flow Monitoring Report containing copies of each monitor site report including final data, weekly plots of flow and rainfall, and summary tables of average, minimum, and maximum daily flows for each meter, depth, velocity, and flow rate for each flow meter and rainfall for each rain gauge.

Deliverables:

1. Hard copy plots of preliminary data are to be provided and discussed with City at progress meeting at approximately half-way point of monitoring program.
2. A Flow Monitoring Report (hard copy and electronic copy).
3. CuSD flow data to support cost-share discussion with CuSD.
4. A CD for electronic files for final data of depth, velocity, and flow rates for each flow meter and rainfall for each rain gauge.

TASK 4: HYDRAULIC MODEL UPDATE

4.1 Update Model Network

Consultant shall expand the model to include additional small-diameter sewers, which may be subject to increasing flows in the future from development and redevelopment, using data from the City's sewer maps and databases. The number and location of sewers to be added shall be determined in conjunction with City's input on sewers of interest due to observed capacity or condition problem. Up to 15 miles of additional sewers will be added to the model and subdividing sewersheds to reduce them from a current average size of 60 acres to 40 acres.

4.1.1 Update Model Network to reflect Current Condition

Consultant shall:

4.1.1.1 Expand the model to include the Northside and Rabello Pump Stations, two force mains and a junction structure between the pump stations and the San Jose-Santa Clara Regional Wastewater Facility (RWF). The hydraulic grade line (HGL) at RWF's Santa Clara Influent Structure 1 shall be included in the model as an existing boundary condition to determine the influence of the influent structure (if any) to the City's facilities.

4.1.1.2 Model the pump stations with considerations to the recent improvements, including replaced pumps at the Rabello pump station and completed electrical improvements at both the Rabello and Northside pump stations.

4.1.1.3 Define the modeling parameters and develop the pump station system curves which will be used to model the two pump stations. The system curves will take into account the hydraulic losses due to the age of the pumps, the discharge header configurations and the valves. The system curves will be compared to flow data for accuracy. The downstream boundary conditions at the RWF will also be reviewed to make sure they match the operational characteristic of the facility. Modeling parameters shall be developed with inputs from Schaaf & Wheeler (S&W), who prepared the City's Sanitary Sewer Pump Station Evaluation in 2010.

4.1.1.4 Define the existing hydraulic boundary conditions at the City of San Jose interceptors based on the City of San Jose's hydraulic model.

4.1.2 Develop Model Network of Future Condition

Model of future condition shall include model updates in Task 4.1.1 and reflect the following items:

4.1.2.1 Based on information available from the City of San Jose, develop HGL at any planed future RWF structure improvements and include the HGL in the model as the future boundary condition to determine the influence of the future improvements (if any) to the City's facilities.

4.1.2.2 Model the pump stations with consideration of future improvements currently being designed by S&W.

4.1.2.3 Define the future hydraulic boundary conditions at the City's connections to San Jose interceptors based on the City of San Jose hydraulic model.

4.2 Develop Model Loads and Flow Factors

Consultant shall review flow factors used in the previous study and refine as needed (in conjunction with model calibration).

4.2.1 Update model loads of current condition. The Consultant shall develop model loads using up-to-date water use data and flow monitoring data collected in Task 3 to reflect 2014/2015 conditions. The Consultant shall review recent flow data at CuSD meter, CuSD monitoring sites (if any), recent metering conducted by V&A in May 2014, and update model loads from CuSD as needed.

4.2.2 Develop model loads of future condition. The Consultant shall use information of all approved developments and their planned use to update flow projections from 2035 General Plan, and therefore develop model loads for build out condition. Consultant shall meet with the City's Planning Department to validate any other potential development and redevelopment projects throughout the City. Consultant shall develop future flow projections of CuSD flow based on CuSD's proposed updates and latest ABAG population and employment projections.

4.3 Model Calibration

For individual flow meters, Consultant shall follow procedures established in the "WaPUG Code of Practice for the Hydraulic Modeling of Sewer Systems", including the following guidelines.

- Average and peak model flows for non-rainfall periods within +/- 10% of observed flows.
- Model peak flows within +25% to -15% of significant wet weather flows.
- Modeled volume of flows within +20% to -10% observed volume of flow during rainfall event.
- The timing of the peak and the minimum flows should be similar to observed flows, and the model should indicate surcharge where surcharge is observed at flow meter locations.

It is acknowledged that the above guidelines are calibration targets only and may not be achieved for all meters. Consultant shall create a detailed flow meters schematic, which allows a better understanding of how meters relate to each other. Consultant shall investigate potential reasons why a flow meter may not have a good match with model flows, such as data errors leading to errors in flow routing, incorrect subcatchment delineation, unrealistic flow loads, or inconsistencies in flow meter data.

4.4 Hydraulic Model Development Update TM.
Consultant shall prepare Technical Memorandum (TM) for Hydraulic Model Development Update.

Deliverables:

1. Technical Memorandum (TM) on Hydraulic Model Development Update.
2. Hydraulic model files (to be provided on CD at the completion of the Project).

TASK 5: EVALUATE SYSTEM HYDRAULIC PERFORMANCE AND DEVELOP CAPTIAL IMPROVEMENT PROJECTS

5.1 Confirm Capacity Evaluation and Design Criteria. The Consultant shall discuss and reach agreement with the City on the capacity evaluation and design criteria to be used for the Master Plan Update.

5.2 Identify Capacity Deficiencies. The Consultant shall conduct model run of the sanitary sewer system for various scenarios, which include the model network developed in Task 4.1.1 and Task 4.1.2 under both the current and future (build out) loads identified in Task 4.2.1 and Task 4.2.2, and evaluate system including pump stations performance. Based on the system performance evaluation, the Consultant shall identify capacity deficiencies and resulting hydraulic grade line elevations in the sanitary sewer system under current and future flow conditions; identify those areas of the modeled network that require capacity relief. The Consultant shall generate a thematic map to present the model results graphically, along with tabular output from the model runs.

The model shall be used to confirm the results of the 2010 Pump Station Evaluation and determine if the pump stations are adequate to convey future flows.

5.3 Identify Potential Solutions and Refine Solution Model. The Consultant shall develop potential solutions models to resolve the capacity deficiencies identified in Task 5.2. Solutions may include re-routing flows, upsizing existing sanitary sewer pipes, or constructing parallel pipes. The Consultant shall verify if the preliminary solutions would be effective in alleviating the identified capacity deficiencies.

If the pump stations are found to be deficient in Task 5.2, develop solutions to upgrade the capacity of the pump stations. The pump station upgrade alternatives analysis will include:

- Modeling high level gravity bypass lines to determine if they are a viable option for conveying peak wet weather flows (PWWFs) without causing overflows.
- Modeling variable speed (V/S) pumps to determine if they provide advantages over the existing constant speed (C/S) pump configuration (e.g. fewer number of pumps required).
- Confirming the existing force mains can convey the additional flow while maintaining the recommended velocity between 2 and 10 feet per second.
- Confirming the existing 42-inch gravity line between the diversion structure at Rabello and the Northside pump stations has enough capacity to convey the additional flow.

5.4 Develop and Confirm Capital Improvement Projects. The Consultant shall develop and evaluate Capital Improvement Project (CIP) alternatives to provide capacity relief for identified deficiencies in the sanitary sewer system. The CIP will be based on the preliminary solutions identified in 5.3. The CIP evaluation will consider the availability of suitable construction corridors, the condition of the existing facilities based on available information, constructability issues, traffic issues, potential permit and easement requirements, operation and maintenance concerns, and public impacts.

The Consultant shall finalize the recommended CIP in the hydraulic model and run the model to confirm the proposed projects. The Consultant's modeling will also confirm additional capacity issues that need to be addressed as a result of the proposed alternative for improvements.

5.5 Prepare Cost Estimate. The Consultant shall prepare cost estimates for proposed Capital Improvement Projects. The Consultant shall utilize recent construction bids and cost data from sanitary sewer projects in the Bay Area to develop the cost estimates. The cost estimates shall include cost allowances (percentages of estimated construction cost) for construction contingencies, design engineering, construction administration and inspection, permitting and legal costs.

5.6 Determine Project Priorities. Develop Project Priorities in conjunction with City staff. Consultant shall prioritize the recommended Capital Improvement Projects. Prioritization criteria will include the severity of capacity deficiencies (as indicated by the extent of surcharge or potential overflows predicted by the model), the relative impact of the predicted surcharge or potential overflows, the timing of proposed development or redevelopment, maintenance history, and/or inspection records provided by City staff, and coordination with other projects such as sewer rehabilitation, other utility construction, pavement overlays, or other street improvements. Consultant shall assess the relative level of certainty of each recommended Capital Improvement Project.

5.7 Prepare Technical Memorandum. Prepare a TM documenting the proposed Capital Improvement Projects, including maps showing the proposed Projects alignments.

Deliverables:

1. Thematic maps and associated tables showing the results for the model scenarios run under Subtask 5.2.
2. TM on Capital Improvement Project and Costs.
3. Model files for current and future conditions and loads (to be provided on CD at the completion of the Project).

4. Solution model files with proposed CIP for final solutions (to be provided on CD at the completion of the Project).

TASK 6: PREPARE SANITARY SEWER MASTER PLAN (UPDATE) REPORT

6.1 Prepare Draft Report. The Consultant shall prepare a draft Master Plan (Update) Report to summarize and present the results and recommendations of the study. It is anticipated that report sections will correspond roughly to the tasks in the Scope of Services, and the TMs will form the basis for relevant report sections as well as be included in the report appendix. The Consultant shall prepare three (3) hardcopies of the draft report for review by City staff, and meet with the City to discuss City's comments on the draft report.

6.2 Prepare Final Report. The Consultant shall prepare the Final Master Plan (Update) Report, and incorporate City's comments on the draft report into the Final Report. Five (5) hardcopies of the final report and electronic files of report text and mapping shall be submitted to the City.

6.3 Quick Reference Tools. The Consultant shall provide the City with "quick reference tools" (such as maps or Google Earth files) with information on available sewer capacity. This tool will allow the City to quickly gauge whether its system has the capacity to accommodate new developments and redevelopments and if there is any potential impact to downstream facilities. The tools will consist of maps showing the percent full and/or available capacity in modeled trunk lines under existing and future design flow conditions.

Deliverables:

1. Draft Sanitary Sewer Master Plan (Update) (3 copies).
2. Final Sanitary Sewer Master Plan (Update) (5 copies)
3. Electronic copy of Final Sanitary Sewer Master Plan (Update) Report including text and mapping.
4. Quick reference tool electronic file.

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EXHIBIT B

FEE SCHEDULE

I. GENERAL PAYMENT

The total payment to the Consultant for Basic Services, as stated in **Exhibit A**, shall not exceed $278,007, plus any authorized Reimbursable Expenses, which shall not exceed $3,000. The amount billed to City for pre-approved Additional Services shall not exceed the sum of $28,000. In no event shall the amount billed to City by Consultant for services under this Agreement exceed $309,007, subject to budget appropriations.

Billing shall be on a monthly basis based on the services performed for each task. Consultant shall, during the term of this Agreement, invoice the City for hours and dollars of work completed under this Agreement. The invoice shall describe the Task invoiced, percent complete of the Task, time and materials expended by Task, and total amount during the invoice period. The invoice shall also show the total to be paid for the invoice period.

II. BASIC SERVICES

The total payment to Consultant for all work necessary for performing all Tasks, as stated in **Exhibit A**, shall be in proportion to services rendered and on a time and materials basis.

The Consultant fee allocated to each Task, as shown below, shall be the Consultant's full compensation for all the Consultant services required for the Project and by this Agreement, as directed by the City, and no additional compensation shall be allowed. Consultant may reallocate remaining budget from completed Tasks to other Tasks. The total amount of all the Tasks is a not-to-exceed amount.

Task 1	Project Management and Coordination	$ 19,786
Task 2	Data Collection and Review	$ 3,974
Task 3	Flow Monitoring *	$ 121,204
Task 4	Hydraulic Model Update	$ 46,745
Task 5	Evaluate System Hydraulic Performance and Develop Capital Improvement Projects	$ 66,925
Task 6	Prepare Sanitary Sewer Master Plan (Update) Report	$ 19,373
	TOTAL (not-to-exceed)	**$ 278,007**

In no event shall the amount billed to City by Consultant for Basic Services under this Agreement exceed two hundred seventy-eight thousand seven ($278,007), subject to budget appropriations.

* This Task is for the performance of monitoring at 23 meters and 4 rain gauges for two months, plus 4 early monitoring meters for one week. Cost for additional meters for two-month monitoring (beyond the proposed 23 meters) would be $4,000 per meter (plus 10% RMC mark-up). Additional cost for extension of flow monitoring beyond the 2 months would be $500 per meter per week (plus 10% RMC mark-up).

III. REIMBURSABLE EXPENSES

Reimbursable Expenses shall not exceed $3,000 without prior written approval by the City. The amount allocated for Reimbursable Expenses shall be the Consultant's full compensation for all Reimbursable Expenses required for the Project and by this Agreement, as directed by the City, and no additional compensation shall be allowed.

Reimbursable Expenses are in addition to compensation for Basic and Additional Services. The following is a sample of items that are included as part of the Basic Services and are not considered Reimbursable Expenses:

- Basic Office Expenses such as overhead, paper, pens, pencils, ink cartridges
- Insurance Expenses, Applicable Taxes, Computer Time
- Travel Expenses (local and long distance; travel time and mileages)
- Faxes
- Local and Long Distance Telephone Expenses (land lines and cellular phones)
- US Mail
- Paper Cost
- Copying Cost
- Plotting Cost

Reimbursable Cost may include:

- Outside Duplicating Cost for Plans and Reports as specified in Section III, Scope of Work, of Exhibit A
- Presentation Materials
- Overnight Delivery Services when requested by City
- Courier Services when requested by City

All reimbursable costs, other than those listed above, shall be approved in advance by City.

IV. ADDITIONAL SERVICES

Additional Services consists of work not included in the Scope of Services outlined within this Agreement. Pre-approved Additional Services shall be billed to City at the fixed hourly rates shown below in Section V, RATE SCHEDULE, or at an agreed negotiated price. Monthly billing for Additional Services shall be consistent with the term set forth in this Agreement. Payment for any Additional Services is allowed only if

written authorization is given by the City Engineer in advance of the work to be performed. Additional Services shall not exceed $28,000 without approval by the City.

V. RATE SCHEDULE

Rates shown are rates per hour.
RMC Water and Environment 2014 Rate Schedule:

Billing Classifications	Rates
Engineer-Planner-Scientist	
EPS-1	$ 146
EPS-2	$ 156
EPS-3	$ 168
EPS-4	$ 184
EPS-5	$ 194
EPS-6	$ 205
EPS-7	$ 215
EPS-8	$ 226
EPS-9	$ 236
EPS-10	$ 250
EPS-11	$ 265
EPS-12	$ 276
EPS-13	$ 286
EPS-14	$ 297
Technicians	
Tech-1	$ 127
Tech-2	$ 130
Tech-3	$ 135
Tech-4	$ 140
Tech-5	$ 146
Tech-6	$ 154
Tech-7	$ 156
Administrative	
AD-1	$ 94
AD-2	$ 99
AD-3	$ 104
AD-4	$ 114
AD-5	$ 125
AD-6	$ 135
AD-7	$ 146

Note: The individual hourly rates include salary, overhead and profit. Subconsultants will be billed as actual cost plus 10%. RMC reserves the right to adjust its hourly rate structure at the beginning of each year, provided that prior to adjusting such rates, RMC receives written approval for the adjustment by City's Director of Public Works, and provided further that no such adjustment shall have any effect on the Not-To-Exceed Amount.

RMC Water and Environment 2015 Rate Schedule:

Billing Classifications	Rates
Engineer-Planner-Scientist	
EPS-1	$ 150
EPS-2	$ 161
EPS-3	$ 173
EPS-4	$ 190
EPS-5	$ 200
EPS-6	$ 211
EPS-7	$ 221
EPS-8	$ 233
EPS-9	$ 243
EPS-10	$ 258
EPS-11	$ 273
EPS-12	$ 284
EPS-13	$ 295
EPS-14	$ 306
Technicians	
Tech-1	$ 131
Tech-2	$ 134
Tech-3	$ 139
Tech-4	$ 144
Tech-5	$ 150
Tech-6	$ 159
Tech-7	$ 161
Administrative	
AD-1	$ 97
AD-2	$ 102
AD-3	$ 107
AD-4	$ 117
AD-5	$ 129
AD-6	$ 139
AD-7	$ 150

RMC's Subconsultants Schaaf & Wheeler 2014 Rate Schedule:
Subconsultants will be billed as actual cost plus 10%.

Title	**Rate**
Project Manager	$210
Project Engineer	$200
Senior Engineer	$185
Associate Engineer	$165
Assistant Engineer	$145
Junior Engineer	$135
Designer	$130
Technician	$125
Engineering Trainee	$95
Construction Manager	$200
Senior Resident Engineer	$175
Resident Engineer	$155
Assistant Resident Engineer	$135
Construction Inspector	$125

Notes:

1. Schaaf & Wheeler reserves the rights to adjust these rates semi-annually, provided that prior to adjusting such rate RMC and Schaaf & Wheeler receive written approval for the adjustment by the City's Director of Public Works, and provided further that no such adjustment shall have any effect on the Not-To-Exceed Amount.
2. Principal time is $275 per hour and is charged only for work done in preparation for litigation and other very high level of expertise assignments. Court or deposition time as an expert witness is charged at $375 per hour with a minimum of four hours per day.

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EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant shall purchase and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Consultant's insurance. The minimum coverages, provisions and endorsements are as follows:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

   $1,000,000 Each Occurrence
   $2,000,000 General Aggregate
   $2,000,000 Products/Completed Operations Aggregate
   $1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:

   a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

   b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars ($1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Consultant and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars ($1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars ($1,000,000) policy limit Bodily Injury by disease, one million dollars ($1,000,000) each accident/Bodily Injury and one million dollars ($1,000,000) each employee Bodily Injury by disease.

2. The indemnification and hold harmless obligations of Consultant included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Consultant. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars ($1,000,000) per occurrence or two million dollars ($2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Consultant's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

2. Primary and non-contributing. Each insurance policy provided by Consultant shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Consultant's insurance.

3. Cancellation.

   a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

   b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

F. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and City agree as follows:

1. Consultant agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Consultant in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Consultant, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Consultant shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

Consultant or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Consultant shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.
City of Santa Clara, Public Works Department

P.O. 12010-S2	or	151 North Lyon Avenue
Hemet, CA 92546-8010		Hemet, CA 92543

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Consultant shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
RMC WATER AND ENVIRONMENT
FOR
SANITARY SEWER MASTER PLAN (UPDATE)

EXHIBIT D

ETHICAL STANDARDS FOR CONSULTANTS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA

Termination of Agreement for Certain Acts.

A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If a Consultant[1] does any of the following:

   a. Is convicted of operating a business in violation of any Federal, State or local law or regulation;

   b. Is convicted[2] of a crime punishable as a felony involving dishonesty[3];

   c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;

   d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City Consultant or subconsultant; and/or,

   e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

---

[1] For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Consultant" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

[2] For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

[3] As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Consultant can be imputed to the Consultant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Consultant, with the Consultant's knowledge, approval or acquiescence, the Consultant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

B. The City may also terminate this Agreement in the event any one or more of the following occurs:

1. The City determines that Consultant no longer has the financial capability[4] or business experience[5] to perform the terms of, or operate under, this Agreement; or,

2. If City determines that the Consultant fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Consultant's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.

C. In the event a prospective Consultant (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Consultant may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Consultant will have the burden of proof on the appeal. The Consultant shall have the opportunity to present evidence, both oral and documentary, and argument.

---

[4] Consultant becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Consultant.

[5] Loss of personnel deemed essential by the City for the successful performance of the obligations of the Consultant to the City.

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EXHIBIT E

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Consultant" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Consultant" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

RMC WATER & ENVIRONMENT,
a California corporation

By: _____

Name: Steve Bui

Title: Vice President

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Contra Costa

On Nov. 5th 2014 before me, Mayra Malinalli Osorio, Notary Public,
(Here insert name and title of the officer)

personally appeared Steve Bui,

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 of Notary Public

(Notary Seal)

MAYRA MALINALLI OSORIO
COMM. #1919641
NOTARY PUBLIC • CALIFORNIA
ALAMEDA COUNTY
Commission Expires Jan 7, 2015

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Affidavit of Compliance with
(Title or description of attached document)

Ethical Standards
(Title or description of attached document continued)

Number of Pages 1 Document Date 11/05/2014

N/A
(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☑ Individual (~~s~~)
- ☐ Corporate Officer
  (Title)
- ☐ Partner(s)
- ☐ Attorney-in-Fact
- ☐ Trustee(s)
- ☐ Other

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they,~~ is /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - Indicate title or type of attached document, number of pages and date.
  - Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
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EXHIBIT F

MILESTONE SCHEDULE

Consultant shall perform its services to conform to the schedule set forth herein, except as mutually agreed by the Parties. In the event the schedule of work is so modified, Consultant shall prepare a revised schedule to be submitted herein upon approval by the City.

TASK DESRIPTION	START	FINISH
Notice to Proceed.....	11/19/14	
Task 1: Project Management and Coordination.....	11/19/14	10/30/15
Task 2: Data Collection and Review.....	11/19/14	12/19/14
Task 3: Flow Monitoring.....	11/19/14	03/31/15
Task 4: Hydraulic Model Update.....	12/10/14	06/30/15
Task 5: System Performance Evaluation and Required Improvements.....	04/01/15	09/15/15
Task 6: Prepare Sanitary Sewer Master Plan (Update) Report.....	08/15/15	10/31/15

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-9

Santa Clara All-America City 2001

Date: November 4, 2014

To: City Manager for Council Action

From: Director of Electric Utility

Subject: Approval of Call No. 14-5 for Professional Services with Milton Security Group LLC for Advanced Metering Infrastructure (AMI) Programmer Analysts to Assist the Electric Department Systems Support Division

EXECUTIVE SUMMARY:

The Electric Department Systems Support Division manages and supports many technology projects for the Utility's business functions. Included in these projects are server implementations and internal networking infrastructure that houses the Meter Data Management Services (MDMS) and Advanced Metering Infrastructure (AMI) projects. The systems have been operated and maintained by separate Contract staff. These resources are no longer available and must be replaced with competent, experienced staff quickly in order to keep these projects on their current schedule.

Milton Security Group, LLC, under their existing Call Agreement, has provided a proposal for Call No. 14-5 for AMI Programmer Analysts to provide ongoing support of the Meter Data Management Services, Advanced Metering Infrastructure and related projects in the Electric Department. A copy of Call No. 14-5 with Milton Security can be viewed on the City's website or is available in the City Clerk's Office for review during normal business hours.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Approval of Call No. 14-5 will provide necessary support for staff to pursue the activities as described above.

ECONOMIC/FISCAL IMPACT:

The total cost of Call No. 14-5 with Milton Security Group, LLC is $111,000.00. Sufficient funds are available in the Electric Department's Contractual Services/Not Classified account, 091-1351-87870-[F]92300.

RECOMMENDATION:

That Council approve, and authorize the City Manager to execute, Call No. 14-5 for Professional Services with Milton Security Group LLC, in an amount not to exceed $111,000.00, for AMI Programmer Analysts to assist the System Support Division of the Electric Department.

John C Roukema

John C. Roukema
Director of Electric Utility

OK DC

Certified as to Availability of Funds:
091-1351-87870 $111,000.00

Gary Ameling

Gary Ameling
Director of Finance/Assistant City Manager

APPROVED:

Julio J. Fuentes
City Manager

MAJORITY VOTE OF COUNCIL

Documents Related to this Report:

1) ***Call No. 14-5 for Professional Services with Milton Security Group LLC***

Ebix Insurance No. S200001663

CALL NO. 14-5
FOR PROFESSIONAL SERVICES
TO BE PROVIDED TO THE
CITY OF SANTA CLARA, CALIFORNIA
BY MILTON SECURITY GROUP LLC

The Parties to this Call No. 14-5 ("Call") agree that on this _____ day of _____ 2014, this Call is made pursuant to the terms of a Call Agreement between the Parties entitled, "Call Agreement by and between the City of Santa Clara, California and Milton Security Group LLC," dated July 19, 2012, the terms of which are incorporated by this reference. This Call describes the Services to be provided to the City of Santa Clara, California ("City") by Milton Security Group LLC ("Contractor"), which are more fully described in Contractor's proposal to City entitled "Data Processing Programming & Support" dated September 15, 2014 ("Proposal"), attached to this Call as Exhibit A and incorporated by this reference. The Services to be performed under this Call shall be completed within the time period beginning on November 18, 2014 and ending on November 18, 2015. The attached Proposal contains a complete description of the Services, and performance dates for the completion of such Services, to be performed by the Contractor under this Call. In no event shall the amount paid to the Contractor for the Services provided to City by the Contractor under this Call, including all fees or pre-approved costs and/or expenses, exceed one hundred eleven thousand dollars ($111,000.00), subject to budgetary appropriations.

The Parties acknowledge and accept the terms and conditions of this Call as evidenced by the following signatures of their duly authorized representatives.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

MILTON SECURITY GROUP INC
a Delaware corporation

By: _____
JAMES McMURRY
Title: Managing Partner
Address: 261 East Imperial Highway, Ste. 550
Fullerton, CA 92835
Telephone: (714) 515-4011
Fax: (714) 459-7489

"CONTRACTOR"

Milton
SECURITY GROUP

AMI Programmer Analysts

Proposal to

City of Santa Clara

Silicon Valley Power

September 15, 2014

BACKGROUND:

Silicon Valley Power ("SVP") is the municipal electric utility owned by the City of Santa Clara, CA. SVP is seeking assistance from Milton Security Group Inc ("MSG") on an ongoing basis to assist with the operation and implementation of systems in support of the SVP Advanced Metering Infrastructure.

PURPOSE

The objective of this proposal is to provide one data processing personnel to assist SVP in their efforts towards a fully operational AMI and MDMS systems.

AMI Programmer Analyst Task Overview

- Check and maintain MV90 systems to ensure reads were processed
- Check EIP System Console for any stopped or problematic services/apps
- Review EIP reports for any issues/exceptions from the previous night
- Ensure MDE file(s) to "MV90 Dropbox" for transfer to EIP
- Ensure read files were absorbed by EIP and check for exceptions
- DEV/TEST daily tasks
- Attend meetings as required and provide subject matter expertise and guidance to SVP on proposals, vendor offerings, internal requirements.
- Work in conjunction with other AMI project team members to ensure smooth operation and implemetntation
- Maintain MDMS systems
- Create scripts as needed to help with proper operation of MDMS systems
- Other IT or related tasks and duties as assigned

Milton
SECURITY GROUP

PROJECT MANAGEMENT

MSG will, by means of James McMurry as Principal Consultant, manage the project tasks. In addition, Mr. McMurry will be directly responsible for (1) managing schedules and budgets; (2) project planning; (3) technical oversight.

SYSTEMS CONSULTANT

MSG will provide appropriate personnel as needed to support the task lists set above. The AMI Programmer Analyst will be available Monday through Friday of every work week, excluding Holidays and scheduled time off.

HOURLY RATES

MSG will provide services as identified in this document to SVP at an hourly rate of $106.00 per hour during non-holiday daytime work hours and $5,000.00 for training and travel for a AMI Programmer Analyst. Services will be provided during the term of this proposal at a Not-to-Exceed amount of $111,000.00.

Invoicing will be done on a weekly basis.

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-10

Santa Clara All-America City 2001

Date: November 12, 2014

To: City Manager for Council Action

From: Director of Electric Utility

Subject: Approval of a Software Maintenance Agreement with ABB Inc., to Provide Maintenance and Support for Silicon Valley Power's Electric Supervisory Control and Data Acquisition (SCADA) System

EXECUTIVE SUMMARY:

Since 1983, the City of Santa Clara's Electric Utility, Silicon Valley Power (SVP), has operated a Supervisory Control and Data Acquisition (SCADA) system in order to monitor and control the City's power grid. The SCADA maintenance and software is a critical part of this system which ABB provided to the City over 20 years ago. ABB has provided excellent service and response time. Staff would like to enter into a fixed price Software Maintenance Agreement with ABB Inc., to provide maintenance support and services for the SCADA system.

In May 2010, ABB Inc. acquired Ventyx which is currently providing this software for the SCADA system. The previous Software Maintenance Agreement with ABB expired on August 31, 2014, and in order to be compliant with the software license, we will need to have the new Software Maintenance Agreement in place with a start date of September 1, 2014, for a three-year term. A copy of the ABB Inc., Software Maintenance Agreement can be viewed on the City's website or is available in the City Clerk's Office for review during normal business hours.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

By entering into this Agreement, SVP will be assured of timely and reliable maintenance services from ABB for a three-year period. If the Agreement is not entered into, SVP risks reliability of its SCADA system due to inability to procure timely critical system support services on a time and material basis.

ECONOMIC/FISCAL IMPACT:

This Agreement for Services with ABB, Inc. shall not exceed $363,456.00. The first year of this three-year agreement is anticipated to be approximately $121,152.00 and sufficient funds are available in the Electric Department Contractual Services/Not Classified Account 091-1362-87870-[F]55600.

RECOMMENDATION:

That Council approve, and authorize the City Manager to execute, the Software Maintenance Agreement with ABB Inc., with a start date retroactive to September 1, 2014, in an amount not to exceed $121,152.00 for the first year of the agreement, and a total not to exceed $363,456.00, to provide continued maintenance and support for Silicon Valley Power's Electric Supervisory Control and Data Acquisition (SCADA) System.

John C. Roukema, Director of Electric Utility

Certified as to Availability of Funds: OK DC
091-1362-87870 $121,152.00

APPROVED:

Julio J. Fuentes, City Manager

Gary Ameling
Director of Finance/Assistant City Manager

Documents Related to this Report: Software Maintenance Agreement with ABB, Inc.

MAJORITY VOTE OF COUNCIL

City of Santa Clara
Software Maintenance Agreement

This Software Maintenance Agreement (this "Agreement") is effective as of September 1, 2014 ("Effective Date") by and between ABB Inc., located at 1601 Industrial Blvd., Sugar Land, Texas 77478 ("Licensor") and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("Licensee") pursuant to Licensee's Software License Agreement Contract number 2324 with an Effective Date of August 15, 1995 (the "License Agreement") for the delivery of ABB's software, as modified herein.

Licensor will provide to Licensee software maintenance services ("Maintenance Services") for the Licensed Software (the "Program") developed and supplied by Licensor as defined herein. The terms and conditions of the License Agreement shall govern Licensee's use of the Program, fixes, updates, releases, documentation and other Confidential Information delivered under this Agreement.

Licensor *Sales Executive*
Name: Dennis Roberts
Phone: 1-281-274-5235
Cell: 1-281-224-1425
E-mail: dennis.roberts@ventyx.abb.com

Licensor *Project Manager*
Name: Colby Tow
Phone: 1-281-274-5125
Cell: 1-713-501-0830
E-mail: colby.tow@ventyx.abb.com

Licensee *Project Manager*
Name: Jeff Ipsaro
Phone: 1-408- 615-5604
Cell:
E-mail: jipsaro@SantacCaraca.gov

Licensee *"Bill to" Contact/Dept.:*
Name: Electric Dept. Accounts Payable
Phone:
Cell:
E-mail: SVP_AP@santaclaraca.gov

PO # :

1. This Agreement shall serve as the exclusive definition of the Maintenance Services for the Software.

2. The term of this Agreement shall commence upon the Effective Date set forth above and shall continue for three (3) years (the "Initial Term"). Thereafter, this Agreement shall automatically renew for successive one-year renewal terms (each a "Renewal Term") unless the Agreement is terminated by either party upon written notice sixty (60) days prior to the end of the Initial Term or the then-current Renewal Term, as the case may be, with such termination to be effective upon the completion of such term.

3. Licensee shall pay Licensor the annual, nonrefundable Maintenance Service Fee in the amount of One-hundred twenty one thousand one-hundred fifty-one dollars ($121,152) U.S. dollars per calendar year. The first invoice shall be invoiced on after contract signing and the subsequent annual fee shall be invoiced on the 1st of August of each following year(s) during the term of this Agreement, net forty-five (45) days upon receipt of invoice by Licensee. Said Maintenance Service Fee does not include any federal, state, or local property; license; privilege; sales; use; excise; gross receipts; value-added; or other similar taxes that may be applicable to, measured by, or imposed upon, or with respect to, this Agreement, the Program, its license, its value or its use, or any performed services, and Licensee agrees to pay or reimburse any such taxes that Licensor, its contractors, or suppliers are required to pay.

4. Maintenance Service Renewal Term(s) Fees shall be equal to the previous year's Maintenance Service Fee plus the United States Consumer Price Index for all Urban Consumers for All Items, not seasonally adjusted, for the most recent twelve-month period ending prior to the maintenance term expiration dates. Such increase in the Maintenance Service Fee shall be limited to ten percent (10%) per year.

5. Licensee may reinstate lapsed Maintenance Services for the Software upon payment for all Maintenance Service Fees for the period during which Maintenance Services lapsed and all costs invoiced by Licensor, using the Network Manager published rate in effect at the time, for updating the Licensee's Software to the then-current version.

6. If payment is not made in accordance with this Agreement, a service fee of one and one-half (1.5%) percent or the highest legal rate permitted on the unpaid balance for each full or partial month of delay shall be charged. This service charge shall not preclude ABB's rights, including that of immediate payment. All Maintenance Services Fees and other amounts due under this Agreement are in U.S. dollars.

7. Maintenance Services shall consist of services as defined in Appendix A. Licensor will provide up to fifty (50) hours of Services during the Initial Term and each Renewal Term. Maintenance Services not utilized during the Initial Term or Renewal Term, as applicable, will lapse and will not be available outside of that term. Any additional services or services not included in Appendix A shall be invoiced using the Network Manager published rate at the current time.

8. During the term of this Agreement, Licensee shall:

a. Ensure that only personnel properly trained in the operation and use of the Software and its associated equipment call Licensor for direct phone support and that such personnel have sufficient access and computer time when using such service in order to implement the corrections suggested by Licensor;

b. Install and maintain the operating software and any third-party software to be provided by Licensee;

c. Ensure the proper Software environment is maintained and that Licensee's personnel who have access to the Software are properly trained in the operation and usage of the Software and the associated equipment; and

9. Provide Licensor an adequate high speed VPN (Virtual Private Network) network connection to Licensee's System so that Licensor can provide adequate remote support;

10. Provide Licensor timely access to supporting data, to include database extracts if required, and

11. Licensee shall be solely responsible to ensure that all of its files and data are adequately duplicated or documented, and Licensor shall in no way be responsible for Licensee's failure to do so, nor for the costs or expenses of reconstructing data which is lost, destroyed or otherwise damaged or rendered useless during the course of or as the result of the performance of any services under this Agreement.

12. Each party shall have the right to terminate this Agreement in the event that the other party breaches any material provision of this Agreement and such breach is not cured within thirty (30) days after notification thereof.

13. The maximum liability of Licensor for any direct damages sustained by the Licensee under this Agreement shall in no circumstance exceed the amount of the annual Maintenance Service Fee payable by the Licensee to Licensor. The Licensee and Licensor shall in no event be liable one to the other for loss of revenue, profit, anticipated profit or indirect, incidental, special or consequential damages, including but not limited to, any losses to Licensee resulting from lost computer time or the destruction or damage of records, or any claims or demands made against the Licensee by a third party.

14. This Agreement shall be governed by the laws of the State of New York, but excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and excluding New York law with respect to conflicts of law. Licensee agrees that all causes of action against Licensor under this Agreement shall be brought in the State Courts of the State of New York, or the U.S. District Court for the Southern District of New York. If any provision hereof, partly or completely, shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision or portion hereof and these terms shall be construed as if such invalid or unenforceable provision or portion thereof had never existed.

15. Neither Licensor nor Licensee shall be liable for any failure to perform or for delay in performance (other than payment obligations) due to fire, flood, strike or labor difficulty, act of God, government authority or the other party, riot, embargo, fuel or energy shortage, wrecks or delay in transportation, inability to obtain necessary labor, materials, or services, or any other cause beyond such party's reasonable control. If there is a performance delay due to any such cause, the date of delivery or time for completion shall be extended by a time period reasonably necessary to overcome the delay's effect.

16. Any notice required or permitted hereunder shall be in writing and shall be deemed to have been delivered upon delivery by commercial delivery service or upon delivery by certified mail to a party's address as set forth above. A party may change its address for receipt of notice by providing written notice to the other party.

17. This Agreement, including the Appendices attached hereto, and the License Agreement contain the entire understanding of the parties with respect to the matters contained herein. This Agreement may not be modified except by writing, executed by authorized representatives of Licensor and Licensee. If any provision hereof is or becomes, at any time or for any reason, unenforceable or invalid, no other provision hereof shall be affected thereby, the remaining provisions shall continue with the same effect as if such unenforceable or invalid provision shall not have been inserted herein. The headings and captions contained herein shall not be considered to be a part hereof for purposes of interpretation or application hereof, but are for convenience only. Either party's failure to exercise any right under this Agreement shall not constitute a waiver of any other terms or conditions of this Agreement with respect to any other or subsequent breach, nor a waiver by such party of its right at any time thereafter to require exact and strict compliance with the terms hereof.

18. If Licensee issues a purchase order or other document that purports to define Maintenance Services other than as set forth in this Agreement, it is agreed that the terms and conditions of any such purchase order shall have no application or effect, and that the provisions of this Agreement shall continue to control matters related to the provision of Maintenance Services.

As a part of Licensor's ISO 9001:2000 quality program requirements regarding customer supplied data, the Licensee acknowledges and accepts that there are no special handling requirements for Licensee's data supplied to Licensor as part of the Agreement. There shall be no tracking of changes that Licensor may make to the data as Licensor utilizes data for support services to Licensee. Licensee understands and accepts that there are no requirements by the Licensor to return any data to Licensee and Licensor can delete data whenever Licensor deems it is no longer required. While the data is in Licensor's possession and when it is disposed, Licensor shall protect the confidentiality of the data as if it were Licensor's confidential information. This agreement summarizes all special handling requirements of Licensee's data.

19. The provisions of Sections 3, 4, 7, 9, 10, 11, 12, 13, 14 and 15 shall survive the expiration or termination of this Agreement for any reason.

ALL SOFTWARE FIXES, UPDATES, RELEASES, DOCUMENTATION AND OTHER MATERIALS OR INFORMATION DELIVERED UNDER THIS AGREEMENT ARE DELIVERED AS-IS, AND LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES UNDER THIS AGREEMENT WHATSOEVER, WHETHER STATUTORY, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

IN COMPLETE AGREEMENT

(LICENSOR)

By: F. Forn

Printed Name: ~~Francisco Forn~~

Title: VP, Network Control

Company: ABB Inc.

Date: 1601 Industrial Blvd. Sugar Land, TX 77478 10/29/2014

(LICENSEE)

By:

Printed Name: Julio J. Fuentes

Title: City Manager

Company: City of Santa Clara

Date:

(LICENSOR)

By:

Printed Name: Jesus Rivera

Title: VP Finance, NC 10/29/14

Company: ABB Inc.

Date: 1601 Industrial Blvd. Sugar Land, TX 77478

LEGAL CATWATI

APPENDIX A

MAINTENANCE SERVICES

1. Software Support

Features	Benefits
Release Rights	Rights to periodic Baseline Release notes and software for those software applications the customer has licensed.
Software Support via Licensee Support Center	SPIDER Support: Is included. Hardware (2 HP Alpha redundant SPIDER servers, 1 Digital Alpha IS500 server, 1 HP Alpha Development server, 4 MMI Consoles, 4 RCS310 Communication Front-End Units, and 2 PCU400 Communication Front-End Units) Software (SPIDER SCADA EMS Systems, version 11 as delivered by Licensor, or as subsequently modified by Licensor). System located in Santa Clara, CA Note: 1. Support for the RCS310 front-end (RTG) is limited to database, configuration and troubleshooting, and does not include software updates. 2. PCU software upgrades are limited to releases that are compatible with SVP's current Network Manager release. 3. Compaq UNIX Version: 5.0 with version 11. 4. Required Third Party Software (Including other required Operating Systems): As required by Licensor. 5. Third party hardware and software support services are not included in this Agreement. Network Manager support: Is included Hardware (For the supported Client and Server Operating System and the required third party software versions please see the Network Manager SCADA Upgrade Project Agreement for Services date June 25, 2013) Software (SCADA EMS Systems, version NM 6.4 as delivered by Licensor, or as subsequently modified by Licensor). System located in Santa Clara, CA. Support up to the contracted number of hours (50) per year via telephone. Additional Support Hours is offered at a rate of $37,800 for 100 man-hour blocks. All actual and verifiable travel, shipping, and subsistence expenses plus a processing fee of 15% of actual charges. Available during normal Houston office hours (0800 - 1600, CST), not including holidays. Licensee shall have the ability to contact Licensor twenty-four (24) hours a day, seven (7) days a week to request support for mission critical issues. The phone number of the answering service which will relay the message to the proper Licensor's employee is: 1-800-HELP-365. Licensor shall respond within two (2) hours and shall make best effort to provide an estimate of when a resolution will be provided.
Access to Support WEB service portal	Via a Web based interface, the Licensee can track the progress of his open and closed support case status on-line, create cases, verify status of defect corrections, download code, access documentation and information about upcoming releases, and submit product enhancement requests.

Remote Diagnostic service	The proposed Network Manager system supports remote diagnostics in both hardware and software by VPN modem connection or dial-up line.
Data Debugging and Correction	Corrective maintenance (bug fixes / patches). Corrective maintenance and data transfer between parties through ABB's ftp site.
Designated Licensee Team Manager	The Licensee's "representative" - also known as Licensee Advocate Manager.
Regular issue reports	Monthly issue reports that outline the status of all open issues logged into Support. This is generated and run by the Licensee Advocate Manager.

2. Support Process

Before Licensor can work on a Support Request, information regarding the nature and location of the issues is required. Upon logging (via telephone or via the web-portal) a product support request the following information is required to be provided;

- Licensee name and address
- Technical contact information (name, telephone number, email, fax, etc.)
- Licensee dial-in information, if necessary (for remote dial in access by Licensor)
- Relevant software and version numbers
- Licensee environment on which software is installed , including hardware and operating system
- Product error number and/or messages
- Detailed description of the issue, including steps to reproduce problem and frequency of occurrence
- Severity of issue and impact on Licensee's business. Severity shall be agreed between the Licensor and Licensee and shall be based on the classifications described in section 3.

Licensor support representatives shall work with the Licensee to replicate any issue logged. An issue can be classified as one of the following:

- A software defect - Software has a defect that requires to be fixed
- A software enhancement; Software operates as designed. Licensee may wish a custom modification undertaken, if this is requested the request will be passed to Licensor's professional services group
- A query; A question or clarification about the software which is not a software defect.

3. Support Request Classification

Each issue is assigned a Priority level, which is an indicator of the impact to Licensee's business (however Level 1 can only be assigned to an issue identified with the Licensee's production environment).

Priority 1	The Licensor Software is non-operational or users cannot access the system, or the functionality is significantly decreased or backup or other security of data can no longer be performed. The defect affects mission-critical functions or information in the production environment and may include, but not be limited to, data loss or corruption, system crash or missing major functionality. This may include any defect related to Licensee or personal safety, system availability, overall data integrity, or ability to serve the Licensee. Licensor will work continuously with the customer to resolve the issue or to restore production. Note 1: Priority 1 is only a valid priority ranking for Production environments. Note 2: A client representative must be available at all times for a Priority 1 case to facilitate gathering additional information, testing, and applying the solution

Priority 2	The Licensor Software is operational with functional limitations or restrictions but there is minimal business impact. Under a Priority 2, the defect will have a large impact on the functionality of the application but does not require immediate release into the production environment. This defect allows continued use of the application, but there is a known compatibility or operability disruptions with no known Licensee acceptable work-around or missing minor functionality.
Priority 3	The Licensor Software is operation with functional limitations or restrictions that are not critical to the overall system operation and the defect has a moderated impact on the functionality of the application. However, the application remains usable by all groups. A functional error exists for which there is a Licensee acceptable workaround. Failures assigned this priority level cause no delays in production.
Priority 4	The Licensor Software is operational with problems or errors, which have little impact on system operations. Priority 4 shall include, but are not limited to, documentation errors. Priority 4 defects have a minor or cosmetic error in the functionality of the application in a production environment. Defect has no impact on the ability to execute a production application. Failures assigned this priority level cause no delays in production.

4. Support Request Resolution

Severity 1 – Priority 1 (which by definition is a business critical defects in a production environment)

- These issues by their very nature require immediate attention from Licensor. These issues take priority over all other issues and Licensor shall use reasonable endeavors to provide a resolution for the defect as soon as possible.
- Licensee is required to work closely with Licensor's support center to replicate the issue and provide all necessary information and replication steps to expedite the clarification of the issue so Licensor can begin to work on a fix can begin.
- Severity 1 – Priority 1 fixes shall be issued to Licensee via the Licensor support centre in the form of an 'emergency patch' or 'hot fix'. Due to the urgency of this type of issue, emergency patches/hot fixes receive less testing prior to release than would be expected for a normal

defect.

- All such fixes shall be 'rolled-into' the next maintenance release to be issued by Licensor for the software.

Non Severity 1 – Priority 1 defects

- All these defects will be fixed on a priority basis and shall be included in a subsequent maintenance release (see below).

Maintenance Releases

- Licensor issue regular maintenance releases for its software, Maintenance releases include all defect fixes which have been fixed and tested since the release of the previous maintenance release.
- Maintenance releases will always include all fixed issues
- Maintenance releases will include as many defect fixes as possible, normally defects are fixed on a priority basis.

5. Support Request Escalation

Should Licensee requires to escalate an issues within Licensor or wishes to discuss the service level being provided, Licensee should in the first instance contact the Licensee Support Representative. Escalation beyond this level is to the Director of Licensee Support and Vice President of Global Support.

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-11

Date: October 30, 2014

To: City Manager for Council Action

From: Acting Housing & Community Services Division Manager

Subject: Approval of Agreement with Santa Clara Methodist Retirement Foundation to Finance the Hot Water Piping System Upgrade at Liberty Tower, 890 Main Street, Santa Clara

EXECUTIVE SUMMARY:

On May 6, 2014, the City Council approved the City's 2014-15 Annual Plan application to the U. S. Department of Housing and Urban Development (HUD) for the use of federal Community Development Block Grant (CDBG) funds. Included in that Plan was an appropriation of CDBG funds to finance the Water Pump Replacement Project at Liberty Tower. Liberty Tower is a 100-unit residential facility that provides affordable rental housing for very low- and low-income seniors. Staff has developed a standard CDBG Capital Loan Agreement with Santa Clara Methodist Retirement Foundation (SCMRF) to undertake that project. A copy of the document can be viewed on the City's website or is available in the City Clerk's office during normal business hours.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The proposed project will replace Liberty Tower's Water Pump and complete the upgrade of the entire hot water delivery system which had experienced problems with leaks and other water delivery issues.

ECONOMIC/FISCAL IMPACT:

The Loan Agreement provides $67,500 in CDBG funding, approved under the Liberty Tower Water Pump Project [562-5544-80300-5561-(G)CDBG]. The Agreement obligates SCMRF to pay all costs of the project in excess of the contract amount of $67,500.

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RECOMMENDATION:

That the Council approve and authorize the City Manager to execute the Capital Loan Agreement with Santa Clara Methodist Retirement Foundation and related documents to provide $67,500 for the hot water piping system upgrade at Liberty Tower, 890 Main Street, Santa Clara, California.

Kevin L. Riley
Director of Planning and Inspection

Certified as to Availability of Funds:
562-5544-80300-5561-(G)CDBG $ 67,500.00

Gary Ameling
Director of Finance/
Assistant City Manager

APPROVED:

Julio J. Fuentes
City Manager

MAJORITY VOTE OF COUNCIL

Documents Related to this Report:
1) Capital Loan Agreement by and between the City of Santa Clara and Santa Clara Methodist Retirement Foundation

F:\Monitoring\CDBG Housing Projects\Liberty Tower\Water Pipes 2014-15\Agenda Report 11-18-14.doc

CAPITAL LOAN AGREEMENT BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA, AND SANTA CLARA METHODIST RETIREMENT FOUNDATION

This capital loan agreement ("Agreement"), is made and entered into on this ___ day of _____, 2014 ("Effective Date") by and between the CITY OF SANTA CLARA, CALIFORNIA, a chartered California municipal corporation ("City"), and SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC, a California non-profit corporation ("Contractor"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties".

AGREEMENT PROVISIONS

The Parties agree as follows:

1. FUNDING AND APPROPRIATION

Pursuant to the provisions of Title I of the Housing and Community Development Act of 1974, as amended, City has received Community Development Block Grant funds ("CDBG") from the Department of Housing and Urban Development ("HUD") as an entitlement. From the CDBG grant funds, City has appropriated an amount not to exceed SIXTY SEVEN THOUSAND FIVE HUNDRED DOLLARS ($67,500), to be given to Contractor to be utilized during the time period between November 1, 2014 and May 31, 2015 for the purpose of meeting the goals and objectives outlined in Exhibit A, titled, "Scope of Affordable Housing Project" ("Program"), attached hereto and incorporated herein by this reference, to primarily benefit low and moderate income City of Santa Clara residents.

2. DEFINITIONS

Whenever used in this Agreement and its attachments, the terms below, when initially capitalized, shall have the following meanings:

A. Affordability Period: Shall mean the length of time this Agreement is in effect and housing unit rents are controlled as set forth in Exhibit B, titled "Budget and Project Rents", attached hereto and incorporated herein by this reference. This period shall be for five (5) years after the date of the final payment to Contractor by the City.

B. Annual Income: Shall mean the "Income" of all household members as defined in the Code of Federal Regulations, 24 CFR 570.03.

C. CDBG: Shall mean Federal Regulations 24 CFR Part 570, which govern the Community Development Block Grant Program. This definition shall include all statutes, HUD memos and other correspondence relating to or otherwise explaining the CDBG Program.

D. Low Income Units: Up to 50 of the housing units in the Project for which the maximum monthly rent shall not exceed 30% of the Annual Income of households whose annual income equals 65% of the median income for the area, divided by 12, as determined by HUD. The rent varies depending on the number of bedrooms in the housing unit.

E. Very Low Income Units: at least 50 of the housing units in the Project for which the maximum monthly rent shall not exceed 30% of the Annual Income of households whose annual income equals 50% of the median income for the area, divided by 12, as determined by HUD. The rent varies depending on the number of bedrooms in the housing unit.

F. OMB: Shall mean the Federal Office of Management and Budget.

G. Project Property: Shall mean all buildings and grounds located at 890 Main Street, Santa Clara, California (APN # 269-28-061), commonly known as Liberty Tower.

H. Tenant/Client: Shall mean low and moderate income households residing in the Project Property on the date of final payment by City to Contractor under this Agreement.

3. PROJECT COORDINATION

A. City: The Housing and Community Services Division Manager or his/her designee, shall be the Program Manager for City and shall render overall supervision of the progress and performance of this Agreement by City. All services to be performed by City shall be under the overall direction of the Program Manager.

B. Contractor: Contractor shall assign a single Project Director who shall have overall responsibility for the progress and execution of this Agreement. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute Project Director, Contractor shall notify City immediately of such occurrence. Project Director and Contractor staff will cooperate with City's Program Manager relating to the Project, areas of concern, and the impact of Project on residents of City.

C. Notices: All notices or other correspondence required or contemplated by this Agreement shall be sent to the Parties at the following addresses:

CITY: Housing and Community Services Division Manager
City of Santa Clara
1500 Civic Center Drive
Santa Clara, California 95050

CONTRACTOR: Executive Officer
Santa Clara Methodist Retirement Foundation
890 Main Street
Santa Clara, CA 95050

4. OBLIGATION OF CONTRACTOR

A. Organization of Contractor: Contractor shall:

1) Provide to City in writing, prior to selection of any subcontractor under this Agreement, the documents listed below. Thereafter, and through the end of the Utilization Period, within thirty (30) days of a change in status of any of the following documents:

   a) A copy of Articles of Incorporation under the laws of the State of California;

   b) A copy of current Bylaws of Contractor;

   c) Verification and documentation of current Internal Revenue Service nonprofit status under Title 26, Section 501(c) of the Internal Revenue Code of 1986;

   d) Verification and documentation of current State of California Franchise Tax Board tax exempt status under Section 23701(d), of the California Revenue and Taxation Code;

   e) Names and addresses of current Board of Directors of Contractor;

   f) A copy of the adopted personnel policies and procedures including an Affirmative Action Plan if staff servicing Liberty Tower tenants exceeds fifteen (15) full-time equivalent employees;

   g) An organizational chart and staffing profile; and

   h) Any other documents required by HUD and/or the City to verify compliance with CDBG and/or the terms of this Agreement.

2) Abide by the conflict of interest provisions in 24 CFR 84.42, 24 CFR 85.36 and OMB Circular A-110. In all cases not governed by these documents, 24 CFR 92.356 and 24 CFR 570.611 shall apply. These rules apply to any person currently being compensated by the Contractor for services rendered to it within the previous twelve (12) months, whether as a full or part time employee, officer, independent contractor or otherwise. Any such persons who have exercised or exercise any decision-making functions or responsibilities with respect to City's administration of CDBG or gain inside information with regard to that process, are prohibited from obtaining any financial interest or benefit for themselves or those with whom they have family or business ties during their tenure with Contractor and for one year thereafter.

3) Include on the Board of Directors representation from a broad cross section of the community, including: those with expertise and interest in the Contractor's services, representatives from community organizations interested in Contractor's services, and users of Contractor's services.

4) Open to the public all meetings of the Board of Directors, except meetings, or portions thereof, dealing with personnel or litigation matters or to instruct negotiators.

5) Keep minutes, approved by the Board of Directors, of all regular and special meetings.

6) Encourage public participation in planning and implementing services provided under this Agreement.

7) Comply with 24 CFR 84.44(b) and the City of Santa Clara Disadvantaged Business Enterprise Program, available from the Agency's Project Manager, regarding the use of minority and/or female owned businesses, vendors, suppliers, and contractors to the maximum extent feasible, for items funded under this Agreement.

B. Project Performance of Contractor: During the Utilization and Affordability Periods, Contractor shall:

1) Submit to City all documentation required by City to assure compliance with Affordability Period requirements of the Project as described in Exhibits A and B;

2) Submit to City by July 31 of each year an Annual Report for the previous Fiscal Year (defined herein as the annual period July 1 through the next June 30), on forms and in a format as pre-approved by the City that, for each resident household, includes: Apartment Number, Number of Bedrooms, Number of Persons in the Household, Total Rent Paid, Rent Subsidy (if any), Affordability Level, Race of Household (White, Black, Asian, Pacific Islander, Native American), and whether the Household is Hispanic or not.

3) Maintain all required insurance coverage as specified in Exhibit C, titled "Insurance Requirements", attached hereto and incorporated herein by this reference;

4) Maintain the appearance of Project Property consistent with surrounding properties;

5) Include an acknowledgement of City funding and support on all appropriate Project publicity and publications using words to the effect that services are funded by the City of Santa Clara; and,

6) Implement any changes required by City, HUD, or CDBG, to maintain compliance with CDBG requirements and any other applicable statutes or regulations. City and Contractor will seek remedies to address any changes that impact the financial viability of the Project.

C. Fiscal Responsibilities of Contractor: During the Utilization and Affordability Periods, Contractor shall:

1) Appoint and submit the name of a Fiscal Officer who shall be responsible for the financial and accounting activities of the Contractor, including the receipt and disbursement of Contractor funds;

2) Establish and maintain a system of accounts that shall be in conformance with generally accepted principles of accounting for budgeted funds;

3) Document all costs by maintaining complete and accurate records of all financial transactions, including, but not limited to, contracts, invoices, time cards, cash receipts, vouchers, canceled checks, bank statements, and/or other official documentation evidencing in proper detail the nature and propriety of all charges;

4) Perform an independent fiscal audit at least every year, in conformance with the generally accepted standard accounting principles. Such audits must identify the total funds received and disbursed and funds loaned and expended relating to this Agreement in a form sufficient to identify, to track and to correlate such funds. The costs for such audits shall be at Contractor's expense, unless otherwise provided for in this Agreement. Copies of the completed audits must be provided to the City; and

5) Be liable for repayment of disallowed costs. Disallowed costs may be identified by the City through audits, monitoring or other sources. Contractor shall be afforded the opportunity to respond to any adverse findings that may lead to disallowed costs. The City shall make the final determination of disallowed costs, subject to the provisions on OMB Circular A-122, entitled "Cost Principles for Non-Profit Organizations," and CDBG.

6) Assure that all accounts and documentation of fiscal activities shall be consistent with the requirements of Exhibit B.

D. Records, Reports and Audits of Contractor

1) Contractor shall comply with all applicable federal Uniform Administrative Requirements as delineated in 24 CFR 92.505(b).

2) Establishment and Maintenance of Records: Contractor shall maintain records, including but not limited to books, financial records, supporting documents, statistical records, personnel, property and other records sufficient to reflect properly (a) all direct and indirect costs of whatever nature, claimed to have been incurred and anticipated to be incurred to perform this Agreement, and (b) all other matters covered by this Agreement. Such records shall solely pertain to the Project Property, which is the subject matter of this Agreement.

3) Preservation of Records: Contractor shall preserve and make available its records:

a) Until the expiration of five (5) years following the end of the Affordability Period or the completion of the activity that produced the record, whichever is earlier;

b) For any longer period, if required by applicable law; or

c) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five (5) years from the date

of any resulting final settlement.

4) Examination of Records and Facilities: At any time during normal business hours and as often as may be deemed necessary, with at least one working day notice by City, Contractor agrees that City, and/or any duly authorized representatives shall, until expiration of (a) five years after the conclusion of the Affordability Period, or (b) such longer period as may be prescribed, have access to and the right to examine its offices and facilities engaged in performance of this Agreement and all its records with respect to all matters covered by this Agreement, excepting those falling within the attorney-client privilege and those falling within the attorney work-product privilege, provided that in the event of a dispute regarding the applicability of the attorney work-product privilege to specific records, the Parties agree to submit the dispute to an impartial arbitrator agreeable to both Parties. Agreement regarding the arbitrator shall not be withheld unreasonably. Parties shall equally divide costs of such arbitration.

   Contractor also agrees that the City, or any duly authorized representatives, have the right to audit, examine and make excerpts or transcripts of and from, such records, and to make audits of all contracts and subcontracts, invoices, payrolls, records of personnel, conditions of employment, materials and all other data relating to matters covered by this Agreement.

5) City Audits: The City may require an independent audit. Such audits may cover Project compliance as well as fiscal matters. Contractor will be notified in advance that an audit will be conducted. Contractor will be afforded an opportunity to respond to any audit findings, and have the responses included in the final audit report. Cost of such audits will be borne by the City.

F. Non-Religious Activity: In addition to, and not in substitution for, other provisions of this Agreement regarding the provision of services with funds, pursuant to Titles I & II of the Housing and Community Development Act, as amended, the Contractor:

1) Represents that it is not, or may not be deemed to be, a religious or denominational institution or organization or an organization operated for religious purposes which is supervised or controlled by or in connection with a religious or denominational institution or organization; and,

2) Agrees that, in connection with such services:

   a) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

   b) It will not discriminate against any person applying for housing on the basis of religion and will not limit such services or give preference to persons on the basis of religion;

   c) It will provide no inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this Agreement, and will only conduct such activities in a separate time or place; and,

d) It will exert no other religious influence in the provision of such services and participation in religious activities by beneficiaries shall be voluntary.

G. Compliance with Ethical Standards: As a condition precedent to entering into this Agreement, Contractor shall:

1) Read the attached Exhibit E, titled "Ethical Standards for Contractors Seeking to Enter into an Agreement with the City of Santa Clara, California", attached hereto and incorporated herein by this reference; and,

2) Execute the affidavit attached as Exhibit F, titled "Affidavit of Compliance with Ethical Standards [City of Santa Clara]", attached hereto and incorporated herein by this reference.

5. CONTRACT COMPLIANCE

A. Monitoring and Evaluation of Project: Contractor shall timely furnish all Client and service data, statements, records, information and reports necessary for Project Manager to monitor, review and evaluate the performance of Contractor with respect to the Project and its components. City shall have the right to request the services of an outside agent to assist in any such evaluation. Such services shall be paid for by City.

B. Contract Noncompliance: With receipt by City of any information that indicates a failure or deficiency by Contractor to comply with any provision of this Agreement, the City shall have the right to require corrective action to enforce compliance with such provision. Corrective action shall be taken if any of the following, as examples only, occur:

1) If Contractor (with or without knowledge) has made any material misrepresentation of any nature with respect to any information or data furnished to City in connection with the Project;

2) If there is pending litigation with respect to the performance by Contractor of any of its duties or obligations under this Agreement that may materially jeopardize or adversely affect the undertaking of or the carrying out of the Project;

3) If Contractor shall have taken any action pertaining to the Project which requires City approval without having obtained such approval;

4) If Contractor is in material default under the any provisions of this Agreement;

5) If Contractor makes improper use of loan funds;

6) If Contractor fails to comply with any of the terms and conditions of this Agreement in such a manner as to constitute material breach thereof; or,

7) If Contractor submits to City any reports which are incorrect or incomplete in any material

respect.

C. Corrective Action: City shall have the right to require the presence of any of Contractor's officers at any meeting called for the purpose of considering corrective action within seven (7) working days of issuing such notice.

Following such meeting, the City shall forward to Contractor a set of corrective action recommendations relative to Project performance and/or noncompliance, and a timetable for implementing the specified corrective action recommendations; such timetable shall allow Contractor not less than seven (7) working days to comply with the specified corrective action recommendations. Following implementation of the corrective actions, Contractor shall forward to City, within the time specified by City, any documentary evidence required by City to verify that the corrective actions have been taken. In the event Contractor does not implement the corrective action recommendations in accordance with the corrective action timetable, City may: disallow all or part of the cost of the activity or action in noncompliance; provide notice of intent to terminate this Agreement as specified below; and/or take other remedies that may be legally available.

6. OBLIGATIONS OF CITY

A. Contract Compliance: Consistent with the applicable sections of 24 CFR Part 570, Subpart J and 24 CFR 84.51, the City will evaluate the Project based on compliance with CDBG, compliance with the Agreement, and on-site monitoring of client and service based data.

B. Method of Payment: City shall pay the actual cost for rehabilitation of Project Property, a total sum not to exceed SIXTY SEVEN THOUSAND FIVE HUNDRED DOLLARS ($67,500). This sum shall be subject to repayment to City under conditions specified in Exhibit G, titled "Promissory Note", attached hereto and incorporated herein by this reference.

C. Utilization of Funds: Funds shall be paid by City under this Agreement shall only be for eligible expenses incurred during the Utilization Period. The Utilization Period of this Agreement shall begin on November 1, 2014 and terminate on May 31, 2015.

D. Final Payment Request: City must receive all payment requests under this Agreement within thirty (30) days of the conclusion of the Utilization Period. City shall have no payment liability under this Agreement after that date, and City may reprogram any unspent amount of the capital loan without prior notice to Contractor.

7. PROJECT INCOME

A. All rents or other payments collected from Project Clients during the Affordability Period shall be retained by the Contractor. These rents shall be used to further program activities at Project Property.

B. All rents or other payments that are collected from Project Clients during the Affordability Period

and that remain unspent at the conclusion of the Affordability Period shall be used by Contractor solely to further program activities at Project Property.

C. Rents received subsequent to the Affordability Period shall not be subject to this Agreement.

8. DISCLOSURE OF CONFIDENTIAL TENANT INFORMATION

To the extent allowed by law, City agrees to maintain the confidentiality of any information regarding Tenants or applicants for residency under this Project, or their immediate families, pursuant to this Agreement, which may be obtained through application forms, interviews, tests, reports, from public agencies or counselors, or any other source. Without the written permission of the applicant, such information shall be divulged only as necessary for purposes related to the performance or evaluation of the services and work to be provided pursuant to this Agreement, and then only to persons having responsibilities under the Agreement, including those furnishing services under the Project through subcontracts.

9. ASSIGNABILITY AND INDEPENDENT CONTRACTOR REQUIREMENTS

A. The relationship of Contractor to City is that of an independent contractor. Contractor has full rights to manage its employees and Tenants subject to the requirements of the law. All persons employed by Contractor in connection with this Agreement shall be employees of Contractor and not employees of City in any respect. Contractor shall be responsible for all employee benefits, including, but not limited to, statutory worker's compensation benefits.

B. None of the work or services to be performed hereunder shall be delegated or subcontracted to third parties without prior written City approval.

C. No subcontractor of Contractor will be recognized by City as having any employment relationship with the City.

10. COMPLIANCE WITH LAW

A. Compliance: Contractor shall become familiar and comply with and cause all its subcontractors and employees, if any, to become familiar and comply with all applicable federal, state and local laws, ordinances, codes, regulations, and decrees, including, but not limited to, those federal rules and regulations outlined in Exhibit D, titled "Assurances", attached hereto and incorporated herein by this reference.

B. Assurances: Failure of Contractor, in any manner, to observe and adhere to law as described herein or as amended shall in no way relieve Contractor of its responsibility to adhere to same and Contractor herein acknowledges this responsibility. Contractor shall hold City, its City Council, officers, employees and boards and commissions harmless from Contractor's failure(s) to comply with any requirement imposed on Contractor by virtue of the utilization of City funds. Contractor shall reimburse City for any disallowed costs and/or penalties imposed on City because of

Contractor's failure to comply with all applicable federal, state and local laws, ordinances, codes, regulations and decrees.

11. TERMS AND AMENDMENTS

Amendments to the terms and conditions of this Agreement shall be requested in writing by the Party desiring such revision, and any such adjustment to this Agreement shall be determined and effective only upon the mutual agreement in writing of the Parties hereto unless the amendments are made by HUD, in which case they will be adopted as ordered.

12. INTEGRATED DOCUMENT

This Agreement embodies the agreement between City and Contractor and its terms and conditions. No verbal agreements or conversations with any officer, agent or employee of City prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon City.

13. HOLD HARMLESS

Contractor hereby releases and agrees to protect, defend, hold harmless and indemnify City, its City Council, its officers, employees and elected officials, boards and commissions, from and against all claims, injury, liability, loss, cost and expense, or damage, however same may be caused, including all cost and reasonable attorney's fees for any claim, injury, liability loss, cost, expense, or damage arising out of or in any way connected with this Agreement.

14. WHEN RIGHTS AND REMEDIES WAIVED

In no event shall any payment by City hereunder constitute or be construed to be a waiver by City of any breach of covenants or conditions of this Agreement or any default which may then exist on the part of Contractor, and the making of any such payment while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to City or Contractor with respect to such breach or default.

15. TERMINATION

A. Termination for Cause: City may terminate this Agreement for cause if:

1) Contractor fails to comply with material existing conditions of the Agreement; or,

2) Contractor refuses to accept any additional conditions that may be imposed by City or the Federal government; or,

3) Contractor fails to implement required corrective actions in a timely and sufficient fashion.

B. Termination for Convenience: Consistent with the applicable sections of 24 CFR Part 570 and 24 CFR 85.44, City or Contractor may terminate or suspend this Agreement in whole or in part when both Parties agree that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds.

C. Upon termination Contractor shall not incur new obligations and shall cancel as many outstanding obligations as possible;

D. Termination does not impair the City's right to subsequently require repayment by Contractor for disallowed costs or other adjustments determined by audit findings.

16. CLOSING OUT PROCEDURE

A. Contractor is responsible for City's receipt of final billing within thirty (30) days of the end of the Utilization Period. After that date, City will accept no further billing for expenses incurred during the Utilization Period. Any amount of the loan remaining unbilled after that date may be reprogrammed by City without notice to Contractor.

B. City is not liable for any Contractor expenses incurred after the Utilization Period of this Agreement.

C. Closing Out does not impair the City's right to subsequently require repayment by Contractor for disallowed costs or other adjustments, or any other City costs and expenses related to this Agreement or the enforcement thereof.

17. MISCELLANEOUS PROVISIONS

A. The Captions: The captions of the various sections, paragraphs, and subparagraphs of the Agreement are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

B. No Third Party Beneficiary: This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

C. Severability Clause: In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal, or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

D. No Pledging of City's Credit: Under no circumstances shall Contractor have the authority or power to pledge the credit of City or incur any obligation in the name of City. Contractor shall save and hold harmless City, its City Council, its officers, employees, and boards and commissions for expenses arising out of this Agreement.

E. Venue: In the event that suit shall be brought by any Party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

F. Corporation Financial Disclosure Requirements: Contractor's services to be rendered under the provisions of this Agreement are excluded from the requirement of filing a Statement of Economic Interests under the Political Reform Act.

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The Parties to this Agreement hereby indicate their acknowledgement and acceptance of the terms and conditions stated herein as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date as set forth on page 1.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal Corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.
a California non-profit Corporation

By: Priscilla J. Haynes

Name: PRISCILLA J. HAYNES
Title: Executive Director

Local Address:
890 Main Street
Santa Clara, CA 95050
Telephone: (408) 243-6226
FAX: (408) 243-8430

"CONTRACTOR"

Exhibit A
SANTA CLARA METHODIST RETIREMENT FOUNDATION
LIBERTY TOWER DOMESTIC WATER PUMP REPLACEMENT

Scope of Affordable Housing Project

1. PURPOSE OF PROJECT

Contractor shall implement this Agreement in accordance with the applicable provisions of Title I of the Housing and Community Development Act of 1990, as amended, the federal regulations as set forth in 24 CFR Part 570, written interpretations or requirements by HUD, and all other rules and regulations pertaining thereto. All these elements shall be collectively called "CDBG".

The purpose of this Project is to replace the existing domestic water pumps and control panel with a new, more efficient pump skid in the 11-story high rise, one hundred (100) unit senior apartment complex, located at 890 Main Street, Santa Clara, California ("Project Property"). The impact of this Project will be to sustain affordable, decent housing.

2. DEFINITION OF TERMS

A. Income Limits: The maximum Annual Income level for a Tenant is eighty percent (80%) of the area median income, adjusted for household size, as established by HUD. The basis for determining compliance is the tenants in residence as of the date of the final payment to Contractor under this Agreement

B. Participation Statement: Shall mean a written statement by Contractor or an applicant, which certifies that an eligible person has applied for residency at Project Property. For applicants who become Tenants, this Statement will indicate the beginning and ending dates of residency. The Participation Statement(s) may be kept confidential and coded by number for City monitoring purposes. Contractor will maintain primary intake documents, supporting the data on this list, at its office.

C. Single Room Occupancy (SRO) Units: Shall mean a single room dwelling unit that is the primary residence of its occupant(s). Since the Project involves the rehabilitation of an existing residential structure, neither food preparation nor sanitary facilities are required to be in the unit. The facility must contain sanitary facilities that are shared by Tenants.

3. ACTIVITIES TO BE PERFORMED

A. Direct Services—Rehabilitation: Contractor shall have full responsibility to procure and to monitor

the performance of subcontractors hired to undertake the repair and replacement of certain elements of the replacement of the domestic water pump of the Project Property, subject to the following requirements:

1) Contractor or Contractor's representative shall describe its method of procuring subcontractors. This procurement plan shall be subject to written approval by City.

2) Contractor shall prepare a scope of work, describing the various development and construction activities to be undertaken. This scope of work shall be approved, in writing, by City, before any financial commitments to subcontractors are entered into by Contractor. The scope of work will be consistent with the "Domestic Pump Skid Replacement Budget Proposal submitted to Contractor by ACCO Engineered Systems and dated December 14, 2013.

3) Contractor shall develop bid/proposal documents for all subcontractors. These documents shall be approved by the City, in writing, prior to public release.

4) Contractor shall obtain any and all required permits and plan approvals before undertaking any construction work.

5) This project is subject to federal prevailing wage requirements. The City shall monitor for compliance with federal prevailing wage requirements.

B. Direct Services—Tenant Relations

1) Except as specifically defined, restricted, or otherwise limited by the terms of this Agreement, Contractor shall be considered landlord of Project Property, with all of the rights and responsibilities normally associated with that term.

2) **Client Selection Criteria**: Within seven (7) days of the Effective Date of this Agreement, Contractor shall provide City with written Client selection criteria for approval. These criteria shall, at minimum:

   a. Be consistent with the purpose of providing affordable housing for seniors;

   b. Be reasonably related to the Purposes of the Project and the applicant's ability to perform the obligations of the lease; and

   c. Select Clients from a written waiting list in the chronological order of application, insofar as possible.

3) **Client Lease**: Within seven (7) days of the Effective Date of this Agreement, Contractor will

provide City with a copy of its standard Tenant lease and submit same to City for approval.

4) **Client Participation Plan**: Contractor shall establish a grievance procedure and provide a plan for and follow a program of Tenant participation in management decisions.

5) **Maintenance**: Contractor must maintain Project Property in compliance with all federal, state and local housing quality standards and code requirements. Contractor shall cooperate with City staff conducting on-site inspections to determine compliance with this paragraph. In addition, Contractor must maintain the appearance of Project Property in a manner and to standards as approved by the City and at least as good as and consistent with surrounding properties.

6) **Project Rents**: Contractor shall set rents as required in Exhibit B. As landlord, Contractor shall be responsible for the collection of all rents due.

7) **Tenant Incomes**: Contractor shall determine tenant incomes in compliance with CDBG, specifically the definition of "Income" at 24 CFR 570.3. That regulatory section also sets forth actions to be taken when a tenant's income exceeds the allowable income maximums for the type of regulated unit. Maximum qualifying incomes are, for:

   a) Very Low Income Units: 50% of the Area Median Income, adjusted for household size, based on the income limits annually published by HUD. CDBG defines this income category as Low Income.

   b) Low Income Units: 80% of the Area Median Income, adjusted for household size, based on the income limits annually published by HUD. CDBG defines this income category as Moderate Income.

C. Indirect Services

During the Utilization and Affordability Periods, Contractor shall maintain a Service Management Plan for the Project Property. This plan will describe services to be provided, staff and their responsibilities, and other elements of the operation of Project Property. Contractor shall submit this plan to City within seven (7) days of approval of the Effective Date of the Agreement.

D. Reports and Submissions

1) By July 31 of each year during the Affordability Period, Contractor shall submit to City an Annual Report for the previous Fiscal Year (defined herein as the annual period July 1 through the next June 30), that, for each resident household, includes: Apartment Number, Number of Bedrooms, Number of Persons in the Household, Total Rent Paid, Rent Subsidy (if any), Rent Affordability Level, Race of Household (White, Black, Asian, Pacific Islander, Native

American), and whether the Household is Hispanic or not.

2) By July 31 of each year during the Affordability Period, Contractor shall submit to City a list of all vacancies that occurred during the immediately preceding period of July 1 to June 30. For each new Tenant, this list shall include that information required in the Annual Report.

3) Contractor shall maintain a waiting list of applicants for residency at Project Property. This waiting list shall be available at Contractor's offices for City review at any time.

4) In order to comply with HOME and other applicable federal, state, and local requirements, and to efficiently monitor compliance with this Agreement, City may require additional reporting elements from Contractor.

4. PROJECT PERFORMANCE STANDARDS

The timeline below constitutes the measurable goals by which Project performance will be evaluated.

Work Phase	Completion Date
Selection of a subcontractor for City's review and approval	Within three (3) months of the execution of this Agreement.
Conduct Pre-Construction Meeting and issue "Notice to Proceed"	Within thirty (30) days of City approval of a subcontractor.
Completion of Construction	Within three (3) months of the Pre-Construction Meeting.

Exhibit B

SANTA CLARA METHODIST RETIREMENT FOUNDATION
LIBERTY TOWER DOMESTIC WATER PUMP REPLACEMENT
Budget and Project Rents

1. APPROPRIATION BUDGET

   A. The City appropriation of $67,500 in CDBG funds shall be used to reimburse Contractor for subcontractors hired by Contractor to undertake the Liberty Tower Domestic Water Pump Replacement Project. The focus of that construction activity will be to replace and repair certain elements of the existing domestic water pump and hot water delivery system. Subcontractors shall include: necessary architectural/engineering services and construction/installation contractor(s). All subcontractors will be solicited through a procurement process reviewed and approved by the City. Subcontractors whose expenses will be reimbursed through this Agreement are subject to approval by City.

   B. Contractor will be responsible for all project costs in excess of the City's appropriation. Contractor agrees that it will spend its funds first, meaning that, if the subcontractor(s) base bid price(s) exceeds the City's appropriation, then Contractor will pay the difference between the bid amount(s) and the City's appropriation before requesting any funds for reimbursement by the City. Subsequently, Contractor will use its funds to pay any change orders that increase costs, as such change orders are approved by Contractor.

   C. It is understood by the Parties that no residents will be permanently displaced by the Project. However, Contractor assumes all financial liability for any relocation costs associated with residents at Project Property during the construction period. The amount of these relocation costs shall be consistent with CDBG requirements.

   D. It is the City's intention that Contractor will maintain and operate the Project Property in a self-supporting manner. To this end, City shall be under no obligation to provide additional funds to maintain and operate the Project Property.

   E. Contractor will use its own funds to pay any project costs in excess of the City appropriation.

2. ACTUAL COSTS AND REIMBURSEMENT

   A. Actual Costs shall be based on the subcontractors' total cost bids, as agreed to by Contractor and reviewed and approved by City, for architectural/engineering services, and construction/installation costs. Work change orders shall be clearly itemized and added to the total costs as soon as approved by Contractor.

City will make reimbursement not more often than once per month, based on copies of invoices received from subcontractors for work completed. Contractor shall indicate approval to pay on all invoices submitted to the City for reimbursement.

C. City will withhold ten percent (10%) as retention from all requests for reimbursement of construction costs. Retention funds shall only be repaid after a Notice of Completion has been recorded for at least 35 days, no outstanding liens on Project Property remain, and all local federal and state requirements have been certified as complete.

3. PROJECT RENTS

A. Housing Units: The Project Property has one hundred (100) zero and one-bedroom housing units. All are considered CDBG-assisted units. At least fifty (50) of those units will be considered Very Low Income Units, subject to Very Low Income Rent restrictions described below. Up to fifty (50) of the remaining Units will be considered Low Income Units. The designation of CDBG units in the annual report may vary, as long as the number of Very Low Income Units is at least fifty (50).

B. Very Low Income Unit Rents: This figure is published annually by HUD as "Low HOME Rents." As of the Effective Date of this Agreement, **the maximum monthly rent for a 0-Bedroom Very Low Income Unit is $918; the maximum monthly rent for 1-Bedroom Very Low Income units is $984.** These maximum rents must be adjusted downward for any tenant-paid utilities, in accordance to the Schedule of Allowances for Tenant-Purchased Utilities and Other Services for Santa Clara County, published annually by the Housing Authority of the County of Santa Clara. In determining compliance with the Very Low Income Unit rent restriction, only the amount the Tenant pays to Contractor to lease its housing unit is considered.

C. Low Income Unit Rents: This figure is published annually by HUD as "High HOME Rents." As of the Effective Date of this Agreement, **the maximum monthly rent for 0-Bedroom Low Income High HOME Rent Units is $1105; the maximum monthly rent for 1-Bedroom High HOME Rent Units is $1,199.** These maximum rents must be adjusted downward for any tenant-paid utilities, in accordance to the Schedule of Allowances for Tenant-Purchased Utilities and Other Services for Santa Clara County, published annually by the Housing Authority of the County of Santa Clara. In determining compliance with the Low Income Unit rent restriction, only the amount the Tenant pays to Contractor to lease its housing unit is considered.

D. Rent Changes: Within thirty (30) days notice to the City by HUD of the annual update of the maximum rents as described above, City shall inform Contractor of the changes in writing. After notification by City, Contractor may implement any increases in accordance with applicable laws.

4. CITY LOAN

A. City provides funds to Contractor under this Agreement in the form of a secured loan. The terms of that loan are set forth in the Promissory Note, included as Exhibit G of the Agreement.

B. Contractor shall not place any new liens on the Project Property without the prior written consent of the City.

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Exhibit C

SANTA CLARA METHODIST RETIREMENT FOUNDATION
LIBERTY TOWER HOT WATER PIPING
Insurance Coverage Requirements

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

   $1,000,000 Each Occurrence
   $2,000,000 General Aggregate
   $2,000,000 Products/Completed Operations Aggregate
   $1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:

   a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

   b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

   c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars ($1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars ($2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars ($1,000,000) policy limit Bodily Injury by disease, one million dollars ($1,000,000) each accident/Bodily Injury and one million dollars ($1,000,000) each employee Bodily Injury by disease.

2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents, using endorsement form WC 04 03 06, or its equivalent.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance, which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

   (a) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

   (b) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

City of Santa Clara Housing & Community Services Division
c/o EBIX, Inc.
P.O. 12010-S2 or 151 North Lyon Avenue
Hemet, CA 92546-8010 Hemet, CA 92543

Telephone: (951)766-2280; or
Fax: (951)325-0409
Email address: ctsantaclara@ebix.com

AND

City of Santa Clara
Housing & Community Services Division
1500 Civic Center Drive
Santa Clara, CA 95050
Telephone: (408) 615-2490
Fax: (408) 248-3381

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

Exhibit D

SANTA CLARA METHODIST RETIREMENT FOUNDATION
LIBERTY TOWER DOMESTIC WATER PUMP REPLACEMENT
Assurances

The Recipient of CDBG funds hereby assures and certifies compliance with all regulations, policies, guidelines and requirements (including, but not limited to, federal OMB Circulars No. A-87, A-102, A-110, and A-122), as they relate to the acceptance and use of Federal CDBG funds by private, non-profit organizations. Also the Corporation assures and certifies to the City that:

1. It possesses legal authority to make a grant submission and to execute a community public service program;

2. Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the person identified as the official representative of the corporation to submit the final statement and all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Corporation to act in connection with the submission of the final application and to provide such additional information as may be required;

3. The grant will be conducted and administered in compliance with:
   a. Title VI of the Civil Rights Act of 1964 (Public Law 88-352; 42 U.S.C. 2000d *et seq.*), as amended, and implementing regulations issued at 24 CFR Part 1; and
   b. Title VIII of the Civil Rights Act of 1968 (Public Law 90-284; 42 U.S.C. 3601 *et seq.*), as amended, implementing regulations issued at 24 CFR Part 107, and Executive Order 11063 ; and
   c. Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 (Public Law 93-383; U.S.C. 5301 *et seq.*), as amended; and
   d. Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112; 29 U.S.C. 794), as amended; and
   e. Executive Order 11246, the implementing regulations issued at 41 CFR Chapter 60, and the Development Act of 1968 (12 U.S.C. 1701u; and
   f. The Age Discrimination Act of 1975 (Public Law 94-135; U.S.C. 6101), as amended.
   g. Presidential Executive Order 13166 ("Improving Access to Services for Persons with Limited English Proficiency"); and
   h. Executive Orders 11625, 12432 and 12138, encouraging the use of minority and women-owned business enterprises in connection with activities funded under this grant.

4. It will affirmatively further fair housing.

5. It will apply the Uniform Accessibility Standards, at 24 CRR Part 40, Appendix A, as they relate to substantial rehabilitation or conversion.

6. It will implement the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846, and implementing regulations at 24 CFR Part 35.

Exhibit E

SANTA CLARA METHODIST RETIREMENT FOUNDATION
LIBERTY TOWER DOMESTIC WATER PUMP REPLACEMENT
Ethical Standards for Contractors
Seeking to Enter into an Agreement with
The City of Santa Clara, California

Termination of Agreement for Certain Acts.

A. City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If Contractor[1] does any of the following:

   a. Is convicted[2] of operating a business in violation of any Federal, State or local law or regulation;

   b. Is convicted of a crime punishable as a felony involving dishonesty[3];

   c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;

   d. Is convicted of an offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,

   e. Made (or makes) and false statement(s) or representation(s) with respect to this Agreement.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with Contractor can be imputed to Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of Contractor, with Contractor's knowledge, approval or acquiescence, Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

B. City may also terminate this Agreement in the event any one or more of the following occurs:

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1 For purposes of this Exhibit, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of the corporation.

2 For purposes of this Exhibit, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

3 As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

1. If City determines that Contractor no longer has the financial capability[4] or business experience[5] to perform the terms of, or operate under, this Agreement; or,

2. If City determines that Contractor fails to submit information, or permits false information, which is required in order to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.

C. In the event Contractor, as an applicant or bidder, is ruled ineligible (debarred) to participate in a contract award process, or the Agreement is terminated pursuant to these provisions, Contractor may appeal City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City of its action. The matter will be heard within thirty (30) days of the filing the appeal request with the City Clerk. Contractor will have the burden of proof on the appeal. Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

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4 Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

5 Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

Exhibit F

SANTA CLARA METHODIST RETIREMENT FOUNDATION
LIBERTY TOWER DOMESTIC WATER PUMP REPLACEMENT
Affidavit of Compliance with Ethical Standards
[City of Santa Clara]

I, _____, being first duly sworn, depose and say that I am the _____ of Santa Clara Methodist Retirement Foundation and I hereby state that I have read and understand the language, titled "Ethical Standards for Contractors Seeking to Enter into an Agreement with the City of Santa Clara, California" (herein "Ethical Standards") set forth in Exhibit E. I have authority to make these representations on my own behalf and on behalf of the legal entity identified herein. I have examined appropriate business records and I have made inquiry of those individuals potentially included within the definition of "Contractor" contained in the Ethical Standards.

Based on the review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in Footnote #1 of Exhibit E (1.e., owner or co-owner of a sole proprietorship, general partner, etc.) has been convicted of any one or more of the crimes identified in Exhibit E within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

Santa Clara Methodist Retirement Foundation
Contractor Legal Name

Priscilla J. Haynie
Signature

Executive Director
Title

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

CERTIFICATE OF ACKNOWLEDGMENT

State of California)
County of Santa Clara)

On 10/27/14 before me, Kathleen Cougill Betts,
Date (here insert name and title of the officer)
personally appeared Priscilla J. Haynes
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.

KATHLEEN COUGILL BETTS
Commission # 1979979
Notary Public - California
Santa Clara County
My Comm. Expires Jun 24, 2016

Signature Kathleen Cougill Betts
Signature of Notary Public

Place Notary Seal Above

Exhibit G

SANTA CLARA METHODIST RETIREMENT FOUNDATION
LIBERTY TOWER DOMESTIC WATER PUMP REPLACEMENT
Promissory Note

1. **Principal**

For value received, **SANTA CLARA METHODIST RETIREMENT FOUNDATION**, a California non-profit corporation ("Contractor") promises to pay to the order of the **CITY OF SANTA CLARA**, a municipal corporation under the laws of the State of California ("City"), the sum of **SIXTY SEVEN THOUSAND FIVE HUNDRED AND 00/100 DOLLARS ($67,500)**, or so much thereof as shall be advanced by City to Contractor, to the Director of Finance of the City of Santa Clara, 1500 Warburton Avenue, Santa Clara, California 95050, or such other place as City may from time to time designate, together with accrued interest from the date of this Note on the unpaid principal at the applicable rate as set forth in Paragraph 3. This Note is issued pursuant to and entitled to the benefits of that certain "CAPITAL LOAN AGREEMENT BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA, AND SANTA CLARA METHODIST RETIREMENT FOUNDATION, dated _____ 2014 ("Contract"), pursuant to Title I of the Housing and Community Development Act of 1974, as amended. This Contract provides that Contractor is the recipient of certain CDBG funds, to rehabilitate one hundred 0-bedroom and 1-bedroom housing units for low income senior households at 890 Main Street, Santa Clara, California ("Project Property").

2. **Payment Dates**

Contractor shall pay the principal and interest provided for herein as follows:

a. Principal and accumulated interest, and all other amounts payable by Contractor under the Loan Documents, shall be immediately due and payable, at the option of City, any time prior to the end of the Affordability Period, as defined in the Contract, if any one or more of the following Events of Default have occurred: (1) the sale, transfer, or other disposition by Contractor of any portion of Project Property, without the prior written consent of City; or (2) a change in use by Contractor of the Project Property, without the prior written consent of the City; or (3) attachment of any liens on Project Property without the prior written consent of the City; or (4) failure to cure any non-compliance with CDBG regulations; or (5) failure to cure any other material noncompliance with the Contract and its exhibits.

b. If an Event of Default has occurred, Contractor or its assignee shall make payment within ten (10) working days of receipt of a written notice of an Event of Default.

c. The entire principal and accumulated interest shall be considered paid in full if no Event of Default has occurred prior to the end of the Affordability Period, as defined in the Contract.

3. **Interest Rate and Accumulated Interest**

Absent an Event of Default hereunder, the outstanding principal amount of the City Loan shall bear simple interest at the rate of zero per cent (0%) per year, beginning on the starting date of the Affordability Period, as defined in the Contract. The maximum interest accumulation shall be ZERO AND 00/100 DOLLARS ($0.00) and the maximum amount owed to the City shall be SIXTY SEVEN THOUSAND FIVE HUNDRED AND 00/100 DOLLARS ($67,500). Notwithstanding anything to the contrary in this Promissory Note, outstanding interest on the principal shall be payable only to the extent of available sale or refinancing proceeds.

4. **Lawful Money**

Principal and interest are payable in lawful money of the United States of America.

5. **Applications of Payments; Late Charges**

a. Any payments received by City pursuant to the terms of this Note shall be applied: first to sums other than principal and interest due to City pursuant to the Loan Documents; next to the payment of all interest accrued to the date of such payment; and the balance, if any, to the payment of principal.

b. If any payment of interest and/or principal is not received by the City with five (5) business days following the due date thereof, then in addition to the remedies conferred upon the City pursuant to Section 6 hereof and the other Loan Documents, (1) a late charge of four percent (4%) of the amount due and unpaid will be added to the delinquent amount to compensate City for the expense of handling the delinquency, and (2) the amount due and unpaid, including the late charge, shall bear interest at the lesser of the higher annual rate which may lawfully be charged and collected under applicable law on the obligation evidenced by this Note or an annual rate which shall be four percent (4%) higher than the rate otherwise applicable to the delinquent amount, computed from the date on which the amount was due and payable until paid. Without prejudice to the rights of the City under any of the Loan Documents, Contractor shall indemnify the City against, and shall pay the City on demand, any expense or loss it may sustain or incur as the result of the failure by Contractor to pay, when due, any interest and/or principal, fees, or other amounts payable to City under the Loan Documents, to the extent that any such expense or loss is not recovered pursuant to such foregoing provisions. A certificate of the City setting forth the basis for the determination of the amounts necessary to indemnify the City in respect to such expenses or direct loss, submitted to Contractor by the City, shall be conclusive and binding for all purposes.

6. **Remedies**

Upon the occurrence of an Event of Default and the expiration of any applicable cure period thereafter, then, at the option of City, the entire balance of principal together with all accrued interest thereon, shall become immediately due and payable, without demand or notice. Upon the occurrence of an Event of Default (and so long as such Event of Default shall continue), the entire balance of principal together with all accrued interest shall bear interest, on the due date of the delinquent payment, at the Bank of America reference rate plus four percent (4%). No delay or omission on the part of City in exercising any right under the Loan Documents shall operate as a waiver of such right.

7. **Waiver**

Contractor, any endorser of this Note, and all others who may become liable for all or any part of the obligations evidenced by this Note hereby severally waive demand, presentment for payment, demand and protest, notice of protest, demand and or dishonor and non-payment and consent to any number of renewals or extensions of time hereof. Any such renewals or extensions may be made without notice to any of said parties and without affecting their liability. The pleading of any statute of limitations as a defense to any demand against the Contractor is expressly waived by Contractor.

8. **Attorney's Fees**

If this Note is not paid when due or if any Event of Default occurs, Contractor promises to pay all attorneys' fees and costs and expenses incurred by the City in connection with any such default or any other action or other proceeding brought to enforce any of the provisions of this Note. The City's right to such fees shall not be limited to or by its representation by staff counsel, and such representation shall be valued at customary and reasonable rates for private sector legal services.

9. **Relationship of Parties**

It is the intent of the Parties that the relationship evidenced by this Note shall be deemed to be one of debtor/creditor, and not of partnership or joint venture.

10. **Severability**

Every provision of this Note is intended to be severable. In the event any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such illegality shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

11. **Interest Rate Limitation**

It is the intent of Contractor and City in the execution of this Note and all other instruments securing this Note that the loan evidenced hereby be exempt from the restrictions of the usury laws of the State of California. The City and Contractor stipulate and agree that none of the terms and provisions contained herein or in any of the loan instruments shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of California. In such event, if the City shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on this Note to a rate in excess of such maximum rate shall, at the option of the City, be credited to the payment of the sums due hereunder or returned to Contractor.

12. **Amendments**

This Note may not be modified or amended except by an instrument in writing expressing such intention executed by the Parties sought to be bound thereby, which writing must be so firmly attached to this Note so as to become a permanent part thereof.

13. **Number and Gender**

In this Note, the singular shall include the plural and the masculine shall include the feminine and neuter gender, and vice versa, if the context so requires.

Promissory Note executed by Contractor on the date first hereinabove written.

SANTA CLARA METHODIST RETIREMENT FOUNDATION
a California Non-Profit Corporation

By: Priscilla J. Haynes

Name: PRISCILLA J. HAYNES

Title: Executive Director

Date: 10/27/14

Local Address:
890 Main Street
Santa Clara, CA 95050-5491
Telephone: (408) 243-6226
FAX: (408) 243-8430

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-12

Date: November 4, 2014

To: City Manager for Council Action

From: Director of Public Works/City Engineer

Subject: Approval of an Agreement with Summerhill Winchester, LLC, to retain and maintain private street light poles, mailboxes, and non-standard driveway approaches within Worthington Circle at 90 North Winchester Boulevard (Adjacent to APN 303-53-001 thru 110; S.C. 18,456)

EXECUTIVE SUMMARY:

In compliance with CMD Number 44 (regarding installation of private improvements in the public right-of-way), Summerhill Winchester, LLC, is requesting to retain and maintain private street light poles, mailboxes, and non-standard driveway approaches within Worthington Circle, a public right-of-way. The property owner, and its successors, agreed to remove said private improvement at their sole cost and expense within sixty (60) days of the date of a written demand from City.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Approval of the encroachment will allow the property owner to retain and maintain said improvements within the public right-of-way while relieving the City of associated liability.

ECONOMIC/FISCAL IMPACT:

There is no additional cost to the City other than staff time and expense.

RECOMMENDATION:

That the Council:

1. Approve and authorize the City Manager to execute the Agreement and Covenant Running with the Land with Summerhill Winchester, LLC, to retain and maintain private street light poles, mailboxes, and non-standard driveway approaches within Worthington Circle at 90 North Winchester Boulevard (Adjacent to APN 303-53-001; thru 110 S.C. 18,456); and
2. Authorize the recordation of said Agreement.

Rajeev Batra

Rajeev Batra
Director of Public Works/City Engineer

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report:
1) Agreement

RECORD WITHOUT FEE
PURSUANT TO GOV'T CODE § 6103

Recording Requested by:
Office of the City Attorney
City of Santa Clara, California

When Recorded, Mail to:
Office of the City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Form per Gov't Code § 27361.6

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

AGREEMENT AND COVENANT RUNNING WITH THE LAND TO MAINTAIN PRIVATE STREET LIGHT POLES, MAILBOXES, AND NON-STANDARD DRIVEWAY APPROACHES

[Restriction on a portion of 90 North Winchester Boulevard, Santa Clara, CA]

This Agreement and Covenant Running with the Land ("Covenant") is made and entered into on this ____ day of _____, 2014 (See paragraph 16 for "Effective Date"), by Summerhill Winchester, LLC, a California limited liability company ("Owner"), and the City of Santa Clara, California, a chartered California municipal corporation ("City").

RECITALS

a. WHEREAS, Owner is the sole and exclusive owner of real property commonly known as a portion of 90 North Winchester Boulevard in the City of Santa Clara, California, and is shown on the 2010-11 Santa Clara County Property Tax Roll as Assessor's Parcel Nos. 303-53-001 thru 110 ("Property"). Property is also known as Tract 9972, which map was filed for record in Book 832 of Maps, at Pages 1-5, Santa Clara County Records.

b. WHEREAS, City will be the owner of the public right-of-way within said Tract 9972 on the date the City Council accepts all the public improvements for said Tract 9972.

c. WHEREAS, Owner wishes to install private street light poles, mailboxes, and non-standard driveway approaches within said public right-of-way.

d. WHEREFORE, the Parties enter into the following Covenant:

COVENANT

1. Owner proposes to install and City agrees to permit certain private improvements ("Improvements") in the street right-of-way described and limited to the following:

Private street light poles, mailboxes, and non-standard driveway approaches. The boundaries of Improvements encroachment are shown on Exhibit "A", attached hereto and incorporated herein by this reference.

Installation of Improvements shall be at Owner's expense and performed under an Encroachment Permit issued by City.

The foundation for the private street light poles shall be constructed to Silicon Valley Power (SVP) standards and said foundation shall be maintained by SVP.

2. Owner shall maintain, at Owner's expense, Improvements in a safe condition in compliance with City ordinances, rules, regulations, and such terms and conditions as all of the aforesaid are required by City from time to time. City approval of Improvements does not constitute approval on behalf of public utility companies. Approval of public utility companies shall be obtained separately by Owner. If, in the future, Improvements are removed, the area they are removed from shall be left in a safe condition. Removal shall be at Owner's expense and performed under an Encroachment Permit issued by City.

3. Owner shall permit public utility companies, the City, and their respective officers, employees, and agents to enter upon Property so that there is access to the street right-of-way for the purpose of installation, modification, repair, maintenance, removal or replacement of utility companies and City owned public improvements, facilities or properties situated in the street right-of-way. Owner waives any and all claims for damages or liabilities in connection therewith for property damages incurred as a result of City operations.

4. Owner shall pay City for any damages to City owned facilities caused by the construction or maintenance done by Owner in the street right-of-way. Payment to City shall be made within sixty (60) calendar days of said demand.

5. Owner shall modify, maintain, repair, or remove within sixty (60) days of a written demand of the City Engineer (or designee) at no cost to the City, Improvements (or portion thereof) which prohibits or interferes with the City's ability to maintain, repair, or replace its public facilities located in the street right-of-way. If owner fails to modify, maintain, repair, or remove Improvements (or portion thereof) within the time frame stated in the written demand of City, City shall cause the work to be done and bill Owner for any and all costs, fees, and expenses related to said work. Payment to City shall be made within sixty (60) calendar days of said demand for payment.

6. If Owner fails to pay City for damage to City facilities or for City caused work the Owner failed to perform upon City demand, City may enforce this Covenant in any manner allowed by law including a levy against the Property.

7. Owner shall defend, indemnify and hold harmless the City, its council, officers, employees, agents, successors and assign from any claims, demands, loss, liability, injury, damage, expense or cost (including reasonable attorney's fees) however same may be caused, which may be sustained, incurred, or asserted against City because of and/or arising from this Agreement, including but not limited to claims for design defect and/or dangerous condition of public property.

8. As used herein, street right-of-way includes not only the roadway traveled by vehicles but the curb and gutter, sidewalk and area between and beyond the sidewalk, if any, to the private

property lines or exterior line of right-of-way easements.

9. Each and every covenant made by Owner and/or City in this Covenant is made for the direct benefit of the respective lands described above or the interests in such lands held by the Parties, their heirs, assigns and/or successors in interest, and shall run with said respective lands or interest in lands, and if applicable, the responsibilities and burdens thereof are imposed on and shall run with said respective lands or interest in lands held by the Parties, their heirs, assigns and successors in interest.

10. The lands of Owner which are burdened by this covenant and which will have the responsibility and burden for the modification, maintenance, repair, or removal of the Improvements is the above mentioned Property.

11. The lands of City which are benefited by the covenants included in this Agreement is Worthington Circle, a public street owned by City.

12. Enforcement, either to restrain violation or to recover damages, shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant created through this Agreement.

13. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

14. Owner represents and warrants to City that they are the owner(s) of Property at the time of their signature hereto, and have the authority to enter into this Covenant and the covenants contained herein, and grant such interests as are necessary to effectuate this Covenant.

15. Wherever the term "Owner" is used, it shall refer collectively to the Owner(s) signing this Covenant, and/or Owner's assigns and successors in interest, provided however, Owner shall have the right to assign all of its rights and obligations under this Agreement to a homeowners association formed by Owner for the Property ("HOA"), and upon assignment of this Agreement by Owner to the HOA, Owner shall no longer have any further obligations under this Agreement and the HOA shall thereafter be liable for all obligations of the Owner under this Agreement. City and Owner may be referred to herein collectively as the "Parties" or individually as a "Party". It is the express intent of the Parties hereto to have the benefits and burdens of this covenant run with the land.

16. This Covenant shall become effective on the date the City Council accepts all the public improvements for Tract No. 9972 (Recorded in Book 832 of Maps, at Pages 1 thru 5, Santa Clara County Records).

[The last paragraph, Paragraph 17, concerning recordation of this Covenant, and the signature blocks are on page 4]

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17. This Covenant shall be recorded by City in the Office of the County Recorder of Santa Clara County.

The Parties acknowledge and accept the terms and conditions of this Covenant as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Covenant shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA
a chartered municipal corporation

_____
JULIO J. FUENTES
City Manager

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: 408/615-2210
Fax Number: 408/241-6771

APPROVED AS TO FORM:

_____
RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

_____
ROD DIRIDON, JR.
City Clerk

"CITY"

SUMMERHILL WINCHESTER LLC,
a California limited liability company

By: Summerhill Homes, LLC,
Its manager

By: _____

Name: KATIA KAMANGAR

Title: SR. VICE PRESIDENT

By: _____

Name: Jason R. Biggs

Title: Assistant Secretary

Mailing Address: _____

_____

Phone #: _____ Fax #: _____

"OWNER" [APN 303-53-001 thru 110 (2012-13)]

ALL LEGAL OWNER(S) OF PROPERTY MUST SIGN THIS DOCUMENT. IF OWNER(S) IS A CORPORATION, THE COMPLETE LEGAL NAME AND CORPORATE SEAL OF THE CORPORATION AND CORPORATE TITLES OF THE PERSONS SIGNING FOR THE CORPORATION SHALL APPEAR ABOVE. WRITTEN EVIDENCE OF AUTHORITY OF PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF CORPORATION, PARTNERSHIP, OR JOINT VENTURE, OR ANY OTHER ORGANIZATION OTHER THAN A SOLE PROPRIETORSHIP SHALL BE ATTACHED.

ATTACH THE ALL-PURPOSE NOTARY ACKNOWLEDGMENT FORM FOR THE PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF THE OWNER(S).

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SANTA CLARA

On 7/1/13 (Date) before me, JUDY LEPULU, NOTARY PUBLIC (Here Insert Name and Title of the Officer),

personally appeared KATIA KAMANGAR AND JASON R. BIGGS (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.

JUDY LEPULU
Commission # 1877666
Notary Public - California
Santa Clara County
My Comm. Expires Jan 22, 2014

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 of Notary Public)

Place Notary Seal and/or Stamp Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document - Winchester LLC

Title or Type of Document: Agmt + Covenant running w/land to maintain Private st. light poles etc.

Document Date: 2/1/13 (footer) Number of Pages: 5

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____	Signer's Name: _____
☐ Corporate Officer — Title(s): _____	☐ Corporate Officer — Title(s): _____
☐ Individual	☐ Individual
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact	☐ Attorney in Fact
☐ Trustee	☐ Trustee
☐ Guardian or Conservator	☐ Guardian or Conservator
☐ Other: _____	☐ Other: _____
Signer Is Representing: _____	Signer Is Representing: _____
RIGHT THUMBPRINT OF SIGNER: Top of thumb here	RIGHT THUMBPRINT OF SIGNER: Top of thumb here

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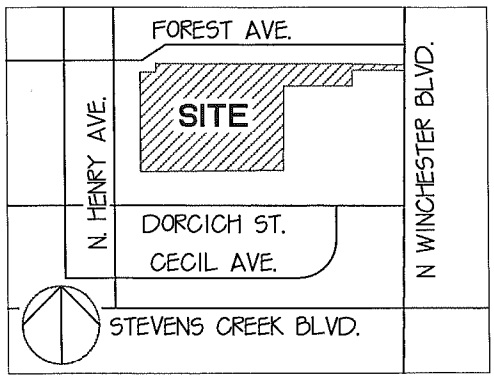
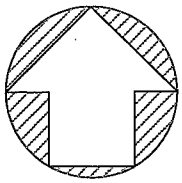
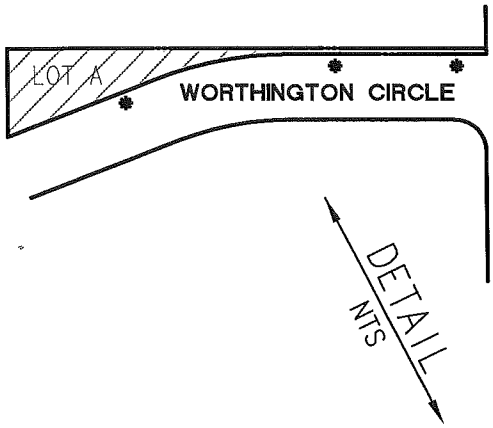
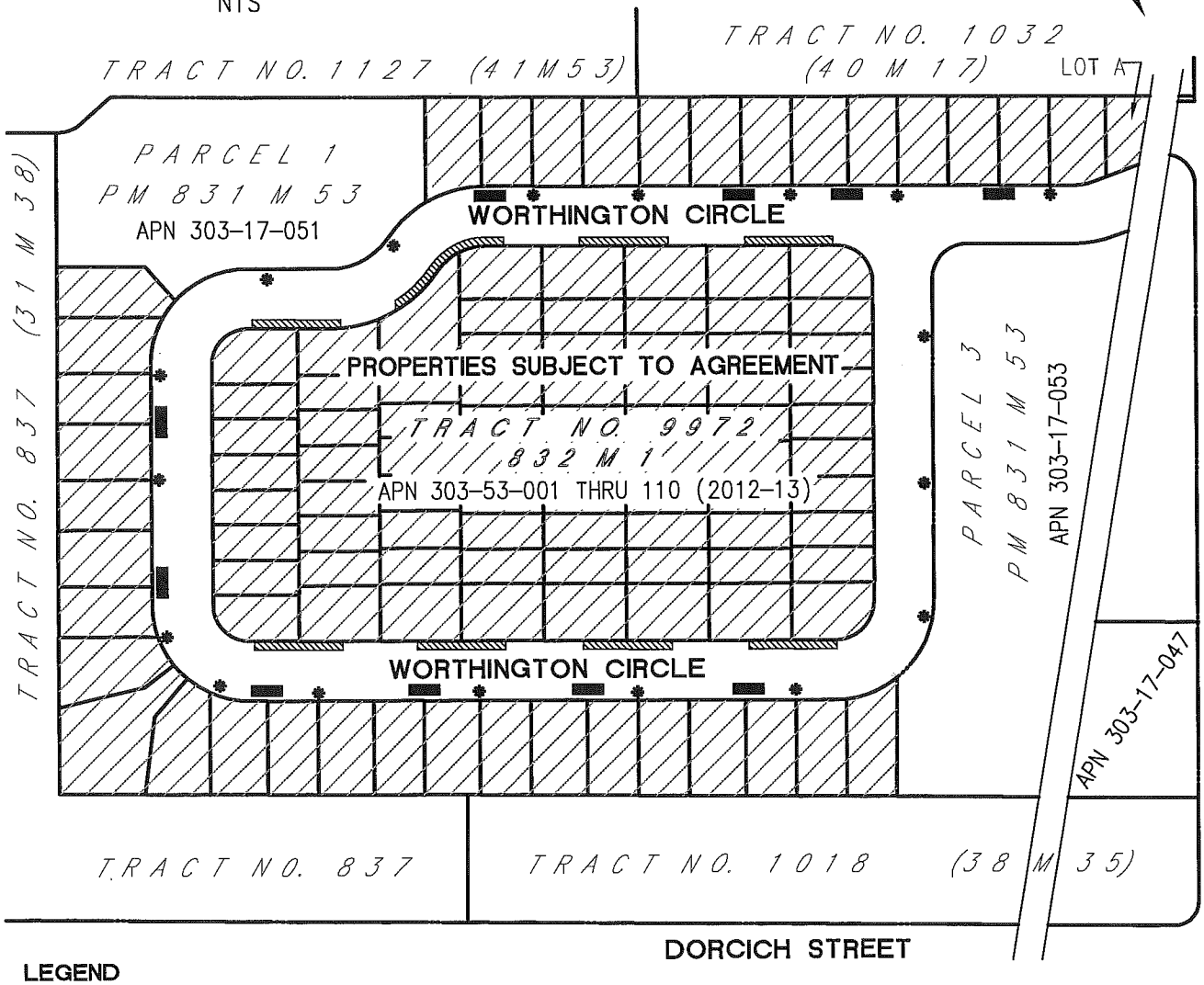


LOCATION MAP
NTS







LEGEND

- LOCATION OF NON-STANDARD DRIVEWAY APPROACHES (8 TOTAL) TO BE MAINTAINED BY PROPERTY OWNER
- PRIVATE STREET LIGHT POLES ENCROACHING INTO WORTHINGTON CIRCLE (A PUBLIC RIGHT-OF-WAY)
- MAILBOXES ENCROACHING INTO WORTHINGTON CIRCLE (A PUBLIC RIGHT-OF-WAY)

K:\...\LPD\NELSON\SC18456 maint pvt st lights2.dwg

Revised		CITY OF SANTA CLARA	Scale 1" = 150'
Drawn By ND	02-01-13		
Checked By KBS	02-04-13	EXHIBIT "A"	Ref. SC 18,456
Approved By G. Gómez	Date 2-5-2013	AGREEMENT AND COVENANT RUNNING WITH THE LAND	
RAJEEV BATRA		(MAINTAIN PRIVATE STREET LIGHT POLES, MAILBOXES, AND DRIVEWAY APPROACHES)	Tracing No. 11,804-A
DIRECTOR OF PUBLIC WORKS/CITY ENGINEER		PORTION OF 90 NORTH WINCHESTER BOULEVARD	

11,804-A

3020321

RECORDED AT THE REQUEST OF AND
WHEN RECORDED, RETURN TO:

JEFFREY G. WAGNER
Law Office of Jeffrey G. Wagner
346 Rheem Boulevard, Suite 103
Moraga, CA 94556

DOCUMENT: 21715041

Pages: 72

Fees 228 00
Taxes
Copies
AMT PAID 228 00

REGINA ALCOMENDRAS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
First American Title Company

RDE # 102
6/20/2012
8:00 AM

MIDTOWN VILLAGE

DECLARATION

OF

RESTRICTIONS (CC&Rs)

If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

This Declaration contains alternative dispute resolution procedures. These procedures bind subsequent purchasers as well as the initial purchasers. See the Claims Procedures in Exhibit D. You are advised to read these procedures carefully and consult with legal counsel if you have any questions.

MIDTOWN VILLAGE

DECLARATION

OF

RESTRICTIONS (CC&Rs)

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MIDTOWN VILLAGE

DECLARATION OF RESTRICTIONS (CC&Rs)

THIS DECLARATION OF RESTRICTIONS (CC&Rs) is executed by SUMMERHILL WINCHESTER LLC, a California limited liability company (the "Declarant") with reference to the following facts:

A. Declarant is constructing a residential development located on certain real property in Santa Clara, California, more particularly described on the subdivision map entitled "Tract 9972" filed in the records of Santa Clara County, California, on April 29, 2009, in Book 832 of Maps at pages 1 through 5. The first phase consists of Lots 65 through 72 and the Alley designated "Rousseau Place".

B. Declarant desires to impose certain restrictions on the lots in the development that will benefit and bind each lot, and each owner and successive owner thereto, as covenants running with the land and equitable servitudes, to grant and describe certain easements that will be appurtenant to the lots and/or in favor of the homeowners association, and to establish a planned development within the meaning of Civil Code section 1351(k).

C. The property in the first phase and Lots 1 through 64 will benefit and be bound by the provisions of **Sections 2.3.3, 2.4 and 2.9** of this Declaration on the recordation of this Declaration and the conveyance of title to a Lot in Phase 1 by Declarant to a purchaser under the authority of a final subdivision public report issued by the California Department of Real Estate. The other covenants, conditions, restrictions, easements, rights and duties described herein will benefit and bind the lots in Phase 1 on the recordation of this Declaration and Lots 1 through 64 and 73 through 110 and Lot A on the recordation of a declaration of annexation annexing the lot into the development.

DECLARANT DECLARES AS FOLLOWS:

ARTICLE 1 - Definitions

Unless the context indicates otherwise, the following terms shall have the following definitions:

1.1 Alleys. The areas identified as Conner Place, Cook Place, Paterson Place and Rousseau Place on the Map located within the easements designated "E.V.A.E., P.I.E.E, & P.U.E." and "(Private Street)" on the Map. The Alleys are Common Areas.

1.2 Architectural Committee or Committee. The Architectural Committee described in **Section 7.1**.

1.3 Articles. The Articles of Incorporation of the Association and any amendments thereto.

1.4 Association. Midtown Village of Santa Clara Owners Association, a California nonprofit mutual benefit corporation.

1.5 Board. The Board of Directors of the Association.

1.6 Bylaws. The Bylaws of the Association and any amendments thereto.

1.7 Common Area. The Alleys as defined in **Section 1.1**, the Paseos as defined in **Section 1.20** and Common Area Lot A when annexed into the Development as described in **Article 14**.

1.8 Declarant. SummerHill Winchester LLC, a California limited liability company, or any successor or assign that assumes in writing all or a portion of the rights and duties of the Declarant hereunder. There may be more than one Declarant.

1.9 Declaration. This Declaration of Restrictions (CC&Rs) and any amendments or corrections thereto.

1.10 Development. The residential development that is constructed on the property shown on the Map and subject to all the provisions in this Declaration, including the Residential Lots, the Common Area, and all Improvements thereon.

1.11 Governing Documents. This Declaration, the Articles of Incorporation, the Bylaws and the Rules, provided that the Claims Procedure attached as **Exhibit D** is not a part of the Governing Documents.

1.12 Improvements. Any property in the Development constituting a fixture within the meaning of Civil Code section 660.

1.13 Lot or Residential Lot. Each Paseo Lot and Perimeter Lot.

1.14 Map. The subdivision map entitled "Tract 9972" filed for record in Santa Clara County, California, on April 29, 2009, in Book 832 of Maps at pages 1 through 5, including any subsequently-recorded amended final maps, parcel maps, certificates of correction, lot-line adjustments, and/or records of survey.

1.15 Member. A member of the Association.

1.16 Mortgage. A recorded mortgage or deed of trust against one or more Lots in the Development.

1.17 Mortgagee. A mortgagee under a Mortgage or a beneficiary under a deed of trust recorded against a Lot in the Development.

1.18 Occupant(s). Any Person entitled to use and reside in a Lot pursuant to an ownership right or any lease, license or other similar agreement with the Owner of the Lot.

1.19 Owner. The owner or owners of the fee (perpetual) estate of a Lot in the Development.

1.20 Paseos. The areas within the private pedestrian easements encumbering the Paseo Lots designated "P.P.E." on the Map that provide access to the front doors of the residences adjacent to the Paseos. The Paseos are Common Area.

1.21 Paseo Lots. Lots 1 through 74 shown on the Map.

1.22 Perimeter Lots. Lots 75 through 110 shown on the Map.

1.23 Permittee(s). The family members, agents and invitees of an Owner or Occupant.

1.24 Person. Any natural person, partnership, trust, corporation, limited liability company, or other legal entity.

1.25 Rules. Rules or regulations adopted by the Board from time to time pursuant to the authority of **Section 5.6.2**.

ARTICLE 2 - Property Rights and Easements

2.1 Type of Development. This Development is a planned development within the meaning of Civil Code section 1351(k) that will be developed in phases. If completed as anticipated, the Development will consist of 110 Residential Lots consisting of 74 Paseo Lots and 36 Perimeter Lots. The first phase consisting of Paseo Lots 65 through 72 and the Alley identified as "Rousseau Place" on the Map will benefit and be bound by all the provisions in this Declaration on the date the first Lot in Phase 1 is conveyed by Declarant to a purchaser under the authority of a final subdivision public report issued by the California Department of Real Estate The remaining Paseo Lots (Lots 1 through 64) will benefit and be bound by the provisions in **Sections 2.3.3, 2.4 and 2.9** on the same date. The remaining Paseo Lots and the Perimeter Lots will benefit and be bound by all the provisions in this Declaration on the date the Lot is annexed into the Development as described in **Article 14**. Declarant has no obligation to annex any additional Lots into the Development.

2.2 Property Rights. Each Owner owns a fee (perpetual) estate in a Residential Lot and is a Member of the Association. If annexed, the Association owns the fee (perpetual) estate in the Common Area Lot A.

2.3 Easements. The Development is subject to the easements described in this **Section 2.3**. Each easement described herein is an easement that is appurtenant to the dominant and servient tenements, and any transfer of the dominant or servient tenement automatically transfers the easement appurtenant thereto regardless of whether the instrument of transfer describes the easement.

2.3.1 Boundary Line Easements. As a part of the original construction of the Development, Declarant has constructed or will construct certain residential Improvements on or within three feet of the boundary line of an adjoining Lot. Declarant grants to each Owner of a Lot on which such Improvements are constructed an easement in favor of the Owner's Lot as the dominant tenement over the adjoining Lot as the servient tenement for purposes of maintaining, repairing and replacing any encroachments (such as roof overhangs) into the servient tenement and for purposes of access to that portion of the servient tenement as may be reasonably necessary to maintain (including repainting), repair or replace any portion of any Improvement on the dominant tenement that is located on or within three feet of the common boundary line. Prior to entering the servient tenement for purposes of maintenance, repair or replacement, the Owner or Occupant of the dominant tenement shall provide the Owner or Occupant of the servient tenement with at least three days' prior notice except in the event of an emergency.

2.3.2 Side Yard Easements. Certain Paseo Lots as the servient tenement are subject to side yard easements in the areas designated "YE" shown in Exhibit B attached hereto (the "Easement Area") in favor of the adjoining Lot as the dominant tenement. The occupants of the dominant tenement shall have exclusive use of the Easement Area subject to the following terms and conditions:

(i) the Owner of the dominant tenement shall maintain the Improvements and landscaping in the Easement Area, including the modular retaining walls and the fence and gate in front of the trash enclosure area;

(ii) the Owner of the dominant tenement may install the following Improvements in the Easement Area: landscaping, irrigation lines, drainage lines, hardscape, decking material and normal and customary patio structures that will not unreasonably interfere with the rights retained by the Owner of the servient tenement as described herein;

(iii) the Owner of the dominant tenement shall not affix or attach any property or vegetation to the wall of the residence or any other structural Improvements situated within the servient tenement and immediately abuts the Easement Area without the prior written consent of the Owner of the servient tenement;

(iv) the Owner of the servient tenement retains the right to enter the Easement Area on such notice as may be reasonable under the circumstances to repair, maintain (including repainting) or replace the abutting building wall or roof (including windows, eaves, gutters, leaders, and drainage pipes) and any other Improvements located in or immediately adjacent to the Easement Area that serve the servient tenement;

(v) the Owner of the servient tenement retains the right to encroach onto the Easement Area with eaves, overhangs, gutters, leaders, the opening of windows, and similar encroachments that were part of or replacements to the original Improvements placed on the servient tenement;

(vi) the Owner of the servient tenement retains the right to connect into and use any drainage line installed within the Easement Area as a part of the original construction of the Improvements within the dominant and servient tenements and intended to serve both the dominant and servient tenements; and

(vii) the fence and/or any wall separating the Easement Area from the servient and dominant tenement shall be considered a good neighbor fence subject to the provisions of **Section 4.2**.

2.3.3 Alley and Paseo Easements. Declarant grants to each Paseo Lot Owner in favor of each Paseo Lot shown on the Map as the dominant tenement an easement over the Alleys and Paseos described in **Sections 1.1 and 1.20** that provide access to the dominant tenements' front doors and/or garages as the servient tenement for pedestrian and vehicular ingress and egress over the Alley and Paseo and for the installation, inspection, maintenance, repair and/or replacement of any utilities within the Alleys and Paseos providing utility service to the dominant tenement that were installed as a part of the original construction of the residence within the dominant tenement. The easement granted herein in favor of a Paseo Lot that is not annexed into the Development as described in **Section 14.1** is subject to the provisions of **Section 2.9**.

2.3.4 Drainage Easement. Declarant grants to the Owner of each Lot and to the Association as the Owner of the Common Area an easement in favor of the Owner's Lot and the Common Area as the dominant tenement over each other Lot and the Common Area as the servient tenement for: (i) the retention, inspection, maintenance, repair or replacement of any storm drainage system installed on the servient tenement as a part of the original construction of the Development; and (ii) the flow of surface and subsurface waters through and over any drainage system and/or drainage patterns established as a part of the original construction of the Development. Unless maintained by the Association as described in **Section 4.4**, each Owner shall maintain and repair that portion of the drainage system located on the Owner's Lot. Each Owner shall at all times keep the drainage system and any intake drains, catch basins or area basins free and clear of debris at all times, and no Owner shall take any action that would in any manner interfere with the operation of the system. No Owner shall alter the grading on any Lot without the prior consent of the Architectural Committee.

2.3.5 Maintenance and Repair Easement. Declarant grants to each Owner an easement in favor of the Owner's Lot as the dominant tenement over each other Lot as the servient tenement for purposes of providing the agents of the Association such access as may be necessary to perform the Association's maintenance and repair duties as described in **Section 4.4**, including maintenance and repair of the Improvements within the Alleys and Paseos.

2.3.6 Clustered Mailbox Easements. The Development has "clustered" mailboxes in which two or more mailboxes are located on one Lot or in the Common Area that serves two or more Lots. Declarant grants to each Owner an easement in favor of the Owner's Lot as the dominant tenement over any Lot and Common Area containing a clustered mailbox as the servient tenement for access to the servient tenement to deposit and retrieve mail and to maintain, repair and replace the mailbox. The easement is

located in the area within the servient tenement where the clustered mailbox was originally installed by Declarant or as relocated with the prior written consent of the Owner of the servient tenement.

2.3.7 Encroachment Easement. Declarant grants to each Lot Owner an easement in favor of the Owner's Lot s the dominant tenement over any adjoining Lot as the servient tenement for the purpose of accommodating any encroachment of roof overhangs, windows, fences or other residential structural Improvements resulting from the original construction of the Improvements, settlement or shifting of structures, minor original construction changes during the course of construction, and any encroachment easements granted in accordance with **Section 2.5**. The extent of the encroachment easement shall be the location of the encroaching structure as originally constructed by Declarant. If a structure on any Lot is partially or totally destroyed, the structure may be repaired or rebuilt in accordance with the original plans, including the replacement of any encroaching Improvement.

2.3.8 Other Easements. Declarant grants to each Lot and the Common Area such other easement(s), rights-of-way, or dedications as may be granted or reserved on the Map, any deed to the Lot or Common Area, or any other appropriate public record.

2.4 General Easement Rights. Each easement described in **Section 2.3** shall be subject to, and construed in accordance with, the following provisions, except as otherwise expressly provided for elsewhere in this Declaration: (i) the easement shall be appurtenant to the dominant and servient tenements and any transfer of a dominant or servient tenement automatically transfers the easement appurtenant thereto regardless of whether the easement is described in the instrument of transfer; (ii) the easement is in perpetuity unless otherwise terminated by operation of law; (iii) no easement may be modified or relocated except with the written consent of the Owners of the dominant and servient tenements; (iv) except as otherwise provided elsewhere in this Declaration, the Owner of the dominant tenement shall maintain the Improvements within any easement that exclusively benefits the dominant tenement; (v) the Owner of the dominant tenement shall indemnify, defend and hold harmless the Owner of the servient tenement against any claims, liabilities, damages, judgments or expenses, including reasonable attorneys' fees (collectively, "Claim"), from any injury or death to any Person or damage to any property that occurs in connection with the use or maintenance of the easement as a result of any act or omission by the Owner or Occupant or their Permittee except to the extent the Claim is a covered claim under insurance maintained by the Association (any deductibles or costs in excess of available coverage amounts shall be paid by the Owner); (vi) all easement uses shall comply with the covenants, rights, duties and restrictions set forth in this Declaration, with all applicable laws and ordinances and with any Rules adopted by the Board under the provisions of **Section 5.6.2**; (vii) each easement granted hereunder exists by virtue of this Declaration, without the necessity of confirmation by any other documents; (viii) the easements are nonexclusive unless expressly provided otherwise; (ix) no easement provided or reserved under this Declaration shall restrict the Owner of the servient tenement to grant other easements or interests therein as long as the other easement or interest does not unreasonably interfere with the easement rights of the dominant tenement; (x) easement access and use rights are subject to the rights reserved in **Sections 2.5 and 2.6**; and (xi) the rights of Declarant as described in **Section 13.10**.

2.5 Reservation of Rights. Notwithstanding any property rights, including easements, granted or reserved herein, each Lot and the Common Area, as the case may be, are subject to each of the following:

(i) the right of Declarant or its agents to enter on any portion of the Development to construct the Improvements that Declarant intends to construct within the Development, to advertise and sell Lots in the Development, to make repairs, and to correct any construction problems thereon, provided that such entry does not unreasonably interfere with the use or occupancy of any occupied Lot unless authorized by its Owner, which authorization shall not be unreasonably withheld;

(ii) the right of the Association's agents to enter any Lot to cure any violation or breach of this Declaration or the Bylaws or the Rules, provided that at least 30 days' prior written notice of such violation or breach (except in the cases of emergency) has been given to the Owner and provided that within the 30-day period such Owner has not acted to cure such violation or breach;

(iii) the right of the Association's agents to enter any Lot to perform its obligations and duties under this Declaration, including the obligations and the duties with respect to maintenance or repair of any Improvement or landscaping located on the Lot;

(iv) the rights reserved in **Sections 2.6, 2.8, and 13.10**; and

(v) the right of the Association to adopt and enforce Rules as described in **Section 5.6**.

2.6 Authority Over Common Area. The Board or Declarant (as long as Declarant owns 25% or more of the Lots in the Development) shall have the power and the right in the name of the Association and all of the Owners as their attorney-in-fact, to grant, convey or otherwise transfer to any Owner or any other Person easements, leasehold estates, exclusive use easements or rights, licenses, lot-line adjustments, rights-of-way and/or dedications in, on, over or under the Common Area or other property, in order to: (i) construct, erect, operate, maintain or replace lines, cables, wires, conduits or other devices for electricity, cable television, internet services, fiber optics, telecommunication equipment, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any similar public or quasi-public Improvements or facilities; (ii) accommodate any encroachment that in the sole discretion of the Board or Declarant does not unreasonably interfere with the use and enjoyment of the Common Area; or (iii) accomplish any other purpose that in the sole discretion of the Board or Declarant is in the interest of the Association and its Members and does not unreasonably interfere with the use and enjoyment of the Common Area. Each Owner in accepting a deed to a Lot expressly consents to such action and authorizes and appoints the Association and Declarant (as long as Declarant owns 25% or more of the Lots in the Development) as attorney-in-fact of such Owner to execute and deliver all documents and interests to accomplish the action, including, but not limited to, grant deeds, easements, subdivision maps, and lot-line adjustments. Notwithstanding anything herein to the contrary, in no event shall the Board or Declarant: (i) take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any Owner of his or her Lot without the prior written consent of that Owner; or (ii) grant exclusive use of any portion of the Common Area to any Owner without the affirmative vote of a majority of the Members present in person or by proxy at a duly held meeting, unless Member approval is not required as described in Civil Code section 1363.07. If Member approval is required, the Board in placing the measure before the Members shall describe whether the Association will receive a monetary consideration for the grant and whether the Association or the transferee is responsible for providing insurance coverage for the exclusive use Common Area and shall comply with the secret balloting requirements of Civil Code section 1363.03(b).

2.7 Delegation of Use Rights. An Owner's Permittees may use and enjoy any Common Area Improvements. All such use shall be subject to restrictions contained in this Declaration and the Rules. If an Owner leases his or her Lot, the Owner's Permittees shall not be entitled to use any Common Area Improvements other than such use as is directly related to the Owner's rights and duties as a landlord. Such rights may be enjoyed by the Occupant and Occupant's Permittees.

Any Owner who rents his or her Lot must comply with the requirements of **Section 3.2**.

2.8 Conveyance of Common Area Lot A. Common Area Lot A shall be conveyed to the Association on or before the date the Declarant first conveys title to a Residential Lot in the phase that includes Lot A.

2.9 Unannexed Paseo Lot Easements. Declarant grants to the Owner of each of the Paseo Lots identified as Lots 1 through 64 on the Map the Alley and Paseo easements described in **Section 2.3.3**. Pending annexation and the commencement of assessments against the dominant tenement, if the owner uses the easement rights, the owner shall pay an equitable share of the cost of the maintenance, repair, replacement and insurance of any Improvements located within the servient tenement used by the Occupants of the servient tenement. The owner's allocable share shall be based on the amount of use, type of use and other relevant factors. The owner shall remit to the Association its share of the costs within 30 days after receipt of demand for same. If owner fails to pay its share when due, the Association may bring an action in any court of competent jurisdiction to recover the cost, together with interest therein at the rate

of 12% per annum, but in no event greater than the maximum rate authorized by law. In such action, the prevailing party shall be entitled to recover costs and attorneys' fees.

2.10 Construction Activity. Each Owner acknowledges that: (i) the construction of the Development may occur over an extended period of time; (ii) the quiet use and enjoyment of the Owner's Lot may be disturbed as a result of the noise, dust, vibrations and other effects of construction activities; and (iii) the disturbance may continue until the completion of the construction of the Development.

2.11 Street Light and Driveway Approach Agreement. Declarant and the City of Santa Clara have or will record in the records of Santa Clara County, California, an "Agreement and Covenant Running with the Land to Maintain Private Street Light Poles and Non-Standard Driveway Approaches" (the "Agreement"). As part of the construction of the Development, street light poles and non-standard driveway approaches off the alley will encroach into the public right-of-way ("Worthington Circle"). This Agreement requires Declarant, as the owner under this Agreement, to maintain the encroaching Improvements. Effective on the date the Association commences its operations under the Agreement, the Association shall assume all of the owner's rights and duties under the Agreement, including the duty to maintain the encroaching Improvements This **Section 2.11** is a briefs summary only of the Agreement. If there is any conflict between the Agreement and this **Section 2.11**, the Agreement shall control.

ARTICLE 3 - Restrictions

3.1 Residential Use. Each Lot shall be used for residential purposes only; and no part of the Development shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other nonresidential purpose. Notwithstanding the foregoing, Owners or Occupants of the Lots may use a room or rooms in the residence as an office, provided that the primary use of the Lot is as a residence, no advertising or signage is used in any manner in connection with the office use, no customers, clients or patients enter the Lot on any regular basis, and the use is in compliance with all local ordinances. The Board shall have the authority to adopt Rules regarding the use of offices within the Development in order to maintain the residential characteristics of the Development. The use of Lots by the Declarant or its designees as models and sales and construction offices for purposes of developing, improving and selling the Lots in the Development shall not be a violation of this restriction, provided that such use shall terminate no later than three years after the date of recordation of this Declaration or any declaration of annexation annexing property in any additional phase into this Development, whichever occurs later.

3.2 Renting. The Owner may rent his or her Lot provided each of the following conditions is satisfied:

(i) the rental agreement must be in writing;

(ii) the initial rental term shall not be less than 30 days;

(iii) the rental agreement must contain a provision that the rental agreement is subject to this Declaration, the Bylaws and the Rules and that any violation of any of the foregoing shall be a default under the rental agreement; and

(iv) before commencement of the rental agreement, the Owner shall provide the Association with the names of the tenants and each family member who will reside on the Lot and the address and telephone number of the Owner.

Any Owner who rents his or her Lot shall keep the Association informed at all times of the Owner's address and telephone number. Any rental agreement shall be subject to this Declaration, the Bylaws and the Rules; and any breach of any of the foregoing shall constitute a breach by the Owner and also a default under the rental agreement, regardless of whether it so provides in the rental agreement. If any tenant

breaches any restriction contained in this Declaration, the Bylaws or the Rules, the Owner, on demand from the Association, immediately shall take such steps as may be necessary to correct the breach, including, if necessary, eviction of the tenant.

3.3 Nuisance. No activity shall be conducted on any Lot or Common Area that constitutes a nuisance or unreasonably interferes with the use or quiet enjoyment of the Occupants of any other Lot.

3.4 Vehicle and Parking Restrictions. No mobile home, camper or recreational vehicle, boat, truck or similar equipment shall be parked within the Development. For purposes herein, "truck" does not include a pickup truck that does not exceed one ton or a sports utility vehicle. In addition, trucks may park on a temporary basis for delivery or pickup purposes.

There shall be no parking in the Alleys at any time, including within any driveway aprons on the Paseo Lots. The Alleys are subject to an emergency vehicle access easement ("E.V.A E ") and must remain accessible to emergency vehicles at all times. Any vehicle parked within an Alley may be towed without notice. Vehicles may be parked in the driveway aprons of the Perimeter Lots as long as the vehicle fits entirely within the apron and does not in any manner extend onto the sidewalk. Worthington Circle is a public street and, as a result, is under the jurisdiction of the City of Santa Clara and not the Association.

3.5 Towing Authority. Any vehicle wrongfully parked within the Development may be towed in compliance with the requirements and procedures of Vehicle Code section 22658 or any successor statute thereto. In addition and without limiting the foregoing or any other right or remedy available to the Board, the Board may impose monetary penalties for violation of any parking restrictions or Rules.

3.6 Animals. Normal and customary household pets may be maintained within the Development in compliance with all local ordinances and the following conditions:

(i) the number of dogs and/or cats maintained within any Lot shall not exceed the number authorized by the Board;

(ii) no animal shall be maintained for any commercial purposes;

(iii) the use of the Common Area by animals shall be subject to such Rules as may be adopted by the Board;

(iv) the Lot Owner of the animal immediately shall clean up after his or her animal; and

(v) the Owner shall be responsible for any damage to any Common Area caused by any animal maintained on the Owner's Lot.

The Board, after notice and a hearing, may require the permanent removal from the Development of any animal that the Board, in its discretion, determines is a nuisance, a danger to the health or safety of any Occupant, or otherwise interferes with the quiet use and enjoyment of Occupants of any Lot. The Board may find that an animal is a nuisance if the animal or the animal's owner continue to violate the Rules regulating animals after receipt of a demand from the Board to comply with the Rules.

3.7 Television or Radio Equipment. No television, video or radio poles, antennae, satellite dishes, cables or other transmission and/or reception fixtures or personal property (individually and collectively the "Antenna Equipment") shall be installed or maintained on any Lot except as follows:

(i) Antenna Equipment that is one meter or less in length or diameter or diagonal measurement, provided that the location, color and screening requirements shall be in accordance with any guidelines imposed by the Architectural Committee, which guidelines shall comply with applicable State and federal laws regulating restrictions on Antenna Equipment; and

(ii) Antenna Equipment not covered under subparagraph (i) above, the installation of which is approved in advance by the Architectural Committee in accordance with the procedures described in **Article 7**.

Nothing herein shall be construed to restrict in any manner Declarant's or the Board's right to authorize a cable television franchisee or other provider of similar services to provide cable television, satellite dish, radio or other similar services to the Development.

3.8 Signs. Subject to the provisions of **Section 13.10** and Civil Code Section 1353.6, no sign of any kind shall be displayed from any Lot that is visible from any other Lot except any sign approved by the Board either on an individual basis or pursuant to Rules adopted by the Board or as may be otherwise authorized by law.

3.9 Clothesline. No exterior clothesline shall be erected or maintained on any Lot; and there shall be no exterior drying or laundering of clothes on any balcony, patio, porch or other outside area of any Lot unless otherwise authorized by the Board in writing.

3.10 Window Coverings. The interior surfaces of all windows shall be covered with normal and customary window coverings such as curtains, drapes, shutters or blinds. The exterior side of window coverings shall be white or off-white or light or dark wood unless approved otherwise in writing by the Architectural Committee.

3.11 Subdivision. No Lot shall be subdivided into two or more lots without the prior written consent of the Association.

3.12 Automobile Maintenance. There shall be no maintenance (other than vehicle washing and cleanup) or repairs performed on any automobile except within an enclosed garage or except for any emergency repairs that are necessary in order to remove the vehicle to a proper repair facility.

3.13 Alterations, Modifications or Additions. There shall be no alterations, modifications or additions made to any Lot or any Improvement thereon except in compliance with the provisions of **Article 7**.

3.14 Compliance with Law. No Owner shall permit anything to be done or kept in his or her Lot that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal agency. Nothing shall be done or kept in any Lot that might increase the rate of or cause the cancellation of any insurance maintained by the Association.

3.15 Drilling. No drilling, mining, or quarrying operation shall be conducted on any Lot or the Common Area at anytime.

3.16 Post Tension Concrete Slab System. The residences have been constructed using a post tension concrete slab system ("System"), which involves placing a grid of steel cables under high tension in the concrete slab foundation of each residence. Any attempt to modify, alter or otherwise tamper with the foundation (for example, saw cutting, drilling or installation of a subterranean safe) is very hazardous and might result in serious injury or damage. No Owner or Occupant of any Lot shall: (i) cut into or otherwise tamper with the System; or (ii) knowingly permit or allow any other Person to cut into or tamper with the System. In addition, the Owner shall disclose the existence of the System to any tenant or lessee of the residence. Any disturbance of the System shall occur only after consultation with a qualified consultant.

3.17 Landscaping Restriction. No landscaping or irrigation system within any Lot maintained by the Association as described in **Section 4.4** may be removed, pruned, added to or otherwise altered in any manner without the prior written approval of the Board.

3.18 Sports Apparatus Restriction. The Board may adopt Rules regulating the installation or retention of any sports apparatus that may be seen from any Lot or public right-of-way, including basketball standards (fixed or free-standing).

ARTICLE 4 - Maintenance and Repair Obligations

4.1 Owner's Maintenance Obligations. Except for the portions of each Lot maintained by the Association as described in **Section 4.4** and subject to the side yard easement area maintenance requirements in **Section 2.4**, each Owner shall maintain his or her Lot and all Improvements thereon in good condition and repair at all times, including Improvements and landscaping within any fenced patio or yard. Good neighbor fences and walls shall be maintained as described in **Sections 2.4 and 4.2**, respectively. Unless maintained by the Association as described in **Section 4.4**, all other fences or walls on the Residential Lot, including fences located on a common boundary between the Owner's Lot and the Common Area, shall be maintained by the Owner. Except for the storm drain Improvements within the Alleys and Paseos maintained by the Association as described in **Sections 4.4.1 and 4.4.3**, each Owner shall maintain the storm drainage Improvements situated within the Owner's Lot as described in **Section 2.5**. Each Owner shall have the Improvements on the Owner's Lot periodically inspected for construction material destroying pests or organisms and, if necessary, immediately shall take appropriate corrective action therefor.

Each Paseo Lot Owner shall maintain: (i) the portion of the lateral sewer line that exclusively serves the Owner's Lot from the cleanout to the Owner's residence; (ii) the portion of the lateral water line that exclusively serves the Owner's Lot from the meter to the Owner's residence; and (iii) the portion of the lateral electrical line from the secondary box to the Owner's residence, including the electrical meter.

Each Owner shall have the exterior surfaces of the Owner's residence (including the rain gutters and downspouts) periodically repainted and the roof materials periodically replaced in accordance with a schedule that maintains substantially the same quality appearance as existed at the time original construction was completed and no less than the periodic repainting and re-roofing recommendations of the manufacturer and/or the maintenance guidelines described in **Section 4.5**.

Each Lot Owner shall be responsible for maintaining and repairing any utility line or equipment that exclusively serves the Lot. No Owner shall excavate, alter or otherwise disturb any Improvement or landscaping on any other Property without the prior written consent of that Property Owner. If the Property is Common Area, the Association may require the Owner to comply with such terms and conditions as the Board may direct prior to commencement of any work within any Common Area.

The illumination for the Alleys is provided by lighting fixtures situated on the exterior walls of the Paseo Lots. The lighting fixtures are on photo-voltaic cells and each Paseo Lot Owner is responsible for paying for the electrical services and maintaining the lighting fixture in good condition and repair, including bulb replacement, so that the fixture remains fully operational during all hours of darkness.

If any Owner fails to maintain his or her Lot as required herein, the Association, after notice and hearing as described in the Bylaws, may, but is not obligated to, enter the Lot and perform the necessary maintenance and repair. The Association may levy a reimbursement assessment against the Lot in the manner described in **Section 6.5**.

In order to reduce the potential for water damage (including mold growth) within the residence, each Owner shall perform each of the following steps: (i) periodically inspect the residence for water leaks, other evidence of water intrusion (such as condensation on the windows or walls, water stains or other types of water damage) and for the presence of molds, fungi and their spores (collectively "Mold"); (ii) if any water leaks, water intrusion and/or Mold are detected, immediately take appropriate corrective steps to repair the leak and/or reduce water intrusion and repair any resulting water damage (including the removal of any Mold); (iii) maintain proper ventilation (particularly in the bathrooms) and humidity levels to reduce the risk of water damage (including Mold growth); (iv) periodically inspect refrigerator condensation pans, air conditioners (if applicable) and any other water-retaining appliances to ensure they are properly functioning and not leaking water or otherwise creating water damage to the residence (including Mold growth); (v) periodically inspect carpeting or similar types of floor covering in bathrooms that may be conducive to Mold growth; (vi) replace heating and air conditioning filters not less frequently than quarterly or as recommended by the manufacturer; and (vii) take such other prudent steps as may be appropriate to prevent water leaks and water intrusion and to repair all leaks, sources of water intrusion and water damage (including Mold growth) within the residence.

Each Owner shall allow agents of the Association access to the Owner's Lot for purposes of performing any of the Association's inspection, maintenance and repair obligations under this Declaration. If any Owner fails or refuses to provide access, the Owner shall be responsible for any maintenance and repair costs that could have been avoided if access had been provided.

In addition to the foregoing, each Owner shall comply with each of the following in performing the Owner's maintenance obligations: (i) the Guidelines described in **Section 4.5** and (ii) commonly-accepted homeowners' maintenance obligations.

4.2 Good Neighbor Fences and Walls. As part of the original construction of the Development, Declarant constructed fences and walls on or about the common boundary line between two adjoining Lots that are to be shared by the adjoining Lot Owners. The adjoining Owners shall jointly share the maintenance and repair of the fence and wall. The cost of the maintenance and repair shall be allocated equally between the Lots unless the circumstances warrant a different allocation for a fair and equitable allocation of such costs. Each Lot as a dominant tenement shall have an easement over the adjoining Lot as the servient tenement for access to that portion of the servient tenement as may be reasonably necessary to maintain, repair or replace the fence and wall.

Any dispute between the adjoining Lot Owners regarding the need for maintenance or repair, the quality or type of maintenance or repair, the allocation of costs, or any related issues shall be submitted to the American Arbitration Association (AAA), any successor thereto or any other alternative dispute resolution provider acceptable to the parties for resolution. The dispute first shall be submitted to non-binding mediation for resolution. If the dispute cannot be resolved through mediation, the dispute shall be submitted to binding arbitration. Unless the parties agree otherwise, the dispute shall be heard by a single arbitrator in the county where the Development is located. In the arbitration proceeding, each party shall have full discovery rights as authorized by Code of Civil Procedure section 1283.05 or any successor statute thereto The decision of the arbitrator shall be binding on the parties and may be enforced in any court of appropriate jurisdiction. The arbitrator in his or her discretion may award costs, including reasonable attorneys' fees, to the prevailing party.

4.3 Perimeter Lot Owner's Landscaping Obligations. Except for the landscaping and irrigation system maintained by the Association as described in **Section 4.4.6**, each Perimeter Lot Owner shall maintain the landscaping on the Owner's Perimeter Lot in a healthy and weed-free condition. The Owner immediately shall remove and replace any dying or dead vegetation. Maintenance shall include regular fertilization, mowing, irrigation, pruning, elimination of pests or diseases, and other customary prudent landscaping practices. All lawns shall be kept neatly mown and trees neatly trimmed and pruned at all times. If the Owner fails to properly maintain the landscaping, the Association may, but without obligation, enter the Perimeter Lot and perform the maintenance under the procedures described in **Section 4.1** and shall have the same rights as described in **Section 4.1**.

The irrigation system irrigating the landscaping in the unfenced front and side yards of the Perimeter Lots (including the landscaping strip between the sidewalk and the back of curb) that is maintained by the Association as described in **Section 4.4.6** is connected into the Lot's individual water system. Each Perimeter Lot Owner shall ensure that water service is provided to this irrigation system at all times. No Person shall interfere in any manner with the portion of the irrigation system, including the controllers, that irrigates the landscaping maintained by the Association without the prior written consent of the Association or its authorized agent.

4.4 Association's Maintenance Responsibilities. The Association shall maintain, repair and replace the Improvements and landscaping described in this **Section 4.4**, including the Improvements and landscaping within the Association Maintenance Areas described in **Exhibit C**. The Improvements shall be maintained in good condition and repair and proper operating condition at all times, reasonable wear and tear excepted. All landscaping to be maintained by the Association shall be maintained in a healthy and weed-free environment. Maintenance shall include regular fertilization, irrigation, pruning and other prudent landscaping practices All lawns shall be kept neatly mown and trees neatly trimmed and pruned at all times. The Association shall take appropriate steps to maintain the irrigation of the landscaping and to prevent damage resulting from misdirected and/or excessive watering.

4.4.1 Alleys: The Association shall maintain the Improvements within the Alleys, including the roadbed, subbase, pavement, the non-standard driveway approaches (including the portion extending into Worthington Circle), curbs, gutters, the storm drainage system and any other utility lines or equipment serving two or more Lots, including the sewer system except the portion maintained by the Owners as described in **Section 4.1**. The fire hydrants in the Alleys will be maintained by the City of Santa Clara.

4.4.2 Common Area Lot A and Street Lights: The Association shall maintain the Improvements and landscaping within Common Area Lot A, including the masonry wall along its northerly and westerly boundary, the monuments and any monument lighting system, including the accent lights and the storm drainage system. Maintenance of the wall along the common boundary line between Lot 110 and Common Area Lot A shall be maintained as described in **Section 4.4.9**. In addition, the Association shall maintain the street lights within Worthington Circle that serve the Development.

4.4.3 Paseos: The Association shall maintain the Improvements and landscaping within the Paseos, including the hardscape, bollard lighting, retaining walls, pilasters, address markers, staircases, railings, irrigation system and the fencing and gate around the private patios facing into the Paseos. The hardscape includes the meandering walkways through the Paseos and the individual walkways connecting into the meandering walkway up to the fence around the private patios facing into the Paseos. The walkway and other hardscape within the fence shall be maintained by the Lot Owner.

4.4.4 Paseo Lot Landscaping: The Association shall maintain the landscaping and irrigation system within the unfenced areas of the Paseo Lots.

4.4.5 Paseo Lot Improvements Adjacent to Worthington Circle: The Association shall maintain the stairs, retaining walls, railings, pilasters, storm drain Improvements, fence and gate situated in the Paseo Lots and located directly adjacent to Worthington Circle, provided that the Lot Owner shall be responsible for the maintenance and repair of the stair lighting fixture, including bulb replacement. The Improvements and any landscaping located between the fence and the residence is maintained by the Lot Owner.

4.4.6 Perimeter Lot Landscaping: The Association shall maintain the landscaping and irrigation system (including the controller) located in the unfenced front and side yards of the Perimeter Lots and within the landscape strip located between the sidewalk and the back of curb along Worthington Circle.

4.4.7 Utilities: Unless maintained by the City of Santa Clara as described in **Section 4.9** or the Lot Owner as described in **Section 4.1**, the Association shall maintain the sanitary sewer line system, storm drain system, domestic water lines, electrical power service and asphalt paved area in the Alleys and Paseos.

4.4.8 Clustered Mailboxes: The Association shall maintain the clustered mailboxes within the Development, , provided that each Owner shall be responsible for maintenance and repair of the lock on the Owner's mailbox.

4.4.9 Lot 110 and Common Area Lot A Masonry Wall: The Association shall maintain the masonry wall situated along the common boundary line between Lot 110 and Common Area Lot A. The Association shall be responsible for structural repairs and periodic repainting and graffiti removal from the side of the wall facing into Common Area Lot A. The Owner of Lot 110 is responsible for the periodic repainting and graffiti removal from the side of the wall facing into Lot 110.

The Association's maintenance responsibilities over Improvements and/or landscaping within the Development shall commence when the phase containing the Improvement and/or landscaping is subject to all of the provisions of this Declaration and assessments are commenced against the Lots in that phase. The Association's maintenance responsibility for any Improvements and/or landscaping located outside the Development shall commence when the phase containing the property immediately adjacent to the Improvements and/or landscaping is subject to all of the provisions in this Declaration and assessments have commenced against the Lots in that phase.

In addition to the foregoing, the Association shall comply with each of the following in performing the Association's maintenance obligations: (i) the Guidelines described in **Section 4.5**; and (ii) commonly-accepted homeowners' maintenance obligations.

4.5 Inspection and Maintenance Guidelines and Schedules. Declarant shall provide each Owner and the Association with inspection and maintenance guidelines and schedules, including manufacturers' guidelines and schedules, for the inspection and maintenance of certain Improvements and personal property situated within the Development with respect to the Improvements and landscaping to be maintained by that party (collectively the "Guidelines"). Each Owner and the Association shall retain the Guidelines and shall take all appropriate steps to implement and comply with the Guidelines as required herein. Each Owner, on the transfer of the Owner's Lot, shall deliver the Guidelines pertaining to the Improvements and any landscaping to be maintained by the Owner to the transferee on or before title is transferred.

The Board periodically and at least once every three years shall review and update the Guidelines for Improvements and any landscaping maintained by the Association, which may be done in conjunction with the preparation of the reserves study described in **Section 6.3**.

Replacement copies of the original Guidelines prepared by Declarant may be obtained from Declarant as described in Section 4 of the Claims Procedure described in **Exhibit D** attached to this Declaration. Declarant may charge a reasonable fee for providing replacement copies.

4.6 Trash Removal. Each Owner shall be responsible for the removal of all the trash and refuse from that Owner's Lot. Each Owner shall engage a trash removal service for the periodic removal of trash from the Owner's Lot unless the Board approves some other arrangement in writing. All trash or refuse shall be kept only in sanitary containers, which shall be kept in the areas within the garage or otherwise screened from view from any other Lot except on trash collection day if curbside service is provided. Trash containers shall be placed outside for curbside service no earlier than the evening before trash collection day and shall be retrieved no later than the evening of trash collection day. The Board may adopt Rules regulating the areas where containers may be stored and areas for curbside service.

4.7 Cooperation and Access. Each Owner and Occupant shall fully cooperate with the agents of the Association in the performance of the Association's maintenance and repair obligations described in **Section 4.4** above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance or repair problems for which the Association is responsible and access to the Owner's or Occupant's Lot as may be necessary to inspect and, if appropriate, to perform any necessary maintenance or repairs.

4.8 Reimbursement and Indemnification. If the Association incurs any maintenance or repair costs because of the willful or negligent act or omission of any Owner or Occupant or their family members, guests, agents or pets, the Association shall charge the cost to the Owner of the Lot responsible for the costs and may levy a reimbursement assessment as described in **Section 6.5**. The Owner immediately shall pay the charge or reimbursement assessment to the Association, together with interest thereon at the rate of 12% per annum, but not in excess of the maximum rate authorized by law. If the Owner disputes the charge, the Owner shall be entitled to notice and a hearing as provided in **Section 5.6.4**. The Association shall not charge the Owner to the extent that the cost is met through insurance maintained by the Association, provided that any deductible amount and any costs in excess of such insurance coverage shall be paid by the Owner.

Furthermore, the Owner shall defend, indemnify and hold the Association harmless from any claim, demand, liability or cost, including attorneys' fees arising from such damage, except to the extent the demand, claim, cost or liability is covered by insurance maintained by the Association. The Owner shall pay the amount of any deductible and any amount in excess of insurance coverage.

4.9 City's Maintenance Requirements. The City of Santa Clara will provide sanitary sewer service to the boundary of the private property within the Development and water service for domestic use

within the public utility easement up to and including the water meters. Underground electrical power service will be provided and maintained by the City up to and including the secondary space boxes.

ARTICLE 5 - The Association

5.1 Formation of the Association. The Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. The Association shall commence operations no later than the date that assessments commence. Pending the commencement of the Association's operations, Declarant shall perform the duties and shall have the rights of the Association as described herein.

5.2 Governing Body. The governing body of the Association shall be the Board. It shall be the responsibility of the Board to ensure that the Association exercises its rights and performs its duties as described within this Declaration, the Articles, Bylaws and any amendments thereto.

The Board shall adopt Rules in accordance with procedures required by Civil Code sections 1357.100 through 1357.150 regarding the elections to the Board and related matters that satisfy the requirements set forth in Civil Code section 1363.03.

5.3 Membership. Each Owner shall automatically be a Member of the Association. If there is more than one fee title Owner of a Lot, each Owner shall be a Member. The holder of a security interest in a Lot shall not be a Member of the Association except and until that holder obtains both the legal and equitable interest in the Lot. Membership shall be appurtenant to the Lot and may not be separated therefrom. Any transfer of an Owner's interest in a Lot (other than a security interest), by operation of law or otherwise, automatically transfers the membership to the Owner's successor in interest. No Owner may resign or revoke his or her membership for any reason.

5.4 Membership Classes and Voting Rights. The Association shall have the following two classes of voting memberships:

5.4.1 Class A. Class A Members are all Owners except the Declarant. Class A Members shall be entitled to one vote for each Lot in which he or she owns an interest. If more than one Owner owns an interest in a Lot, only one vote may be cast with respect to that Lot.

5.4.2 Class B. The Class B Member shall be the Declarant, who shall be entitled to three votes for each Lot owned by the Declarant. Class B membership shall cease and be irreversibly converted to Class A on the first to occur of the following:

(a) the second anniversary of the first conveyance of a Lot in the most recent phase of the Development; or

(b) the fourth anniversary of the first conveyance of a Lot in the Development.

Voting rights shall vest at the time that assessments are levied against the Owner's Lot.

Except as set forth below, all matters requiring the approval of the Members shall be approved if: (i) approved by a majority of the votes cast either in person or by proxy at a duly-held regular or special meeting at which a quorum was present; (ii) approved by a majority of the written ballots cast in compliance with the requirements of Corporations Code section 7513 or any successor statute thereto; or (iii) approved by unanimous written consent of all the Members. Notwithstanding the foregoing, approval by the Members shall be subject to each of the following:

(1) Two Membership Classes. As long as two classes of voting membership exist, any action by the Association that requires approval by the Members shall require approval by the members of each class.

(2) Single Membership Class/Declarant-Owned Lots. If one class of voting membership exists and Declarant owns any Lots, any action by the Association that requires approval by the Members shall require approval by the Members including Declarant's vote(s) and approval by the Members excluding Declarant's votes.

(3) Greater Than a Majority. If, under the terms of this Declaration, a particular action requires approval by more than a majority, the action shall be approved by the Members only if the required percentage of votes approves the action.

(4) Completion Bond and Section 896 Claims. Votes of the Declarant shall be excluded as provided in **Sections 5.11 and 5.15** of this Declaration.

(5) Amendments. Member approval requirements for any amendments to this Declaration, the Articles or Bylaws shall comply with the amendment requirements set forth in the applicable document.

(6) Legal Requirements. If the voting requirements and/or procedures conflict with any applicable statutory requirements, the statutory requirements shall control.

5.5 Joint Ownership Votes. The vote that is attributed to each Lot may not be cast on a fractional basis. If the Lot has more than one Owner and the Owners are unable to agree as to how the vote shall be cast, the vote shall be forfeited on the matter in question. Any vote cast by an Owner for any Lot is presumed conclusively to be the vote cast by all the Owners of that Lot. If more than one Owner casts a vote attributed to a Lot on any matter on which only one vote could be cast for that Lot, the votes cast by such Owners shall be counted as one vote if the votes are the same; if the votes are different, the vote cast by such Owners shall not be counted and shall be forfeited.

5.6 Powers of the Association. The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the general nonprofit mutual benefit corporation laws of California, subject only to such limitations on the exercise of these powers as are set forth in the Articles, Bylaws and this Declaration. The Association shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Association under this Declaration, the Articles and the Bylaws and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including, without limitation, each of the following:

5.6.1 Levying Assessments: The Board shall establish, fix and levy assessments against the Lots and collect and enforce payment of such assessments in accordance with the provisions of **Article 6** of this Declaration.

5.6.2 Adopting Rules: The Board may adopt, amend and repeal Rules as it considers appropriate. Rules shall apply generally to the management and operation of the Development and/or the conduct of the business and affairs of the Association and may regulate the use and enjoyment of the Common Area, the use of any commonly-metered utilities that are paid by the Association and such other matters as are authorized in this Declaration. The Rules shall satisfy the requirements of Civil Code section 1357.110 and, to the extent applicable, the procedural requirements for the adoption, amendment or repeal of the Rules as set forth in Civil Code section 1357.130 and for the reversal of Rules as set forth in Civil Code section 1357.140. A copy of the Rules as adopted, amended or repealed shall be mailed or otherwise delivered to each Owner; and a copy shall be posted in a conspicuous place within the Development if an appropriate space is available for such posting. If any provision of this Declaration, the Articles or the Bylaws is inconsistent with or materially alters any Rules, this Declaration, the Articles and the Bylaws shall control to the extent of any such inconsistencies. Members shall have the same access to the Rules as they have to the accounting books and records of the Association.

Any Rules adopted by the Board shall apply to all Owners or Occupants in a uniform and nondiscriminatory manner. The Board may adopt a Rule as the result of an act or omission of any Owner or Occupant or their family members or guests or a Rule that does not directly affect all Owners or Occupants in the same manner as long as the Rule applies to all Owners or Occupants.

5.6.3 Borrowing Money: The Board may borrow money to meet any anticipated or unanticipated cost of the Association and, subject to the provisions of **Section 5.13(v)**, may mortgage, encumber or pledge Association assets (including, but not limited to, assessments) as security for such borrowing.

5.6.4 Imposing Disciplinary Action: In addition to any other enforcement rights described in this Declaration and the Bylaws or as may be authorized by law and subject to the due process requirements imposed by this Declaration, the Bylaws or by law, the Board may take any of the following actions against any Person whose act or failure to act violates or threatens to violate any provisions of this Declaration, the Bylaws or Rules: (a) impose monetary penalties, including late charges and interest; (b) suspend voting rights in the Association; and (c) commence any legal or equitable action for damages, injunctive relief or both. Subject to the provisions of **Section 13.8**, the determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Board. Any legal action may be brought in the name of the Association on its own behalf and on behalf of any Owner who consents; and, except as otherwise provided herein, the prevailing party in such action shall be entitled to recover costs and reasonable attorneys' fees. The Board, in its sole discretion, may resolve or settle any dispute, including any legal action in which the Association is a party, under such terms and conditions as it considers appropriate.

(i) If the Board adopts a policy imposing monetary penalties, including any fee on any Member for a violation of the governing documents or the Rules, including any monetary penalty relating to the activity of a guest or invitee of a Member, the Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed. The Board may change the schedule from time to time and shall distribute a notice of such changes to the Members in the same manner as the schedule of penalties.

(ii) The imposition of any disciplinary action, including, but not limited to, the imposition of monetary penalties or the suspension of use and/or voting privileges except as otherwise noted herein, shall be subject to the following procedures and requirements:

(a) Notice of Hearing: Prior to the time the Board meets to consider or impose discipline upon a Member, the Board shall notify the Member, by either personal delivery or first-class mail, at least 15 days prior to the meeting. The notice shall contain, at a minimum, the date, time and place of the meeting, the nature of the alleged violation for which the Member may be disciplined, and a statement that the Member has a right to attend and may address the Board at the meeting.

(b) Hearing: If requested by the Member, the Board shall conduct the disciplinary proceeding in executive session. The Member, the Member's legal counsel, and the Association's legal counsel shall be entitled to attend the executive session meeting. The Board may interview witnesses and other interested parties in executive session.

(c) Notice of Action Taken: If the Board elects to impose discipline on the Member, the Board shall notify the Member of the disciplinary action within ten days following the election to impose the disciplinary action.

(d) No Forfeiture: Under no circumstances may the Association cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Lot on account of the failure of the Owner to comply with the provisions of this Declaration, the Articles, Bylaws or Rules, except by judgment of a court or decision of an arbitrator or on account of a foreclosure or sale under power of sale for failure of the Owner to pay assessments duly levied by the Association.

(e) Assessment Charges: The provisions of this **Section 5.6.4** do not apply to charges imposed against a Member for reasonable late payment penalties or charges to reimburse the Association for loss of interest and for costs reasonably incurred (including attorneys' fees) in collecting delinquent assessments

5.6.5 Delegating Duties: Except as may be limited by the Bylaws, the Board may delegate any of the Association's powers and duties to its employees, committees or agents, including a professional management agent.

5.6.6 Implementing Special Fees: The Board may implement special fees to reimburse the Association for special costs incurred as a result of actions taken by Owners.

5.6.7 Dispute Resolution Procedures: The Board shall implement dispute resolution procedures for disputes between the Association and a Member involving the rights, duties or liabilities under the Governing Documents, the Davis-Stirling Common Interest Development Act (Civil Code sections 1350-1378) or the Nonprofit Mutual Benefit Corporation Law (Corporations Code sections 7110-8910) that comply with the requirements of Civil Code sections 1363.810 through 1363.850.

5.7 Duties of the Association. In addition to the duties described in the Articles or Bylaws, or elsewhere in this Declaration, the Association shall have the duty to manage the Common Area, exercise the rights and perform the duties under the Agreement described in **Section 2.11**, perform the maintenance as described in **Section 4.4**, prepare, periodically update, and comply with the maintenance and inspection guidelines described in **Section 4.5**, prepare and distribute financial statements, reports and the other documents and notices described in **Section 5.10**, enforce bonded obligations as described in **Section 5.11**, levy and collect assessments as described in **Article 6**, prepare when required the reserve studies described in **Section 6.3** and annually review and implement adjustments as required, and procure, maintain and review the insurance as described in **Article 8**. The Association shall perform such other acts as may be reasonably necessary to exercise its powers to perform its duties under any of the provisions of this Declaration, the Articles, Bylaws, Rules or Board resolutions.

5.8 Taxes and Assessments. The Association shall pay all real and personal property taxes and assessments and all other taxes levied against the Association, the Common Area or the personal property owned by the Association. Such taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

5.9 Utility Service to the Common Area. The Association shall acquire, provide and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas and other necessary utility services for the Common Area.

5.10 Reporting and Notice Requirements. The Association shall prepare and distribute the documents described in this **Section 5.10**. The reporting requirements incorporate the requirements imposed on homeowners associations under the Davis-Stirling Common Interest Development Act ("Act") in effect as of January 1, 2012. If the reporting requirements in the Act are subsequently amended, the reporting requirements in the Act, as amended, shall apply.

5.10.1 Pro Forma Operating Budget. A pro forma operating budget for each fiscal year shall be distributed not less than 30 days nor more than 90 days before the beginning of the fiscal year consisting of at least the following:

(1) Estimated revenue and expenses on an accrual basis.

(2) A summary of the Association's reserves based on the most recent reserves review or study conducted pursuant to **Section 6.3**, based only on assets held in cash or cash equivalents, which shall be printed in bold type and shall include the following:

(A) the current estimated replacement cost, estimated remaining life and estimated useful life of each major component which the Association is obligated to maintain (collectively the "Major Components");

(B) as of the end of the fiscal year for which the study was prepared:

(i) the current estimate of cash reserves necessary to repair, replace, restore or maintain the Major Components;

(ii) the current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the Major Components; and

(iii) if applicable, the amount of funds received from either a compensatory damage award or settlement to the Association from any Person for injuries to property, real or personal, arising out of any construction or design defects and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to **Section 5.10.1(2)(B)(ii)**. In lieu of complying with the foregoing requirements, if the Association is obligated to issue a review of its financial statement pursuant to **Section 5.10.2** below, the Association may include in the review a statement containing all of the information required by this **Section 5.10.1(2)(B)(iii)**;

(C) the percentage that the amount in **Section 5.10.1(2)(B)(ii)** is to the amount in **Section 5.10.1(2)(B)(i)**; and

(D) the current deficiency in reserve funding expressed on a per Lot basis. The figure shall be calculated by subtracting the amount determined for purposes of **Section 5.10.1(2)(B)(ii)** from the amount determined for purposes of **Section 5.10.1(2)(B)(i)** and then dividing the result by the number of separate interests within the Association, except that if assessments vary by the size or type of ownership interest, then the Association shall calculate the current deficiency in a manner that reflects the variation.

(3) A statement as to the following:

(A) whether the Board has determined to defer or not undertake repairs or replacement of any Major Component with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement;

(B) whether the Board, consistent with the reserve funding plan adopted pursuant to Civil Code section 1365.5(e), has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any Major Component or to provide adequate reserves therefor; and if so, the statement shall also set out the estimated amount, commencement date and duration of the assessment;

(C) the mechanism or mechanisms by which the Board will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacement or repair, or alternative mechanisms; and

(D) whether the Association has any loans with an original term of more than one year, including the payee, interest rate, amount outstanding, annual payment and when the loan is scheduled to be retired.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement or additions to the Major Components. The report shall include, but need not be limited to, reserve calculations made using the formula described in Civil Code section 1365.2.5(b)(4) and may not assume a rate of return on cash reserves in excess of 2 percent above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.

In lieu of the distribution of the pro forma operating budget, the Board may elect to distribute a summary of the budget to all its Members with a written notice in at least 10-point bold type on the front page of the summary that the budget is available at the Association's business office or another suitable location within the boundaries of the Development and that copies will be provided on request and at the expense

of the Association. If any Member requests a copy of the pro forma operating budget to be mailed to the Member, the Association shall provide the copy to the Member by first-class mail at the expense of the Association, which copy shall be mailed within five days of the receipt of the request.

5.10.2 Reserve Funding Plan Summary. A summary of the reserve funding plan adopted by the Board, as specified in Civil Code section 1365.5(e)(4). The summary shall include notice to Members that the full reserve study plan is available upon request and the Association shall provide the full reserve plan to any Member upon request.

5.10.3 Financial Statement Review. A review of the financial statement of the Association shall be prepared in accordance with Generally Accepted Accounting Principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income of the Association exceeds $75,000. A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

5.10.4 Policies and Practices Statement. A statement of the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of assessments. A copy of this statement shall be distributed to each Owner and any Mortgagee no less than 30 days nor more than 90 days immediately preceding the beginning of each fiscal year.

5.10 5 Governing Documents. Copies of this Declaration, the Articles, Bylaws, Rules and other applicable documents as required by Civil Code section 1368(a) shall be provided to any Owner within ten days of the mailing or delivery of a written request. The items required to be made available pursuant to this **Section 5.10.5** may be maintained in electronic form and requesting parties shall have the option of receiving them by electronic transmission or machine readable storage media if the Association maintains these items in electronic form. The Board may impose a fee to provide these materials but not to exceed the Association's reasonable costs in preparing and reproducing the material.

5.10.6 Minutes. A statement describing the Members' rights to obtain copies of the minutes of meetings of the Board, including a description of how and where these minutes may be obtained shall be distributed to the Members at the time the Pro Forma Operating Budget described in **Section 5.10.1** is distributed to the Members.

5.10.7 Dispute Resolution Summary. A dispute resolution summary shall be provided to the Members either at the time the Pro Forma Operating Budget described in **Section 5.10.1** is distributed to Members or in the manner set forth in Corporations Code section 5016 and shall include a description of the Association's internal dispute resolution procedures required by Civil Code section 1363.850 and the following statement:

> Failure of a member of the Association to comply with the alternative dispute resolution requirements of Civil Code section 1369.520 may result in the loss of your right to sue the Association or another member of the Association regarding enforcement of the governing documents or the applicable law.

5.10.8 Insurance Summary. A summary of the Association's property, general liability, earthquake, flood and fidelity insurance policies, if any (individually and collectively referred to as the "Policy" or "Policies"), shall be distributed to the Members not less than 30 days nor more than 90 days preceding the beginning of the Association's fiscal year. The summary shall include the following information on the Policies:

(A) the name of the insurer;

(B) the type of insurance;

(C) the Policy limits of the insurance; and

(D) the amount of deductibles, if any

The Association, as soon as reasonably practical, shall notify its Members by first-class mail if any of the Policies have lapsed, been cancelled and not immediately renewed or restored or if there is a significant change such as a reduction in coverage or limits or an increase in the deductible for any Policy. If the Association receives any notice of non-renewal of a Policy, the Association immediately shall notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

To the extent that the information required to be disclosed as described in this **Section 5.10.8** is specified in the insurance policy declaration page, the Association may meet its disclosure obligations by making copies of that page and distributing copies to all its Members.

The summary required in this **Section 5.10.8** shall contain, in at least 10-point boldface type, the following statement:

> This summary of the Association's policies of insurance provides only certain information as required by subdivision (f) of section 1365 of the Civil Code and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance Any Association member, upon request and reasonable notice, may review the Association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property, or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage.

5.10.9 Assessment/Foreclosure Notice. A written notice regarding assessments and foreclosures required by Civil Code section 1365 1(b) shall be distributed to each Member during the 60-day period immediately preceding the beginning of the Association's fiscal year. The notice shall be printed in at least 12-point type.

5.10.10 Architectural Approval/Dispute Resolution Procedure Notices. The Association shall annually provide the Members with notice of the requirements for approval by the Architectural Committee in accordance with the procedures described in **Article 7** for physical changes to the Improvements on the Lots. The notice shall describe the types of changes that require approval, shall include a copy of the procedure used to review and approve or disapprove a proposed change, and shall include a description of the dispute resolution procedures implemented by the Board as required under **Section 5.6.7**.

5.10 11 Secondary Notice Address. A Member may provide written notice by facsimile transmission or United States mail to the Association of a secondary address. If a secondary address is provided, the Association shall send any and all correspondence and legal notices required, pursuant to Civil Code sections 1365 through 1365.1, 1365.2, 1365.2.5 and 1365.5, to both the primary and the secondary address.

5.11 Enforcement of Bonded Obligations. If the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of the Declarant or a successor or assign to complete the Common Area Improvements not completed at the time the California Department of Real Estate issued a final subdivision report, the Board will consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any Improvement for which a notice of completion has not been filed by the later of: (i) 60 days after the completion date specified for that Improvement in the "planned construction statement" appended to the Bond; or (ii) 30 days after the

expiration of any written extension given by the Association. If the Board fails to consider and vote on the action to enforce the obligations under the Bond, or if the Board decides not to initiate action to enforce the obligations under the Bond, then on receipt of a petition signed by Owners representing not less than 5% of the total voting power of the Association, the Board shall call a special meeting of Owners for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the Bond. The Board shall give written notice of the meeting to all Owners entitled to vote in the manner provided in this Declaration or in the Bylaws for notices of special meetings of Owners. The meeting shall be held not less than 35 days nor more than 45 days after receipt of the petition. At the meeting, the vote in person or by proxy by a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the Bond shall be considered the decision of the Association; and the Board shall implement this decision by initiating and pursuing appropriate action in the name of the Association.

Upon satisfaction of the Declarant's obligation to complete the Common Area Improvements, the Board shall acknowledge in writing that it approves the release of the Bond and shall execute any other documents or instruments as may be necessary or advisable to effect the release of the Bond. The Board shall not condition its approval to release the Bond on the satisfaction of any condition other than the completion of the Common Area Improvements as described in the "planned construction statement". Any dispute between the Declarant and the Association regarding the release of the Bond shall be resolved in accordance with the Bond escrow instructions or, if these instructions are not operative for any reason, in accordance with the procedures of **Article 12**.

5.12 Limitations on Authority of the Board. The Association is prohibited from taking any of the following actions:

(i) except as otherwise provided in law, or order of the court, or an order pursuant to a final and binding arbitration decision, the Association shall not deny an Owner or Occupant physical access to his or her Lot, either by restricting access through the Common Areas to the Owner's Lot or by restricting access solely to the Owner's Lot;

(ii) the Association may not voluntarily assign or pledge the Association's right to collect payments or assessments or to enforce or foreclose a lien to a third party except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or State law when acting within the scope of that charter or license as security for a loan obtained by the Association; however, the foregoing provision may not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection;

(iii) adopt a Rule or regulation that arbitrarily or unreasonably restricts an Owner's ability to market the Owner's Lot; or

(iv) establish an exclusive relationship with a real estate broker through which the sale or marketing of Lots is required to occur. This restriction does not apply to the sale or marketing of Common Areas owned by the Association.

5.13 Further Limitations on Authority of the Board. The Board shall not take any of the following actions except with the consent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code section 7513 or any successive statute thereto, of a simple majority of the Members other than Declarant constituting a quorum of more than 50% of the voting power of the Association residing in Members other than the Declarant:

(i) incur aggregate expenditures for capital Improvements to the Common Area in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year;

(ii) sell during any fiscal year property of the Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Association for that fiscal year;

(iii) pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business, provided that the Board may reimburse a member or officer for expenses incurred in carrying on the business of the Association;

(iv) enter into a contract with a third Person to furnish goods or services for the Common Area or the Association for a term longer than one year with the following exceptions:

(a) a management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration;

(b) a contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission, provided the term does not exceed the shortest term for which the supplier will contract at the regulated rate;

(c) prepaid casualty or liability insurance policies not to exceed three years' duration, provided the policy permits for short rate cancellation by the insured;

(d) a contract for a term not to exceed three years that is terminable by the Association after no longer than one year without cause, penalty or other obligation upon 90 days written notice of termination to the other party; or

(v) borrow money secured by any Association assets as authorized under **Section 5.6.3**.

5.14 Notice of Significant Legal Proceedings. Notwithstanding anything herein to the contrary, not later than 30 days prior to the filing of any civil action against the Declarant or other developer for alleged damage to the Common Area, alleged damage to the separate interests that the Association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the Common Area or separate interests that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member of the Association. The notice shall specify the date and location of the meeting and both of the following:

(i) that a meeting will take place to discuss problems that may lead to the filing of a civil action; and

(ii) the options, including civil actions, that are available to address the problems.

If the Board in good faith determines that there is insufficient time to provide prior notice to the Members as required herein prior to the expiration of any applicable statute of limitations, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Association, provided that as soon as is reasonably practical thereafter, and not later than 30 days following the commencement of the proceeding, the Board shall provide the Members with notice as required herein.

5.15 Civil Code Sections 896 and 897 Claims. The sole and exclusive authority to initiate claims on behalf of the Association in connection with Improvements or landscaping maintained by the Association for violations of the functionality standards set forth in Civil Code sections 896 and 897 shall rest with the Board members elected solely by Class A Members described in **Section 5.4.1** of this Declaration (the "Non-Declarant Directors"). Any Non-Declarant Director may at any time request a meeting for the purpose of discussing, inspecting, investigating and/or initiating any claims under Civil Code sections 896 or 897. Notice of the meeting shall be sent in the same manner as notice for special meetings of the Board. Any member of the Board appointed by Declarant or elected by votes cast by Declarant shall be entitled to attend the meeting but shall not be entitled to vote. The meeting shall be open for all Members of the Association unless the Non-Declarant Directors adjourn to an executive session as authorized by the Bylaws. The decision of a majority of the Non-Declarant Directors shall control. If the Non-Declarant Directors elect to initiate a claim, the authority to initiate a claim also shall require the approval of the votes cast by a majority of the Class A Members present in person or by proxy at a duly-held meeting. Any Non-Declarant Director may call a special meeting of the Members for this purpose. For purposes of this **Section 5.15**, if the Class B membership has been converted to Class A membership as described in **Section 5.4**, the quorum

requirements shall be based on the total votes of the Class A Members other than the votes held by Declarant and the Declarant votes shall not count for approval or disapproval purposes. The claim is subject to the provisions and procedures set forth in **Article 12**. If requested by the Non-Declarant Directors, the Association shall provide the administrative support for the notice and conduct of its meetings and any meeting of the Members called to approve the initiation of a claim. In addition, the Association shall provide such reasonable financial support as may be necessary in order for the Non-Declarant Directors to inspect, investigate and/ or initiate the claim on behalf of the Association, subject to the applicable requirements and procedures set forth in **Sections 5.14, 6.6** and **Article 12.** The provisions of this **Section 5.15** are effective automatically on the date the first Non-Declarant Director is elected to the Board.

5.16 Access to Association Records. The Association shall comply with the requirements of Civil Code section 1365.2 in making the "Association Records" and "Enhanced Association Records", as defined in Civil Code section 1365.2(a), available for copy and inspection unless exempt under the provisions of Civil Code section 1365.2(n).

ARTICLE 6 - Assessments

6.1 Obligations to Pay Assessments. The Owner of each Lot is obligated to pay any assessments levied against that Owner's Lot on or before the due date of the assessment. If there is more than one Owner of the Lot, the obligation is joint and several. Each Owner on acceptance of a deed to a Lot automatically personally assumes the obligation to pay any assessments against the Owner's Lot (including, but not limited to, that portion of the annual regular assessment not yet due and payable) and agrees to allow the Association to enforce any assessment lien established hereunder by nonjudicial proceedings under the power of sale or by any other means authorized by law. The Owner shall be liable for the full assessment levied against that Owner's Lot regardless of the Owner's possession or use of the Lot, the Common Area or any services rendered by the Association. The Owner has no right or power to commit or omit any act, such as waiving the right to use the Common Area Improvements, in an attempt to eliminate or reduce the assessments against that Owner's Lot. An assessment shall be both a personal obligation of the Owners of the Lot against which the assessment is levied and, on the recordation of a notice of delinquent assessment, a lien against the Lot. Any Owner who transfers a Lot shall remain personally liable for any unpaid assessments that accrued on or before the date of the transfer. No Owner shall be liable for any defaults of the Owner's predecessor in interest in the payment of any assessment that has accrued prior to the Owner taking title to the Lot unless that Owner expressly assumes the obligation to cure the delinquent assessments. Notwithstanding the foregoing, any Owner who takes title to a Lot on which a lien for a delinquent assessment has been established will take title subject to the lien and the Association's enforcement remedies as a result thereof unless the Owner takes title under a foreclosure or trustee sale resulting from a foreclosure or exercise of a power of sale under a Mortgage, deed of trust, or other lien recorded before the recordation of the notice of delinquent assessment.

6.2 Annual Regular Assessment. Prior to the beginning of each fiscal year of the Association, the Board shall meet for the purpose of establishing the annual regular assessment for the forthcoming fiscal year. At such meeting, the Board shall review the preliminary pro forma operating budget prepared for the forthcoming fiscal year, any written comments received from Members and Mortgagees, and such other related information that has been made available to the Board. After making any adjustments that the Board considers appropriate and subject to such Member approval as may be required by **Section 6.6**, the Board will establish an annual regular assessment for the forthcoming fiscal year. Each annual regular assessment may include a portion for reserves as described in **Section 6.3**.

If the Board for any reason fails to take the appropriate steps to establish the annual regular assessment for the next fiscal year, the annual regular assessment for the preceding fiscal year shall continue in effect subject to the Board's right at anytime during the next fiscal year to adjust the assessment pursuant to the procedures described herein.

Declarant's obligation to pay regular assessments for Lots owned by Declarant may be reduced or abated pursuant to a maintenance or subsidy agreement between Declarant and the Association and approval by the California Department of Real Estate.

6.3 Reserves, Reserve Accounts and Reserves Study. Each annual regular assessment shall include a portion for reserves in such amount as the Board in its discretion considers appropriate to meet the cost of the future repair, replacement or additions to the Major Components as described in **Section 5.10.1** that the Association is obligated to maintain and repair. For all purposes in this Declaration and in the Bylaws, reserve accounts shall mean: (i) the funds that the Board has identified for the foregoing purposes ("Regular Reserve Funds") and (ii) the funds received and not yet expended or disposed from either a compensatory damage award or settlement to the Association from any Person for injuries to property, real or personal arising from any construction or design defects (the "Construction Reserve Funds"). Construction Reserve Funds shall be separately itemized from funds designated as Regular Reserve Funds.

Reserve funds shall be deposited in a separate account; and the signatures of at least two persons, who shall either be members of the Board or one officer who is not a member of the Board and a member of the Board, shall be required to withdraw monies from the reserve account. Reserve funds may not be expended for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, Major Components that the Association is obligated to maintain.

Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reason that the transfer is needed and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, provided that the Board, on the making of a finding supported by documentation that a temporary delay is in the best interest of the Development, may delay temporarily the restoration. The Board shall exercise prudent fiscal management in maintaining the integrity of the reserve account and, if necessary, shall levy a special assessment to recover the full amount of the expended funds within the time limits required herein. This special assessment shall be subject to the assessment increase restrictions set forth in **Section 6.6** and Civil Code section 1366(b).

If the Board elects to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Members of that decision in the next available mailing to all Members pursuant to Corporations Code section 5016. The notice shall inform Members of the availability of an accounting of these expenses. The Board shall distribute a written accounting of this expense to the Members on at least a quarterly basis, with the first accounting to be delivered no later than the 30th day following the Board's decision to use reserve funds for litigation, either directly or through a transfer to operating funds. In any proposed litigation in which the amount in controversy is expected to exceed $25,000, the first accounting shall include a description of expenses paid to date, a description of the principal terms and conditions of any contract with any Person providing services in connection with the litigation, including attorneys and expert witnesses, a good faith estimate of the total legal fees, expert fees and other litigation costs that may be incurred, and a sample disclosure that Members should provide prospective purchasers, lenders and other parties that have obtained or may obtain an interest in the Owner's Lot regarding the litigation In each subsequent accounting, the information required in the first accounting shall be appropriately updated.

At least once every three years, the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the Major Components that the Association is obligated to repair, replace, restore or maintain as a part of a study of the reserve account requirements of the Development if the current replacement value of the Major Components is equal to or greater than one-half of the gross budget of the Association, excluding the Association's reserve account for that period. **The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.**

The study, at a minimum, shall include:

(i) identification of the Major Components that the Association is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years;

(ii) identification of the probable remaining useful life of the Major Components identified in subparagraph (i) as of the date of the study;

(iii) an estimate of the cost of repair, replacement, restoration, or maintenance of the Major Components identified in subparagraph (i) during and at the end of its useful life;

(iv) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the Major Components during and at the end of its useful life after subtracting total reserve funds as of the date of the study; and

(v) a reserve funding plan that indicates how the Association plans to fund the contribution identified in paragraph (iv) to meet the Association's obligations for the repair and replacement of all Major Components with an expected remaining life of 30 years or less, not including those components that the Board has determined will not be replaced or repaired. The plan shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan. The plans shall be adopted by the Board at an open meeting before the membership of the Association as described in Civil Code section 1363.05. If the Board determines that an assessment increase is necessary to fund the reserve funding plan, any increase shall be approved in a separate action of the Board that is consistent with the procedure described in Civil Code section 1366.

As used herein, "reserve accounts" has the meaning set forth in Civil Code section 1365.5(f) or any successor statute thereto.

6.4 Special Assessments. Subject to the restrictions described in **Section 6.6**, the Board may levy a special assessment if the Board in its discretion determines that the Association's available funds are or will become inadequate to meet the estimated expenses of the Association, including, but not limited to, expenses resulting from inadequate reserves, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital Improvements, inadequate insurance proceeds, or other unanticipated expenses. The Board may levy the entire special assessment immediately or levy it in installments over a period the Board considers appropriate.

6.5 Reimbursement Assessments. The Board shall have the authority to levy reimbursement assessments against one or more Lot Owners to reimburse the Association for any costs incurred or to be incurred by the Association as the result of any act or omission of any Owner or Occupant of any Lot or their family members, guests, agents or pets. The levy shall not include any portion that is paid or will be paid by any insurer under a policy maintained by the Association. Payment of the deductible amount shall be the responsibility of the Owner. If the reimbursement assessment is levied and paid before all or any portion of the costs have been incurred by the Association and the amount paid exceeds the costs incurred, the Association promptly shall refund the excess to the Owner. If the costs exceed the amount, the Owner shall reimburse the Association within 30 days thereafter. If payment is not made when due, the payment shall be considered a delinquent assessment and the Association may enforce the delinquent assessment as described in **Section 6.10**, subject to the non-judicial foreclosure restrictions described in this **Section 6.5**.

In addition to reimbursing the Association for costs necessary to repair any Common Area or other property that is maintained by the Association, the Association may seek reimbursement for any costs incurred by the Association, including attorneys' fees, to bring the Owner or Occupant or the Owner's Lot into compliance with this Declaration, the Articles, Bylaws or Rules. A reimbursement assessment may not be levied against any Lot until notice and hearing have been provided the Owner as described in **Section 5.6.4**; and under no circumstances may a reimbursement assessment (or a monetary penalty imposed by the Association as a disciplinary measure for violation of this Declaration or the Rules) become a lien against the Owner's Lot that is enforceable by nonjudicial foreclosure proceedings under a power of sale. The foregoing restriction on enforcement is not applicable to late payment penalties or interest for delinquent

assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

6.6 Assessment Increase Restrictions. The Association shall provide notice by personal delivery or by first-class mail to the Owners of any increase in the regular or special assessments not less than 30 days nor more than 60 days prior to the due date of the increased assessment.

The Board may not: (i) impose an annual regular assessment for any fiscal year more than 20% above the annual regular assessment for the Association's preceding fiscal year, or (ii) impose special assessments which in the aggregate exceed 5% of the budgeted gross expenses of the Association for that fiscal year without the approval of a majority of the votes of Owners at a meeting of the Members of the Association at which a quorum is present. For purposes of this **Section 6.6**, a "quorum" means more than 50% of the Owners, and the meeting must be conducted in accordance with Corporations Code sections 7510 through 7527 and 7613. The foregoing restrictions on assessment increases do not apply to increases necessary for emergency situations. An emergency situation is any one of the following:

(i) an extraordinary expense required by an order of court;

(ii) an extraordinary expense necessary to repair or maintain the Development or any part of it that the Association is responsible to maintain where a threat to personal safety within the Development is discovered; and/or

(iii) an extraordinary expense necessary to repair or maintain the Development or any part of it that the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget required under Civil Code section 1365, provided that before the imposition or collection of any assessment under this subparagraph the Board must pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process and shall distribute the resolution to the Members with the notice of the assessment.

If the Board fails to distribute the Pro Forma Operating Budget as required by **Section 5.10.1** for any fiscal year, the Association may not increase its annual regular assessment for that fiscal year, as authorized by Civil Code section 1366(b), unless the Board has obtained the approval of a majority of the votes of the Owners at a meeting of the Members at which a quorum was present. For the foregoing purposes, a "quorum" means more than 50% of the Owners of the Association; and the meeting must be conducted in accordance with Corporations Code sections 7510 through 7527 and 7613 or any successor statute thereto.

6.7 Commencement of Regular Assessments. Annual regular assessments shall commence for all Lots in a phase on the first day of the month coinciding with or immediately following the date of the first transfer of title of a Lot in that phase by the Declarant to a purchaser under the authority of a final subdivision public report issued by the California Department of Real Estate or an earlier date at the discretion of the Declarant. No Lot shall be subject to any special assessments until regular assessments have commenced against that Lot.

Notwithstanding the foregoing, the sale of a Lot in a phase that is not occupied and that is used as a model home will not commence assessments against the Lots in that phase. The subsequent sale of a Lot in that phase not used as a model home will commence assessments against the Lots in that phase, including assessments against any model homes in that phase.

6.8 Due Dates of Assessments. Unless otherwise directed by the Board or unless accelerated as described herein, the annual regular assessment shall be collected in monthly installments and shall be due and payable on the first day of each month. If any monthly installment is delinquent, the Board, at its election, may accelerate the remaining installment payments so that the entire remaining balance of the annual regular assessment is immediately due and payable Special assessments shall be due on such date or dates as selected by the Board. Reimbursement assessments shall be due and payable ten days after the Owner receives the notice of the reimbursement assessment. The notice shall be deemed received on the date described in **Section 13.13**.

Any annual regular assessment installment (including any accelerated installments), special assessment, or reimbursement assessment not paid within 15 days after the due date shall be delinquent, shall bear interest at the rate of 12% per annum from 30 days after the due date until paid, and shall incur a late penalty in an amount to be set by the Board from time to time, not to exceed the maximum amount permitted by law.

6.9 Allocation of Regular and Special Assessments. Regular and special assessments levied by the Board as described in this **Section 6.9** shall be allocated among the Lots as described in this **Section 6.9**. Notwithstanding anything herein to the contrary, if the use of any Lot, the equipment or facilities maintained within any Lot or any related reason results in an increase in the Association costs, including, but not limited to, increases in maintenance and repair costs, trash removal costs, commonly-metered utility costs or insurance costs, the Board may allocate the amount of the increase to the Lot or Lots responsible for the increase.

6.9.1 Paseo Lots Cost Center: All Association costs for the management, inspection, maintenance, repair and restoration (including reserves) of the Alleys and the Paseos, (including the water costs for the irrigation system but excluding the landscaping maintenance costs) under **Sections 4.4.1, 4.4.3, 4.4.5 and 4.4.7** shall be allocated equally among the Paseo Lots. This cost center is a part of the regular assessments levied against the Paseo Lots.

6.9.2 Remaining Costs: All remaining costs incurred by the Association to perform its management, maintenance and insurance duties under this Declaration shall be allocated equally among all Lots subject to assessments.

6.10 Enforcement of Delinquent Assessments. The Association may elect to pursue one or more of the following remedies in the event of a delinquent assessment:

6.10.1 Personal Obligation. The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the assessment and in such action shall be entitled to recover the delinquent assessment or assessments, accompanying late charges, interest, costs and reasonable attorneys' fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in **Section 6.10.2**.

6.10.2 Assessment Lien. Except as otherwise provided in **Section 6.5** and subject to the provisions of **Section 6.10.3**, the Association may impose a lien against the Owner's Lot for the amount of the delinquent assessment or assessments, plus any costs of collection (including attorneys' fees), late charges and interest by taking the following steps:

(a) At least 30 days prior to recording a lien upon the Owner's Lot to collect a delinquent assessment, the Association shall notify the Owner in writing by certified mail of the following (the "Delinquency Notice"):

(1) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the Owner of the Lot has the right to inspect the Association records, pursuant to section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION".

(2) An itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorneys' fees, any late charges, and interest, if any.

(3) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the Association.

(4) The right to request a meeting with the Board as provided by **Section 6.10.2(e)**.

(5) The right to dispute the assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Civil Code sections 1369.510 through 1369.590 before the Association may initiate foreclosure against the Owner's Lot, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(b) Any payments made by the Lot Owner toward the delinquent assessment shall first be applied to the assessments owed; and only after the assessments owed are paid in full shall the payments be applied to the fees and the costs of collection, attorneys' fees, late charges or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the Person who received it. The Association shall provide a mailing address for overnight payment of assessments.

(c) Prior to recording a lien for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850.

Prior to initiating a foreclosure for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, shall participate in dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850 or alternative dispute resolution with a neutral third party pursuant to Civil Code sections 1369.510 through 1369.580. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(d) The decision to record a lien for delinquent assessments shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board members in an open meeting. The Board shall record the vote in the minutes of that meeting

(e) An Owner may submit a written request to meet with the Board to discuss a payment plan for the delinquent assessment. The Association shall provide the Owners the standards for payment plans if any exist. The Board shall meet with the Owner in executive session within 45 days of the postmark of the request if the request is mailed within 15 days of the date of the postmark of the Delinquency Notice unless there is no regularly-scheduled Board meeting within that period, in which case the Board may designate a committee of one or more Members to meet with the Owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede an Association's ability to record a lien on the Owner's Lot to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.

(f) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with **Section 6.8**, shall be a lien on the Owner's Lot from and after the time the Association causes to be recorded with the county recorder of the county in which the Lot is located a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Civil Code section 1366, a legal description of the Owner's interest in the Development against which the assessment and other sums are levied, and the name of the record owner of the Owner's interest in the Development against which the lien is imposed. The itemized statement of the charges owed by the Owner described in **Section 6.10.2(a)(2)** shall be recorded together with a notice of delinquent assessment. In order for the lien to be enforced by nonjudicial foreclosure as provided in **Section 6.10.2(h)**,

the notice of delinquent assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice of delinquent assessment shall be signed by any officer of the Association or by the Person designated by the Association for that purpose. A copy of the recorded notice of delinquent assessment shall be mailed by certified mail to every person whose name is shown as an Owner in the Association's records, and the notice shall be mailed no later than ten calendar days after recordation. Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the Association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the Lot Owner a copy of the lien release or notice that the delinquent assessment has been satisfied.

A monetary charge imposed by the Association: (i) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area Improvements or landscaping for which the Member or the Member's guests or tenants were responsible; or (ii) as a disciplinary measure for failure of a Member to comply with the Governing Documents, except for the late payments, may not be characterized nor treated as an assessment that may become a lien against the Member's Lot enforceable by the sale of the interest under Civil Code sections 2924, 2924b and 2924c.

(g) A lien created pursuant to **Section 6.10.2(f)** shall be prior to all other liens recorded subsequent to the notice of assessment, except as described in **Article 10**.

(h) Subject to the limitations of this **Section 6.10**, after the expiration of 30 days following the recording of a lien created pursuant to **Section 6.10.2(f)**, the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Civil Code section 2934a. Any sale by the trustee shall be conducted in accordance with Civil Code sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Civil Code sections 2924c and 2924d plus the cost of service for either of the following: (i) the notice of default pursuant to Civil Code section 1367.1(j); or (ii) the decision of the Board to foreclose upon the separate interest of an Owner as described in Civil Code section 1367.4(c)(3).

(i) If it is determined that a lien previously recorded against a Lot was recorded in error, the party who recorded the lien, within 21 calendar days, shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the Lot Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(j) In addition to the requirements of Civil Code section 2924, a notice of default shall be served by the Association on the Owner's legal representative in accordance with the manner of service of summons in Code of Civil Procedure sections 415.10 through 415.95. The Owner's legal representative shall be the person whose name is shown as the Owner of the Lot in the Association's records, unless another person has been previously designated by the Owner as his or her legal representative in writing and mailed to the Association in a manner that indicates that the Association has received it.

(k) Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this section to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association, at the time the Association issues the Pro Forma Operating Budget pursuant to Civil Code section 1365. The Owner's request shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.

(l) This **Section 6.10.2** is subordinate to and shall be interpreted in conformity with **Section 6.10.3**.

(m) If the Association fails to comply with the procedures set forth in this **Section 6.10.2**, prior to recording a lien, the Association shall recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Lot Owner.

6.10.3 Assessment Enforcement Restrictions.

(a) If the Association seeks to collect delinquent regular or special assessments of an amount less than one thousand eight hundred dollars ($1,800), not including any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, the Association may not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(1) By a civil action in small claims court, pursuant to Code of Civil Procedure sections 116.110 through 116.950. If the Association chooses to proceed by an action in small claims court, and prevails, the Association may enforce the judgment as permitted under Code of Civil Procedure sections 116.810 through 116.880. The amount that may be recovered in small claims court to collect upon a debt for delinquent assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

(A) The amount owed as of the date of filing the complaint in the small claims court proceeding

(B) In the discretion of the court, an additional amount to that described in **Section 6.10.3(a)(1)** equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include accruing unpaid assessments and any reasonable late charges, fees and costs of collection, attorneys' fees, and interest, up to the jurisdictional limits of the small claims court.

(2) By recording a lien on the Owner's Lot upon which the Association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, equals or exceeds one thousand eight hundred dollars ($1,800) or the assessments secured by the lien are more than 12 months delinquent. If the Association chooses to record a lien under these provisions, prior to recording the lien, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution as set forth in Civil Code sections 1363.810 through 1363.850.

(3) Any other manner provided by law, except for judicial or nonjudicial foreclosure.

(b) If the Association seeks to collect delinquent regular or special assessments of an amount of one thousand eight hundred dollars ($1,800) or more, not including any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, or any assessments secured by the lien that are more than 12 months delinquent, the Association may use judicial or nonjudicial foreclosure subject to the following conditions:

(1) Prior to initiating a foreclosure on an Owner's Lot, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850 or alternative dispute resolution as set forth in Civil Code sections 1369.510 through 1369.580. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(2) The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board members

in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to all members. The Board shall maintain the confidentiality of the Owner or Owners of the Lot by identifying the matter in the minutes by the parcel number of the property, rather than the name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale.

(3) The Board shall provide notice by personal service in accordance with the manner of service of summons in Code of Civil Procedure sections 415.10 through 415.95 to an Owner of a Lot who occupies the Lot or to the Owner's legal representative, if the Board votes to foreclose upon the Lot. The Board shall provide written notice to an Owner who does not occupy the Lot by first-class mail, postage prepaid, at the most current address shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Owner's Lot may be treated as the Owner's mailing address.

(4) A nonjudicial foreclosure by the Association to collect upon a debt for delinquent assessments shall be subject to a right of redemption. The redemption period within which the Lot may be redeemed from a foreclosure sale under this paragraph ends 90 days after the sale. In addition to the requirements of Civil Code section 2924f, a notice of sale in connection with an Association's foreclosure of a Lot shall include a statement that the Lot is being sold subject to the right of redemption created by Civil Code section 1367.4(c)(4).

6.10.4 Erroneous Liens. If it is determined, through dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850 or alternative dispute resolution with a neutral third party pursuant to Civil Code sections 1369.510 through 1369.590, that the Association has recorded a lien for a delinquent assessment in error, the Association shall promptly reverse all late charges, fees, interest, attorneys' fees, costs of collection, costs imposed for the notice prescribed in Civil Code sections 1367.1(a) and 1367.1(b) and pay all costs related to the dispute resolution or alternative dispute resolution.

6.10.5 Small Claims Court Resolution If a dispute exists between an Owner and the Association regarding any disputed charge or sum levied by the Association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and the amount in dispute does not exceed the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure, the Owner, in addition to pursuing dispute resolution under Civil Code sections 1363.810 through 1363.850, may pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorneys' fees, late charges, and interest, if any, pursuant to Civil Code section 1366(e), and commence an action in small claims court for resolution of the dispute. Nothing in this **Section 6.10.5** shall impede the Association's ability to collect delinquent assessments as provided in Civil Code sections 1367.1 and 1367.4.

The provisions of this Section 6.10 are intended to comply with the requirements of Civil Code sections 1367.1, 1367.4 and 1367.5 in effect as of January 1, 2012. If these sections are amended, restated or rescinded in any manner, the provisions of this Section 6.10 automatically shall be amended, restated or rescinded in the same manner. Civil Code sections 1367.1, 1367.4 and 1367.5 may have been amended by the State Legislature, and the Board should confirm the current statutory requirements.

6.11 Assessment Exemption. Any Lot having no completed landscaping and irrigation system shall be exempt from the payment of that portion of any assessment that is for the purpose of defraying expenses and reserves directly attributable to the maintenance of the landscaping and irrigation system. The exemption shall remain in effect until the landscaping and irrigation system have been installed and the Association assumes maintenance responsibility over the landscaping.

In addition, the Declarant and any other Owner of a Lot are exempt from the payment of that portion of any assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility (including landscaping) that is not complete at the time assessments

commence. This exemption from the payment of assessments shall be in effect until the earliest of the following events:

(i) a notice of completion of the common facility has been recorded; or

(ii) the common facility has been placed into use.

6.12 Estoppel Certificate. Within ten days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or Occupant of the Owner's Lot is in violation of any of the provisions of this Declaration, the Articles, Bylaws or Rules; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year in which the request is received; and (iii) the amount of any assessments levied against the Owner's Lot that are unpaid as of the date of the statement, including any late charges, interest or costs of collection, and that, as of the date of the statement, are or may be made a lien against the Owner's Lot as provided by this Declaration. The Association may charge a fee to provide this information provided the fee shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

6.13 Restrictions on Association Funds. Pursuant to the requirements of Civil Code section 1363.04, no Member funds shall be used for campaign purposes in connection with any election of members to the Board or for company purposes in connection with any other Association election, except to the extent necessary to comply with duties of the Association imposed by law.

ARTICLE 7 - Architectural Review

7.1 Architectural Committee. An Architectural Committee may be established by the Declarant or by the Board. The Committee shall consist of three members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original final subdivision public report for the Development. Declarant's appointees need not be Members of the Association. Declarant shall have the right to appoint a majority of the members of the Committee until 90% of all the Lots in the Development have been sold or until the fifth anniversary of the issuance of the final public report for the Development, whichever occurs first. On the first anniversary date of the issuance of the original public report for the Development, the Board shall have the power to appoint one member to the Committee until 90% of the Lots of the Development have been sold or until the fifth anniversary date of the issuance of the final public report for the Development, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Committee. The Board appointees shall be Members of the Association and shall serve at the will of the Board. The term of the members shall be as designated by the Declarant or by the Board. If a member is removed from the Committee for any reason, the person appointing the member immediately shall appoint a replacement for the balance of the removed member's term. Until a replacement is named, the remaining members of the Committee shall have full authority to act on behalf of the Committee. No member of the Committee shall be entitled to any compensation for serving as a member, provided that member shall be entitled to be reimbursed by the Committee for any expenses incurred by the member in performing its duties, provided the member received prior authorization for the incurrence of the expense. All actions of the Committee shall be governed by a majority vote of the members. The Committee shall meet at such times and places as it shall designate. Meetings of the Committee shall be open to all Members of the Association. The Committee may adopt guidelines regarding the type, location, quality, size, height and other matters relating to any Improvements or landscaping to be constructed or installed on the Lots and may establish a procedure for reviewing all plans and specifications submitted to it for prior approval and shall be responsible for periodic review and modification of the guidelines. The guidelines shall comply with the use restrictions described in **Article 3**. Factors that shall be considered in approving proposed plans and specifications shall include without limitation: (i) conformity and harmony of external design with other Lots in the Development; (ii) effect of the proposed location on neighboring Lots; (iii) relation of the topography, grade and finished ground elevation to that of adjoining Lots; (iv) proper facing of elevations with respect to nearby streets and adjoining Lots; (v) overall conformity with the general purpose of the Development and the restrictions in this Declaration; and (vi) the guidelines.

7.2 Approval Requirements. None of the following actions shall take place anywhere within the Development without the prior written approval of the Committee:

(i) any construction, installation, addition, repair (including exterior painting), replacement, alteration or removal of any building, outbuilding, structure, exterior wall, roof, windows, exterior doors, exterior stairs, fence, sign, garage, trash enclosure, storage area, berms, utilities, fixtures (gas, electricity, telephone, water, or otherwise) or other Improvements visible from any other Lot or Common Area;

(ii) any planting or landscaping (including the removal of any tree);

(iii) any grading, excavation or site preparation; or

(iv) any placement or storage of building materials or temporary structures (including trailers, tents, mobile homes, offices or vehicles).

If the Committee has established landscaping guidelines, the installation or replacement of all landscaping and planting (including tree removal) shall comply with the guidelines, subject to such variances as may be approved in writing by the Committee.

The Committee may impose terms and conditions on any approval, including: (i) contractor licensing and insurance requirements (including workers compensation and liability insurance; (ii) completion and labor and material bonds or other acceptable collateral; and (iii) construction regulations such as authorized hours of construction, access restrictions, noise restrictions and clean-up requirements.

Notwithstanding anything herein to the contrary, any Owner may repaint the exteriors of any Improvements on the Owner's Lot in the same colors, remove and replace any siding or roofing materials with the same material and in the same color, and remove and replace vegetation of the same type as originally constructed or installed by Declarant or as previously approved by the Committee. In addition, any Owner may repaint the interior of the Owner's residence in any color the Owner desires or remodel the interior, provided the remodeling does not in any manner alter the exterior appearance of the building or, in the case of any residences that immediately abut an adjoining residence, result in the increase of the sound transmissions from the residence to the adjoining residence.

Any Perimeter Lot Owner may install landscaping and hardscape within the fenced portion of the Owner's Lot without the prior approval of the Committee. The installation of any Improvements, such as swimming pools, spas or gazebos, shall require prior approval of the Committee.

7.3 Architectural Rules. The Committee, from time to time, may adopt, amend and repeal rules and regulations to be known as "Architectural Rules". Pending adoption of the Architectural Rules, the provisions of this **Section 7.3** shall control the actions of the Committee and shall bind all Owners. The Architectural Rules shall interpret and implement the provisions of this **Article 7**, and shall contain the following mandatory elements and such other elements as the Committee considers necessary or advisable:

7.3.1 Application Requirements. The Architectural Rules shall set forth the necessary documents to be submitted by the applicant. Unless otherwise waived in writing by the Committee, or an authorized representative thereof, the application shall include plans and specifications prepared by an architect or a licensed building designer which adequately describe the proposed work and shall include the following to the extent applicable to the proposed work: plot layout; location of all existing and proposed Improvements; setbacks from Lot lines of all existing and proposed Improvements; proposed drainage; exterior designs; roofing and siding materials; elevations; of all Improvements; floor plans; location of all heating or cooling equipment; decking; screening devices; bearing walls and retaining walls; materials and colors; landscaping plans; construction schedule; and such other information as the Committee shall reasonably require. Landscaping plans shall include a complete and professionally prepared plan including the name, location and sizes of all proposed trees, sodding, shrubbery, lawn areas, hardscape and irrigation system. The plans shall identify any trees scheduled for removal and describe the plans for replanting trees and vegetation.

If the proposed work does not merit extensive plans and specifications, the Committee may, but shall not be obligated to, waive or modify any of the above requirements upon receipt of a written request from the applicant to do so.

An application shall not be considered a "complete application" for purposes of **Section 7.4** until the Committee has received all the required documents. After the submission of an application, the applicant may request in writing from the Committee confirmation that the application is complete. The initial confirmation request may be made no sooner than seven calendar days after the initial application has been received by the Committee. If the Committee fails to respond within 30 days of receipt of the request, the application shall be considered complete for purposes of **Section 7.4** only. The foregoing does not preclude the Committee from requesting additional documentation unless the application has been deemed approved pursuant to the provisions of **Section 7.4**. If a timely request for additional documentation is received, this documentation or the failure to receive the documentation can be considered by the Committee in rendering its decision on the proposed work.

The application, any request for confirmation of a complete application, any additional documents requested by the Committee, and any other notices or documents given to the Committee under the provisions of this **Article 7** shall be considered received by the Committee in accordance with the "receipt" procedures described in the Architectural Rules or, if there are no such procedures, on the date of personal delivery to the Association's manager, the President of the Association, or the Chair of the Committee or, if mailed, on the date receipt is acknowledged on the return receipt when mailed certified mail, return receipt requested, addressed to the President of the Association or Chair of the Committee and mailed to the principal office of the Association.

7.3.2 Application Fee. The Architectural Rules may require that the application be accompanied by a reasonable application fee to pay for any out-of-pocket costs incurred by the Committee in reviewing any plans and specifications. This fee may include the cost of retaining outside consultants for purposes of assisting the Committee in reviewing the plans and specifications. If, during the review process, the Committee determines that additional fees will be necessary to cover additional out-of-pocket costs, the Committee may require the applicant to advance any additional fees before the review can be completed. The proposed work can be denied for the sole reason that the applicant has failed to pay the required fees.

7.3.3 Guidelines and Variances. The Architectural Rules may include guidelines for any proposed work that are not inconsistent with any use restriction contained in this Declaration. The guidelines can apply to structures and/or landscaping. The guidelines may set forth specific standards regarding color, height, quality, setbacks, materials, size and such other standards as the Committee may adopt from time to time that are consistent with the approval conditions described in **Section 7.4**. The Committee, from time to time and upon request from the applicant, may grant variances from any guidelines established by the Committee. Under no circumstances shall the Committee have any authority to grant any variance that would result in violation of any use restrictions contained in this Declaration.

7.3.4 Hearings (Optional). If the Committee, in its sole discretion, elects to conduct a hearing on an application, reasonable notice of the time, place and proposed agenda for the Committee's hearing shall be distributed prior to the date of a hearing to any applicant whose application is scheduled to be heard. The applicant shall be entitled to appear at the hearing, shall be entitled to be heard on the matter, and may be accompanied by the applicant's architect, engineer and/or contractor. Notice also shall be given to such adjoining or nearby Lot Owners that the Committee reasonably believes could be affected by the proposed work. These Owners shall be entitled to attend the hearing and given reasonable opportunity to present their views on the proposed work.

7.3.5 Preliminary Approval Procedures. The Committee may adopt procedures for preliminary approval. This would enable applicants who are proposing to make Improvements an opportunity to obtain guidance and comments from the Committee prior to the expenditure of substantial sums on completed plans and specifications. Preliminary approval shall be granted if the Committee, in its sole discretion, determines that it would approve final plans as described in **Section 7.4**. Pending or denying preliminary approval, the Committee may give the applicant such directions or recommendations concerning the form and substance of the final application for approval as it may deem proper or desirable for guidance

of the applicant. Any preliminary approval granted by the Committee shall be effective for a period of 90 days from the date of issuance or such longer period as, in the Committee's discretion, may be granted. During this period, any application for final approval that presents complete plans and specifications for the proposed Improvements, consistent with the provisions of preliminary approval and otherwise acceptable under the terms of this Declaration and the Architectural Rules, shall be approved by the Committee. In no event shall any preliminary approval of a proposed Improvement constitute final approval authorizing construction of the Improvement. The purpose of the preliminary review procedure is to give the applicant a measure of security in proceeding with completion of plans and specifications for the proposed Improvement, committing funds thereto. Final approval shall be based on a complete submittal conforming to the requirements of this **Section 7.3**.

7.4 Basis for Approval. The Committee shall not approve the application unless the Committee, in its sole discretion, finds all of the following conditions have been satisfied:

(i) the applicant has complied with the application procedures described in **Section 7.3** and any additional procedures adopted by the Committee;

(ii) the proposed work is in compliance with the use restrictions contained in this Declaration, the Architectural Rules, and, unless a variance is granted, any guidelines established by the Committee under **Section 7.3.3** in effect at the time the application was submitted to the Committee;

(iii) the proposed work is in compliance with all governmental laws and ordinances (the Committee shall have no duty to independently confirm such compliance);

(iv) if the proposed work involves any exterior modifications or additions, the work is in harmony with the external design of other structures and/or landscaping within the Development and is consistent with the architectural and aesthetic standards prevailing within the Development and with the overall general plan and scheme of the Development; and

(v) if the residence immediately abuts the wall of an adjoining residence, the proposed work will not unreasonably increase the sound transmissions, resonances or reverberations to the other residence.

The Committee shall be entitled to determine that the proposed work is unacceptable even if the same or similar work previously had been approved for another Lot as long as the Committee finds that reasonable factors exist to distinguish this application from the approved work. The Committee shall be entitled to make subjective judgments and to consider the aesthetics of a proposal when the proposed work will result in Improvements and/or landscaping that can be seen from any other Lot or public right-of-way as long as the Committee acts in good faith and not unreasonably, arbitrarily or capriciously.

In approving any proposed work, the Committee may grant conditional approval on the adoption of modifications to the proposed work that in the Committee's judgment are necessary to bring the proposed work into compliance with the approval conditions contained in this **Section 7.4**. In addition, the Committee may impose reasonable construction restrictions, such as construction hours, dust controls, noise abatement measures, and such other conditions as the Committee may reasonably require, to minimize the interference with the quiet use and enjoyment of the surrounding residences during the course of construction.

In reviewing and approving plans, the Committee shall comply with the requirements of Civil Code section 1378, the applicable requirements of Civil Code section 714, the restrictions contained in **Article 3** and with all federal, State and local laws regulating the rights of handicapped persons. If there is any conflict between this **Article 7** and Civil Code section 1378, Civil Code section 1378 shall control to the extent of the conflict.

7.5 Architectural Committee's Decision. The decision on any proposed work shall be in writing. If a proposed change is disapproved by the Committee, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the Board. If disapproved, the applicant is entitled to reconsideration by the Board at an open

meeting of the Board unless the disapproval decision was made by the Board instead of the Committee or unless the Architectural Committee has the same members as the Board. Reconsideration by the Board does not constitute a dispute resolution procedure described in **Section 5.6.7**.

If the Committee fails to approve or disapprove any application or fails to request additional information within 60 days of receipt of either the complete application or any advance fees required by the Committee, whichever shall occur later, the application shall be deemed approved unless a written extension is executed by the Person submitting the application and by the Committee. The burden shall be on the applicant to establish that the Committee did receive the complete application and/or advance fees and to establish the date of receipt.

7.6 Completion of Work. On receipt of approval, the Owner shall commence the work as soon as reasonably practicable and shall diligently pursue the completion of the work. If the work is not commenced within 90 days after receipt of approval or completed within 180 days or such later date as the Committee shall approve in writing, the approval automatically shall be deemed revoked and no further work shall be done without again obtaining the written approval of the Committee as described herein. The work shall be done in strict compliance with the approved plans except for minor non-material changes as may be necessary during the course of construction.

7.7 Non-liability. The Association, the Committee, the Declarant, and the other Lot Owners, and their respective successors or assigns, shall not be liable to any Person submitting plans to the Committee for approval or to any other Lot Owners or Occupants by reason of any act or omission arising out of or in connection with the approval or disapproval of any plans or specifications. Approval shall not constitute any warranty or representation by the Committee or its members that the plans satisfy any applicable governmental law, ordinance or regulation or that any Improvement constructed in accordance with the plans shall be fit for the use for which it was intended and safe for use and occupancy. Applicants shall make their own independent verifications of the foregoing and shall not rely on the Committee or its members in any manner in this regard.

7.8 Enforcement. If any Owner or Occupant violates the provisions of this **Article 7**, the Declarant or the Association, in addition to levying monetary fines and penalties and in addition to any other remedy available at law or equity, may bring an action to compel compliance, including an action for a court order mandating the removal of any Improvement or other property constructed or installed in violation of the provisions of this **Article 7**. In such action, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

7.9 Board's Authority. If for any reason the Committee is not established or not active, the Board shall perform the duties and shall have the rights of the Committee as described in this **Article 7**.

7.10 Governmental Approval. Before commencement of any addition of any Improvement or any alteration to any Improvement approved by the Committee, the Owner shall comply with all the appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required from any governmental entity with appropriate jurisdiction.

7.11 Declarant Exemption. Declarant, or its successor or assign, shall not be subject to the approval requirements of this **Article 7** in connection with the construction or alteration of any Improvement within the Development or the installation of any landscaping, provided that this exemption shall expire on the third anniversary date of the recordation of this Declaration. In addition Declarant, or its successor or assign shall not be subject to the approval requirements of this **Article 7** in connection with any repairs or modifications made to any Improvements as may be required by law or pursuant to an agreement with any Lot Owner or the Association.

ARTICLE 8 - Insurance

8.1 Liability Insurance. The Association shall obtain and maintain the following liability policies:

8.1.1 Commercial General Liability Policy: A commercial general liability insurance policy insuring the Association, its manager, Declarant, the Association's directors and officers, and the Owners and Occupants of the Residential Lots and their respective family members against bodily injury or property damage from an accident or occurrence within the Common Area. Subject to the terms and conditions of the policy, the policy also shall cover bodily injury or property damage from an accident or occurrence within any Lot related to any maintenance or repair work required to be performed on any Lot by the Association pursuant to this Declaration, including, but not limited to, work performed in any Common Area. The policy shall include, if obtainable, cross liability or severability of interest coverage. The limits of such insurance shall not be less than $1,000,000 covering all claims for bodily injury and property damage arising out of a single occurrence. The $1,000,000 coverage may be a combination of primary and excess policies. Such insurance shall include coverage against liability for owned, non-owned and hired automobiles and other liability or risk customarily covered with respect to projects similar in construction, location and use and shall require at least 30 days' written notice to the Association before the policy can be cancelled or substantially modified unless the policy is being replaced with a policy of equivalent coverage. The policy shall be primary and noncontributing with any other liability policy covering the same liability.

8 1 2 Directors and Officers Liability Policy: A directors and officers liability policy containing such terms and conditions that are normally and customarily carried for directors and officers of a residential association and in sufficient amounts to satisfy the insurance requirements of Civil Code section 1365.7 or any successor statute thereto.

8.2 Association Property Insurance. The Association, in the sole discretion of the Board, may obtain and maintain a property insurance policy on the Common Area Improvements and Association personal property insuring the Improvements maintained by the Association against losses from fire and other hazards normally covered by a "Special Form" policy or its equivalent. The insurance, if obtained, shall be in such amounts and containing such terms and conditions as the Board from time to time may select after consultation with a qualified insurance consultant.

8.3 Insurance Rating and Cancellation. The insurance company providing the Association's insurance under **Sections 8.1** and **8.2**, if applicable, shall have a A.M. Best rating of not less than A:VII if licensed to do business in the State of California and a rating of not less than A:X if not licensed to do business in the State of California. If the A.M. Best ratings are no longer available, the insurance ratings shall be based on equivalent ratings issued by an independent insurer company rating entity used by financial institutions for insurance rating purposes. All of the policies of insurance maintained by the Association shall contain a provision that such policy or policies shall not be cancelled or terminated, or expired by their terms, or not renewed without 30 days' prior written notice to the Board, the Owners and their respective first Mortgagees (provided that such Owners or Mortgagees have filed written requests with the carrier for such notice) and every other Person in interest who shall have requested such notice of the insurer.

8.4 Board's Authority to Revise Insurance Coverage. The Board shall have the power and right to deviate from the insurance requirements contained in this **Article 8** in any manner that the Board, in its discretion, considers to be in the best interests of the Association, provided that the Board shall maintain the minimum insurance requirements set forth in Civil Code section 1365.7 or in any successor statute thereto. If the Board elects to materially reduce the coverage from the coverage required in this **Article 8**, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least 30 days prior to the effective date of the reduction.

The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Each Owner, by acceptance of a deed to a Lot, irrevocably appoints the Association or the Insurance Trustee, described in **Section 8.6**, as that Owner's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing and taking other related actions in connection with any insurance policy maintained by the Association and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Owner had personally taken the action.

8.5 Periodic Insurance Review. The Board periodically (and not less than once every three years) shall review the Association's insurance policies and make such adjustments to the policies' terms and conditions as the Board considers to be in the best interests of the Association. If applicable, the review shall include an appraisal by a qualified appraiser of the current replacement costs of all covered property under the Association's property insurance policy unless the Board is satisfied that the current dollar limit of the property insurance policy, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs.

8.6 Insurance Trustee. All property insurance proceeds payable to the Association under any property insurance policy procured by the Association as described in **Section 8.2**, subject to the rights of Mortgagees under **Article 10**, may be paid to a trustee as designated by the Board to be held and expended for the benefit of the Owners and Mortgagees as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the county in which the Development is located that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Association will have the duty to contract for such work as provided for in this Declaration.

8.7 Individual Property Insurance Policies. Each Owner shall obtain and maintain, at the Owner's expense, a property insurance policy which provides in the minimum coverage against losses caused by fire and all other hazards normally covered under a "special form" policy or its equivalent in an amount not less than 90% of the replacement cost of the insurable Improvements on the Lot. The policy shall contain the following endorsements or their equivalents: agreed amount, inflation guard, ordinance or law, and replacement cost. The policy shall provide liability coverage in such amounts and for such acts or omissions as are normally and customarily included in homeowners property insurance policies of the types required herein. Nothing herein imposes any duty or obligation on the Association or any directors, officers or agents thereof to confirm that Owners are carrying the insurance required under this **Section 8.7**.

Each Owner is strongly advised to seek the advice of a qualified insurance consultant regarding: (i) the amount of personal liability and personal property insurance coverage the Owner should maintain and (ii) the availability of loss assessment insurance coverage.

8.8 Other Insurance. In addition to the policies described in **Sections 8.1 and 8.2**, the Association may obtain and maintain the following insurance:

(i) Workers Compensation Insurance to the extent required by law; and

(ii) such other insurance as the Board in its discretion considers necessary or advisable.

ARTICLE 9 - Damage, Destruction or Condemnation

9.1 Repair or Reconstruction. If an Improvement on any Lot is damaged or destroyed by fire or other casualty, the Owner of such Lot shall repair or reconstruct the Improvement to substantially the same condition and appearance as existed immediately before the damage or destruction, subject to such modifications as may be approved by the Architectural Committee or as required by law.

If any Improvement maintained by the Association is damaged or destroyed by fire or other casualty, the Association shall repair or reconstruct the Improvement substantially in accordance with the original as-built plans and specifications subject to such modifications as may be required by law. Notwithstanding the foregoing but subject to the provisions of **Section 9.3**, the Association will not be required to reconstruct or

restore the damaged or destroyed Improvement if there are not available insurance proceeds and reserves sufficient to pay for at least 85% of the costs of such repairs or reconstruction and three-fourths of the total voting power of the Association's residing Members and their first lenders vote against such repair or reconstruction.

9.2 Reconstruction Contract. If the Common Area Improvements are to be rebuilt or restored, the Board shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the Common Area Improvements in accordance with the original plans and specifications, subject to such changes as may be approved by the Architectural Committee or required by law, and shall award the repair and reconstruction work to the lowest qualified bidder unless the Board in its reasonable judgment elects to select a higher bidder. The Association shall have the authority to enter into a written contract with the contractor or contractors for the repair and reconstruction, and the insurance proceeds held by the Association or insurance trustee shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Association to take all steps necessary to ensure the commencement and completion of authorized rebuilding at the earliest possible date.

9.3 Minor Repair and Reconstruction and Deductibles. The Association shall have the duty to repair and reconstruct Common Area Improvements within the Development without the requirement of any consent of the Owners and irrespective of the amount of available insurance proceeds in all cases of partial destruction when the estimated cost of repair or reconstruction does not exceed $20,000, which amount shall be increased 3% per annum on a compounded basis commencing on the anniversary date of the recordation of this Declaration and each anniversary date thereafter. The Association may levy a special assessment for the cost of repairing and reconstructing Improvements to the extent insurance proceeds are unavailable pursuant to the procedures described in **Article 6**.

9.4 Completion of Repair or Reconstruction. The repair or reconstruction of any Improvement shall commence no later than 90 days after the date of such damage or destruction and shall be completed no later than 180 days subject to extensions because of delays that are beyond the control of the Association. The Association immediately shall take such steps as may be reasonably required to secure any hazardous condition resulting from the damage or destruction and to screen any unsightly views.

9.5 Election Not to Rebuild. If any Common Area Improvement is not repaired or reconstructed in accordance with the foregoing, any Association's obligation to maintain, repair or insure the Improvements shall terminate and any available insurance proceeds from any property insurance policy maintained by the Association shall be disbursed to the Owners, in which case the proceeds shall be disbursed equally among all the Lots, subject to the rights of the Owner's Mortgagees after first applying the proceeds to the cost of mitigating hazardous conditions on the property, screening the area from unsightly views, and complying with all the applicable requirements of governmental agencies.

9.6 Condemnation. If any action for condemnation of all or any portion of the Common Area is proposed or threatened by any governmental agency having the right of eminent domain, then, after approval by vote or written consent of Members holding at least 51% of the total voting power of the Association and with the consent of the first mortgagees as may be required herein, the Common Area or a portion of it may be sold and conveyed to the condemning authority by the Association or its designees acting as the attorney-in-fact of all the Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Lot in the Development grants to the Board, and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board Proceeds of any such sale shall be allocated equally among the Lots and distributed to each Owner and their Mortgagees as their respective interests may appear. If the Common Area or any portion of it is not sold but is instead taken, the award shall be apportioned among the Owners and their respective Mortgagees by the terms of the judgment of condemnation; and if not so apportioned, then the award shall be allocated equally among the Lots and distributed equally to each Owner and their Mortgagees as their respective interests may appear.

Notwithstanding anything herein to the contrary, the Board may elect to retain all or any portion of any condemnation proceeds with the Association's funds in lieu of distribution.

ARTICLE 10 - Rights of Mortgagees

10.1 Lender Definitions. Unless the context indicates otherwise, the following terms as used in this **Article 10** shall have the definitions contained in this **Section 10.1**. An "institutional" Mortgagee is a first Mortgagee that is: (i) a federally or state chartered or licensed bank or savings and loan association; (ii) a mortgage company or other entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property or investing in such loans; (iii) an insurance company; (iv) a federal or state agency or instrumentality including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; or (v) an insurer or governmental guarantor of a first Mortgage including the Federal Housing Administration and the Veterans Administration. A "first Mortgage" or "first Mortgagee" is one having a priority as to all other Mortgages encumbering the same Lot or other portions of the Development.

10.2 Encumbrance. Any Owner may encumber his or her Lot with a Mortgage or Mortgages.

10.3 Rights of Institutional Mortgagees. Any institutional Mortgagee who obtains title to a Lot pursuant to the remedies provided in the first Mortgage, including judicial foreclosure or nonjudicial foreclosure under a power of sale (but excluding voluntary conveyance to the first Mortgagee), shall take the Lot free of any obligation to pay any assessments that were delinquent as of the date the institutional Mortgagee acquired title to the Lot, including any interest, penalties or late charges in connection therewith. The institutional Mortgagee as Owner of the Lot shall be obligated to pay any assessments that were not delinquent as of the date the institutional Mortgagee took title to the Lot and all future assessments levied against the Lot as long as the institutional Mortgagee remains in title, including any special assessments levied by the Association to raise operating or reserve funds needed because of uncollected delinquent assessments, as long as the special assessment is allocated among all the Lots as provided in **Section 6.9**.

10.4 Subordination. Any assessment lien established under the provisions of this Declaration is expressly made subject to and subordinate to the rights of any Mortgage that encumbers all or any portion of the Development or any Lot made in good faith and for value and recorded before the recordation of a notice of delinquent assessment. No assessment lien shall in any way defeat, invalidate or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates in writing its interest to such lien. If any Lot is encumbered by a Mortgage made in good faith and for value, the foreclosure of any assessment lien cannot operate to affect or impair the lien of any Mortgage recorded prior to the recordation of the notice of delinquent assessment. Upon the foreclosure of any prior-recorded Mortgage, any lien for delinquent assessment shall be subordinate to the Mortgage lien; and the purchaser at the foreclosure sale shall take title free of the assessment lien. By taking title, the purchaser shall be obligated to pay only assessments or other charges that were not delinquent at the time the purchaser acquired title or that were levied by the Association on or after the date the purchaser acquired title to the Lot Any subsequently-levied assessments or other charges may include previously-unpaid assessments, provided all Owners, including the purchaser and its successors and assigns, are required to pay their proportionate share of such unpaid assessments.

10.5 Breaches. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith or for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee sale or otherwise.

ARTICLE 11 - Amendments

11.1 Amendment Before Close of First Sale. Before the close of the first sale of a Lot in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended in any respect or rescinded by Declarant by recording an instrument amending or rescinding this Declaration. Before the close of the first sale of a Lot in a subsequent phase of the Development to a purchaser other than Declarant or entity controlled by Declarant, any declaration of annexation recorded

pursuant to **Article 14** with respect to such phase may be amended in any respect or rescinded by the Declarant by recording an instrument amending the declaration of annexation or rescinding the declaration of annexation. If the declaration of annexation is rescinded, the phase shall be de-annexed from the Development and no longer subject to this Declaration. The amending or rescinding instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the county in which the Development is located. For purposes herein, a Person is considered controlled by Declarant if the Declarant holds 50% or more of the capital and profit interests if a partnership or limited liability company, 50% or more of the voting shares if a corporation, and 50% or more of the beneficial interests if a trust.

11.2 Amendment After Close of First Sale. After the close of the first sale of a Lot in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended or revoked in any respect with the vote or written consent of the holders of not less than a majority of the voting rights of each class of Owners or, if a single class of Owners is then in effect, by the vote or written consent of not less than a majority of all votes and a majority of all votes excluding Declarant. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Owners in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Owners shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, Mortgagee, Owner or other person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Notwithstanding anything herein to the contrary, any provision in this Declaration that specifically confers rights or benefits on Declarant as the Declarant and not on any other Owner may not be amended or rescinded without the prior written consent of Declarant except as expressly authorized by Civil Code section 1355.5. The amendment is effective when it has been approved by the appropriate percentage of Owners as required herein, the approval has been certified in a writing executed and acknowledged by the officer designated in this Declaration or by the Association for that purpose (or, if no one has been designated, the President of the Association), and the amendment and certification have been recorded in the county in which the Development is located.

11.3 Corrections. Notwithstanding anything herein to the contrary, Declarant reserves the right as the attorney-in-fact for each Lot Owner to record an amendment or appropriate instrument of correction to correct any errors in this Declaration, any Declarations of Annexation, or any exhibits thereto, and the consent of neither the Association nor any Lot Owner shall be required provided that if the correction affects the size, location or access or use rights to any Lot, the consent of that Lot Owner shall be required.

11.4 Mortgagee Reserved Amendment Rights. Notwithstanding anything herein to the contrary, Declarant reserves the right to amend this Declaration as may be necessary or advisable in order to include provisions that satisfy the requirements of the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal Housing Administration (FHA) and/or the Veterans Administration (VA). The Association and each Owner shall fully cooperate in the delivery, execution and recordation of any documents necessary to effect the amendments.

ARTICLE 12 - Declarant Disputes

Any claim, dispute or other controversy between: (i) the Association and/or any Owner(s) and (ii)the Declarant or any affiliated general contractor or affiliated contractor who is a "builder" within the meaning of Civil Code section 911, or any director, officer, member, shareholder, partner, employee or agent thereof (individually and collectively the "Declarant" for purposes of this **Article 12**) and/or any non-affiliated general contractor, non-affiliated contractor, subcontractor, material supplier, individual product manufacturer, design professional or any other Person that provided materials or services to the Development on behalf of Declarant, relating to this Declaration, the use, condition, design, specifications, surveying, grading, construction, installation and/or operation of any improvements or landscaping located within the Development, including any claims made under Civil Code sections 896 and 897 (individually and

collectively the "Claim") shall be subject to the claims procedures set forth in **Exhibit D** attached hereto and incorporated herein.

The claims procedures in **Exhibit D** do not apply to any action taken by the Association to enforce delinquent assessments against Declarant, which shall be governed by **Section 6.10** of this Declaration.

ARTICLE 13 - Miscellaneous Provisions

13.1 Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

13.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions or any portion thereof shall not invalidate any other provision or any portion of the provisions not found invalid or unenforceable.

13.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and nonexclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver of the remedy.

13.4 Discrimination. No Owner shall execute or cause to be recorded any instrument that imposes a restriction on the sale, leasing or occupancy of the Owner's Lot on the basis of race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in Government Code section 12955(p), or ancestry.

13.5 Notification of Sale. No later than five days after the closing of the sale of any Lot, the new Owner shall notify the Association of such sale. Such notification shall be in writing and shall set forth the name and address of the new Owner and the date of sale.

13.6 Reservation or Grant of Easements. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in any deed to any Lot.

13.7 Incorporation of Exhibits. All exhibits referred to herein and attached to this Declaration are incorporated herein by reference as fully set forth herein

13.8 Enforcement Rights and Remedies. The covenants, restrictions, rights and duties contained in this Declaration constitute covenants running with the land and equitable servitudes that benefit and bind each Lot in the Development, each Owner, and each successive Owner thereto, and may be enforced by the Association, the Declarant or any Owner in any legal or equitable action pursuant to the procedures described herein. Declarant may enforce any covenants, restrictions, and rights set forth in this Declaration that expressly benefit Declarant without regard to whether Declarant owns any Lots in the Development.

Each Owner acknowledges and agrees that if any Person breaches any of the restrictions contained herein, money damages may not be adequate compensation. As a result, each Owner agrees that in the event of a breach, the non-breaching party, in addition to any other remedy available at law or equity, shall be entitled to equitable relief, including, but not limited to, an order compelling the breaching party to perform an act which the party is required to perform under this Declaration or which is necessary to bring the breaching party or the breaching party's Lot into compliance with restrictions contained herein or prohibiting the breaching party from performing any act that violates the restrictions.

Notwithstanding anything herein to the contrary, the Association shall have the exclusive right to levy assessments and to take appropriate action to enforce delinquent assessments, including imposition of an assessment lien and the foreclosure of the lien. Furthermore, the Association shall have the primary responsibility for enforcing the restrictions contained in **Article 3** and the architectural provisions contained

in **Article 7**. If any Owner or Occupant desires the Association to take any enforcement action, the Owner or Occupant shall notify the Association in writing of the alleged violation. On receipt, the Board shall review the matter and shall determine what action, if any, to take. Neither the Board nor the Association or any director, officer or agent thereof shall be liable if the Board in the exercise of its judgment elects not to take any action. To the extent applicable, the Board shall comply with the due process requirements described in this Declaration. If within 90 days after receipt of the notice the Board has failed to take any corrective action and the alleged violation has not been cured and is continuing, any Owner may bring an action on the Owner's behalf for appropriate legal and/or equitable relief. In such action, the Owner shall bear his or her own costs and attorneys' fees, provided that the prevailing party in such action shall be entitled to recovery of such costs and fees.

Prior to the commencement of any action by the Association, the Declarant or Owner to enforce the Governing Documents, the Davis-Stirling Common Interest Development Act (Civil Code sections 1350-1378) or the Nonprofit Mutual Benefit Corporation Law (Corporations Code sections 7110-8910), the Association, the Declarant or the Owner shall comply with the requirements of Civil Code sections 1369.510 through 1369.560 to the extent applicable.

13.9 Term. The term of this Declaration shall be for a period of 50 years from the date on which this Declaration is recorded in the records of the county in which the Development is located. After that time, this Declaration and each of its restrictions and covenants and other provisions automatically shall be extended for successive ten-year periods unless this Declaration is rescinded by the written consent of Owners holding a majority of the total voting power of the Association. The rescission shall be effective on recordation of a notice of rescission in the records of the county in which the Development is located.

13.10 Reserved Rights of Declarant. Declarant is recording this Declaration as part of the construction of a residential development. No covenant or restriction contained herein shall be applied in any manner that would unreasonably interfere with Declarant's rights to complete the construction of the Improvements and to sell the Improvements. The rights retained by Declarant during the construction and sales period include, but are not limited to, the right to:

(i) maintain construction equipment, personnel and materials within the Development;

(ii) use such portions within the Development as may be necessary or advisable to complete the construction or sales;

(iii) maintain construction and/or sales offices within the Development and appropriate parking to accommodate the foregoing;

(iv) maintain sale signs or other appropriate advertisements within the Development ;

(v) maintain model homes for viewing by prospective purchasers; and

(vi) allow prospective purchasers access to the Development to inspect any Common Area or any model homes.

13.11 Assignment by Declarant. Declarant may assign all or any portion of its rights and delegate all or any portion of its duties to any other Person; and from and after the date of such assignment and/or delegation, the Declarant shall have no further rights and/or duties hereunder with respect to the rights assigned and duties delegated. Any successor or assignee of rights and duties of the Declarant shall execute an instrument assuming the rights and duties of the Declarant assigned and delegated hereunder and thereafter shall be entitled to exercise all the rights of Declarant so assigned and shall be obligated to perform all the Declarant's duties so delegated, provided such successor or assignee shall not be liable in any manner for any act or omission committed or omitted by the Declarant before the date the successor or assignee succeeded to the rights of the Declarant hereunder.

13.12 Attorneys' Fees. Except as provided in **Article 12**, in the event of any litigation or alternative dispute resolution procedure arbitration regarding the rights or duties under the Governing Documents of the

Association or any Member, the prevailing party in such proceeding, in the discretion of the judge or decision-maker, shall be entitled to recover costs, including reasonable attorneys' fees.

13.13 Notices. Any notice permitted or required by this Declaration, the Articles, Bylaws or Rules shall be considered received on the date the notice is personally delivered to the recipient or 48 hours after the notice is deposited in the United States mail, first-class, registered or certified, postage prepaid and addressed to the recipient at the address that the recipient has provided the Association for receipt of notice or, if no such address was provided, at the recipient's Lot address in the Development.

13.14 No Enforcement Waiver Failure to enforce a restriction in the past in and of itself shall not constitute a defense to any action brought against any Owner for violation of any restriction contained herein. Each Owner, by acceptance of a deed to a Lot in the Development, acknowledges that the enforcement of these restrictions may vary as a result of different Owners, Boards or Architectural Committees, changing conditions, or other reasons and agrees that the failure of any Owner, Board or Committee to enforce any particular restriction, even if such failure is for an extended period of time, shall not in any manner restrict or estop the right of any Owner, Board or Committee to enforce these restrictions at any future time.

13.15 Statutory Reference. Any reference to a governmental statute in this Declaration includes any amendments to the statute. If the statute is replaced by an equivalent statute, the equivalent statute shall be the applicable statute.

ARTICLE 14 - Annexation

14.1 Automatic Annexation. The real property described in Exhibit A or any portion of it may be annexed at anytime into the Development in one or more phases and made subject to this Declaration at the election of the Declarant (or by the successors in title to such real property and to whom Declarant has assigned annexation rights). Declarant reserves the right to determine the number of phases, the number of lots in a phase, and the building types in a phase. Declarant makes no representations or warranty that any subsequent phase will be annexed into the Development and has no obligation to annex any subsequent phase into the Development. Each election shall be made by the recording of a declaration of annexation. The declaration of annexation shall describe the real property to be annexed and shall state that it is being executed pursuant to the terms of this Declaration for the purpose of annexing the property described in the declaration of annexation into the Development and to subject the property to the terms of this Declaration. Any declaration of annexation recorded in accordance with the terms of this section shall be conclusively presumed valid in favor of all Persons who relied on it in good faith. In recording the declaration of annexation in accordance with the provisions of this Declaration, the real property described in the declaration of annexation shall be a part of the Development and subject to the provisions of this Declaration and to the rights and powers of the Association pursuant to the terms of this Declaration, the Articles and the Bylaws; and thereafter all Owners of Lots constituting a portion of the annexed real property shall automatically be Members of the Association with voting rights commencing on the date regular assessments commence. Regular and special assessments with respect to the annexed property shall commence at the time and to the extent described in **Section 6.7**.

Declarant reserves the right to rescind any declaration of annexation before Declarant has transferred title to any Lot in the declaration of annexation to any purchaser under the authority of a final subdivision public report issued by the California Department of Real Estate. The rescission shall be effective on the date a notice of rescission is recorded in the records of Santa Clara County, California. From and after this rescission, the property described in the declaration of annexation shall no longer be subject to the covenants, rights, duties, benefits or burdens set forth in this Declaration except as otherwise provided in the notice of rescission. Any declaration of annexation may be amended or corrected in the manner described in **Article 11**.

Declarant expressly reserves for the benefit of all property that may from time to time be covered by this Declaration reciprocal easements of use, enjoyment, access, ingress and egress. Such easements

may be used by Declarant, its successors, purchasers and all Owners of Lots, their guests, tenants and invitees for sidewalks, walkways, vehicular access and such other purposes reasonably necessary to the use and enjoyment of all the Lots in the Development. The declaration of annexation may contain complementary additions, amendments and modifications to this Declaration necessary to reflect the different character, if any, of the real property being annexed which are not consistent with the general scheme of this Declaration or which are required by any institutional Mortgagee as defined in **Section 10.1** to make Lots in the Development eligible for mortgage, purchase, guarantee or insurance.

If the annexed property has been rented for at least one year before the closing of the first Lot in the annexed phase, the Declarant shall pay the Association appropriate amounts for reserves for replacement or deferred maintenance of Common Area Improvements or other Improvements that the Association is required to maintain in the annexed phase.

14.2 Annexation by Approval. Except for the automatic annexation provision contained in **Section 14.1**, no additional real property shall be annexed into the Development without the approval of Members holding two-thirds of the total voting power of the Association other than Declarant and such approval of Mortgagees as may be required herein.

THIS DECLARATION is executed this 10th day of April, 2012.

SUMMERHILL WINCHESTER LLC,
a California limited liability company

By: SUMMERHILL HOMES LLC,
a California limited liability company,
Its manager

By: _____
Name: KATIA KAMANGAR
Title: SR. VICE PRESIDENT

By: _____
Name: Jason R. Biggs
Title: Assistant Secretary

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

On 4/10/12 before me, JUDY LEPULU a Notary Public, personally appeared KATIA KAMANGAR AND JASON R. BIGGS

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 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

JUDY LEPULU, notary Public in County of Santa Clara
Name (typed or printed), Notary Public in State of California
and for said County and State.

JUDY LEPULU
Commission # 1877666
Notary Public - California
Santa Clara County
My Comm. Expires Jan 22, 2014

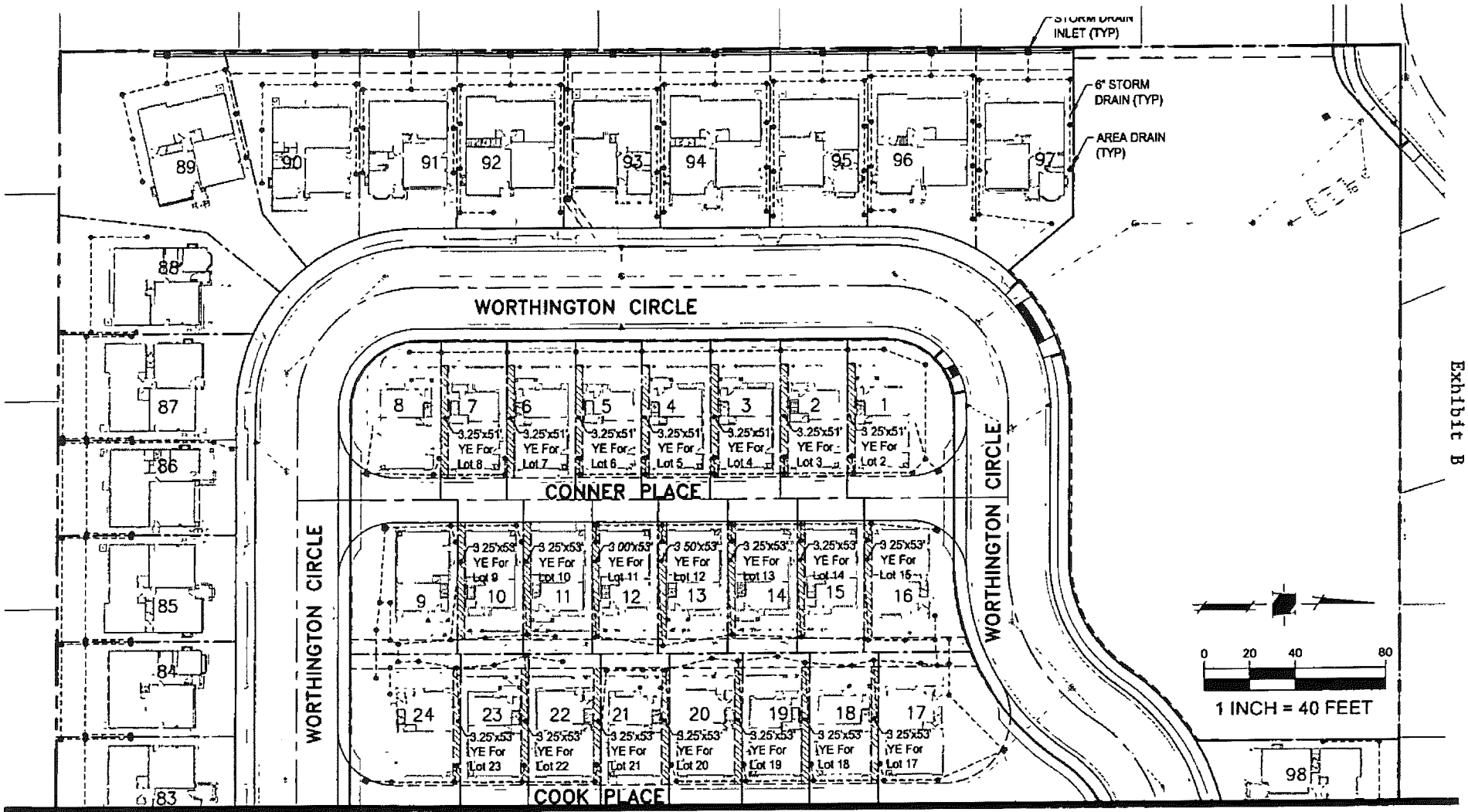
(seal)

EXHIBIT A - Property That May Be Annexed

Lots 1 through 64 and 73 through 110 and Common Area Lot A shown on the map entitled "Tract 9972" recorded on April 29, 2009, in Book 832 of Maps at pages 1 through 5 in the records of Santa Clara County, California.*

*Declarant at its discretion reserves the right to establish the order of phases; the number of Common Area Lots or Residential Lots in a phase, the number of phases, or the building types in a phase.

Exhibit B



SummerHill Homes SIDEYARD EASEMENT EXHIBIT

Vanderbilt Site

HMH#3081.04 | Drawn AL | Review DW | Scale 1" = 40' | Date 11 02 11

1570 Oakland Road
San Jose, CA 95131
(408) 487-2200
HMHca.com

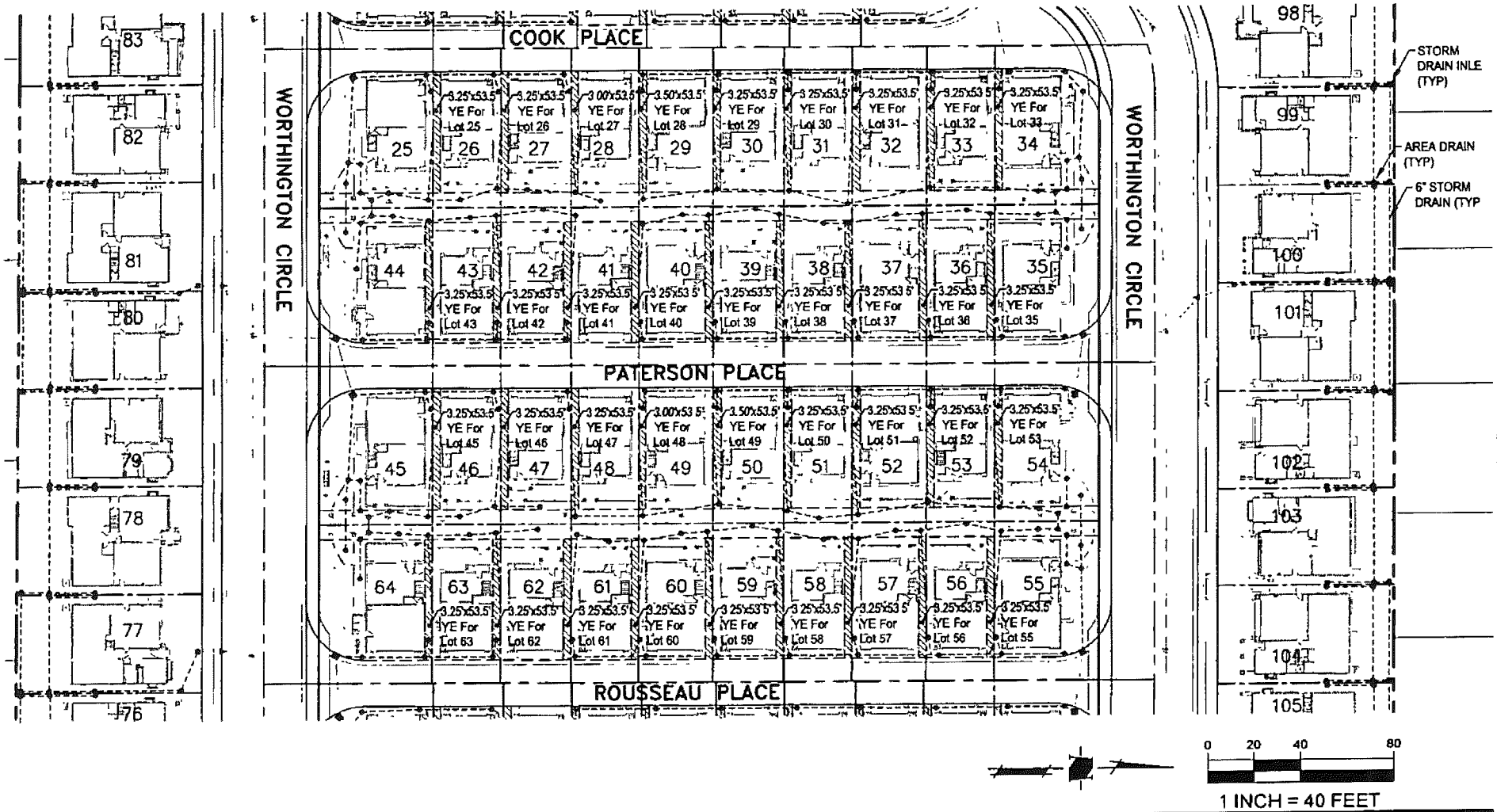


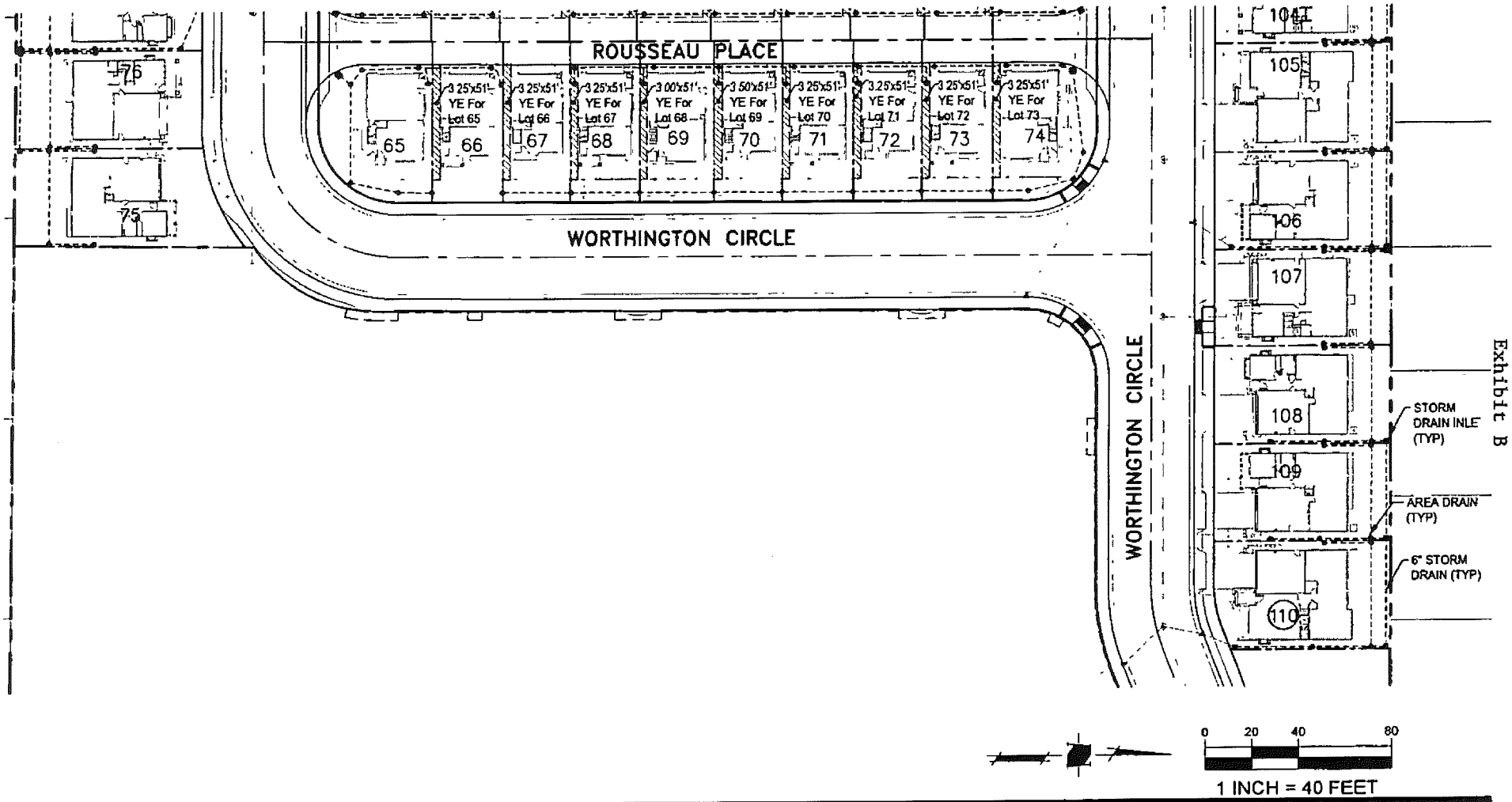
Exhibit B

SummerHill Homes **SIDEYARD EASEMENT EXHIBIT**

Vanderbilt Site

HMH#3081 04 | Drawn AL | Review DW | Scale 1" = 40' | Date 11 02.11

HMH
1570 Oakland Road
San Jose, CA 95131
(408) 487-2200
HMHca com



0 20 40 80

1 INCH = 40 FEET

Exhibit B

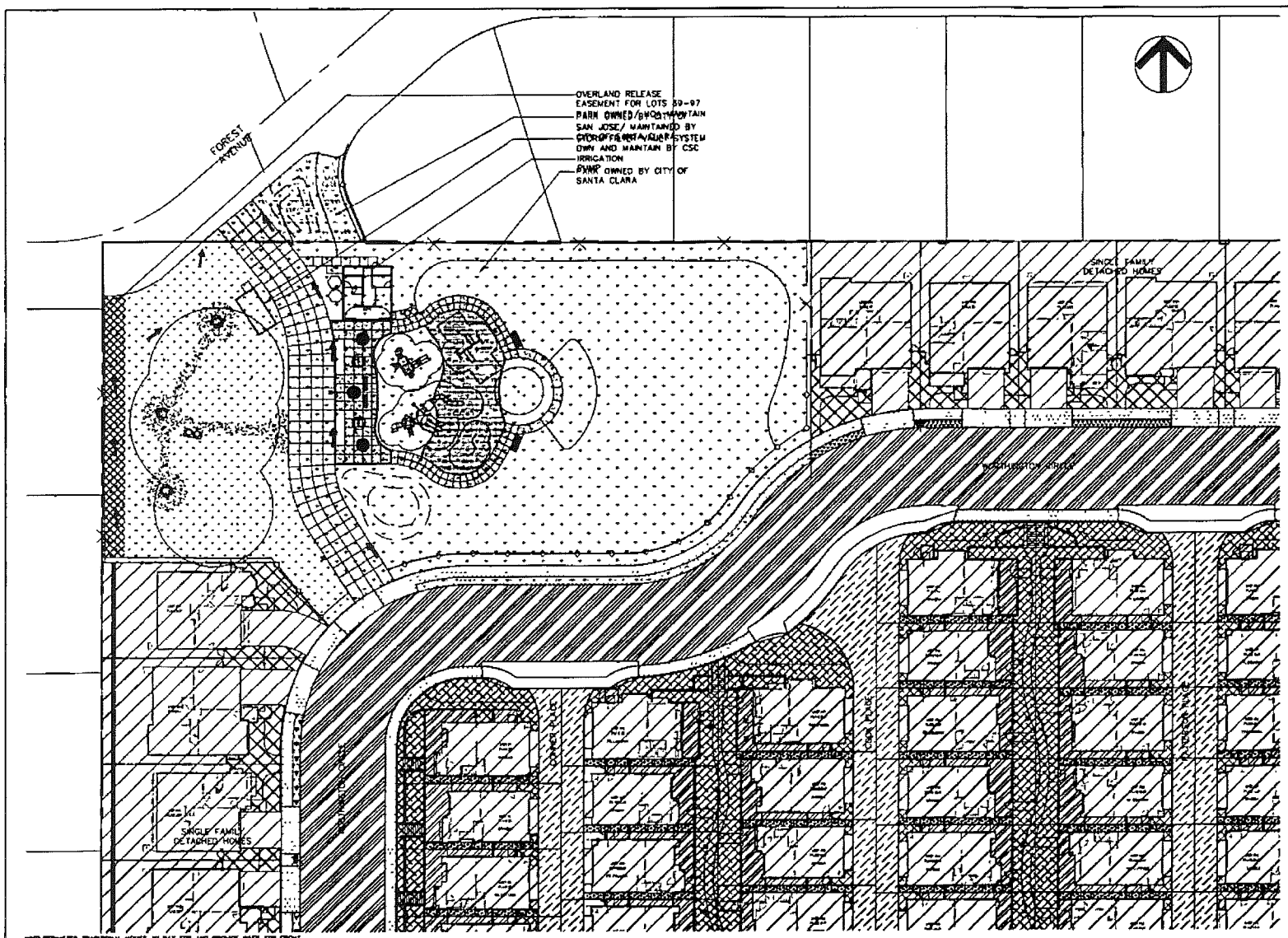
SummerHill Homes SIDEYARD EASEMENT EXHIBIT

Vanderbilt Site

HMH#3081 04 | Drawn AL | Review DW | Scale 1" = 40' | Date 11 02 11

HMH
1570 Oakland Road
San Jose, CA 95131
(408) 487-2200
HMHca com

EXHIBIT C - Association Maintenance Areas



INNER PERIMETER TRADITIONAL HOMES TO PAY FOR AND PROVIDE WALK FOR FRONT YARD LANDSCAPING.

BY	DATE	REVISIONS

SUMMERHILL HOMES
COMMUNITIES OF DISTINCTION

SummerHill Homes
777 California Avenue
Palo Alto, California 94304
www.summerhillhomes.com

Date:	03 29 12
Scale:	1"=20'
Designed:	
Drawn:	EB
Checked:	WS
Proj. Engr:	AL
File: HOA MAIN EXB.DWG	

HMH

Land Use Entitlements
Land Planning
Landscape Architecture
Civil Engineering
Utility Design
Land Surveying
Geotechnical
Construction Compliance

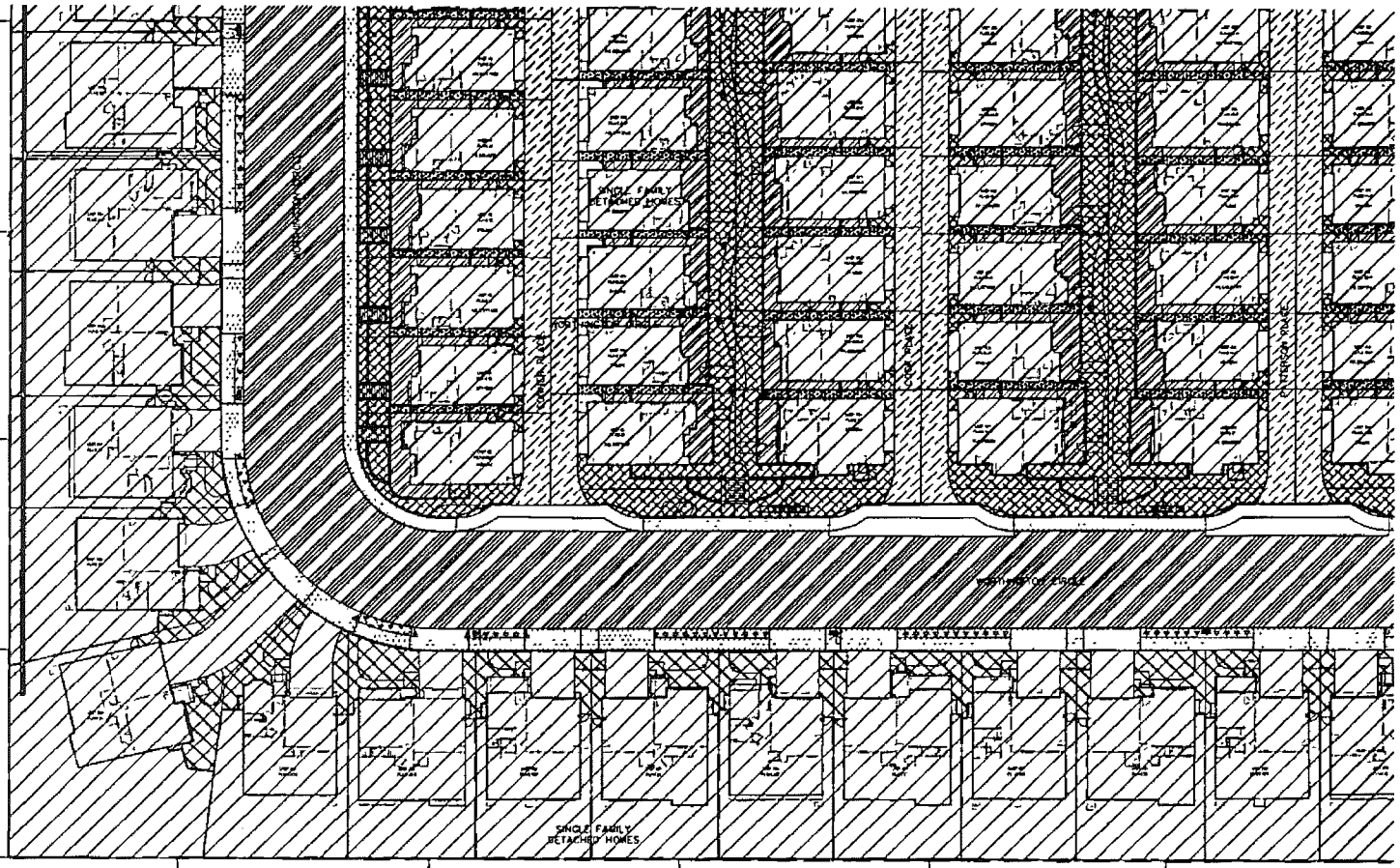
HOA MAINTENANCE EXHIBIT

Midtown Village, Santa Clara, California

Sheet 1.0

JOB NUMBER 3081.02

EXHIBIT C - Association Maintenance Areas



NOTE: PERIMETER TRADITIONAL HOMES TO PAY FOR AND PROVIDE WATER FOR FRONT YARD LANDSCAPING.

BY	DATE	REVISIONS

SUMMERHILL HOMES
COMMUNITIES OF DISTINCTION

SummerHill Homes
777 California Avenue
Palo Alto, California 94304
www.summerhillhomes.com

Date:	03.29.12
Scale:	1"=20'
Designed:	
Drawn:	EB
Checked:	WS
Proj. Engr:	AL
File: HOA MAIN EXH.DWG	

HMH

Land Use Entitlements
Land Planning
Landscape Architecture
Civil Engineering
Utility Design
Land Surveying
Stormwater Compliance

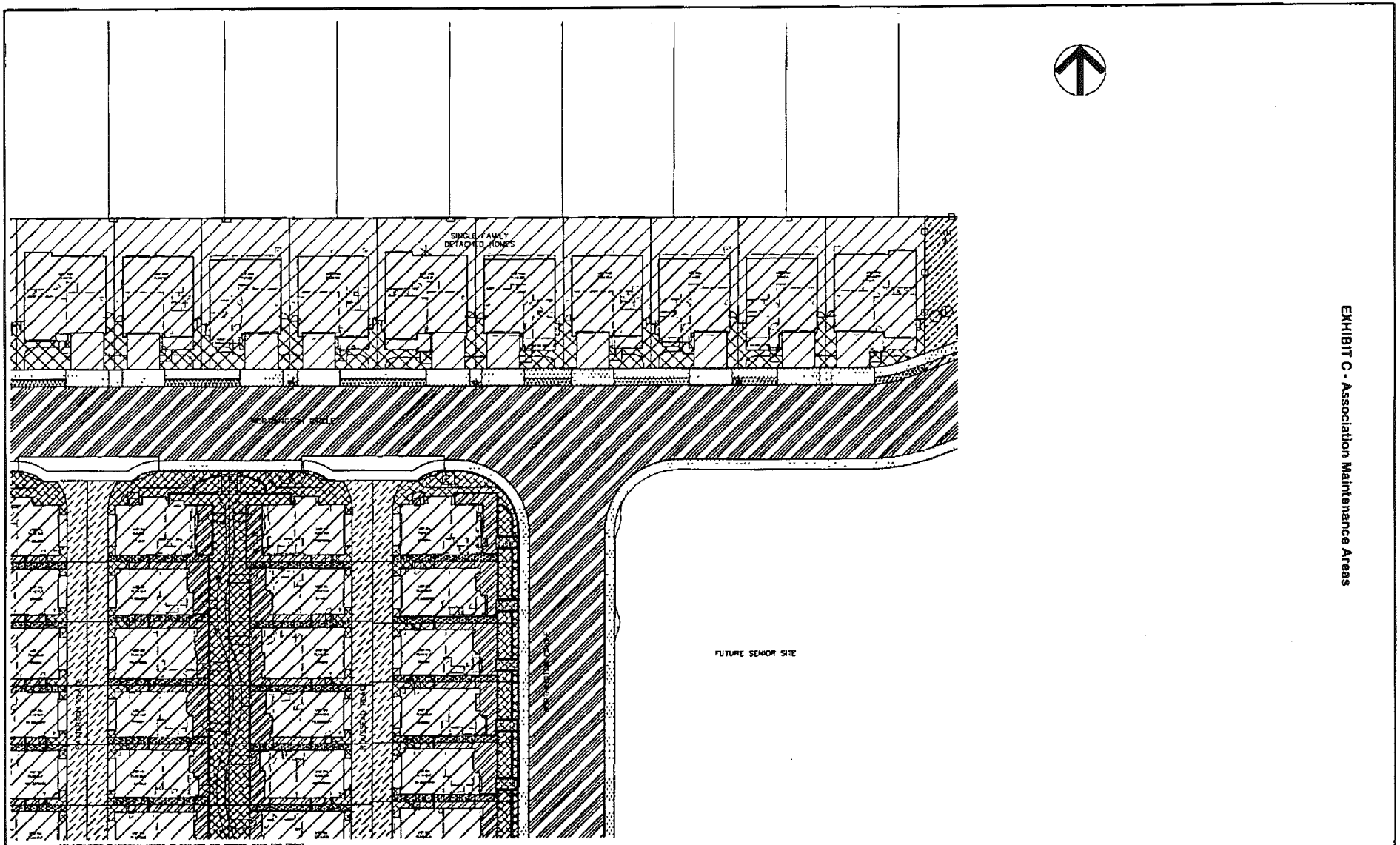
HOA MAINTENANCE EXHIBIT

Midtown Village, Santa Clara, California

Sheet 2.0

JOB NUMBER 3081 02

EXHIBIT C - Association Maintenance Areas



BY	DATE	REVISIONS

SUMMERHILL HOMES
COMMUNITIES OF DISTINCTION

SummerHill Homes
777 California Avenue
Palo Alto, California 94304
www.summerhillhomes.com

Date	03 29 12
Scale	1"=20'
Designed	
Drawn	EB
Checked	WS
Proj Engr	AL
File	HOA MAIN EXH DWG

HMH
1570 Oakland Road
San Jose, CA 95131
(408) 467-0300
Mail@hmh.com

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Utility Design
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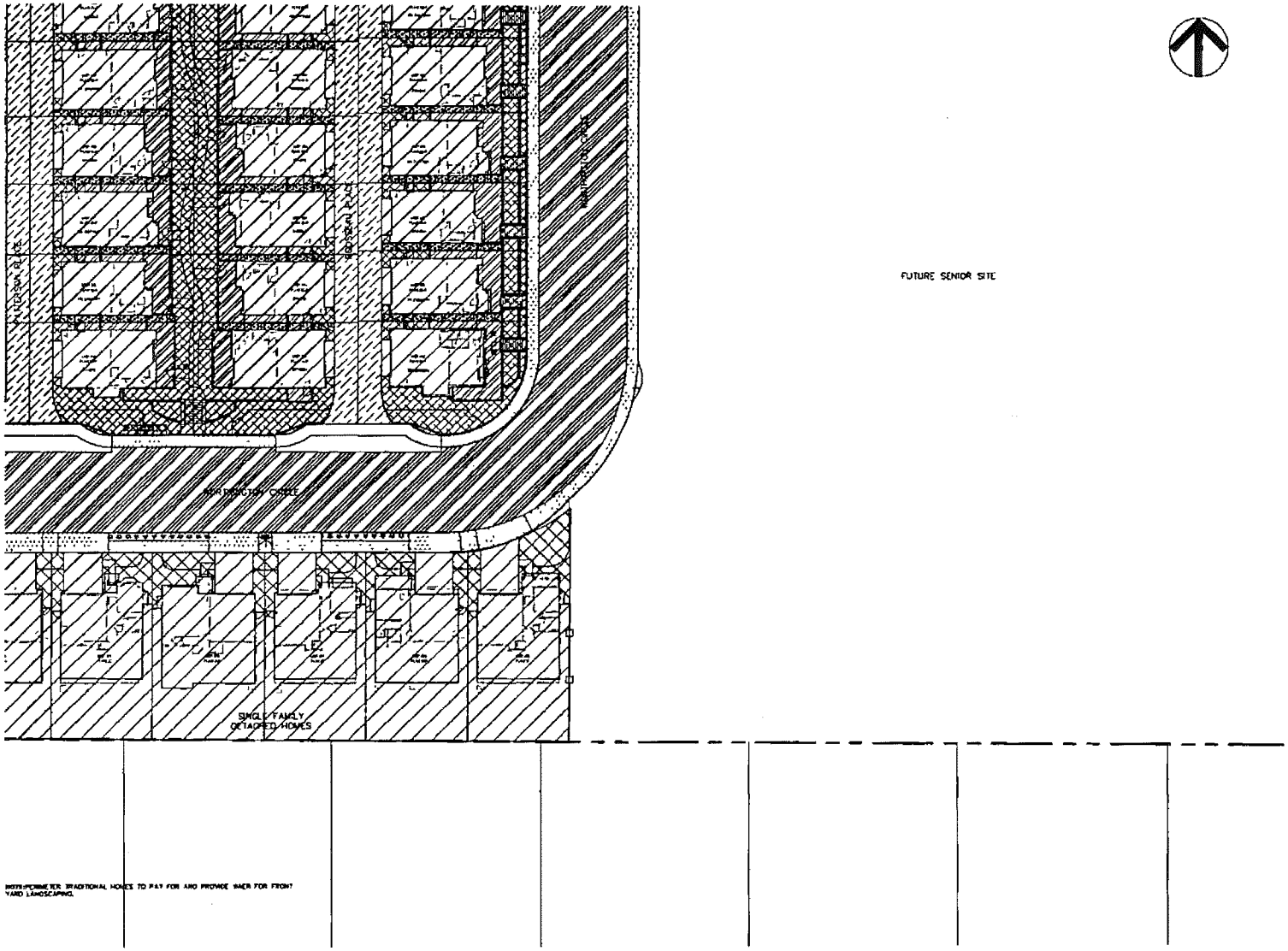
HOA MAINTENANCE EXHIBIT

Midtown Village, Santa Clara, California

Sheet
3.0

JOB NUMBER
3081.02



INSTRUCTIONS TO SINGLE FAMILY HOMES TO PAY FOR AND PROVIDE WATER FOR FRONT YARD LANDSCAPING.

EXHIBIT C - Association Maintenance Areas

BY	DATE	REVISIONS

SUMMERHILL HOMES
COMMUNITIES OF DISTINCTION

SummerHill Homes
777 California Avenue
Palo Alto, California 94304
www.summerhillhomes.com

Date:	03.28.12
Scale:	1"=20'
Designed:	
Drawn:	EB
Checked:	WS
Proj. Engr:	AL
File HOA MAIN EXB DWG	

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Stormwater Compliance

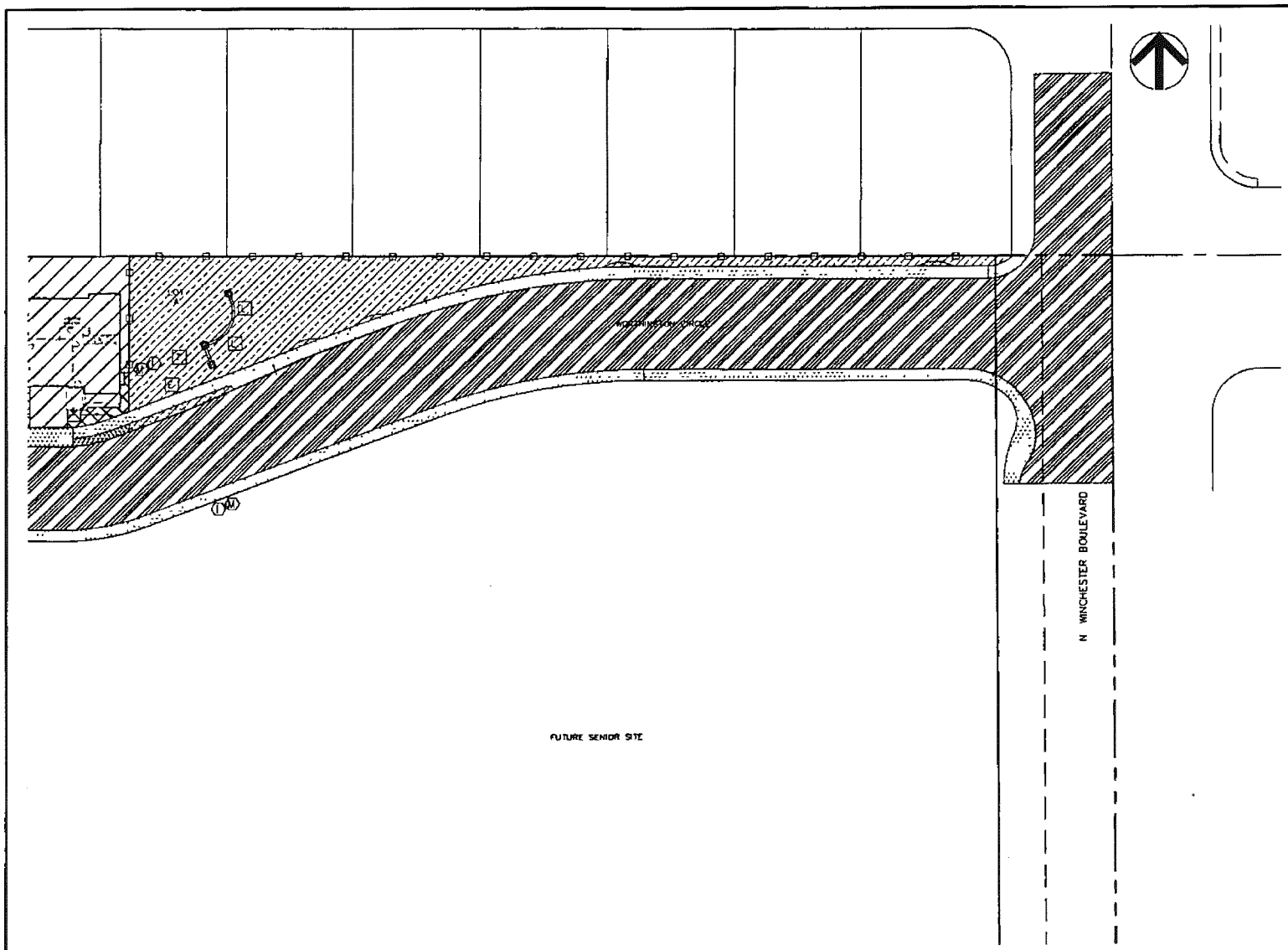
HOA MAINTENANCE EXHIBIT

Midtown Village, Santa Clara, California

Sheet 4.0

JOB NUMBER 3081.02

EXHIBIT C - Association Maintenance Areas



NOTE: PERMITTER TRADITIONAL HOMES TO PAY FOR AND PROVIDE WATER FOR FRONT YARD LANDSCAPING.

BY	DATE	REVISIONS
△		
△		
△		
△		
△		

SUMMERHILL HOMES
COMMUNITIES OF DISTINCTION

SummerHill Homes
777 California Avenue
Palo Alto, California 94304
www.summerhillhomes.com

Date	03 29 12
Scale	1" = 20'
Designed	
Drawn	EB
Checked	WS
Proj. Engr	AL
File	HOA MAIN. EXB DWG

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Land Use Professionals
Land Planning
Landscape Architecture
Civil Engineering
Utility Design
Land Surveying
Stormwater Compliance

HOA MAINTENANCE EXHIBIT

Midtown Village, Santa Clara, California

Sheet
5.0

JOB NUMBER
3081.02

EXHIBIT C - Association Maintenance Areas

LEGEND			
SYMBOL	DESCRIPTION	OWNED	MAINTAINED
DETACHED HOMES AND TUCK-UNDER HOMES			
	SINGLE FAMILY DETACHED HOMES	HOMEOWNER	HOMEOWNER
	SINGLE FAMILY DETACHED YARD & CONTROLLER	HOMEOWNER	HOA
*	MAILBOXES	HOA	HOA
	STORM DRAIN EASEMENT (UNDERGROUND AND OVER LAND RELEASE)	HOMEOWNER	HOMEOWNER (HOA HAS EASEMENT RIGHT IF HOMEOWNER FAIL TO MAINTAIN)
	PRIVATE YARDS/ PATIOS	HOMEOWNER	HOMEOWNER
	SIDEYARD EASEMENT	HOMEOWNER	HOMEOWNER (MAINTENANCE OF RECIPROCAL EASEMENT FROM NEIGHBOR)
	PASEO, TUCK-UNDER FRONT AND SIDE YARDS (INCL. STORMDRAIN, BOLLARDS LIGHTING, LANDSCAPE, IRRIGATION, WALLS, STAIRS AND STEP STONES)	HOMEOWNER	HOA
	PRIVATE ROAD	HOMEOWNER	HOA
	SD SYSTEM	HOMEOWNER	HOA
	SEWER SYSTEM (HOMEOWNER TO MAINTAIN FROM CLEANOUT TO THE HOUSE)	HOMEOWNER	HOA
	WATER SYSTEM (HOMEOWNER TO MAINTAIN FROM WATER METER TO THE HOUSE)	CITY	CITY
	JOINT TRENCH (HOMEOWNER TO MAINTAIN EVERYTHING FROM SVP'S SECONDARY BOX TO THE HOUSE.	SVP/ PG&E	SVP/ PG&E
	GARAGE AND EXTERIOR LIGHTING (LIGHT BULB MAINTENANCE)	HOMEOWNER	HOMEOWNER

DATE: 04 04 2012
SCALE: n/a
DESIGNED: WRS
DRAWN: WRS
CHECKED:
PROJ. ENGR.: AL
JOB NO.: 306102

HMH
1570 Oakland Road
San Jose, CA 95131
(408) 487-2200
HMHca.com

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SUMMERHILL HOMES
COMMUNITIES OF DISTINCTION

MIDTOWN VILLAGE
Tract 9972
HOA MAINTENANCE EXHIBIT LEGEND
1 OF 4
SANTA CLARA CALIFORNIA

EXHIBIT C - Association of Maintenance Areas

LEGEND			
SYMBOL	DESCRIPTION	OWNED	MAINTAINED
DETACHED HOMES AND TUCK-UNDER HOMES			
	NON STANDARD DRIVEWAY ENTRANCE TO PRIVATE DRIVE WAY	CITY	HOA
	ENTRY LANDSCAPE LOT A	HOA	HOA
I	IRRIGATION CONTROLLER	HOA	HOA
M	IRRIGATION WATER METER	HOA	HOA
L	ACCENT LIGHTS	HOA	HOA

DATE: 04 04 2012
SCALE: n/a
DESIGNED: WBS
DRAWN: WBS
CHECKED:
PROJ. ENGR.: AL
JOB NO.: 306102

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San Jose CA 95131
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Land Planning
Landscape Architecture
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Utility Design
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SUMMERHILL HOMES
COMMUNITIES OF DISTINCTION

MIDTOWN VILLAGE
Tract 9972
HOA MAINTENANCE EXHIBIT LEGEND
2 OF 4
SANTA CLARA CALIFORNIA

EXHIBIT C - Association Maintenance Areas

LEGEND			
SYMBOL	DESCRIPTION	OWNED	MAINTAINED
PUBLIC/ CITY OF SANTA CLARA			
	LANDSCAPE IN PUBLIC ROW (CONNECTED TO FRONT YARD)	CITY OF SANTA CLARA	HOA
	PUBLIC PARK LANDSCAPE AND PARK ROW	CITY OF SANTA CLARA	CITY OF SANTA CLARA
	PUBLIC ROAD	CITY OF SANTA CLARA	CITY OF SANTA CLARA
	STREET LIGHT	CITY OF SANTA CLARA	CITY OF SANTA CLARA
	PUBLIC SIDEWALK	CITY OF SANTA CLARA	CITY OF SANTA CLARA
	OVERLAND RELEASE HOA EASEMENT TO BENEFIT 9 LOTS	CITY OF SANTA CLARA	CITY OF SANTA CLARA
	STORM VAULT SYSTEM, FUNDED BY HOMEOWNERS, CITY AND AFFORDABLE HOUSING THROUGH FUNDING MECHANISM. CFD.	CITY OF SANTA CLARA	CITY OF SANTA CLARA

DATE: 04 04 2012
SCALE: nts
DESIGNED: WBS
DRAWN: WBS
CHECKED:
PROJ. ENGR.: AL
JOB NO.: 308102

HMH
1570 Oakland Road
San Jose CA 95131
(408) 487-2200
HMHca.com

Land Use Entitlements
Land Planning
Landscape Architecture
Civil Engineering
Utility Design
Land Surveying
Stormwater Compliance

SUMMERHILL HOMES
COMMUNITIES OF DISTINCTION

MIDTOWN VILLAGE
Tract 9972
HOA MAINTENANCE EXHIBIT LEGEND
3 OF 4
SANTA CLARA CALIFORNIA

EXHIBIT C - Association of Maintenance Areas

LEGEND			
SYMBOL	DESCRIPTION	OWNED	MAINTAINED
FENCES, WALLS AND METERS			
E	ELECTRIC METER	HOMEOWNER	HOMEOWNER
	CHAIN LINK FENCE	CITY OF SANTA CLARA	CITY OF SANTA CLARA
	DECORATIVE IRON RAIL FENCE AT PUBLIC PARK	CITY OF SANTA CLARA	CITY OF SANTA CLARA
	GOOD NEIGHBOR FENCE ON PRIMETER LOTS	HOMEOWNER	HOMEOWNER
	FRONT YARD FENCE WITH LATTICE AND GATE ON PRIMETER LOTS	HOMEOWNER	HOMEOWNER
	GATED FENCE AT REAR SIDE YARD OF TUCKUNDER LOTS	HOMEOWNER	HOMEOWNER
	TUBE STEEL FENCE	HOMEOWNER	HOA
	LOW WALL	HOMEOWNER	HOA
	RETAINING WALL	HOMEOWNER	HOA
	GOOD NEIGHBOR PATIO WALL	HOMEOWNER	HOMEOWNER
	PRE-CAST WALL ON LOT A	HOA	HOA
	MODULAR RETAINING WALL WITH FENCE	HOMEOWNER	HOMEOWNER

DATE: 04 04 2012
SCALE: n/a
DESIGNED: WBS
DRAWN: WBS
CHECKED:
PROJ. ENGR.: AL
JOB NO.: 3081102

HMH
1570 Oakland Road
San Jose CA 95131
(408) 487-2200
HMHca.com

Land Use Entitlements
Land Planning
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SUMMERHILL HOMES
COMMUNITIES OF DISTINCTION

MIDTOWN VILLAGE
Tract 9972
HOA MAINTENANCE EXHIBIT LEGEND
4 OF 4
SANTA CLARA CALIFORNIA

MIDTOWN VILLAGE

CLAIMS PROCEDURE

EXHIBIT D

This Exhibit contains alternative dispute resolution procedures. These procedures bind subsequent purchasers as well as the initial purchasers. You are advised to read these procedures carefully and consult with legal counsel if you have any questions.

This Exhibit describes the procedures for filing claims against Declarant and certain other designated parties related to this Development. Any claim, dispute or other controversy between (i) any owner(s) (the "Claimant") and (ii) the Declarant or any affiliated general contractor or affiliated contractor who is a "builder" within the meaning of Civil Code section 911 or any director, officer, member, shareholder, partner, employee or agent thereof (individually and collectively the "Declarant" for purposes of this Exhibit) and/or any non-affiliated general contractor, non-affiliated contractor, subcontractor, material supplier, individual product manufacturer, design professional or any other Person that provided materials or labor or other services to the Lot on behalf of Declarant, relating to this Exhibit, the use, condition, design, specifications, surveying, grading, construction, installation, budgeting and/or operation of any Improvements or landscaping located within the Lot, including but not limited to any claims for violation of the functionality standards set forth in Civil Code sections 896 and 897, whether based in contract, tort or statutory violation, and any Claim based on misrepresentation, fraud, non-disclosure, breach of contract, negligence, latent or patent construction defects or personal injury (individually and collectively the "Claim"), shall be subject to the claims procedures set forth in **Sections 1** and **2** or **3**, as applicable, of this Exhibit.

The intention and purpose of this Exhibit is to provide that all Claims against the Declarant relating to the construction or sale of the Lots be resolved in accordance with the claims procedures set forth in this Exhibit regardless of the legal theory upon which the Claim is based so that a certain and efficient method is established for resolution of the Claim. Notwithstanding the foregoing, for purposes herein Claim does not include a claim to the extent the claim has been waived or deemed waived or precluded by law.

The procedures in this Exhibit do not apply to Declarant's normal customer service procedures. Owners are encouraged to resolve any potential Claim first through Declarant's normal customer service procedures. It is intended that the procedures in this Exhibit become operative only if the Claim cannot be resolved in accordance with Declarant's normal customer service procedures; provided however, a Claim may be filed under the provisions in this Exhibit without complying with Declarant's normal customer service procedures.

Declarant and each owner covenant not to commence any litigation without complying with the procedures described in **Section 1**. If any party breaches the foregoing, the other party may obtain an appropriate order compelling the breaching party to comply with the procedures. Except as is expressly authorized by law, nothing herein shall reduce or extend any applicable time frame within which legal action must be commenced, including applicable statutes of limitation or repose and time frames set forth in Civil Code sections 896, 897 and 941.

Title 7 of Part 2 of Division 2 of the Civil Code (Civil Code sections 895 through 945.5) commonly known as "SB 800" sets forth functionality or construction standards that describe how the Improvements and landscaping within the Lots should function within the certain applicable time frames (the "Functionality Standards"). SB 800 impacts the legal rights of the Lot owner. Civil Code sections 910 through 938 contain prelitigation procedures that Declarant may elect to use or Declarant may elect to use alternate procedures. Declarant has elected to use the SB 800 prelitigation procedures as described in **Section 1**. The Lot owner has certain rights under SB 800 if the Improvement or landscaping fails to meet a Functionality Standard during the applicable time period. These rights may be lost as described in Civil Code section 945.5, including if the Lot owner: (1) fails to follow the Declarant's or the manufacturer's reasonable recommendations regarding inspection and maintenance, including schedules, (2) fails to follow commonly accepted homeowner maintenance guidelines; (3) fails to provide Declarant with timely notice after a discovery of the violation of the Functionality Standard or to allow Declarant reasonable and timely access for repairs; or (4) unreasonably fails to minimize or prevent damages in a timely manner.

1. <u>Nonadversarial Prelitigation Procedures:</u>

The Claim is subject to the nonadversarial prelitigation procedures set forth in this **Section 1**.

1.1 <u>Claim Notice.</u> The Claimant shall notify Declarant in writing of the Claim addressed to the agent for service of the Claim Notice described in **Section 4**. The notice shall: (i) contain the Claimant's name and address and preferred method of contact; (ii) state that the Claimant elects to commence the procedures in this Exhibit to resolve the Claim; (iii) describe the Claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation; and (iv) if applicable, state that the Claimant alleges a violation of the Functionality Standards (the "Claim Notice").

1.2 <u>Claim Procedures</u>. The Claim shall be processed in accordance with the nonadversarial prelitigation procedures set forth in Civil Code sections 910 through 938.

If the Claim is not resolved in accordance with these nonadversarial prelitigation procedures, the Claim shall be resolved by the binding procedures set forth in **Section 2** if the amount of the Claim is

$100,000 or less or by the binding procedures set forth in **Section 3** if the amount of the Claim is more than $100,000.

2. Arbitration:

If the amount of the Claim is $100,000 or less, it shall be resolved by the arbitration procedures set forth in this **Section 2**. Either party may commence binding arbitration by submitting the Claim to the American Arbitration Association ("AAA") or to another binding arbitration service mutually acceptable to the parties.

The Lot owner and Declarant acknowledge and agree that any Claim involving the design, specification, surveying, grading, construction, installation or operation of any Improvement or landscaping within the Lot, including any Claim under Civil Code sections 896 and 897, involves interstate commerce and is subject to and governed by the Federal Arbitration Act, notwithstanding any State or local laws or ordinances to the contrary and notwithstanding the fact the parties have elected to utilize certain State law arbitration procedures to resolve the Claim. The following provisions and procedures shall apply in all cases unless the parties agree otherwise in writing:

(i) the arbitration shall be conducted in accordance with the commercial rules used by AAA;

(ii) any fee to initiate the arbitration shall be paid by the party initiating the arbitration, provided that the arbitration costs and fees, including any initiation fee, ultimately shall be borne as determined by the arbitrator;

(iii) the venue of the arbitration proceeding shall be in Santa Clara County, California, unless the parties agree to a different location;

(iv) each party shall bear its own attorneys' fees (including expert costs) for the arbitration;

(v) the arbitrator shall be appointed within 60 days of the arbitrator's receipt of a written request to arbitrate the dispute. In selecting the arbitrator, the provisions of section 1297.121 of the Code of Civil Procedure shall apply. The arbitrator appointed to serve shall be a neutral and impartial individual. The arbitrator may be challenged for any of the grounds listed therein or in section 1297.124 of the Code of Civil Procedure;

(vi) the arbitrator shall have the power to determine the enforceability of this arbitration provision and the scope of the claims and matters that are subject to arbitration;

(vii) the arbitrator shall be authorized to provide all recognized remedies available in law or equity, provided that the arbitrator is not authorized to award punitive damages; and

(viii) a judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction thereof.

If any provision of this **Section 2** shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

3. Judicial Reference:

If the amount of the Claim exceeds $100,000, it shall be resolved by the judicial reference procedures in this **Section 3**. Either party may commence binding judicial reference by submitting the Claim to the Judicial Arbitration and Mediation Services (JAMS) or any other reference provider mutually acceptable to the parties for resolution under the provisions of Code of Civil Procedure section 638, et seq., by a general referee appointed under the provisions of Code of Civil Procedure section 638(a) or any successor statutes thereto (the "Referee").

The Referee shall have the authority to hear and determine any and all issues in the action or proceeding, whether of fact or law, and to report a statement of decision. The following rules and procedures shall apply in all cases unless the parties agree otherwise in writing:

(a) the proceedings shall be heard in Santa Clara County, California;

(b) the Referee shall be a retired judge, or an attorney with at least ten years' real estate and construction experience; provided that either party may object to the appointment of a particular referee for any grounds authorized under Code of Civil Procedure section 641 or any successor statute thereto;

(c) any dispute regarding the selection of the Referee shall be resolved by the entity providing the reference services or, if no entity is involved, by the court in which the action or proceeding is pending;

(d) each party shall bear its own attorneys' fees (including expert costs);

(e) the Referee may require one or more pre-trial conferences;

(f) the parties shall be entitled to such discovery as the Referee may authorize in the Referee's sole and absolute discretion, provided that the parties shall be provided with copies of the reports of any experts that will testify at the hearing or that will be introduced at the hearing, shall be entitled to take the deposition of any party to the proceeding and any party's expert witness(es), and shall be provided with the opportunity to inspect and/or test any areas that have been inspected and/or tested by the claimant;

(g) the Referee shall have the power to hear and dispose of motions in the same manner as a trial court judge;

(h) the Referee shall apply the rules of law, including the rules of evidence, unless expressly waived by both parties in writing;

(i) a stenographic record of the hearing shall be made, provided that the record shall remain confidential unless the Referee's decision is appealed;

(j) the Referee's decision may include legal and/or equitable remedies;

(k) the Referee's statement of decision shall contain a description of the grounds for the Referee's decision and shall stand as the decision of the court as authorized under Code of Civil Procedure section 644(a), and judgment may be entered thereon in the same manner as if the action had been tried by a court; and

(l) the Referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

Each party retains the same appeal rights from the Referee's decision as if judgment had been entered on a trial court judge's statement of decision.

If any provision of this **Section 3** shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

4. <u>Agent for Services of Claim Notice:</u>

Notice of any Claim made, including Civil Code sections 896 and 897 claims, or requests for information including requests for copies of the documents described in **Section 5** or for copies of the documents described in **Section 5**, may be served on Declarant's agent via certified mail, overnight mail or personal delivery. The name and address of Declarant's agent for this purpose is:

Customer Service Director - Midtown Village
3000 Executive Parkway, Suite 450
San Ramon, CA 94583

With copy to: General Counsel
3000 Executive Parkway, Suite 450
San Ramon, CA 94583

If the notice cannot be served on Declarant's agent at the above-referenced address because the agent is no longer located at the address or the agent has changed and Declarant has not provided the Claimant with an updated address or the name and/or address of the new agent, the Claimant may serve the claim notice on Declarant's agent for notice under Civil Code section 912(e) on file with the California Secretary of State's office in Sacramento, California. The current telephone number and website for the Secretary of State's office are: (916) 653-3984 and www.ss.ca.gov. Written requests may be mailed to the California Secretary of State Claims Filing, P.O. Box 944225, Sacramento, California 94244-2250. If the notice is served via mail, it shall be assumed received by Declarant on the third business day following deposit into the U.S. Mails. If delivered via overnight mail, such as Federal Express or UPS, it shall be assumed received on the next business day. If delivered personally, it shall be assumed received on the date of personal delivery. These assumptions may be rebutted by Declarant if Declarant did not receive actual notice.

5. Documents and Subsequent Owners:

Declarant has or will provide copies of the following documents to the initial purchasers of homes in this Lot:

(i) Homeowner's Maintenance Manual;
(ii) Homeowner's Limited Fit and Finish Warranty;
(iii) A copy of Title 7 of Part 2 of the Civil Code (SB 800); and
(iv) Manufactured Products Limited Warranties.

The initial purchasers shall retain the foregoing documents (the "Documents) and on transfer of title to the property to a subsequent owner shall transfer the Documents or provide true and complete copies to

the new owner(s) on or before transfer of title and instruct the new owner(s) that they are to retain the Documents and transfer or provide copies to any subsequent owner(s). **Replacement copies of the Documents may be obtained from Declarant by contacting Declarant at Declarant's principal place of business or through the agent for claim notice purposes described in Section 4 of this Exhibit.** Declarant may charge a reasonable fee for providing replacement copies. Initial purchasers and subsequent owners must comply with the inspection and maintenance guidelines provided by the Declarant and any manufacturer.

6. Covenants and Third Party Beneficiary:

The covenants, restrictions, rights, duties, benefits and burdens set forth in this Exhibit are covenants running with the land and equitable servitudes that benefit and bind each Lot and each owner and successor owner thereto. In addition, Declarant is a third party beneficiary of the covenants, restrictions, rights, duties, benefits and burdens set forth in this Exhibit and shall have full right, power and authority to exercise all of the rights and duties in this Exhibit without regard to whether Declarant owns any of the Lots.

7. Amendments:

The provisions in this Exhibit may be rescinded or modified or waived with the written consent of Declarant and the Claimant or Claimants affected by the rescission or modification.

8. Claims Filing Period:

Nothing herein extends any time periods in which a claim or action must be filed under Civil Code sections 896 or 897 or otherwise extends any applicable statutes of limitations or statutes of repose, except as expressly authorized by law.

CONSENT AND SUBORDINATION

To undersigned, beneficiary under that certain Deed of Trusts dated December 19, 2011, recorded on December 22, 2011 as Instrument No. 21467323 and No. 21467324, Official Records, Santa Clara County, California, executed by SummerHill Winchester LLC, a California limited liability company does hereby consent to the execution and recordation and does hereby subordinate said Deed of Trust to the Midtown Village Declaration of Restriction (CC&R's), with the same force and effect as if said Declaration had been executed and recorded prior to the execution and recordation of said Deed of Trust.

Union Bank, N.A.,

BY: _____

STATE OF CALIFORNIA }ss.
COUNTY OF } Contra Costa

On June 11, 2012 before me, Jessica H. Loberstein, Notary Public, personally appeared Erik Leutecker, 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 _____

JESSICA H. LOBERSTEIN
Commission # 1924426
Notary Public - California
Contra Costa County
My Comm. Expires Mar 4, 2015

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-13

Date: November 12, 2014

To: City Manager for Council Action

From: Acting Housing and Community Services Division Manager

Subject: Affordable Housing Agreement between the City and 555 Saratoga, LLC for the Provision of One (1) Below Market Purchase (BMP) Home and Payment of an In-Lieu Fee for a Fractional Unit within a 13-Unit Housing Project at 555 Saratoga Avenue

EXECUTIVE SUMMARY:

On September 10, 2013, Council approved a 13-unit condominium residential development proposal submitted by Silicon Sage Builders, for the property located at 555 Saratoga Avenue. The land will be developed by 555 Saratoga, LLC (Developer). As a condition of the land use approval, the Developer is required to enter into an Affordable Housing Agreement (AHA) to designate 10-percent of the total units (i.e. 1.3 BMP units) as Below Market Purchase (BMP) units to be sold to qualified first-time homebuyers at an affordable price. The BMP Policies and Procedures Guidelines adopted by Council, clarify that the developer can either elect to provide two (2) of the homes as BMP units, or one (1) home and pay a BMP in-lieu fee for the fractional unit. The developer has decided to provide the one (1) BMP unit and pay the required in-lieu fee for the fractional unit. The housing unit will be sold to a household whose income does not exceed 110% of area median income. The Affordable Sales Price for the 2-bedroom, 2 1/2-bath BMP home is $371,000. The anticipated BMP in-lieu fee will be established by an appraisal of the BMP unit after completion. The BMP in-lieu fee will be equal to the difference between the appraised unrestricted Initial Market Value (IMV) and the Affordable Sales Price, multiplied by the 0.3 fraction. A copy of the AHA can be viewed on the City's website or is available in the City Clerk's Office during normal business hours.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

According to the terms of the AHA, 555 Saratoga, LLC will sell one BMP home at an affordable sales prices of $371,000 per unit. Under the BMP Program, an advantage is given to the homeowner to realize equity appreciation in their home after 5 years of ownership. The City will be able to recapture the value of its inclusionary requirement (the monetary difference between the initial market value and the affordable sales price) at the time the BMP unit converts to market rate.

ECONOMIC/FISCAL IMPACT:

In accordance with the procedures of the BMP Program, the City will realize a recapture of the inclusionary value of the BMP units when resold in the future. In addition, the BMP in-lieu fee for the fractional unit will be deposited into the City Housing Fund at the time it is received from the Developer.

RECOMMENDATION:

That Council approve and authorize the City Manager, or her designee, to execute the Affordable Housing Agreement between the City and 555 Saratoga, LLC for the provision of one (1) Below Market Purchase (BMP) unit and payment of a BMP in-lieu fee for a fractional unit within a 13-unit housing project at 555 Saratoga Avenue.

Kevin L. Riley
Director of Planning and Inspection

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report:
1) Affordable Housing Agreement between the City and 555 Saratoga, LLC

F:\BMP-BMR Projects\Silicon Sage\555 Saratoga\Agenda Report 555 Saratoga 9-23-14.doc

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
555 SARATOGA, LLC

PREAMBLE

This Affordable Housing Agreement (the "Agreement") is entered into on this _____ day of _____, 2014__, (the "Effective Date") between 555 Saratoga, LLC, a California limited liability company with its principal place of business located at 3255-2 Scott Boulevard, Santa Clara, CA 95054 (the "Developer"), and the City of Santa Clara, a chartered municipal organization, with its primary business address located at 1500 Warburton Avenue, Santa Clara, CA 95050 (the "City"). City and Developer may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

A. The purpose of this Agreement is to increase, improve and preserve the supply of moderate income housing in the City by ensuring the Developer's construction and sale of housing affordably priced for moderate-income households.

B. Developer owns certain real property (the "Property") located within the jurisdiction of the City, which is described in Attachment A attached hereto and incorporated herein.

C. Developer intends to construct Thirteen (13) condominium housing units ("Units"), on the Property pursuant to the September 10, 2013 City Council land use approvals ("Project").

D. As a condition of Project entitlement by the City, and to satisfy the City's Inclusionary Housing Policy, the Developer is required to designate the one **(1)** condominium housing units, as shown on Attachment B attached hereto and incorporated herein, to be marketed and made available for sale exclusively to Moderate Income Household(s) for a Below Market Price (the "Below Market Price Unit" or "BMP Unit" and to pay an in-lieu fee for the fractional second unit that is required by the Project's conditions of approval and the City's Below Market Purchase Program Policies and Procedures Guidelines (the "BMP Program Policies & Procedures").

E. The BMP Unit will be sold at a price not to exceed the amount established by the City ("Affordable Sales Price").

F. The in-lieu fee shall be due payment by the Developer to the City at the time when the one (1) designated BMP unit has been sold. The in-lieu fee amount shall be equal to the difference between the unrestricted appraised market value ("Initial Market Value") and

the Affordable Sales Price of one of the BMP units at completion, multiplied by three-tenths (0.3). The Initial Market Value of the BMP unit sold shall be the basis for calculating the in-lieu fee to be paid by Developer.

G. "Developer," for purposes of this Agreement, includes Developer and any assignee or successor in interest.

The Parties therefore agree as follows:

AGREEMENT PROVISIONS

1. DEVELOPER OBLIGATIONS. As provided in this Agreement, in compliance with the Project conditions of approval and subject to the approval of the City, the Developer hereby designate ONE **(1)** of the condominium units to be completed on the Property as a BMP Unit. Developer agrees to complete the BMP Unit in the initial construction phases of residential units at the Project. Such BMP Unit shall be that unit designated as such on Attachment B attached, and shall meet the following criteria:

a. The BMP Unit shall have all the standard amenities available to market rate units, including equivalent parking facilities and shall be a 2 bedroom condominium unit with 2 and one half baths and totaling 1,357 square feet in total size (excluding garage), as specified below. The BMP unit shall be offered for sale at the following Affordable Sales Price:

i. Unit 1, 2 Bedroom/2 and 1/2 Bath, Plan B2 $371,000

b. The Affordable Housing Unit shall be sold exclusively to and for occupancy by persons and families whose affordable housing cost is not less than 28 percent of the gross income of the household, nor which exceeds the product of 35 percent times 110 percent of area median income adjusted for family size, as established in California Health and Safety Code Section 50052.5(b)(4) and Title 25, California Code of Regulations Section 6910 et seq., as may be amended from time-to-time.

c. The Affordable Sales Price of each unit shall be equal to:

i. Unit 1, 2 Bedroom/2 and 1/2 Bath, Plan B2 $371,000

d. The Affordable Housing Unit shall be marketed and made available for sale by the City or its designee to a Moderate Income Household at the Designated Sales Price. The City reserves the right to use consultants as necessary to qualify eligible buyers and to market the Affordable Housing Units. Developer agrees not to engage in direct marketing of the Affordable Housing Units without prior approval of the City.

e. Developer agrees to abide by the City's Below Market Purchase Program Policies and Procedures Guidelines (the "BMP Program Policies & Procedures"), as may be amended from time to time. A true and correct copy of the current BMP Program Policies & Procedures is attached hereto and incorporated herein as Attachment C.

f. Unless otherwise released from this Agreement as provided herein, Developer agrees to include resale restrictions and related language and/or documents required by the City in any grant deed conveying a BMP Unit by including the forms attached hereto and incorporated herein as Exhibits A through C as part of the Covenants, Promissory Note, and Deed of Trust, and recording of the same. The City reserves the right, without any required approval of Developer, to amend the form of the resale restrictions and any related documents in the future to maintain consistency with the BMP Program Policies & Procedures that are in place at the time that a BMP Unit is proposed to be sold by Developer to an eligible buyer.

2. CITY OBLIGATIONS. The City agrees to make a good faith effort to initiate marketing of the Affordable Housing Units itself or thru its designee, within 30-days of the developer providing notice to the City of the Affordable Housing Units construction completion and availability for sale. The City, at its sole discretion, may consent to a developer request to conduct earlier marketing efforts.

3. TERM OF AGREEMENT. The term of this Agreement shall begin on the Effective Date set forth above, and shall terminate when all BMP Units have received Certificates of Occupancy and escrow has closed on all BMP Units, thereby transferring title to City-approved buyers.

4. NO ASSIGNMENT OF AGREEMENT; SUCCESSORS IN INTEREST. No interest in this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of the City, which approval shall not be unreasonably withheld.

5. RELATIONSHIP OF CITY AND DEVELOPER. No written or verbal statement, including but not limited to this Agreement, shall be deemed or construed to create a partnership, tenancy, joint venture or co-ownership between the City and the Developer. The City shall not be responsible or liable for the debts, losses, obligations or duties of the Developer with respect to the Property, the Project or otherwise.

6. NO THIRD PARTY BENEFICIARY. This Agreement shall not be construed to be an agreement for the benefit of any third party or parties other than the record owner of title to the Property, and no other third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

7. FAIR EMPLOYMENT. Developer shall not discriminate against any employee because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion,

ethnic background, or marital status, in violation of state or federal law in the performance of this Agreement.

8. HOLD HARMLESS/INDEMNIFICATION. Developer agrees to defend, hold harmless and indemnify the City, its Council members, officers, employees, volunteers and agents from any claim, injury, liability, loss, cost, and/or expense or damage arising from or in any way connected with this Agreement and the performance thereof, including any such claim, etc., arising from the actual or alleged presence of hazardous substances on the Property, or any environmental claim relating in any way to the Property or Project.

9. COMPLIANCE WITH ENVIRONMENTAL LAWS. Developer shall comply with all environmental laws and environmental permits applicable to the operations of the Developer and the ownership or use of the Property and the Project, shall immediately pay or cause to be paid all costs and expenses incurred by reason of such compliance, shall keep the Property and Project free and clear of any environmental claims or liens imposed pursuant to any environmental law, and shall obtain and renew all environmental permits required for ownership or use of the Property and the Project.

10. INSURANCE REQUIREMENTS. During the term of this Agreement, and for any required time thereafter as set forth below, Developer shall purchase and maintain in full force and effect, at no cost to City, the following insurance policies:

1) Commercial general liability policy (bodily injury and property damage);
2) Comprehensive automobile liability policy; and
3) Workers' compensation and employer's liability policy

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as set forth in Attachment D, attached hereto and incorporated herein.

11. INTEGRATED DOCUMENT; AMENDMENT. This Agreement and the Project's condition of approval by City embody the entire agreement between Parties and its terms and conditions. No other understanding, agreements, or conversations with any officer, agent, or employee of City shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. It is mutually understood and agreed that, except for the City's periodic updates of its BMP Program Policies & Procedures and related documents, no amendment to this Agreement shall be valid unless made in writing and signed by the Parties.

12. SEVERABILITY CLAUSE. In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

13. WAIVER. Developer agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

14. NOTICES. All notices to the Parties shall, unless otherwise requested in writing, be addressed as follows:

City: Housing & Community Services Division
City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 248-3381

Developer:
Name: 555 Saratoga, LLC
Address: 3255-2 Scott Boulevard, Suite # 101
Santa Clara, California 95054
(408) 916 -3205

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

15. GOVERING LAW; VENUE. This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. In the event that suit shall be brought by either Party, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

16. COMPLIANCE WITH LAWS. Developer shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments, applicable to the Property and Project.

17. DISPUTE RESOLUTION.

a. Unless otherwise mutually agreed to by the Parties, any controversies between Developer and the City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party. Submission to mediation shall be a pre-condition to filing of any litigation.

b. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement. The costs of mediation shall be borne by the Parties equally.

18. CONFLICTS OF INTEREST. Developer certifies that to the best of its knowledge no City employee or officer has any pecuniary interest in the business of Developer and that no person associated with Developer has any interest that would conflict in any manner or degree with the performance of this Agreement. Developer represents that it presently has no interest and shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the faithful performance of this Agreement. Developer is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts that constitute a violation of said provisions. Developer will advise City if a conflict arises.

19. TERMINATION OF AGREEMENT. This Agreement shall terminate when all BMP Units have received Certificates of Occupancy and escrow has closed on all BMP units.

20. BINDING ON SUCCESSORS IN INTEREST. This Agreement inures to the benefit of, and is binding upon, the City and the Developer, and their respective agents, representatives, successors, and assigns.

21. AFFORDABILITY COVENANTS. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that unless and to the extent released of record as provided herein, the Affordable Housing Units shall be subject to this Agreement for twenty (20) years.

22. COVENANTS RUNNING WITH THE LAND. The Parties agree that this Agreement shall run with the land, and, subject to the terms hereof, shall bind any and all successors in interest. The Parties agree that this Agreement shall be duly recorded with the County of Santa Clara.

23. COMPLIANCE WITH ETHICAL STANDARDS. As a condition precedent to entering into this Agreement, Developer shall review Attachment E, "Ethical Standards," attached hereto and incorporated herein, and execute the affidavit attached hereto and incorporated herein as Attachment F, entitled "Affidavit of Compliance with Ethical Standards."

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

JULIO J. FUENTES
City Manager

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

ATTEST:

ROD DIRIDON, JR.
City Clerk

"City"

555 SARATOGA, LLC
a California limited liability company

Name: Sanjeev Acharya
Title: Manager
Address: 3255-2 Scott Boulevard, Suite 101, Santa Clara, CA 95054
Telephone: (408) 916-3205

"Developer"

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
555 SARATOGA, LLC

ATTACHMENT A

LEGAL DESCRIPTION OF PROPERTY

ORDER NO. : 0616009988-SL

EXHIBIT A

The land referred to is situated in the County of Santa Clara, City of Santa Clara, State of California, and is described as follows:

PARCEL ONE:

Lot 17, Block 25, as shown on that certain Map entitled Tract No. 1229 Westwood Unit No. 7 which Map was filed in the Office of the Recorder of the County of Santa Clara, State of California, on November 22, 1954 in Book 53 of Maps at Page(s) 33-35.

EXCEPTING THEREFROM that portion as granted in the Deed from Ronald L. Campbell, et al, to The City of Santa Clara, Recorded on November 18, 1964 in Book 6744 at Page 565 of Official Records, as described in the Document herein referred to.

PARCEL TWO:

Lot 18, Block 25, as shown on that certain Map entitled Tract No. 1229 Westwood Unit No. 7 which Map was filed in the Office of the Recorder of the County of Santa Clara, State of California, on November 22, 1954 in Book 53 of Maps at Page(s) 33-35.

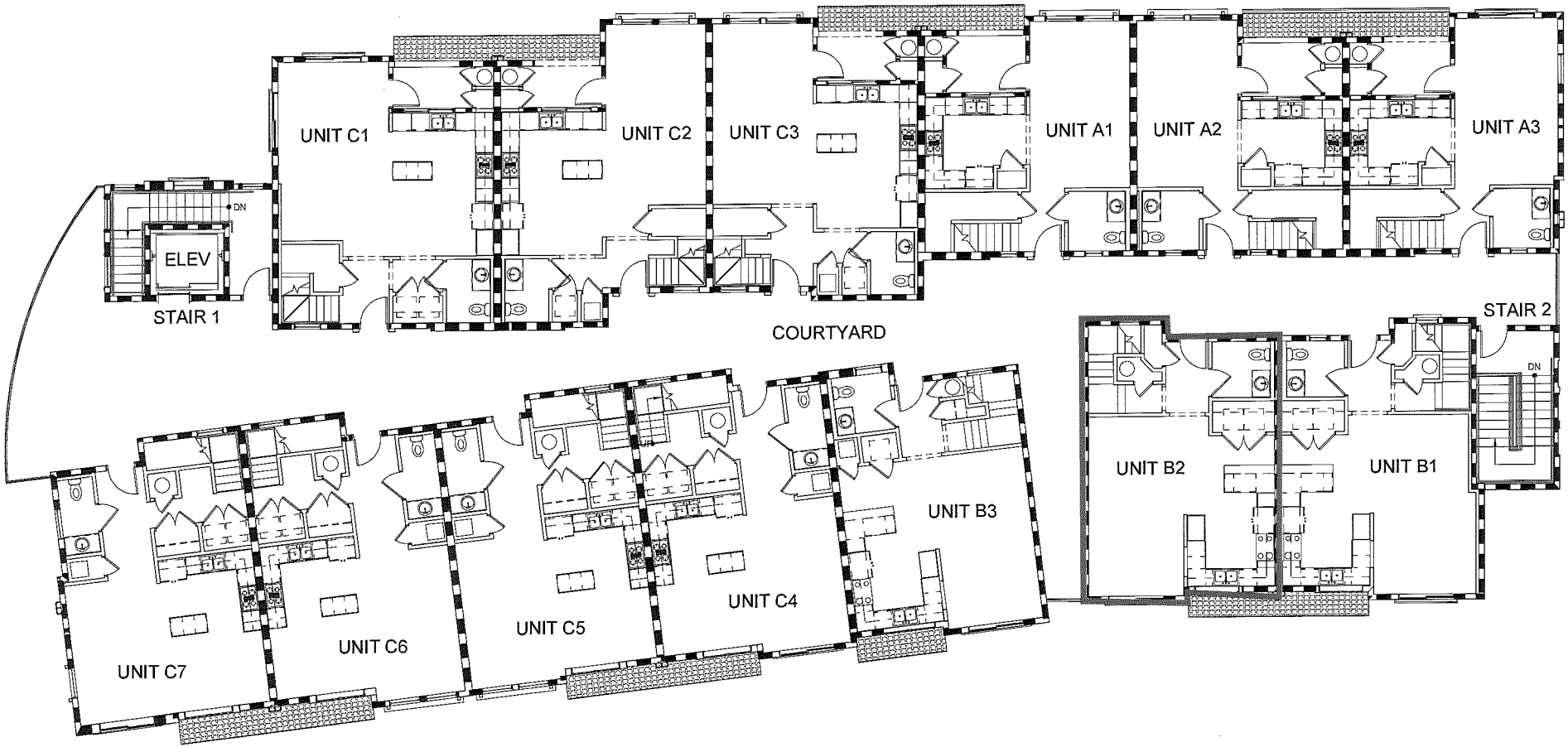
EXCEPTING THEREFROM the Northwesterly 7 feet of Lot 18, in Block 25, as shown on the Map of Tract No. 1229 Westwood Unit No. 7 which Map was filed in the Office of the Recorder of the County of Santa Clara, State of California on November 22, 1954 in Book 53 of Maps at Pages 33-35, measured at right angles from the Northwesterly line thereof.

APN: 269-39-101

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
555 SARATOGA, LLC

ATTACHMENT B

PROJECT MAP


UNIT C1
UNIT C2
UNIT C3
UNIT A1
UNIT A2
UNIT A3
DN
ELEV
STAIR 1
COURTYARD
STAIR 2
DN
UNIT B2
UNIT B1
UNIT B3
UNIT C4
UNIT C5
UNIT C6
UNIT C7

LOWER LEVEL

UNIT C1
UNIT C2
UNIT C3
UNIT A1
UNIT A2
UNIT A3
UNIT C7
UNIT C6
UNIT C5
UNIT C4
UNIT B3
UNIT B2
UNIT B1

UPPER LEVEL

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
555 SARATOGA, LLC

ATTACHMENT C

BMP PROGRAM POLICIES AND PROCEDURES

City of Santa Clara
Below-Market Price Purchase Program
Policies and Procedures

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III. Homebuyer Eligibility Requirements and Obligations 6
V. Financing the Home Purchase 10
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I. Introduction

The City of Santa Clara (City) and its Redevelopment Agency (Agency) have operated a Below-Market Price Purchase Program (BMP) since 1995 to help low- and moderate-income families achieve the goal of homeownership and to fulfill State mandates for the production of housing for all income levels.

The City's Housing Element, certified by the State in 2002, includes an affordable housing policy that requires "developers of residential developments with ten or more units to provide at least ten percent of their units at rents or prices affordable to low-and moderate-income households." Specifically, for-sale housing developers are required to designate at least ten percent of the total units in an approved project as BMP units to be sold to qualified buyers.

In 2006, the City Council adopted significant enhancements to the original BMP program. A restrictive covenant (Covenant) period is enforced over 20 years. The resale restriction period within the Covenant has been decreased to five years, and the homeowner can resell the home at market price after five years. However, if the homeowner sells the BMP unit within the first five years, the BMP unit must be sold to another qualified, income-eligible homebuyer. An additional new requirement is that the City and the homeowner will share in the appreciation of the home (Appreciation Amount). The homeowner's share of any appreciation beyond the Initial Market Value (IMV) will increase by five percent per year for twenty years. After the Covenant expires in twenty years, the equity sharing requirement is exhausted, and the homeowner will realize full equity gain beyond the IMV.

However, if the BMP unit is sold at market price during the 20-year term of the Covenant, the seller must pay the City the difference between the original Affordable Sales Price (ASP) and the IMV, established as the principal amount (Principal) of the promissory note (City Promissory Note). The IMV is defined as the unit's unrestricted initial market value as shown in **Section II.B**. The calculation for determining the seller's pay-off obligation to the City is explained in **Section III.B**.

The intent of these changes is to further the City's strong commitment to producing and maintaining affordable housing while increasing the level of interest among prospective homebuyers in the BMP Program.

The BMP Program is administered by the City's Department of Planning and Inspection (Department), with certain functions delegated under a service contract to Neighborhood Housing Services Silicon Valley (NHSSV). The Department administers the City's approval process for each proposed housing development. The Housing and Community Services Division of the Department administers the Affordable Housing Agreement (AHA), the agreement between the buyer and developer to purchase the unit at an affordable price according to the Covenant. NHSSV is the City's exclusive sales and marketing agent for sale of the BMP units. NHSSV also manages the homebuyer qualification and selection process as well as facilitates the sale of the BMP units. NHSSV has ongoing responsibilities for monitoring developer and homebuyer compliance with the BMP Program terms and for managing resale of the BMP units.

The foregoing Policies and Procedures describe:

- The BMP Program requirements for developers of single-family, townhome, and condominium residential projects
- The BMP Program requirements for homebuyers of BMP units
- The procedures for administration of the BMP Program and the roles of each participant in the BMP Program
- The relationship between the BMP Program, the Agency's First Time Homebuyers Financing Program (FTHB), and subordinate financing programs offered by outside agencies
- The BMP Program's documents and other useful reference material

For further information, please contact:

City of Santa Clara Housing & Community Services Division
1500 Warburton Avenue, Santa Clara, CA 95050
Phone: (408)615-2490

II. BMP Requirements for Homeownership Projects

A. General

The BMP Program applies to any housing project of ten or more units for which an AHA was executed after July 18, 2006. Such projects include proposed new single-family detached, townhouse, or condominium developments as well as any proposed conversion of existing structures to condominiums. Each developer is required to enter into an AHA with the City.

The AHA describes the project and states current applicable zoning and land use requirements. It provides the ASP for each unit as discussed below. The AHA requires that BMP units shall be sold to eligible households whose incomes are at or below 110% of current Area Median Income.

B. Initial Market Value (IMV)

For each BMP unit, the City sets an IMV based upon an independent appraisal prior to the initial sale. The IMV reflects each unit's unrestricted initial market value. The IMV is used to establish the difference between the market value and the ASP for which the BMP unit will be sold. The IMV provides the basis for computing: 1) what the developer would owe the City if the developer chooses to pay an in-lieu fee for a fractional unit, as discussed below, and 2) the amounts that the homebuyer would owe the City if the home is resold at an unrestricted resale price, as discussed in **Section III.B**.

C. Affordable Sales Price (ASP)

For each BMP unit in a project, the City establishes an ASP as follows: (See illustration in **Attachment 1**.)

1. Calculates the assumed household size by counting the number of bedrooms in the subject BMP unit and adding one. For example, if the unit is a two-bedroom unit, the assumed household size is three persons.
2. Ascertains the current Area Median Income (AMI) for the assumed household size based on data set annually by the U. S. Department of Housing and Urban Development and the California Department of Housing and Community Development.
3. Multiplies the applicable AMI by 35% and divides the product by 12 to derive a maximum monthly Affordable Housing Cost (AHC).
4. Converts the AHC to an ASP as follows:
    a. Obtains the estimated amount available for first mortgage principal and interest payment by subtracting from the AHC the estimated cost of property taxes, insurance, homeowner association dues (if any), and allowances for utilities, maintenance and repairs.
    b. Utilizing the amount available for principal and interest, calculates the maximum principal amount of the first mortgage loan that can be borrowed, assuming the interest rate for a 30-year fixed-rate mortgage that would be reasonable for the City's housing program client base (typically first-time homebuyers).
    c. Sets the maximum sales price by dividing the first mortgage loan amount by one hundred percent minus the assumed percentage of the first mortgage that will be provided by the homebuyer as down payment. For example, if a three percent down payment is assumed, then the mortgage loan amount is divided by 97%.

In setting the ASP, the City will also consider the following:

1. Housing characteristics: Age of unit (new construction/conversion); type of unit (single-family detached/townhouse/condominium), based upon research of available comparable cost and sales price information.
2. Whether the developer will sustain a documented financial loss for basic production costs, based upon the *pro forma* that the developer has submitted to financial institutions for project financing purposes.
3. Whether the ASP exceeds the maximum sales price published by the California Housing Finance Agency.

D. In-Lieu Fee for a Fractional Unit

If the City determines that the required number of BMP units includes a fraction, the developer may either round up and provide an additional BMP unit within the project or pay an in-lieu fee for the fractional unit. The fee is determined by multiplying the fractional unit percentage (rounded to the nearest 1/10) by the difference between the Initial Market Value (IMV) and the Affordable Sales Price (ASP). For example, a developer of a 16-unit project would be required to provide 1.6 BMP units. The developer may either: 1) round up and provide two BMP units and pay no in-lieu fee, or 2) provide one unit and pay an in-lieu fee for the 0.6 units (0.6 X (IMV-ASP)).

III. Homebuyer Eligibility Requirements and Obligations

A. Eligibility

To be eligible for the program, the household must meet *all* of the following criteria:

1. Have a gross household income of not more than 110% of the AMI, adjusted for household size. The maximum amount of this income for Santa Clara County is set by the U.S. Department of Housing and Urban Development and published by the California Department of Housing and Community Development in *Title 25, California Code of Regulations, Section 6930.* The AMI limits are updated and published annually. **Attachment 2** lists the types of income that are included in or excluded from gross household income.

   Maximum Allowable Household Income Levels for 2010

Household Size	1	2	3	4	5	6
100% AMI	$72,450	$82,800	$93,150	$103,500	$111,800	$120,050
110% AMI	$76,695	$91,080	$102,465	$113,850	$122,980	$132,055

   Source: California Department of Housing and Community Development, Division of Housing Policy Development, 17 June 2010.

2. Be a first-time homebuyer, defined as an individual who meets any one of the following criteria:
   a) An individual who has had no ownership in a principal residence during the three-year period ending on the date of purchase of the property.
   b) An individual who is a displaced homemaker. Displaced homemaker means:
      1. Is an adult;
      2. Has not worked full-time in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and
      3. Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.
   c) An individual who has only owned a principal residence not permanently affixed to a permanent foundation.
3. Qualify to purchase a BMP unit with a fixed-rate, thirty-year conventional loan, applying prudent debt-to-income ratios for principal, interest, taxes, insurance and HOA and total debt.
4. Obtain a Homebuyer Education Certificate from NHSSV.
5. Have less than $100,000 in financial assets. Assets accumulated under a certified down-payment assistance program are excluded from this limit. **Attachment 2** defines those assets that are required to be included and those that may be excluded.
6. Agree to contribute to the purchase transaction any liquid assets in excess of $20,000, except for those excluded as indicated in **Attachment 2**.

B. Requirements and Obligations

Each BMP unit is subject to a twenty-year Covenant on the unit as follows: (See form legal documents attached as **Exhibits A-C**).

1. The unit must be owned and occupied by the homeowner as his or her principal residence and for no other purpose. The unit, or any parts thereof, shall not be leased or rented by the homebuyer to any person or entity.

2. For the first five years after the unit is purchased, if the unit is sold, it must be sold to a household whose income does not exceed 110% of AMI. If the initial BMP homebuyer sells his or her unit during the first five years after the close of escrow, he or she must sell to a BMP-qualified new homebuyer, as required by the City, at a newly established Restricted Resale Price (RSP). The RSP shall be the ASP adjusted by any percent change in the AMI from the date of the original BMP home purchase. The City may increase the RSP to account for any individual capital improvements valued at greater than $2,000. No amounts are owed by the homeowner to the City if the home is sold at the RSP. **Section II.C** above indicates the method for deriving the ASP.

3. After the five-year resale restriction period ends, the homeowner may sell the home at market rate, subject to the following conditions through Year Twenty at which time, the restriction expires:

   a) The homeowner will first pay-off the City Promissory Note held by the City. The City Promissory Note represents the difference between the ASP and the IMV that the City sets when the home is initially sold. The initial homebuyer executes the note and deed of trust in favor of the City. The City sets the IMV based upon an appraisal prior to the initial sale. If the BMP unit is sold at any time after the end of the sixtieth month after the close of escrow on the initial sale (Year Six and thereafter), the seller must pay to the City the full amount of the City Promissory Note.

   b) The homeowner will also pay the City the lesser of:

      1. A decreasing portion of the Appreciation Amount gained during the time of ownership. The Appreciation Amount is calculated as the difference between the IMV and the current market price at the time of resale (Unrestricted Resale Price). The homeowner pays the City a proportionate share of the Appreciation Amount that decreases at the rate of 5% per year during the 20-year term of the Note. The homeowner's share of the Appreciation Amount will increase 5% for each year the BMP unit is owned. After twenty years, the homeowner realizes the full, unrestricted appreciation amount of any equity gain in the market value of the unit, or

      2. Seven percent (7%) simple interest per year on the difference between the IMV and the ASP.

   Attachment 3 illustrates and compares how the amounts received by the City and the homeowner would be calculated under the shared appreciation or simple interest payment alternatives. **Attachment 5** illustrates the procedure for computing interest on the City Loan.

4. The owner may not refinance or encumber the unit without prior approval from the City. Any attempt to refinance or encumber without such approval are grounds for foreclosure against the property, and a breach of contract action against the homeowner. The City may consent to a refinancing or encumbrance of the unit in hardship situations or to allow the homeowner to access lower interest rates if the original loan amount is not exceeded and the borrower is receiving no cash out.

IV. Homebuyer Selection

The City has contracted with NHSSV to administer the BMP Program. The scope of services includes administering buyer applications, evaluating homebuyers during the selection processes, providing a homebuyer education program, offering mortgage counseling and financial services, and facilitating communication between buyer and developer to ensure that sale of the BMP unit is completed. NHSSV also provides on-going monitoring of units and unit resale services to the City.

NHSSV can be reached at:

1156 North Fourth Street
San Jose, CA 95112
Phone: (408) 279-2600
Web: www.nhssv.org

A. Qualifications

To be considered for a BMP unit, the prospective homebuyer must be pre-qualified by NHSSV and pre-approved for a first mortgage loan. The pre-qualified household will be considered for selection of a BMP unit in accordance with the Priority Criteria and Process specified in **Section IV.B**.

1. At the time a BMP unit within any given project is near completion, the City, directly and/or through NHSSV, will advertise availability. Prospective qualified homebuyers, who indicate an interest in buying a BMP unit, will be pooled according to the priorities set forth below. If the number of interested and qualified prospective homebuyers is greater than the number of units available in any one project, a lottery will be held, administered by NHSSV, to determine who will have the first opportunity to purchase.
2. Having one's name drawn in the lottery is not a guarantee by the City, NHSSV, or the BMP unit developer that the selected household will be able to avail itself of the opportunity to purchase a BMP unit. The prospective homebuyer must successfully complete his or her responsibilities under the purchase agreement, and, within the time constraints of the purchase agreement and the BMP Program, must obtain all financing needed to close the transaction.
3. Failure of the homebuyer to perform such requirements shall result in disqualification from the program. Application and qualification for a BMP unit in one project are not transferable to another project. A new application must be submitted for each project in accordance with the time constraints and application procedures as published for each project by the City and/or NHSSV.

B. Priority Criteria

The City Council has established the following Priority Criteria for the allocation of the BMP units as they become available to the community:

1st Priority Level	At least one household member who both lives within the City Limits of the City of Santa Clara *and* operates a business or is employed by a business or a public or quasi-public agency in Santa Clara.
2nd Priority Level	At least one household member lives within the City Limits of the City of Santa Clara.
3rd Priority Level	At least one household member operates a business or is employed by a business or a public or quasi-public agency in Santa Clara.
4th Priority Level	Any other qualified applicant household without regard to residency or employment.
Note:	The qualifying household member must be the person or a dependent of a person whose name will appear on title and who will use the unit as their primary residence.

NHSSV will verify residency and employment of each applicant. NHSSV will apply the above-described Priority Criteria to rank BMP Program applicants. Those selected for the highest priority level will be screened first and selected either through a lottery selection, if necessary, or without a lottery if the number of candidates in the priority level is less than or equal to the number of units available.

The list of pre-qualified buyers in a higher priority category must be exhausted before a BMP unit will be offered to someone who is in the next priority level. **Section VI** provides additional information on the selection process.

V. Financing the Home Purchase

Each homebuyer is responsible for arranging and qualifying for the mortgage financing that is required to purchase the BMP unit. The first mortgage must be a thirty or thirty-five-year, fixed-rate mortgage.

The proposed financing package is subject to review by NHSSV. Such package may include first-time homebuyer loan assistance from the City of Santa Clara Redevelopment Agency and other subordinate financing offered by other public agencies and/or nonprofit entities. **Attachment 4** indicates the documents that must be submitted for review.

The City has designated NHSSV as a preferred lender with respect to its BMP homes. As an approved California Housing Finance Agency (CalHFA) direct lender, NHSSV may originate and fund CalHFA loans for those borrowers who qualify for its products. For borrowers who do not qualify for CalHFA financing, NHSSV may provide first mortgage financing through Neighborhood Housing Services of America or through conventional mortgage financing sources. *It is understood that the buyer has the freedom to select his or her own lender.*

CalHFA financing may be combined with both the BMP Program and the Agency's FTHB Program. CalHFA financing is a valuable resource for assisting families in buying a home that they might not otherwise afford. One should be aware of the below-noted CalHFA requirements that differ from those established for Santa Clara's program. CalHFA currently offers two primary loan programs, Cal30, a conventional loan program that offers a conventional 30-year fixed loan and a CalHFA FHA loan program. *If CalHFA requirements conflict with those of other programs, the most restrictive limit applies.*

A. The home purchase price cannot exceed CalHFA's sales price limit: as of 7/27/10, CalHFA's limit for new homes in non-targeted areas of Santa Clara County was $656,755

B. The homebuyer(s) cannot exceed the maximum income limit in the Cal30 Conventional Loan Program: the maximum income for households buying a home in Santa Clara County in non-targeted areas is $88,600 for a one-person household; $101,300 for a two-person household; $113,950 for a three-person household and $126,600 for a household of four or more persons

C. The homebuyer(s) cannot exceed the maximum income limit in the CalHFA FHA Loan Program: the maximum income for households buying a home in Santa Clara County in non-targeted areas is $127,320 for a one- or two-person household and $148,540 for a household of three or more persons

D. The homebuyer may not have owned and occupied a home during the last three years

E. The borrower may be subject to a Federal "Recapture Tax." This is a Federal income tax that the borrower(s) may have to pay if they sell or transfer their CalHFA financed home within 9 years. CalHFA indicates that the purpose of recapture is to focus the benefits of its programs on families who need them most. CalHFA also states that most borrowers will not have to pay this tax and for those who do, the tax will never exceed one-half of the gain on the sale of the home or 6.25% of the original CalHFA mortgages, whichever is less.

F. For further information on CalHFA requirements, go to www.CalHFA.ca.gov.

VI. Operating Procedures

A. Developer and City Actions

The City imposes the BMP program requirements as a condition of approval for projects receiving new land use or subdivision entitlements. Prior to the City issuing building permits for a given project, the developer and the City shall have fully executed the Affordable Housing Agreement (AHA). At the time of project approval, the City will issue a preliminary notice to NHSSV. This notice will provide an estimated date for the delivery of the BMP units. It will also provide the location, size, bedroom mix, unit type (single-family, townhouse, condominium), amenities, and targeted income groups.

The Developer shall notify both the City and NHSSV no less than one hundred eighty (180) days prior to the estimated occupancy of the BMP units, to enable the start of marketing and homebuyer selection process. The developer shall provide current project and unit descriptive information as a basis for preparation of marketing materials.

At least 30 days prior to start of BMP unit sales, the City shall have set the IMV based upon an independent appraisal.

B. Marketing

NHSSV shall be responsible for preparing and implementing the BMP unit marketing plan.

C. Initial Inquiries

NHSSV will respond to inquiries from prospective homebuyers by providing a summary of the BMP Program, which will include the program's requirements and contact information.

NHSSV will invite prospective homebuyers who express an interest in a BMP unit to complete an intake form and to register for homebuyer education classes and (if needed) counseling. The purpose of the intake form is to conduct a preliminary assessment of the prospective homebuyer's mortgage readiness and to develop a plan of action designed to move the homebuyer through the homeownership process. NHSSV shall insure that interested persons receive an intake form and other program materials within a reasonable time after initial contact.

NHSSV shall serve as exclusive sales agent for the City. NHSSV will select the buyers in accordance with the City's policies and procedures, and will prepare the required purchase and sales agreement for execution by the buyer and the developer. NHSSV will facilitate the close of escrow. It will perform these functions in coordination with the Developer's project sales team.

D. Verifications/Selection Process

Interested buyers will be provided an application and a flyer describing the unit, sale price, amenities, deed restrictions, and selection process with submittal deadlines. Applicants shall be given at least a two-week period to file applications prior to any established submittal deadline.

Upon receipt of applications for the BMP Program, NHSSV will meet with each prospective homebuyer to complete an assessment of income and credit. If the client appears to be mortgage ready and has not been previously approved by another lender, he or she may be pre-approved for a first mortgage loan, and NHSSV will take a formal loan application. NHSSV will verify compliance with all BMP

program homebuyer requirements established by the City. It will follow standard mortgage lending procedures, underwriting the client in terms of income, credit, and applicable eligibility criteria.

NHSSV will also verify the applicant's residency and employment for purposes of ranking the applicant according to the City's Priority Criteria. An applicant is required to submit to NHSSV sufficient verification of residency (e.g., copies of rent receipts, utility bills, and/or landlord affidavits). In addition, the applicant must provide NHSSV with verification of employment or evidence of self-employment (e.g., copies of payroll stubs, tax returns, employer affidavits, and/or copies of City business licenses). The documents submitted will be for the time period from the initial application to close of escrow.

If, in the sale of BMP units, NHSSV finds that it has more qualified applicants than the number of readily available units, it will rank each qualified applicant according to the Priority Criteria established by the City. Prior to any selection, NHSSV may, if requested, review with City staff any application that was disqualified. NHSSV shall document the reasons for the applicant's disqualification. If NHSSV has more qualified prospective buyers in the highest priority level than the number of available units, it shall select by lottery, a "Designated Buyer" and two "Alternate Buyers" for each available unit. All "Designated Buyers" shall be selected first, followed by all First "Alternate Buyers" and then by all Second "Alternate Buyers."

If a Designated Buyer is unable to obtain financing at an affordable cost or is unable to meet the program requirement to purchase the BMP unit, the next highest ranked Alternate Buyer will be offered the unit. In the event that the Alternate Buyer is unable to purchase the BMP unit, the second highest ranked Alternate Buyer will be offered the unit. If no qualified applicants are able to purchase the BMP unit from the initial advertisement or notice, NHSSV shall re-advertise the unit.

E. Execution of BMP Home Purchase Agreement

Upon completion of the selection process, NHSSV will arrange for execution of a Purchase Agreement between the developer and the approved buyer. The Purchase Agreement will be subject to the buyer completing the arrangements for financing the home purchase, and the sale price shall be the ASP set by the City. The Purchase Agreement shall also reference IMV and the amount of the City Promissory Note. The Purchase Agreement shall be accompanied by a Disclosure Affidavit (**Attachment 6**), signed by the buyer, disclosing the Covenant and the amount and terms of the City Promissory Note.

Prior to proceeding with close of escrow, NHSSV must review the proposed financing package. **Attachment 4** indicates the financing documents that must be submitted for review.

F. Close of Escrow

NHSSV is responsible for coordinating the close of escrow with the title company, the developer, the City, the lender(s), and the homebuyer. The City shall provide NHSSV with Escrow Instructions to transmit to the Title Company. NHSSV will ensure that real estate purchase and financing documents are executed correctly and are recorded in the following order of priority:

1. First Deed of Trust
2. Second Deed of Trust for a CalHFA down-payment assistance loan (if applicable)
3. Covenants, Restrictions, and City Option to Purchase
4. Deed of Trust securing the City's Promissory Note
5. Deed of Trust securing a Redevelopment Agency First-Time Homebuyer loan (if applicable)
6. Deed(s) of Trust securing other secondary financing (if applicable)

7. Requests for Notice for the City and Redevelopment Agency loans.

G. Reports to County Assessor

The County Assessor has indicated that the base year value for real property tax purposes shall be the restricted price established by the government agency (the ASP for homes purchased under Santa Clara's BMP Program). No later than May 1 of each year, NHSSV shall prepare and provide to the City and the County Assessor an annual BMP report. This report will indicate for each BMP unit transaction recorded during the previous 12 month period, the APN and property address, the buyer(s) name, the ASP amount, and the terms and restrictions of the transactions. The Escrow Officer shall provide the County Assessor with a change of ownership form with each sale or resale of a BMP unit.

H. Post Purchase Counseling / Compliance Monitoring

NHSSV shall provide post purchase counseling services for each homebuyer. NHSSV is also responsible for ongoing administration of the BMP Program, including:

1. Facilitating resale of BMP units to eligible households at a RSP during the five-year resale restriction period;
2. Monitoring compliance with BMP requirements;
3. Reviewing requests for refinancing of the BMP units; and
4. Calculating payoff demands for any BMP unit that is to be resold at market value, after expiration of the resale restriction period and until the twenty-year restriction period expires.

Attachments and Exhibits

Attachments:

1. Illustrative Calculation of Affordable Sales Price
2. Income and Asset Definitions
3. Loan Payoff/Equity Share Illustration
3. Lender Document Checklist
4. Calculation of Interest on City Loan
5. Disclosure Affidavit
6. Homebuyer Test

Exhibits:

A. Covenants, Restrictions and Option to Purchase
B. City Promissory Note
C. Deed of Trust and Security Agreement
D. Request for Notice

Attachment 1.

Illustrative Calculation of Affordable Sales Price

(behind this page)

Attachment 1

Illustrative Calculation of the Affordable Sales Price

(Please note that these are illustrative only, and may not represent the actual costs, fees or mortgage rates actually applied to a particular unit or project.)

The calculation in this Attachment is based on the following definition of household size: The defined household size is equal to one person greater than the number of bedrooms in the unit.

Assumptions for calculating the Affordable Sales Price (ASP):

1. Unit Size = _____

2. Family Size = _____

3. Interest Rate* = _____

4. Property taxes and assessments (per month) = _____
   (based on actual tax rate with value based on the Affordable Sales Price (ASP) of the unit)

5. Actual insurance premiums (per month) = _____
   (if not included in homeowners' association dues)

6. Property maintenance and repair (per month) ** = _____
   (if not included in homeowners' association dues)

7. Project's budgeted homeowners' association dues (per month) = _____

8. Utility allowance (per month)*** = _____

9. Mortgage insurance premium, if any = _____

*The interest rate shall be based upon a 3% down, 30-year, fully amortizing fixed rate mortgage that would be reasonable for the City's housing program client base (typically first-time homebuyers).
** Amount is obtained from the City's Department of Planning and Inspection.
*** Amount is obtained from the Housing Authority of the County of Santa Clara's most recent schedule of allowances for tenant purchased utilities.

Attachment 1

Illustrative Calculation of the Affordable Sales Price

I. Calculate monthly Affordable Housing Cost:

$105,500.00	((100% of Area median Income adjusted for family size (4 person household /3 bedroom unit))
X .35 $36,925	(Affordable Housing Cost cannot exceed 35% times 100% of Area Median Income)
divided by 12	(To calculate the monthly Affordable Housing Cost)
$3,077	(As this hypothetical illustrates, no family with an income of 100% of Area Median Income with a family size of 4 shall spend more than $3,385 per month, as of the date hereof, on the sum of the items which make up the Affordable Housing Cost).

II. Calculation of the maximum amount to be spent on principal and interest of all mortgage loans:

A. $3,077 (Maximum monthly Affordable Housing Cost) ***less:***
B. (-)_____ Property taxes and assessments (per month)
C. (-)_____ Insurance premiums (per month)
D. (-)_____ Utility allowance (per month)
E. (-)_____ Mortgage insurance premiums (per month)
F. (-)_____ Property maintenance and repair (per month)
G. (-)_____ Homeowners' association dues (per month) ***equals:***
H. _____ Maximum Monthly Mortgage Payment

III. Calculation of Affordable Sales Price: The ASP is calculated by adding the Maximum Monthly Mortgage Amount to the down payment. The Maximum Mortgage Amount will be based upon a 3% down, 30-year, fully amortizing fixed rate mortgage at an interest rate that would be reasonable for the City's housing program client base (typically first-time homebuyers). The calculation is as follows:

1. At a _____% interest rate, and a loan term of 30 years, the Maximum Monthly Mortgage Payment (H.) of $_____will allow a Maximum Mortgage Amount of $_____.
   (Note: The above step requires the use of a financial calculator.)

2. The Maximum Mortgage Amount of $_____ divided by .97 (for an assumed 3% down payment) equals the Affordable Sales Price of $_____.

Attachment 2.

Income and Asset Definitions

(behind this page)

Attachment 2

Income and Asset Definitions

Determination of Gross Income:

1. In calculating gross income, the applicant shall present evidence of all household income including that of the applicant, and other individuals who have and will share the same dwelling unit or will share in ownership of the unit. All household income shall be considered as set forth below:

    a. Gross pay in the case of an employee, as determined by the employer before any payroll tax or other deductions are taken, whether voluntary or involuntary; and including salaries, overtime pay, commissions, fees, tips, and bonuses; and/or
    b. Net income from the operation of a professional business, the production and/or sale of goods, or the provision of a service as determined by calculating the average net income as reflected in the venture's federal income-tax return for the past three years; and/or
    c. Interest, dividends, and other net income derived from any kind from real or personal property; and/or
    d. The full amount of periodic payments actually received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum payment in lieu of a periodic payment; and/or
    e. Payments in lieu of earnings, such as unemployment, worker's compensation, severance pay, and welfare assistance. Although such payments may be excluded by the first mortgage lender for underwriting purposes, they shall be included in determining the applicant's eligibility for the BMP Program; and/or
    f. Periodic and determinable allowances such as alimony and child support payments, regular contributions or gifts received from persons not residing in the home; to the extent that such payments are reasonably expected to continue; and/or
    g. All regular pay, special pay and allowances due to an applicant or other household resident as a member of the Armed Forces (whether or not living in the dwelling) who is head of the family, spouse, or other person whose dependents are residing in the unit; and/or

h. Any earned income tax credit to the extent it exceeds income tax liability; and/or

i. Any other income that must be reported for federal and State Income tax purposes.

2. The following household income shall not be counted in the determination of gross household income:

   a. Payments received for the care of foster children;
   b. Amounts specifically excluded by any federal or state statute from consideration as income;
   c. Casual, sporadic, or irregular gifts;
   d. Amounts that are paid specifically for meeting medical expenses or are reimbursements for medical costs incurred;
   e. Lump-sum supplements to family assets such as an inheritance, insurance payment (including payments under health care or accident insurance and Worker's Compensation); and settlement payments for personal injury or property losses.

Note: *Although not considered income, these payments will be considered in estimating total household assets, and may result in a determination that total assets exceed qualifying limits.*

   f. Payments for educational scholarships made directly to the student or to the educational institution, including amounts paid by the government to veterans to cover the cost of tuition, fees, books, and equipment.

3. The applicant shall be required to provide federal and State income-tax returns for the prior three years and verification of current income in order to establish eligibility for the program.

Assets:

The applicant shall not possess liquid or non-liquid assets in excess of $100,000, excluding assets accumulated under a certified down payment assistance program.

For purposes of the BMP program, the following types of assets shall be considered in determining eligibility:

   a. Cash savings:
   b. Marketable securities, stocks, bonds, and other forms of capital investment, including tax-exempt securities *other than individual, tax-deferred retirement accounts;*

c. Inheritance or lump-sum insurance payments already received;
d. Settlements for personal or property damage already received;
e. Equity in real estate, except as stated below;
f. Personal property that is readily convertible to cash.

2. The following are *not* considered assets:

a. Ordinary household effects, including furniture, fixtures, and personal property;
b. Automobiles used for personal use;
c. Depreciable property used in a business that generates a significant portion of household income;
d. Individual tax-deferred retirement accounts.

Attachment 3.

Loan Payoff/Equity Share Illustration

(behind this page)

Attachment 3

Equity Share and 7% Simple Interest Illustration
The seller will pay the lesser of the City's Equity Share of the Appreciation Amount or 7% simple interest based on a 20-Year Promissory Note

Example:

Initial Market Value of the Unit	$500,000
Less Affordable Sales Price at time of initial sale	$385,000
equals Principal amount of City Note	$115,000

Equity Share Calculation of the Appreciation Amount (Equity Subject to Sharing):

	Year Resale Occurs		
	6	**10**	**15**
Assumed Unrestricted Resale Price	$600,000	$675,000	$750,000
Less capital improvements approved by City	5,000	7,500	10,000
Net Unrestricted Resale Price	595,000	667,500	740,000
Less Initial Market Value	500,000	500,000	500,000
Appreciation Amount	$ 95,000	$167,500	$240,000
City's Equity Share			
(20-6)/20 times the Appreciation Amount	($66,500)		
(20-10)/20 times the Appreciation Amount		($83,750)	
(20-15)/20 times the Appreciation Amount			($60,000)
Seller's Equity (Appreciation Amount less City's Share)	*$28,500*	*$83,750*	*$180,000*
(Seller gets 5%/yr increase in shared Appreciation Amount)			

OR

7% Simple Interest Illustration:

Appreciation Amount	$95,000	$167,500	$240,000
7% simple interest ($115,000 principal)	($48,300)	($80,500)	($120,750)
Seller's Equity (Appreciation Amount less City's Interest)	*$46,700*	*$87,000*	*$119,250*
Principal amount of City Note	$115,000	$115,000	$115,000

Borrower must pay principal amount of the City Note in addition to either the City's share of the Appreciation Amount or the 7% simple interest amount.

It is assumed that no further encumbering of the property has occurred since the initial sale. Further encumbering of the unit is prohibited without the written permission of the City. The City offers no assurances or guarantee whatsoever that the property will increase in value to any extent or that it will not decrease in value. This illustration is solely created to serve as an illustration of calculated equity share or interest that may be owed.

Attachment 4.

Lender Document Checklist

(behind this page)

Attachment 4

Document Transmittal Checklist

Lender/Mortgage Broker Name_____ Contact_____

Phone #_____ Fax#_____ E-mail_____

Title Company Name_____ Escrow Officer Name_____

Phone #_____ Purchase Price_____

Items Required for BMP Program or First-Time Homebuyer Program Commitment, Funding and Close of Escrow

___Signed original of Homebuyer Program Application
___Two current pay stubs
___Signed purchase and sale agreement
___Current appraisal*
___Preliminary title report (no more than 45 days old)
___Freddie Mac Form 65/Fannie Mae Form 1003 (Uniform Residential Loan Application)
___Freddie Mac Form 1077/Fannie Mae Form1008 (Uniform Underwriting Transmittal Summary)
___Federal income tax returns for past three years
___Senior lender loan commitment letter or equivalent
___Evidence of other proposed non-City financial commitments (CalHFA, Teacher MCC, regular MCC, HTSCC $6,500, HomeVenture Fund, etc.) if applicable
___Statement indicating vesting, correct corporate name of beneficiary and trustee (page 1 of 1st deed of trust, if available), and estimated close of escrow date
___Certificate of completion of homebuyer training course
___Wiring Instructions (First-Time Homebuyer Program Only)

**May be submitted after FTHB loan commitment is issued but at least 7 days before close of escrow.*

Attachment 5.

Calculation of Interest on City Loan

(behind this page)

Attachment 5

Calculation of Interest on City Loan

The method for calculating interest on the City BMP Program Loan is as follows:

Step 1-- Multiply the City loan amount by the annual interest amount and by the number of whole calendar years during the period that the loan is outstanding.

Step 2--For each fractional year during the loan period, divide the number of partial year days by 360, then multiply the result by the loan amount times the annual interest rate.

Step 3—Add *Step 1* and *Step 2* totals to obtain total interest that the borrower(s) owe the City.

Example –Loan that closes March 31, 2007 and is repaid June 30, 2017

Step 1 - $40,000 loan amount x 7% x 9 calendar years (2008-2116) = $25,200

Step 2 - For Fractional Year 2007 – (270 days/360) x $40,000 x 7% = $ 2,100
For Fractional Year 2117 - (180 days/360) x $40,000 x 7% = $ 1,400

Step 3 - Total of Step 2 and Step 3 Amounts $28,700

Attachment 6.

Disclosure Affidavit

(behind this page)

Attachment #6

AFFIRMATIVE BUYER DISCLOSURE & ACKNOWLEDGEMENT OF BELOW MARKET PURCHASE UNIT RESALE, REFINANCING & AFFORDABILITY RESTRICTIONS PRIOR TO PURCHASE

RECITALS

I/ We ***Mr. Jose S. Public*** and ***Mrs. Clara S. Public***
Currently residing at ***1156 N. Fourth Street, San Jose, CA 95112-4944***
the ("DESIGNATED BUYER(S)") who have been allowed an opportunity by the City of Santa Clara, ("CITY") to qualify to purchase the dwelling located at ***1500 Civic Center Drive, Santa Clara, CA 95050*** which has been designated by the CITY as a Below Market Purchase Unit (the "BMP UNIT").

I./ We have been informed by the CITY and their non-profit administrator, Neighborhood Housing Services Silicon Valley, Inc. "NHSSV", that the City has required the developer of the development project ("the DEVELOPER") to provide this dwelling (the BMP UNIT) at a sales price that is significantly lower than the other market rate units in the development.

I/ We fully understand that without the CITY'S assistance, I / we would not otherwise have the ability to purchase this dwelling (the BMP UNIT) with the same favorable terms or at the Affordable Sales Price noted by the CITY.

I/ We fully understand and have been informed by the CITY and NHSSV of the following facts related to the opportunity provided to purchase the dwelling (the BMP UNIT):

1. The unrestricted Initial Market Value (IMV) of the dwelling based on a recent appraisal is ***$ 425,000***;

2. I/ We are being allowed the opportunity to qualify to purchase the dwelling (the BMP UNIT) at the reduced sales price of ***$ 385,000***;
   (the "Affordable Sales Price recorded as the official transaction price)

3. This represents a reduction of ***$ 40,000*** from the Initial Market Value;

4. I/ We will sign a Promissory Note payable to the City for this amount (***$40,000***) and it will become a separate subordinate loan obligation and must be paid to the CITY with interest, if the dwelling (the BMP UNIT) is sold for a price higher than an Affordable Sales Price after the five-year resale restriction period (discussed in Item 8 below) expires.

5. The Appreciation Amount of the dwelling (the BMP UNIT) after 5 years of ownership is the difference of the Initial Market Value (IMV) appraised at ***$425,000*** and the future unrestricted market value determined at the time of resale.

6. The interest that must be paid to the City based on the City Promissory Note is the lesser of either 7% simple interest or a decreasing share of the Appreciation Amount due to the City calculated at a rate of -5% per year of ownership.

   Example A: In addition to the Promissory Note Value of ***$ 40,000*** after 6 years the City could receive interest equal to 70% of the Appreciation Amount gained above the Unrestricted Initial Market Value [100% of the equity - (6 years X 5%/year) = 70%] or 7% simple interest $ ***16,800***, which ever is less.

   Example B: After 20 years, the City would receive only the Promissory Note Value of ***$ 40,000***, because the equity share would be less than 7% simple interest. [100% of the equity - (20 years X 5%/year) = 0%]

7. I/ We fully understand if I / we sell the dwelling (the BMP UNIT) during the first 5 years that I / we will not be able to sell the unit at a full market price because the Resale, Refinance, and Affordability Restrictions I / we will be signing give the City a right to buy the BMP UNIT (or designate another qualified buyer to buy the BMP UNIT) at a reduced purchase price that equals the Affordable Sales Price I / we paid adjusted overtime in accordance with the City's BMP Procedures. If the City or another designated buyer purchases the unit at the Affordable Sales Price, the City will forgive the City Promissory Note and I / we will not have to pay the ***$ 40,000*** to the City.

8. I/ We fully understand that only improvements that are consistent with the City's BMP Procedures and of at least $ ***2,000*** in value will be eligible to increase the Affordable Sales Price of dwelling (the BMP UNIT) during the first 5 years of ownership.

9. I/ We fully understand that the original primary mortgage loan of ***$ 300,000*** used to purchase this property may not be refinanced without prior written approval from the City and that it may only be replaced with a loan of equal or lesser value.

10. I/ We fully understand that I / we must live in the dwelling (the BMP UNIT) until the end of the Resale, Refinancing, and Affordability Restrictions (i.e. 20 years from the date of purchase) or the property is sold, whichever comes first.

11. I/ We fully understand that the Santa Clara County Tax Assessor will use the restricted value of the dwelling (the BMP UNIT) as represented in the Affordable Sales Price of ***$ 385,000*** to calculate property taxes for the property and that this amount may be adjusted by the Santa Clara County Tax Assessor as allowed by California Law.

Prior to close of escrow, I / we acknowledge that I / we have read and fully understand and comprehend this disclosure and the buyer documents provided by the CITY and NHSSV (Attachments _____ thru_____). I / We have no reservations regarding the terms or conditions that limit our use and ability to resell or refinance the dwelling during the effective 20 year term of the Resale, Refinancing and Affordability Restrictions. I/ We accept the terms and conditions noted in these documents.

Accepted: 1500 Civic Center Drive Designated Buyer(s)

Jose S. Public	_____	_____
Buyer #1 Printed Name	Buyer #1 Signature	Date:
Clara S. Public	_____	_____
Buyer #2 Printed Name	Buyer #2 Signature	Date:

Return Original to NHSSV to be placed in BMP File with Copies of all Attachments
Provide 1 Copy to Buyer with Copies of all Attachments
Provide 1 Copy to City of Santa Clara RDA with Copies of all Attachments

Attachment 7.

Homebuyer Test

(behind this page)

VERIFICATION OF HOMEBUYER AWARENESS & COMPREHENSION OF THE SANTA CLARA BMP PROGRAM RESALE, REFINANCING, & AFFORDABILITY RESTRICTIONS

This is a test of your understanding of the Santa Clara Below Market Purchase (BMP) Program and the Resale, Refinancing, & Affordability Restrictions that will apply to the dwelling you may be given the opportunity to purchase. You must understand the concepts noted in each question and be able to answer all the questions correctly or you will not be allowed to purchase the designated BMP Unit.

1. What is the address of the dwelling (the BMP UNIT) that I may be given the opportunity to purchase? _____.

2. Given my / our current financial circumstances, I / we would not otherwise have the ability to purchase this dwelling (the BMP UNIT) with the same favorable terms or at the Affordable Sales Price noted by the CITY. True or False? _____.

3. The Initial Market Value (IMV) of the dwelling without the City's Resale, Refinancing, and Affordability Restrictions based on an appraisal is $ _____.

4. I / We are being allowed the opportunity to qualify to purchase the dwelling (the BMP UNIT) at the reduced sales price of $_____ which is also referred to as the "Affordable Sales Price and this is the official recorded transaction price.

5. The difference between the Initial Market Value and the Affordable Sales Prices is $_____.

6. The eventual buyer of the dwelling (the BMP UNIT) will record a second Promissory Note (a loan) payable to the City and it will become a separate loan from the primary mortgage loan used to purchase the unit and must be paid to the CITY with interest, if after the five-year resale restriction expires, the dwelling is sold for a price higher than the allowed Affordable Sales Price. What is the amount that will be on the City Promissory Note and when must it be paid to the City with interest? _____.
_____.

7. What is the Affordable Sales Price? $ _____.

8. In addition to the value on the City Promissory Note, what is the interest that must be paid to the City if the dwelling (the BMP UNIT) is sold for a price higher than the Affordable Sales Price? _____
_____.

9. Can improvements made to the dwelling (the BMP UNIT) during the first 5 years of ownership be used to adjust the Affordable Sales Price? If so what is the minimum value of the improvements eligible? _____.

10. Can the original mortgage loan used to purchase this property be refinanced and if so for what amount? _____
_____

11. Can I rent out the dwelling (the BMP UNIT)? _____
_____

12. What is the transaction price used by the Santa Clara County Tax Assessor to calculate property taxes for this property? _____

COMPLETED BY:

Buyer #1 Printed Name	Buyer #1 Signature	Date:
Buyer #2 Printed Name	Buyer #2 Signature	Date:

NEIGHBORHOOD HOUSING SERVICES VERIFICATION OF HOMEBUYER COMPREHENSION OF THE SANTA CLARA BMP PROGRAMRESALE, REFINANCING, & AFFORDABILITY RESTRICTIONS

NHSSV Representative	Signature	Date:

Return Original to NHSSV to be placed in BMP File with Copies of all Attachments
Provide 1 Copy to Buyer with Copies of all Attachments
Provide 1 Copy to City of Santa Clara RDA with Copies of all Attachments

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
555 SARATOGA, LLC

ATTACHMENT D
INSURANCE COVERAGE REQUIREMENTS

Without limiting the Developer's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Developer shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

   $1,000,000 Each Occurrence
   $2,000,000 General Aggregate
   $2,000,000 Products/Completed Operations aggregate
   $1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Developer; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Developer to comply with the insurance -requirements of this Agreement:

   a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

   b. There shall be no cross liability exclusion, which precludes coverage for claims or suits by one insured against another;

   c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability;

   d. Coverage shall contain no Contractor's' limitation endorsement limiting the scope of coverage for liability arising from pollution, personal injury, Owners' and Contractor's' protective Liability; and

e. Contractual Liability coverage shall expressly include all liability assumed under this Agreement.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars ($1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Developer and/or its sub-contractor's involved in such activities shall provide coverage with a limit of two million dollars ($2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars ($1,000,000) policy limit Bodily Injury by disease, one million dollars ($1,000,000) each accident/Bodily Injury and one million dollars ($1,000,000) each employee Bodily Injury by disease.

2. The indemnification and hold harmless obligations of Developer included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Developer or any sub-contractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. The City of Santa Clara, its officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Developer's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

2. Primary and non-contributing. Each insurance policy provided by Developer shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from any other insurance, which the indemnities may possess, including

any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Developer's insurance.

3. Cancellation. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Attachment D, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Developer and City agree as follows:

1. Developer agrees to ensure that sub-contractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Developer, provide the same minimum insurance coverage required of Developer, except as with respect to limits. Developer agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Developer agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such sub-contractors and others engaged in the project will be submitted to City for review.

2. Developer agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Developer for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Developer in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Developer, and each and every sub-contractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Developer shall file with the City all certificates and endorsements for the required insurance policies for City 's approval as to adequacy of the insurance protection.

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G. EVIDENCE OF COMPLIANCE

Developer or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City 's request, Developer shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

The City of Santa Clara
Housing & Community Services Division
c/o EBIX Inc.
P.O. 12010-S2 or 151 North Lyon Avenue
Hemet, CA 92546-8010 Hemet, CA 92543

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Developer shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
555 SARATOGA, LLC

ATTACHMENT E
ETHICAL STANDARDS

Termination of Agreement for Certain Acts.

A. City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If Developer[1] does any of the following:

   a. Is convicted[2] of operating a business in violation of any Federal, State or local law or regulation;

   b. Is convicted of a crime punishable as a felony involving dishonesty[3];

   c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;

   d. Is convicted of an offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of Developer; and/or,

   e. Made (or makes) and false statement(s) or representation(s) with respect to this Agreement.

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[1] For purposes of this Agreement, the word "Developer" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of the corporation.

[2] For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

[3] As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with Developer can be imputed to Developer when the conduct occurred in connection with the individual's performance of duties for or on behalf of Developer, with Developer's knowledge, approval or acquiescence, Developer's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

B. City may also terminate this Agreement in the event any one or more of the following occurs:

1. If City determines that Developer no longer has the financial capability[4] or business experience[5] to perform the terms of, or operate under, this Agreement; or,

2. If City determines that Developer fails to submit information, or permits false information, which is required in order to perform or be awarded a contract with City , including, but not limited to, Developer's failure to maintain a required State license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.

C. In the event Developer, as an applicant or bidder, is ruled ineligible (debarred) to participate in a contract award process, or the Agreement is terminated pursuant to these provisions, Developer may appeal City 's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City of its action. The matter will be heard within thirty (30) days of the filing the appeal request with the City Clerk. Developer will have the burden of proof on the appeal. Developer shall have the opportunity to present evidence, both oral and documentary, and argument.

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[4]Developer becomes insolvent, transfers assets in fraud of creditors, makes an assignment for benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Developer.

[5] Loss of personnel deemed essential by the City for the successful performance of the obligations of the Developer to the City.

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
555 SARATOGA, LLC

ATTACHMENT F
AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I, Sanjeev Acharya, being first duly sworn, depose and say that I am the Manager of 555 Saratoga, LLC and I hereby state that I have read and understand the language, titled "Ethical Standards for Developers Seeking to Enter into an Agreement with the City of Santa Clara" (herein "Ethical Standards") set forth in Attachment E. I have authority to make these representations on my own behalf and on behalf of the legal entity identified herein. I have examined appropriate business records and I have made inquiry of those individuals potentially included within the definition of "Developer" contained in the Ethical Standards.

Based on the review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in Footnote #1 of Attachment E (1.e., owner or co-owner of a sole proprietorship, general partner, etc.) has been convicted of any one or more of the crimes identified in Attachment E within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

555 Saratoga, LLC
Developer Legal Name

S. Acharya
Signature

CEO
Title

NOTARY'S ACKNOWLEDGEMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgement of execution of the affidavit by the signatory. If the affidavit is on behalf of a Developer, partnership, or other legal entity, the entity's complete legal name and title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a Developer, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of **California**

County of **Santa Clara**

On 9/2/14 (Date) before me, **Sunita Singh**, Notary Public (Name and Title of Officer)

personally appeared Sanjeev Acharya,

(Name 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.

SUNITA SINGH
Commission # 1994918
Notary Public - California
Santa Clara County
My Comm. Expires Nov 18, 2016

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 of Notary Public

My Commission Expires: Nov 18, 2016

OPTIONAL INFORMATION

Description of Attached Document

Title or Type of Document: Affidavit of compliance with ethical standards.

Document Date: _____ Number of Pages: _____

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
555 SARATOGA, LLC

EXHIBIT A

Form of City Covenants, Restrictions and Option to Purchase

(Attached hereto)

COMPLIMENTARY RECORDING
REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 27383

Recording Requested by and
When Recorded Mail To:
CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, California 95050
Attn: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

BELOW MARKET PURCHASE PROGRAM COVENANTS, RESTRICTIONS AND OPTION TO PURCHASE

This agreement, entitled Covenants, Restrictions and Option to Purchase (the "City Covenants") is entered into as of this DATE, by and between the City of Santa Clara (the "City") and OWNER (the "Owner").

RECITALS

WHEREAS, the City has determined that it is desirable to encourage the purchase of homes by Moderate Income Households, and,

WHEREAS, the City has established a Below Market Purchase Program to assist Moderate Income Households, and

WHEREAS, concurrently with the execution of these City Covenants, Owner is purchasing the Residence for a purchase price that is affordable to Owner in accordance with a certain Affordable Housing Agreement (the "AHA") by and between the City and DEVELOPER dated DATE OF THE AGREEMENT. Without the benefits afforded by the City's BMP Program, the purchase price of the Residence would exceed the amount that is affordable to Owner; and,

WHEREAS, accordingly, in order to preserve the affordability of the Residence for Moderate Income Households, and in return for and in consideration of the opportunity for the Owner to purchase the Residence under the above-referenced circumstances and for other good and valuable consideration, the receipt and legal sufficiency of which the undersigned hereby acknowledges, the Owner, has agreed to execute these City Covenants; and,

WHEREAS, these City Covenants place certain use restrictions on the Residence, establish resale controls with respect to the Residence, and reserve to the City an option to purchase or designate an Eligible Purchaser to purchase the Residence from the Owner in order to provide for the continued availability of the Residence to Moderate Income Households.

NOW, THEREFORE, in consideration of the benefits received by the Owner and the City, the Owner and the City agree, as follows:

1. **Definitions.** The terms set forth in this section shall have the following meanings when used herein:

"Affordable Housing Cost" shall mean a monthly housing cost not exceeding one-twelfth (1/12) of thirty-five percent (35%) of one hundred percent (100%) of Median Income, adjusted for household size appropriate for the size of the Residence.

"Affordable Sales Price" shall mean a sales price for a Residence that is derived from the Affordable Housing Cost, as determined by the City.

"Appreciation Amount" shall mean the difference between the Initial Market Value and the Unrestricted Resale Price less the Owner's "capital improvements" as this term is defined in these City Covenants, and which is approved by the City.

"City Covenants" shall mean these Covenants, Restrictions and Option to Purchase executed by and between the City and the Owner, of even date herewith, as amended, modified or supplemented from time to time.

"City Lien" shall mean that certain subordinate mortgage lien, made to the Owner by the City and evidenced by the City Note.

"City Lien Documents" shall collectively mean the City Note, these City Covenants and the City Subordinate Deed of Trust.

"City Manager" shall mean the City Manager of the City of Santa Clara or his/her designee.

"City Note" shall mean the promissory note from the Owner to the City, as amended from time to time, evidencing the City Lien, as amended, modified or supplemented from time to time.

"City Subordinate Deed of Trust" shall mean the deed of trust recorded against the Residence from the Owner in favor of the City, as amended, modified or supplemented from time to time, securing the City Note and these City Covenants.

"CalHFA" shall mean the California Housing Finance Agency.

"Eligible Household" shall mean a prospective purchaser of the Residence who meets the then current requirements established by the City, including, but not limited to, having a household income that does not exceed 110% of the Area Median Income.

"Fair Market Value" shall be determined by an appraisal of the Residence as provided hereunder.

"First Mortgage Deed of Trust" shall mean the Deed of Trust on the Home from the Homebuyer in favor of the First Mortgage Lender, securing the First Mortgage Lender Note.

"First Mortgage Lender" shall mean LENDER, its successors and assigns.

"First Mortgage Loan" shall mean the first mortgage loan provided by the First Mortgage Lender to the Owner and secured by the First Mortgage Deed of Trust.

"Initial Market Value" shall mean the unrestricted Fair Market Value of the Residence as determined by the City as of the date of these City Covenants.

"Moderate Income Household" shall be a household with a gross income which does not exceed one hundred and ten percent (110%) of the Median Income, adjusted for household size.

"Area Median Income" shall mean the median gross yearly income for households in Santa Clara County, California, as published periodically by the California Department of Housing and Community Development ("HCD"). In the event such income determinations are no longer published by HCD, or are not updated for a period of at least eighteen months, the City shall provide the First Mortgage Lender with other income determinations which are reasonably similar with respect to method of calculation to those previously published by HCD.

"Notice of Intended Transfer" shall mean the notice required under Section 5 of these City Covenants that shall specify all the terms of the intended Transfer.

"Program" shall mean the City's Below Market Purchase Program.

"Purchase Option" shall have the meaning ascribed thereto under Section 7 below.

"Resale Restriction Period" shall mean five years from the date of these City Covenants.

"Residence" shall mean the housing unit commonly known as ADDRESS, together with the land thereon, and any subparts thereof, which is more particularly described in Exhibit A attached to the City Subordinate Deed of Trust that secures the City Note, which is incorporated herein by reference.

"Restricted Resale Price"- see Section 6.

"Senior Lender" or "Senior Lenders" shall mean any of the following entities and their successors and assigns, which are the beneficiary of a recorded security instrument used to secure financing for the purchase of the Residence: (i) the First Mortgage Lender (ii) CalHFA; (iii) the City of Santa Clara; or (iv) a lender under a CalHFA first mortgage program.

"Senior Loan" or "Senior Loans" shall refer to loans made by Senior Lenders to the Owner.

"Senior Loan Deeds of Trust" shall refer to the deeds of trust securing each Senior Loan, which documents shall at all times be senior to the City Lien Documents.

"Transfer" shall mean any sale, assignment, transfer, encumbrance voluntary or involuntary, in part or in full, of any interest in the Residence, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, a lien or an interest evidenced by a land contract by which possession of the Residence is transferred and Owner retains title; provided, however, that Transfer shall not include transfers by gift, devise or inheritance to an existing spouse, surviving joint tenant, or transfers to a spouse in the course of a dissolution proceeding or in connection with marriage, or transfers by devise or inheritance to children, or a transfer into an inter vivos trust of which the Owner is the sole beneficiary.

"Unrestricted Resale Price" shall mean the actual unrestricted price of the Residence that the Owner transfers between the expiration of the Resale Restriction Period and the twentieth (20th) anniversary of this Agreement.

2. **Owner Representations and Warranties**. The Owner represents and warrants that:

(a) The financial and other information provided by Owner to the City, its contractors and agents, and all lenders in order to qualify to purchase the Residence is true and correct as of the date first written above;

(b) The Owner intends and shall occupy the Residence as the Owner's principal place of residence, except as otherwise provided in Paragraph (c) of Section 3 below.

3. **Owner-Occupancy.**

(a) Owner shall occupy the Residence as his or her or their primary residence, and the Residence shall be used as the primary residence of Owner and Owner's household and for no other purpose. The Residence shall not be leased or rented by Owner to any person or entity.

(b) The City shall have the right to monitor whether the Residence is Owner-occupied by requesting that Owner provide the City, not more frequently than annually, with a written certification under penalty of perjury that the Residence is Owner-occupied, accompanied by supporting documentation reasonably satisfactory to the City.

(c) These Owner-occupancy restrictions may be waived, modified or terminated only upon the prior written approval of the City Manager.

4. **Maintenance of Property.** Owner agrees it shall maintain the interior and exterior of the Residence and any landscaping on the Residence in good condition and repair and in a manner consistent with the community standards which will uphold the value of the Residence, and in accordance with all applicable City codes. Failure to maintain the Residence in accordance with this Section 4, including, but not limited to, any violations of applicable building, plumbing, electric, fire,

housing or other applicable City of Santa Clara Building Codes, shall be a default by the Owner under this Agreement.

5. **Notice of Intended Transfer.** In the event Owner vacates the Residence (e.g., to use the Residence as their primary residence) or Transfer any interest therein or any portion thereof, Owner shall give the City a Notice of Intended Transfer at least ninety (90) days prior to the intended date for vacating the Residence or executing the Transfer. Any Transfer in violation of this Section 5 or any other provision of these City Covenants is prohibited and shall be null and void.

In the case of a Transfer by sale, the Notice of Intended Transfer shall also be accompanied by a written certification by the Owner and the proposed purchaser, in a form that is reasonably acceptable to the City, that the Owner and the proposed purchaser have not paid, have no agreement to pay and will not pay, to the other such party, or to any other person, any money or other consideration in addition to the consideration described in the terms of the sale.

6. **Determination of Restricted Resale Price.** During the Resale Restriction Period, the maximum sales price that the Owner may receive from any source for any type of Transfer of the Residence ("Restricted Resale Price") shall be the lowest of the following: (a) the Increased Base Price (defined below); (b) the Fair Market Value (defined below); or (c) the Affordable Sales Price (as defined in Section 1.).

(a) Increased Base Price. The "Increased Base Price" means the purchase price that Owner paid for the Residence, increased by the percentage change in the Area Median Income, as published by the U.S. Department of Housing and Urban Development, from the purchase date to the date of notification stated in Section 5, above. In the event that such income determination is no longer published, or has not been updated for a period of at least eighteen (18) months, the City may use or develop such other reasonable method as it may choose to determine the Area Median Income for Santa Clara County.

The Increased Base Price shall also be adjusted for the "Value of Capital Improvements". The "Value of Capital Improvements" shall mean the value of substantial structural or permanent fixed improvements that cannot be removed without substantial damage to the Residence or substantial or total loss of value of said improvements. No such valuation shall be made except for improvements: (a) made or installed by or under the direction of the Owner; (b) with an initial cost of Two Thousand Dollars ($2,000) or more; and (c) which can be documented by the Owner to the reasonable satisfaction of the City Manager. The value of such improvements to be taken into account in calculation of the Increased Base Price shall be the appraised market value of the improvements when considered as additions or fixtures to the Residence (i.e., the amount by which said improvements enhance the market value of the Residence at the time of sale or valuation). The adjustment to the Increased Base Price for such improvements shall be limited to the increase in value, and shall be determined by the City Manager and the Owner, or in the event of a failure to agree, by an independent residential appraiser selected by the Owner from a list of appraisers established by the City. The cost of the appraisal shall be borne by the Owner.

(b) Fair Market Value. The "Fair Market Value" of the Residence shall be determined by an independent residential appraiser selected by the Owner from a list of appraisers established by the City. To the extent possible, the appraisal shall be based on the sales prices of comparable properties sold in the market area during the preceding three (3) month period. The cost of the appraisal shall be borne by the Owner. In the event the Owner has made capital improvements to the Residence which have individually cost more than Two Thousand Dollars ($2,000) and can be documented to the appraiser and which have increased the value of the Residence, or if damage or deferred maintenance have occurred while the Owner owned the Residence which have decreased the value of the Residence, the appraisal shall specifically determine the Value of Capital Improvements as set forth in Section 6.a. or the adjustment for damage and deferred maintenance and shall state what the fair market value of the Residence would be without such value or adjustments. Nothing in this Section shall preclude the Owner and the City from establishing the Fair Market Value of the Residence by mutual agreement in lieu of an appraisal pursuant to this Section.

7. **Purchase Option.**

(a) As a material part of the consideration for these City Covenants, Owner covenants and agrees for itself, its successors and its assigns and every successor in interest to the Residence that for the Resale Restriction Period of these City Covenants, Owner hereby grants to the City an exclusive option to purchase the Residence or designate an Eligible Household to purchase the Residence from Owner in the event of an uncured default under the First Mortgage Loan or the City Lien Documents (subject to the First Mortgage Lender and Senior Lender's rights to cure under Section 12 herein), or upon receipt by the City of a Notice of Intended Transfer (the "Purchase Option"); provided, however, that the City shall be deemed to have waived such Purchase Option unless it gives notice to the Owner, the First Mortgage Lender and the Senior Lenders of its intention to exercise the Purchase Option within thirty (30) days, and to the extent possible, subsequently completes the purchase of the Residence within one hundred twenty (120) days from earliest of: (i) the expiration of the applicable cure period in the event of a default by the Owner under the City Lien Documents; or (ii) receipt by the City of a notice of default under the First Mortgage Loan, a Senior Loan, or a Notice of Intended Transfer.

(b) Within thirty (30) days following the exercise of the Purchase Option, the parties agree that the City shall open, or cause to be opened, an escrow with a title insurance company or such other escrow agent reasonably acceptable to the City (the "Escrow Agent") and the parties agree to execute escrow instructions with Escrow Agent as may be required by Escrow Agent, or to implement or give effect to the terms and conditions of these City Covenants. The parties agree to the following escrow terms and conditions:

(1) The escrow shall be for a period of one hundred (120) days or sooner if mutually agreed by the parties;

(2) The City agrees that it will pay, or cause to be paid by an Eligible Household designated by the City, the Restricted Resale Price upon the close of escrow or as otherwise mutually agreed to by the parties. Notwithstanding the foregoing, prior to the close of escrow, the Owner hereby agrees that the Escrow Agent shall withhold that portion of the Restricted Resale Price

necessary to pay off the outstanding principal balance and interest due under the First Mortgage Loan, the Senior Loans and any outstanding liens or encumbrances against the Residence other than as due under the City Lien Documents. Any remaining funds shall be disbursed by the Escrow Agent to Owner;

(3) The Owner agrees that it shall pay the premium for a standard C.L.T.A. policy of Owner's title insurance issued by the Escrow Agent or title insurance company reasonably acceptable to the City in the amount of the Restricted Resale Price, insuring title to the Residence in the City's (or Eligible Household's, as the case may be) name, subject only to those matters approved by the City in writing. In the event the City (or Eligible Household, as the case may be) requests an A.L.T.A. policy of Owner's insurance and/or any title endorsements, the additional costs associated with the issuance of an A.L.T.A policy or the endorsements shall be paid by the City (or Eligible Household, as the case may be);

(4) In the event the City exercises its Purchase Option, the Owner and City agree that all costs and fees charged in connection with the closing and escrow shall be borne one-half (1/2) by the City (or Eligible Household, as the case may be) and one-half (1/2) by the Owner; provided, however, in the event the City exercises its Purchase Option upon default by the Owner under the City Lien, the First Mortgage Loan or a Senior Loan, the Owner agrees to pay all costs and fees charged in connection with the closing and escrow;

(5) The Owner agrees that it shall deposit in escrow for delivery to the City (or Eligible Household, as the case may be) a grant deed to the City (or Eligible Household, as the case maybe) in such form as may be reasonably acceptable to the City Manager in his or her sole discretion);

(6) Taxes and assessments shall be prorated at the close of escrow with Owner paying all such taxes and assessments due and payable prior to the close of escrow and City (or Eligible Household, as the case may be) paying all such taxes and assessments due and payable following the close of escrow;

(7) Owner agrees that title shall be conveyed by Owner at the close of escrow to the City (or Eligible Household, as the case may be) free and clear of all mortgages, deeds of trust, liens and encumbrances. Owner agrees that any costs to remove or satisfy any mortgages, deeds of trusts, liens or encumbrances shall be the responsibility of Owner, at Owner's sole cost and expense; and

(8) Any other terms or conditions mutually agreed to by the parties.

(c) Priority of Option. The Option granted pursuant to these City Covenants shall be senior in priority to any lien or encumbrance, with the exception of the First Mortgage Loan, the Senior Loans and the documents securing such loans.

(d) In no event shall the City become in any way liable or obligated to the Owner or any successor-in-interest to the Owner by reason of the exercise of, or the failure to exercise the Purchase Option.

8. **Appraisal; Fair Market Value.** Upon a Transfer of the Residence, the First Mortgage Lender shall conduct an appraisal of the Residence, subject to the City's right to have an independent appraisal conducted. The cost of the appraisal shall be borne by the Owner. Nothing in this Section shall preclude Owner and City from establishing the Fair Market Value of the Residence by mutual agreement in lieu of an appraisal.

9. **Transfer by Owner at an Unrestricted Resale Price.** If, after the expiration of the Resale Restriction Period, the Owner Transfers the Residence at an Unrestricted Resale Price, and such Transfer occurs prior to the twentieth (20th) anniversary of the date of this Agreement, the City shall be entitled to receive, and Owner shall pay to the City, an amount equal to the principal balance of the City Note. In addition to paying the entire outstanding balance of the City Note, Owner shall pay the City the lesser of either (i) simple interest at the rate of seven percent (7%) on the principal amount of the City Lien or (ii) an equity share, defined as the City's proportionate share of the Appreciation Amount decreased at the rate of five percent (5%) per year commencing from the date of this Agreement and the City Note until the twentieth (20th) anniversary. These obligations to pay the City shall be evidenced by a promissory note secured by a deed of trust recorded against the Residence.

10. **Restrictions on Transfer Proceeds.** The proceeds from any Transfer that ensues following the waiver or other failure by the City to exercise the Purchase Option under Section 7 above, after paying any and all superior liens and costs and fees relating to the transaction (such as any escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs), shall be applied in the following order of priority: (i) the outstanding balance on the City Note; and (ii) any excess proceeds shall belong to the Owner.

11. **Default.** The occurrence of any of the following shall be deemed a default hereunder:

(a) Failure or delay by Owner to perform any covenant or agreement of the Owner under these City Covenants; or

(b) Failure or delay by Owner to perform any other covenant or agreement of the City Lien Documents or any other lien recorded against the Residence.

12. **Notice of Default; Cure Periods.**

(a) Regardless of whether any notice is given, in the event of a failure or delay amounting to a default by the Owner in the performance of any term or provision of these City Covenants or any other City Lien Document, the Owner must immediately commence to cure, correct, or remedy such default and shall complete such cure, correction or remedy with reasonable diligence. In the event the Owner is unable or unwilling to implement the required cure, correction or remedy, the First Mortgage Lender and Senior Lenders shall have the right to cure, correct, or remedy any such default of the Owner, provided the First Mortgage Lender and Senior Lenders give notice to the City of its intention to cure, correct, or remedy the default within thirty (30) days after receipt of notice thereof. The City shall not exercise the Purchase Option, commence foreclosure proceedings or accept a deed

in lieu of foreclosure until it has given the First Mortgage Lender and Senior Lenders at least thirty (30) days' prior notice of the default in accordance with this Section 12.

(b) In the event of a non-monetary default by the Owner, the City shall give, or cause to be given, notice of default to the Owner, the First Mortgage Lender and the Senior Lenders, specifying: (1) the default complained of by the City; (2) the action required to cure such default; (3) a date by which such default is to be cured; (4) that failure to cure such default on or before the date specified in the notice may result in the exercise by the City of the Purchase Option pursuant to these City Covenants and such other remedies available to the City under the City Lien Documents or as provided by law; and (5) that Owner has the right to seek reinstatement and the right to bring a court action to assert the nonexistence of default or any other defense of the Owner to acceleration and sale. If the non-monetary default is reasonably capable of being cured within thirty (30) days, the City may grant the Owner, the First Mortgage Lender or the Senior Lenders such period after receipt of the notice to effect a cure. If such default is not reasonably capable of being cured within thirty (30) days, and the Owner, the First Mortgage Lenders or the Senior Lenders (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, the City may grant the Owner, the First Mortgage Lenders or the Senior Lenders such additional time as is reasonably necessary to cure the default.

(c) In the event of a monetary default, the Owner shall receive notice, and shall be accorded the appropriate period of time to effect a cure, in the manner and under the terms and conditions applicable to such default as provided under the City Lien Documents.

(d) Notwithstanding the cure periods established in this Section 12, in no event shall the City be precluded from sooner exercising any remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default or delinquency is given.

(e) Any omission or delay by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

13. **Notices.** Except as otherwise expressly provided in these City Covenants, in every case when, under the provisions of these City Covenants, it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served: (i) personally; or (ii) by independent, reputable, overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested; or (iv) by facsimile machine, with transmission and receipt confirmed, addressed as follows:

To Owner: _____
_____
_____
_____

To First Mortgage Lender: _____
_____
_____
_____

To Senior Lenders: _____
_____
_____
_____

To City The City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
Fax: (408) 249-7846
(Or such other address as may be provided by the City)

Any notice that is transmitted by electronic facsimile transmission during regular business hours of regular business days followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission by facsimile; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

14. **Binding on Successors and Assigns**. Notwithstanding any other provision of law, these City Covenants shall run with the land and shall be enforceable against the Owner and its successors in interest by the City. The requirements of these City Covenants shall remain in effect with respect to the Residence until the first to occur of the following:

(a) The end of twenty (20) years from the date hereof;

(b) The exercise by the City of the Purchase Option granted herein;

(c) A Transfer of the Residence and payment to the City of the full amount due on the City Note (including principal and the equity share or accrued interest);

(d) The acquisition of title to the Residence, by the First Mortgage Lender, a Senior Lender or other party, upon foreclosure of the First Mortgage Deed of Trust or a Senior Loan Deed of Trust;

(e) The acquisition of title to the Residence by the First Mortgage Lender or a Senior Lender or other party by a deed in lieu of foreclosure of the First Mortgage Deed of Trust or Senior Loan Deed of Trust, as applicable.

15. **Superiority of City Covenants/Subordination.** Upon close of escrow for the purchase of this Residence and the valid recordation of these Covenants, these Covenants shall supersede and replace the AHA, any other prior document restricting the unit, and all restrictions in such document are void and of no further effect.

The Owner covenants that he or she has not, and will not, execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that, in any event, these City Covenants is controlling as to the rights and obligations between and among the Owner, the City and their respective successors.

Notwithstanding anything to the contrary contained herein, these City Covenants shall, at all times, be subordinate to the First Mortgage Loan Documents and the Senior Loan Deeds of Trust.

16. **Right To Consent To Changes, Enforce.** No changes shall be made to these City Covenants without the prior written consent of the City. Only the City, the First Mortgage Lender, a Senior Lender, the Owner and their respective successors and assigns in and to the Residence shall have the right to consent and agree to changes in, or to eliminate in whole or in part, these City Covenants or to subject the Residence to additional covenants, easements, or other restrictions without the consent of any tenant, lessee, easement holder, licensee, trustee, beneficiary under a deed of trust (other than those securing the First Mortgage Loan, a Senior Loan or the City Lien) or any other person or entity having an interest less than a fee in the Residence. These City Covenants, without regard to technical classification or designation, shall not benefit or be enforceable by any person, or firm, or corporation, public or private, except the City of Santa Clara and the Owner and their respective successors and assigns.

17. **Invalid Provisions.** If any one or more of the provisions contained in these City Covenants shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in these City Covenants, and these City Covenants shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

18. **Controlling Law; Venue.** The terms of these City Covenants shall be interpreted under the laws of the State of California. Any lawsuit brought to enforce these covenants shall be brought in the Superior Court for this County of Santa Clara, and/or the federal district courts Northern District of California, San Jose.

19. **Exhibits.** Any exhibits referred to in these City Covenants are incorporated in these City Covenants by such reference. Owner agrees that he or she has had adequate opportunity to discuss these covenants with a representative of their choosing, and fully understand and accept all obligations assumed by execution of this Agreement.

[Signatures on following pages]

IN WITNESS WHEREOF, the Owner has executed these City Covenants as of the date first written above.

THE CITY OF SANTA CLARA, CA
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Facsimile: (408) 241-6771

"City"

By:_____
Name:_____

By:_____
Name:_____

"Owner"

EXHIBIT A

RESIDENCE DESCRIPTION

[To be added.]

State of California)
)
County of Santa Clara)

On _____, 20___, before me, _____,
a Notary Public, personally appeared _____,
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 _____ (SEAL)

State of California)
)
County of Santa Clara)

On _____, 20___, before me, _____,
a Notary Public, personally appeared _____,
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 _____ (SEAL)

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
555 SARATOGA, LLC

EXHIBIT B
Form of City Promissory Note

[Behind this page]

NOTICE TO BORROWER:
This document contains provisions restricting resales and assumptions.

BELOW MARKET PURCHASE PROGRAM
PROMISSORY NOTE
Secured by City Subordinate Deed of Trust

Note Amount: $ Santa Clara, California
Loan Date: _____, 20__

FOR VALUE RECEIVED, the undersigned ("Borrower") promises to pay to the CITY OF SANTA CLARA ("City") at such place as the City may designate from time to time in writing, the principal sum of $_____. All sums hereunder shall be payable in lawful money of the United States of America.

1. **Definitions**. The terms set forth in this section shall have the following meanings in this Note.

"Affordable Housing Cost" shall mean a Monthly Housing Cost not exceeding one-twelfth (1/12) of thirty-five percent (35%) of one hundred percent (100%) of Median Income, adjusted for household size appropriate for the size of the Residence, but in no event less than one-twelfth (1/12) of twenty-eight percent (28%) of the Borrower's actual gross income.

"Affordable Sales Price" shall mean a below-market sales price for a Residence, as determined by the City as of the date of the City Covenant.

"Appreciation Amount" shall mean the difference between the Initial Market Value and the Unrestricted Resale Price (less Borrower's "capital improvements" as this term is defined in the City Covenants and approved by the City).

"City Covenants" shall mean those certain Covenants, Restrictions and Option to Purchase entered into by and between the Borrower and the City, as amended, modified or supplemented from time to time.

"City Lien" shall mean that certain secondary mortgage lien, made to the Borrower by the City and evidenced by this Note.

"City Lien Documents" shall collectively mean this City Note, the City Covenants and the City Deed of Trust.

"City Note" or "Note" shall mean this promissory note from the Borrower to the City evidencing the City Lien to the Borrower, as amended, modified or supplemented from time to time.

"City Subordinate Deed of Trust" shall mean the deed of trust against the Residence executed by the Borrower in favor of the City, securing the City Note, as amended, modified or supplemented from time to time.

"CalHFA" shall mean the California Housing Finance Agency.

"Eligible Household" shall mean a Moderate Income Household which: (i) is defined as a first-time homebuyer in the City Covenants; (ii) intends to owner-occupy the Residence; and, (iii) meets the Program's household income and liquid assets requirements.

"Initial Market Value" shall mean the fair market value of the Residence, as determined by the City as of the date of the City Covenants.

"Moderate Income Household" shall be a household with a gross income which does not exceed one hundred and ten percent (110%) of the Median Income, adjusted for household size.

"Notice of Intended Transfer" shall mean the notice required under Section 4 of the City Covenants that shall specify all the terms of the intended Transfer.

"Program" shall mean the City's Below Market Purchase Program.

"Resale Restriction Period" shall mean five years from the date of the City Covenants.

"Restricted Resale Price" shall mean that price determined by the City in accordance with the provisions in the City Covenants.

"Residence" shall mean the housing unit commonly known as _____, together with the land thereon and any subparts thereof, and more particularly described in Exhibit A attached to the City Subordinate Deed of Trust that secures this Note.

"Senior Lender" or "Senior Lenders" shall mean any of the following entities and their successors and assigns, which is the beneficiary of a recorded security instrument used to secure financing for the purchase of the Residence: (i) the First Mortgage Lender, (ii) CalHFA; (iii) the City of Santa Clara; or (iv) a lender under a CalHFA first mortgage program.

"Senior Loan" or "Senior Loans" shall refer to loans made by Senior Lenders to the Borrower.

"Senior Loan Deeds of Trust" shall refer to the deeds of trust securing each Senior Loan, which documents shall at all times be senior to the City Lien Documents.

"Term" shall mean the twenty (20) year period commencing upon the date of this Note.

"Transfer" shall mean any sale, assignment, transfer, or encumbrance voluntary or involuntary, in part or in full, of any interest in the Residence, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Residence is transferred and

Borrower retains title; provided, however, that Transfer shall not include transfers by gift, devise or inheritance to an existing spouse, surviving joint tenant, or transfers to a spouse in the course of a dissolution proceeding or in connection with marriage, or transfers by devise or inheritance to children, or a transfer into an inter vivos trust of which the Borrower is the sole beneficiary.

"Unrestricted Resale Price" shall mean the actual unrestricted price of the Residence that the Owner transfers between the expiration of the Resale Restriction Period and the twentieth (20th) anniversary of this Note.

2. **City Lien.** This Note is made and delivered pursuant to, and in implementation of, the City's Below Market Purchase Program, under which the City, in order to assist Borrower to purchase the Residence, is making the City Lien to Borrower in the amount set forth above. The amount of the City Lien consists of the difference between the Initial Market Value and the Affordable Sales Price for the Residence, as determined by the City as of the date of the City Covenants. Concurrently with the execution of this City Note, Borrower is executing the following instruments in connection with the purchase of the Residence:

   (a) The City Subordinate Deed of Trust that secures this Note; and
   (b) The City Covenants, recorded concurrently with the City Subordinate Deed of Trust.

3. **Loan Security.** This Note is secured by the City Subordinate Deed of Trust of even date herewith. Borrower shall purchase an ALTA lender's policy of title insurance, insuring such City Subordinate Deed of Trust as a secondary lien on the Residence, with no delinquent taxes or assessment liens that appear as exceptions to title.

4. **Repayment.**

   (a) Notwithstanding any other provision of this Note, the entire outstanding principal balance of this Note and the amount set forth in subsection (b) below, shall be due and payable upon the first to occur of the following:

      (i) a default by Borrower under the City Lien Documents;

      (ii) a Transfer that occurs after the expiration of the Resale Restriction Period and before the expiration date of this Note, except as otherwise provided herein;

      (iii) payment in full of the First Mortgage Loan;

      (iv) Borrower refinances all, or any part of, the First Mortgage Loan; provided, however, that the entire outstanding principal balance of this Note shall not be due and payable upon such a refinance if the amount refinanced does not exceed the outstanding balance of the First Mortgage Loan plus closing costs; or

      (v) twenty (20) years from the date of this Note.

(b) In addition to paying the entire outstanding principal balance of the Note, Borrower shall pay the City the lesser of either (i) simple interest at the rate of seven percent (7%) on the principal amount of the City Lien commencing from the date of this Note to the date all amounts due under this Note have been repaid in full, or (ii) an equity share, defined as the City's proportionate share of the Appreciation Amount decreased at the rate of five percent (5%) per year commencing from the date of this Note until the maturity date of this Note. See Equity Share/Interest Payment Example attached hereto as **Attachment A.**

c) After payment of the outstanding balance of the Note and any interest or equity share, the City shall then remove or cause to be removed the City Covenants as a lien on the Residence and the City Covenants shall cease to be covenants running with the land for the Residence.

5. **Repayment Deferral/Forgiveness.** Except as provided under Section 4 above, the Borrower is not obligated to repay this Note during the Resale Restriction Period if the Residence is transferred at a Restricted Resale Price pursuant to and in accordance with the City Covenants.

6. **Exception.** The City may, at its sole and absolute discretion, permit exceptions on a case-to-case basis to the accelerated repayment provisions under paragraph (a) of the preceding Section 4 of this Note.

7. **Prepayments.** Borrower may prepay all or part of the principal balance due under this Note. If prepayment occurs after the expiration of the Resale Restriction Period and prior to transfer of the Residence, Borrower shall also pay either interest or an equity share as specified in Section 4 (b). The City shall use Fair Market Value, as defined in the City Covenants in determining the Appreciation Amount. The City Covenants shall continue to remain in full force and effect until the 20th anniversary of this Note. Borrower shall not prepay the First Mortgage Loan unless this Note is paid in full.

8. **Application of Payments.** Any payments made pursuant to the terms of this Note shall be applied first to sums, other than principal, that are due to the City pursuant to this Note, and the balance, if any, to the payment of principal.

9. **Indemnification.** Without prejudice to the rights of the City hereunder or under any other City Lien Documents, Borrower shall indemnify defend and hold harmless the City against, and shall pay the City on demand, any expense or loss which City may sustain or incur as a result of the failure by Borrower to pay when due any installment of principal, interest, fees, or other amounts payable to the City under this Note or any other City Lien Documents.

10. **Restrictions on Transfer Proceeds.** Except as otherwise provided by the requirements of any Fannie Mae or CalHFA rules or guidelines applicable to the First Mortgage Loan, or by this Note, proceeds from any Transfer, after paying any and all superior liens against the Residence and costs and fees relating to the transaction, if any (such as escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs), shall be applied in the following order of priority: (i) accrued interest or shared equity under this Note; (ii) the

outstanding balance under this Note; and (iii) any excess proceeds shall belong to the Borrower.

11. **Junior Liens.** Borrower shall not encumber the Residence for the purpose of securing financing and excluding the Senior Loan, whether senior in priority or subordinated to the City Deed of Trust without the prior written approval of the City. Notwithstanding any other provision of this Note, the following shall apply in the case of junior liens:

(a) Borrower shall give written notice to the City at least 30 days prior to recording any junior lien against the Residence to secure any loan of funds, including documentation of the proposed use of the proceeds of such loan.

(b) Borrower shall give written notice to City of any notice of default under any junior lien.

(c) Failure to give any notice required under this Section 11 and any uncured default under the terms of the junior lien shall be a default under this Note.

12. **Default.** The occurrence of any of the following shall be deemed a default hereunder:

(a) Failure by Borrower to make timely payments as required under this Note; or

(b) Failure or delay in the performance, or any other violation by Borrower of any other covenant or agreement of Borrower under this Note; or

(c) Failure or delay by Borrower to perform any covenant or agreement of Borrower in the City Deed of Trust, the City Covenants or any other lien recorded against the Residence.

13. **Notice of Default; Cure Periods.**

(a) Regardless of whether any notice is given, in the event of a failure or delay that constitutes a default by the Borrower in the performance of any term or provision of this Note or any other City Lien Document, the Borrower must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence. In the event the Borrower is unable or unwilling to enter into a forbearance agreement or otherwise implement the required cure, correction or remedy, the Senior Lenders shall have the right to cure, correct, or remedy any such default of the Borrower provided the Senior Lenders give notice to the City of its intention to cure, correct, or remedy the default within thirty (30) days after receipt of notice thereof. The City shall not commence foreclosure proceedings or accept a deed in lieu of foreclosure until it has given the Senior Lenders at least thirty (30) days' prior written notice of the default in accordance with this Section 13.

(b) In the event of a non-monetary default by the Borrower, the City shall give, or cause to be given, written notice of default to the Borrower, the Senior Lenders, specifying: (1) the default complained of by the City; (2) the action required to cure such default; (3) a date by which such default is to be cured; and (4) that failure to cure such default on or

before the date specified in the notice may result in acceleration of the sums owing under this Note, the sale of the Residence or the exercise of such other remedies available to the City under the City Lien Documents or as provided by law; (5) that Borrower has the right to seek reinstatement after acceleration and the right to bring a court action to assert the nonexistence of default or any other defense of Borrower to such acceleration and sale. If the non-monetary default is reasonably capable of being cured within thirty (30) days, the City may grant the Borrower, the Senior Lenders such period after receipt of the notice to effect a cure. If such default is not reasonably capable of being cured within thirty (30) days, and the Borrower, the Senior Lender (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, the City may grant the Borrower, the Senior Lender such additional time as is reasonably necessary to cure the default.

(c) In the event of a monetary default by the Borrower under the terms of this Note or the City Deed of Trust, the procedures and time periods established in Section 13 (a) above shall govern.

(d) Notwithstanding the cure periods established in this Section 13, in no event shall the City be precluded from sooner exercising any remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or if the default is not cured within ninety (90) days after the first notice of default or delinquency is given.

(e) Any omission or delay by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

14. **Borrower's Waivers.** Borrower waives any right to require the City:

(a) To demand payment of amounts due (known as "presentment");

(b) To give notice that amounts due have not been paid (known as "notice of dishonor")

(c) To obtain an official certification of nonpayment (known as "protest").

15. **Remedies.** Upon the occurrence of a default, the giving of notice and the expiration of the applicable cure period, the City may, at its option: (a) Declare all of the sums owing hereunder and secured by the City Deed of Trust to be immediately due and payable without further demand, and invoke the power of sale and any other remedies permitted by California law; (b) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Residence and take possession thereof (or any part thereof), in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Residence, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Residence shall not cure or waive any breach hereunder or invalidate any act done in response

to such breach and, notwithstanding its continuance in possession of the Residence, the City shall be entitled to exercise every right provided for in this Note and the City Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale; (c) commence an action to foreclose the City Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; (d) deliver to one or more of the Trustees named in the City Deed of Trust, the trustee named in the deed of trust securing the Senior Loan, or any of them, a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found in California Civil Code Sections 2924, *et seq.*, as amended from time to time, which notice such trustee shall cause to be duly filed for record; (e) exercise its option to purchase pursuant to the City Covenants; or (f) exercise all other rights and remedies provided herein, in the instruments by which the Borrower acquires title to Residence, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law. No delay or omission on the part of the City in exercising any right under this City Note or the City Deed of Trust shall operate as a waiver of such right.

16. **City Assignment.** City may, at its option, assign its right to receive payment under this Note without obtaining the consent of the Borrower. City shall provide written notice of any such assignment to the Senior Lenders.

17. **Attorney Fees and Costs.**

    (a) Borrower agrees to pay the following costs, expenses, and attorneys' fees paid or incurred by City, or adjudged by a court: (i) reasonable costs of collection, costs, and expenses, and attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suite is filed; and (ii) costs of suit and such sum as the court may adjudge as attorneys' fees in any action to enforce payment of this Note or any part of it.

    (b) In addition to the foregoing award of attorneys' fees, City shall be entitled to its attorneys' fees incurred in any post judgment proceedings to enforce any judgment in connection with this Note. This provision is separate and several and shall survive the merger of this provision into any judgment.

18. **Amendments.** This Note may not be modified or amended except by an instrument in writing expressing such intention executed by the parties sought to be bound thereby, which writing must be so firmly attached to this Note so as to become a permanent part thereof.

19. **Severability.** The covenants of this Note are severable. Invalidation of any covenant or any part thereof by law, judgment, or court order shall not affect any other covenant.

20. **Notices.** Except as otherwise expressly provided in this Note, in every case when, under the provisions of this Note, it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served: (i) personally; or (ii) by independent, reputable, overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested; or (iv) by facsimile machine, with transmission and receipt confirmed, addressed as follows:

To Borrower: _____
_____
_____
_____

To Senior Lender: _____
_____
_____
_____

_____
_____
_____
_____

To City: The City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
Fax: (408) 248-3381
(Or such other address as may be provided by the City)

Any notice that is transmitted by electronic facsimile transmission during regular business hours of regular business days followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission by facsimile; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

21. **Non-Waiver.** Failure or delay in giving any notice required hereunder shall not constitute a waiver of any default or late payment, nor shall it change the time for any default or payment.

22. **Successors Bound.** This Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.

23. **Joint and Several Obligations.** This Note is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

[Signature on following page]

BORROWER

By: _____
Printed Name: _____

By: _____
Printed Name: _____

Address: _____

_____

Attachment A

Equity Share and 7% Simple Interest Illustration
The seller will pay the lesser of the City's Equity Share of the Appreciation Amount or 7% simple interest based on a 20-Year Promissory Note

Example:

Initial Market Value of the Unit	$500,000
Less Affordable Sales Price at time of initial sale	$385,000
equals Principal amount of City Note	$115,000

Equity Share Calculation of the Appreciation Amount (Equity Subject to Sharing):

	Year Resale Occurs		
	6	**10**	**15**
Assumed Unrestricted Resale Price	$600,000	$675,000	$750,000
Less capital improvements approved by City	5,000	7,500	10,000
Net Unrestricted Resale Price	595,000	667,500	740,000
Less Initial Market Value	500,000	500,000	500,000
Appreciation Amount	$ 95,000	$167,500	$240,000
City's Equity Share			
(20-6)/20 times the Appreciation Amount	($66,500)		
(20-10)/20 times the Appreciation Amount		($83,750)	
(20-15)/20 times the Appreciation Amount			($60,000)
Seller's Equity (Appreciation Amount less City's Share)	*$28,500*	*$83,750*	*$180,000*
(Seller gets 5%/yr increase in shared Appreciation Amount)			

OR

7% Simple Interest Illustration:

Appreciation Amount	$95,000	$167,500	$240,000
7% simple interest ($115,000 principal)	($48,300)	($80,500)	($120,750)
Seller's Equity (Appreciation Amount less City's Interest)	*$46,700*	*$87,000*	*$119,250*
Principal amount of City Note	$115,000	$115,000	$115,000

Borrower must pay principal amount of the City Note in addition to either the City's share of the Appreciation Amount or the 7% simple interest amount.

It is assumed that no further encumbering of the property has occurred since the initial sale. Further encumbering of the unit is prohibited without the written permission of the City. The City offers no assurances or guarantee whatsoever that the property will increase in value to any extent or that it will not decrease in value. This illustration is solely created to serve as an illustration of calculated equity share or interest that may be owed.

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
555 SARATOGA, LLC

EXHIBIT C
Form of City Subordinate Deed of Trust

[Behind this page]

COMPLIMENTARY RECORDING
REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 27383

Recording Requested By and
When Recorded Mail To:
The City of Santa Clara
City Hall, 1500 Warburton Avenue
Santa Clara, California 95050
Attention: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

THIS DEED OF TRUST CONTAINS
PROVISIONS RESTRICTING ASSUMPTIONS

BELOW MARKET PURCHASE PROGRAM
DEED OF TRUST AND SECURITY AGREEMENT
(CITY SUBORDINATE DEED OF TRUST)

THIS DEED OF TRUST AND SECURITY AGREEMENT ("Deed of Trust") is made this ___ day of _____, 20__, among the trustor, BORROWER"S NAME ("Borrower") and TITLE COMPANY NAME, a Title Company ("Trustee"), and the CITY OF SANTA CLARA as Beneficiary (the "City").

The Borrower, in consideration of the promises herein recited and the trust herein created, irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with power of sale, the property located in the City of Santa Clara, State of California, described in the attached Exhibit "A" and more commonly known as: PROPERTY ADDRESS, Santa Clara, California (the "Property").

TOGETHER with all the improvements now or hereafter erected on the Property, and all easements, rights, appurtenances, and all fixtures now or hereafter attached to the Property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by this Deed of Trust; and

TOGETHER with all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected, or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all

renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner; and all of the foregoing, together with the Property, is herein collectively referred to as the "Security";

TO HAVE AND TO HOLD the Security, together with acquittances, to the Trustee, its successors and assigns forever;

TO SECURE to the City the performance of the covenants and agreements of Borrower contained in that certain Covenants, Restrictions and Option to Purchase executed by and between the Owner and the City and incorporated herein by this reference (the "City Covenants");

TO SECURE to the City the repayment of all sums evidenced by that certain promissory note to the City executed by Borrower, on or about the date hereof, in the principal amount of _____ Dollars ($_____.00) and incorporated herein by this reference ("City Note"), with interest or equity share as provided in the City Note; and

TO SECURE the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained.

BORROWER AND CITY COVENANT AND AGREE AS FOLLOWS:

1. **Borrower's Estate.** Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Security and other than this Deed of Trust, the Security is encumbered only by: (1) that deed of trust executed by Borrower in connection with a loan made to Borrower by _____, a _____, (the "First Mortgage Lender"), securing a promissory note executed by Borrower in favor of the First Mortgage Lender (the "First Mortgage Note") to assist in the purchase of the Property; (2) the Senior Loan Deeds of Trust (hereinafter defined); (3) the City Note; and (4) the City Covenants. Borrower agrees to warrant and defend generally the title to the Security against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring the City's interest in the Security. (As used in this Deed of Trust, the term "First Mortgage Lender" shall include all successors and assigns of the First Mortgage Lender.) For purposes of this Deed of Trust, "Senior Deeds of Trust" shall refer to the recordable instruments securing acquisition loans for the Security made for the benefit of the following entities, their successors and assigns: (i) First Mortgage Lender, (ii) California Housing Finance Agency; (iii) the City of Santa Clara; or (iv) a lender under a California Housing Finance Agency first mortgage program (collectively, the "Senior Lenders").

2. **Repayment of Debt.** Borrower will promptly repay, when due, the accrued interest or shared appreciation, plus principal required by the City Note.

3. **City Covenants.** Borrower will observe and perform all of the covenants and agreements of the City Covenants.

4. **Charges; Liens.** Borrower will pay all taxes, assessments and other charges, fines and impositions attributable to the Security which may attain a priority over this Deed of Trust, by Borrower making any payment, when due, directly to the payee thereof. Upon request by the City, Borrower will promptly furnish to the City all notices of amounts due under this paragraph. In the event Borrower makes payment directly, Borrower will promptly discharge any lien which has priority over this Deed of Trust; provided, that Borrower will not be required to discharge the lien of the Deed of Trust securing the First Mortgage Note (the "First Mortgage Lender Deed of Trust") or any other lien described in this paragraph so long as Borrower will agree in writing to the payment of the obligation secured by such lien in a manner acceptable to the City, or will, in good faith, contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Security or any part thereof.

5. **Hazard Insurance.** Borrower will keep the Security insured by a standard fire and extended coverage insurance policy in at least such amounts and for such periods as the City may require, which amounts shall be the lesser of (1) the sum of the loan amounts under the City Note and the First Mortgage Note, or (2) the replacement cost of the Security, but in no event less than (3) the amount necessary to prevent Borrower from becoming a co-insurer under the terms of the policy.

The insurance carrier providing this insurance shall be licensed to do business in the State of California and be chosen by Borrower subject to approval by the City; provided that such approval will not be withheld if the insurer is also approved by the Senior Lenders, the Federal Home Loan Mortgage Company, Fannie Mae, California Housing Finance Agency, or successors thereto.

All insurance policies and renewals thereof will be in a form acceptable to the City and will include a standard mortgagee clause with standard lender's endorsement in favor of the holder of the First Mortgage Note and the City as their interests may appear and in a form acceptable to the City. The City shall have the right to hold, or cause its designated agent to hold, the policies and renewals thereof, and Borrower shall promptly furnish to the City, or its designated agent, the original insurance policies or certificates of insurance, all renewal notices and all receipts of paid premiums. In the event of loss, Borrower will give prompt notice to the insurance carrier and the City or its designated agent. The City, or its designated agent, may make proof of loss if not made promptly by Borrower. The City shall receive thirty (30) days' advance notice of cancellation of any insurance policies required under this section.

Unless the City and Borrower otherwise agree in writing, insurance proceeds, subject to the rights of the First Mortgage Lender, will be applied to restoration or repair of the Security damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds will be used to repay the City Note secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Security is abandoned by Borrower, or if Borrower fails to respond to the City, or its designated agent, within thirty (30) days from the date notice is mailed by either of them to Borrower that the insurance carrier offers to settle a claim for insurance benefits, the City, or its designated agent, is authorized to collect and apply the insurance proceeds at the City's option either to restoration or repair of the Security or to repay the City Note.

If the Security is acquired by the City, all right, title and interest of Borrower in and to any insurance policy and in and to the proceeds thereof resulting from damage to the Security prior to the sale or acquisition will pass to the City to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition subject to the rights of the First Mortgage Lender.

6. **Preservation and Maintenance of Security.** Borrower will keep the Security in good repair and will not commit waste or permit impairment or deterioration of the Security.

7. **Protection of the City's Security.** If Borrower fails to perform the covenants and agreements contained in this Deed of Trust or if any action or proceeding is commenced which materially affects the City's interest in the Security, including, but not limited to, default under the deed of trust securing the First Mortgage Note, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving bankruptcy or a decedent, then the City, at the City's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as it determines necessary to protect the City's interest, including but not limited to, disbursement of reasonable attorneys' fees and entry upon the Security to make repairs.

Any amounts provided pursuant to this paragraph, with interest thereon, will become an indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and City agree to other terms of payment, such amount will be payable upon notice from the City to Borrower requesting payment thereof, and will bear interest from the date of disbursement at the highest interest rate permissible under applicable law. Nothing contained in this paragraph will require the City to insure any expense or take any action hereunder.

8. **Inspection.** The City may make, or cause to be made, reasonable entries upon and inspections of the Security; provided that the City will give Borrower reasonable notice of inspection.

9. **Forbearance by the City Not a Waiver.** Any forbearance by the City in exercising any right or remedy will not be a waiver of the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by the City will not be a waiver of the City's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

10. **Remedies Cumulative.** All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or any other document, or afforded by law or equity, and may be exercised concurrently, independently or successively.

11. **Successors and Assigns Bound.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the City and Borrower subject to the provisions of this Deed of Trust.

12. **Joint and Several Liability.** All covenants and agreements of Borrower shall be joint and several.

13. **Notice.** In every case under the provisions of this Deed of Trust when it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served: (i) personally; or (ii) by independent, reputable, overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested; or (iv) by facsimile machine, with transmission and receipt confirmed, addressed as follows:

To Owner: _____
_____
_____

To First Mortgage Lender: _____
_____
_____
_____
_____

To Senior Lenders: _____

_____
_____
_____
_____

To City: The City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
Fax: (408) 248-3381
(Or such other address as may be provided by the City)

Any notice that is transmitted by electronic facsimile transmission during regular business hours of regular business days followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission by facsimile; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

14. **Governing Law.** This Deed of Trust shall be governed by the laws of the State of California.

15. **Severability.** In the event that any provision or clause of this Deed of Trust or the City Note conflicts with applicable law, such conflict will not affect other provisions of this Deed of Trust or the City Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and the City Note are declared to be severable.

16. **Captions.** The captions and headings in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

17. **Default.** The occurrence of any of the following shall be deemed a Default hereunder:

(a) Failure or delay by Borrower to make any payments provided for in the City Note or herein; or

(b) Failure or delay by Borrower to perform any covenant or agreement of Borrower in the City Covenants; or

(c) Failure or delay by Borrower to perform any other covenant or agreement of Borrower in this Deed of Trust or the City Note.

18. **Notice of Default.**

(a) Regardless of whether any notice is given, in the event of a failure or delay that constitutes a default by the Borrower in the performance of any term or provision of this Deed of Trust, the Borrower must immediately commence to cure, correct, or remedy such default and shall complete such cure, correction or remedy with reasonable diligence.

(b) In the event of a non-monetary default by the Borrower, the City shall give, or cause to be given, notice of default to the Borrower, the First Mortgage Lender and the Senior Lenders, specifying: (1) the default complained of by the City; (2) the action required to cure such default; (3) a date by which such default is to be cured; (4) that failure to cure such default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust, sale of the Security or the exercise of such other remedies available to the City under this Deed of Trust or as provided by law; and (5) that Borrower has the right to seek reinstatement and the right to bring a court action to assert the nonexistence of default or any other defense of the Borrower to acceleration and sale. If the non-monetary default is reasonably capable of being cured within thirty (30) days, the City, in its sole and absolute discretion, may grant the Borrower, the First Mortgage Lender or the Senior Lender such period after receipt of the notice to effect a cure. If such default is not reasonably capable of being cured within thirty (30) days, and the Borrower or the First Mortgage Lender (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, the City, in its sole and absolute discretion, may grant the Borrower or the First Mortgage Lender such additional time as is reasonably necessary to cure the default.

(c) In the event of a monetary default by the Borrower, the notice provisions under Section 13 of the City Note shall govern, subject to any forbearance agreement that the City and Borrower may execute pursuant thereto.

(d) Notwithstanding the cure periods established in this Paragraph 18, in no event shall the City be precluded from sooner exercising any remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default or delinquency is given.

(e) Any omission or delay by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not

deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

19. **Acceleration; Remedies.** Upon the occurrence of a Default, the giving of notice thereof and the expiration of any applicable cure period, City may, at its option: (a) Declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by California law; (b) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding the continuance in possession of the Security, the City shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale; (c) commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; (d) deliver to one or more of the Trustees named in this Deed of Trust and the trustee named in the First Mortgage Deed of Trust, or any of them, a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found at California Civil Code Sections 2924, et seq., as amended from time to time, which notice such trustee shall cause to be duly filed for record; (e) exercise its option to purchase pursuant to the City Covenants; or (f) exercise all other rights and remedies provided herein, in the instruments by which the Borrower acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law. No delay or omission on the part of the City in exercising any right under the City Note, the City Covenants or this Deed of Trust shall operate as a waiver of such right. The City shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorneys' fees.

20. **Borrower's Right to Reinstate.** Notwithstanding the City's acceleration of the sums secured by this Deed of Trust, Borrower will have the right to have any proceedings begun by the City to enforce this Deed of Trust discontinued at any time prior to five (5) days before sale of the Security pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays City all sums which would be then due under this Deed of Trust and no acceleration under the City Note has occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by City and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing the City's and Trustee's remedies, including, but not limited to, reasonable

Attorneys' fees; and (d) Borrower takes such action as City may reasonably require to assure that the lien of this Deed of Trust, City's interest in the Security and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby will remain in full force and effect as if no acceleration had occurred.

21. **Due on Transfer of the Property or Repayment of the First Mortgage Loan.** Upon a Transfer (as defined in the City Note) of the Property or any interest in it or repayment in full of the amounts due under the First Mortgage Note, the City may, at its option, require immediate payment in full of all sums due and outstanding under the City Note and secured by this Deed of Trust. However, this option shall not be exercised by the City if applicable law as of the date of this Deed of Trust prohibits such exercise, or if the City has executed a separate written waiver of this option.

22. **Reconveyance.** Upon of satisfaction of all obligations secured by this Deed of Trust, the City will request Trustee to reconvey the Security and will surrender this Deed of Trust and the City Note to Trustee. Trustee will reconvey the Security without warranty and without charge to the person or persons legally entitled thereto. Such person or persons will pay all costs of recordation, if any.

23. **Substitute Trustee.** The City, at the City's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. The successor trustee will succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

24. **Subordination.** Notwithstanding any provision herein, this Deed of Trust shall not diminish or affect the rights of the First Mortgage Lender, and their successors and assigns, under the First Mortgage Deed of Trust or any subsequent First Mortgage deeds of trust or the Senior Lenders, and their successors and assigns, under the Senior Deeds of Trust or any subsequent Senior Lenders deeds of trust hereafter recorded against the Security. Further, this Deed of Trust, the City Covenants and the City Note are expressly subordinate to the First Mortgage Loan Documents and the Senior Loan Deeds of Trust.

Notwithstanding any provision in this Deed of Trust to the contrary, all of the provisions of this Deed of Trust shall terminate and have no further force and effect upon the occurrence of one of the following events:

(a) Title is acquired by First Mortgage Lender or another party upon foreclosure of the Senior Loan Deeds of Trust;

(b) Title is acquired by the First Mortgage Lender or another party by a deed in lieu of foreclosure of the Senior Loan Deeds of Trust.

25. **Request for Notice.** Borrower requests that copies of the notice of default and notice of sale be sent to Borrower at the address set forth in Section 13 above.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust as of the date first written above.

_____
Borrower

_____
Borrower

EXHIBIT A
Property Description

State of California)
)
County of Santa Clara)

On _____, 20___, before me, _____,
a Notary Public, personally appeared _____,
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 _____ (SEAL)

State of California)
)
County of Santa Clara)

On _____, 20___, before me, _____,
a Notary Public, personally appeared _____,
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 _____ (SEAL)

FULL RECONVEYANCE

THE CITY OF SANTA CLARA, the Beneficiary named in that Below Market Purchase Program Deed of Trust and Security Agreement (City Subordinate Deed of Trust) dated _____, 20__, in which _____ is named as Trustor and the undersigned _____Title Insurance Company, is named as Trustee [or appropriate language if successor trustee], and recorded on _____, as Instrument No. _____, in the Official Records, Santa Clara County, California, having declared that all obligations secured thereby have been discharged or performed and having requested the reconveyance thereof, _____Title Insurance Company, as said Trustee does hereby reconvey, without warranty, to the person or persons legally entitled thereto all right, title, interest and estate held by the undersigned as such Trustee, in and to the following real property described in the City Subordinate Deed of Trust:

[describe]

Dated: _____

[TRUSTEE]

By:_____

[ACKNOWLEDGMENT]

REQUEST FOR FULL RECONVEYANCE

A reconveyance will be issued only upon presentation to the _____Title Insurance Company, of this request properly signed and accompanied by the City Subordinate Deed of Trust, the original City Note secured by said City Subordinate Deed of Trust, and any receipt or document evidencing any other indebtedness secured thereby.

To _____, Trustee

The undersigned is the legal owner and holder of the Below Market Purchase Program Promissory Note ("City Note") for the total sum of $_____, and of all other indebtedness secured by City Subordinate Deed of Trust dated _____, 20__, made by _____, Trustor, to_____, Trustee, and recorded on _____, 20__, as Instrument No_____, in the Official Records in the Office of the County Recorder of Santa Clara County, California.

Said City Note, together with all other indebtedness and obligations secured by said City Subordinate Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, upon payment to you of any sums owing to you under the terms of said City Subordinate Deed of Trust, to cancel said City Note, above mentioned, and all other evidences of indebtedness secured by said City Second Deed of Trust delivered to you herewith, together with the said City Subordinate Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said City Subordinate Deed of Trust, all the estate now held by you and under the same.

Dated: _____, 20__

THE CITY OF SANTA CLARA

By:_____

Name:

Title:

Mail Reconveyance to:

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
555 SARATOGA, LLC

EXHIBIT D
Form of Request for Notice

[Behind this page]

OFFICIAL BUSINESS.
Document entitled to free
recording per Government
Code Section 6103.

Recording Requested by and
When Recorded Mail to:
Housing and Community Services Division
CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, California 95050

SPACE ABOVE THIS LINE FOR RECORDER'S USE

REQUEST FOR NOTICE
Under Section 2924b Civil Code

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any NOTICE OF DEFAULT and a copy of any NOTICE OF SALE under the _____dated as of __/__/ 20__ and recorded as Instrument No. _____, in the Official Records of Santa Clara County on _____, 20____ executed by _____ and __ _____ as Borrowers, for the benefit of the City of Santa Clara and describing the following real property, located in Santa Clara County, California:

[See Exhibit A attached hereto and incorporated herein.]

be mailed to THE CITY OF SANTA CLARA at the following address:

1500 Warburton Avenue
Santa Clara, California 95050

NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

THE CITY OF SANTA CLARA,
a chartered California municipal corporation

By: _____
Julio J. Fuentes
City Manager

ATTEST:

By: _____
Rod Diridon, Jr.
City Clerk

APPROVED AS TO FORM:

City Attorney

By: _____
Richard E. Nosky, Jr.

State of California)
)
County of Santa Clara)

On _____, 20___, before me, _____
_____,a Notary Public, personally appeared
_____, personally known to me (or 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 _____ (SEAL)

Exhibit A

Legal Description

[TO BE ATTACHED]

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-14

Santa Clara All-America City 2001

Date: November 12, 2014

To: City Manager for Council Action

From: Director of Electric Utility

Subject: Approval of Change Order No.2 to Public Works Contract 2129A for the Installation of the Building Pad, Roadway and Substructures with Anderson Pacific Engineering Construction, Inc., Change Order No. 1 to Public Works Contract 2129B for the Raymond Substation Storage Structure Construction with Guerra Construction Group, and Affirmation of Delegation of Authority to the City Manager to Approve and Execute Change Orders up to the Council Approved Appropriation for the Project

EXECUTIVE SUMMARY:

In November 2013, Council authorized a transfer of funds for the construction of the Raymond Substation storage structure including a 10% contingency, awarded the bid for Public Works Project 2129A for construction of the building pad, roadways and substructures to Anderson Pacific Engineering Construction for an amount of $334,331.00, awarded the bid for Public Works Project 2129B for construction of the building to Guerra Construction in the amount of $222,800.00, and authorized the City Manager to execute the contract documents on behalf of the City. The Council action did not specifically authorize the City Manager to approve and execute change orders.

The proposed Contract Change Order No. 2 for Anderson Pacific includes additional grading and paving work for a net increase of $34,648.84; Change Order No. 1 with Anderson Pacific was previously approved for a decrease of $54,128.00. Change Order No.1 for Guerra Construction includes a deduction related to manufacture of the building in accordance with current building codes and an increase for addition of the installation of a storage room within the structure, for a net increase of $17,764.00. The total of all change orders with both contractors on the project is a decrease of $1,715.16. Although no further change orders are expected, staff recommends that Council confirm the City Manager's authority to approve and execute change orders for this project up to the Council approved appropriation for the project. Copies of Change Order No. 2 with Anderson Pacific and Change Order No. 1 with Guerra Construction can be viewed on the City's website or are available in the City Clerk's Office for review during normal business hours.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Approval of Change Order No. 2 with Anderson Pacific covers an increase in scope to provide better drainage, improve grading and approaches to the new building for driveway access, and installation of pull boxes for service to building and existing site lighting. Approval of Change Order No. 1 with Guerra Construction allows for the addition of a storage room within the Raymond Storage Building and assure the building is constructed in accordance with current building codes. There are no identified disadvantages.

ECONOMIC/FISCAL IMPACT:

The total cost of the proposed change orders is $52,412.84. Funds are available in the Electric Department Capital Project Substation Critical Equipment Storage Building account 591-1372-80300-2129-(A)00015-(F)39000.

RECOMMENDATION:

That the Council:

1. approve and authorize the City Manager to execute Change Order No. 2 to Public Works Contract 2129A, in an amount not to exceed $34,648.84, for the Raymond Substation Building Pad, Roadway and Substructure Construction with Anderson Pacific Engineering Construction, Inc.;
2. approve and authorize the City Manager to execute Change Order No. 1 to Public Works Contract 2129B, in an amount not to exceed $17,764.00, for the Raymond Substation Storage Structure Construction with Guerra Construction Group; and
3. authorize the City Manager to execute any additional change orders related to the project not to exceed the Council approved appropriation.

John C. Roukema
Director of Electric Utility

Certified as to Availability of Funds: OK JF
591-1372-80300-2129 $52,412.84

Gary Ameling
Director of Finance/Assistant City Manager

APPROVED:

Julio J. Fuentes
City Manager

MAJORITY VOTE OF COUNCIL

Documents related to this report:

1) Change Order No. 2 to Public Works Contract 2129A with Anderson Pacific Engineering Construction, Inc.

2) Change Order No. 1 to Public Works Contract 2129B with Guerra Construction

CONTRACT CHANGE ORDER NO. 1

(Per City of Santa Clara Procurement Agreement)

This Change Order is issued after the Effective Date of the Agreement and modifies the terms of the Agreement. It is signed by Contractor, Engineer and Owner and authorizes the addition(s), deletion(s) or revision(s) in the Work described in the Agreement and/or provides for an adjustment in the Contract Price and/or the Contract Times included in the Agreement.

PROJECT NAME: Raymond Substation
CITY CONTRACT NO. 2129B

OWNER: **CITY OF SANTA CLARA, CALIFORNIA**
ENGINEER: Silicon Valley Power
CONTRACTOR: Guerra Construction Group

Contractor is directed to make the following changes in the Contract Work and/or Contract Times:

1. Deduction to manufacture structure to current building codes <$2,050>
2. Provide 12' X 12' storage room inside the structure 19,814

See backup data on full scope of work. All work is per agreed lump sum cost of work.

CHANGE IN AGREEMENT PRICE: **Original Contract Price: $222,800.00**	**CHANGE IN CONTRACT TIMES:** Original Contract Times: March 10, 2014 Substantial Completion Date: June 27, 2014 Ready for Final Payment Date: July 18, 2014
Net Change all Previous Change Order(s) (No. n/a) **$0.00**	Net Changes all Previous Change Orders (No. **n/a** to No. **n/a**) Substantial Completion: Number of Days 0 Ready for Final Payment: Number of Days 0
Revised Agreement Price Prior to This Change Order: **$ 222,800.00**	Revised Contract Times Prior to This Change Order Substantial Completion Date: August 29, 2014 Ready for Final Payment Date: September 30, 2014
Net Change This Change Order: **$ 17,764.00**	Net Change in Contract Time Per This Change Order: Substantial Completion Date: August 29, 2014 Number of Days 63 Ready for Final Payment Date: September 30, 2014 Number of Days 74
Revised Contract Price After This Approved Change Order: **$ 240,564**	Revised Contract Times After This Approved Change Order: Substantial Completion Date: August 29, 2014 Ready for Final Payment Date: September 30, 2014

The Parties to this negotiated Agreement modification ("Change Order") acknowledge and agree that this Change Order amends the Agreement between the City and Contractor and changes the Contract Documents to adjust the Contract Price, Contract Time, or both. A significant element of the consideration between the Parties which formed the basis for this Change Order is that it includes all of the costs related to the changes in the Scope of Work to be performed by the Contractor. As an integral part of the consideration for this Change Order, any Work performed or to be performed as a result of this Change Order and any direct or indirect costs related to such Work (including, but not limited to, any and all home office overhead, special overhead, delay costs, costs incurred due to lost efficiency or contract delays of any kind) have been included in the Description of Changes to be made, above. The Parties agree that all other terms and conditions included in the Contract Documents and all previous Change Orders which have not been addressed in this Change Order shall remain unchanged and continue in full force and effect.

ENGINEER
Recommended:

By: _____
Engineer
(Authorized Signature)

Date: 9/22/14

DEPARTMENT HEAD
Recommended:

By: John Roukema

Date: 10/31/14

CONTRACTOR
Accepted and Agreed:

By: _____
Contractor JAIME GUERRA
(Authorized Signature)

Date: 9/17/14

CITY OF SANTA CLARA
Approved:

By: _____
City Manager

Attest: _____
City Clerk

Approved as to Form:
11-3-14
City Attorney

Date: _____
The Effective Date of this Change Order

PUBLIC WORKS CONTRACT CHANGE ORDER NO. 2

(Per City of Santa Clara Public Works Agreement)

This Change Order is issued after the Effective Date of the Agreement and modifies the terms of the Agreement. It is signed by Contractor, Engineer and Owner and authorizes the addition(s), deletion(s) or revision(s) in the Work described in the Agreement and/or provides for an adjustment in the Contract Price and/or the Contract Times included in the Agreement.

PROJECT NAME: **Raymond Substation**
CITY CONTRACT NO. **2129A**

OWNER: **CITY OF SANTA CLARA, CALIFORNIA**
ENGINEER: **Silicon Valley Power**
CONTRACTOR: **Anderson Pacific Engineering Construction, Inc.**

Contractor is directed to make the following changes in the Contract Work and/or Contract Times:

Description of Change(s) to be Made:

1. Remove and replace 1" thick AC on native with 4" AC on 8" AB in drainage swale	**$ 12,870.00**
2. Grade existing AB for approaches to new building for driveways and place 4" of AC	**18,270.00**
3. Grade existing AB and place 4" AC for southern personnel door	**1,800.00**
4. Install two owner provided pull boxes one for service to building and one to connect existing site lighting	**1,708.84**

All work is per agreed lump sum cost of work.

CHANGE IN CONTRACT PRICE: **Original Contract Price: $ 334,331.00**	**CHANGE IN CONTRACT TIMES:** Original Contract Times: **March 10, 2014** Substantial Completion Date: **May 16, 2014** Ready for Final Payment Date: **May 30, 2014**
Net Change all Previous Change Order(s) (No. **1** to No.) $-54,128.00	Net Changes all Previous Change Orders (No.**1** to No.) Substantial Completion: **10** Number of Days (+/-) Ready for Final Payment: **5** Number of Days (+/-)
Revised Contract Price Prior to This Change Order: **$280,203.00**	Revised Contract Times Prior to This Change Order Substantial Completion Date: **May 30, 2014** Ready for Final Payment Date: **June 6, 2014**
Net Change This Change Order: **$34,648.84**	Net Change in Contract Time Per This Change Order: Substantial Completion Date: **0** Number of Days (+/-) Ready for Final Payment Date: **0**Number of Days (+/-)
Revised Contract Price After This Approved Change Order: **$314,851.84**	Revised Contract Times After This Approved Change Order: Substantial Completion Date: **May 30, 2014** Ready for Final Payment Date: **June 6, 2014**

The Parties to this negotiated Contract modification ("Change Order") acknowledge and agree that this Change Order amends the Contract between the City and Contractor and changes the Contract Documents to adjust the Contract Price, Contract Time, or both. A significant element of the consideration between the Parties which formed the basis for this Change Order is that it includes all of the costs related to the changes in the Scope of Work to be performed by the Contractor. As an integral part of the consideration for this Change Order, any Work performed or to be performed as a result of this Change Order and any direct or indirect costs related to such Work (including, but not limited to, any and all home office overhead, special overhead, delay costs, costs incurred due to lost efficiency or contract delays of any kind) have been included in the Description of Changes to be made, above. The Parties agree that all other terms and conditions included in the Contract Documents and all previous Change Orders which have not been addressed in this Change Order shall remain unchanged and continue in full force and effect. This Change Order may be executed in counterparts, each of which when executed shall constitute a duplicate original. By signing below, Contractor affirms under penalty of perjury under the laws of the State of California that this Change Order is a true and correct claim for necessary additional work, and is not a false claim under Government Code § 12650 et seq.

ENGINEER **Recommended:** By: _____ Engineer (Authorized Signature) Date: 14 October, 2014 **DEPARTMENT HEAD** **Recommended:** By: _____ Date: 10/31/14	**CONTRACTOR** **Accepted and Agreed:** By: _____ Contractor (Authorized Signature) Date: 10-10-14 Email Address: MD@andpx.com	**CITY OF SANTA CLARA** **Approved:** By: _____ City Manager Attest: _____ City Clerk Approved as to Form: 11-2-14 _____ City Attorney Date: _____ The Effective Date of this Change Order

S:\Attorney\AGREEMENTS\Change Orders\Change Order Template SVP.doc [rev. 10/2/14]

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7C-1

Date: October 30, 2014

To: City Manager for Council Information

From: Acting Housing and Community Services Division Manager

Subject: Publication of Notice of Availability of Community Development Block Grant (CDBG) and Home Investment Partnerships Act (HOME) Entitlement Funds and Availability of FY 2015-16 Application Form

As part of its Citizen's Participation Plan for Federal Entitlements, the City will publish a notice of the availability of CDBG and HOME funds. The public notice is attached to this report. Application for those funds will be made available to interested parties on November 19, 2014 and be due at noon on December 19, 2014. The application will be available in the Housing and Community Services Division office. It is estimated that $850,000 in CDBG and $320,000 in HOME entitlement funds will be available for allocation for FY 2015-16.

Kevin L. Riley
Director of Planning and Inspection

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report:

1) ***Notice of Availability of Community Development Block Grant and Home Investment Partnerships Act Funding***
2) ***City of Santa Clara Application Form for FY 2014-15 Funding, in Council offices***
3) ***Instructions for FY 2014-15 Funding Application***

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NOTICE OF AVAILABILITY OF COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIPS ACT FUNDING

Notice is hereby given that the City of Santa Clara is accepting applications for FY 2015-16 Community Development Block Grant (CDBG) and Home Investment Partnerships Act (HOME) federal entitlement funds. The use of those funds must address housing and community development needs of low and moderate income City of Santa Clara residents. An estimated $850,000 in CDBG funds is anticipated to be available for FY 2015-16; a maximum of 15% of that total can be used for public services. Approximately $320,000 in HOME funds is anticipated to be available for FY 2015-16; a minimum of 15% of that amount must be set aside for Community Housing Development Organizations.

Beginning November 19, 2014, applications will be available at the offices of the Housing & Community Services Division, 1500 Civic Center Drive, Santa Clara, California. Applicants may call 408-615-2490 to request an application form. For more information, contact the Housing & Community Services Division at (408) 615-2490.

Completed application will be due at the Housing & Community Service Division Office no later than Noon, on December 19, 2014.

Rod Diridon, Jr., City Clerk

CITY OF SANTA CLARA

SECTION 1: PROJECT AND APPLICANT SUMMARY

A. PROJECT TITLE: _____

B. PROJECT STATEMENT (short description stating location, clients to be served and services to be rendered):

_____
_____
_____
_____
_____
_____
_____
_____

DO NOT ATTACH ADDITIONAL SHEETS

C. FUNDING REQUEST: $_____

D. SPONSORING ORGANIZATION

LEGAL NAME: _____

STREET ADDRESS: _____

CITY: _____ STATE: _____ ZIPCODE: _____

TELEPHONE (W/AREA CODE): _____ FAX (W/AREA CODE): _____

DUNS NUMBER: _____ See Attachment III of the Instructions

E. CONTACT PERSON (PROJECT MANAGER):

NAME: _____ TELEPHONE W/AREA CODE: _____

TITLE: _____ E-MAIL ADDRESS: _____

PROJECT TITLE: _____

SECTION 2: PROJECT INFORMATION

A. Consistency with City's Consolidated Plan Objectives

Check which Consolidated Plan Objective(s) that the Project will address.

_____ **Goal #1:** Increase the supply of affordable housing for homeownership.
_____ **Goal #2:** Increase the supply of affordable rental housing.
_____ **Goal #3:** Maintain the supply of affordable housing.
_____ **Goal #4:** Reduce the number of homeless individuals and families.
_____ **Goal #5:** Provide services that enhance the quality of life of residents.
_____ **Goal #6:** Affirmatively further fair housing.
_____ **Goal #7:** Maintain public facilities that enhance the quality of life of residents.

B. HUD Performance Measures

Check one HUD objective and one HUD outcome that will be addressed by the Project.

Objectives

Objective #1: Creates a suitable living environment.

_____ This objective includes projects that are designed to improve existing infrastructure, public facilities and public services available to individuals or families in the City of Santa Clara.

Objective #2: Provides decent housing.

_____ This objective includes housing projects whose purpose is to create or maintain affordable housing for individuals or families in the City of Santa Clara.

Objective #3: Creates economic opportunity.

_____ This objective includes projects involving economic development, commercial revitalization or job creation in the City of Santa Clara.

Outcomes

Outcome #1: Improve availability/accessibility.

_____ This category includes projects that make services, infrastructure, public facilities, housing, or shelters available or accessible to low/moderate income people in their community, including persons with disabilities. In this category, accessibility does not apply only to physical barriers.

Outcome #2: Improve affordability.

_____ This category applies to activities that provide affordability in a variety of ways in the lives of low/moderate income people. It can include the creation or maintenance of affordable housing, basic infrastructure connections, or services such as transportation or food assistance.

Outcome #3: Improve sustainability.

_____ This category applies to projects aimed at improving communities or neighborhoods, helping to make them more livable by providing benefit to low/moderate income persons, by improving their economic opportunity or by removing or eliminating slums or blighted areas.

PROJECT TITLE: _____

C. Project Overview and Narrative

Attach additional sheets to respond. Answers to individual questions should be no longer than one page.

1. Describe the need(s) that the proposed Project addresses, its community impact, and how it addresses an objective or priority identified in the City of Santa Clara's Consolidated Plan for 2010-2015.
   Available upon request.

2. Describe the Project's target population, including client eligibility requirements. Discuss how and if they are an at-risk and/or under-served population.
   If any fees or other costs are charged to clients, attach a Fee Schedule.

3. What direct benefits will be rendered by the Project, and how and where will they be measured and delivered? Include a description of your agency's experience in providing the proposed benefits.
   Submit brochures, flyers describing Project.

4. What other private or government organizations are now or will be addressing the same needs identified herein? List and describe the services provided by each in relation to the needs addressed. Explain how the proposed Project augments rather than duplicates the services of others. Describe how your organization collaborates with other providers.

5. What is your organization's written policy and/or established process for assuring access to services and benefits for persons with disabilities and/or Limited English Proficiency?
   Attach written policy if available or narrative of how access will be provided for persons with disabilities or limited English.

SECTION 3: TARGET POPULATION AND PROJECT BENEFICIARIES

A. Check which description applies to the proposed Project.

_____ The Project was underway in FY 2013-14 and the number of beneficiaries is actual from that year. Circle "Actual"

_____ The Project began in FY 2014-15 and the number of beneficiaries is the current year projected number. Circle "Projected"

_____ The Project will be new in FY 2015-16 and the number of beneficiaries is an estimated figure. Explain the basis for your estimate:

_____

_____

_____

B. Based on the description checked above, state the number of unduplicated clients previously served (if applicable) and the proposed number to be served in FY 2015-16. City Clients refers to beneficiaries who reside in the City of Santa Clara. Total Project Clients refers to all beneficiaries, regardless of residence, who benefit from the Project. For housing projects to be located in the City of Santa Clara, City and Project Clients are the same.

City Clients: _____ Total Project Clients: _____

PROJECT TITLE: _____

C. Demographic Profile of Beneficiaries of the Project

	Projected or Actual		2015-2016 Proposed			Projected or Actual		2015-2016 Proposed	
	City	Total	City	Total		City	Total	City	Total
HOUSEHOLD INCOME*					**BENEFICIARY RACE/ETHNICITY**				
Extremely Low Income (0%-30% AMI)					White/ Caucasian				
Very Low Income (31%-50% AMI)					Black/ African-American				
Low Income (51%-80% AMI)					American Indian/ Alaska Native				
Medium Income (81%-120% AMI)					Hawaiian/ Pacific Islander				
Above Medium Income (120%+ AMI)					Asian				
					*Hispanic***				
BENEFICIARY AGE					**MISCELLANEOUS**				
Youth (0-18 years)					Disabled Persons				
Adults (19-59 years)					Female Head Of Household				
Seniors (60+ years)									

* See Attachment I of the Instructions for explanation of income levels. AMI – Area Median Income, as defined by HUD.
** HUD requires that persons of Hispanic ethnicity also be identified by one of the five races above.

Explain how your agency collects income and race/ethnicity data.
Attach a copy of your Client Intake Form.

_____
_____
_____
_____
_____
_____

PROJECT TITLE: _____

SECTION 4: FINANCIAL AND OTHER ORGANIZATION INFORMATION

A. Agency Information

Is your organization incorporated under the laws of the State of California? (y/n) _____
If yes, attach a copy of your Articles of Incorporation (with amendments) and current By-Laws.

Non-profit with 501(c) Status (y/n): _____ Faith-based organization (y/n): _____
Attach documentation of Internal Revenue Service Non-Profit Status under Title 26, Section 501(c) of the federal code AND documentation of State of California Franchise Tax Board exempt status under Section 23701d of the State Revenue and Taxation Code.

Has your organization been certified by any HOME jurisdiction as a Community Housing Development Organization (CHDO) under the HOME Program? Yes ____ No ____ Not Sure _____
If no or not sure, are you willing to meet the qualifications to be certified as a CHDO, as set forth in the HOME regulations, 24 CFR Part 92? (y/n): _____
See Attachment IV of the Instructions for a description of CHDO qualifications

Has your organization been certified by any CDBG jurisdiction as a Community Based Development Organization (CBDO) under the CDBG Program? Yes _____ No _____ Not Sure _____
If no or not sure, are you willing to meet the qualifications to be certified as a CBDO, as set forth in the CDBG regulations, 24 CFR Part 570.204? (y/n): ____
See Attachment V of the Instructions for a description of CBDO qualifications

B. Total Organization Budget

	2015-2016 PROPOSED	2014-2015 PROJECTED	2013-2014 ACTUAL
Administration			
Fundraising			
Proposed Project (Total budget for all cities)			
All Other Programs			
TOTAL AGENCY BUDGET			

C. Total Project Budget for All Cities

PROJECT EXPENSES	2015-2016 PROPOSED	2014-2015 PROJECTED	2013-2014 ACTUAL
City of Santa Clara Portion			
All Other Cities			
TOTAL PROJECT BUDGET			

PROJECT TITLE: _____

D. Total Project Revenues for All Cities

- List all public cash revenue sources and amounts on a separate sheet.
- List all specific private cash revenue sources and amounts on a separate sheet. If specific sources have not been identified, use generic terms such as "individual donations" or "foundation grants."
- Under "Date 2015-16 S/B Known", enter the expected date notice regarding funding request should be provided.
- For Capital Improvement Projects, use the "2015-16 Proposed" column for funding that has or will be applied for, and the "2014-2015 Received" column for funding that has already been granted.

REVENUE SOURCE	2015-2016 PROPOSED	2014-2015 RECEIVED	DATE 2015-16 S/B KNOWN
City of Santa Clara			
Other Public Sources – from attached sheet			
Private Sources – from attached sheet			
TOTAL PROJECT REVENUES			

1. Does your organization charge fees for services that are provided by the Project? (y/n) _____
   If yes, attach a Fee Schedule.

2. Is your organization leveraging the requested City funds with other funds? (y/n) _____
   If no, explain why on an additional sheet.

3. Has your organization completed an independent audit for FY 2013-14? (y/n) _____
   If yes, attach a copy of the audit. If no, attach a financial statement, certified by your organization's Board Treasurer or Chief Executive Officer.

4. Was your organization required to file a federal single audit in FY 2013-14? (y/n) _____
   If yes, attach a copy of the audit.

5. Has your organization ever had funds withdrawn or a contract terminated for cause, unsatisfactory performance, or questionable costs on any financial statement or audit? (y/n) _____
   If yes, please explain:
   _____
   _____
   _____
   _____
   _____

6. Are the revenues of your organization greater than $25 million per year? (y/n) _____
   Does your organization receive 80% or more of its annual gross revenues from federal awards? (y/n) _____

PROJECT TITLE: _____

E. Current and Proposed Staff

Project includes all jurisdictions in which proposed project operates

	FY 2015-16 PROPOSED			FY 2014-15 ACTUAL	
EMPLOYEE CATEGORY	**AGENCY**	**PROJECT**		**AGENCY**	**PROJECT**
Paid Employees (in FTE's)					
Full-time					
Part-Time					
Contractual (Temporary)					
Volunteers (total number)					

F. Other Information That Will Be Required if Project is Funded

See the Checklist under Instructions for a full list of required documents. Do not submit with your application the documents listed below.

If your application is selected for funding, you will be required to submit the information below:

1. **Policy & Procedures Manual.** Include policy prohibiting discrimination, grievance procedures, and conflict of interest and substance abuse.

2. **List of Board of Directors.** Include the name, telephone number, address, and occupation or affiliation of each member. Identify the principal officers of the governing body.

3. **Designation of Authorized Official.** Consistent with the organization's By-Laws, documentation identifying the person(s) authorized to enter into an agreement with the City on behalf of the organization.

4. **Organizational Chart.** Include the organization's administrative framework and staff positions.

5. **Proof of Liability Insurance.**
   See Attachment II of the Instructions for a description of Insurance Requirements.

PROJECT TITLE: _____

SECTION 5: AUTHORIZATION AND CERTIFICATION

The applicant hereby assures and certifies that, if this request for funds is approved by the City of Santa Clara, it will comply with all applicable federal, state, and local laws, regulations, policies, and requirements (including, but not limited to, federal OMB Circulars No. A-87, A-102, A-110, and A-122), as they relate to the acceptance and use of federal and local funds by private or public organizations. Furthermore, the organization declares that it is capable of fulfilling the obligations as set forth in this application Also the applicant assures and certifies the following information:

1. It possesses legal authority to make a grant submission and to execute the proposed project;

2. The agency's governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the person identified as the official representative of the corporation to submit this funding application and all associated information and assurances;
   Attach documentation of authorization by your organization's governing board to submit an application.

3. The grant will be conducted and administered in compliance with:
   a. Title VI of the Civil Rights Act of 1964 (Public Law 88-352; 42 U.S.C. 2000d *et seq.*), as amended, and implementing regulations issued at 24 CFR Part 1; and
   b. Title VIII of the Civil Rights Act of 1968 (Public Law 90-284; 42 U.S.C. 3601 *et seq.*), as amended, implementing regulations issued at 24 CFR Part 107, and Executive Order 11063 ; and
   c. Titles I & II of the Housing and Community Development Act of 1974 (Public Law 93-383; U.S.C. 5301 *et seq.*), as amended; and
   d. Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112; 29 U.S.C. 794), as amended; and
   e. Executive Order 11246, the implementing regulations issued at 41 CFR Chapter 60, and the Housing & Urban Development Act of 1968 (12 U.S.C. 1701u), as amended; and
   f. The Age Discrimination Act of 1975 (Public Law 94-135; U.S.C. 6101), as amended; and
   g. Presidential Executive Order 13166 ("Improving Access to Services for Persons with Limited English Proficiency"); and
   h. Executive Orders 11625, 12432 and 12138, encouraging the use of minority and women-owned business enterprises in connection with activities funded under this grant.

4. It will affirmatively further fair housing.

5. It will implement the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), and implementing regulations at 24 CFR Part 35.

6. It will comply with Uniform Federal Accessibility Standards at 24 CFR Part 40, Appendix A, as they related to major rehabilitation or conversion of housing and public facilities.

As a duly authorized representative of the Agency, I submit this application to the City of Santa Clara and certify, under penalty of perjury under the laws of the State of California or other jurisdiction of authority, that the information contained herein is, to the best of my knowledge, true, correct and complete.
Attach documentation verifying person(s) with the authority to submit this application and execute the contract.

AUTHORIZED SIGNATURE: _____ DATE _____

NAME (Please Print): _____ TITLE: _____

SECTION 6: CHECKLIST OF REQUIRED DOCUMENTS

Below is a list of supporting documents that the applicant Agency is required to furnish either with the application or after notice of award. Submit one copy of each document together with the completed application for funding. The references to the various sections of the application where you can find descriptive details of the required document. Please check the items below to indicate that copies are attached.

SECTION II: PROGRAM INFORMATION

___ FEE SCHEDULE (if applicable)

___ PROMOTIONAL MATERIAL (brochure, flyer, etc.)

___ LIMITED ENGLISH PROFICIENCY POLICY

___ ACCESSIBILITY TO SERVICES AND ACTIVITIES FOR PERSONS @W/DISABILITIES

SECTION III: TARGET POPULATION

___ CLIENT INTAKE FORM

SECTION IV: FINANCIAL INFORMATION

___ ARTICLES OF INCORPORATION

___ BY-LAWS

___ FEDERAL 501(c) TAX EXEMPT STATUS

___ STATE 23701d TAX EXEMPT STATUS

___ 2013-14 FEDERAL SINGLE AUDIT (if applicable)

___ BOARD AUTHORIZATION TO SUBMIT APPLICATION

___ 2013-14 AGENCY AUDIT or ___ FINANCIAL STATEMENT plus LETTER OF AUDITABILITY

DOCUMENTS REQUIRED IF AWARDED FUNDING

___ LIST OF BOARD OF DIRECTORS

___ PERSONNEL POLICIES & PROCEDURES MANUAL

___ PERSONNEL POLICIES & PROCEDURES MANUAL

___ ORGANIZATION CHART

___ RESUME OF CHIEF EXECUTIVE OFFICER

___ RESUME OF CHIEF FISCAL OFFICER

___ BOARD AUTHORIZATION

___ BOARD AUTHORIZATION OF OFFICIAL TO SIGN AGREEMENT ON BEHALF OF AGENCY

ADDENDUM A PUBLIC/AFFORDABLE HOUSING/HOMELESS SUPPORT SERVICES

A. PROJECT SERVICE SUMMARY (check one only):
1. CONTINUATION OF EXISTING FUNDED PROJECT AT SAME LEVEL _____
2. CONTINUATION OF EXISTING FUNDED PROJECT AT REDUCED LEVEL _____
3. EXPANSION OF EXISTING FUNDED PROJECT _____
4. ONE-TIME PROJECT _____
5. SEED PROJECT _____
6. EMERGING NEED PROJECT _____

B. PROJECT CATEGORY (check one only):

1. HOUSING	___	2. HOMELESS	___	3. MENTAL HEALTH	___
4. TRANSPORTATION	___	5. LEGAL ASSISTANCE	___	6. VIOLENCE	___
7. DISABLED	___	8. FOOD/NUTRITION	___		
9. OTHER	___	Describe: _____			

C. CLIENT FEES--Attach a list of all enrollment/membership fees, fees for service, and any other fees charged to clients as part of providing services to be funded by City. If no fees are charged, state "No fees charged."

D. PROJECT PERFORMANCE GOALS (Direct Services)—All public, affordable housing/homeless support services projects must have a goal of clients served and at least one other quantifiable direct service activity (e.g., meals served, rides provided, counseling sessions held) that is to be rendered to a beneficiary:

PRODUCTIVITY (see page v of General Instructions)
1. UNDUPLICATED CLIENTS SERVED _____ _____
2. _____ _____
3. _____ _____

PROJECT IMPACT (see page vii of Part One: Completing the Application Form)
1. _____ _____
2. _____ _____
3. _____ _____

E. BASIS FOR REIMBURSEMENT
1. What Productivity Direct Service will be the basis for reimbursement? _____
2. What is your proposed reimbursement rate? $ _____
3. How was that reimbursement rate determined? _____

_____

F. INDIRECT SERVICES--Quantify efforts to enroll, inform and educate clients about your Project direct services (Attach promotional materials describing Project):

1. INFORMATION AND REFERRAL	(# of Calls/Contacts)	_____
2. INTAKE, SCREENING, NEEDS ASSESSMENTS	(# of Client Contacts)	_____
3. COMMUNITY EDUCATION	(# of Presentations)	_____
4. PROGRAM EVALUATION	(# of Clients Surveyed)	_____

PROJECT LINE ITEM BUDGET

This budget (unlike that on page 5, Fiscal Information) should include those revenues and expenses related to the City of Santa Clara Project for which funding is requested in this application, plus non-City revenues. All figures should be annualized. For staff positions to be funded wholly or partly by this grant (CDBG only), submit a complete job description and salary detail (including fringe benefits).

If your agency budget structure makes it impossible to determine the City portion of the Project's cost, please indicate that the budget reflects all Project costs, not just those assigned to the City. If such is the case, please provide an explanation as to how your agency can determine the portion of Project costs to be charged to City.

REVENUE **Description**	**2015-16** **Proposed**	**2014-15** **Projected**	**2013-14** **Actual**
City of Santa Clara			
TOTAL REVENUE			

EXPENSES **Description**	**2015-16** **Proposed**	**2014-15** **Projected**	**2013-14** **Actual**
Salaries & Wages			
Fringe Benefits and Taxes			
SUBTOTAL PERSONNEL			
Office Supplies			
Equipment			
Printing			
Telephone			
Travel			
Training			
Advertisement			
Insurance			
Occupancy			
Contract Services			
Direct Payments for Beneficiaries			
Miscellaneous			
SUBTOTAL MATERIAL & SUPPLY			
TOTAL EXPENSES			

BUDGET NARRATIVE

1. For each line item of the budget, explain any variation in excess of 10% between the Actual FY 2013-14 amount and the Proposed FY 2015-16 amount.

2. What is the alternative plan if City funding is not granted or provided at a reduced amount?

3. What efforts has your organization made to fund this project from other sources?

4. Describe your organization's plan to reduce its dependence from City funding, by leveraging other funds. Be specific as to goals and sources.

ADDENDUM B AFFORDABLE HOUSING CAPITAL IMPROVEMENT PROJECTS

A. TYPE OF HOUSING IMPROVEMENT PROJECT (Check all that apply)

1. ACQUISITION _____ 2. NEW CONSTRUCTION _____
3. REHABILITATION _____ 3. SUBSTANTIAL REHABILITATION _____
5. EXPANSION OF EXISTING, AGENCY-OWNED HOUSING FACILITY _____

B. TYPE OF HOUSING TENURE

1. RENTER _____ 2. HOMEOWNER _____

C. PROJECT PERFORMANCE GOALS (Direct Services)—All housing capital projects must have a goal of affordable housing units created/rehabilitated and an estimated timeline for all significant accomplishments required to complete the proposed Project, assuming City funds are available on or after July 1, 2015.

PRODUCTIVITY (see page v of General Instructions)

1. _____ _____
2. _____ _____
3. _____ _____

PROJECT IMPACT (see page v of General Instructions)

1. _____ _____
2. _____ _____
3. _____ _____

D. IS THIS REQUEST: A DEFERRED LOAN _____ A REPAYABLE LOAN _____

If a deferred loan, indicate why the City's funding cannot be repaid from annual project net cash flow: _____

_____

If a loan, indicate proposed terms: _____

_____

E. HAS A SPECIFIC SITE BEEN SELECTED? Yes _____ No _____

If yes, give address: _____

_____

Do you have site control? Yes _____ No _____

Describe Nature of Site Control: _____

(Provide Site Control Documentation) _____

F. WHO IS THE PROJECT DEVELOPER?

1. Agency Staff: _____ (Attach resume(s) of key personnel with experience in similar projects).
2. Outside Staff: _____ (Attach resume(s) of key personnel with experience in similar projects).

G. RELOCATION: Will the project require the relocation of any tenants, including businesses:

1. Permanently? Yes ___ No ___
2. Temporarily? Yes ___ No ___

H. DOES YOUR AGENCY QUALIFY AS A COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO) UNDER THE HOME PROGRAM? Yes ____ No ____ Not Sure ____

IF NO OR NOT SURE, ARE YOU WILLING AND ABLE TO MEET THE QUALIFICATIONS AS SET FORTH IN FEDERAL REGULATIONS 24 CFR Part 92? Yes _____ No _____
(See Attachment IV for a description of CHDO qualifications)

I. PROVIDE DETAILS OF OWNERSHIP AND MANAGEMENT STRUCTURE:

_____
_____
_____
_____
_____
_____
_____

J. PRO FORMA: For rental properties, attach an operating statement and cash flow analysis detailing:

1. Number of Units by Size (Bedrooms, Baths, Square Footage)
2. Proposed rent Schedule
3. Operating expenses by category.
4. Provide at least a three year projection of anticipated sources of operating funds.
5. Mortgage and other on-going loan costs
6. Provide a 30-Year cash flow analysis, assuming annual rent increases of 3% and annual operating expenses increases of 4%

K. **PROJECT LINE ITEM BUDGET**

This budget should include only those revenues and expenses related to the Project for which funding is requested in this application. All figures should be for the Total Project.

REVENUE **Description**	**Funding Requests**	**Funding Commitments**
City of Santa Clara		
TOTAL REVENUE		

EXPENSES

Description	Amount	Total Amount
1. PROPERTY ACQUISITION		
Purchase Price (Attach Appraisal)	_____	
Holding/Carrying Cost	_____	
Escrow Fees & Charges	_____	
Other (Specify: _____)	_____	
TOTAL ACQUISITION COST		_____
2. CONSTRUCTION/REHABILITATION		
Structures	_____	
Site Preparation/Off-Site Improvements	_____	
Builder's Overhead/Profit	_____	
Contingency	_____	
Environmental Mitigation	_____	
Lead-Based Paint Mitigation	_____	
Other (Specify: _____)	_____	
TOTAL CONSTRUCTION/REHABILITATION COST		_____
3. SPECIAL SOFT CHARGES		
Relocation	_____	
Labor Monitoring (1.5% of Construction Cost)	_____	
Furniture	_____	
Marketing	_____	
Initial Operating Reserve	_____	
Other (Specify: _____)	_____	
TOTAL SPECIAL SOFT CHARGES COST		_____
4 FEES AND PERMITS		
Architect/Engineering Fees		
Environmental Survey & Testing	_____	
City Permits and Fees	_____	
Other (Specify: _____)	_____	
TOTAL FEES AND PERMITS		_____
5 FINANCE & CARRYING CHARGES		
Construction Loan Interest & Points	_____	
Taxes During Construction Period	_____	
Insurance	_____	
Other (Specify: _____)	_____	
TOTAL FINANCE & CARRING CHARGES COST		_____
6 ORGANIZATION & DEVELOPMENT		
Legal Fees	_____	
Developer Fees	_____	
Insurance	_____	
Other (Specify: _____)	_____	
TOTAL ORGANIZATION & DEVELOPMENT COST		_____

TOTAL PROJECT COST _____

ADDENDUM C NON-HOUSING CAPITAL IMPROVEMENT PROJECTS

A. TYPE OF CAPITAL IMPROVEMENT PROJECT (Check all that apply)

1. ACQUISITION _____ 2. NEW CONSTRUCTION _____
3. REHABILITATION _____ 3. SUBSTANTIAL REHABILITATION _____
5. EXPANSION OF EXISTING, AGENCY-OWNED FACILITY _____

B. PROJECT CATEGORY (check one only):

1. HOUSING _____ 2. HOMELESS _____ 3. MENTAL HEALTH _____
4. TRANSPORTATION _____ 5. LEGAL ASSISTANCE _____ 6. VIOLENCE _____
7. DISABLED _____ 8. FOOD/NUTRITION _____
9. OTHER _____ Describe: _____

C. PROJECT PERFORMANCE GOALS (Direct Services)—All non-housing capital projects must have a goal of clients benefiting and an estimated timeline for all significant accomplishments required to complete the proposed Project, assuming City funds are available on or after July 1, 2015.

PRODUCTIVITY (see page v of General Instructions)

1. _____ _____
2. _____ _____
3. _____ _____

PROJECT IMPACT (see page v of General Instructions)

1. _____ _____
2. _____ _____
3. _____ _____

D. IS THIS REQUEST: A GRANT _____ A LOAN _____

If a grant, indicate why the City's funding cannot be repaid: _____

_____

If a loan, indicate proposed terms: _____

_____

E. HAS A SPECIFIC SITE BEEN SELECTED? Yes _____ No _____

If yes, give address: _____

Do you have site control? Yes _____ No _____

Describe Nature of Site Control: _____

(Provide Site Control Documentation) _____

F. FUNDING FOR FUTURE OPERATIONS If this project represents an addition to or expansion of existing operations, detail the anticipated new or increased funding sources that will fund the expanded operations. **Provide at least a three year projection of anticipated operating costs and the funding sources.**

G. WHO IS THE PROJECT DEVELOPER?

1. Agency Staff: _____ (Attach resume(s) of key personnel with experience in similar projects).
2. Outside Staff: _____ (Attach resume(s) of key personnel with experience in similar projects).

H. RELOCATION: Will the project require the relocation of any tenants (residential or commercial):

1. Permanently? Yes ___ No ___
2. Temporarily? Yes ___ No ___

I. PROVIDE DETAILS OF OWNERSHIP AND MANAGEMENT STRUCTURE:

J. **PROJECT LINE ITEM BUDGET**

This budget should include only those revenues and expenses related to the Project for which funding is requested in this application. All figures should be for the Total Project.

REVENUE Description	**Funding Requests**	**Funding Commitments**
City of Santa Clara		
TOTAL REVENUE		

EXPENSES

Description	Amount	Total Amount
1. PROPERTY ACQUISITION		
Purchase Price (Attach Appraisal)	_____	
Holding/Carrying Cost	_____	
Escrow Fees & Charges	_____	
Other (Specify: _____)	_____	
TOTAL ACQUISITION COST		_____
2. CONSTRUCTION/REHABILITATION		
Structures	_____	
Site Preparation/Off-Site Improvements	_____	
Builder's Overhead/Profit	_____	
Contingency	_____	
Environmental Mitigation	_____	
Lead-Based Paint Mitigation	_____	
Other (Specify: _____)	_____	
TOTAL CONSTRUCTION/REHABILITATION COST		_____
3. SPECIAL SOFT CHARGES		
Relocation	_____	
Labor Monitoring (1.5% of Construction Cost)	_____	
Furniture	_____	
Marketing	_____	
Other (Specify: _____)	_____	
TOTAL SPECIAL SOFT CHARGES COST		_____
4 FEES AND PERMITS		
Architect/Engineering Fees		
Environmental Survey & Testing	_____	
City Permits and Fees	_____	
Other (Specify: _____)	_____	
TOTAL FEES AND PERMITS		_____
5 FINANCE & CARRYING CHARGES		
Construction Loan Interest & Points	_____	
Taxes During Construction Period	_____	
Insurance	_____	
Other (Specify: _____)	_____	
TOTAL FINANCE & CARRING CHARGES COST		_____
6 ORGANIZATION & DEVELOPMENT		
Legal Fees	_____	
Developer Fees	_____	
Insurance	_____	
Other (Specify: _____)	_____	
TOTAL ORGANIZATION & DEVELOPMENT COST		_____

TOTAL PROJECT COST _____

CITY OF SANTA CLARA

INSTRUCTIONS FOR 2015-2016 FUNDING APPLICATION

Dear Applicant:

The attached packet contains the consolidated Application Form and Instructions for submitting a request to the City of Santa Clara for FY 2015-2016 funding from those entities to be used to address housing and other community needs of lower income residents of the City of Santa Clara. Funds provided under this application will be available on July 1, 2015. This application is for funds from the following sources:

1. Community Development Block Grant (CDBG), from the City's entitlement grant received from the U.S. Department of Housing & Urban Development (HUD).
2. Home Investment Partnerships Act (HOME), from the City's entitlement grant received from HUD.
3. Other sources, identified in the City's 5-Year Consolidated Plan for the Use of Federal Entitlement Funds (ConPlan), or which may become available to the City during the 2015-2016 fiscal year.

The federal entitlement jurisdictions in Santa Clara County have developed a common application form that can be used by all jurisdictions, so that applicants are asked for the same information by those jurisdictions choosing to use the consolidated form. **To be considered for funds from the City of Santa Clara, applicants must submit the City's Application Form to the City of Santa Clara.**

The application packet consists of two parts:

PART ONE - Instructions and exhibits that are **NOT TO BE SUBMITTED**, and includes:
1. A Table of Contents identifying all parts of the packet.
2. A description of the available funds and the evaluation process, including a schedule of significant dates.
3. Instructions for completing the application form.
4. A set of six attachments providing detailed information on items included in the Application Form.

PART TWO – The Application Form that is **TO BE SUBMITTED**, and includes:
1. The main Application Form, which **ALL APPLICANTS MUST SUBMIT**.
2. Three Addenda, of which each application shall **INCLUDE ONLY ONE**, based on the type of project proposed.
3. A checklist of organization documents that **ALL APPLICANTS MUST SUBMIT** along with the required documents.

PART ONE: TABLE OF CONTENTS

PART ONE (not to be submitted with application)

COVER LETTER i

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- Purpose iii
- Eligibility Criteria iii
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DESCRIPTION OF EVALUATION PROCESS
- Evaluation Process v
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INSTRUCTIONS FOR COMPLETING & SUBMITTING THE APPLICATION FORM
- Completing the Application Form vii
- Completing Requested Budget Information viii
- Completing and Submitting an Addendum ix
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ATTACHMENTS **(Information only)**
- Attachment I Income Guidelines
- Attachment II Insurance Requirements
- Attachment III How to Obtain a DUNS Number
- Attachment IV HOME Definition of a Community Housing Development Organization
- Attachment V CDBG Definition of a Community Based Development Organization
- Attachment VI Service Projects Application Evaluation Criteria

PART TWO (to be submitted with application)

GENERAL APPLICATION FORM **(all applicants must submit all parts)**
- Section 1 Project and Applicant Summary 1
- Section 2 Project Information 2
- Section 3 Target Population and Project Beneficiaries 3
- Section 4 Financial and Other Organization Information 5
- Section 5 Authorization and Certification 8

CHECKLIST OF REQUIRED ORGANIZATION DOCUMENTS **(all applicants must submit)**

ADDENDA **(submit only one Addendum based on the type of project being proposed)**
- Addendum A Public Services/Affordable Housing Services/Homeless Support Services
- Addendum B Housing Capital Projects (New Construction/Acquisition/Rehabilitation)
- Addendum C Non-Housing Capital Improvement Projects

PART ONE: DESCRIPTION OF AVAILABLE FUNDS

PURPOSE

The purpose of the Application Form is as follows:

- Substantiate demographically the assessed need for the Project within the community;
- Collect all required data from applicants in order to determine eligibility under the City's federal grant programs;
- Document the quality and quantity of services to be provided;
- Evaluate those services against established criteria; and,
- Demonstrate benefit to City of Santa Clara citizens.

ELIGIBILITY CRITERIA

1. Proposed projects must meet established community needs set forth in the City's Consolidated Plan, 2010-2015 (ConPlan), enhance existing City services and policies, and provide City of Santa Clara residents with quality benefits at reasonable costs. That plan is available at www.santaclaraca.gov, by clicking on Departments & Services, Planning & Inspection, Housing & Community Services Division, Consolidated Plan.

2. An eligible organization must be incorporated as a public agency or a tax exempt, non-profit corporation, demonstrate the managerial and financial capability to receive and expend grant funds, and assure compliance with all applicable Local, State, and Federal laws.

3. **Community Development Block Grant (CDBG)** Projects must meet one of the three national objectives of the CDBG Program set forth below. Projects must also be consistent with the City's ConPlan. For further details, see: Federal Regulations 24 CFR Part 570:
   a) Benefit lower income persons (defined in Attachment I);
   b) Address slums or blight; or,
   c) Meet a particularly urgent community development need.

4. **HOME Investment Partnerships Act (HOME)** Projects must expand or maintain the City's supply of decent, safe, sanitary, and affordable housing for lower income residents (defined in Attachment I). Proposed Projects must be consistent with the City's ConPlan. Funds may be used for New Construction, Rehabilitation, Acquisition and Tenant-Based Rental Assistance. For further details, see Federal Regulations 24 CFR Part 92.

5. All **Public Service/Affordable Housing/Homeless Support service projects** must demonstrate that no funds other than CDBG are available to meet the service levels proposed by the Applicant. Public Service projects not previously funded by the City must demonstrate that they are a new project to be undertaken by the Applicant or expansion of an existing project currently provided by the Applicant. Attachment VI summarizes the established criteria used by the City to evaluate Public Service/Affordable Housing/Homeless Support service applications. The City reserves the right to consider other factors in evaluating service applications. Funding for service programs must qualify under one of the criteria below:

   A. **Existing, Funded Project**: Proposed projects funded by the City in the current fiscal year, which are satisfactorily meeting their program goals. Requests for increased funding above a minimal allowance

for inflationary cost increases must demonstrate an expanded level of service, or a new service, or a loss of previously provided funds from a major source of project funding. Such agencies must make good faith efforts to secure funding from other sources, and must develop a long-range plan of independence from City funding.

B. **One-time Project**: Projects addressing a community need that is limited to a timeframe of one year or less.

C. **Seed Projects**: Projects addressing a community need that is being met by a new service. Such projects must demonstrate a high probability that they have developed or are likely to develop future, non-City commitments for on-going funding. City funding for such projects is normally for a maximum of two years.

D. **Emerging Community Need Project**: Projects that will serve an identified community need not currently funded by the City. Each November, the City holds a public hearing on City housing and community development needs. Projects addressing unmet, significant needs identified in the City's Consolidated Plan, at that needs public hearing or other appropriate public forums, are eligible for funding consideration under this criterion.

FUNDING AVAILABILITY

1. Each year, the City of Santa Clara receives an entitlement grant under the CDBG Program. In FY 2014-15, the total amount of this grant was $856,158. For FY 2015-16, an amount of $850,000 is projected to be available. By law, a maximum of 15% of this grant may be set aside for public services. The City supplements available Public Service Funds from current year Program Income, estimated annually to be $30,000. Organizations proposing economic development projects must qualify or be willing to qualify as a Community Based Development Organization (CBDO). See Attachment V for the CDBG definition of a CBDO.

2. Each year, the City of Santa Clara receives a participation grant under the HOME Program. In FY 2014-15, the total amount of this grant was $327,815. For FY 2015-16, an amount of $320,000 is projected to be available. By law, 15% of this grant must be set aside for a qualified Community Housing Development Organization (CHDO). Organization qualified as a CHDO or willing to be qualify as a CHDO will receive higher consideration for funding. See Attachment IV for the HOME definition of a CHDO.

3. The City, at its sole discretion, selects the source of funds for approved projects and may elect to fund projects with other sources and/or multiple sources of funding.

PART ONE: DESCRIPTION OF THE EVALUATION PROCESS

EVALUATION PROCESS

The schedule of significant dates is provided below. **THAT SCHEDULE IS THE ONLY NOTICE THAT APPLICANTS WILL RECEIVE, unless there is a change in the schedule.**

After the Application Due Date, City staff shall review applications and shall formulate recommendations to the City Council. Applicants may be required to provide additional or clarifying information regarding their Application Form. In evaluating project proposals, the City will consider:

- Consistency with the City's ConPlan objectives and priorities.
- Priorities and requirements of the two primary funding sources, as described in the previous section.
- Organization's demonstrated managerial and financial capability to receive and expend grant funds.
- Cost-effectiveness of the proposed project.
- For Public/Affordable Housing/Homeless Support services not previously funded by the City, the evaluation criteria set forth in the Service Projects Application Evaluation Criteria. See Attachment VI.

All applicants for FY 2015-16 public service or affordable housing service funds, must submit a complete application form to be considered for funding in FY 2015-16.

ONE PUBLIC HEARING is scheduled on proposed CDBG and HOME Projects. City staff recommendations will be presented at the Public Hearing. The Public Hearing is also the appropriate forum for applicants to make their oral presentations to City Council. Organizations recommended for other local funds will also be invited to present their projects at this hearings.

At the Public Hearing, City Council is expected to appropriate available CDBG and HOME funds among the applicant agencies. Allocations of other funds may occur at that time or at a later hearing in concert with the City's FY 2015-16 Capital Improvement budget process.

The attached application shall be employed by the City Council in determining which projects receive funding approval. All local appropriations and subsequent contracts are subject to the availability of federal funds. Copies of the standard contract are available for review. Acceptance of City funding means that the City's designees, auditors, and federal officials will have access to your organization's records.

SCHEDULE OF SIGNIFICANT DATES

THIS SCHEDULE IS THE ONLY NOTICE THAT AGENCIES WILL RECEIVE REGARDING SCHEDULED HEARING DATES, unless there is a change in the schedule.

November 19, 2014	Public Service and Capital Improvement Project applications will be available from the Housing & Community Services Division office, 1500 Civic Center Drive, Santa Clara, CA.
December 19, 2014	All applications due at the Housing & Community Services office no later than 12:00 P.M. **APPLICATIONS WILL NOT BE ACCEPTED AFTER THAT DEADLINE**.
March 10, 2015	Public Hearing on Community Development Block Grant and HOME funds. **SCHEDULED APPLICANT PUBLIC PRESENTATIONS.** Meeting held in City Council Chambers, 1500 Warburton Avenue, Santa Clara, CA, at 7:00 P.M.
May 5, 2015	City Council approval of the City's 1-year plan for the use of federal funds

CONTACT FOR INFORMATION

Contact: Eloiza Murillo-Garcia, Acting Housing & Community Services Division Manager, at (408) 615-2490.

PART ONE: INSTRUCTIONS FOR COMPLETING & SUBMITTING THE APPLICATION FORM

COMPLETING THE APPLICATION FORM

Section 1: Project and Applicant Summary

- The Project Statement must be short and concise. It will be used as a summary description of the project throughout the evaluation and funding process.
- The Legal Name is the organization's name as it appears on its Articles of Incorporation. Do not use a dba ("doing business as") name.
- To obtain a DUNS number see Attachment III, How to Obtain a DUNS Number.
- All applicants must have an IRS Tax ID number to be eligible.
- The Project Manager is the person who will be the applicant's primary contact person for questions and information relating to the Application Form.

Section 2: Project Information

- All applications must check at least one of the seven ConPlan goals listed. For more detailed information on the City programs under each objective, see the City's Con Plan.
- All applications must check only one Objective and only one Outcome.
  Objective #2 is only checked if the project involves new construction/acquisition/rehabilitation capital improvement projects or rental assistance/shared housing match services. Objective #3 is only checked if the primary purpose of the project is one of the three activities specified with that objective. All other projects will check Objective #1.
  All funded projects will be required to include one outcome performance indicator, which will be directly related to the Outcome checked on the Application Form. Outcome #2 includes the provision of decent housing under Objective #2, affordable housing/homeless support services, and public services that provide basic needs at below market costs (e.g., transportation, food) or produce additional household income for families living in poverty. Outcome #3 includes the creation of economic activity under Objective #3. All other projects will check Outcome #1.
- Responses to each one of the five narrative questions are not to exceed one page per question.

Section 3: Target Population and Project Beneficiaries

- Question A asks the basis for determining the number of beneficiaries reported in this section. New projects must provide an explanation of how they calculated the proposed number of beneficiaries for FY 2015-16.
- Question B asks how many beneficiaries the project is expected to serve and what portion of those beneficiaries are expected to be City residents. In the case of housing projects to be located in the City of Santa Clara, City Beneficiaries and Total Project Beneficiaries will be the same.
- In the demographic table, the "Projected or Actual" numbers are based on the response to Question A. The "2015-16 Proposed" are based on the numbers provided in Question B.
- HUD defines "Hispanic" as an ethnicity. Beneficiaries who identify themselves as Hispanic must also identify themselves as one of the five listed races. Thus, the number of Hispanic beneficiaries is also included in the sum of the five races.
- HUD and City policy for beneficiaries who identify themselves as being more than one race allows two methods of counting: (1) fractionalize the responses (e.g., a beneficiary choosing 3 races equals one third for each race) and apply those fractions to each selected racial category; and (2) prioritize the multiple responses

into one response, using the order of priority (the City's preferred choice) – American Indian/Alaska Native, Hawaiian/Pacific Islander, Black/African-American, Asian.

Section 4: Financial and Other Organization Information

- The description of a CHDO is found in Attachment IV.
- The description of a CBDO is found in Attachment V.
- The number of Paid Employees is expressed in Full Time Equivalents (FTE), based on a 40 hour work equals 1 FTE.
- The number of volunteers is the number of individuals who provide services to the organization with only minimal reimbursement for transportation or other direct costs of providing their services.
- New federal rules require applicants answering yes to both questions in 4.D.6 to provide the names and total compensation of its top five executives if the City chooses to fund its proposed project.

COMPLETING REQUESTED BUDGET INFORMATION

The Application Form requests budget information at several different levels and detail. The City recommends that the organization's financial division assist in providing the information in the form described below.

1. Total Organization Budget: This is the organization's total operating budget and should not include funds budgeted as capital expenses. The budget categories are based on the format typically presented in an independent audit. The categories of "Proposed Project" and "All Other Programs" relate to the direct costs of the various services provided by the organization. Typically, an audit divides direct costs into one or more direct service programs. If the proposed project is for operational funds (e.g., services of some kind), the Proposed Project budget is that program to which City funds would be designated. In the case of requests for capital funding, the capital budget amounts requested are not included under the Proposed Project budget. However, the services provided in conjunction with the capital facility being considered for City funding would be included in the Proposed Project budget, even if that amount does not include City funds. A zero amount for All Other Programs would indicate that the organization provides only one direct service, which relates to the proposed project, whether operation or capital funds are being requested.

2. Total Project Budget for All Cities: The purpose of this budget is to enable the City to determine the portion of Project costs it is funding and compare it to the portion of beneficiaries who will be City residents. The City will not provide funds in an amount greater than the portion of City beneficiaries who will benefit from the proposed project. If the application is requesting operation funding, the "Total Project Budget" line item in this table will equal the Proposed Project budget amount from the previous table. If the application is requesting capital funding, the Total Project Budget is the budget for that capital project only.

3. Total Project Revenues: The amount of "Total Project Revenues" line in this table should equal the Total Project Budget line in the previous table. The "City of Santa Clara" amount will equal the City of Santa Clara Portion presented in the previous table. This table provides the detail of the expected revenue from sources other than the City. The sources listed should include: (a) funds already granted; (b) funds already applied for; and (c) sources to which the organization is committing itself to apply for funding in the near future. In the case of items under b & c, the table should include the expected funding award date.

4. Addendum A Budget: Addendum A is used for proposed service projects. The Addendum A budget amount should be the direct and indirect costs associated with providing project service(s) to City residents. Thus, unless all project beneficiaries are City residents, the total budget amount in Addendum A will be a portion of the Total Budget for All Cities. That portion may be calculated in one of two ways: (a) if the organization has a system for tracking and assigning project costs to individual cities, that system may be used; or (b) if the organization has no such existing system, the percentage of City Beneficiaries divided by Total Project Beneficiaries, times total project costs for each cost category equals the Addendum A budget cost. The one exception to that rule is the "Direct Payments for Beneficiaries." This category includes only the actual amount paid to a third party by the organization to benefit a City resident.
   Under revenues, 100% of the City's funding will be included. Other revenues used to provide services to City residents, which the City recognizes as "leveraged" funds, should be presented in a format similar to that in the Total Project Revenues table. Expected award dates are not required in the Addendum A budget.

5. The Addenda B & C Budgets: Addenda B & C are for capital projects and the budgets provide details of the costs summarized in the Total Project Budget table.

COMPLETING AND SUBMITTING AN ADDENDUM

Each Application Form submitted to the City must include one, and only one, Addendum of the three provided in the packet. The applicant chooses a particular Addendum based on the nature of the project for which City funding is being sought. Organizations that are applying for funds for more than one project, must submit a separate Application Form for each proposed project.

Addendum A - Public/Affordable Housing/Homeless Support Services: This Addendum is used for all requests for operations funding involving the provision of services. Applicants making payments to third parties on behalf of beneficiaries (e.g., rental assistance) would use this Addendum.

- All "Project Performance Goals" refer to City residents only.
- "Productivity" performance goals must include a goal of Unduplicated Clients Served and at least one other quantifiable direct service activity (e.g., meals served, rides provided, counseling sessions held) that is to be rendered to a beneficiary. Unduplicated Clients are beneficiaries who receive at least one productivity service from the organization; they are counted only once, no matter how many services they receive in the fiscal year.
- "Project Impact" performance goals are desired outcomes that can be quantified. (e.g., monetary value of donated food; behavioral outcome of mental health counseling). Each proposed project must have at least one Project Impact performance goal.
- The City prefers to reimburse funded organizations on a "cost per unit of service" basis. To qualify for such reimbursement, a unit of service must be an activity that generates a consistent cost. Units of service that are used as a basis for reimbursement must be included as a Project Performance Goal.
- "Indirect Services" are services provided by the organization that are incidental or contributory to accomplishing the Performance Measurements, but for which the organization is not reimbursed by City funds.
- The City gives higher priority to funding projects that leverage non-City funds and have a sustainable balance between public and private funding sources. The answers to "Budget Narrative" questions 3 & 4

are use to help make that assessment.

Addendum B - Affordable Housing Capital Improvement Projects: This Addendum is used for all requests for capital projects involving the Acquisition, New Construction, Expansion or Rehabilitation of affordable housing units. Projects involving Shared Housing Matches or Rental Assistance must use Addendum A.

- "Productivity" performance goals must include the number of affordable housing units to be created or rehabilitated, and the timeline for completion of the project, assuming funds will be available on July 1, 2013.
- "Project Impact" performance goals include the income targeting of the affordable units and the quantity of on-site support services that will be provided (if applicable).
- "Site Control" may be in the form of current ownership, an option, a long-term (99 year) lease or other written documentation that guarantees the ability of the organization to undertake a housing development on the property. Applicants stating they have site control must provide documentation demonstrating the terms of that guarantee.

Addendum C – Non-Housing Capital Improvement Projects: This Addendum is used for all requests for capital projects involving the Acquisition, New Construction, Expansion or Rehabilitation of structures that provide non-housing benefits to low-income City residents.

- "Productivity" performance goals must include the number of City residents who will benefit from the facility after completion of the project, and the timeline for completion of the project, assuming funds will be available on July 1, 2015.
- "Project Impact" performance goals include the number of expanded and/or new services that will be provided after completion of the project.
- "Site Control" may be in the form of current ownership, an option, a long-term (50 year in the case of new construction, 10 year in the case of rehabilitation of an existing facility) lease or other written documentation that guarantees the ability of the organization to undertake a development on the property. Applicants stating they have site control must provide documentation demonstrating the terms of that guarantee.

SUBMITTING THE APPLICATION FORM

1. Applications that do not use the City's Application Form will not be considered for funding; organizations may copy the blank application form.

   A. Applicants are encouraged to submit their application electronically. Digital copies of the Application form and the Instructions can be downloaded from the City's website www.santaclaraca.gov. Digital copies of the forms can also be provided by E-Mail to those who request them by calling (408) 615-2490. Applicants submitting their application digitally can send it to emurillo-garcia@santaclaraca.gov with a copy to ldejillo@santaclaraca.gov . Remember to attach all of the required documents indicated on the Required Documents Checklist. Applicants must submit the application and all required attachments no later than the due date on the Schedule of Significant Dates. Within 7 (seven) calendar days of that due date, applicants must submit one paper copy of "Section 5: Authorization and Certification" of the Application Form, with an original signature, to:

City of Santa Clara
Housing & Community Services Division
1500 Civic Center Drive
Santa Clara, CA 95050

B. Hard copies instead of electronic applications may be submitted if an applicant chooses to do so. A hard copy version of the Application may be obtained by calling 408-615-2490. Applicants submitting a hard copy of the application, must provide one original and one copy of the Application Form, including the appropriate Addendum. Only one copy of the support documents listed on the Checklist of Required Organization Documents is required. The full Application Form, appropriate Addendum, and required documents must be received at the Housing & Community Services Division office by the due date on the Schedule of Significant Events.

2. All applicants must complete and submit the General Application Form, Sections 1-5 of the Application Form, the Required Documents Checklist, and the appropriate Addendum as identified above.

3. In addition to the documents listed on the Required Documents Checklist, applicants may submit letters of support, agency publications relevant to the proposed project or other relevant materials as attachments to the application form. For those submitting the application electronically, all such submissions must be in digital form.

4. The Instructions document **is not to be submitted with the application**.

5. No additional information will be accepted after the submission deadline unless: (a) It is requested by City staff; or (b) It was not available at that deadline and is significant for determining the eligibility or viability of the project (e.g., additional funds, site control). City staff shall make the final determination whether information submitted after the deadline will be accepted.

ATTACHMENT I

FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME)

2014 INCOME GUIDELINE SCHEDULE

GROSS ANNUAL INCOME

HOUSEHOLD SIZE	30% of MEDIAN	50% of MEDIAN	80% of MEDIAN
1	$ 21,400	$ 35,700	$ 49,950
2	$ 24,450	$ 40,800	$ 57,050
3	$ 27,500	$ 45,900	$ 64,200
4	$ 30,550	$ 50,950	$ 71,300
5	$ 33,000	$ 55,050	$ 77,050
6	$ 35,450	$ 59,150	$ 82,750
7	$ 37,900	$ 63,200	$ 88,450
8	$ 40,350	$ 67,300	$ 94,150

Effective: December 1, 2013 (Federal)

HUD has determined the FY 2014 four person household median income is $101,900

When determining whether a household is income eligible, the City uses the following definition of ''annual income'': "Adjusted gross income" as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes.

ATTACHMENT II

NOTE: THIS ATTACHMENT IS FOR INFORMATION PURPOSES AND IN NO WAY IMPLIES OR REPRESENTS A FORMAL OFFER BY THE CITY. ADDITIONAL COVERAGE LEVELS AND REQUIREMENTS MAY APPLY FOR CONTRACTS IN EXCESS OF $50,000 AND CAPITAL IMPROVEMENT PROJECTS. THE CITY RESERVES THE RIGHT TO CHANGE THESE REQUIREMENTS PRIOR TO ITS EXECUTION OF ANY CONTRACTUAL AGREEMENT PROVIDING CITY FUNDS.

INSURANCE COVERAGE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

   $1,000,000 each occurrence
   $1,000,000 general aggregate
   $1,000,000 products/completed operations aggregate
   $1,000,000 personal injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:

   a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

   b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

   c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01, with minimum policy limits of not less than one million dollars ($1,000,000) each accident using, or

providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with the following limits: at least one million dollars ($1,000,000) policy limit Illness/Injury by disease, and one million dollars ($1,000,000) for each Accident/Bodily Injury.

2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

   a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

   b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

City of Santa Clara Housing & Community Services Division
c/o EBIX Inc.
P.O. 12010-S2or 151 North Lyon Avenue
Hemet, CA 92546-8010 Hemet, CA 92543

Telephone number: 951-766-2280
Fax number: 770-325-0409

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

ATTACHMENT III

HOW TO OBTAIN A DUNS NUMBER

All applicants must obtain a Data Universal Numbering System (DUNS) number in order to be eligible to receive federal funds. That number may be obtained via the web at *http://www.grants.gov/applicants/.jsp*. The cost of obtaining a DUNS number is free. The Department of Housing & Urban Development (HUD) has posted instructions on its website at *www.hud.gov/offices/adm/grants/duns.cfm,* about how to obtain a DUNS number.

ATTACHMENT IV

HOME DEFINITION OF A CHDO
24 CFR Section 92.2

Community Housing Development Organization [CHDO] means a private nonprofit organization that:

(1) Is organized under State or local laws;
(2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
(3) Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. A community housing development organization may be sponsored or created by a for-profit entity, but:
   (i) The for-profit entity may not be an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm;
   (ii) The for-profit entity may not have the right to appoint more than one-third of the membership of an organization's governing body. Board members appointed by the for-profit entity may not appoint the remaining two-thirds of the board members; and
   (iii) The community housing development organization must be free to contract for goods and services from vendors of its own choosing; and
   (iv) The officers and employees of the for-profit entity may not be officers or employees of the community housing development organization.
(4) Has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 (26 CFR 1.501(c)(3)-1or 1.501 (c)(4)- 1)), is classified as a subordinate of a central organization non-profit under section 905 of the Internal Revenue Code of 1986, or if the private nonprofit organization is an wholly owned entity separate from its owner for tax purposes (e.g., a single member limited liability company that is wholly owned by an organization that qualifies as tax exempt), the owner organization has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 and meets the definition of "community housing development organization;"
(5) Is not a governmental entity (including the participating jurisdiction, other jurisdiction, Indian tribe, public housing authority, housing finance agency, or redevelopment authority) and is not controlled by a governmental entity. An organization that is created by a governmental entity may qualify as a community housing development organization; however, the governmental entity may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members may be public officials or employees of governmental entity. Board members appointed by a governmental entity may not appoint the remaining two-thirds of the board members. The officers or employees of a governmental entity may not be officers or employees of a community housing development organization;
(6) Has standards of financial accountability that conform to 24 CFR 84.21. "Standards for Financial Management Systems;"
(7) Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced by its charter, articles of incorporation, resolutions or by-laws;
(8) Maintains accountability to low-income community residents by:
   (i) Maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representative of low-income neighborhood organizations. For urban areas, "community" may be a neighborhood or neighborhoods, city, county or metropolitan area; and
   (ii) Providing a formal process for low income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing;
(9) Has a demonstrated capacity for carrying out activities assisted with HOME funds. A designated organization undertaking development activities as a developer or sponsor must satisfy this requirement by having paid employees

with housing development experience who will work on projects assisted with HOME funds. For its first year of funding as a community housing development organization, an organization may satisfy this requirement through a contract with a consultant who has housing development experience to train appropriate key staff of the organization. An organization that will own housing must demonstrate capacity to act as owner of a project and meet the requirements of § 92.200 (a)(2). A nonprofit organization does not meet the test of demonstrated capacity based on any person who is a volunteer or whose services are donated by another organization; and

(10) Has a history of serving the community within which housing to be assisted with HOME funds is to be located. In general, an organization must be able to show one year of serving the community before HOME funds are reserved for the organization. However, a newly created organization formed by local churches, service organizations or neighborhood organizations may meet this requirement by demonstrating that its parent organization has at least a year of serving the community.

ATTACHMENT V

CDBG DEFINITION OF A CBDO
24 CFR Section 570.204

(c) Eligible CBDOs. (1) A CBDO qualifying under this section is an organization which has the following characteristics:

(i) Is an association or corporation organized under State or local law to engage in community development activities (which may include housing and economic development activities) primarily within an identified geographic area of operation within the jurisdiction of the recipient [City of Santa Clara], or in the case of an urban county, the jurisdiction of the county; and

(ii) Has as its primary purpose the improvement of the physical, economic or social environment of its geographic area of operation by addressing one or more critical problems of the area, with particular attention to the needs of persons of low and moderate income; and

(iii) May be either non-profit or for-profit, provided any monetary profits to its shareholders or members must be only incidental to its operations; and

(iv) Maintains at least 51 percent of its governing body's membership for low- and moderate-income residents of its geographic area of operation, owners or senior officers of private establishments and other institutions located in and serving its geographic area of operation, or representatives of low- and moderate-income neighborhood organizations located in its geographic area of operation; and

(v) Is not an agency or instrumentality of the recipient [City] and does not permit more than one-third of the membership of its governing body to be appointed by, or to consist of, elected or other public officials or employees or officials of an ineligible entity (even though such persons may be otherwise qualified under paragraph (c)(1)(iv) of this section); and

(vi) Except as otherwise authorized in paragraph (c)(1)(v) of this section, requires the members of its governing body to be nominated and approved by the general membership of the organization, or by its permanent governing body; and

(vii)

(viii)

(2) A CBDO that does not meet the criteria in paragraph (c)(1) of this section may also qualify as an eligible entity under this section if it meets one of the following requirements:

(i) Is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making; or

(ii) Is an SBA approved Section 501 State Development Company or Section 502 Local Development Company, or an SBA Certified Section 503 Company under the Small Business Investment Act of 1958, as amended; or

(iii) Is a Community Housing Development Organization (CHDO) under 24 CFR 92.2, designated as a CHDO by the HOME Investment Partnerships program participating jurisdiction, with a geographic area of operation of no more than one neighborhood, and has received HOME funds under 24 CFR 92.300 or is expected to receive HOME funds as described in and documented in accordance with 24 CFR 92.300(e).

(3) A CBDO that does not qualify under paragraph (c)(1) or (2) of this section may also be determined to qualify as an eligible entity under this section if the recipient [City] demonstrates to the satisfaction of HUD, through the provision of information regarding the organization's charter and by-laws, that the organization is sufficiently similar in purpose, function, and scope to those entities qualifying under paragraph (c)(1) or (2) of this section.

ATTACHMENT VI

SERVICE PROJECTS APPLICATION EVALUATION CRITERIA

1. **QUALIFYING CRITERIA** (applicants must meet all these criteria)

   Low and Moderate Income Clientele: At least 51% of beneficiaries have a household income less than or equal to 80% of the Area Median Income (AMI), adjusted for household size.

   Eligibility of Proposed Service: The proposed service is a continuation of services currently-funded by the City, new service being provided to City residents, or a measurable expansion of an existing service being provided to City residents (with or without City funding).

   Not a Duplication of Existing City Service: Existing City Service is defined as one provided by the City directly or by an organization funded by the City.

   Precedent for City Funding of Activity: In the past, the City has provided similar services either directly or by funding provided to a non-City entity.

2. **EVALUATION CRITERIA**

   Targets Lower Income Residents.

   HIGH: Over half of the beneficiaries are at or below 30% of AMI.
   MEDIUM: Over half of the beneficiaries are at or below 50% of AMI.
   LOW: Over three fourths of the beneficiaries are at or below 80% of AMI.
   ZERO: Less than three fourths of the beneficiaries are at or below 80% of AMI.

   Consistency with City's Five-Year Consolidated Plan (CP).

   HIGH: Proposed activity is given a High Priority in the CP.
   MEDIUM: Proposed activity is given a Medium Priority in the CP.
   LOW: Proposed activity is given a Low Priority in the CP.
   ZERO: Proposed activity is not identified in the CP as a community need.

   History of Providing Proposed Service.

   HIGH: Has provided the proposed service for more than 6 years.
   MEDIUM: Has provided the proposed service 3-5 years.
   LOW: Has provided the proposed service for less than 3 years.
   ZERO: Has not previously provided the service.

   Provision of Proposed Services in other Santa Clara County jurisdictions (agencies providing services only to City residents are automatically rated High).

   HIGH: Receive or is requesting funds from at least 75% of the jurisdictions in which the proposed service will be provided.
   MEDIUM: Receive or is requesting funds from at least 50% of the jurisdictions in which the proposed service will be provided.
   LOW: Receive or is requesting funds from at least 25% of the jurisdictions in which the proposed service will be provided
   ZERO: Does not receive and is not requesting funds from any other jurisdictions in which the proposed service will be provided.

Experience providing services to City residents (with or without City funding support).

HIGH: Provided proposed services to City residents for more than 6 years.
MEDIUM: Provided proposed services to City residents for 3-5 years.
LOW: Provided proposed services to City residents for less than 3 years.
ZERO: Has not previously provided proposed services to City residents.

Leveraging of non-City funds, measured as percentage of the cost of providing proposed services to City residents.

HIGH: City funds pay 10% or less of the cost of proposed services to be provided to City residents.
MEDIUM: City funds pay more than 10% and less than 25% of the cost of proposed services to be provided to City residents.
LOW: City funds pay 25-50% of the cost of proposed services to be provided to City residents.
ZERO: City funds pay more than 50% of the cost of proposed services to be provided to City residents.

Leveraging of private (non-government) funds, measured as percentage of the applicant's operating budget.

HIGH: Private funds make up more than 25% of applicant's operating budget.
MEDIUM: Private funds make up 10-25% of applicant's operating budget.
LOW: Private funds make up less than 10% of applicant's operating budget.
ZERO: No private funds contribute to the applicant's operating budget.

Note: In-Kind contributions can be counted as private funds if they are included in the applicant's annual audit or can otherwise be documented to the satisfaction of the City.

11/18/14

7D-1

Minutes
Of the City of Santa Clara, California
Cultural Commission
for meeting held on Monday, August 4, 2014

Recommendations for Council Action: none

I. Call to order
Called to order at 7:06 p.m.

Roll call of commissioners:
Present: Beavers, Fagundes, Forte, Lockwood, Neal, Ryan
Absent: Schuk, Stahl
Visitors: George Doeltz

Staff Liaison: Yvonne Galletta, Staff Liaison

II. Approval of Minutes
Titles for officers are Chair and Vice-Chair, not President and Vice-President.
With corrections, M/S/C

III. Correspondence and announcements
The video for "Outside the Box" art exhibit is finished; the link will be emailed to commissioners.

IV. New Business
a. Sister Cities Association
See attached report.
The Limerick visit went very well. Lockwood and Beavers had photos taken at the MOU signing. Staff would like copies of any and all photos people have of the event.
b. Santa Clara Players
"Agatha Crusty and the Village Hall Murders" had one of the best turn-outs in years, because it's a new comedy. It's the North American premier of this British farce. Commissioners suggested trying Google Ads for their next performance, because they offer free ads to non-profits. Approve funding M/S/C
c. Santa Clara Chorale
SCC is once again a non-profit. They will appear at the October meeting for their funding request.
d. Schedule Study Session
The most convenient date is September 22 @ 7:00pm. Commissioners should have items ready to study, including the groups that we fund, local cultural groups, new projects, etc.

V. Unfinished Business

a. Chalk Art Festival Proposal
Lockwood and staff will contact other cities with this type of festival to learn logistics.
b. Concerts in the Park
Commissioners considered options to increase attendance, including: moving some concerts to Friday night next year to increase attendance, adjusting the time of the Sunday concerts, or letting non-profit groups sell water or other convenient refreshments.
c. Street Dance 2014
Forte thinking of Hit Men for next year. People also suggested Spazmatics or Bust-a-Groove as other possibilities. The Weekly is doing an article about the Dance.
d. Utility box art
Staff is working on setting up a meeting with a coordinator.
e. Banner program
Staff has had some logistics problems.

VI. Commissioner Reports

Lockwood handed out memorial pamphlets for Jacqueline Moore, a prior Commissioner. Fagundes, Lockwood, Forte, and Beavers attended the SCI conference. It was a great time. Forte would like to find younger commissioners.

VIII. Public Presentations

Doeltz has a request. SCP is sponsoring a traveling show on September 6 at 2 p.m.: "Best Beloved" from Kipling's "Just-So Stories." The city won't waive the $250 fee for the permit, so they're requesting funds to cover the cost. The event will be free. It has been in planning for about a month. Commissioners suggested they try an IndieGoGo or other crowdsourcing campaign.

IX. Adjournment

There being no further business, the meeting was adjourned at 8:57 p.m. to Monday evening, October 6, 2014 at 7:00 p.m. in the City Manager's Staff Conference Room.

Respectfully submitted,

Loretta Beavers

Loretta Beavers
Secretary

Santa Clara Sister Cities Association

Coimbra, Portugal — *Established August 4, 1972*

Izumo, Japan — *Established October 11, 1986*

EXECUTIVE BOARD

Kathy Watanabe
President

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1982 – 2001

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May Ban
Director at Large

Report to the Cultural Commission – August 4, 2014

What an incredible last few months SCSCA has had and we have an incredible few months ahead of us too.

After members of the SCSCA committee to approve Limerick, Ireland as a new Sister City, there was a presentation before the Santa City Council who also approved the signing of a Memorandum of Understanding and moving ahead with the relationship. We were fortunate to be able to complete all the paperwork necessary and coordinate an itinerary for the Cathaoirleach (Mayor) Kevin Sheahan, his wife, Caroline, and the Director of Services for Limerick, Kieran Lehane, to come over for the Sister Cities International Conference and sign off on the MOU. It was a well-done ceremony and one of the highlights of the conference. Thank you to everyone who could be there to be a part of the historic moment.

While the Limerick delegation was in Santa Clara, they had the opportunity to meet many City Staff through several events that were planned for them. The highlight of the week was the dinner at the Convention Center along with the exchange of gifts between Mayor Matthews and Cathaoirleach Sheahan. A special thank you to Loretta Beavers for creating the beautiful wine glasses which everyone was so happy to receive. We will be sure that all members of the Cultural Commission and SCSCA that couldn't attend the dinner receive one of the glasses too.

The Street Dance was a big success on Friday, August 1. Even though SCSCA was scattered in many places that night due to the SCI conference and dinner for the Limerick delegation, there were enough wonderful volunteers to help sell wine and beer – which we sold out of. That might be a first.

At the SCI conference, our own AJ Chahal, President of the Youth Commission and son of Raj and Dahljit Chahal, was elected as the Youth Representative to the SCI Board of Directors and will be serving for one year. Over the course of that year, he will have to make several trips to Washington, DC too. We are very excited for AJ.

Finally, SCSCA will be preparing for the Art & Wine Festival to be held on September 13 and 14. We will be selling bifana sandwiches and lemonade as we have in the past.

In closing, thank you to the Cultural Commission for all your support and assistance of the last few weeks in preparation for the visit by the Limerick delegation.

Respectfully submitted by:
Kathy Watanabe, President, Santa Clara Sister Cities Association

MD-2

CITY OF SANTA CLARA
YOUTH COMMISSION MINUTES
May 13, 2014

The City of Santa Clara Youth Commission met for their regularly scheduled meeting on Tuesday, May 13 at 6:00 pm, at the Santa Clara Teen Center, 2446 Cabrillo Avenue, Santa Clara, California.

Present: Commissioners: Samia Abbasi, Ajaipal Chahal, Karla Cisneros, Devleena Das, Jeff Hara, Vyvy Nguyen, Emily Packer, Sheryl Ratnam, Andrew Rauschhuber, Rafal Saeed, Michelle Vo, Shana Vu, Ryan Winter, and Ashley Wong

Absent: Excused – Hannah Villalpando

Guests: Tamara Pantic – Recommended 2014-2015 Youth Commission
Alyssa Riley - Recommended 2014-2015 Youth Commission
Tara Singh - Recommended 2014-2015 Youth Commission

Staff Present: Jennifer Herb – Recreation Supervisor
Nan Choi – Teen Librarian

Matters for City Council Action – None

I. CALL TO ORDER - The meeting was called to order by Chair, Jeff Hara at 6:18 pm.

II. INTRODUCTION OF GUESTS -
A. Tamara Pantic – Recommended 2014-2015 Youth Commission
B. Alyssa Riley - Recommended 2014-2015 Youth Commission
C. Tara Singh - Recommended 2014-2015 Youth Commission

III. APPROVAL OF APRIL 8 MINUTES -
A. April 8 - Ashley Wong made a motion to amend the minutes with the following changes: delete, "in lieu of their regularly scheduled meeting" at the introduction of the minutes. VI. Old Business A – Summer is misspelled. B – there should be a space between 1:00 and "pm". X. Adjourn – the last name Saeed should be deleted. Michelle Vo seconded the motion. Devleena Das made a motion to approve the amended minutes, seconded by Samia Abbasi.

IV. CORRESPONDENCE/COMMUNICATIONS–
A. Library –
1. May 16 – Volunteer Deadline
2. May 24 – Sustainable You Volunteer Fair
3. June 1 – Sign up for Teen Read Program and receive a $10.00 Barnes and Noble Gift card.
4. This summer at the Teen Center:
a. Monday – Chess

b. Tuesday – Movies and Pizza
c. Thursday – Activities

5. New City Librarian has started.

B. Santa Clara High School
1. May 12 – Sophomore Class Elections
2. May 13 – Junior Class Elections
3. May 14 – Senior Sports Awards Night
4. May 16 – Teacher/Student Softball & ASB appointed positions
5. May 20 – Blood Drive & French Club Field trip to Legion of Honor
6. May 21 – DeAnza College orientation & Faultline Animation Night
7. May 24 – Prom
8. May 28 – Senior Awards
9. May 30 – Goodbye Rally
10. June 3 – Senior Picnic
11. June 4 & 5 – Graduation practice
12. June 6 - Graduation

C. Wilcox High School
1. May 16 & 17 – Drama Production
2. May 21 – Music Concert
3. May 22 – Fashion Show
4. May 23 – CSF Beach Trip
5. May 28 – Academic Awards Night
6. May 30 – Good-Bye Rally
7. May 30 – Choir Concert
8. June 4 – Chicano Commencement
9. June 6 – Graduation & Grad Night

D. Presentation High School
1. May 13 – 15, Dance Team Clinic
2. May 15 – Improv Show
3. May 16 – Awards Assemble & Dance Team Auditions
4. May 19 – Confirmation
5. May 20 – Spring Sports Awards Night & Film/Media Festival
6. May 21 – Senior Dinner
7. May 28 – Senior Class Lunch
8. May 31 - Graduation

E. Archbishop Mitty High School
1. May 15 – Senior Cruise in San Francisco
2. May 22 – Senior Dinner
3. May 23 - Baccalaureate

F. St. Francis High School
1. May 13 – Senior Honors Night
2. May 15 – President's Dinner
3. May 17 – Senior Ball
4. May 20 – 22, Finals
5. May 23 – Baccalaureate Mass
6. May 24 - Graduation

G. Bellarmine College Preparatory
1. May 14 – Film Festival

2. May 22 – Baccalaureate Mass
3. May 24 - Graduation

H. Buchser Middle School
1. May 14 – 8th grade Career Fair
2. May 15 – Spring Pop Concert
3. May 22 – Awards Night
4. May 30 – Yearbook Distribution

V. SUMMARY OF CITY COUNCIL ACTIONS – None

VI. OLD BUSINESS

A. Leadership Santa Clara – Ashley Wong encouraged the group to get involved in the program next year.
B. "Run Santa Clara – Our City Awaits You," Fun Run, April 13 – this event was cancelled due to insufficient planning.
C. Easter Egg Hunt, April 19 – The Youth Commission volunteered at the City event, selling balloons and Easter Baskets.
D. LITE Application deadline, April 23 – Jennifer encouraged those that met the requirements to apply.
E. 4th of July All-City Picnic –the Youth Commission will be volunteering at the City event, running the game area.

VII. COMMITTEE REPORTS

A. Fun Run/Walk – the Committee met to talk about the detrimental factors that kept the committee from being successful with their event. A committee meeting was not scheduled as the event was cancelled.
B. Parent Resource Workshops – the Committee met to discuss last minute details about the final workshop. A committee meeting was not scheduled as this will be the last workshop for the year.
C. Scholarships – the Committee met to evaluate the scholarship application and interview process. A committee meeting was not scheduled as the committee is no longer needed.

VIII. NEW BUSINESS

A. Recognition of outgoing and incoming Youth Commission, and scholarship recipients, May 20 - Jennifer Herb explained how the City Council meeting will run, and what the Youth Commissioners can expect.
B. Sunset Cinema, May 23 – The Teen Center is hosting an outdoor movie, showing *Frozen,* from 7:00 – 10:00 pm.
C. End of the Year Social, May 25 - The group will have dinner at Pizza My Heart in Santa Clara, and walk to Mission City Creamery for dessert. They will then walk over to Santa Clara University and reflect on the year, discussing successes and setbacks, and looking ahead to next year and potential goals.
D. Upgrade Dance, May 30 – The Teen Center is hosting the last dance of the year, from 9:00 – 11:00 pm.
E. Silicon Valley BBQ Championship, June 27 & 28 – The Santa Clara Rotary and Santa Clara Parks and Recreation Department is holding the second annual event at Central Park.

A. All City Picnic and Fireworks Extravaganza, July 4 – The Youth Commission will be running the carnival games during the daytime event. The money raised will go towards the scholarship fund.
B. Santa Clara Art and Wine Festival, September 13 & 14 – The Youth Commission will be selling concessions as well as assisting with vendor loading/unloading. The money raised will go towards the scholarship fund.

IX. PUBLIC PRESENTATIONS – none

X. ADJOURN – A motion was made by Ryan Winter to adjourn the meeting at 7:20 pm. Rafal Saeed seconded the motion. Meeting was adjourned to the next scheduled meeting, Tuesday, August 19, at the Santa Clara Teen Center.

Minutes Prepared by: _____
Jennifer Herb
Youth Commission Staff Liaison
Recreation Supervisor

11/18/14

7D-3

CITY OF SANTA CLARA
YOUTH COMMISSION MINUTES
August 19, 2014

The City of Santa Clara Youth Commission met for an informational meeting on Tuesday, August 19, 2014 at 6:00 pm at the Santa Clara Teen Center, 2446 Cabrillo Avenue, Santa Clara, California.

Present: Commissioners: Samia Abbasi, Ajaipal Chahal, Devleena Das, Sarisha Kurup, Vyvy Nguyen, Tamara Pantic, Sheryl Ratnam, Andrew Rauschhuber, Alyssa Riley, Tara Singh, Michelle Vo, Shana Vu, Ryan Winter, and Ashley Wong

Absent: Unexcused – Karla Cisneros

Guests: Antonio Davila – interested in being a Member at Large
Renvir Gellon – interested in being a Member at Large
Ria Nawathe – interested in being a Member at Large
Rachel Ratnam – interested in being a Member at Large

Staff Present: Jennifer Herb, Recreation Supervisor & Staff Liaison
Jennifer Yamaguma – City Clerk's Office

Matters for City Council Action – None

I. CALL TO ORDER - The meeting was called to order by Jennifer Herb at 6:25 pm.

II. INTRODUCTION OF GUESTS
- A. Antonio Davila – interested in being a Member at Large
- B. Renvir Gellon – interested in being a Member at Large
- C. Ria Nawathe – interested in being a Member at Large
- D. Rachel Ratnam – interested in being a Member at Large

III. APPROVAL OF MINUTES – None

IV. CORRESPONDENCE/COMMUNICATIONS–
- A. Archbishop Mitty High School
  1. August 12 – Life Team Pilgrimage
  2. August 18 – Robotics meeting
  3. September 6 – Back to School Dance
- B. Santa Clara High School
  1. August 11 – 15, Band Camp
  2. August 18 – Senior Sunrise
  3. August 21 - Interact
  4. August 22 – Class meetings
  5. August 29 – Football scrimmage
  6. September 5 – Club Fair
  7. September 10 – Back to School Night

8. September 12 – Fall Sports Rally

C. Buchser Middle School
   1. August 29 – Back to School Night

D. Wilcox High School
   1. August 29 – Levi's Stadium football game
   2. September 3 – Back to School Night
   3. September 5 – Club Faire
   4. September 5 & 6 – Santa Clara vs. Wilcox, J.V Volleyball tournament for Breast Cancer Awareness
   5. September 12 & 13 – Santa Clara vs. Wilcox, Varsity Volleyball tournament for Breast Cancer Awareness

E. St. Francis High School
   1. August 20 – Back to School Night
   2. August 22 – Interact Board meeting
   3. August 24 – Senior Student/Parent College Admissions Workshop
   4. September 5 – Back to School Rally
   5. September 6 – Back to School Dance
   6. September 13 & 14 – Debate Tournament

F. Mission Middle College
   1. August 25 – First Day of Classes

G. The Harker School
   1. August 21 – Class trips
   2. August 22 - Matriculation
   3. August 25 – School begins

V. SUMMARY OF CITY COUNCIL ACTIONS – None

VI. NEW BUSINESS

A. Review phone, email, and birthday roster – Jennifer Herb provided the Youth Commission with a phone and email list. The Youth Commission checked each document for accuracy. Jennifer Herb will make the correct changes and email to the Youth Commission.
   1. Badge – Jennifer Herb explained that the Youth Commission would be receiving a name badge that they should wear to all events.

B. Review 2013-2014 City of Santa Clara Youth Commission accomplishments – Youth Commissioners from last year discussed the list of accomplishments from the 2013-2014 term with the new Youth Commission members.

C. Review 2014-2015 meeting and activity calendar – Jennifer Herb reviewed the meeting and activity calendar with the Youth Commission. This calendar will be used when the Youth Commission develops their goals for the 2014-2015 term.

D. Youth Commission Binder
   1. By–Laws – Jennifer Herb discussed the new inserts for the Boards and Commissions Hand Book. She informed returning Commissioners to replace the old information with the current information.
   2. Brown Act – Jennifer Herb reviewed the Brown Act Policy with the Youth Commission.

3. Parliamentary Procedure – Jennifer Herb discussed and explained the Parliamentary Procedure with the Youth Commission.

E. Member at Large Program – Returning Youth Commissioners explained the Member at Large program to the Youth Commission, and the difference between a Youth Commissioner and a Member at Large.

F. Brainstorm 2014-2015 Youth Commission goals – Jennifer Herb asked the Commissioners to come to the September meeting prepared to discuss ideas and have input regarding possible goals for the new term. The Youth Commission will finalize their goals at the September 16 meeting. Their suggestions are as follows:

G. Youth Commission T-shirts – Jennifer Herb informed the Commissioners that she will work to develop a print concept and report back to the Youth Commission. Commissioner Michelle Vo offered to help with the design.

H. Sunset Cinema: Back to School Edition, September 19 at the Teen Center – The Teen Center is hosting an outdoor movie, to welcome the students for the new school year. Entrance and movie is free, and food will be available for purchase.

I. City of Santa Clara Art & Wine Festival – loading/unloading, September 12 & 14 – The Youth Commission will be helping the vendors load and unload their supplies for a fee of $8.00/load. The money raised will go towards Scholarship fund, sponsored by the Youth Commission. This money will be awarded to deserving juniors and graduating seniors in May.

J. City of Santa Clara Art & Wine Festival, September 13 & 14 – The Youth Commission will be selling Grilled Cheese and Paninis along with juice boxes in the Food Booth. The money raised will go towards the Scholarship fund, sponsored by the Youth Commission. This money will be awarded to deserving juniors and graduating seniors in May.

K. At the September 16 meeting, the Youth Commission will discuss the following:

1. Election of officers – Jennifer discussed with the Youth Commission the different positions and the responsibilities that go along with each one. Elections for these positions will take place at the September 16 meeting.
2. Finalize 2014 – 2015 goals.
3. Develop a calendar of events for the 2014-2015 term.
4. Form committees

VII. PUBLIC PRESENTATIONS – None

VIII. ADJOURN – A motion was made by Devleena Das to adjourn the meeting at 7:54 pm. Samia Abbasi seconded the motion. Meeting was adjourned to the next scheduled meeting, Tuesday, September 16, at the Teen Center.

Minutes Prepared by: _____
Jennifer Herb
Youth Commission Staff Liaison
Recreation Supervisor

11/18/14

7D-4

Santa Clara
All-America City
2001

CULTURAL COMMISSION
City of Santa Clara

Special Noticed Meeting

Minutes of the July 7, 2014 Meeting

Commissioners Present:	Chair Fatima Fagundes, Bunny Lockwood, Kent Neal, Kathleen Ryan, Eversley Forte, Carolyn Schuk, Loretta Beavers and Barbara Stahl
Commissioners Absent:	N/A
Staff Liaison:	Yvonne Galletta
Visitors:	Leslie Brown, Business Analyst-Public Benefits

MATTERS FOR COUNCIL ACTION – None

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1. Meeting was called to order by Chair Fagundes at 7:01 p.m. All Commissioners were present for this special noticed Cultural Commission meeting.

2. New Business:

   a. Presentation by Silicon Valley Power (SVP) for Art Contest to Celebrate SVP's 10 year Anniversary for Art Teachers and Santa Clara Unified School District Student Participation: SVP Business Analyst-Public Benefits Ms. Leslie Brown requested the assistance of the Cultural Commission in regards to SVP's efforts to do an art contest connected with their 10 yr. anniversary for the Santa Clara Green Power program which they would like to coordinate with Art teachers from SCUSD, if possible. SVP would also like to have one or two members of the Commission to be part of the selection committee for choosing the winner if they would like to be a part of the review. Commissioners will be selected in August/September timeframe.

   b. Study Session: Review of Budget for Annual Events and Group Funding in Preparation for Fiscal Year 2015-2016. The Cultural Commission scheduled July 9, 2014 to review the current year's budget and determine what programs the Commission would like to review for potential implementation for next fiscal year. Also, review the funding that is being provided to the groups. Commissioner Schuk submitted an outline of items for possible discussion. No changes are being recommended at this time. Any subsequent action would be at a regularly scheduled Commission meeting in the future. Funding groups would be notified of any changes that would be proposed by the Commission for next fiscal year (FY2015-2016) before any recommendation would be made to the City Council.

      The Commission reviewed each of the funding groups and would like to do further review at a later date, possibly suggestion was to meet with the funding groups throughout the current fiscal year individually in regards to the programming.

Commissioner Lockwood presented a new event for possible consideration: A Chalk Art Festival. The Commission was interested in learning more about what an event would require and how it could be organized, and logistics for location and presentation. More information will be discussed with the Commission at future meetings.

3. Public Presentations: None.

4. Meeting adjourned at 8:34 p.m. to the August 4, 2014 at 7 p.m. regularly scheduled Cultural Commission meeting.

Submitted by:

Yvonne Felix Galletta

Yvonne Felix Galletta
Liaison to the Cultural Commission

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7E-1

Santa Clara All-America City 2001

Date: November 10, 2014

To: City Manager for Council Action

From: Director of Planning and Inspection

Subject: Retroactive approval of a Special Permit Request to Allow Use of a Temporary Showroom Trailer for a One-Day Parking Lot Event at 52 N. Winchester Boulevard (PLN2014-10693)

EXECUTIVE SUMMARY:

The applicant, Ken Simons of Standards of Excellence, is requesting a Special Permit to allow use of a temporary showroom trailer for a one-day event. The event will take place on Thursday, October 30, 2014, in the parking lot located at 52 N. Winchester Boulevard. Trailer set-up will begin on October 29, 2014, with breakdown/clean-up to take place on Friday, October 31, 2014. The event will include product demonstration for vendors and customers. The showroom trailer will occupy 8 parking stalls and the event will provide restroom facilities to customers. The event is open to the public and will have directional signage on-site routing guests to park in the parking lot, with access from Winchester Boulevard and Stevens Creek Boulevard.

The Special Permit application was submitted in between regularly scheduled City Council meetings and was processed administratively to allow the applicant to acquire the necessary permits, subject to Council approval and conditions. This practice allows the applicant to pay all fees and move forward with the proposal. Staff is requesting that the Council formally approve this Special Permit retroactively.

Approval of the Special Permit would be subject to the following conditions:

1. This Special Permit shall include setup to begin on Wednesday, October 29, 2014, and breakdown/clean-up to take place on Friday, October 31, 2014, which shall be completed by 8:00 p.m.;
2. Event activities are restricted to Thursday, October 30, 2014, from 12:00 p.m. to 6:00 p.m.;
3. There shall be no physical change to the property, landscaping or existing amenities;
4. The applicant shall comply with all Zoning Ordinance regulations regarding temporary and permanent structures and obtain all necessary Building and/or Fire Department permits;
5. The applicant shall obtain Fire Marshal approval and comply with the Fire Department directives and requirements;
6. The applicant shall obtain an amplified music permit from the City of Santa Clara, if applicable;
7. There shall be no "searchlight" beams, streamers, or roof-mounted balloons during the term of this Special Permit;
8. The applicant shall obtain temporary sign permits for all temporary signs advertising the event; and
9. At the conclusion of the event, the parking lot and landscaped areas shall be cleaned and returned to their prior condition.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

None associated with this request.

ECONOMIC/FISCAL IMPACT:

There is no cost to the City other than administrative staff time and expense.

RECOMMENDATION:

That the Council retroactively approve the request for a Special Permit to allow use of a temporary showroom trailer for a one-day parking lot event at 52 N. Winchester Boulevard (PLN2014-10693), subject to conditions.

Kevin L. Riley
Director of Planning and Inspection

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report:
1) Planning Application
2) Site Plan

I:\PLANNING\2014\SPermit\52 N. Winchester Blvd\CC agnd rpt 111814.doc

PLANNING APPLICATION

CITY OF SANTA CLARA PLANNING DIVISION
1500 Warburton Avenue, Santa Clara, California 95050
(408) 615-2450 Fax: (408) 247-9857
E-mail Planning@santaclaraca.gov
Website: www.santaclaraca.gov
See reverse side for application requirements

APPLICATION FOR:
(Please check all applicable boxes)
- ☐ VARIANCE
- ☐ USE PERMIT
- ☐ ZONING CHANGE
- ☐ TENTATIVE MAP
- ☐ TENTATIVE PARCEL MAP
- ☐ LOT LINE ADJUSTMENT
- ☐ MODIFICATION
- ☑ SPECIAL PERMIT
- ☐ HISTORICAL & LANDMARKS COMMISSION
- ☐ GENERAL PLAN AMENDMENT
- ☐ OFF-SITE PARKING PERMIT
- ☐ (OTHER):

ARCHITECTURAL REVIEW FOR:
- ☐ RESIDENTIAL
- ☐ NON-RESIDENTIAL
- ☐ MIXED-USE
- ☐ LANDSCAPE
- ☐ SIGNS
- ☐ TEMPORARY SIGNS

FOR PLANNING STAFF USE ONLY
Checked in by: DB on 10-09-14
Fee: 681 Receipt number: _____
PCC-SC meeting date: _____
Tentative Commission date: _____
Tentative AC meeting date: _____
File number(s): PLN2014-10693
ENVIRONMENTAL REVIEW:
☐ EXEMPT ☐ NEG DEC ☐ EIR

Fax to: _____
Fax #: _____

Project Address: 52 N. Winchester Blvd., Santa Clara, CA 95050 Building area: _____ square feet
County Assessor's Parcel Number (APN): 3 0 3 - 1 5 - 0 4 8 Gross lot area: _____ acres / square feet
Development Project Description: Special permit to allow a one-day event in parking lot

Hazardous Wastes and Substances Statement (Calif. Gov. Code 65962.5):
☑ This site is **not** included on the Hazardous Wastes and Substances Sites List Date of list: _____
☐ This site is on the Hazardous Wastes and Substances Sites List.
(A copy of this list is available in the Planning Office) Regulatory ID #: _____

☐ Urban Runoff Pollution Prevention Program (URPPP) information provided to applicant

Please print all information legibly, including correct zip code.

Applicant: Ken Simons Mailing address: 1720 Ringwood Ave Day phone: 408-907-3802
Company: Standards of Excellence San Jose Fax #: 408-907-3801
Signature: _____ Zip code: 95131 E-Mail (Optional): _____

Property Owner: Deborah Hemluck Mailing address: 1111 Bayhill Dr. Ste 150 Day phone: 650.228.2201
Company: SClay Management Inc. City: San Bruno Fax #: 650.952.6671
Signature: See Attached Zip code: 94066 E-Mail (Optional): _____

NOTE: Please attach the names and full addresses, including zip codes, of all other involved parties to which you would like agendas and minutes sent.

Statement of justification for the above **APPLICATION** (this statement will be included in the staff report to the Planning Commission; a separate statement may be attached, if necessary): Contact staff for assistance on preparing a statement.

The one-day event will include product demonstration for vendors and customers within truck. Will also provide portable toilets in parking lot. Set up trailer/truck (10/29) event date (10/30) take down (10/31)
NO outdoor amplified music

Tentative Map / Tentative Parcel Map / Lot-Line Adjustment application only:

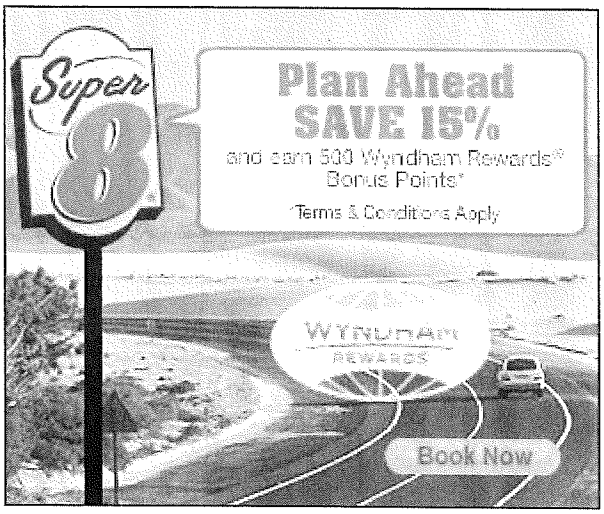
Engineering firm: _____ Engineer's name: _____
Address: _____ Phone #: _____
Fax #: _____
Internet E-Mail (Optional) _____ Engineer's signature _____
STAFF COMMENTS: _____

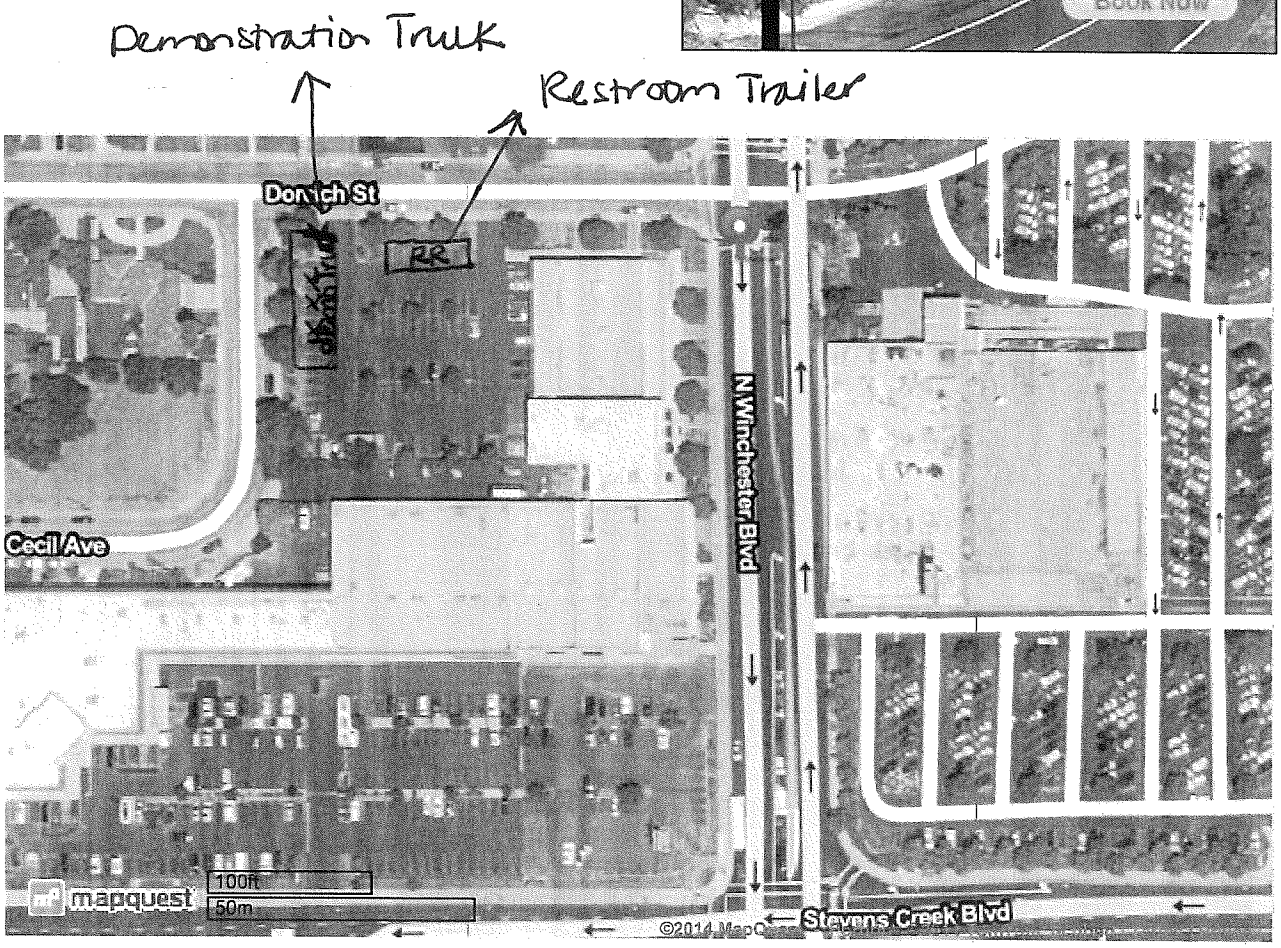
TO BE COMPLETE, IN ADDITION TO FILING THE APPROPRIATE APPLICATION FEES AND ANY REQUIRED ENVIRONMENTAL INFORMATION, THE FOLLOWING PLANS AND DATA MUST ACCOMPANY THE PLANNING APPLICATION, BASED UPON THE TYPE REQUEST BEING MADE:

mapquest

Map of:
52 N Winchester Blvd
Santa Clara, CA 95050-6703

Notes





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Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 8A

Date: November 4, 2014

To: City Manager for Council Action

From: Director of Planning and Inspection

Subject: Public Hearing for the Santa Clara Square Project (Office Phase II & III), a 27.5-Acre Project Site, Located at 2465, 2505, 2525, 2575 Augustine Drive and 3393, 3333 Octavius Drive, APNs: 216-45-036, 037, 038, 006, 025, 024 [PLN2014-10577, PLN2014-10578, PLN2014-10579, PLN2014-10580, PLN2014-10581, and CEQ2014-01181]

EXECUTIVE SUMMARY:

The applicant is requesting to amend the previously approved "2009 and June 2014 Projects". The Santa Clara Square Office Phase I, the Retail Center, and Office Phase II and III entitlements allow for development up to 2,000,100 square feet. The Original Office Phase II and III approved in June 2014 consists of no more than 1,243,300 square feet of office use located in six to eight story office buildings with associated surface and structure parking at a ratio of 3.3/1000 on 16.84-acres. The applicant was able to acquire the property separating the office campus and added a parcel on Octavius Drive to increase the Office Phase II and III development area to 22.79-acres. The applicant proposes to redistribute the 1,243,300 square feet into five office buildings, one amenity building and two parking garages. The new campus design clusters the buildings together to create a unified campus with the garages at the ends of the project site. The proposed office development location directly adjacent to the Highway 101 is more suitable for office use and could serve as a buffer for the future residential use in areas south of Augustine Drive as designated in Phase III of the 2010-2035 General Plan.

The Amendment to the Development Agreement allows for a phased development of the project and its associated facilities and improvements. Additional provisions were added to address street bulb improvements at the intersection of Augustine Drive and Octavius Drive, and to require the developer to make additional improvements at this intersection in the future, if the developer undertakes further projects in the vicinity. There is no change to the contributions set forth in the Original DA to the City's Housing Fund. The project also contributes to the City's Trails, Open Space and Parks, and included contributions to mitigate traffic impacts.

The Vesting Tentative Parcel Map was reviewed by the City's Subdivision Committee and determined to be complete on September 30, 2014. The 27.5-acres, 6 parcels, will be combined to create 3 parcels. Office Phase II and III are reconfigured to occupy two of the three new parcels, approximately 22.79-acres. The remaining 4.73-acre parcel continues on with the General Plan designation as Light Industrial and Zoned Light Industrial-ML. The street bulb at Augustine Drive and Octavius Drive is proposed to be replaced with standard curb. The consideration and action on the Vesting Tentative Parcel Map is a function of the City Council.

On October 20, 2014, the City received a letter from the Santa Clara Unified School District (SCUSD) on the proposed General Plan Amendment, which asserted the need for additional school facilities, and asked that the project conduct studies on traffic and air emissions. The project as proposed to be amended does not increase the square footage over the previously approved project, does not include a residential component, and would not have any additional impact on school facilities over what the 2009 EIR considered. The 2009 EIR studied both traffic and air emissions and the proposed Addendum No. 3 updated those studies.

The project was reviewed by the Planning Commission on October 22, 2014. The Planning Commission recommended that the City Council approve this newest version of the Santa Clara Square Project (Office Phase II & III), and refer the project to the Architectural Committee for Office Phases II and III, subject to Conditions, as reflected in the Minutes, and in the Resolutions and Ordinance prepared for Council Action.

The City received additional comments to the General Plan Amendment from Santa Clara Valley Transportation Authority (VTA) on October 27, 2014. The letter asked whether a Transportation Impact Analysis (TIA) had been performed, informed the City that the VTA recently adopted optional new guidelines, encouraged Transportation Demand Management strategies (TDMs) for the project, and recommended bus stop improvements. An updated TIA was completed by Fehr & Peers for both the June and October 2014 Projects, as part of the EIR Addendum. The analysis for the October 2014 Project started in August 2014 (Fehr & Peer's report is dated August 21, 2014) which was before the new VTA Guidelines were adopted. The 2014 Project proposes a number of TDM measures that will reduce single-occupant vehicle trips to the site, including but not limited to implementation of a carpool/vanpool program, and provision of, or contribution to, a shuttle system for employees to access local transit services within the City. Finally, the June and October 2014 Projects propose to provide all of the improvements recommended by the VTA to the bus stop on Bowers Avenue, north of Scott Boulevard.

At the Council study session on November 7, 2014, staff highlighted the progression of changes to the project since June 2012 when the Irvine Company first amended the original site development plans approved for EOP, and presented that latest iteration of the site plan that would be coming before Council at the November 18 public hearing. The applicant was present and commented briefly on the updated plan.

Notice of public hearings have been posted within 500 feet of the site and published in the Santa Clara Weekly on November 5, 2014 as well as mailed to property owners within 500 feet of the project site. The full administrative record is available for review during normal business hours in the Planning Division office at City Hall, 1500 Warburton Avenue, Santa Clara.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The project site is located in an urbanized area served by existing municipal services, and the physical development of the project site would localize employment in a central geographic area. The landscape and open space concept for the office development include campus serving amenities, such as sports courts, event space, and seating areas. These onsite private open space and recreational facilities help to meet the needs of tenants and patrons of this project. The project includes the payment of local and regional traffic impact fees and fair share contributions toward the cost of roadway improvements. The project will also provide a creek trail connecting Augustine/Octavius Drive to the San Tomas Aquino Creek Trail.

The project would still result in impacts with regard to air quality, traffic, population and housing and greenhouse gases, but to a lesser extent than the 2009 Project. The availability of recycled water for the project results in reduced hydrological impacts when compared to the 2009 Project. In addition, the project will need

to comply with the Santa Clara Climate Action Plan which imposes a number of requirements, such as a 20% Vehicle Miles Traveled reduction, implementation of water conservation measures, and waste reduction programs.

ECONOMIC/FISCAL IMPACT:
There is no cost to the City other than administrative staff time and expense.

RECOMMENDATION:
That the Council, for the Santa Clara Square Project (Office Phase II & III), a 27.5-Acre Project Site, Located at 2465, 2505, 2525, 2575 Augustine Drive and 3393, 3333 Octavius Drive (APNs: 216-45-036, 037, 038, 006, 025, 024):

1) Adopt resolutions to:
   - Approve the Addendum No. 3 to the Augustine-Bowers Office Park Environmental Impact Report;
   - Approve the General Plan Amendment from Light Industrial to High Intensity Office/R&D (APN's 216-45-038 and 025)
   - Approve a Rezone from Light Industrial (ML) to Commercial Park (CP) (APN's 216-45-038 and 025); to allow the construction of up to 1,243,300 square feet of office space out of a total (inclusive of Office Phase I and Retail) of up to 2,000,100 square feet of development, Subject to Conditions;
   - Approve the Vesting Tentative Parcel Map for 27.5-acres where 6 parcels will be combined to create 3 parcels, Subject to Conditions; and
2) Pass-to-Print an Ordinance to approve the Third Amendment to the Development Agreement with The Irvine Company LLC, 2525 Augustine Drive LLC and 3255 Scott Boulevard LLC; and
3) Refer the project to the Architectural Committee for final architectural review;

APPROVED:

Kevin Riley
Director of Planning and Inspection

Julio J. Fuentes
City Manager

Documents Related to this Report:
1) ***Resolution EIR Addendum No.3 to Augustine-Bowers Office Park EIR***
2) ***Resolution General Plan Amendment from Light Industrial to High Intensity Office/R&D***
3) ***Resolution Approval of Rezoning from ML to CP***
4) ***Resolution Vesting Tentative Parcel Map***
5) ***Ordinance Third Amendment to Development Agreement***
6) ***Third Amendment to Development Agreement***
7) ***Conditions of Approval – Rezone***
8) ***Conditions of Approval – Map***
9) ***EIR Addendum No.3 to Augustine-Bowers Office Park EIR***
10) ***Planning Commission Meeting Excerpt Minutes from the meeting of 10/22/14***
11) ***Planning Commission Staff Report from the meeting of 10/22/14***
12) ***Applicant Letter of Justification dated August 7, 2014***
13) ***Correspondence as of November 12, 2014***
14) ***Development Plans***
15) ***Vesting Tentative Parcel Map***

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, APPROVING THE ADDENDUM NO. 3 TO THE AUGUSTINE-BOWERS OFFICE PARK ENVIRONMENTAL IMPACT REPORT FOR THE SANTA CLARA SQUARE PROJECT LOCATED AT 2465, 2505, 2525, 2575 AUGUSTINE DRIVE AND 3393, 3333 OCTAVIUS DRIVE, SANTA CLARA

SCH# 2008052065
CEQ 2014-01181 (Addendum No.3 to EIR)
PLN2014-10577 (General Plan Amendment)
PLN2014-10578 (Rezone to Commercial Park)
PLN2014-10579 (Vesting Tentative Parcel Map)
PLN2014-10580 (Third Amendment to Development Agreement)
PLN2014-10581 (Architectural Review)

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on August 13, 2014, The Irvine Company LLC ("Applicant") filed an application to change the General Plan Land Use Designation from Light Industrial to High Intensity Office/R&D and to rezone the properties from Light Industrial (ML) to Commercial Park (CP) at 2505 Augustine Drive and 3393, 3333 Octavius Drive ("Project Sties"), a 5.95-acre project site in the City of Santa Clara comprised of 2 parcels (APNs: 221-45-038, -025), a Vesting Tentative Parcel Map to remove existing lot lines and an amendment to the existing Development Agreement;

WHEREAS, the Santa Clara Square Project ("June 2014 Project") was formerly known as the Augustine Bowers Office Park Project ("2009 Project") and as the Santa Clara Technology Campus Project ("2013 Project");

WHEREAS, the Santa Clara Square Office Phase I, the Retail Center, Office Phase II and III entitlements allow for the development up to 2,000,100 square feet;

WHEREAS, the Santa Clara Square Office Phase II and III approved in June 2014 consists of no more than 1,243,300 square feet of office use at a parking ratio of 3.3/1000 on 16.84-acres;

WHEREAS, the addition of two parcels (APNs: 221-45-038, -025) to the Original Santa Clara Square Office Phase II and III allows for the redesign and redistribution of the 1,243,300 square feet of office use on 22.79-acres;

WHEREAS, in order to effectuate the development application and its change in use, the Project Site needs a General Plan Amendment to change the General Plan Land Use Designation from Light Industrial to High Intensity Office/R&D and a rezone from Light Industrial (ML) to Commercial Park (CP) as shown on the revised Development Plans, attached as Exhibit "Development Plans" and conditioned in attached Exhibit "Conditions of Approval";

WHEREAS, on October 22, 2014, the Planning Commission reviewed the proposed EIR Addendum for the Project, and adopted a resolution recommending that the Council approve the proposed EIR Addendum;

WHEREAS, the City Council has reviewed the EIR Addendum for the Project, the City Staff reports pertaining to the EIR Addendum and all evidence received at a duly noticed public meeting on November 18, 2014, and all of these documents and evidence are incorporated herein by this reference into this Resolution; and,

WHEREAS, the EIR Addendum concludes that the proposed project would not result in any new significant adverse environmental impacts, nor would it result in an increase in the severity of any previously identified significant environmental impacts identified and studied in the EIR.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. The City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. The City Council hereby finds the EIR Addendum has been presented to the City Council, which reviewed and considered the information and analysis contained therein.

3. The City Council hereby finds that the EIR Addendum has been completed in compliance with CEQA.

4. The City Council hereby finds that the EIR Addendum concluded that the proposed project would not result in any new significant adverse impacts, nor an increase in the severity of any significant impacts previously identified and studied in the EIR.

5. The City Council finds that there have been not changes in circumstances in the project area that would result in new significant impacts or more severe impacts, and the magnitude of previously identified environmental impacts would not be substantially different from those associated with the June 2014 Project, the 2013 Project or the 2009 Project.

6. All documents referenced in the EIR Addendum were made available for public review and will be included in the public record file with the Final EIR.

7. Based on the findings set forth in this Resolution and the evidence in the City Staff Report, the City Council approves the EIR Addendum for the Project.

8. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

9. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ___ DAY OF _____, 2014, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:
1. Conditions of Approval - Rezone
2. Development Plans

I:\PLANNING\2014\Project Files Active\PLN2014-10256 2620-2790 Augustine Dr (SCSQ)\CC\SCSQ CC Reso-EIR.doc

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, APPROVING GENERAL PLAN AMENDMENT FOR OF THE PROPERTIES LOCATED AT 2505 AUGUSTINE DRIVE AND 3393, 3333 OCTAVIUS DRIVE, SANTA CLARA

SCH# 2008052065
CEQ 2014-01181 (Addendum No.3 to EIR)
PLN2014-10577 (General Plan Amendment)
PLN2014-10578 (Rezone to Commercial Park)
PLN2014-10579 (Vesting Tentative Parcel Map)
PLN2014-10580 (Third Amendment to Development Agreement)
PLN2014-10581 (Architectural Review)

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, The Irvine Company ("Applicant") applied for a General Plan Amendment for the properties located at 2505 Augustine drive and 3393, 3333 Octavius Drive (APNs: 221-45-038, -025) in order to change the General Plan Land Use Designation from Light Industrial to High Intensity Office/R&D in the City of Santa Clara ("Project Sites");

WHEREAS, Applicant has simultaneously applied to rezone the Project Site from Light Industrial (ML) to Commercial Park (CP);

WHEREAS, the Santa Clara Square Office Phase I, the Retail Center, Office Phase II and III entitlements allow for the development up to 2,000,100 square feet;

WHEREAS, the Santa Clara Square Office Phase II and III approved in June 2014 consists of no more than 1,243,300 square feet of office use at a parking ratio of 3.3/1000 on 16.84-acres;

WHEREAS, the addition of two parcels to the Original Santa Clara Square Office Phase II and III allows for the redesign and redistribution of the 1,243,300 square feet of office use on 22.79-acres as shown on the revised Development Plans, attached as Exhibit "Development Plans";

WHEREAS, City staff has negotiated with Developer the proposed amendment to the Original Development Agreement ("Third Amendment to the Development Agreement"), and are recommending it to the Planning Commission for approval;

WHEREAS, Santa Clara General Plan Section 7.1.4 requires that the Planning Commission provide input to the City Council on any proposed General Plan amendment, and at its October 22, 2014 meeting, the Planning Commission conducted a public hearing and recommended that the Council approve the proposed amendment;

WHEREAS, Government Code Section 65355 requires the City Council to hold a public hearing prior to adopting an amendment to the General Plan;

WHEREAS, notice of the public hearing on the proposed General Plan Amendment was published in the *Santa Clara Weekly*, a newspaper of general circulation for the City, on November 5, 2014;

WHEREAS, on November 7, 2014, notices of the public hearing on the General Plan Amendment were mailed to all property owners within 500 feet of the property, according to the most recent assessor's roll;

WHEREAS, before considering the General Plan Amendment for the Project Site, the City Council reviewed and considered the information contained in the Addendum No. 3 to Augustine-Bowers Office Park Environmental Impact Report for the Project (SCH #2008052065); and

WHEREAS, the City Council has reviewed the General Plan Amendment and conducted a public hearing.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. General Plan Amendment Findings. That the City Council finds and determines that the General Plan Amendment is in the interest of the public good for the following reasons:

A. The proposed amendment is deemed to be in the public interest, in that the proposed project is located in an urbanized area and allows redevelopment consistent with the height, uses and development similar to the surrounding area.

B. The proposed General Plan amendment is consistent and compatible with the rest of the General Plan and any implementation programs that may be affected, in that the proposed General Plan change supports urban design objectives by promoting the special design and campus-like site plan required in the Office/Research and Development designation and the economic development objectives of increased employment intensity.

C. The potential impacts of the proposed Amendment have been assessed and have been determined not to be detrimental to the public health, safety, or welfare in that the proposal has been analyzed in accordance with the California Environmental Quality Act (CEQA) and the proposal would not result in any new significant adverse impacts, nor an increase in the severity of previously identified impacts.

D. The proposed amendment has been processed in accordance with the applicable provisions of the California Government Code and CEQA in that an Addendum No. 3 to the Augustine-Bowers Office Park Environmental Impact Report has been prepared.

3. That based on the findings set forth in this Resolution, the Addendum No. 3 to Augustine-Bowers Office Park Environmental Impact Report and the evidence in the City Staff Report, and such other evidence as received at the public hearing on this matter, the City Council approves the General Plan Amendment.

4. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

5. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ___ DAY OF _____, 2014, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:
1. Development Plans

I:\\PLANNING\2014\Project Files Active\PLN2014-10577 2505 Augustine Dr (SCSQ Rev)\CC\SCSQ CC Reso-GPA.doc

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, REZONING THE PROPERTIES LOCATED AT 2505 AUGUSTINE DRIVE AND 3393, 3333 OCTAVIUS DRIVE, SANTA CLARA FROM LIGHT INDUSTRIAL (ML) TO COMMERCIAL PARK (CP) [OFFICE PHASE II & III]

SCH# 2008052065
CEQ 2014-01181 (Addendum No.3 to EIR)
PLN2014-10577 (General Plan Amendment)
PLN2014-10578 (Rezone to Commercial Park)
PLN2014-10579 (Vesting Tentative Parcel Map)
PLN2014-10580 (Third Amendment to Development Agreement)
PLN2014-10581 (Architectural Review)

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on August 13, 2014, The Irvine Company LLC ("Applicant") filed an application to rezone the properties located at 2505 Augustine Drive and 3393, 3333 Octavius Drive, a 5.95-acre project site comprised of 2 parcels (APNs: 221-45-038, -025), in the City of Santa Clara ("Project Sites");

WHEREAS, the Project Sites are currently zoned as Light Industrial (ML);

WHEREAS, the Planning Commission has recommended that the City Council approve the General Plan Amendment #84 to change the General Plan Land Use Designation from Light Industrial to High Intensity Office/R&D;

WHEREAS, the Santa Clara Square Project ("June 2014 Project") was formerly known as the Augustine Bowers Office Park Project ("2009 Project") and as the Santa Clara Technology Campus Project ("2013 Project");

WHEREAS, the Santa Clara Square Office Phase I, the Retail Center, Office Phase II and III entitlements allow for the development up to 2,000,100 square feet;

WHEREAS, the Santa Clara Square Office Phase II and III approved in June 2014 consists of no more than 1,243,300 square feet of office use at a parking ratio of 3.3/1000 on 16.84-acres;

WHEREAS, the addition of two parcels to the Original Santa Clara Square Office Phase II and III allows for the redesign and redistribution of the 1,243,300 square feet of office use on 22.79-acres;

WHEREAS, in order to effectuate the development application and its change in use, the Project Site needs to be rezoned from Light Industrial (ML) to Commercial Park (CP) as shown on the revised Development Plans, attached as Exhibit "Development Plans" and conditioned in attached Exhibit "Conditions of Approval";

WHEREAS, before considering the rezone of the Project Sites, the City Council reviewed and considered the information contained in the Addendum No. 3 to the Environmental Impact Report for the Project;

WHEREAS, at its October 22 meeting, the Planning Commission held a public hearing to consider the rezoning application;

WHEREAS, at the conclusion of the public hearing the Planning Commission made a recommendation to the City Council to approve the rezoning application;

WHEREAS, on November 10, 2014, pursuant to section 18.112.060 of the City of Santa Clara Code, a notice of public hearing was posted in at least eight conspicuous places within five hundred (500) feet of the affected property, and mailed to property owners within five hundred (500) feet of the Project Site; and,

WHEREAS, the City Council conducted a duly noticed public hearing on November 18, 2014 to consider the rezoning application.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. The City Council hereby rezones the Project Sites, as shown on the Exhibit "Development Plans" and conditioned in Exhibit "Conditions of Approval - Rezone", attached hereto and incorporated herein by this reference, from Light Industrial (ML) to Commercial Park (CP) to allow the construction of up to 1,243,300 square feet of office space.

3. Pursuant to SCCC Section 18.112.010, the City Council determines that the following findings exist in support of the rezoning:

A. The proposed amendment to the zoning district is appropriate or equitable, in that the General Plan permits an office park such as the proposed project. The proposed zone change helps the City achieve the stated objectives to: promote quality job growth within the City and region; support campus development that can take advantage of transit opportunities by concentrating jobs near existing transit facilities; support development of significant employment centers on major local and regional roadways to minimize traffic on minor local streets and to facilitate transit services; and promote private open space and recreation facilities in employment centers in order to meet a portion of the urban open space and recreational needs that will be generated by the development.

B. The proposed zone change will conserve property values; protect or improve the existing character and stability of the area in question; and promote the orderly and beneficial development of such area, in that the proposed rezoning change would allow future improvements consistent with the General Plan High Intensity Office/R&D Designation.

C. The proposed zone change is required by public necessity, public convenience, or the general welfare of the City, in that the proposed rezoning would allow for office development on the project site which would help achieve the City's goals of encouraging innovative design of new office space to promote higher-intensity new development.

D. The proposed zone change would allow an office campus redevelopment at the desired FAR.

4. That based on the findings set forth in this Resolution, the EIR and evidence in the City Staff Report, and all evidence presented at the hearing, the City Council hereby rezones the Project Sites as set forth herein.

5. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

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6. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ___ DAY OF _____, 2014, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:
1. Development Plans
2. Conditions of Approval - Rezone

I:\\PLANNING\2014\Project Files Active\PLN2014-10577 2505 Augustine Dr (SCSQ Rev)\CC\SCSQ CC Reso-Z.doc

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, APPROVING THE VESTING TENTATIVE PARCEL MAP FOR THE PROPERTY LOCATED AT 2465, 2505, 2525, 2575 AUGUSTINE DRIVE AND 3393, 3333 OCTAVIUS DRIVE, SANTA CLARA

SCH# 2008052065
CEQ 2014-01181 (Addendum No.3 to EIR)
PLN2014-10577 (General Plan Amendment)
PLN2014-10578 (Rezone to Commercial Park)
PLN2014-10579 (Vesting Tentative Parcel Map)
PLN2014-10580 (Third Amendment to Development Agreement)
PLN2014-10581 (Architectural Review)

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on August 13, 2014, the Irvine Company ("Applicant") applied for a General Plan Amendment for the properties located at 2505 Augustine Drive and 3393, 3333 Octavius Drive (APNs: 221-45-038, -025) in order to change the General Plan Land Use Designation from Light Industrial to High Intensity Office/R&D in the City of Santa Clara ("Project Sites");

WHEREAS, Applicant has simultaneously applied to rezone the Project Sites from Light Industrial (ML) to Commercial Park (CP) ("Office Phase II & III") to allow the construction of up to 1,243,300 square feet of office space for a total (inclusive of Office Phase I and Retail) of up to 2,000,100 square feet of development as shown on the revised Development Plans, attached as Exhibit "Development Plans";

WHEREAS, consistent with the proposed uses under the Development Plans, the proposal will combine the existing lot lines to create 3 parcels on the 27.5-acre portion of the project site (APNs: 216-45-036, 037, 038, 006, 025, 024), as shown on Exhibit "Vesting Tentative Parcel Map" attached hereto and incorporated herein by this reference;

WHEREAS, pursuant to Section 17.05.220 of the Code of the City of Santa Clara ("SCCC"), a parcel map is required for divisions of land into four or fewer parcels;

WHEREAS, on September 30, 2014, the Subdivision Committee determined that the application was complete and that the parcel map be reviewed by the City Council in conformance with Section 17.05.400 of the SCCC as a Vesting Tentative Parcel Map along with the project;

WHEREAS, Section 17.05.400(d) of the SCCC requires that the City Council hold a public hearing before considering the approval of a Vesting Tentative Parcel Map for the division of land;

WHEREAS, Section 17.05.400(d) of the SCCC further requires that notice of the public hearing before the City Council be given by providing notice to all property owners within three hundred (300) feet of the proposed Tentative Parcel Map area by mail and by posting a notice of public hearing in at least three places within the vicinity of the project site;

WHEREAS, notice of the public hearing on the Vesting Tentative Parcel Map was published in the *Santa Clara Weekly*, a newspaper of general circulation for the City, on November 5, 2014;

WHEREAS, on November 7, 2014, notices of the public hearing on the Vesting Tentative Parcel Map were mailed to all property owners within five hundred (500) feet of the proposed Tentative Parcel Map, according to the most recent assessor's roll;

WHEREAS, before considering the Vesting Tentative Parcel Map, the City Council reviewed and considered the information contained in the Addendum No. 3 to Augustine-Bowers Office Park Environmental Impact Report for the Project (SCH #2008052065); and,

WHEREAS, the City Council has reviewed the Vesting Tentative Parcel Map and conducted a public hearing.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. Tentative Parcel Map Findings. The City Council finds and determines that:

A. The proposed subdivision is substantially consistent with the objectives, policies, general land use and programs specified in the City's General Plan. The subdivision combines the existing lot lines to create 3 parcels on the 27.5-acre portion of the project site (APNs: 216-45-036, 037, 038, 006, 025, 024), located at 2465, 2505, 2525, 2575 Augustine Drive and 3393, 3333 Octavius Drive. The Office Phase II & III portion of the project site allows for the development of up to 1,243,300 square feet of office space for a total (inclusive of Office Phase I and Retail) of up to 2,000,100 square feet of development.

B. The design and improvements of the proposed subdivision are substantially consistent with the City's General Plan in that the Vesting Tentative Parcel Map is subject to the conditions set forth in Exhibit "Conditions of Approval - Map", attached hereto and incorporated by this reference. The project site is served by existing municipal services, and the physical development of the project site would localize employment in a central geographic area. The landscape and open space concept for the office development include campus serving amenities, such as sports courts, event space, and seating areas. These onsite private open space and recreational facility help to meet the needs of tenants and patrons of this project. The project includes the payment of local and regional traffic impact fees and fair share contributions toward the cost of road way improvements. The project will also provide a creek trail connecting Augustine/Octavius Drive to the San Tomas Aquino Creek Trail.

C. The proposed subdivision would provide, to the extent feasible, for future passive or natural heating or cooling opportunities, in that the offices will be built to LEED "Silver"

level or equivalent, and the office developments provide outdoor amenities, outdoor seating areas.

D. The site is physically suitable for the proposed type of development in that the office development on the project site would help achieve the City's goals of encouraging innovative design of new office space to promote higher-intensity new development.

E. This site is physically suitable for the proposed intensity of development in that the Project Site is located in an urbanized area. The project is located in a transit, bicycle and pedestrian friendly location that would further enhance the City's General Plan development priorities for this area.

F. The design of the subdivision and type of improvements are not likely to cause serious health problems in that the site is surrounded by office developments and supporting services and does not propose the use of hazardous chemicals or materials.

G. The design of the subdivision and type of improvements are not likely to cause substantial environmental damage. The EIR Addendum concludes that the proposed Project (Santa Clara Square) would not result in new significant adverse impacts or an increase in severity of any previously identified significant impacts identified and studied in the EIR.

H. The design of the subdivision and type of improvements will not conflict with easements acquired by the public at large or use of property within the proposed subdivision, in that the project is designed to avoid encroachments and conflicts with public easements in the site design.

3. That based on the findings set forth in this resolution, the EIR and the evidence in the City Staff Report, the City Council approves the tentative parcel map for the Project Sites as set forth herein.

4. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

5. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ___ DAY OF _____, 2014, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:
1. Development Plans
2. Vesting Tentative Parcel Map
3. Conditions of Approval – Map

I:\\PLANNING\2014\Project Files Active\PLN2014-10577 2505 Augustine Dr (SCSQ Rev)\CC\SCSQ CC Reso Map.doc

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, APPROVING THE THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SANTA CLARA AND THE IRVINE COMPANY LLC; 2525 AUGUSTINE DRIVE LLC; 3255 SCOTT BOULEVARD LLC; AND 2505 AUGUSTINE DRIVE LLC FOR THE PROPERTIES LOCATED AT 2465, 2505, 2525, 2575 AUGUSTINE DRIVE AND 3393, 3333 OCTAVIUS DRIVE, SANTA CLARA

SCH# 2008052065
CEQ 2014-01181 (Addendum No.3 to EIR)
PLN2014-10577 (General Plan Amendment)
PLN2014-10578 (Rezone to Commercial Park)
PLN2014-10579 (Vesting Tentative Parcel Map)
PLN2014-10580 (Third Amendment to Development Agreement)
PLN2014-10581 (Architectural Review)

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, California Government Code Sections 65864 through 65869.5 ("Development Agreement Act") authorize cities to enter into binding development agreements with owners of real property and these agreements govern the development of the property;

WHEREAS, on May 19, 2009, the City of Santa Clara entered into such a development agreement with EOP-Industrial Portfolio, LLC and CA-Santa Clara Office Center, LP ("Prior Owners"), adopted by Ordinance No. 1844 and recorded in the official records of Santa Clara County ("Official Records") on June 25, 2009 as Document No. 20314645 (the "Original Agreement");

WHEREAS, the Original Agreement concerned a proposed campus development located at 2620-2727 Augustine Drive (including properties on Bowers Avenue and Scott Boulevard), a 30.73-acre project site comprised of eight parcels located on the north and south sides of Augustine Drive, immediately east of Bowers Avenue, between Scott Boulevard and Highway 101 (APNs: 216-45-009, 011, 014, 019, 027, 028, 031, 032) in the City of Santa Clara ("2009 Project Sites");

WHEREAS, on August 2, 2012, The Irvine Company, LLC acquired fee title to the Property as legally described in Exhibit A and entered an Assignment and Assumption Agreement with the Prior Owners, pursuant to which The Irvine Company took all right, title and interest under the Development Agreement. The Assignment and Assumption Agreement was recorded in the Official Records of Santa Clara County on August 16, 2012 as Document No. 21797365;

WHEREAS, on January 8, 2013, The Irvine Company submitted to the City an application to amend the Original Agreement to revise the project layout; decrease the density, building footprints and floor area ratio; modify the parking; and divide the project into phases ("2013 Project");

WHEREAS, on October 16, 2013, by grant deed, the Developer transferred fee title to the portion of the Property north of Augustine Drive (APNs 216-45-009, 216-45-031, and 216-45-032) ("Office Phase I Property") to Augustine Bowers LLC, a Delaware limited liability company;

WHEREAS, on September 11, 2013, 2525 Augustine Drive LLC, a Delaware limited liability company, acquired fee title to two directly adjacent parcels (APNs 216-45-036 and 216-45-037) ("June Office Phase II Property"), and on April 22, 2013, 3255 Scott Boulevard LLC, a Delaware limited liability company, acquired fee title to another nearby parcel (APN 216-45-006) ("June Office Phase III Property"). The Irvine Company, LLC, 2525 Augustine Drive, LLC, and 3255 Scott Boulevard, LLC, are collectively referred to herein as the "Developer";

WHEREAS, on June 10, 2014, the City approved the Developer's application (PLN2014-10257, 10258, 10259,10260, 10381, CEQ 2014-01172) for an amendment of the PD zoning on the 13.8 acre southern portion of the 2009 Project Sites (APNs: 216-45-011, 014, 019,027,028) (the "Retail Property"), a General Plan amendment and rezoning of the June Office Phase II and June Office Phase III Properties, development of 125,000 square feet of specialty retail development on the

Retail Property, and the construction of up to 1,243,300 square feet of corporate office development on the June Office Phase II and June Office Phase III Properties ("June 2014 Project");

WHEREAS, on August 4, 2014 the Developer transferred fee title to the Retail Property by grant deed to Augustine Bowers II LLC, a Delaware limited liability company;

WHEREAS, on August 8, 2014, 2505 Augustine Drive LLC, a Delaware limited liability company and wholly owned subsidiary of The Irvine Company acquired fee title to a parcel (APN 216-45-038) that is located in between the June Office Phase II and June Office Phase III properties, as legally described in Exhibit B, which was recorded in the Official Records of Santa Clara County as Document No. 22674134 ("2505 Augustine Property"), and on April 22, 2013, 3255 Scott Boulevard LLC, a Delaware limited liability company and wholly owned subsidiary of The Irvine Company acquired fee title to a parcel (APN 216-45-025) as legally described in Exhibit B, which was recorded in the Official Records of Santa Clara County as Document No. 22184282 ("3333-3393 Octavius Property");

WHEREAS, the June Office Phase II, June Office Phase III, 2505 Augustine, and 3333-3393 Octavius Properties have been consolidated into new Office Phase II and Office Phase III Properties, and referred to collectively as the "Modified Property";

WHEREAS, this Third Amendment allows the development of the previously approved 1,243,300 square feet of corporate office development on the Modified Property;

WHEREAS, the total development on the Office Phase I Property, the Retail Property, and the Modified Property will not exceed 2,000,100 square feet, and is 4,500 square feet less than the 2,004,600 square feet of approved development in the 2009 Project;

WHEREAS, the Project entitlements will include approving the EIR Addendum, General Plan Amendment, Rezone of the Project Site, a Vesting Tentative Parcel Map and Final Map, approving

the Third Amendment to the Development Agreement and Architectural Review (collectively, "Entitlements");

WHEREAS, the present application is for the properties located at 2620-2790, 2425, 2465 and 2475 Augustine Drive, a 47.57-acre project site comprised of eight parcels located on the north and south sides of Augustine Drive, between Bowers Avenue and San Tomas Aquino Creek, Scott Boulevard and Highway 101 (APNs: 216-45-011, -014, -019, -027, -028, -036, -037, -006) in the City of Santa Clara ("2014 Project Sites");

WHEREAS, Section 11.1 of the Original Development Agreement provides that the Parties, by mutual consent, may modify the terms of the Original Agreement, and the Parties have recently negotiated a proposed "Third Amendment to Development Agreement," attached hereto and incorporated herein by this reference ("Third Amendment");

WHEREAS, the City Council has reviewed the Third Amendment and has considered all available facts related to the Third Amendment;

WHEREAS, as a result of the proposed revisions to the Project, City staff prepared an addendum to the EIR for the Revised Project;

WHEREAS, before considering the Third Amendment, the City Council reviewed and considered the information contained in the Addendum to the EIR;

WHEREAS, the EIR addendum indicated that the Revised Project would not result in any new significant adverse environmental impacts or increase the severity of any previously identified significant environmental impacts identified and studied in the EIR;

WHEREAS, the City Council voted to approve the EIR addendum on November 18, 2014;

WHEREAS, on October 22, 2014, City's Planning Commission held a duly noticed public hearing on the Third Amendment and (i) determined that consideration of Third Amendment, based on the

EIR Addendum, complies in all respects with the California Environmental Quality Act ("CEQA"); (ii) determined that Third Amendment is consistent with the City's General Plan; and (iii) recommended that the City Council approve Third Amendment;

WHEREAS, on November 18, 2014, the City Council introduced this ordinance and conducted a public hearing, at which time the Council received and considered all verbal and written testimony and evidence submitted; and

WHEREAS, on December 9, 2014, the City Council conducted a second reading of this Ordinance.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: The City Council hereby finds that all of the foregoing recitals are true and correct.

SECTION 2: Pursuant to Government Code section 65867.5, the City Council hereby finds that the provisions of the Third Amendment are consistent with the General Plan, in that the General Plan designation for the Property is High Intensity Office/R&D, which encourages campus-like developments for corporate headquarters, R&D and supporting uses, and the proposal is to construct a high density office campus and supporting amenities.

SECTION 3: The City Council has reviewed the Third Amendment, and based on its review finds that the Original Development Agreement, as amended by Third Amendment and all previous amendments, complies with all requirements of Government Code section 65865.2 [entitled "Contents" (of a Development Agreement)].

SECTION 4: The City Council hereby approves the Third Amendment, substantially in the form attached hereto, a copy of which is on file with the City Clerk and can be reviewed by members of the public at the City Clerk's office, 1500 Warburton Avenue, Santa Clara, California.

SECTION 5: The City Manager is hereby authorized to execute the Third Amendment on behalf of the City upon the Effective Date of this Ordinance, together with such minor and clarifying changes consistent with the terms thereof as may be approved by the City Attorney prior to execution thereof. The City Manager, or designee, is also authorized and directed to take any action and execute any documents or agreements necessary to implement the Development Agreement as amended, including but not limited to conducting an annual review of compliance as specified therein.

SECTION 6: Except as specifically set forth herein, this ordinance suspends and supersedes all conflicting resolutions, ordinances, plans, codes, laws and regulations.

SECTION 7: Within ten (10) days after the City Manager executes the Third Amendment, the City Clerk shall cause the Third Amendment to be recorded with the Santa Clara County recorder.

SECTION 8: Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

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SECTION 9: This Ordinance shall not be codified in the Santa Clara City Code.

SECTION 10: Effective Date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this _____ day of _____, 2014, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:
1. Third Amendment to Development Agreement

I:\\PLANNING\2014\Project Files Active\PLN2014-10577 2505 Augustine Dr (SCSQ Rev)\CC\SQSQ CC Ord Third Amd DA_v1.doc

RECORD WITHOUT FEE
PURSUANT TO GOVERNMENT CODE § 6103

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:
City of Santa Clara
City Clerk's Office
1500 Warburton Avenue
Santa Clara, California 95050

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

This THIRD AMENDMENT TO DEVELOPMENT AGREEMENT ("**Third Amendment**") to amend the Development Agreement between the City of Santa Clara, a chartered California municipal corporation ("**City**") and The Irvine Company LLC, a Delaware limited liability company; 2525 Augustine Drive LLC, a Delaware limited liability company; and 3255 Scott Boulevard LLC, a Delaware limited liability company, and 2505 Augustine Drive LLC, a Delaware limited liability company (collectively, "**Developer**") is entered into on _____, 2014. The City and Developer are hereinafter individually a "**Party**" and collectively, the "**Parties**."

RECITALS:

Developer and City enter into this Third Amendment on the basis of the following facts, understandings and intentions:

A. Pursuant to Government Code Sections 65864 through 65869.5 and Santa Clara City Code Chapter 17.10, the City of Santa Clara and Developer's predecessors in interest, EOP-Industrial Portfolio, LLC and CA-Santa Clara Office Center, LP ("**Prior Owners**"), entered into the Development Agreement adopted by Ordinance No. 1844 on May 19, 2009 which was recorded in the official records of Santa Clara County ("**Official Records**") on June 25, 2009 as Document No. 20314645, as amended on July 16, 2013 by the First Amended Development Agreement, recorded in the Official Records on August 29, 2013 as Document No. 23369909. The Parties agree that City Council approved the Second Amended Development Agreement and adopted Ordinance No. 1927 on June 24, 2014, and that the effective date of the Second Amended Development Agreement is July 24, 2014. The Second Amended Development Agreement was recorded in the Official Records on July 24, 2014 as Document No. 22660613. (collectively "**Development Agreement**").

B. The 2009 Development Agreement covered eight (8) separate parcels (APNs 216-45-009, 216-45-031, 216-45-032, 216-45-011, 216-45-014, 216-45-019, 216-45-027, 216-45-028) totaling 30.73 acres ("**Original Property**").

C. In 2009, the City approved the Prior Owners' applications for a General Plan Amendment to *Office/Research and Development* ("**2009 General Plan Amendment**") and a rezoning of the Original Property to Planned Development ("**2009 PD**") (PD #PLN 2008-06858/06859/06860, CEQ 2008-0105) ("**2009 Rezoning**"). The 2009 Rezoning allowed the development of the 30.73 acre Original Property by the demolition of all of the existing structures on the site and the construction of up to 1,969,600 square feet of office development (a net increase of 1,524,848 square feet) and up to 35,000 square feet of retail development (a net increase of 29,710 square feet), for a total of 2,004,600 square feet of development (collectively, the "**2009 Project**").

D. The Irvine Company acquired fee title to the Original Property as legally described in Exhibit A and entered an Assignment and Assumption Agreement taking all right, title and interest under the Development Agreement on August 2, 2012 which was recorded in the Official Records of Santa Clara County on August 16, 2012 as Document No. 21797365.

E. As recorded on October 16, 2013 the Developer transferred fee title to the portion of the Original Property north of Augustine Drive (APNs 216-45-009, 216-45-031, and 216-45-032)("**Office Phase I Property**") by grant deed to Augustine Bowers LLC, a Delaware limited liability company. This Third Amendment is not intended to amend the Development Agreement as it applies to the Office Phase I Property.

F. The Developer retained ownership of the remaining portion of the Property located south of Augustine Drive (APNs 216-45-011, 216-45-014, 216-45-019, 216-45-027, 216-45-028) ("**Retail Property**").

G. 2525 Augustine Drive LLC, a Delaware limited liability company and wholly owned subsidiary of The Irvine Company acquired fee title to two directly adjacent parcels (APNs 216-45-036 and 216-45-037) as legally described in Exhibit B, which was recorded in the Official Records of Santa Clara County on September 11, 2013 as Document No. 22382954 **("June Office Phase II Property")**. 3255 Scott Boulevard LLC, a Delaware limited liability company and wholly owned subsidiary of The Irvine Company acquired fee title to a parcel (APN 216-45-006) as legally described in Exhibit B, which was recorded in the Official Records of Santa Clara County on April 22, 2013 as Document No. 22184282 **("June Office Phase III Property").**

H. On June 10, 2014, the City approved the Developer's application (PLN2014-10257, 10258, 10259,10260, 10381, CEQ 2014-01172) for an amendment of the PD zoning on the Retail Property, a General Plan amendment and rezoning of the June Office Phase II and June Office Phase III Properties, development of 125,000 square feet of specialty retail development on the Retail Property, and the construction of up to 1,243,300 square feet of corporate office development on the June Office Phase II and June Office Phase III Properties ("**June 2014 Project**").

I. On August 4, 2014 the Developer transferred fee title to the Retail Property by grant deed to Augustine Bowers II LLC, a Delaware limited liability company. This Third

Amendment is not intended to amend the Development Agreement as it applies to the Retail Property.

J. 2505 Augustine Drive LLC, a Delaware limited liability company and wholly owned subsidiary of The Irvine Company acquired fee title to a parcel (APN 216-45-038) that is located in between the June Office Phase II and June Office Phase III properties, as legally described in Exhibit B, which was recorded in the Official Records of Santa Clara County on August 8, 2014 as Document No. 22674134 ("**2505 Augustine Property**"). 3255 Scott Boulevard LLC, a Delaware limited liability company and wholly owned subsidiary of The Irvine Company acquired fee title to a parcel (APN 216-45-025) as legally described in Exhibit B, which was recorded in the Official Records of Santa Clara County on April 22, 2013 as Document No. 22184282 ("**3333-3393 Octavius Property**").

K. The June Office Phase II, June Office Phase III, 2505 Augustine, and 3333-3393 Octavius Properties have been consolidated into new Office Phase II and Office Phase III Properties, as shown on the vesting map in Exhibit C, and referred to collectively as the "**Modified Property**". This Third Amendment allows the development of the previously approved 1,243,300 square feet of corporate office development on the Modified Property. The total development on the Office Phase I Property, the Retail Property, and the Modified Property will not exceed 2,000,100 square feet, and is 4,500 square feet less than the 2,004,600 square feet of approved development in the 2009 Project.

L. Consistent with Sections 11.1, 11.2 and 24 of the Development Agreement, the revisions to the Development Agreement set forth below constitute a Development Agreement Amendment pursuant to Government Code Section 65868.

M. This Third Amendment is intended to conform the Development Agreement to the Parties' modifications to the 2009 Project pursuant to application File Nos. PLN 2014-10577, 10578, 10579, 10580, 10581; CEQ 2014-01181.

N. On October 22, 2014, the City's Planning Commission held a duly noticed public hearing where following public testimony, the Planning Commission recommended that the City Council approve: (i) the EIR Third Addendum; (ii) the General Plan Amendment of the 2505 Augustine Property and 3333-3393 Octavius Property to *High Intensity Office Research and Development*, (**"October 2014 General Plan Amendments"**); and (iii) the zoning change of the 2505 Augustine Property and 3333-3393 Octavius Parking Garage Property to *Commercial Park* (**"October 2014 Rezoning"**).

O. On_____, 2014, the City Council approved Resolution No. _____ adopting the October 2014 General Plan Amendments, Resolution No. _____ adopting the October 2014 Rezoning, and Resolution No. 14-_____ approving the parcel maps for the Office Phase II Property, and the Office Phase III Property ("Parcel Maps"), and introduced Ordinance No. _____ to approve this Third Amendment.

P. On_____, 2014, the City Council held a duly noticed public hearing and (i) determined that based on the EIR and the EIR Third Addendum, this Third Amendment complies in all respects with CEQA, and approved the EIR Addendum; (ii) determined that this Third Amendment is consistent with the City's General Plan, as amended.

Q. On _____, the City Council approved this Third Amendment and adopted Ordinance No. _____ approving the Third Amendment.

AMENDMENTS

NOW THEREFORE, in consideration of the mutual representations, covenants and promises of the Parties hereto, the Parties agree as follows:

a. Defined Terms. All terms used herein shall have the meanings given in the Development Agreement, except as expressly otherwise provided herein.

b. Office Phase I. The Third Amendment does not modify the Development Agreement as it applies to the Office Phase I Property.

c. Retail Property. The Third Amendment does not modify the Development Agreement as it applies to the Retail Property.

d. Enumeration of Specific Amendments. The Development Agreement is hereby revised to incorporate the following changes to the Development Agreement:

a. Modified Property. Recital C is amended to read as follows:

C. Developer is currently the legal owner of the property ("Modified Property") governed by this Agreement. The Modified Property consists of five (5) separate parcels (APNs 216-45-036, 216-45-037, 216-45-038, 216-45-025 and 216-45-006) totaling 22.69 acres, as further described in Exhibit "October2014RevisedPropDesc", attached hereto and incorporated by this reference. Any reference to "Property" in the Development Agreement shall mean "Modified Property" as set forth in this Third Amendment.

b. October 2014 Project. Recital D is amended to read as follows:

D. Developer has submitted the following applications to the City: General Plan Amendments to High Intensity Office Research and Development (**"October 2014 General Plan Amendments"**); and rezoning (**"October 2014 Rezoning"**) to Commercial Park (PLN2014-10577, 10578). The application(s) request the Developer be allowed to develop the 22.69 acre Property by demolishing all of the existing structures on the site (602,000 square feet) and constructing up to 1,243,300 square feet of office development (**"October 2014 Project"**). Any reference to "Project" in the

Development Agreement shall mean the "October 2014 Project" as set forth in this Third Amendment.

c. Development Plan. Recital E is amended to read as follows:

E. The Project, including but not limited to the buildings, access and parking facilities, landscaping, and infrastructure improvements, is shown on the October 2014 Rezoning as approved by the City Council after duly noticed public hearings on _____, 2014 by Resolution No. 14-_____(**"October 2014 Development Plan"**) and incorporated by this reference. Any reference to "Development Plan" in the Development Agreement shall mean the "October 2014 Development Plan" as set forth in this Third Amendment.

d. Conditions of Approval. Recital N is amended as follows:

N. Certain improvements as set forth in the conditions of approval for the Project ("**Conditions of Approval**"), which are attached hereto as **Exhibit "Third Revised CoA-R"** and incorporated by this reference, are necessary to provide infrastructure support for the Project. Exhibit "Third Revised CoA-R" shall replace both former Exhibit CoA-R, Revised Exhibit CoA-R, and Second Revised CoA-R in their entirety and any reference in the Development Agreement to "Exhibit CoA-R", "Revised Exhibit CoA-R", Second Revised CoA-R or to the "Conditions of Approval" shall mean Exhibit "Third Revised CoA-R".

e. Property. Section 2.1 is amended to read as follows:

2.1 Property. The Property that is the subject of this Agreement is that certain real property described in Exhibit "October2014RevisedPropDesc" attached hereto.

f. Life Approvals. Section 2.3 is amended to read as follows:

2.3 Life of Approvals. Pursuant to Government Code Section 66452.6(a) and this Agreement, the life of the Project approvals, including but not limited to certification of the EIR, certification of the EIR Third Addendum, adoption of the 2009 General Plan Amendment, June 2014 General Plan Amendments, approval of the October 2014 Rezoning, approval of the October 2014 General Plan Amendment, approval of the Development Agreement Ordinance and this Development Agreement, approval of a Development Plan, approval of a Vesting Tentative Parcel Map, approval of Parcel Maps, and architectural approval of the Project (collectively, "**Approvals**") shall automatically be extended to and until the later of the following: (1) the end of the Term of this Agreement; or (2) the end of the term or life of any such approval. Notwithstanding the foregoing, the Vested Elements, as defined in Section 2.4, secured by Developer under this Agreement shall remain vested

for a period no greater than the Term of this Agreement, and any extension thereof.

g. Vested Elements. Section 2.4(b) is amended to read as follows:

b. The SCCC, current as of the Effective Date, including the rezoning of the Property to PD, as subsequently amended by the 2013 Amended PD and 2014 PD Amendment, June 2014 Rezoning, and October 2014 Rezoning;

h. Vested Elements. Section 2.4(c) is amended to read as follows:

c. The June 2014 and October 2014 Rezoning, and the Conditions of Approval imposed thereon;

i. Permitted Uses. Section 2.5 is amended to read as follows:

2.5 Permitted Uses. The permitted uses for the Property the Office Phase I Property, and Retail Property are as follows: 2,004,600 square feet of office and retail development in buildings up to fourteen (14) stories and 244 feet in height and parking at a ratio of 3.3/1000 square feet averaged over the entire property, all of which must be implemented in accordance with the Development Plan and the Conditions of Approval.

j. Present Right to Develop. Section 2.6 is amended to read as follows:

2.6 Present Right to Develop. Subject to Developer's fulfillment of the provisions of this Agreement, the Development Plan and the Conditions of Approval, the City hereby grants to Developer the present vested right to develop and construct on the Property all the improvements authorized by, and in accordance with, this Agreement and the Vested Elements, including in particular the terms of the October 2014 Development Plan and the October 2014 Rezoning. To the extent permitted by law, no future modification (including by later-adopted initiative and/or referendum) of the City's General Plan, SCCC, ordinances, policies or regulations that purport to (i) limit the rate or timing of development, size of buildings or other improvements (including developable square footage), or amount of development of the portions of the Project to be built; or (ii) impose fees, exactions or conditions upon development, occupancy or use of the Property other than as provided in the Development Plan or Conditions of Approval or pursuant to this Agreement, shall apply to the Property; provided, however, that nothing in this Agreement shall prevent or preclude City from adopting any fees or land use regulations or amendments thereto, expressly permitted herein.

k. Fair Share Traffic Fees. Section 4.9 is amended to read as follows:

4.9 Fair Share Traffic Fees. Developer satisfied its obligation to pay the City the sum of nine hundred sixty-eight thousand, eight hundred ninety-three

dollars ($968,893) for the Project's contribution to the intersection improvements identified in the EIR as Fair Share Traffic Fees.

l. Future Improvements at Augustine & Octavius. A new Section 4.12 is added to read as follows:

4.12 Future Improvements at Augustine & Octavius. In the event that Developer, or one of its subsidiaries or affiliates, constructs another development project in the vicinity of the Modified Property that would have a substantial adverse effect on the safety or traffic flow of pedestrians, bicycles, or vehicles at the intersection of Augustine Drive and Octavius Way, as determined by City's traffic engineer, then at the time of approval of that other development project, Developer shall construct additional Improvements at the intersection of Augustine and Octavius as necessary to make the intersection compliant with City standards for traffic control and safety.

m. Exhibits. The Exhibits are amended as follows:

Exhibits "Plans", "Second Revised CoA-R" and "MMRP" to the Development Agreement are deleted each in its entirety. Exhibit "Second Revised CoA-R" is replaced by Exhibit "Third Revised CoA-R" attached hereto.

SIGNATURES FOLLOW ON PAGES 8 and 9.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

The Irvine Company LLC,
a Delaware limited liability company

By: _____
Signature of Person executing the Agreement on behalf of Developer

Name: _____

Title: _____

Local Address: _____

Email Address: _____

Telephone: _____

Fax: _____

2525 AUGUSTINE DRIVE LLC,
a Delaware limited liability company

By: _____
Signature of Person executing the Agreement on behalf of Developer

Name: _____

Title: _____

Local Address: _____

Email Address: _____

Telephone: _____

Fax: _____

3255 SCOTT BOULEVARD LLC,
a Delaware limited liability company

By: _____
Signature of Person executing the Agreement on behalf of Developer

Name: _____

Title: _____

Local Address: _____

Email Address: _____

Telephone: _____

Fax: _____

2505 AUGUSTINE DRIVE LLC,
a Delaware limited liability company

By: _____
Signature of Person executing the Agreement on behalf of Developer

Name: _____

Title: _____

Local Address: _____

Email Address: _____

Telephone: _____

Fax: _____

"DEVELOPER"

EXHIBITS

Exhibit "A" – Original Property Description
Exhibit "B" – June Office Phases II, June Office Phase III, 2505 Augustine and 3333-3393 Octavius Property Description
Exhibit "October2014RevisedPropDesc" – Legal Property Description
Exhibit "ThirdRevised CoA-R" – October 2014 Conditions of Approval
Exhibit "Development Plan" – October 2014 Development Plan

EXHIBIT A

ORIGINAL PROPERTY
LEGAL DESCRIPTION

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

TRACT 1:

ALL OF PARCEL "A", AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP OF CROWSPIEKER #19, PORTION SECTION 28, TOWNSHIP 6 SOUTH, RANGE 1 WEST, MOUNT DIABLO BASE AND MERIDIAN IN THE CITY OF SANTA CLARA, CALIFORNIA", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON APRIL 16, 1975 IN BOOK 354 OF MAPS AT PAGE 23.

APN: 216-45-011

TRACT 2:
ALL OF PARCEL 1 AS SHOWN ON PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 08, 1977, IN BOOK 392 OF MAPS, PAGES 28 AND 29.

APN: 216-45-019

TRACT 3:
PARCEL 1, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 26, 1979, IN BOOK 440 OF MAPS, PAGES 3 AND 4.
APN: 216-45-027

TRACT 4:

PARCEL 2, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 26, 1979, IN BOOK 440 OF MAPS, PAGES 3.

APN: 216-45-028

TRACT 5:

PARCEL A, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JANUARY 06, 1976, IN BOOK 366 OF MAPS, PAGES 16 AND 17.

APN: 216-45-014

TRACT 6:

SUB-TRACT ONE:

PARCEL 3, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON NOVEMBER 20,

1984, IN BOOK 536 OF MAPS, PAGES 20.

APN: 216-45-032

SUB-TRACT TWO:

PARCEL 2, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON NOVEMBER 20, 1984, IN BOOK 536 OF MAPS, PAGES 20.

APN: 216-45-031

SUB-TRACT THREE:

PARCEL C, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 22, 1975, IN BOOK 354 OF MAPS, PAGE 22.

APN: 216-45-009

EXHIBIT B

June Office Phase II

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

PORTIONS OF PARCELS A AND B AS SHOWN ON PARCEL MAP RECORDED JULY 8, 1982 IN BOOK 502 OF MAPS, PAGES 10 AND 11, SANTA CLARA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF AUGUSTINE DRIVE AT THE COMMON CORNER OF PARCEL A AND PARCEL B AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JULY 8, 1982 IN BOOK 502 OF MAPS, PAGES 10 AND 11; THENCE ALONG THE COMMON BOUNDARY OF SAID PARCEL A AND SAID PARCEL B THE FOLLOWING THREE COURSES AND DISTANCES; 1. NORTH 00° 50' 53" EAST 270.00 FEET; 2. NORTH 46° 30' 04" EAST 170.60 FEET; 3. SOUTH 89° 09' 07" EAST 30.00 FEET; THENCE LEAVING SAID COMMON LINE NORTH 00° 50' 17" EAST 46.70 FEET; THENCE SOUTH 89° 10' 08" EAST 35.67 FEET; THENCE NORTH 00° 49' 52" EAST 17.04 FEET; THENCE NORTH 19° 14' 23" EAST 191.50 FEET TO THE MOST NORTHERLY LINE OF SAID PARCEL A; THENCE ALONG THE MOST NORTHERLY LINES OF SAID PARCEL A AND SAID PARCEL B THE FOLLOWING TWO COURSES AND DISTANCES, 1. NORTH 70° 45' 37" WEST 308.80 FEET; 2. NORTH 74° 10' 28" WEST 136.68 FEET TO THE MOST NORTHWESTERLY CORNER OF SAID PARCEL B. THENCE ALONG THE WEST LINE OF SAID PARCEL B, SOUTH 00° 50' 53" WEST 767.48 FEET TO SAID NORTHERLY RIGHT OF WAY LINE OF AUGUSTINE DRIVE; THENCE ALONG SAID RIGHT OF WAY LINE, SOUTH 89° 09' 07" EAST 177.00 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

BEGINNING AT A POINT ON THE NORTHERLY RIGHT OF WAY OF AUGUSTINE DRIVE AT THE COMMON CORNER OF PARCEL A AND PARCEL B, AS SHOWN ON THE PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JULY 8, 1982 IN BOOK 502 OF MAPS, PAGES 10 AND 11, THENCE ALONG THE COMMON BOUNDARY OF SAID PARCEL A AND PARCEL B THE FOLLOWING THREE COURSES AND DISTANCES: 1. NORTH 00° 50' 53" EAST 270.00 FEET; 2. NORTH 48° 30' 04" EAST 170.60 FEET; 3, SOUTH 89° 09' 07" EAST 30.00 FEET, THENCE LEAVING SAID COMMON LINE NORTH 00° 50' 17" EAST 46.70 FEET; THENCE SOUTH 89° 10' 08" EAST 35.67 FEET; THENCE NORTH 00° 49' 52" EAST 17.04 FEET; THENCE NORTH 19° 14' 23" EAST 191.50 FEET TO THE MOST NORTHERLY LINE OF PARCEL A; THENCE ALONG SAID NORTHERLY LINE THE FOLLOWING TWO COURSES AND DISTANCES: 1. SOUTH 70° 45' 37" EAST 245.23 FEET; 2. SOUTH 69° 24' 27" EAST 119.15 FEET TO A POINT WHICH BEARS ALONG SAID LINE NORTH 69° 24' 27" WEST 48.77 FEET FROM THE MOST NORTHEASTERLY CORNER OF SAID PARCEL A; THENCE LEAVING SAID NORTHERLY LINE SOUTH 20° 35' 33" WEST

36.00 FEET; THENCE SOUTH 69° 24' 27" EAST 8.07 FEET; THENCE SOUTH 20° 09' 59" WEST 10.00 FEET TO THE COMMON CORNER OF PARCEL ONE AND PARCEL TWO, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 23, 1998 IN BOOK 711 OF MAPS, PAGES 29 AND 30; THENCE ALONG THE COMMON LINE OF SAID PARCEL ONE AND PARCEL TWO THE FOLLOWING NINE COURSES AND DISTANCES: 1. SOUTH 20° 09' 59" WEST 16.00 FEET; 2. NORTH 69° 24' 27" WEST 126.68 FEET, 3. NORTH 70° 45' 37" WEST 51.81 FEET; 4. SOUTH 19° 14' 23" WEST 111.30 FEET; 5. SOUTH 00° 50' 53" WEST 228.54 FEET; 6. SOUTH 89° 09' 07" EAST 33.00 FEET; 7. SOUTH 00° 50' 53" WEST 150.03 FEET; 8. NORTH 89° 09' 07" WEST 33.00 FEET; 9. SOUTH 00° 50' 53" WEST 45.77 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF AUGUSTINE DRIVE, AS SHOWN ON SAID PARCEL MAP AND THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT TO WHICH A TANGENT LINE BEARS NORTH 83° 28' 31" WEST; THENCE WESTERLY ALONG SAID CURVE TO THE LEFT, WITH A RADIUS OF 3030.00 FEET, THROUGH A CENTRAL ANGLE OF 5° 40' 38" FOR AN ARC LENGTH OF 300.20 FEET; THENCE NORTH 89° 09' 07" WEST 76.52 FEET TO THE POINT OF BEGINNING.

APNs 216-45-036 and 216-45-037

June Office Phase III

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

ALL OF PARCEL A-2, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP P'TN LANDS OF KAISER-AETNA BEING A PORTION P'CL "C", BOOK 273 OF P'CL MAPS, PAGE 3, WITHIN THE CITY OF SANTA CLARA, SANTA CLARA COUNTY, CALIFORNIA", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON DECEMBER 21, 1973 IN BOOK 334 OF MAPS, AT PAGE 28.

APN 216-45-006

2505 Augustine

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

BEGINNING AT A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF AUGUSTINE DRIVE AND THE COMMON CORNER OF PARCEL ONE AND PARCEL TWO, AS SHOWN ON THE PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 23, 1998 IN BOOK 711 OF MAPS, PAGES 29 AND 30;

THENCE ALONG THE SOUTHERLY, EASTERLY AND NORTHERLY BOUNDARY OF SAID PARCEL TWO THE FOLLOWING FOUR COURSES AND DISTANCES;

1. FROM A TANGENT BEARING OF SOUTH 83° 28' 31" EAST ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 3030.00 FEET, A CENTRAL ANGLE OF 1° 26' 14" AND AN ARC LENGTH OF 76.01 FEET;

2. SOUTH 82° 02' 17" EAST 120.73 FEET;

3. NORTH 07° 57' 43" EAST 543.08 FEET;

4. NORTH 69° 24' 27" WEST 48.77 FEET;

THENCE LEAVING SAID NORTHERLY BOUNDARY SOUTH 20° 35' 33" WEST 36.00 FEET;

THENCE SOUTH 69° 24' 27" EAST 8.07 FEET; THENCE SOUTH 20° 09' 59" WEST 10.00 FEET TO A COMMON CORNER OF PARCEL ONE AND PARCEL TWO, AS SHOWN ON SAID PARCEL MAP;

THENCE ALONG THE COMMON LINES OF SAID PARCEL ONE AND PARCEL TWO THE FOLLOWING NINE COURSES AND DISTANCES;

1. SOUTH 20° 09' 59" WEST 16.00 FEET;

2. NORTH 69° 24' 27" WEST 126.68 FEET;

3. NORTH 70° 45' 37" WEST 51.81 FEET;

4. SOUTH 19° 14' 23" WEST 111.30 FEET;

5. SOUTH 0° 50' 53" WEST 228.54 FEET;

6. SOUTH 89° 09' 07" EAST 33.00 FEET;

7. SOUTH 0° 50' 53" WEST 150.03 FEET;

8. NORTH 89° 09' 07" WEST 33.00 FEET;

9. SOUTH 0° 50' 53" WEST 45.77 FEET TO THE POINT OF BEGINNING.

AS SET FORTH IN THAT CERTAIN NOTICE OF LOT LINE ADJUSTMENT AS "ADJUSTED PARCEL TWO" RECORDED JANUARY 04, 2000, AS INSTRUMENT NO. 15110618, OF OFFICIAL RECORDS.

APN: 216-45-038

3333-3393 Octavius

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

ALL OF PARCEL 2, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP BEING ALL OF PARCEL 'F' AS SHOWN ON THAT CERTAIN MAP ENTITLED 'PARCEL MAP' RECORDED IN BOOK 334 OF MAPS, AT PAGE 28, SANTA CLARA COUNTY RECORDS", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON AUGUST 2, 1977 IN BOOK 401 OF MAPS AT PAGE 25.

APN: 216-45-025

EXHIBIT October2014RevisedPropDesc

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

PORTIONS OF PARCELS A AND B AS SHOWN ON PARCEL MAP RECORDED JULY 8, 1982 IN BOOK 502 OF MAPS, PAGES 10 AND 11, SANTA CLARA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF AUGUSTINE DRIVE AT THE COMMON CORNER OF PARCEL A AND PARCEL B AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JULY 8, 1982 IN BOOK 502 OF MAPS, PAGES 10 AND 11; THENCE ALONG THE COMMON BOUNDARY OF SAID PARCEL A AND SAID PARCEL B THE FOLLOWING THREE COURSES AND DISTANCES; 1. NORTH 00° 50' 53" EAST 270.00 FEET; 2. NORTH 46° 30' 04" EAST 170.60 FEET; 3. SOUTH 89° 09' 07" EAST 30.00 FEET; THENCE LEAVING SAID COMMON LINE NORTH 00° 50' 17" EAST 46.70 FEET; THENCE SOUTH 89° 10' 08" EAST 35.67 FEET; THENCE NORTH 00° 49' 52" EAST 17.04 FEET; THENCE NORTH 19° 14' 23" EAST 191.50 FEET TO THE MOST NORTHERLY LINE OF SAID PARCEL A; THENCE ALONG THE MOST NORTHERLY LINES OF SAID PARCEL A AND SAID PARCEL B THE FOLLOWING TWO COURSES AND DISTANCES, 1. NORTH 70° 45' 37" WEST 308.80 FEET; 2. NORTH 74° 10' 28" WEST 136.68 FEET TO THE MOST NORTHWESTERLY CORNER OF SAID PARCEL B. THENCE ALONG THE WEST LINE OF SAID PARCEL B, SOUTH 00° 50' 53" WEST 767.48 FEET TO SAID NORTHERLY RIGHT OF WAY LINE OF AUGUSTINE DRIVE; THENCE ALONG SAID RIGHT OF WAY LINE, SOUTH 89° 09' 07" EAST 177.00 FEET TO THE POINT OF BEGINNING.

BEGINNING AT A POINT ON THE NORTHERLY RIGHT OF WAY OF AUGUSTINE DRIVE AT THE COMMON CORNER OF PARCEL A AND PARCEL B, AS SHOWN ON THE PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JULY 8, 1982 IN BOOK 502 OF MAPS, PAGES 10 AND 11, THENCE ALONG THE COMMON BOUNDARY OF SAID PARCEL A AND PARCEL B THE FOLLOWING THREE COURSES AND DISTANCES: 1. NORTH 00° 50' 53" EAST 270.00 FEET; 2. NORTH 48° 30' 04" EAST 170.60 FEET; 3, SOUTH 89° 09' 07" EAST 30.00 FEET, THENCE LEAVING SAID COMMON LINE NORTH 00° 50' 17" EAST 46.70 FEET; THENCE SOUTH 89° 10' 08" EAST 35.67 FEET; THENCE NORTH 00° 49' 52" EAST 17.04 FEET; THENCE NORTH 19° 14' 23" EAST 191.50 FEET TO THE MOST NORTHERLY LINE OF PARCEL A; THENCE ALONG SAID NORTHERLY LINE THE FOLLOWING TWO COURSES AND DISTANCES: 1. SOUTH 70° 45' 37" EAST 245.23 FEET; 2. SOUTH 69° 24' 27" EAST 119.15 FEET TO A POINT WHICH BEARS ALONG SAID LINE NORTH 69° 24' 27" WEST 48.77 FEET FROM THE MOST NORTHEASTERLY CORNER OF SAID PARCEL A; THENCE LEAVING SAID NORTHERLY LINE SOUTH 20° 35' 33" WEST 36.00 FEET; THENCE SOUTH 69° 24' 27" EAST 8.07 FEET; THENCE SOUTH 20° 09' 59" WEST 10.00 FEET TO THE COMMON CORNER OF PARCEL ONE AND PARCEL TWO, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 23, 1998 IN BOOK 711 OF MAPS, PAGES 29 AND 30; THENCE ALONG THE COMMON LINE OF SAID PARCEL ONE AND PARCEL TWO THE FOLLOWING NINE COURSES AND DISTANCES: 1. SOUTH 20° 09' 59" WEST 16.00 FEET; 2. NORTH 69° 24' 27" WEST 126.68 FEET, 3. NORTH 70° 45' 37" WEST 51.81 FEET; 4. SOUTH 19° 14' 23" WEST 111.30 FEET; 5. SOUTH 00° 50' 53" WEST 228.54 FEET; 6.

SOUTH 89° 09' 07" EAST 33.00 FEET; 7. SOUTH 00° 50' 53" WEST 150.03 FEET; 8. NORTH 89° 09' 07" WEST 33.00 FEET; 9. SOUTH 00° 50' 53" WEST 45.77 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF AUGUSTINE DRIVE, AS SHOWN ON SAID PARCEL MAP AND THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT TO WHICH A TANGENT LINE BEARS NORTH 83° 28' 31" WEST; THENCE WESTERLY ALONG SAID CURVE TO THE LEFT, WITH A RADIUS OF 3030.00 FEET, THROUGH A CENTRAL ANGLE OF 5° 40' 38" FOR AN ARC LENGTH OF 300.20 FEET; THENCE NORTH 89° 09' 07" WEST 76.52 FEET TO THE POINT OF BEGINNING.

APNs 216-45-036 and 216-45-037

BEGINNING AT A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF AUGUSTINE DRIVE AND THE COMMON CORNER OF PARCEL ONE AND PARCEL TWO, AS SHOWN ON THE PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 23, 1998 IN BOOK 711 OF MAPS PAGES 29 AND 30;

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1. FROM A TANGENT BEARING OF SOUTH 83O 28' 31" EAST ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 3030.00 FEET, A CENTRAL ANGLE OF 01° 26' 14" AND AN ARC LENGTH OF 76.01 FEET;

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THENCE LEAVING SAID NORTHERLY BOUNDARY SOUTH 20° 35' 33" WEST 36.00 FEET;

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AS SET FORTH IN THAT CERTAIN NOTICE OF LOT LINE ADJUSTMENT AS "ADJUSTED PARCEL TWO" RECORDED JANUARY 04, 2000, AS INSTRUMENT NO. 15110618, OF OFFICIAL RECORDS.

APN: 216-45-038

ALL OF PARCEL A-2, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP P'TN LANDS OF KAISER-AETNA BEING A PORTION P'CL "C", BOOK 273 OF P'CL MAPS, PAGE 3, WITHIN THE CITY OF SANTA CLARA, SANTA CLARA COUNTY, CALIFORNIA", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON DECEMBER 21, 1973 IN BOOK 334 OF MAPS, AT PAGE 28.

APN 216-45-006

ALL OF PARCEL 2, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP BEING ALL OF PARCEL 'F' AS SHOWN ON THAT CERTAIN MAP ENTITLED 'PARCEL MAP' RECORDED IN BOOK 334 OF MAPS, AT PAGE 28, SANTA CLARA COUNTY RECORDS", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON AUGUST 2, 1977 IN BOOK 401 OF MAPS AT PAGE 25.

APN: 216-45-025

CONDITIONS OF APPROVAL - REZONE
SANTA CLARA SQUARE PROJECT

GENERAL

G1. The Developer shall comply with all applicable codes, regulations, ordinances and resolutions.

G2. If relocation of an existing public facility becomes necessary due to a conflict with the developer's new improvements, then the cost of said relocation shall be borne by the developer.

ATTORNEY'S OFFICE

A1. The Developer agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, attorneys' fees, injuries, costs, and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed by a third party against the City by reason of its approval of developer's project.

PLANNING AND BUILDING INSPECTION

P1. Obtain required permits and inspections from the Building Official and comply with the conditions thereof. If this project involves land area of 1 acre or more, the developer shall file a Notice of Intent (NOI) with the State Water Resources Control Board prior to issuance of any building permit for grading, or construction; a copy of the NOI shall be sent to the City Building Inspection Division. A storm water pollution prevention plan is also required with the NOI.

P2. Submit plans for final architectural review to the Planning Division and obtain architectural approval prior to issuance of building permits. Said plans to include, but not be limited to: site plans, floor plans, elevations, landscaping, lighting and signage. Landscaping installation shall meet City water conservation criteria in a manner acceptable to the Director of Planning and Inspection. Major modifications to the architecture of buildings would require Architectural Committee review and approval.

P3. Construct six-foot masonry wall along property lines abutting residential properties in accordance with Zoning Ordinance requirements to the satisfaction of the Director of Planning and Inspection.

P4. Construction activity shall be limited to the hours of 7:00 a.m. to 6:00 p.m. weekdays and 9:00 a.m. to 6:00 p.m. Saturdays for projects within 300 feet of a residential use and shall not be allowed on recognized State and Federal holidays.

P5. Prior to issuance of a demolition permit, Developer/Owner shall have an asbestos survey of the proposed site performed by a certified individual. Survey results and notice of the proposed demolition are to be sent to the Bay Area Air Quality Management District (BAAQMD). No demolition shall be performed without a demolition permit and BAAQMD approval and, if necessary, proper asbestos removal.

P6. Incorporate Best Management Practices (BMPs) into construction plans and incorporate post construction water runoff measures into project plans in accordance with the City's Urban Runoff Pollution Prevention Program standards prior to the issuance of permits. Proposed BMPs shall be submitted to and thereafter reviewed and approved by the Planning Division and the Building Inspection Division for incorporation into construction drawings and specifications.

P7. An erosion control plan shall be prepared and copies provided to the Planning Division and to the Building Inspection Division for review and approval prior to the issuance of grading permits or building permits that involve substantial disturbance of substantial ground area.

P8. Commercial, industrial, and multi-family residential buildings must have enclosures for solid waste and recycling containers. The size and shape of the enclosure(s) must be adequate to serve the estimated solid waste and recycling needs and size of the building(s) onsite, and should be designed and located on the property so as to allow ease of access by collection vehicles. As a general rule, the size of the enclosure(s) for the recycling containers should be similar to the size of the trash enclosure(s) provided onsite. Roofed enclosures with masonry walls and solid metal gates are the preferred design. Any required enclosure fencing (trash area, utility equipment, etc.) if not see-thru, shall have a six (6) inch opening along the bottom for clear visibility. Any gates or access doors to these enclosures shall be locked.

P9. The Final Storm Water Management Plan (SWMP) must be certified by a third-party consultant from SCVURPP's current list of qualified consultants. Five copies of the approval letter from the certified third party review (wet stamped and signed) must be submitted prior to the issuance of grading or building permit.

P10. Prior to the issuance final occupancy, the applicant shall enter into Operations and Maintenance (O&M) agreement with the City. The project operator is responsible for the operations and maintenance of the SWMP and stormwater BMPs consistent with the O&M agreement throughout the life of the project.

P11. A complete landscape plan that includes, type, size and location of all plant species shall be required as part of architectural review of the project. Review and approval of the complete landscape plan, including water conservation calculations and irrigation plan shall be required prior to issuance of building permits. Installation of landscaping is required prior to occupancy permits.

P12. A master sign program shall be required as part of architectural review of the project.

P13. A master outdoor seating plan shall be required as part of architectural review of the project.

P14. The Planning Division requires the replanting of specific trees by the Developer as a Condition of Approval. In conformance with the Santa Clara Community Design Guidelines and the project EIR, the following tree replacement standards shall be included in the final landscaping plans:

- Minimum fifteen (15) gallon street tree.
- Minimum fifteen (15) gallon on private property.
- Minimum twenty (24) or thirty-six (36) inch box to replace a mature tree which has been or is proposed to be removed.

P15. Prior to the issuance of building permit, the Developer shall submit to the Planning Division all draft covenant, joint-maintenance, and/or shared-access agreements, for review and approval. Such agreements shall ensure consistent maintenance of all landscaped areas and shared access between adjacent parcels.

P16. The Developer shall comply with the Mitigations Monitoring and Reporting Program identified in the Augustine-Bowers Environmental Impact Report and Mitigations as amended in the Addendum No. 2 for the Santa Clara Square Project, and shall be incorporated in the Conditions of Approval for this project.

P17. The Developer shall comply with the conditions set forth in the Development Agreement in effect between the City of Santa Clara and The Irvine Company LLC, as successor interest to EOP-Industrial Portfolio, LLC and CA-Santa Clara Office Center Limited Partnership, effective June 18, 2009, as may be amended from time to time in accordance with the terms of the Development Agreement.

P18. For Regional Traffic Fee, the Developer shall pay the sum of one dollar ($1.00) per square foot of building payable to the City prior to the issuance of Building Permit for the Vertical Construction of each building within the Project based on net square footage of applicable building. "Net Square Footage" is defined as occupiable building square footage subject to the issuance of a Building Permit, excluding parking structures, trash enclosures and similar non-occupiable facilities, less the occupiable square footage subject of existing buildings, existing on the Effective Date, which have previously been demolished, or as subject to Demolition Permits which have not been previously included in a Net Square Footage calculation. Regional Traffic Fees are nonrefundable.

P19. For Local Traffic Fee, the Developer shall pay the sum of one dollar ($1.00) per square foot of building payable to the City prior to the issuance of Building Permit for the Vertical Construction of each building within the Project based on net square footage of applicable building. Local Traffic Fees are non-refundable.

P20. For Fair Share Traffic Fees, Developer satisfied its obligation to pay the City the sum of nine hundred sixty-eight thousand, eight hundred ninety-three dollars ($968,893) for the Project's contribution to the intersection improvements identified in the EIR as Fair Share Traffic Fees.

P21. The Developer shall participate in exploring the feasibility of adding transportation services to link businesses with multi-modal transit in cooperation with the City, other public agencies, and other local business interests.

P22. The Developer will employ all reasonable efforts such that the project will be built to, and certified in, accordance with Leadership for Energy and Environmental Design (LEED) at the "SILVER" certificate

level, or equivalent. LEED is a nationally acceptable benchmark for the design, construction, and operation of high performance green buildings.

P23. The Developer shall submit a Notice of Proposed Construction or Alteration - Form 7460-1 to the Federal Aviation Administration, in accordance with Federal Aviation Regulation, Part 77 "Objects Affecting Navigable Airspace". Public Utilities Code Section 21659 prohibits structural hazards near airports. Project is subject to the provisions of 49 U.S.C, Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77. A determination of "No Hazard" shall be made prior to issuance of building permit for any of the four proposed tower buildings.

P24. Prior to issuance of the occupancy permit, the applicant shall prepare and receive approval on a 20 percent vehicle miles traveled (VMT) reduction strategy, 10 percent of which would come from a Transportation Demand Management program (TDM).

P25. On the annual anniversary of project occupancy, the Developer/ Owner shall prepare and provide to the Planning Division an annual report outlining the performance of the TDM program.

P26. The Developer/ Owner shall develop and implement a Transportation Demand Management (TDM) program. The project proposes the following elements in the TDM Program, or similar, alternative transportation demand management measures acceptable to the City:

- Provide physical improvements, such as sidewalk improvements, landscaping and bicycle parking that would act as incentives for pedestrian and bicycle modes of travel.
- Connect individual sites with regional bikeways.
- Provide on-site transit information kiosks.
- Implement a carpool/vanpool program, e.g., carpool ride matching for employees, assistance with vanpool information, provision of vanpool vehicles, etc.
- Develop a transit use incentive program for employees in the project area, such as on-site distribution of passes and/or subsidized transit passes for local transit systems. (Examples include VTA EcoPass system and "Wageworks" which utilizes pre-tax dollars to purchase transit passes.)
- Provide preferential parking for carpools.
- Provide a guaranteed ride home program.
- Implement a flextime policy.
- Provide on-site services such as ATMs, dry cleaning facilities, exercise room, cafeteria, etc.
- Participate in a shuttle program for employees to access local transit services within the City. (Examples include the Altamont Commuter Express (ACE) Yellow Shuttle and the Lawrence Caltrain Bowers/Walsh Shuttle.)
- Provide showers and lockers for employees bicycling or walking to work.

P27. The VTA Community Design & Transportation (CDT) Guidelines and VTA Pedestrian Technical Guidelines should be used as a guide by the Developer to on site planning, building design, street design, preferred pedestrian environment, intersection design and parking requirements.

P28. Prior to the issuance of building permits, the Developer shall submit a plan to minimize construction vehicle trips during peak hour traffic conditions to the Planning Division for review and approval.

P29. The Developer shall fully construct the intersection and street improvements at Augustine Drive and Bowers Avenue prior to occupancy of any building shown on the Development Plans unless partial improvements identified in a subsequent Traffic Impact Analysis to the satisfaction of the City Traffic Engineer demonstrates that partial improvements to allow for the construction of the office towers north of Augustine Drive will meet or exceed the reduction in Level of Service impacts as identified in the project EIR. The Developer shall complete full intersection improvements prior to occupancy of the retail center south of Augustine Drive.

P30. Buildings may be phased in any order provided that adequate parking is completed in conjunction with each office tower. Landscaping may be phased with each building, provided that at least 20% of the landscape plan is implemented with each office tower and/or free-standing amenity building.

P31. Future Improvements at Augustine & Octavius. In the event that Developer, or one of its subsidiaries or affiliates, constructs another development project in the vicinity of the Modified

Property that would have a substantial adverse effect on the safety or traffic flow of pedestrians, bicycles, or vehicles at the intersection of Augustine Drive and Octavius Way, as determined by City's traffic engineer, then at the time of approval of that other development project, Developer shall construct additional Improvements at the intersection of Augustine and Octavius as necessary to make the intersection compliant with City standards for traffic control and safety.

ENGINEERING

E1. Obtain site clearance through Engineering Department prior to issuance of building permit. Site clearance will require payment of applicable development fees. Other requirements may be identified for compliance during the site clearance process. Contact Engineering Department at (408) 615-3000 for further information.

E2. All work within the public right-of-way and/or public easement, which is to be performed by the Developer/Owner, the general contractor, and all subcontractors shall be included within a **Single Encroachment Permit** issued by the City Engineering Department. Issuance of the Encroachment Permit and payment of all appropriate fees shall be completed prior to commencement of work, and all work under the permit shall be completed prior to issuance of occupancy permit.

E3. Developer shall provide a complete storm drain study for the 10-year and 100-year storm events. The grading plans shall include the overland release for the 100-year storm event and any localized flooding areas. System improvements, if needed, will be at developer's expense.

E4. Submit public improvement plans prepared in accordance with City Engineering Department procedures which provide for the installation of public improvements. Plans shall be prepared by a Registered Civil Engineer and approved by the City Engineer prior to approval and recordation of final map and/or issuance of building permits.

E5. Confirm that the existing sanitary sewer laterals are in good condition. The developer shall CCTV /video the lateral in the presence of the City inspector. Do not reuse unless the laterals are in good condition.

E6. All driveways shall be City standard ST-8 or ST-9 except those at 4-way signalized intersections. Those shall be curb return style with asphalt roadway.

E7. Provide root barrier when trees are planted adjacent to the sidewalk. Root barriers shall be 12' long x 2' deep, and centered on trees.

E8. Storm drain and sanitary sewer laterals shall be outside the drip line of mature trees or 10' clear of the tree trunk.

E9. Developer is responsible for cost of relocation or modification of any public facility necessary to accommodate subject development.

E10. Damaged curb, gutter, and sidewalk within the public right-of-way along property's frontage shall be repaired or replaced (to the nearest score mark) in a manner acceptable to the City Engineer or his designee. The extents of said repair or replacement within the property frontage shall be at the discretion of the City Engineer or his designee.

E11. Existing non-standard or non-ADA compliant frontage improvements shall be replaced with current City standard frontage improvements as directed by the City Engineer or his designee.

E12. Unused driveways in the public right-of-way shall be replaced with City standard curb, gutter, and sidewalk.

E13. Existing sanitary sewer and storm drain laterals that do not serve any purpose shall be abandoned to City standards.

E14. Show and comply with City's driveway vision triangle requirements at all driveways and City's intersection visibility obstruction clearance requirements. No trees and/or structures obstructing drivers' view are allowed in the vision triangle & visibility obstruction areas. Contact Traffic Engineering at (408) 615-3000 for further information.

E15. Provide onsite ADA walkway connecting proposed buildings/parking structure to the public sidewalk.

E16. Provide 5' wide sidewalk along the property's Augustine Drive and Octavius Drive frontages.

E17. Provide 12' wide minimum creek trail/easement connecting Augustine/Octavius Drive to the San Tomas Aquino Creek Trail.

E18. Provide 4' wide minimum bicycle lane along property's Augustine Drive and Octavius Drive frontages. Gutter pan shall not be used as part of bicycle lane (6' wide minimum from face of curb).

E19. Traffic signal improvement at proposed driveway entrance on Augustine Drive, approximately 900' east of Bowers/Augustine intersection shall be required.

E20. Provide Stop Study/Analysis to determine if a new traffic signal or a 4-way stop is needed at the Augustine/Montgomery intersection.

E21. All traffic striping, messages, symbols destroyed/damaged due to proposed improvements' construction shall be replaced with thermoplastic striping/messages/symbols. All proposed traffic striping, messages, symbols shall be thermoplastic.

E22. Dedicate on-site easements for new public utilities and/or sidewalk as required by means of parcel map or approved instrument at time of development.

E23. Obtain Council approval of a resolution ordering vacation of existing public easement(s) proposed to be abandoned, through Engineering Department, and pay all appropriate fees, prior to start of construction.

E24. File and record parcel map to create parcel for proposed development and pay all appropriate fee(s) prior to Building Permit issuance.

E25. For current proposed Retail/Market areas, Office Buildings, and Parking Structures, the following minimum bicycle facilities shall be provided at the main entrance and/or high visible areas:

- 107,588 SF Retail: 1 Class I Bike Locker space per each 30 employees and 20 Class II Bike Rack spaces for patrons.
- 543,288 SF Office Bldgs: 68 Class I Bike Locker spaces 23 Class II Bike Rack spaces.
- Parking Structures: TBD (depend on proposed parking stalls).

E26. The Developer shall mitigate traffic impacts as outlined in the Traffic Impact Analysis Report (TIA), Final Environmental Impact Report (FEIR), and Addendum to FEIR.

E27. The new on-site public sanitary sewer and storm drain systems shall be completed, accepted by the City, and placed into service prior to abandoning the existing on-site public sanitary sewer and storm drain systems. The required easements for the new on-site public sanitary sewer and storm drain systems shall be dedicated and recorded prior to vacating the existing storm drain and sanitary sewer easement.

E28. Interconnect sanitary sewer systems along Augustine Drive from manhole no. 25 of Block Book page 73 to manhole no. 21 of Block Book page 74.

E29. Provide study for the bike lane(s) transition from Phase I to the future Phase 2 improvements.

E30. Execute Covenant(s) Running with the Land to assume maintenance responsibility for non-standard street improvements. Non-standard street improvements include, but are not limited to, curb return type driveway(s).

ELECTRICAL

EL1. Prior to submitting any project for Electric Department review, applicant shall provide a site plan showing all existing utilities, structures, easements and trees. Applicant shall also include a "Load Survey" form showing all current and proposed electric loads. A new customer with a load of 500KVA or greater or 100 residential units will have to fill out a "Service Investigation Form" and submit this form to the Electric Planning Department for review by the Electric Planning Engineer. Silicon Valley Power will do exact design of required substructures after plans are submitted for building permits.

EL2. The Developer shall provide and install electric facilities per Santa Clara City Code chapter 17.15.210.

EL3. Electric service shall be underground. See Electric Department Rules and Regulations for available services.

EL4. Installation of underground facilities shall be in accordance with City of Santa Clara Electric Department standard UG-1000, latest version, and Santa Clara City Code chapter 17.15.050.

EL5. Underground service entrance conduits and conductors shall be "privately" owned, maintained, and installed per City Building Inspection Division Codes. Electric meters and main disconnects shall be installed per Silicon Valley Power Standard MS-G7, Rev. 2.

EL6. The developer shall grant to the City, without cost, all easements and/or right of way necessary for serving the property of the developer and for the installation of utilities (Santa Clara City Code chapter 17.15.110).

EL7. All electric meters and services disconnects shall be grouped at one location, outside of the building or in a utility room accessible directly from the outside. A double hasp locking arrangement shall be provided on the main switchboard door(s). Utility room door(s) shall have a double hasp locking arrangement or a lock box shall be provided. Utility room door(s) shall not be alarmed.

EL8. If transformer pads are required, City Electric Department requires an area of 17' x 16'-2", which is clear of all utilities, trees, walls, etc. This area includes a 5'-0" area away from the actual transformer pad. This area in front of the transformer may be reduced from a 8'-0" apron to a 3'-0", providing the apron is back of a 5'-0" min. wide sidewalk. Transformer pad must be a minimum of 10'-0 from all doors and windows, and shall be located next to a level, drivable area that will support a large crane or truck.

EL9. All trees, existing and proposed, shall be a minimum of five (5) feet from any existing or proposed Electric Department facilities. Existing trees in conflict will have to be removed. Trees shall not be planted in PUE's or electric easements.

EL10. Any relocation of existing electric facilities shall be at Developer's expense.

EL11. Electric Load Increase fees may be applicable.

EL12. The developer shall provide the City, in accordance with current City standards and specifications, all trenching, backfill, resurfacing, landscaping, conduit, junction boxes, vaults, street light foundations, equipment pads and subsurface housings required for power distribution, street lighting, and signal communication systems, as required by the City in the development of frontage and on-site property. Upon completion of improvements satisfactory to the City, the City shall accept the work. Developer shall further install at his cost the service facilities, consisting of service wires, cables, conductors, and associated equipment necessary to connect a customer to the electrical supply system of and by the City. After completion of the facilities installed by developer, the City shall furnish and install all cable, switches, street lighting poles, luminaries, transformers, meters, and other equipment that it deems necessary for the betterment of the system (Santa Clara City Code chapter 17.15.210 (2)).

EL13. Electrical improvements (including underground electrical conduits along frontage of properties) may be required if any single non-residential private improvement valued at $200,000 or more or any series of non-residential private improvements made within a three-year period valued at $200,000 or more (Santa Clara City Code Title 17 Appendix A (Table III)).

EL14. Non-Utility Generator equipment shall not operate in parallel with the electric utility, unless approved and reviewed by the Electric Engineering Division. All switching operations shall be "Open-Transition-Mode", unless specifically authorized by SVP Electric Engineering Division. A Generating Facility Interconnection Application must be submitted with building permit plans. Review process may take several months depending on size and type of generator. No interconnection of a generation facility with SVP is allowed without written authorization from SVP Electric Engineering Division.

EL15. Applicant is advised to contact SVP (CSC Electric Department) to obtain specific design and utility requirements that are required for building permit review/approval submittal. Please provide a site plan to Leonard Buttitta at 408-261-5469 to facilitate plan review.

WATER

W1. Existing water services to the site are available for use, otherwise they shall be abandoned back to their respective water mains.

W2. Water mains shall be placed in the public right-of-way. Public water mains not in the public right-of-way shall be placed within water easements, which shall be executed prior to Project acceptance.

W3. All landscaping and irrigation systems shall meet water conservation requirements as per City's Rules and Regulations for Water Service (Resolution 6390).

W4. Landscape design shall keep trees a minimum of 10' from water and sewer facilities.
W5. All water improvements for this development shall be paid for by the Owner.
W6. Applicant is advised that applicant must design and install adequate plumbing for the proposed development and the affected building, or reduced residual water pressure may be experienced due to added water demand.
W7. The proposed project is in an area with limited water distribution capability. Prior to the issuance of Building or Grading Permits, the applicant shall provide hydraulic calculations showing the impacts of the proposed development on the water utilities to the satisfaction of the Director of Water & Sewer Utilities.
W8. Prior to issuance of Building Permits, the applicant shall submit plans for independent water service to each individual parcel connected to a public main in the public right-of-way to the satisfaction of the Director of Water & Sewer Utilities. Additionally, different types of water use (domestic, irrigation, fire) shall be served by individual water services.
W9. Prior to the issuance of Building or Grading Permits, the applicant must indicate the disposition of all existing water services on the plans. The applicant must properly abandon all existing water services on the property that will not be used per Water & Sewer Utilities standards.
W10. Each parcel shall have their own domestic, fire and landscape services and cannot be connected thru adjacent parcels.
W11. Show Water meters and backflow preventers to scale as per City Standard Details.
W12. Design water meters and backflow preventers to be in public right-of-way, if not then 5 feet around, water easements must be provided for the services to be on the private side of the property.
W13. Need to show separate landscape services for the development.
W14. All the Fire services for this proposed project will be designed with Reduced Pressure Detector Assembly (RPDA) as backflow preventer.
W15. Extension of recycled water main for the proposed development.

FIRE

Occupancy Classifications:

F1. State the occupancy classification in accordance with the 2013 California Building Code for each building and/or areas.

Fire Department Emergency Access:

F2. Approved fire apparatus access roads (public/private) shall be established and maintained to within 150 feet of all exterior walls of any building.
F3. Approved fire apparatus access roads shall have a minimum 20-foot width, have a minimum 13 ½-foot vertical clearances and have a minimum 36-foot inside turning radius.
F4. Dead-end fire apparatus access roads that exceed 150-feet in length shall be provided with a 75-foot diameter vehicle turnaround or an approved hammerhead turnaround (incorporating the minimum 36-foot inside turning radius).
F5. Fire apparatus access roads shall be designed and maintained to support imposed loads of fire apparatus (75,000 lbs) and shall be surfaced to provide all-weather driving capabilities (2013 CFC, 503.2.3).
F6. Any barricades, bollards, gates that may obstruct the fire lane shall be approved by the Fire Department.
F7. Adjacent private emergency access roads from lands adjoining a property required to have access shall not be considered unless such access is designated as a "shared Emergency Access Easement" (E.A.E.). **Note: When parcels are subdivided, E.A.E. will most likely be required.**

Emergency Responder Radio Coverage:

F8. All new buildings shall have approved radio coverage for emergency responders within the building based upon the existing coverage levels of the public safety communication systems of the jurisdiction at the exterior of the building (any exceptions are required to be approved by Fire Code Official). The radio

coverage system shall be provided with an approved secondary source of power capable of operating for a period of at least 24 hours. (2013 CFC 510.1). The emergency responder radio shall be in accordance with Section 510 of the CFC and City of Santa Clara Radio Shop (408-615-5590). **NOTE:** A third party review and report is required under a separate permit.

F9. Existing buildings that do not have approved radio coverage for emergency responder within the building based upon the existing coverage levels of the public safety communication systems of the jurisdiction at the exterior of the building, shall be equipped with such coverage according to one of the following (2013 CFC 1103.2):

1. Whenever an existing wired communication system cannot be repaired or is being replaced, or where not approved in accordance with Section 510.1, Exception 1.
2. Within a time frame established by the adopting authority.

NOTE: A review and report is required under a separate permit.

F10. Obstruction by new buildings: When determined, a new structure obstructs the line of sight emergency radio communications to existing buildings or to any other locations, the developer of the structure shall provide and install the radio retransmission equipment necessary to restore communications capabilities. The equipment shall be located in an approved space or area within the new structure (SCMFEC 510.1.1)

Water Supply:

F11. Private fire hydrants and mains capable of supplying the required fire flow shall be installed when any portion of the building protected is in excess of 150 feet from a water supply, as measured by an approved route around the exterior of the facility or building. On-site fire hydrants and mains capable of supplying the required fire flow shall be provided. Fire flow for hydrants shall be in accordance with Appendix B and C of the 2013 CFC. **Show all existing and proposed on-site and city fire hydrants on the site plan at time of Building Permit application. Also show the proposed fire service line with FDC, PIV and ASR.**

F12. When a new back flow preventer is installed for an existing fire service, an Underground Fire Service permit shall be required (as outlined below). The permit submittal shall include the manufacturer's specifications and pressure loss chart for the back flow preventer being installed. If the water meter is installed on the same line (typically only for residential facilities), then submit the meter's specification and pressure loss chart as well. Hydraulic calculations shall also be submitted demonstrating that the sprinkler demand and hose allowance still provide a 10% safety margin from what is available for the existing system.

F13. New raised floor areas: Either an automatic sprinkler system, carbon dioxide extinguishing system, or inert agent fire extinguishing system for the protection of the area below the raised floor in an information technology equipment room or information technology equipment area shall be provided (2010 NFPA 13, 21.14.2.3).

F14. Data centers: A sprinkler design hazard of Ordinary Group 1 is recommended for above ceiling spaces in the data center areas. In rooms where batteries are to be stored, an Ordinary Group 1 design is required.

F15. When underground fire service mains are required, submit separate plans, fees and fire flow calculations to the Fire Department for separate review and permit. Each parcel or building may require separate fire service. (NOTE: Stamped and wet signed Civil drawings shall be submitted in conjunction with shop quality drawings by the installing "A" or "C-16" licensed contractor).

F16. Any development providing any combination of six (6) or more fire hydrants, fire sprinkler or standpipe services, shall not be served bay a dead end water main, but rather served by a looped service with two separate feeds containing fire department connections (FDCs), post indicator valves (PIVs) and private fire hydrants. When a FDC pressurizes fire service mains including private hydrants, the hydrant intended to be used by the fire department must be a hydrant directly connected to the public water main (i.e., a city hydrant). Each fire sprinkler system shall be provided with an independent FDC when the fire service main includes fire hydrants and sprinkler systems. The FDC and PIV shall be located on the

street fronting each building. The FDC shall be located within 50 feet of a city (public) fire hydrant, plus on the same side of the road as the fire hydrant(s).

F17. In private underground piping systems, any dead end pipe, which supplies both sprinkler and hydrants, shall be not less than eight (8) inches in diameter.

F18. Backflow preventer model and installation detail shall be approved by City of Santa Clara Water Department. Contact: (408) 615-2000. If property has a single fire service connection to the City water main, typically a minimum Double-Check Detector Assembly (DCDA) backflow device is required. If property has more than one fire service connection to the City water main, typically the backflow device at each connection shall be a Reduced Pressure Detector Assembly (RPDA).

Fire Pump Rooms Requirements For All Occupancies:

F19. Ventilation (NFPA 20, 5.12.5). Provision shall be made for ventilation of a pump room or pump house.

F20. Drainage (NFPA 20, 5.12.6). Floors shall be pitched for adequate drainage of escaping water away from critical equipment such as the pump, driver, controller, and so forth. The pump room or pump house shall be provided with a floor drain that will discharge to a frost-free location.

F21. Temperature (CBC 913.3). Suitable means shall be provided for maintaining the temperature of a pump room or pump house, where required, above 40°F (5°C). Temperature of the pump room, pump house or area where engines are installed shall never be less than the minimum recommended by the engine manufacturer. The engine manufacture's recommendations for oil heaters shall be followed.

F22. Normal Lighting (NFPA 20, 5.12.3). Artificial light shall be provided in a pump room or pump house.

F23. Emergency Lighting (NFPA 20, 5.12.4). Approved emergency lighting shall be provided in the pump room or pump house.

F24. Indoor Fire Pump Room Fire Resistance (CBC 913.2.1). Indoor fire pump rooms shall be constructed with a minimum one or two-hour (high rises) fire resistance rating in accordance with CBC 913.2.1.

F25. The fire pump suction, discharge and bypass valves, and isolation valves on the backflow prevention device or assembly shall be supervised in the **open position**. Where a fire alarm system is installed, the central station shall monitor the valves. NOTE: Fire pump test outlet valves shall be supervised in the **closed position.** (CBC 913.4, 913.4.1)

Specific Requirements for High Rises:

F26. A sprinkler water flow alarm-initiating device and a control valve with a supervisory signal-initiating device shall be provided at the lateral connection to the riser for each floor (2013 CFC 403.3).

F27. Required fire pumps shall be supplied by connections to a minimum of two water mains located in different streets. Separate supply piping shall be provided between each connection to the water main and the pumps. Each connection and the supply piping between the connection and the pumps shall be sized to supply the flow and pressure required for the pumps to operate. (2013 CBC 403.3.2). EXCEPTIONS:

a. Two connections to the same main shall be permitted provided the main is valved such that an interruption can be isolated so that the water supply will continue without interruption through no fewer than one of the connections

b. High-rise buildings hot having an occupied floor more than 120 feet above the lowest level of fire department vehicle access where a secondary water supply is provided in accordance with Section CBC 903.3.5.2.

F28. Fire pumps in high-rise buildings:

a. Engine-driven fire pumps and electric drive fire pumps supplied by generators shall both be provided with an on-premises fuel supply, sufficient for not less than 8-hour full-demand operation at 100 percent of the rated pump capacity in addition to all other required supply demands in accordance with Sections 9.6 and 11.4.2 of NFPA 20 and this section (also see Section 604.2.14.1.1 of the CFC). **NOTE: The code now requires the fuel supply to be maintained at an 8-hour level at all times for serving fire pumps. Other standby power requirements (such as elevators) need only a minimum duration of 6 hours of fuel supply.**

b. Fire pumps shall be located in rooms that are separated from all other areas of the building by 2-hour fire barriers constructed in accordance with Section 707 or 2-hour horizontal assemblies constructed in accordance with Section 711, or both (CBC 913.2.1). Exception: Separation is not required for fire pumps physically separate in accordance with NFPA 20.

F29. An automatic secondary on-site water supply having usable capacity of not less than the hydraulically calculated sprinkler demand, including the hose stream requirement, shall be provided for high-rise buildings and Group I-2 occupancies having occupied floors located more than 75 feet above the lowest level of fire department vehicle access assigned to Seismic Design Category C, D, E, or F as determined by the California Building Code. An additional fire pump shall not be required for the secondary water supply unless needed to provide the minimum design intake pressure at the suction side of the fire pump supplying the automatic sprinkler system. The secondary water supply shall have a duration of not less than 30 minutes as determined by the occupancy hazard classification in accordance with NFPA 13, whichever is greater. The Class I standpipe system demand shall not be required to be included in the secondary on-site water supply calculation. In no case shall the secondary on-site water supply be less than 15,000 gallons (2013 CBC 903.3.5.2).

F30. A fire alarm system shall be provided as required in Section 907.2.13.

F31. An emergency voice/alarm communication system shall be provided in accordance with Section 907.6.2.2 of the CFC. In high rise building the system shall operation on a minimum of the alarming floor, the floor above and the floor below. Speakers shall be provided throughout the building by paging zones. At a minimum, paging zones shall be provided as follows:

1. Elevator Groups
2. Exit stairways.
3. Each floor.
4. Areas of refuge as defined in Section 1002.1

F32. Emergency responder radio coverage shall be provided in accordance with Section 510 of the CFC (CBC 403.4.4).

F33. Luminous Egress Path Marking - Required for A, B, E, I, M & R-1 buildings having occupied floors located more than 75 feet above the lowest level of fire department vehicle access. Exceptions may apply, and refer to CFC, 1024 for specific requirements.

F34. Smoke detection shall be provided in accordance with Section 907.2.13.1. of the CBC.

F35. The fire command center shall be a minimum of 200 square feet in area with a minimum dimension of 10 feet (CFC 508.1.3). The fire command center shall include, but not be limited to the following features (CFC 508.1.5):

1. The emergency voice/alarm communication system control unit.
2. The fire department communications system.
3. Fire detection and alarm system annunciator.
4. Annunciate unit visually indicating the location of the elevators and whether they are operation.
5. Status indicators and controls for air distribution systems.
6. The fire-fighter's control panel for smoke control systems installed.
7. Controls for unlocking stairway doors simultaneously.
8. Sprinkler valve and water-flow detector display panels.
9. Emergency and standby power status indicators.
10. A telephone for fire department use with controlled access to the public telephone system.
11. Fire pump status indicators.
12. Schematic building plans indicating the typical floor plan and detailing the building core, means of egress, fire protection systems, fire-fighting equipment and fire department access, and the location of fire walls, fire barriers, fire partitions, smoke barriers and smoke partitions.
13. An approved Building Information Card that contains, but is not limited to, the information described in 2013 CFC 508.1.5 item #13.
14. Work table.

15. Generator supervision devices, manual start and transfer features.
16. Public address system.
17. Elevator fire recall switch in accordance with California Code of Regulations, Title 8, Division 1, Chapter 4, Subchapter 6, Elevator Safety Orders.
18. Elevator emergency or standby power selector switch(es), where emergency or standby power is provided.
19. A table with chairs (size and number of chairs shall be approved by Fire Chief) (SCMFEC).
20. A locking key box, acceptable to the Chief, large enough for 10 sets of master keys (SCMFEC).
21. Ten (10) sets of master keys for the building (SCMFEC).
22. A complete set of electrical, mechanical, and plumbing plans for the building (SCMFEC).

***Fire Command Center shall not be used for the housing of any boiler, heating unit, generator, combustible storage, or similar hazardous equipment storage.

F36. A passive or active smoke control system or combination thereof shall be provided in accordance with Section 909 of the CFC.

F37. A standby power system complying with Chapter 27 shall be provided for standby power loads specified in Section 403.4.7.2 of the CFC. If the standby system is a generator set inside a building, the system shall be located in a separate room enclosed with 2-hour fire barriers constructed in accordance with Section 707 or horizontal assemblies constructed in accordance with Section 712 or both. System supervision with manual start and transfer features shall be provided at the fire command center (CBC 403.4.7).

F38. An emergency power system complying with Chapter 27 shall be provided for emergency power loads specified in Section 403.4.8.1 (CBC 403.4.8).

F39. An on-premise fuel supply, sufficient for not less than 6-hour full-demand operation of the standby power system, shall be provided. The minimum required fuel supply shall be maintained at all times. (CFC 604.2.14.1.1).

F40. Stairway doors other than the exit discharge doors shall be permitted to be locked form the stairway side. Stairway doors that are locked from the stairway side shall be capable of being unlocked simultaneously without unlatching upon a signal from the fire command center. Upon failure of electrical power to the locking mechanism the door shall unlock (CBC 403.5.3).

F41. A telephone or other two-way communications system connected to an approved constantly attended station shall be provided at not less then every fifth floor in each stairway where the doors to the stairway are locked (CBC 403.5.3.1).

<u>Required Fire Sprinkler/Suppression Systems:</u>

F42. At time of building permit application, state on the title sheet what type of sprinkler system will be required (NFPA 13 or 13R). If a sprinkler system is used for increases in height/stories/area allowable, etc., it shall be a NFPA 13 system

F43. An approved automatic sprinkler system in accordance with Section 903.1.1 shall be allowed to be substituted for 1-hour fire-resistance rated construction, provided such system is **not otherwise required by other provision of the code** or used for an allowable increase in accordance with Section 506.3 or an allowable height increase in accordance with Section 504.2. The 1-hour substitution for the fire resistance of exterior walls shall not be permitted (CBC Table 601, footnote d).

F44. Approved automatic sprinkler systems in new and existing buildings and structure shall be provided in the locations described in this Section or in Sections 903.2.1 through 903.2.18 whichever is the more restrictive. For the purposes of this section, firewalls and fire barriers used to separate building areas shall be constructed in accordance with the California Building Code and shall be without openings or penetrations (2013 SCMFEC 903.2).

F45. An automatic fire sprinkler system shall be installed throughout all new buildings and structures (2013 SCMFEC 903.2).

Exceptions:

(a) Buildings and structures that do not exceed 1,000 square feet of building area in the following Groups: A, B, E, F, I, L, M, S and U occupancies. **Exception does not apply to habitable accessory structures constructed on residential properties, regardless of area or occupancy classification.**

(b) Group S-2 and U occupancies used exclusively for vehicle parking and meeting all the following conditions:

i. Noncombustible construction
ii. Maximum building area not to exceed 5,000 square feet.
iii. Structure is open on three (3) or more sides.
iv. Minimum of 10 feet separation from existing buildings unless area is separated by fire walls complying with CBC Section 706.

A separate Fire Department permit is required for the sprinkler system (*Sprinkler main drain test valves shall discharge to the sanitary sewer system (via an indirect connection) or shall discharge onto a landscape area of sufficient size).*

F46. An automatic fire sprinkler system shall be installed through out all **existing** Group A, B, E, F, I, L, M, S and U buildings and structures when additions are made that increases the gross floor area to more than 3,600 square feet or that create conditions described in Sections 903.2.1 through 903.2.18 (2013 SCMFEC 903.2). A separate Fire Department permit is required for the sprinkler system (*Sprinkler main drain test valves shall discharge to the sanitary sewer system (via an indirect connection) or shall discharge onto a landscape area of sufficient size.)*

F47. An automatic sprinkler system shall be provided throughout all new basements regardless of size and throughout existing basements that are expanded by more than 50% (2013 SCMFEC 903.2). A separate Fire Department permit is required for the sprinkler system (*Sprinkler main drain test valves shall discharge to the sanitary sewer system (via an indirect connection) or shall discharge onto a landscape area of sufficient size.)*

F48. Any change in the character of occupancy or in use of any building with a building area equal to or greater than 3,600 square feet which, in the opinion of the fire code official or building official, would place the building into a more hazardous division of the same occupancy group or into a different group of occupancies and constitutes a greater degree of life safety[1]or increased fire risk[2], shall require the installation of an approved fire automatic fire sprinkler system (2013 SCMFEC 903.2). A separate Fire Department permit is required for the sprinkler system (*Sprinkler main drain test valves shall discharge to the sanitary sewer system (via an indirect connection) or shall discharge onto a landscape area of sufficient size.)*

F49. The following rooms shall be calculated at 0.25 gpm/ft2 density over the entire area:

a. Standby Emergency Diesel Generator and Combustion Turbine Rooms
b. Fire pump rooms/houses
c. Auxiliary Boilers. Oil-fired boilers or boilers using oil ignition should be provided with protection.

F50. Standpipe System: When installing or modifying the Standpipe System, notify the installer (a licensed C-16 contractor) to apply for a "Standpipe System" permit. NOTE: A separate permit is not required when the standpipe system is combined with an automatic sprinkler system. Class I standpipe hose connections shall be provided in all of the following locations: a) In every required stairway, a hose connection at each floor level (not at the intermediate landings between floors), including the first floor b) On each side of the wall adjacent to the exit opening of a horizontal exit. Exceptions may apply. c) In every exit passageway, at the entrance from the exit passageway to other areas of a building. Exceptions may apply. 4) Where the roof has a slope less than four units vertical in 12 units horizontal (33.3 percent slope), each standpipe shall be provided with a hose connection located either on the roof or at the highest landing of a stairway with stair access to the roof. An additional hose connection shall be provided at the top of the

most hydraulically remote standpipe for testing purposes (CFC, 905.4). Additional standpipes may be required (AHJ & CFC, 905.1).

F51. Modifications to the existing sprinkler system will require a separate permit to be applied for directly to the Fire Department.

F52. The installation of a kitchen automatic fire protection system will be required for the cooking areas. The system shall comply with 2002 NFPA 17A; 2013 California Fire Code (CFC) Chapter 9, Section 904.11; and the 2013 California Mechanical Code (CMC) Chapter 5. A permit must be obtained directly from the Fire Department.

Battery Systems:

F53. Battery systems with more than 50 gallons electrolyte capacity **(or 1,000 pounds for lithium ion and lithium metal polymer)** will require Fire Department permit(s).

Dumpster Storage:

F54. Rubbish containers: Containers that are 1.5 cubic yards (40.5 cubic feet) or more shall not be stored in buildings or placed within 5 feet of combustible walls, openings, property lines or combustible roof eave lines unless protected by approved fire sprinklers (CFC 304.3.3). Exceptions may apply. If a roof over the trash enclosure is to be provided, then it shall be of non-combustible construction.

Spill Prevention Control and Countermeasure Plan

F55. Businesses that store more than 1,320 gallons (accumulative for 55 gallons and larger in drums and/or tanks on a contiguous property) of petroleum products aboveground must prepare a Spill Prevention Control and Countermeasure (SPCC) plan. If the business has over 10,000 gallons of petroleum products, the SPCC must be signed by a professional engineer. If the business has between 1,320 and 10,000 gallons the owner/operator can self-certify the SPCC plan (additional requirements apply for self-certification).

For businesses that currently do not have a SPCC plan, the SPCC plan must be signed and a copy kept on-site prior to using/filling the tank/equipment. Have the SPCC plan available to the Fire Department at time of inspection.

For businesses that currently have a SPCC plan, and are adding additional tanks/equipment amendments to the existing SPCC plan must be made, signed and a copy kept on-site within 6 months of the change.

SPCC Plan requirements are found in Title 40, Code of Federal Regulations, Part 112. Information regarding SPCC plan preparation and submittal requirements is available on the Internet at http://www.calepa.ca.gov/CUPA/Aboveground/FactSheetSPCC.pdf (H&SC §2527005(c)).

Fire Safety During Construction:

F56. **At the time of permit application, submit** a construction **"Fire Safety Plan"** to the Fire Department for review and approval. The "Fire Safety Plan" shall address fire protection (i.e., access roads, water mains, on-site fire hydrants, fire extinguishers and standpipes) be installed and made serviceable prior to the time of construction. Include in the safety plan the location of fire extinguishers, fire hydrants (public and private), storage of combustible construction materials, propane tanks, and "NO SMOKING" signs. Plus the Safety plan shall address the how the following items will be used: temporary heating devices, temporary electrical wiring, cutting/welding and other open-flame devices. See "Standards for Construction site fire Safety" handout or website at www.unidocs.org/fire

Fire Department (Required on plans/ drawings at the time of application)

F57. **At the time of Building Permit application,** submit Civil Drawings that denote existing and proposed locations of fire hydrants, underground sectional valves, fire department connections and post indicator valves for fire department review and approval.

F58. Prior to combustible materials being brought onto the site, approved fire apparatus access roads shall be constructed. These shall be capable of supporting the imposed fire apparatus load (75,000 lbs.) and have a FD approved all-weather driving surface.

F59. Construction materials shall not obstruct access roads, access to buildings, hydrants or fire appliances.

F60. Combustible construction in excess of 100 feet from the street shall not commence until emergency access roads; underground fire service lines and permanent on-site hydrants are in service and have been tested, flushed and approved by the Fire Department.

F61. During construction of a building and until permanent fire-extinguishers have been installed, portable fire extinguishers are required within 50 feet travel distance to any part of the building in accordance with California Fire Code and the Santa Clara Municipal Fire and Environmental Code.

F62. General Permit Storm Water Discharges Associated with Construction Activity-Water Quality through the State (order 99-08-DWQ) shall be adhered to regarding non-point source issues on construction sites. (i.e., prevention of paints, debris, etc. from going down storm drains). The Permit is issued by the State Water Resources Control Board. Information regarding the permit can be found at www.waterboards.ca.gov/stormwtr/index.html.

F63. Internal-combustion-powered construction equipment shall be used as follows; (a) Equipment shall not be refueled while in operation, (b) Exhausts shall be piped to the outside of the building.

POLICE

PD1. The Developer shall provide a minimum average illumination of one-foot candle in carport, parking areas and in all common pedestrian or landscaped areas of the development, subject to adjustments by the Police Chief in consultation with Silicon Valley Power and Planning Department as necessary for the project to meet LEED Certification, or equivalent, objectives. The illumination should be deployed in fixtures that are both weather and vandal resistant.

PD2. Address numbers of the individual units shall be clearly visible from the street and shall be a minimum of six (6) inches in height and of a color contrasting with the background material. Numbers shall be illuminated during the hours of darkness. Individual apartment numbers shall be a minimum of six (6) inches in height and a color contrasting to the background material and either visible from the street or from the center area of the project. Where multiple units/buildings occupy the same property, unit/building address shall be clearly visible.

PD3. The Developer shall meet the City's guidelines established for radio signal penetration, detailed in the Santa Clara Police Department's Public Safety Radio System Building Penetration Guidelines. The intended use of telecommunications sites shall be clearly and accurately stated in the project description. The signal, of whatever nature, of any communications facility or system, shall in no way whatsoever interfere with or affect any Police communication or Police communication system.

PD4. When in the opinion of the fire code official, a new structure obstructs the line of sight of emergency radio communications to existing buildings or to any other locations, the developer of the structure shall provide and install the radio retransmission equipment necessary to restore communications capabilities. The equipment shall be located in an approved space or area within the new structure.

PD5. The Developer shall provide enclosure fencing (trash area, utility equipment, etc.) that is either see-through or that has a six (6) inch opening along the bottom for clear visibility subject to adjustments by the Police Chief. Any gates or access doors to these enclosures should be locked.

PD6. The Owner/Developer shall ensure that exterior elevators are see-through for maximum visibility. The Owner/Developer shall ensure that all elevators are well lit and equipped with a security mirror to provide interior and exterior visibility prior to entry or exit.

PD7. In a development where there is an alley, driveway, etc. providing a rear entrance or access, the Developer shall ensure that addresses are displayed to both the front and rear of the individual buildings. Where an alley, driveway, etc. provides vehicular access, address numbers shall be clearly visible from that access.

PD8. Parking structures, including ramps, corners and entrances, should be illuminated per ISNA recommendations by the Developer, subject to adjustments by the Police Chief in consultation with Silicon Valley Power and Planning Department as necessary for the project to meet LEED Certification, or equivalent, objectives.

PD9. The Developer should equip the parking structure/site with an emergency panic alarm system that reports to a central office and/or 9-1-1. If more than one button is installed, they should be placed no more than 100 ft. apart.

PD10. All entrances to parking areas (surface, structure, sub-terranean, etc.) should be posted with appropriate signage to discourage trespassing, unauthorized parking, etc. (See California Vehicle Code Section 22658(a) for guidance).

PD11. The developer should install skate stoppers on any low clearance wall of 36 inches in height or lower to prevent vandalism to the wall.

PD12. If the development includes any benches, these benches should not be longer in five feet in length and have arm rests at both ends. If the benches are longer than five feet in length, there should be a divider (arm rest or similar) in the middle of the bench in addition to the arm rests on both ends.

PD13. If there is outdoor seating associated with a restaurant or similar business which is near vehicle parking stalls or roadways, the developer should install bollards, low fencing, or some other means to separate outdoor seating from vehicle traffic.

STREET

ST1. Submit copy of complete landscape and automatic irrigation plans for review and comment by City staff. Plans are to include all existing trees with 4" or larger diameter (measured 30" above ground) on development property and adjacent property if they may be impacted. Trees are to be correctly labeled with specie name and correctly plotted as to exact location on the plans. Trees are to be noted as to whether they are proposed to be saved or removed. City tree preservation specifications are to be included on all plans where existing trees are to be saved during construction. A copy of these specifications can be obtained from the City Arborist at 408-615-3080.

ST2. The Developer is to supply and install City street trees per City specifications; spacing, specie, and size (15 gallon minimum) to be determined by City Arborist.

ST3. No cutting of any part of City trees, including roots, shall be done without following city tree preservation specifications and securing approval and direct supervision from the City Arborist at 408-615-3080.

ST4. No cutting of any part of private trees, including roots, shall be done without direct supervision of a certified arborist (Certification of International Society of Arboriculture).

ST5. Identified existing mature trees to be maintained. Prepare a tree protection plan for review and approval by the City prior to any demolition, grading or other earthwork in the vicinity of existing trees on the site. Provide 48-inch box trees for screening adjacent to the existing residential properties, type to be determined by City Arborist.

ST6. All trees, existing and proposed, must maintain minimum of ten (10) feet from any existing or proposed Water Department facilities. Existing trees that conflict must be removed by developer. Trees shall not be planted in water easements or public utility easements.

ST7. Prior to submitting any project for Street Department review, applicant shall provide a site plan showing all existing trees (including size and species), proposed trees (including size and species), existing stormwater drainage facilities, proposed storm water drainage facilities, proposed locations of solid waste containers and, if applicable, a statement on the site plan confirming compliance with Fire Department approved fire apparatus access roads (1998 CFC 902.2.2.1 & 902.2.2.3).

ST8. All landscaping and irrigation systems shall meet City standard specifications.

ST9. Since this project involves disturbing a land area of one acre or more, the developer shall file a Notice of Intent (NOI) with the State Water Resources Control Board for coverage under the State Construction General Permit (Order No. 2009-0009-DWQ) prior to issuance of any building permit for grading, or construction; a copy of the NOI shall be sent to the City Building Inspection Division. A storm water pollution prevention plan is also required with the NOI.

ST10. Incorporate Best Management Practices (BMPs) into construction plans and incorporate post construction water runoff measures into project plans in accordance with the City's Urban Runoff Pollution Prevention Program standards prior to the issuance of permits. Proposed BMPs shall be submitted to and thereafter reviewed and approved by the Planning Division and the Building Inspection Division for incorporation into construction drawings and specifications.

ST11. An erosion control plan shall be prepared and copies provided to the Planning Division and to the Building Inspection Division for review and approval prior to the issuance of grading permits or building permits that involve substantial disturbance of substantial ground area.

ST12. All post construction structural controls shall require property owner to execute with City a Stormwater Treatment Measures Inspection and Maintenance Agreement.

ST13. Decorative water features such as fountains and ponds shall be designed and constructed to drain to sanitary sewer only. No discharges allowed to storm drain.

ST14. Special Urban Runoff Stormwater Pollution Prevention requirements apply. Set up meeting with the Street Department to discuss requirements. Contact Dave Staub at 408-615-3080.

ST15. Commercial, industrial, and multi-family residential buildings must have enclosures for solid waste and recycling containers. The size and shape of the enclosure(s) must be adequate to serve the estimated solid waste and recycling needs and size of the structure, and should be designed and located on the property so as to allow ease of access by collection vehicles. As a general rule, the size of the enclosure(s) for the recycling containers should be similar to the size of the trash enclosure(s) provided onsite. Roofed enclosures with masonry walls and solid gates are the preferred design.

ST16. Potable water must be used for irrigation to redwood trees.

ST17. A minimum 15 gallon tree at a 2:1 on- or off-site replacement for trees removed as part of the proposal or 36" box tree at a 1:1 replacement.

ST18. Landscape screening shall be provided along the Highway 101 frontage.

ST19. The Developer should install full trash capture devices for food and retail establishments as the location is within a medium-high trash generation area. Set up meeting with the Street Department to discuss requirements. Contact Dave Staub at 408-615-3080.

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CONDITIONS OF APPROVAL - MAP
SANTA CLARA SQUARE PROJECT

GENERAL

G1. The Developer shall comply with all applicable codes, regulations, ordinances and resolutions.

G2. If relocation of an existing public facility becomes necessary due to a conflict with the developer's new improvements, then the cost of said relocation shall be borne by the developer.

ATTORNEY'S OFFICE

A1. The Developer agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, attorneys' fees, injuries, costs, and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed by a third party against the City by reason of its approval of developer's project.

PLANNING AND BUILDING INSPECTION

P1. Obtain required permits and inspections from the Building Official and comply with the conditions thereof. If this project involves land area of 1 acre or more, the developer shall file a Notice of Intent (NOI) with the State Water Resources Control Board prior to issuance of any building permit for grading, or construction; a copy of the NOI shall be sent to the City Building Inspection Division. A storm water pollution prevention plan is also required with the NOI.

P2. The Developer shall comply with the Mitigations Monitoring and Reporting Program identified in the Augustine-Bowers Environmental Impact Report and Mitigations as amended in the Addendum No. 3 for the Santa Clara Square Project, and shall be incorporated in the Conditions of Approval for this project.

P3. The Developer shall comply with the conditions set forth in the Development Agreement in effect between the City of Santa Clara and The Irvine Company LLC, as successor interest to EOP-Industrial Portfolio, LLC and CA-Santa Clara Office Center Limited Partnership, effective June 18, 2009, as may be amended from time to time in accordance with the terms of the Development Agreement.

ENGINEERING

E1. Obtain site clearance through Engineering Department prior to issuance of Building Permit. Site clearance will require payment of applicable development fees. Other requirements may be identified for compliance during the site clearance process. Contact Engineering Department at (408) 615-3000 for further information.

E2. All work within the public right-of-way and/or public easement, which is to be performed by the Developer/Owner, the general contractor, and all subcontractors shall be included within a **Single Encroachment Permit** issued by the City Engineering Department. Issuance of the Encroachment Permit and payment of all appropriate fees shall be completed prior to commencement of work, and all work under the permit shall be completed prior to issuance of occupancy permit.

E3. After City Council approval of the Vesting Tentative Parcel Map, submit 10 copies of the Parcel Map, prepared by a Licensed Land Surveyor or a Registered Civil Engineer with Land Surveyor privileges to the Engineering Department. The submittal shall include a title report, closure calculations, and all appropriate fees. Parcel Map must be approved by staff and recorded by developer prior to building permit issuance.

E4. Submit public improvement plans prepared in accordance with City Engineering Department procedures which provide for the installation of public improvements. Plans shall be prepared by a Registered Civil Engineer and approved by the City Engineer prior to approval and recordation of final map and/or issuance of building permits.

E5. All driveways shall be City standard ST-8 or ST-9 except those at 4-way signalized intersections. Those shall be curb return style with asphalt roadway.

E6. Provide root barrier when trees are planted adjacent to the sidewalk. Root barriers shall be 12' long x 2' deep, and centered on trees.

E7. Storm drain and sanitary sewer laterals shall be outside the drip line of mature trees or 10' clear of the tree trunk.

E8. Developer is responsible for cost of relocation or modification of any public facility necessary to accommodate subject development.

E9. Damaged curb, gutter, and sidewalk within the public right-of-way along property's frontage shall be repaired or replaced (to the nearest score mark) in a manner acceptable to the City Engineer or his designee. The extents of said repair or replacement within the property frontage shall be at the discretion of the City Engineer or his designee.

E10. Existing non-standard or non-ADA compliant frontage improvements shall be replaced with current City standard frontage improvements as directed by the City Engineer or his designee.

E11. Unused driveways in the public right-of-way shall be replaced with City standard curb, gutter, and sidewalk.

E12. Existing sanitary sewer and storm drain laterals that do not serve any purpose shall be abandoned to City standards.

E13. Show and comply with City's driveway vision triangle requirements at all driveways and City's intersection visibility obstruction clearance requirements. No trees and/or structures obstructing drivers' view are allowed in the vision triangle & visibility obstruction areas. Contact Traffic Engineering at (408) 615-3000 for further information.

E14. Provide 5' wide sidewalk along the property's Augustine Drive and Octavius Drive frontages.

E15. Provide 4' wide minimum bicycle lane along property's Augustine Drive and Octavius Drive frontages. Gutter pan shall not be used as part of bicycle lane (6' wide minimum from face of curb).

E16. Provide 12' wide minimum creek trail/easement connecting Augustine/Octavius Drive to the San Tomas Aquino Creek Trail.

E17. Traffic signal improvement at proposed driveway entrance on Augustine Drive, approximately 900' east of Bowers/Augustine intersection shall be required.

E18. Provide Stop Study/Analysis to determine if a new traffic signal or a 4-way stop is needed at the Augustine/Montgomery intersection.

E19. All traffic striping, messages, symbols destroyed/damaged due to proposed improvements' construction shall be replaced with thermoplastic striping/messages/symbols. All proposed traffic striping, messages, symbols shall be thermoplastic.

E20. Dedicate on-site easements for new public utilities and/or sidewalk as required by means of parcel map or approved instrument at time of development.

E21. Obtain Council approval of a resolution ordering vacation of existing public easement(s) proposed to be abandoned, through Engineering Department, and pay all appropriate fees, prior to start of construction.

E22. The new on-site public sanitary sewer and storm drain systems shall be completed, accepted by the City, and placed into service prior to abandoning the existing on-site public sanitary sewer and storm drain systems. The required easements for the new on-site public sanitary sewer and storm drain systems shall be dedicated and recorded prior to vacating the existing storm drain and sanitary sewer easement.

E23. Interconnect sanitary sewer systems along Augustine Drive from manhole no. 25 of Block Book page 73 to manhole no. 21 of Block Book page 74.

E24. Record parcel map to create parcel for proposed development and pay all appropriate fee(s) prior to Building Permit issuance.

E25. Execute Covenant(s) Running with the Land to assume maintenance responsibility for non-standard street improvements. Non-standard street improvements include, but are not limited to, curb return type driveway(s).

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Santa Clara Square

Addendum No. 3

to

Augustine-Bowers Office Park Environmental Impact Report

(State Clearinghouse No. 2008052065)

Prepared For:

City of Santa Clara Planning Department

1500 Warburton Avenue

Santa Clara, California 95050

October 2014

Preface

This document has been prepared by the City of Santa Clara as the Lead Agency, in conformance with the California Environmental Quality Act. This Addendum provides environmental review appropriate for the approval of the proposed Santa Clara Square project.

All documents referenced in this Addendum are available for public review in the Department of Planning and Inspection, 1500 Warburton Ave, Santa Clara, California, on weekdays during normal business hours.

I. Introduction

The City of Santa Clara (the "City") certified an environmental impact report (SCH No. 2008052065) prepared pursuant to the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*) ("CEQA") for the Augustine-Bowers Office Park on May 5, 2009 ("EIR") by Resolution No. 09-7618. The EIR contemplated the development of a 30.73-acre site located at 2620-2727 Augustine Drive ("2009 Project site"). The EIR analyzed the construction of up to 1,969,600 square feet of office development and up to 35,000 square feet of retail development for a total of 2,004,600 square feet in 4 towers up to 14 stories high (the "2009 Project"). In addition to certifying the EIR, the City approved a General Plan Amendment, an application for rezoning, a vesting tentative parcel map, a development agreement, and architectural review.

The Irvine Company, LLC ("TIC") acquired the Augustine-Bowers Office Park in 2012. TIC initially proposed to modify the design of the 2009 Project to reduce the intensity of office development to approximately 1.235 million square feet. TIC's initial proposal included six office buildings, associated surface and structured parking, and ancillary campus-serving amenity buildings. The proposal was approved by the City of Santa Clara in July 2013 by adoption of Ordinance No. 1909, EIR Addendum No. 1 (CEQ 2013-01159), a PD Amendment (PLN2013-09609), an amendment to the Development Agreement (PLN2013-09865), and architectural review (PLN2013-09866). The amended Development Agreement also continued to authorize the original intensity of development (1,969,600 square feet of office and 35,000 square feet of retail).

The 16.6-acre portion of the Augustine-Bowers Office Park located north of Augustine Drive ("Office Phase I") was transferred to Augustine Bowers LLC in September 2013. The office complex in Office Phase I will be developed consistent with Addendum No. 1 and will consist of approximately 618,800 square feet of office use, 13,000 square feet of accessory retail use. Office Phase I is currently under construction and completion is anticipated in the next few months.

In June 2014, the City approved development of an approximately 125,000 square foot specialty retail center, with major anchor tenant grocery, sit down restaurants, and boutiques on the 14.2-acres located south of Augustine Drive ("Retail Phase"). The Retail Phase was transferred to Augustine Bowers II, LLC in August 2014 and is currently under construction. The City also approved an office development on 2525 - 2585 Augustine Drive that is located immediately adjacent to the northeast property line of the 2009 Project site ("Office Phase II") and a 7.65 acre site located at 2455 - 2475 Augustine Drive ("Office Phase III"). The approved office development consisted to of 1,243,300 square feet in 6-8 story office buildings, with associated surface and structured parking. Collectively, the Retail Phase, Office Phase II, and Office Phase III are referred to as the "June 2014 Project." The total development approved in the June 2014 Project, including the previously approved Office Phase I, did not exceed 2,000,100 square feet of development, and in fact was 4,500 square feet less than the total development that was approved in the 2009 Project. In addition to certifying the Addendum

No. 2 to the EIR, the City approved a General Plan Amendment, an application for rezoning, a vesting tentative parcel map, and an amended Development Agreement.

TIC recently acquired the 2.58 acre property located between the Office Phase II and Office Phase III properties at 2505 Augustine Drive ("2505 Augustine"). In addition, TIC owns the 3.27 acre property at the east end of Augustine Drive at 3333 and 3393 Octavius Drive ("3333-3393 Octavius"). In order to fold these two parcels into the design of the Office Park, TIC submitted a request for a General Plan Amendment [from Light Industrial to High-Intensity Office/Research & Development (R&D)] and a Zoning Change [Light Industrial (ML) to Commercial Park (CP)] to allow flexibility in how the approved office development from the June 2014 Project can be configured. See File No. PLN2014-10577, PLN2014- 10578. TIC proposes to include these two new parcels in the existing Office Phase II and Office Phase III so they are incorporated into its approved office development. Combined, the reconfigured Office Phase II and Office Phase III properties are currently developed with 602,000 square feet of existing low density office space. The reconfigured Office Phase II and Office Phase III properties will be developed as a single office campus that consists of up to 1,243,300 square feet of 6-8 story office buildings, with associated surface and structured parking and is referred to as the "October 2014 Project." The proposed development is consistent with the office component of the June 2014 Santa Clara Square Project that was analyzed in Addendum No. 2 and approved on June 10, 2014.

The October 2014 Project is a minor revision to the approved June 2014 Project that allows the approved office development to encompass 2505 Augustine so that there is no gap between the Office Phase II and Office Phase III developments. In addition, the October 2014 Project adds land on the east end of Augustine Drive to accommodate an anticipated parking structure on 3333-3393 Octavius. The October 2014 Project would modify the June 2014 Project in two ways: (1) redistribute the total building space authorized for the site over a larger area onto two adjacent properties (2) remove and redevelop an additional 135,000 square feet of existing low density office space. This modification represents a spreading out of approved office development to include two sites already in use with office development. Table 1 summarizes the 2009, July 2013, June 2014, and October 2014 Projects.

Project	Office Phase I	Retail Phase	Office Phase II and III	Subtotal	Total (including Office Phase I)
2009 **(Original Project)**	1,969,600 sf of office 35,000 sf of retail		0	1,969,600 sf of office 35,000 sf of retail	2,004,600 sf of development
July 2013 **(Addendum No. 1)**	1,235,154 sf office 35,000 sf of retail		0	1,235,154 sf office 35,000 sf of retail	1,270,154 sf of development
June 2014 **(Addendum No. 2)**	618,800 sf of Office 13,000 sf of retail space	125,000 sf of retail space	1,243,300 sf of office	1,862,100 sf of office 138,000 of retail space	2,000,100 sf of development
October 2014 **(Addendum No. 3)**	618,800 sf of Office 13,000 sf of retail space	125,000 sf of retail space	1,243,300 sf of office	1,862,100 sf of office 138,000 of retail space	2,000,100 sf of development

Where none of the conditions requiring the preparation of a Subsequent EIR are met, the CEQA Guidelines (14 Cal. Code Regs. §§ 15300-15387) require a lead agency to prepare an Addendum to the previously certified EIR, including a brief explanation of the decision to not prepare a Subsequent EIR supported by substantial evidence. 14 Cal. Code Regs. §§ 15162, 15164(a). Based on the analysis below, this Addendum No. 3 concludes that the 2014 Project would not result in any new significant adverse impacts, nor an increase in the severity of significant adverse impacts previously identified and studied in the EIR. Nor would the 2014 Project require the adoption of any new or considerably different mitigation measures or alternatives. Therefore, this Addendum No. 3 is the appropriate form of environmental review required under CEQA.

II. CEQA Requirements

CEQA requires local governments to conduct environmental review on public and private development projects. CEQA Guidelines Section 15164(a) states that the lead agency

shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred. Section 15164(c) states than an addendum does not need to be circulated for public review. Section 15164(d) provides that the decision-making body shall consider the addendum in conjunction with the EIR prior to making a decision on the project. Section 15164(e) requires documentation of the decision not to prepare a subsequent EIR pursuant to Section 15162.

CEQA Guidelines Section 15162(a) provides that once an EIR has been certified, no subsequent EIR shall be prepared unless the lead agency determines, on the basis of substantial evidence, one or more of the following:

> (1) Substantial changes are proposed in the project which will require major revisions of the previous 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 occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
>
> (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 previous EIR was certified as complete, shows any of the following:
>
> (A) The project will have one or more significant effects not discussed in the previous EIR;
>
> (B) Significant effects previously examined will be substantially more severe than shown in the previous 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 of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
>
> (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the

environment, but the project proponents decline to adopt the mitigation measure or alternative.

This Addendum No. 3 has been prepared to satisfy the requirements of CEQA Guidelines Sections 15164(a), 15164(d), and 15164(e).

III. Project Description

A. 2009 Project

The project evaluated in the EIR was located on a 30.73 acre site comprised of eight parcels on the north and south sides of Augustine Drive, immediately east of Bowers ("2009 Project site") as seen in Figure 1. The 2009 included demolition of all the existing structures on the 2009 Project site and construction of up to 1,969,600 square feet of office development (a net increase of 1,524,848 square feet) and up to 35,000 square feet of retail development (a net increase of 29,710 square feet), for a total of up to 2,004,600 square feet of office/retail development. The 2009 Project contemplated four office towers of up to 244 feet (up to 14 stories) in height.

The 2009 Project included parking on surface lots and in four 5-story parking structures. The retail component included four one-story retail buildings, and additional retail space on the ground floors of the two office towers. The 2009 Project also included approximately nine acres of open space.

B. July 2013 Project

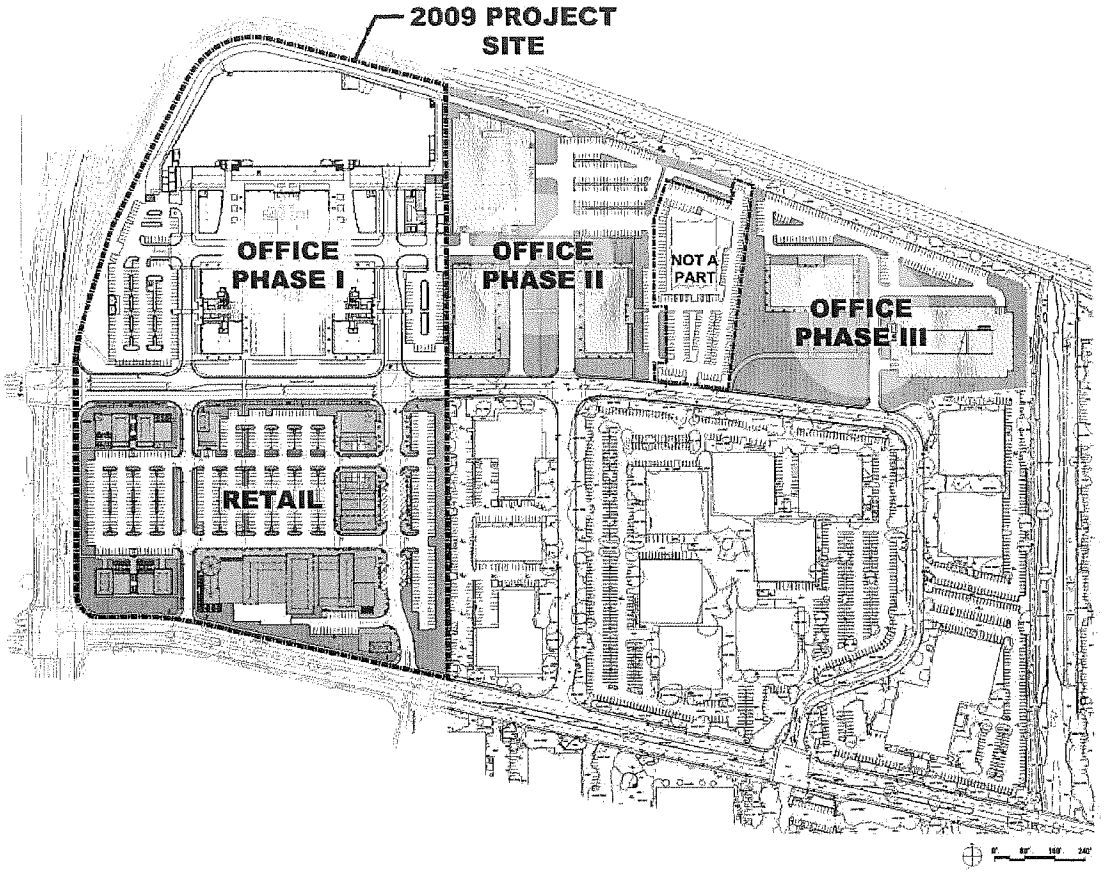
The July 2013 Project provided for the development of an office campus on the 2009 Project site (currently the Office Phase I and Retail Properties) , totaling no more than 1,235,154 million square feet of office space, and up to 35,000 square feet of retail space.

C. June 2014 Project

The June 2014 Project provided for the development of an office campus in two phases, totaling no more than 1,243,300 million square feet of office space (a net increase of 602,730 square feet), and up to 125,000 square feet of retail space (a net increase of 119,710 square feet), on the Retail and Office Phases II and III properties, for a total (inclusive of Office Phase I) of up to 2,000,100 square feet of development, or 4,500 square feet less than the total development that was approved in the 2009 Project. The June 2014 Project was analyzed in Addendum No. 2, which was certified by the City on June 10, 2014.

As seen in Figure 1, the June 2014 Project reoriented the office campus to align with Highway 101, a more suitable location for office development, to make room for a much needed specialty retail development to the area south of Augustine Drive along Bowers Drive.

Figure 1 – June 2014 Project Site Plan



D. OCTOBER 2014 PROJECT

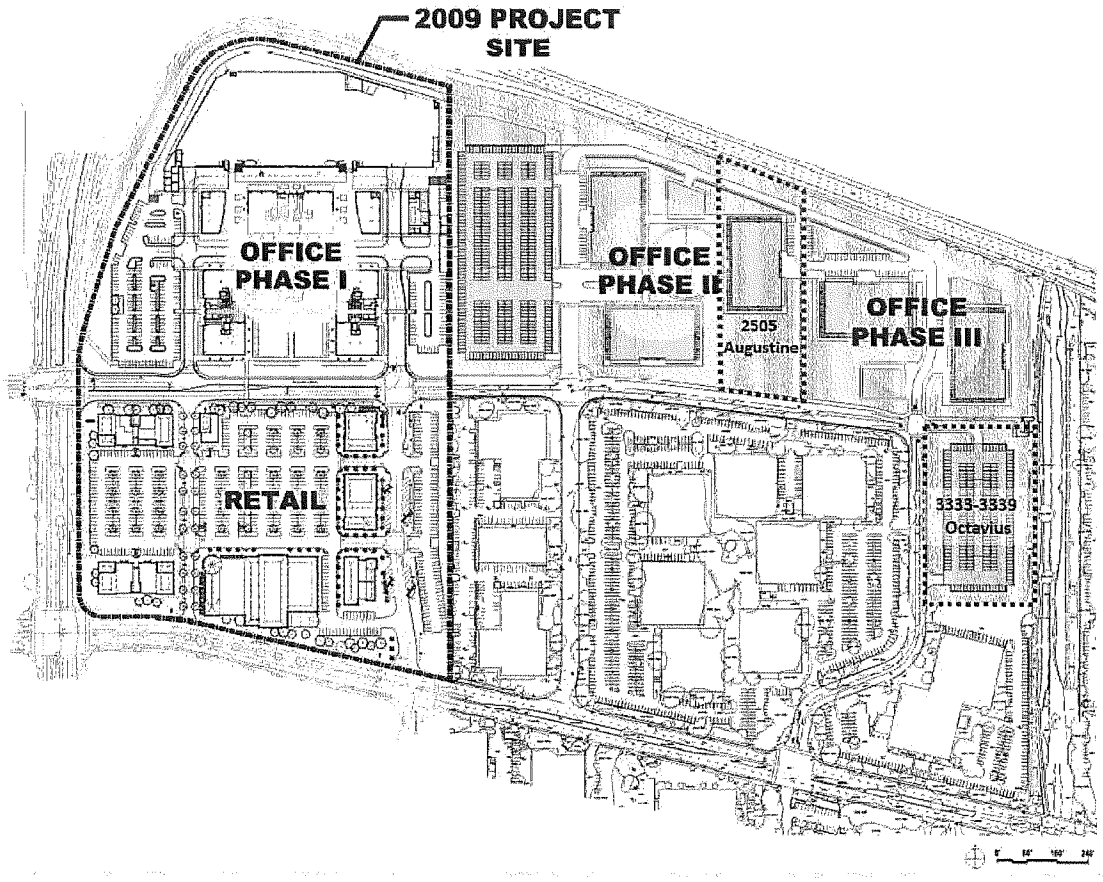
The October Project is located on an approximately 23 acre site) and is comprised of five parcels located on the north and east side of Augustine Drive, between Scott Boulevard and Highway 101 and west of the San Tomas Aquino Creek in the City of Santa Clara as seen in Figure 2("Site"). The Site is currently developed with several one and two-story office/industrial buildings, (totaling 602,000 square feet) and associated surface parking lots.

Like the June 2014 Project, the October 2014 Project continues to provide for the development of an office campus in two phases, totaling no more than 1,243,300 million square feet of office space on the reconfigured Office Phase II and Office Phase III properties for a total (inclusive of Office Phase I and the Retail Phase) of up to 2,000,100 square feet of development, or 4,500 square feet less than the total development that was approved in the 2009 Project. Importantly, the reconfigured Office development does not change the total amount of overall retail and office development for Santa Clara Square, but it does incorporate two additional parcels into the development area. The added parcels will be used to create a campus environment with parking located on the east and west ends of the planning area. A

total of 602,000 square feet of existing office space on the Site will be demolished as the part of the October 2014 Project.

As seen in Figure 2, the October 2014 Project spreads out the office campus along Augustine Drive parallel to Highway 101, which is a suitable location for office development.

Figure 2 – October 2014 Project Site Plan



With regard to parking, the October 2014 Project will include parking structures and surface parking commensurate with the office uses on the Site. Approximately 2 acres of new landscaping will be developed, which will be irrigated with recycled water where available.

The October 2014 Project also includes the project design features proposed as part of the 2009 Project, with a few modifications identified under each applicable impact analysis in Section V, below, to reflect the modified project and to clarify implementation.

IV. Project Objectives

Pursuant to CEQA Guidelines Section 15124, the City identified the purposes of the 2009 Project in Section 1.3 of the EIR. The project objectives remain the same, though Objective 2 and limited portions of Objective 3 are no longer applicable. The project objectives, as slightly modified, are listed below.

The stated objectives of the project proponent are to:

1. Create a high quality corporate center that includes retail amenities for the tenants and surrounding neighborhood.

2. Redevelop underutilized properties in the north Santa Clara industrial area through a General Plan redesignation, Rezoning, and Development Agreement to allow up to 1,862,100 square feet of new high quality corporate office/R&D and up to 138,000 square feet of retail commercial space.

3. Create a successful mix of office, retail space and private open space that will complement the varied mix of land uses existing in the northern area of Santa Clara.

4. Strengthen local serving commercial and retail activity by providing ground floor space for such uses.

5. Develop a project that is both financially feasible and sustainable using environmentally sustainable practices ("green building") in project construction.

6. Further the General Plan Land Use Element goal to "continue to encourage the development of a sound and diverse economic base to support necessary public services. Encourage a stable employment demand corresponding to the City's labor characteristics. Work towards a sustainable combination of population and production."

7. Further Commercial Land Use policies of the General Plan that "encourage a wide variety of retail and commercial services such as restaurants, and day care in locations appropriate to the industrial area."

8. Increase the diversity of specialty retail services to encourage nearby commercial occupants and residents to walk to these locations, and to increase the diversity of uses within the vicinity of the Site to reduce multi-modal trip lengths for these uses.

The stated objectives of the City are to:

1. Promote quality job growth within the City and region.

2. Support campus development that can take advantage of transit opportunities by concentrating jobs near existing transit facilities.

3. Support development of significant employment centers on major local and regional roadways to minimize traffic on minor local streets and to facilitate transit services.

4. Promote private open space and recreation facilities in employment centers in order to meet a portion of the urban open space and recreational needs that will be generated by the development.

5. Increase the amount and diversity of specialty retail services, with corresponding environmental and fiscal benefits, in a walkable location that will further enhance the City's General Plan development priorities for this area.

V. Analysis of Impacts

This addendum provides an analysis of each environmental issue identified in the EIR to determine whether new or more severe effects would occur or new mitigation measures should be required. CEQA Guidelines Section 15164(a) states that the lead agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred. Here, an addendum is appropriate to address additional project-specific detail included in the Application and supporting documentation. This document assesses the 2014 Project to determine whether it is within the scope of the EIR or the Project would result in new significant impacts or substantially more severe impacts under CEQA Guidelines Section 15162.

In the following evaluation each topic section includes the following sub-sections:

1. Environmental Checklist. Contains a modified form of the Appendix G Initial Study environmental checklist. Each checklist question has been modified to characterize the potentially significant impact, less than significant impact, no impact and other categories in the context of whether or not the Proposed Project would result in new significant impacts or substantially more severe impacts when compared to the EIR and the 15162 triggers as follows:

a. Would the project result in substantial changes which will require major revisions of the previous EIR due to new significant environmental effects or a substantial increase in the severity of previously identified effects;

b. Would the project result in substantial changes with respect to the circumstances in which the project is undertaken which will require major revisions of the EIR due new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

c. Would the project have one or more significant effects not discussed in the EIR or that will be substantially more severe than shown in the EIR, or are there mitigation measures or alternatives previously found not to be feasible or that are considerably different, that would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternatives.

The checklist presented in the following analysis classifies impacts in one of four ways:

a. Potentially Significant New Impact — This category is for any potentially significant impact that was not analyzed in the EIR.

b. Less than Significant New Impact with Mitigation Incorporated — This category is for any impacts which were not analyzed or found in the EIR, but are nonetheless found to be less than significant with mitigation incorporated.

c. Less than Significant New Impact — This category is for any impacts which were not analyzed or found in the EIR, but which are nonetheless less than significant.

d. Impacts Fully Analyzed in the EIR — This category is for impacts which are equal to or less than the impacts found and analyzed in the EIR.

2. Environmental Checklist Responses. Provides a response and explanation to each environmental checklist question. This sub-section also identifies mitigation measures that would be necessary to reduce the potential level of impact to less-than-significant.

3. Conclusions. Provides a conclusion as to each checklist question regarding whether the Proposed Project would result in any new significant impacts or impacts that would be substantially more severe than identified in the EIR according to the triggers detailed in Section 15162 of the CEQA Guidelines.

A. AESTHETICS

Aesthetics	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
Would the project:				
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☑
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☑
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☐	☐	☑
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	☐	☐	☐	☑

Sources: EIR, as amended by Addendum No. 1 and Addendum No. 2; October 2014 Project Application.

EIR Conclusion: Less than significant.

The EIR analyzed visual and aesthetics impacts of the 2009 Project in Section 4.2. In terms of scenic views and resources, it determined that there are no scenic views in the project area, which is located adjacent to Highway 101. While industrial and commercial development adjacent to the 2009 Project site is substantially smaller in scale than the 2009 Project, there are high-rise office buildings in the immediate vicinity of the 2009 Project site. The EIR concluded that while the visual character of the area will be altered somewhat by replacing the existing industrial park development with office towers (up to 14 stories) and parking structures, the EIR found the 2009 Project would be visually compatible with surrounding land uses and more densely landscaped than the surrounding development. Likewise, it concluded that the 2009 Project would not shade any public open space areas or private residential open space areas. Furthermore, complying with the City's standard lighting requirements would result in less than significant light and glare impacts.

EIR Mitigation Measures: No mitigation required.

Discussion of the October 2014 Project: The October 2014 Project would generate the same types of aesthetics impacts as both the 2009 and June 2014 Projects. While the configuration of the buildings in the October 2014 Project differs slightly from the 2009 Project, the office campus nature and character of the buildings in Office Phase II and III remains exactly the same. The development on the newly acquired parcels is consistent with the existing office use. Just like the June 2014 Project, the office buildings range in height up to 112 feet and up to 8 stories

in the October 2014 Project, in contrast to the four office towers in the 2009 Project that ranged from 170 to 241 feet in height and up to 14 stories.

The proposed office buildings will achieve LEED certification, will employ high quality materials and finishes and will be arranged around a generously landscaped central space designed to afford a more relaxed setting for future employees to collaborate and socialize. The Office Phase II and III developments will include pedestrian and bicycle connections to the existing trail along the San Tomas Aquino Creek, will provide bicycle lanes along both Augustine and Octavius Drives, and provides approximately 2 acres of landscaped open space. Thus, compared to the 2009 Project, the October 2014 Project will have similar or less impacts with regard to aesthetics.

Finding: The potential visual and aesthetics impacts from the October 2014 Project are the same or less than those analyzed in the EIR. For reasons stated above, the October 2014 Project potential impacts related to aesthetics are less than significant. Therefore, no new or substantially increased significant impacts would result from the October 2014 Project beyond those discussed in the EIR. No new mitigation is required.

B. AGRICULTURE AND FOREST RESOURCES

Agriculture and Forest Resources	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	☑
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☑

Agriculture and Forest Resources	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland '(as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	☐	☐	☐	☑
d) Result in the loss of forest land or conversion of forest land to non-forest use?	☐	☐	☐	☑
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	☐	☐	☐	☑

Sources: EIR, as amended by Addendum No. 1 and Addendum No. 2; October 2014 Project Application.

EIR Conclusion: Less than significant.

The EIR analyzes agricultural impacts in Section 4.1.2.6. The 2009 Project site does not include agricultural or forest resources, as it is currently developed as a light industrial park. Agricultural activities on the 2009 Project site and the Site ceased in 1974, as discussed in the Hazards and Hazardous Materials Section below.

EIR Mitigation Measures: No mitigation required.

Discussion of the October 2014 Project: Because both the 2009 Project site and the Site are already developed as an industrial park, neither the 2009 Project nor the October 2014 Project have any direct or indirect impacts on agricultural resources or forest land.

Finding: The potential impacts of the October 2014 Project on agricultural resources are essentially the same as those analyzed in the EIR. For reasons stated above, the October 2014 Project's impacts related to agricultural and forest resources are less than significant. Therefore, no new or substantially increased significant impacts would result from the October 2014 Project. No new mitigation is required.

C. AIR QUALITY

Air Quality	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☐	☑
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	☐	☐	☐	☑
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	☐	☐	☐	☑
d) Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☐	☑
e) Create objectionable odors affecting a substantial number of people?	☐	☐	☐	☑

Source: EIR, as amended by Addendum No. 1 and Addendum No. 2; October 2014 Project Application; Illingworth & Rodkin, Inc. September 16, 2014, Evaluation of 2014 Changes to Augustine Bowers Office Park Air Quality Impacts – Santa Clara, CA attached as Appendix A.1.

EIR Conclusion: Significant and unavoidable for operational emissions; less than significant with mitigation for construction emissions associated with dust generation.

The EIR found that the 2009 Project would increase office uses within an existing employment center that is adjacent to a major roadway (US 101) and served by transit. The 2009 Project would cause an increase in vehicle miles traveled because it would further exacerbate Santa Clara's jobs/housing imbalance, requiring more commuters from outside Santa Clara, resulting in a significant impact.

The EIR also found that even with trip reduction credit for transit use and implementation of a transportation demand management program, which is a project design feature, the 2009 Project would have a significant impact on regional air quality, as it would result in emissions that would exceed Bay Area Air Quality Management District's (BAAQMD) ROG, NO_x, and PM_{10} thresholds and the operational emissions impact would be significant and unavoidable. The EIR concluded that the 2009 Project would not result in carbon monoxide concentrations at study intersections above established state or federal standards. The EIR concluded that construction of the 2009 Project would result in significant short-term air quality impacts associated with particulate matter (dust).

The EIR includes the following project design features to reduce transportation-related air emissions and the following project-specific mitigation measures to reduce impacts from dust generated by construction to a less than significant level. These mitigation measures will be applicable to the October 2014 Project.

Project Design Features:

Transportation Demand Management Program

Employment-generating development is required to develop and implement a Transportation Demand Management ("TDM") program. The project proposes to include the following elements in the TDM program, or similar, alternate transportation demand management measures acceptable to the City:

1. *Provide physical improvements, such as sidewalk improvements, landscaping and bicycle parking that would act as incentives for pedestrian and bicycle modes of travel.*
2. *Connect individual sites with regional bikeway system.*
3. *Provide on-site transit information kiosks.*
4. *Implement a carpool/vanpool program, e.g., carpool ridematching for employees, assistance with vanpool information, provision of vanpool vehicles, etc.*
5. *Develop a transit use incentive program for employees in the project area, such as on-site distribution of passes and/or subsidized transit passes for local transit systems.*[1]
6. *Provide preferential parking for carpools.*
7. *Provide a guaranteed ride home program.*
8. *Implement a flextime policy.*
9. *Provide on-site services such as ATMs, dry cleaning facilities, exercise room, cafeteria, etc.*
10. *Provide or contribute to a shuttle system for employees to access local transit services within the City.*[2]
11. *Provide showers and lockers for employees bicycling or walking to work.*

[1] Examples include VTA EcoPass system and "Wageworks" which utilizes pre-tax dollars to purchase transit passes.
[2] Examples include the Altamont Commuter Express (ACE) Yellow Shuttle and the Lawrence Caltrain Bowers/Walsh Shuttle.

12. *Provide secure and conveniently located bicycle parking and storage for workers.*

EIR Mitigation Measures:

Project-specific mitigation measures that would be required during construction to reduce construction-related dust emissions include:

1. *Water all active construction areas at least twice daily and more often during windy periods.*
2. *Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.*
3. *Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.*
4. *Sweep daily (preferably with water sweepers) all paved access roads on-site, parking areas and staging areas at construction sites.*
5. *Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.*
6. *Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.*
7. *Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).*
8. *Limit traffic speeds on unpaved roads to 15 mph.*
9. *Install sandbags or other erosion control measures to prevent silt runoff to public roadways.*
10. *Replant vegetation in disturbed areas as quickly as possible.*

Discussion of the October 2014 Project:

Illingworth & Rodkin evaluated the changes included in the October 2014 Project and related impacts, attached as Appendix A.1.

Construction-Phase Impacts

The evaluation noted that construction emissions (both fugitive dust and combustion emissions) were not quantified for the 2009 Project, as the analysis used the impact assessment methodology recommended by BAAQMD at that time and relied on best management practices to avoid and minimize construction phase air quality impacts. Since the 2009 Project analysis was conducted, in 2010 BAAQMD put forth updated CEQA Air Quality Guidelines which recommend the quantification of a project's construction emissions and the use of average

daily emission thresholds developed by BAAQMD. Although the Guidelines are currently in litigation, the City uses the quantitative thresholds provided in the updated Guidelines. The California Emissions Estimator Model, Version 2013.2 (CalEEMod) was used to estimate construction emissions from the October 2014 Project, as compared to the Office development analyzed in Addendum No. 2. Construction emissions were estimated assuming the default construction assumptions that CalEEMod includes. Inputs to the model included the type and size of the projects.

Table 1 in the Illingworth and Rodkin report (Appendix A.1) shows that the average daily emissions of the October 2014 Project are slightly higher than the 2009 Project, but would not result in a significant impact. Illingworth and Rodkin concluded that the change in the daily construction emissions caused by the proposed Santa Clara Square project compared to both the June 2014 and 2009 Projects would be below the thresholds currently used by the City to evaluate the significance of impacts to regional air quality from the construction emissions generated by projects.

With respect to impacts associated with toxic air contaminant ("TAC") emissions emitted during project construction, there are no sensitive receptors proximate (within 1,000 feet) of the Project site that could be exposed to the TAC emissions generated during the construction of the October 2014 Project.

Operational Impacts

The occupancy and operation of the October 2014 Project will generate the same types of air quality impacts as 2009 and the June 2014 Projects because the project involves the same types of land uses as previously analyzed in the EIR and Addendum No. 2. The operational regional emissions caused by the October 2014 Project will be less than the emissions that would result from the 2009 or the June 2014 Project because the October 2014 Project involves a smaller net increase in building space and a lower number of daily vehicle trips than previously analyzed for the 2009 Project and June 2014 Project. However, similar to the previously analyzed and approved projects, despite mitigation, the October 2014 project will result in a significant and unavoidable air quality impact due to operational emissions of criteria pollutants.

In addition to the project's impact on regional air quality, the 2009 EIR estimated carbon monoxide concentrations at congested intersections that would result from the addition of traffic associated with the 2009 Project. The analysis found the concentrations to be below ambient air quality standards, representing a less-than-significant impact. The October 2014 Project would produce less traffic than both the 2009 and June 2014 Projects, and thus, lower carbon monoxide concentrations than either the 2009 or June 2014 Projects.

As noted by Illingworth & Rodkin, operation of the October 2014 Project is not anticipated to expose sensitive receptors to TAC emissions as sensitive receptors are not located within 1,000 feet of the project site. Furthermore, the October 2014 Project will not

include sensitive receptors that could be exposed to nearby air pollution sources (i.e., sources of TACs).

Finding: For reasons stated above, the potential air quality impacts of the October 2014 Project are the same as or less than those analyzed in the EIR. As with the 2009 Project, the October 2014 Project's potential operational impacts related to air quality would remain significant and unavoidable, even with the implementation of the mitigation measures described above. Therefore, no new or substantially increased significant impacts will result from the October 2014 Project beyond those discussed in the EIR. No new mitigation is required.

D. BIOLOGICAL RESOURCES

Biological Resources	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☐	☑
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	☐	☐	☐	☑
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through {direct removal, filling, hydrological interruption, or other means?	☐	☐	☐	☑
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☐	☐	☑
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☐	☑
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☐	☐	☑

Sources: EIR, as amended by Addendum No. 1 and Addendum No. 2; October 2014 Project Application; WRA, Inc., September 9, 2014 Santa Clara Square Biological Assessment: Subject Property 1; WRA, Inc., September 9, 2014 Santa Clara Square Biological Assessment: Subject Property 2. The WRA Technical Reports are attached as Appendix B.1 and B.2. HortScience, Inc., September 2014 Tree Survey Report Office Parking Garage; HortScience, Inc., September

2014 Tree Survey Report PSAI Parcel. The HortScience Reports are attached as Appendix B.3 and B.4.

EIR Mitigation Measures: Less than significant with mitigation.

The EIR analyzed vegetation and wildlife impacts in Section 4.5.3. It observed that the 2009 Project site is completely developed and mostly paved, but that there are numerous large trees onsite that may provide perching or nesting habitat for raptors such as falcons, hawks, eagles, and owls. The EIR found that construction activities could result in the abandonment of active raptor nests, which would be a significant impact. Furthermore, the 2009 Project proposed to remove all of the 420 mature trees located on the 2009 Project site, which could potentially decrease the number and variety of bird species in the project vicinity.

The EIR includes mitigation measures to reduce these impacts to a less than significant level. These mitigation measures would be applicable to the October 2014 Project, as modified in the First Addendum to better reflect current practices for the protection of nesting birds based on the recommendations of a qualified biologist, WRA, Inc., which would result in the same protection of nesting birds and assist with clarity of implementation[3].

EIR Mitigation Measures, as amended in the First Addendum:

The following project specific mitigation measures will be implemented during construction to avoid abandonment of raptor nests:

1. *A pre-construction nesting bird survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 15 through April 30), and no more than 30 days prior to the initiation of these activities if construction will begin during the late part of the breeding season (May 1 through August 31). During this survey, the ornithologist will inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If construction begins at some time other than February 15 to August 31, then no pre-construction nesting surveys should be needed.*

2. *If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in conformance with existing CDFW-approved practices, will determine the extent of a construction–free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests will not be disturbed during project construction. If the buffer is proposed to be substantially less than 250 feet, the ornithologist shall consult with CDFW personnel.*

Discussion of the October 2014 Project: The October 2014 Project will generate the similar biological impacts as both the June 2014 and the 2009 Project. The enlarged Office Phase III property is located adjacent to San Tomas Aquino Creek. However, due to the existence of a

[3] Telephone conversation with Michael Josselyn, Principal, WRA, Inc. dated February 18, 2014.

raised levee, existing paved pedestrian path, and the concrete-lined and channelized nature of the San Tomas Aquino Creek in this location, there would be minimal, if any, impacts to riparian habitat as a result of the October 2014 Project.

The City's General Plan acknowledges that the City and its waterways are highly urbanized. (Environmental Quality, Section 5.10.1) It lists the San Tomas Aquino Creek as one of the existing major waterways and that it has been "modified for flood control purposes." The Plan goes on to note that as a result of the flood control channelization, "there is limited riparian vegetation along these creeks, providing the City with an opportunity to restore habitat in those areas."

- Conservation Goal 5.10.1 G-2: "Conservation and restoration of riparian vegetation and habitat."
- Conservation Policy 5.10.1-P2: "Work with [Santa Clara Valley Water District] and require that new development follow the 'Guidelines and Standards for Lands Near Streams' to protect streams and riparian habitats."
- Conservation Policy 5.10.1-P4: "Encourage enhancement of land adjacent to creeks in order to foster the reinstatement of natural riparian corridors, where possible."

WRA, Inc. prepared a Biological Resources Assessment of (2505 Augustine and 3333 - 3393 Octavius in September 2014. No sensitive vegetation or aquatic communities are present, and there is no potential for special status plant and wildlife species to occur on the sites, because the sites do not contain any of the habitat conditions necessary to support such species. Future development of the revised Office Phase III will not alter the berm that separates the October 2014 Project site from the San Tomas Aquino Creek, and best management practices will be employed to prevent the spill of any pollutants into the San Tomas Aquino Creek. The future development will not impact riparian habitat and is consistent with the General Plan policies related to conservation of riparian habitat.

Hort Sciences prepared tree survey reports for 2505 Augustine and 3333-3393 Octavius in September 2014. Forty trees were evaluated on 2505 Augustine, and 35 trees were evaluated on 3333-3393 Octavius. All of the trees that were assessed were common to Santa Clara and none could be considered either rare or unusual. Trees that are removed as part of the development of the revised Office Phases II and III will be replaced at a minimum replacement ratio of 2 new trees for every tree removed, as per the City of Santa Clara policy. Tree removal permits will be obtained as necessary, and any trees that remain during construction will be visibly demarcated to ensure impact avoidance.

Finding: The potential impacts of the October 2014 Project on biological resources are the same as those analyzed in the EIR. For reasons stated above, the October 2014 Project's potential impacts related to biological resources are less than significant with the implementation of the mitigation discussed above. Therefore, no new or substantially increased significant impacts will result from the October 2014 Project beyond those discussed in the EIR. No new mitigation is required.

E. CULTURAL RESOURCES

Cultural Resources	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	☐	☐	☐	☑
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?	☐	☐	☐	☑
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	☐	☐	☐	☑
d) Disturb any human remains, including those interred outside of formal cemeteries?	☐	☐	☐	☑

Sources: EIR, as amended by Addendum No. 1 and Addendum No. 2; October 2014 Project Application; Basin Research Associates, August 25, 2014 Subject Property 1 (APN 216-045-038; Augustine Drive) - Archaeological Literature and Archival Search for Office Phase II Property Line Adjustment, City of Santa Clara, Santa Clara County; Basin Research Associates, August 25, 2014 Subject Property 2 (APN 216-045-025; Octavius Drive) - Archaeological Literature and Archival Search for Office Phase III Property Line Adjustment, City of Santa Clara, Santa Clara County. The Basin Research Associates reports are attached as Appendix C.1 and C.2.

EIR Conclusion: Less than significant with mitigation.

The EIR analyzes impacts to cultural resources in Section 4.7.2.2. The EIR concluded that the 2009 Project site does not contain any historical resources. With regard to archeological resources, the EIR concluded that even though the 2009 Project site has failed to generate reports of archeological findings over the last 35 years, the 2009 Project site has a moderate to high potential for containing prehistoric archeological resources. Due to the 2009 Project site's proximity to Saratoga Creek and Calabazas Creek, the EIR concluded that the 2009 Project could result in the discovery of Native American artifacts, a potentially significant impact.

The EIR includes the following mitigation measures reduce the impacts to cultural resources to a less than significant level. These mitigation measures will be applicable to the October 2014 Project.

EIR Mitigation Measures:

The following project-specific mitigation measures will be implemented during construction to avoid significant impacts to unknown cultural resources:

1. *A qualified archaeologist will be on site to monitor the initial excavation of native soil once all pavement and engineered soil is removed from the project site. After monitoring the initial excavation, the archaeologist will make recommendations for further monitoring if it is determined that the site has cultural resources. If the archaeologist determines that no resources are likely to be found on site, no additional monitoring will be required.*

2. *In the event that prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-meter radius of the find will be stopped, the Director of Planning and Inspection will be notified, and the archaeologist will examine the find and make appropriate recommendations. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery during monitoring would be submitted to the Director of Planning and Inspection.*

3. *In the event that human remains are discovered during excavation and/or grading of the site, all activity within a 50-foot radius of the find will be stopped. The Santa Clara County Coroner will be notified and shall make a determination as to whether the remains are of Native American origin or whether an investigation into the cause of death is required. If the remains are determined to be Native American, the Coroner will notify the Native American Heritage Commission (NAHC) immediately. Once NAHC identifies the most likely descendants, the descendants will make recommendations regarding proper burial, which will be implemented in accordance with Section 15064.5(e) of the CEQA Guidelines.*

Discussion of the October 2014 Project: The October 2014 Project will generate the same types of impacts to cultural resources as both the June 2014 and 2009 Projects. Basin Research Associates performed an Archeological Literature and Archival Search for 2505 Augustine and 3333-3393 Octavius in August 2014. They concluded that the like the 2009 Site, the new properties are located in area of low to moderate potential for both prehistoric and historic archeological resources. Basin Resources further concluded that previous subsurface disturbances associated with infrastructure improvements and development over the past 50 years have likely reduced the potential for significant subsurface cultural resources to exist on these parcels. The October 2014 Project will have the same potential to impact unknown cultural resources as both the June 2014 and 2009 Projects and will include the mitigation measures recommended in the EIR.

Finding: The potential impacts of the October 2014 Project on cultural resources are the same as those analyzed in the EIR. For reasons stated above, the October 2014 Project's potential impacts related to cultural resources are less than significant with the implementation of the

mitigation discussed above. Therefore, no new or substantially increased significant impacts will result from the October 2014 Project beyond those discussed in the EIR. No new mitigation is required.

F. GEOLOGY AND SOILS

Geology and Soils	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	☐	☐	☐	☑
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☐	☐	☐	☑
ii) Strong seismic ground shaking?	☐	☐	☐	☑
iii) Seismic-related ground failure, including liquefaction?	☐	☐	☐	☑
iv) Landslides?	☐	☐	☐	☑
b) Result in substantial soil erosion or the loss of topsoil?	☐	☐	☐	☑
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on-or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☐	☐	☑
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	☐	☐	☐	☑
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	☐	☐	☐	☑

Sources: EIR, as amended by Addendum No. 1 and Addendum No. 2; October 2014 Project Application; Cornerstone Earth Group Report, August 22, 2014 Geotechnical Feasibility Study Santa Clara Square Feasibility - Augustine Drive and Montgomery Drive Santa Clara California; Langan Treadwell Rollo, August 29, 2014 Preliminary Geotechnical Feasibility Study Santa Clara Square – Parking Garage G3 Santa Clara, California. The Cornerstone Earth Group and Langan Treadwell Rollo Reports are attached as Appendix D.1 and D.2.

EIR Conclusion: Less than significant.

The EIR analyzes impacts related to Geology and Soils in Section 4.3. It states that the 2009 Project site contains moderate to highly expansive soils and is located in a seismically active region. Due to the geologic conditions in the area, the 2009 Project must be designed and built in conformance with Uniform Building Code (UBC) and Seismic Zone 4 requirements. The EIR concluded that as the project would comply with the UBC and the seismic requirements, the potential impacts would be less than significant. It also determined that there are no known or designated mineral resources on the 2009 Project site.

EIR Mitigation Measures: No mitigation required.

Discussion of October 2014 Project: The October 2014 Project will generate the same types of geology and soils impacts as both the June 2014 and 2009 Projects.

Cornerstone Earth Group performed a geotechnical feasibility study for the newly acquired 2505 Augustine Drive and noted that the property is underlain by moderate to highly expansive soils and is located in a seismically active region. Langan Treadwell Rollo ("Langan") performed a geotechnical feasibility study of 3333-3393 Octavius, including a subsurface investigation that consisted of drilling two new test borings. Langan similarly noted that the property is underlain by moderate to highly expansive soils and is located in a seismically active region. Based on site specific testing on the garage property, Langan also noted that that while there may be potentially liqufiable sands at the garage property, because the site is relatively flat and the potentially liquifiable soils are not continuous, widespread shear zones should not develop for significant lateral displacement to occur during liquefaction. As noted in the EIR, there have not been any reported incidents of lateral spreading in the area.

Like the 2009 Project, the Office Phase II and Office Phase III development will be designed and constructed in accordance with a design-level geotechnical investigation prepared for the site. The design-level geotechnical investigation will include a detailed liquefaction study for the enlarged Office Phase III property and along the length of San Tomas Aquino Creek, and will be reviewed and approved by the City prior to issuance of a building permit for the Office development. All structures will be designed and built in conformance with the requirements of the Uniform Building Code for Seismic Zone 4.

The City's General Plan requires new development to comply with the Santa Clara Valley Water District's (SCVWD) "*Guidelines and Standards for Lands Near Streams*." This manual requires the City to review any development within 50 feet of the top of bank and ensure that any development within that Streamside Review Area complies with the guidelines. The manual clearly differentiates "natural" creeks from channelized/levee'd creeks, and does not establish a specific setback. For projects adjacent to a levee'd stream, the guidelines "recommend" an 18-25 foot building setback from the toe of slope of the levee. No development is proposed within 25 feet of the toe of the slope of the levee, therefore the October 2014 Project is consistent with the SCVWD guidelines.

Like the June 2014 and 2009 Projects, the October 2014 Project will be designed and built in conformance with Uniform Building Code and Seismic Zone 4 requirements.

Finding: The potential impacts of the October 2014 Project related to geology and soils are the same than those analyzed in the EIR. For reasons stated above, the October 2014 Project's potential impacts related to geology and soils are less than significant. Therefore, no new or substantially increased significant impacts will result from the October 2014 Project beyond those discussed in the EIR. No new mitigation is required.

G. GREENHOUSE GAS EMISSIONS

Greenhouse Gas Emissions	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
Would the project:				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	☐	☐	☐	☑
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	☐	☐	☐	☑

Sources: EIR, as amended by Addendum No. 1 and Addendum No.2; October 2014 Project Application; Illingworth & Rodkin, Inc. September 16, 2014, Evaluation of 2014 Changes to Augustine Bowers Office Park Air Quality Impacts – Santa Clara, CA attached as Appendix A.1. Illingworth & Rodkin, Inc. Memorandum regarding Effect of New Title 24 Standards, June 10, 2013, attached as Appendix A.2..

EIR Conclusion: Significant and unavoidable cumulative impact.

The EIR analyzed climate change impacts in Section 6.1.5. The EIR estimated greenhouse gas emissions from vehicles, electricity use, and other sources. The EIR concluded that the 2009 Project would result in a net increase in carbon dioxide emissions, primarily attributed to automobile emissions.

The EIR evaluated the significance of emissions of greenhouse gases, measures to reduce greenhouse gas emissions, and the consistency of the 2009 Project with strategies for reducing future greenhouse gas emissions identified by the California Climate Action Team in 2006. For vehicle emissions, the EIR concluded that the net new carbon dioxide vehicle emissions would be approximately 10,148 metric tons per year. From electricity use, the EIR estimated that the additional development on the 2009 Site would result in an increase in emissions of approximately 10,148 metric tons of carbon dioxide a year, 0.0846 metric tons of methane a year, and 0.0467 metric tons of nitrogen oxide a year. The EIR thus concluded that

the impact of the 2009 Project due to greenhouse gas emissions would be significant and unavoidable.

The EIR also analyzed energy impacts in Section 4.12.3. It determined that the 2009 Project would consume about 35.5 million kilowatt hours of electricity and 57.1 million cubic feet of natural gas. This usage is a net increase of about 27.5 million kilowatt hours of electricity per year and 44.2 million cubic feet of natural gas per year over full occupancy of the existing development on the 2009 Site. The EIR found that this increase in demand upon energy resources would be less than significant with the implementation of the mitigation below. The EIR also determined that the 2009 Project would increase jobs in an existing job center in Santa Clara close to transit and within close proximity to existing and future housing. As a result, the 2009 Project would not result in longer overall distances between jobs and housing.

The EIR includes the following mitigation measure to reduce greenhouse gas emissions, although the impact remains significant and unavoidable. The mitigation measure related to greenhouse gas emissions will continue to be applicable to the October 2014 Project. As confirmed by Illingworth & Rodkin the analysis of greenhouse gas emissions did not assume any greenhouse gas reduction measures that were proposed as part of the Project (i.e., project design features). The EIR also included mitigation to reduce impacts to energy use to less than significant. These mitigation measures will continue to be applicable to the October 2014 Project which will still result in a less than significant impact relative to energy use.

EIR Mitigation Measures, as amended in the First Addendum:

Mitigation for Greenhouse Gas Impacts:

The proposed project will be built to minimum LEED certification requirements.

Mitigation for Energy Impacts:

1. *The project shall be certified in accordance with the Leadership in Energy and Environmental Design (LEED) requirements, a nationally acceptable benchmark for the design, construction, and operation of high performance green buildings, or equivalent standards acceptable to the City. The level of LEED certification will be at the discretion of the project applicant.*

2. *The project shall meet the currently applicable Title 24 energy to the satisfaction of the Director of Electric Utility.*

3. *The project shall include reflective, EnergyStar™ cool roofs. Cool roofs decrease roofing maintenance and replacement costs, improve building comfort, reduce impact on surrounding air temperatures, reduce peak electricity demand, and reduce waste stream of roofing debris.*

4. *The project shall include the following energy reducing measure, or similar, alternate energy reducing measures acceptable to the City:*

    - *The project shall utilize local and regional building materials in order to reduce energy consumption associated with transporting materials over long distances.*
    - *The project shall crush the demolished buildings on-site and use the material as base fill for the parking lots and driveways.*
    - *The project shall utilize building products that contain post-consumer recycled materials.*
    - *The project shall include photovoltaic (i.e., solar electric) systems on rooftops where feasible to the satisfaction of the Director of Electric Utility.*

Discussion of October 2014 Project:

As evaluated in Appendix A.1 the 2014 Project will generate the same types of greenhouse gas impacts as both the June 2014 and 2009 Projects. The magnitude of impacts from the October 2014 Project, however, will be less because of the decreased traffic generated by the October 2014 Project and the decrease in office use.

The October 2014 Project also includes the following project design features that were included in the 2009 Project to reduce greenhouse gas emissions, or similar, alternate measures acceptable to the City:

- *Inclusion of bicycle storage and changing rooms on site to reduce automobile trips*
- *Design the project to provide a high ratio of open space.*
- *Design the project to reduce the "heat island effect"*
- *Design exterior lighting to minimize light trespass*
- *Inclusion of low-flow water fixtures to reduce potable water use*
- *Recycle and or salvage non-hazardous construction debris to the extent feasible*
- *Use recycled content building materials to the extent feasible*
- *Use local (i.e., within 500 miles) building materials to the extent feasible*
- *Use low-emitting adhesives, sealants, paints, and flooring*

With regard to energy impacts, the October 2014 Project will use the same amount of energy as the June 2014 Project, and less energy than the 2009 Project. As confirmed by Illingworth & Rodkin in 2013, (Appendix A.2), the 2009 Project was designed based on the then-applicable 2005 Title 24 standards. The current 2013 Title 24 standards are approximately 25% more stringent than 2005 Title 24, resulting in a further net decrease in energy impacts beyond what was projected in the EIR.

Compliance with the currently applicable standards will make the October 2014 Project more energy efficient than the 2009 Project. The October 2014 Project will implement the mitigation measures specified above and will result in a less than significant impact with respect to energy use. Additionally, the distance between jobs and housing within Santa Clara will not change as the October 2014 Project is the same use as the 2009 Project.

Finding: The October 2014 Project's potential impacts related to greenhouse gas emissions and energy impacts are less than those analyzed in the EIR. Therefore, no new or substantially increased significant impacts will result from the October 2014 Project beyond those discussed in the EIR. No new mitigation is required.

H. HAZARDS AND HAZARDOUS MATERIALS

Hazards and Hazardous Materials	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☐	☑
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☐	☑
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☐	☐	☑
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	☑
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☑

Hazards and Hazardous Materials	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☑
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☑
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	☐	☐	☐	☑

Sources: EIR, as amended by Addendum No. 1 and Addendum No. 2; October 2014 Project Application; Erler & Kalinowski ("EKI"), July 2014, Phase I Environmental Site Assessment, 2505 Augustine Drive, Santa Clara, California; August 2014, Phase I Environmental Site Assessment and Results of Phase II Investigation, 3333 and 3393 Octavius Drive, Santa Clara, California. The substantive text of both EKI Phase I Reports is attached as Appendix E.1, E.2; the full EKI reports are available for review at the City Planning Department upon request.

EIR Conclusion: Less than significant with mitigation.

The EIR analyzed impacts related to Hazards and Hazardous Materials in Section 4.6. The 2009 Project site was previously used for agricultural purposes until 1974. Agricultural land commonly has residual arsenic, lead, and DDT. The EIR stated that the arsenic and lead concentrations exceed San Francisco Bay Water Quality Control Board's established residential environmental screening levels ("ESL"). It determined that because about 70% of the 2009 Project site will be hardscaped and the remainder will be landscaped and because the contamination did not exceed industrial ESLs, there would be no risk to future employees that would be present in the new buildings constructed on the project site and the impact would be less than significant. The EIR however concluded that there could be a significant impact to construction workers implementing the 2009 Project from exposure to residual agricultural contaminants.

The EIR also found that selenium levels exceed industrial ESLs and that there could be soil contamination from a localized hydraulic jack oil spill. Groundwater monitoring revealed no contamination that exceeded the maximum contaminant levels established for drinking water. Thus, implementation of the 2009 Project could expose construction workers to soil contamination.

Additionally, both friable and non-friable asbestos containing materials are known to be present in all of the buildings on the 2009 Project site, which could result in significant impacts to construction workers. The existing buildings also potentially contain lead-based paint, but

because the removal of lead-based paint coated building materials will be conducted in compliance with state law, the impact will be less than significant.

With regard to risk from offsite hazards, the EIR located four National Priorities List ("NPL") uncontrolled or abandoned hazardous waste sites within one mile of the 2009 Project site. While two of the NPL sites are cross-gradient and were not expected to affect the 2009 Project site, two are up-gradient and are known to have groundwater contaminated with chlorinated hydrocarbons. The EIR concluded that there was a probability for contaminated groundwater to migrate onto the 2009 Project site, but since the groundwater depth is a minimum of seven feet, it is unlikely to affect persons onsite following the completion of the project. There is, however, risk for construction workers to be exposed to contaminated groundwater, and the impact is potentially significant.

The 2009 Project site is also located near the Norman Y. Mineta San Jose International Airport and within the flight zone. The EIR analyzed the impacts related to the airport in Section 4.1.2.2. The Federal Aviation Administration issued a feasibility report for the four office towers in the 2009 Project. The FAA has not made its official determination of findings, but the 2009 Project, which included buildings up to 14 stories, must comply with the FAA's height restrictions. This was identified as a potentially significant impact.

The EIR includes mitigation measures for the potentially significant impacts, which would mitigate the hazards impacts to a less than significant level. These mitigation measures would be applicable to the October 2014 Project:

EIR Mitigation Measures, as clarified in Addendum No.1:

1. *Prior to the issuance of grading permits, shallow soil samples shall be taken to determine the location of contaminated soils with concentrations above established construction/trench worker thresholds. Any contaminated soils found in concentrations above established thresholds shall be managed according to applicable regulatory requirements, including the Site Management Plan discussed below.* Any *contaminated soil removed from the site shall be managed, transported, and disposed of at an appropriately permitted disposal site.*

2. *A Site Management Plan (SMP) will be prepared to establish management practices for handling impacted groundwater and/or soil material that may be encountered during site development and soil-disturbing activities. Components of the SMP will include: a detailed discussion of the site background; preparation of a health and safety plan by an industrial hygienist; notification procedures if previously undiscovered significantly impacted soil (i.e., stained or odorous soil) or free fuel product is encountered during construction; on-site soil reuse and management guidelines; sampling and laboratory analyses of excess soil requiring disposal at an appropriate off-site waste disposal facility; soil stockpiling protocols; and protocols to manage ground water that may be encountered during trenching and/or subsurface excavation activities. Prior to issuance of grading permits, the project proponent will forward a copy of the SMP to, and confer*

with, the San Francisco Regional Water Quality Control Board and forward a copy of the SMP to the City Director of Planning and Inspection for review and approval.

3. *All potentially friable ACMs shall be removed in accordance with NESGAP guidelines prior to building demolition. All demolition activities will be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from exposure to asbestos.*

4. *A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in accordance with the standards stated above.*

5. *Materials containing more than one percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements.*

6. *The demolition and removal of all building materials coated with lead-based paint will be completed in accordance with the CAL/OSHA Lead in Construction Standard requirements as found in Title 17 of the California Code of Regulations (CCR 1532.1).*

7. *The building height of the four towers will conform to the findings of the FAA. An FAA Determination of No Hazard will be required for each of the four proposed towers prior to issuance of building permits.*

Discussion of the October 2014 Project:

Erler & Kalinowski, Inc. ("EKI") prepared Phase I Environmental Site Assessment ("ESA") reports for 2505 Augustine Drive and 3333 - 3393 Octavius.. The purpose of the ESAs was to determine if either of the new properties that would be included in the Office Phase II and Office Phase III development had any Recognized Environmental Conditions that were not identified for the 2009 Project. A recognized environmental condition is defined as "the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: (1) due to any release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment. De minimis conditions are not recognized environmental conditions." ASTM E1527-13.

Consistent with the EIR, the Phase I ESAs prepared for both new properties identified only one on-site Recognized Environmental Condition based on the site's past agricultural use. Any impacts related to the presence of agricultural constituents will be mitigated through the preparation of, and compliance with, an SMP consistent with the EIR mitigation measures, as amended by Addendum No. 1. For the reasons stated above, no new information related to on-site hazards has been identified and no additional mitigation measures are necessary.

Based on regional groundwater flow direction and the monitoring data and trends from upgradient wells, EKI concluded in its ESAs for the June 2014 Project that VOCs in groundwater from the Synertek site, and other nearby sites including the Integrated Device Technology site identified in the Office Phase III ESA, do not appear to be migrating onto the Office Phase II and Phase III properties. In the ESAs prepared for the 2505 Augustine and 3333-3393 Octavius, EKI similarly concluded that VOC impacted groundwater does not appear to be migrating onto either new property. EKI concluded that groundwater issues are not anticipated at reconfigured Office Phase II and Office Phase III properties.

EKI has performed extensive subsurface evaluations on the Retail and Office Phase I sites and is very familiar with the soil and groundwater conditions in the 2014 Project area. EKI performed shallow groundwater and soil vapor sampling on both the Office Phase III property and on 3333 -3393 Octavius Drive in June 2013 to evaluate potential vapor intrusion issues,. No VOCs were detected above reporting limits in soil gas samples; and no VOCs were detected in groundwater above reporting limits. Based on these results, and the results of previous upgradient groundwater sampling performed by others, no significant impacts related to contaminated groundwater appear to be present on 3333-3393 Octavius, and none would be expected on 2505 Augustine. Prior to the issuance of grading permits, shallow soil samples shall be taken to determine the location of contaminated soils with concentrations above established thresholds. For the reasons stated above, no new information has been identified and no additional mitigation measures are necessary.

Finding: The potential impacts of the October 2014 Project related to hazards are the same as those analyzed in the EIR. For reasons stated above, the October 2014 Project's potential impacts related to hazards are less than significant with the implementation of the mitigation measures described above. Therefore, no new or substantially increased significant impacts will result from the October 2014 Project beyond those discussed in the EIR. No new mitigation is required.

I. HYDROLOGY AND WATER QUALITY

Hydrology and Water Quality	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
Would the project:				
a) Violate any water quality standards or waste discharge requirements?	☐	☐	☐	☑
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	☐	☑
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	☐	☐	☐	☑
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	☐	☐	☐	☑
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	☐	☐	☐	☑
f) Otherwise substantially degrade water quality?	☐	☐	☐	☑
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	☐	☑
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	☐	☐	☐	☑
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☐	☐	☑
j) Inundation by seiche, tsunami, or mudflow?	☐	☐	☐	☑

Sources: EIR, as amended by Addendum No. 1 and Addendum No. 2; October 2014 Project Application; HMH, September 4, 2014 Santa Clara Square Retail and Phase II/III Stormwater Analysis for the EIR Addendum, attached as Appendix F.

EIR Conclusion: Less than significant with mitigation.

The EIR analyzed hydrology impacts in Section 4.4. It found that impacts related to flooding and storm drainage would be less than significant with compliance with the City's

ordinances. It also found that the existing storm drainage system will be sufficient to support the 2009 Project.

With regard to operational impacts to water quality, the EIR found that the proposed treatment systems, combined with best management practices proposed in the Stormwater Control Plan, and a net reduction in stormwater runoff, would result in less than significant impacts on water quality. Construction activities, which generate dust, sediment, litter, oil, paint, and other pollutants, would temporarily contaminate runoff from the 2009 Project site, resulting in a potentially significant impact.

With regard to groundwater impacts, the EIR found that although the existing development on the 2009 Project site is less dense than the 2009 Project, the 2009 Project included more open space and thus more permeable surfaces compared to the existing development. Therefore, the EIR concluded that 2009 Project would result in an increase in permeable surface area on the 2009 Project site and would help maintain the groundwater supply, resulting in a less than significant impact.

The EIR includes the following mitigation measures to reduce the impacts to hydrology and water quality to a less than significant level. These mitigation measures would be applicable to the October 2014 Project, as modified to reflect current stormwater control plan requirements.

EIR Mitigation Measures:

The following project-specific measures, based on Regional Water Quality Control Board Best Management Practices, have been included in the project to reduce construction-related water quality impacts. All mitigation will be implemented prior to the start of earthmoving activities on-site and will continue until the construction is complete.

1. *Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.*

2. *Earthmoving or other dust-producing activities shall be suspended during periods of high winds.*

3. *All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.*

4. *Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.*

5. *All trucks hauling soil, sand, and other loose materials shall be covered and all trucks would be required to maintain at least two feet of freeboard.*

6. *All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers). In addition, a tire wash system may be required.*

7. *Vegetation in disturbed areas shall be replanted as quickly as possible.*

8. *All unpaved entrances to the site shall be filled with rock to knock mud from truck tires prior to entering City streets.*

9. *A Storm Water Permit will be administered by the Regional Water Quality Control Board. Prior to construction grading for the proposed land uses, the project proponent will file a "Notice of Intent" (NOI) to comply with the General Permit and prepare a Storm Water Pollution Prevention Plan (SWPPP) which addresses measures that would be included in the project to minimize and control construction and post-construction runoff. Measures will include, but are not limited to, the aforementioned RWQCB mitigation. The project proponent will submit a copy of the draft SWPPP to the City of Santa Clara for review and approval prior to start of construction on the project site. The certified SWPPP will be posted at the project site and will be updated to reflect current site conditions.*

10. *When construction is complete, a Notice of Termination (NOT) for the General Permit for Construction will be filed with the Regional Water Quality Control Board and the City of Santa Clara. The NOT will document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a post- construction storm water management plan is in place as described in the SWPPP for the site.*

Like the June 2014 Project, the October 2014 Project is also required to comply with more stringent stormwater management requirements, which were not applicable at the time the 2009 Project was approved. Specifically, the project proponent must comply with the requirements of the Regional Water Quality Control Board Municipal Regional Permit ("MRP") and the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) and will submit a copy of the City of Santa Clara Stormwater Requirements Applicant Packet (SCVURPPP C.3) Data Forms and associated drawings to the City.

In addition, the following Regional Water Quality Control Board Best Management Practices included in the EIR and updated to current standards, have been included as project design features for the October 2014 Project to reduce post-construction water quality impacts:

- As part of the mitigation for post-construction runoff impacts addressed in the SWPPP, the project will implement regular maintenance activities (i.e., sweeping, maintaining vegetative swales, litter control, and other activities as specified by the City) at the site to prevent soil, grease, and litter from accumulating on the

project site and contaminating surface runoff. Storm water catch basins will be stenciled to discourage illegal dumping.

- The proposed project will use Low Impact Development (LID) techniques for onsite treatment of runoff, as required by the MRP.

- An erosion control plan will be prepared and copies provided to the Planning Division and to the Building Inspection Division for review and approval prior to the issuance of grading permits or building permits that involve substantial disturbance of substantial ground area.

- The proposed project will be required to record an Operation & Management (O&M) agreement with the City to insure continued maintenance and performance of post-construction measures.

Discussion of the October 2014 Project: The October 2014 Project will generate similar types of hydrology and water quality impacts as both June 2014 and the 2009 Projects. HMH performed a hydrologic assessment of the October 2014 Project and concluded that the potential hydrology impacts of the revised Office Phase II and Office Phase III site plans that include 2505 Augustine and 3333-3393 Octavius related to post-construction stormwater runoff would not be significantly different than those identified in the EIR. Similar to the June 2014 and 2009 Projects, there will be net reductions in the amounts of impervious surface area generated by the new plans in comparison with the existing conditions and Stormwater Control Plans will be developed for these sites that will incorporate the same concepts as the June 2014 and 2009 Projects, notably: minimization of impervious surface area through the use of landscaping and pervious paving materials; utilization of source control techniques; and installation of treatment controls to reduce pollutants from entering runoff prior to its discharge to the public storm drain system.

As noted above, the October 2014 Project will comply with the San Francisco Bay Regional Water Quality Control Board's MRP that applies to Santa Clara, including a key provision that requires the use of Low Impact Development (LID) techniques for onsite treatment of runoff. The specific type of LID controls will be bioretention cells, which will be located adjacent to paved areas and roof downspout discharge areas throughout the Site. Because the October 2014 Project reduces the impervious surface area on the Site and will conform with applicable provisions of the MRP, the October 2014 Project will result in less than significant post-construction impacts to hydrology and water quality.

Finding: The potential impacts of the October 2014 Project on hydrology and water quality are the same as those analyzed in the EIR. For reasons stated above, the October 2014 Project's potential impacts related to hydrology and water quality are less than significant with the implementation of the mitigation described above. Therefore, no new or substantially increased significant impacts will result from the October 2014 Project beyond those discussed in the EIR. No new mitigation is required.

J. LAND USE AND PLANNING

Land Use and Planning	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
Would the project:				
a) Physically divide an established community?	☐	☐	☐	☑
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☐	☑
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	☐	☐	☐	☑

Sources: EIR, as amended by Addendum No. 1; October 2014 Project Application.

EIR Conclusion: Less than significant.

The EIR analyzes impacts to Land Use and Planning in Section 4.1.2. It determined that the 2009 Project would have less than significant impacts with regard to planning, since there is already a light industrial park on the 2009 Project site. The EIR also determined that the 2009 Project is compatible with existing uses.

The EIR further noted that development in the immediate vicinity of the 2009 Project, including the parcels that make up the October 2014 Project area, includes commercial and light industrial uses with structures up to 12 stories tall. The 2009 Project site is bounded by US 101 to the north, Bowers Avenue to the west, and San Tomas Aquino Creek to the east. To the north of 101 are several high density office buildings, including offices for McAfee and Sun Microsystems. The EIR concluded that the proposed rezoning to PD-Planned Development and General Plan Amendment from Light Industrial to Office/Research and Development that would allow for the proposed building heights of up to 14 stories and higher intensity office development was compatible with surrounding land uses and therefore was a less than significant impact.

EIR Mitigation Measures: No mitigation required.

Discussion of the October 2014 Project: The October 2014 Project will generate similar land use impacts as both the June 2014 and 2009 Projects, since the October 2014 Project includes development of the same land use (office) on generally the same Site as the June 2014 Project.

2505 Augustine and 3333-3393 Octavius are currently developed with a total of 135,000 square feet of light industrial and office use. 2505 Augustine is bounded by US 101 on the north, and light industrial and office uses to the south and east. 3333-3393 Octavius is bounded on the north and south by light industrial uses, on the west by Octavius Drive, and on the east by the channelized San Tomas Aquino Creek. The uses surrounding October 2014 Project site are therefore same as those of both the June 2014 Project and the 2009 Project sites and like the June 2014 and 2009 Projects, the October 2014 Project is therefore compatible with surrounding land uses.

The October 2014 Project proposes to amend the General Plan designation for 2505 Augustine and 3333-3393 Octavius from Light Industrial to High Density Office/R&D, and to rezone the properties from Light Industrial to Commercial Park to be consistent with the rest of the Office Phase II and Phase III development.

The General Plan was designed as a "Progressive Plan" that breaks down a 25-year planning horizon into three planning phases: short-term (present until 2015); medium-term (2015- 2015); and long-term (2025 - 2035). The short- and medium-term General Plan designation for the Site is Light Industrial, and the long-term General Plan designation is High Density Residential. The long-term General Plan designation also provides for implementation flexibility. Given the long-term air emissions and noise associated with the adjacent US 101, discussed below, enlarging the area used for Office Phase II and III development rather than introducing new sensitive residential receptors which would require buffers and other measures to reduce exposure to air pollution and noise is considered to be a more efficient use of these properties.

As described in more detail in Section L (Noise), noise levels are expected to range from CNEL 60 dB to higher than 75 dB at buildings closest to US 101. This is in the normal to conditionally acceptable range of noise levels for commercial land-use based on Table 5.10-2 of the City of Santa Clara General Plan. However, CNEL levels higher than 72 dB are incompatible with residential use. Therefore office use is more appropriate than residential for the Site.

As described in more detail in Section C (Air Quality), Illingworth & Rodkin concluded that while the October 2014 Site is near sources of air pollutant emissions that include traffic on U.S. 101 traffic, Bowers Avenue, and Scott Boulevard and numerous stationary sources, the proposed office uses within the October 2014 Project will not include any sensitive receptors. A high density residential development would include sensitive receptors and is therefore not appropriate for the Site.

Furthermore, the long-term use designations within this portion of the City include other High Density Residential use designations in the immediate vicinity of the October 2014 Project, providing ample opportunities to achieve the City's long term vision of balancing residential and other uses. The City continues to encourage High Density Residential development in areas adjacent to transportation corridors, transit, and mixed use. While the Site is located close to transportation corridors, transit, and mixed use, their location directly adjacent to US 101 makes them more suitable to office use. The proposed office campus could

serve as a buffer between the noise and particulate matter generated by US 101 and future residential use in areas south of Augustine Drive as designated in the long-term Land Use Diagram. Because the October 2014 Project is consistent with the short-term and medium-term designations of the General Plan, because it provides a coherent office campus that will potentially enhance future mixed (including residential) uses in this area of the City, and because it is not inconsistent with the City's long-term vision for increasing overall residential densities in this area of the City, the October 2014 Project does not conflict with the General Plan.

Similar to the 2009 Project, the proposed development is inconsistent with the current land use designation and zoning due to the height of the proposed buildings and the exclusive office use. All other aspects of the proposed development are consistent with the current land use designation and zoning. The High-Intensity Office/R&D classification is intended for high-rise or campus-like development for corporate headquarters, R&D and supporting uses, with landscaped areas for employee activities. Accessory, or secondary, small-scale supporting retail uses that serve local employees and visitors are also permitted. The revised Office Phases II and III properties are currently proposed to consist of a coherent office campus with 6-8 story office buildings and associated surface and structured parking at a ratio of 3.3/1,000. The proposed Office Phase III development will continue to provide bicycle and pedestrian connectivity to the existing path on the western edge of San Tomas Aquino Creek, and both Office Phases will provide open space for employee activities. There are no sensitive receptors within close proximity to the project site, and the proposed office development would be compatible with the surrounding land uses. The addition of the 2505 Augustine and 3333-3393 Octavius to the Office Phases II and III development will allow for more open space and enables the creation of a true campus environment.

Finding: The potential impacts of the October 2014 Project related to land use and planning are the same as those analyzed in the EIR. For reasons stated above, the October 2014 Project's potential impacts related to land use and planning are less than significant. Therefore, no new or substantially increased significant impacts will result from the October 2014 Project beyond those discussed in the EIR. No new mitigation is required.

K. MINERAL RESOURCES

Mineral Resources	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☑
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☑

Sources: EIR, as amended by Addendum No. 1 and Addendum No. 2; October 2014 Project Application.

EIR Conclusion: Less than significant.

The EIR analyzed mineral resources in Section 4.3. It determined that there are no known or designated mineral resources on the 2009 Project site, and therefore the impacts are less than significant.

EIR Mitigation Measures: No mitigation required.

Discussion of the October 2014 Project: Cornerstone Earth Group performed a geotechnical consultation for the proposed Office Phase II and Office Phase III properties in February 2014 and concluded that the June 2014 Project would have a less than significant impact on mineral resources. 2505 Augustine and 3333-3393 Octavius are located directly adjacent to, and have the same geologic conditions as the original Office Phase II and Office Phase III properties. Therefore development of 2505 Augustine and 3333-3393 Octavius would similarly have less than significant impact on mineral resources.

Finding: The potential impacts of the October 2014 Project on mineral resources are the same as than those analyzed in the EIR. For reasons stated above, the October 2014 Project's potential impacts related to mineral resources are less than significant. Therefore, no new or substantially increased significant impacts will result from the October 2014 Project beyond those discussed in the EIR. No new mitigation is required.

L. NOISE

Noise	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☐	☐	☑
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	☐	☐	☐	☑
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☑
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☑
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☑
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☑

Sources: EIR, as amended by the Addendum No.1 and Addendum No.2; October 2014 Project Application. Charles Salter & Associates, September 22, 2014 Santa Clara Square – Santa Clara, CA Noise Analysis Addendum, attached as Appendix G.

EIR Conclusion: Less than significant.

The EIR analyzes noise impacts in Section 4.10. It determined that while the 2009 Project would increase traffic, the associated generation of noise would be less than significant. The EIR noted there are no noise-sensitive uses along Bowers Avenue or US 101. Additionally, while construction would temporarily increase noise levels, these increases would not be audible at sensitive locations. The closest sensitive use is located about 0.85 miles south of the 2009 Project site, and south of the Central Expressway. Furthermore, compliance with City Code requirements for construction such as time limits and standard noise suppression techniques would ensure that any construction noise impacts would be less than significant.

EIR Mitigation Measures: No mitigation required.

Discussion of October 2014 Project: The October 2014 Project will generate the same type of noise impacts as the June 2014 and 2009 Projects, since the October 2014 Project includes

office development in the same general area as the 2009 Project. Like the June 2014 Project, the October 2014 Project concentrates office use next to US 101 and does not include any sensitive receptors.

Impact Related to Exposure of Project Site Occupants to Ambient Noise Levels

Addendum No. 2 studied the noise impacts related to shifting approved office development to the north side of Augustine Drive and adjacent to US 101. Based on noise contours in Figure 5.10-4 of the City of Santa Clara General Plan, noise levels are expected to range from CNEL 60 dB to higher than 75 dB at buildings closest to US 101. 2505 Augustine and 3333-3393 Octavius are site located in the same area as the project site evaluated in Addendum No. 2 and would be exposed to the same ambient noise levels which are in the normal to conditionally acceptable range of noise levels for commercial land-use based on Table 5.10-2 of the City of Santa Clara General Plan. 3333-3393 Octavius is located further south and would be exposed to somewhat lower freeway noise levels.

The October 2014 Project reorganizes the proposed office buildings and parking facilities on the Site. While the reorganization of the buildings on the Site places the proposed office buildings slightly closer to US 101 than the buildings previously approved per Addendum No. 2, and therefore the exposure to freeway noise would be slightly greater, as with the June 2014 Project, the October 2014 Project will comply with all applicable City, County, and State requirements by implementing appropriate noise reduction measures. For example, sound-rated windows, exterior doors, and walls will be provided to reduce interior noise levels. Outdoor-use spaces will be located in areas with lower noise levels and exterior noise barriers constructed as necessary. By reducing interior and exterior noise levels to normally acceptable levels there would be no change in the impacts identified in the EIR.

Operational Traffic Noise Impact on City Roadways

Section 4.10.1.2 of the EIR identifies the following significance criteria for project generated noise increase:

- Increase of 3 dB or more where exterior noise levels would exceed the normally acceptable noise level standard
- Increase of 5 dB or more where exterior noise levels would remain below the normally acceptable noise level standard

The City of Santa Clara General Plan (Table 5.10-2) identifies the normally acceptable noise level threshold for commercial use as a CNEL of 65 dB. Addendum No. 2 concluded that based on peak hour traffic volumes, speed, and percentage of trucks for roadway segments expected to have the highest increase in noise based on traffic volume, future noise levels generated by vehicle traffic associated with the June 2014 Project would will remain below a CNEL of 65 dB. Furthermore, increased traffic volumes from the June 2014 Project at key intersections would not increase noise levels more than 5 dB above background, and future

noise levels were predicted to remain below the normally acceptable noise threshold. As discussed in Section P (Traffic), the October 2014 Project will generate fewer trips than either the June 2014 or 2009 Projects and will therefore have less noise impacts. Thus, like the 2009 Project, the October 2014 Project will have less than significant impacts with respect to operational traffic noise.

Construction Noise Impact

As with the previously approved 2009 and June 2014 Projects, construction activities associated with the implementation of the October 2014 Project would temporarily increase noise levels in the immediate vicinity of the Site. The nearest noise-sensitive receptor is located approximately 0.85 miles south of the project site. The October 2014 Project does not include construction activities that would be further south than the construction activities in the 2009 Project. Therefore, the October 2014 Project site is the same distance from noise-sensitive receptors that were identified in the EIR and analyzed for construction noise impacts. Thus, like the 2009 Project, the October 2014 Project will have less than significant impacts with respect to construction noise.

Finding: The potential noise impacts of the October 2014 Project are the same as those analyzed in the EIR. For reasons stated above, the October 2014 Project's potential impacts related to noise are less than significant. Therefore, no new or substantially increased significant impacts will result from the October 2014 Project beyond those discussed in the EIR. No new mitigation is required.

M. POPULATION AND HOUSING

Population and Housing	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☐	☐	☐	☑
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☑
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☑

Sources: EIR, as amended by Addendum No. 1 and Addendum No. 2; October 2014 Project Application.

EIR Conclusion: Significant and unavoidable impacts.

The EIR analyzes population and housing in Section 4.1.2.7. The EIR determined that the City has a strong employment base with approximately 2.22 jobs per employed resident. Since the 2009 Project would construct about 1.5 million square feet of net new office space and 30,000 square feet of net new retail/commercial space, it would also create additional job opportunities within the City and increase the jobs/housing imbalance. Since the 2009 Project would induce substantial population growth at other locations, the EIR determined the impact is significant and unavoidable.

EIR Mitigation Measures: No mitigation was feasible.

Discussion of the October 2014 Project: As an office project, the October 2014 Project will generate the same type of population and housing impacts as both the June 2014 and 2009 Projects. The October 2014 Project will result in the same contribution to the jobs/housing imbalance as the June 2014 Project as it is for the exact same amount of office development. Since the October 2014 Project proposes less net new office development than either the June 2014 or 2009 Projects, the October 2014 Project will result in a smaller contribution to the jobs/housing imbalance than the 2009 Project. Like the 2009 Project, the October 2014 Project does not create any housing. Thus, the October 2014 Project will induce less population growth than analyzed in the 2009 Project.

Finding: The potential impacts of the October 2014 Project on population and housing are similar to or less than those analyzed in the EIR. For reasons stated above, the October 2014 Project's potential impacts related to population and housing are significant and unavoidable and no mitigation is feasible. No new or substantially increased significant impacts will result from the October 2014 Project beyond those discussed in the EIR. No new mitigation is required.

N. PUBIC SERVICES

Public Services	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:	☐	☐	☐	☑

Public Services	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
Fire protection?	☐	☐	☐	☑
Police protection?	☐	☐	☐	☑
Schools?	☐	☐	☐	☑
Parks?	☐	☐	☐	☑
Other public facilities?	☐	☐	☐	☑

Sources: EIR, as amended by Addendum No. 1 and Addendum No. 2; October 2014 Project Application.

EIR Conclusion: Less than significant.

The EIR analyzes project impacts on public facilities and services in Section 5.0. With regard to fire services, it notes that the existing development on the 2009 Project site creates minimal demand for fire services because only half of the 2009 Project site is currently occupied. The 2009 Project would increase the net total square footage of office building space on the site, resulting in an increase in demand for fire protection. The 2009 Project would not, however, require the development of new fire service facilities, and therefore the EIR concluded the 2009 Project would have a less than significant impact related to fire protection.

The 2009 Project would increase the total population of the City during standard business hours, but would not permanently increase the population because residential use is not part of the project. Therefore, the 2009 Project would not result in the need for new police facilities, schools, or libraries. Please see the discussion below in Section O, Recreation, for a discussion of parks. The EIR concluded that the 2009 Project's impacts on public services would be less than significant.

EIR Mitigation Measures: No mitigation required.

Discussion of the October 2014 Project: The October 2014 Project will generate the same type of public services impacts as both the June 2014 and 2009 Projects, since the October 2014 Project includes the same amount of office development as the June 2014 Project and is on, and adjacent to, the June 2014 and 2009 Project sites. Since the project design does not include residential uses, the October 2014 Project's impacts to public services will also be

minimal. Finally, the October 2014 Project will be built to all applicable fire and other safety codes.

Finding: The potential impacts of the October 2014 Project on public services are the same as those analyzed in the EIR. For reasons stated above, the October 2014 Project's potential impacts related to public services are less than significant. Therefore, no new or substantially increased significant impacts will result from the October 2014 Project beyond those discussed in the EIR. No new mitigation is required.

O. RECREATION

Recreation	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☑
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	☐	☐	☐	☑

Sources: EIR, as amended by Addendum No. 1 and Addendum No. 2; October 2014 Project Application.

EIR Conclusion: Less than significant.

The EIR analyzes project impacts on parks in Section 5.4. It determined that a net increase in the daily employee population in the City would not result in a substantial increase in usage of local recreational facilities. Additionally, it noted that the 2009 Project includes about nine acres of open space that could include outdoor amenities for 2009 Project site users. Accordingly, the EIR concluded that the 2009 Project would not impact existing recreational facilities in the City.

EIR Mitigation Measures: No mitigation required.

Discussion of the October 2014 Project: The October 2014 Project will generate the same type of recreation impacts as both the June 2014 and 2009 Projects, since the October 2014 Project includes office development on, and immediately adjacent to, the June 2014 and 2009 Project sites. Like the June 2014 Project, the October 2014 Project will include approximately 2 acres of landscaped open space for employee activities, and will include bicycle and pedestrian connectivity to the existing path on the western side of San Tomas Aquino Creek. Specifically, the October 2014 Project will provide bicycle lanes on Bowers, Scott, Augustine, and Octavius;

and will provide a creek trail along Augustine Drive. Thus, the October 2014 Project impacts to recreation will be the same or less than those of the 2009 Project.

Finding: The potential impacts of the October 2014 Project on recreation are the same as those analyzed in the EIR. For reasons stated above, the October 2014 Project's potential impacts related to recreation are less than significant. Therefore, no new or substantially increased significant impacts will result from the October 2014 Project beyond those discussed in the EIR. No new mitigation is required.

P. TRANSPORTATION/TRAFFIC

Transportation/Traffic	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
Would the project:				
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	☐	☐	☐	☑
b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	☐	☐	☐	☑
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	☐	☐	☐	☑
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☑
e) Result in inadequate emergency access?	☐	☐	☐	☑
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	☐	☐	☐	☑

Sources: EIR, as amended by Addendum No. 1 and Addendum No. 2; October 2014 Project Application; Fehr & Peers, Review of Revised Master Plan for Santa Clara Square Development Office Phases II and III, August 21, 2014, attached as Appendix H. Santa Clara Climate Action Plan (Adopted December 3, 2013).

EIR Conclusion: Significant and unavoidable impact.

The EIR analyzes traffic impacts in Section 4.8. It determined that the 2009 Project would result in significant traffic impacts at four intersections during at least one of the peak hours: (i) Bowers Avenue/ Augustine Drive; (ii) Bowers Avenue/ Central Expressway; (iii) San Tomas Expressway/Scott Boulevard; and (iv) San Tomas Expressway/ El Camino Real.

Additionally, the 2009 Project would result in significant impacts to the following eight freeway segments: (i) Northbound ("NB") US 101, from N. First Street to Guadalupe Parkway; (ii) NB US 101 from Guadalupe Parkway to De La Cruz Boulevard; (iii) Southbound ("SB") US 101, from Bowers Avenue-Great America Parkway to Montague Expressway-San Tomas Expressway; (iv) SB US 101, from Montague Expressway-San Tomas Expressway to De La Cruz Boulevard; (v) SB 101, from De La Cruz Boulevard to Guadalupe Parkway; (vi) SB US 101, from Guadalupe Parkway to N. First Street; (vii) NB SR 87, from Skyport Drive to US 101; and (viii) SB SR 87, from Skyport Drive to Taylor Street. The City requires the payment of regional traffic impact fees, but there is no guarantee that the fees will be used to improve the impacted segments. The EIR thus concluded that the impacts cannot be reduced to a less than significant level even with payment of the fees.

In terms of 2009 Project site access, the 2009 Project included seven driveways on Augustine Drive and Scott Boulevard, which the EIR determined was sufficient to accommodate project-generated traffic.

The EIR includes the following project design features and project-specific mitigation measures to reduce the project's traffic impacts to a less than significant level, although certain impacts were determined to be significant and unavoidable. The original project-specific mitigation measures would continue to be applicable to the October 2014 Project and have not been proposed to be modified.

Project Design Features:

Traffic Improvements

- *Provide traffic signal improvement at proposed driveway entrance on Augustine Drive*
- *Provide traffic signal modification for Bowers/Scott and Bowers/Augustine intersections*
- *Provide a pedestrian signalized mid-block crossing on Augustine Drive*

Transportation Demand Management Program

Employment-generating development is required to develop and implement a Transportation Demand Management ("TDM") program. The project proposes to include the following elements in the TDM program, or similar, alternate transportation demand management measures acceptable to the City:

1. *Provide physical improvements, such as sidewalk improvements, landscaping and bicycle parking that would act as incentives for pedestrian and bicycle modes of travel.*

2. *Connect individual sites with regional bikeway system.*

3. *Provide on-site transit information kiosks.*

4. *Implement a carpool/vanpool program, e.g., carpool ridematching for employees, assistance with vanpool information, provision of vanpool vehicles, etc.*

5. *Develop a transit use incentive program for employees in the project area, such as on-site distribution of passes and/or subsidized transit passes for local transit systems.*[4]

6. *Provide preferential parking for carpools.*

7. *Provide a guaranteed ride home program.*

8. *Implement a flextime policy.*

9. *Provide on-site services such as ATMs, dry cleaning facilities, exercise room, cafeteria, etc.*

10. *Provide or contribute to a shuttle system for employees to access local transit services within the City.*[5]

11. *Provide showers and lockers for employees bicycling or walking to work.*

Project-Specific Mitigation Measures

The following mitigation measures describe roadway improvements that could reduce most of the identified intersection impacts. The feasibility of each mitigation measure is addressed below. Only those mitigation measures which are deemed feasible or include the payment of impact fees (where applicable) are proposed as part of the project to reduce the project specific traffic impact.

As a condition of approval, the City of Santa Clara will collect an impact fee equal to one dollar per square foot of development in addition to fair share contributions for the identified Santa Clara controlled intersections listed below. This is consistent with City policy to collect fees from projects that have a significant impact on local and/or regional facilities. In addition, the

[4] Examples include VTA EcoPass system and "Wageworks" which utilizes pre-tax dollars to purchase transit passes.

[5] Examples include the Altamont Commuter Express (ACE) Yellow Shuttle and the Lawrence Caltrain Bowers/Walsh Shuttle.

project proposes to pay a fair share contribution toward improvement programs currently approved and funded by the County of Santa Clara. Identified improvements for intersections and/or roadway segments which are listed as proposed mitigation and not controlled by the City of Santa Clara, and are subject to financial contributions from Santa Clara, must complete the necessary environmental review and be certified by the Lead Agency with jurisdiction over the intersection/roadway in conformance with CEQA prior to the payment of fees toward those improvements.

Bowers Avenue/Augustine Drive

There are no feasible mitigation measures available to reduce the project impact at the identified intersection to a less than significant level. The addition of a second southbound left-turn lane (from Bowers Avenue to Augustine Drive) and widening/restriping of the westbound approach to provide one left-turn, one shared through/right-turn lane, and one right-turn lane would improve the overall operation of the intersection. The improvements would not, however, improve the LOS to an acceptable level of operation. With implementation of the aforementioned mitigation, the intersection would operate at LOS E in the PM Peak Hour. Therefore, the project's impact to this intersection is significant and unavoidable.

These intersection improvements are currently under design by the Irvine Company and will be constructed as a part of the Phase I office development.

Central Expressway/Bowers Avenue

The Comprehensive County Expressway Planning Study identifies the widening of Central Expressway to six lanes between Lawrence Expressway and San Tomas Expressway as a Tier 1 priority. The developer will pay a fair share contribution to the City towards the County's widening of Central Expressway between Lawrence Expressway and San Tomas Expressway. With implementation of the aforementioned mitigation, the intersection would operate at LOS E+ in the AM and PM Peak Hour.

Santa Clara County constructed the improvements at this intersection when the HOV lanes were removed in 2010.

San Tomas Expressway/Scott Boulevard

The Comprehensive County Expressway Planning Study identifies the addition of a second westbound right-turn lane from westbound Scott Boulevard to northbound San Tomas Expressway as a Tier 1 priority. The developer will pay a fair share contribution to the City towards the County's addition of a second westbound right-turn lane on Scott Boulevard. With implementation of the aforementioned mitigation, the intersection would operate at LOS E- in the PM Peak Hour.

This improvement has not been implemented by Santa Clara County.

San Tomas Expressway/El Camino Real

The City of Santa Clara's Capital Improvement Program (dated June 2008) has identified the addition of a second left-turn lane on both the eastbound and westbound approaches to this intersection as a City improvement project. The developer will pay a fair share contribution to the City towards the addition of a second left-turn lane. With implementation of the aforementioned mitigation, the intersection would operate at LOS E- in the AM Peak Hour.

This improvement has not been implemented by Santa Clara County.

Discussion of the October 2014 Project:

Pursuant to the report from Fehr & Peers, the October 2014 Project will generate the same type of traffic impacts as the 2009 Project. Fehr & Peers performed a new trip generation analysis for the October 2014 Project (referred to as the August Project in the Fehr & Peers Report). Fehr & Peers performed a transportation impact analysis ("TIA") for the October 2014 Project. In order to provide a direct comparison to the June 2014 Project and the 2009 Project analyzed in the EIR, Fehr & Peers included the Office Phase I, Office Phase II, Office Phase III, and Retail Phase developments in their model. Their analysis estimated the total traffic generated by the project using rates published in both the 7th and 9th Editions of the Institute of Traffic Engineers Trip Generation Manual. This allowed for a direct comparison to the April 2014 TIA prepared by Fehr & Peers for the June 2014 Project that used the 7th and 9th Editions, and provided trip rates as calculated with the currently accepted methods in the 9th Edition. The revised Project does not change the total amount of proposed retail and office development, but it does incorporate two additional parcels into the master planning area. The added parcels have been used to create a campus environment with parking located on the east and west ends of the planning area. The two parcels added to the master planning area include a total of 135,000 square feet existing office uses that will be demolished as the part of the project. Based on robust demand for office space in this area, full occupancy of existing office uses on the Site is considered normal operational conditions and was used as the baseline in both the June and October 2014 Project TIAs. Fehr & Peers concluded that the removal of this additional existing office space reduces the number of net new trips added to the transportation network by the October 2014 Project.

Fehr & Peers used background traffic volumes from the EIR for the traffic analysis of potential impacts due to the October 2014 Project. These volumes were used to maintain consistency between the current traffic analysis and the analysis prepared for the EIR and Addendum No. 2. A review of available traffic count data showed that counts conducted in 2013 were similar to, or in some cases lower than, the background traffic conditions studied in the EIR. Therefore, updated counts were not used in the traffic impact evaluation for either the June or October 2014 Projects. As seen in Table 1 of Fehr & Peer's TIA Report (Attachment H.1), the trip generation data calculated using the 7th Edition is essentially the same as that calculated using the 9th Edition. Because the 9th Edition uses the most up-to-date trip rates, the trip rates calculated using the 9th Edition were used as the net new trips generated by the October 2014 Project for the level of service analysis, noise analysis, air quality analysis, and the GHG analysis.

Addendum No. 2 concluded that upon completion of all Phases of development, the June 2014 Project, including Office Phase I and Retail, would generate less trips than the 2009 Project. Based on the revised plan for Office Phase II and Office Phase III, Fehr & Peers compared the net new trips generated by the October 2014 Project to the net new trip generated by the June 2014 Project. As seen in Table 1 of Fehr & Peer's TIA Report (Attachment H), upon completion of all Phases of development, the October 2014 Project, including Office Phase I and the Retail Phase, will generate less trips than the June 2014 Project. Specifically, the October 2014 Project is estimated to produce 1,616 less total daily trips, 238 less AM peak hour trips, and 266 less PM peak hour trips than the June 2014 Project. Therefore from a trip generation perspective, the October 2014 Project will have less impact than both the June 2014 and 2009 Projects.

Access to the adjacent roadways will remain unchanged with parking structures that will have access to Augustine, Octavius and Montgomery Drives. Fehr & Peers concluded that because the October 2014 Project will generate less trips than the June 2014 Project, the revised development plan for Office Phase II and Office Phase III will have less impact on the transportation network than the June 2014 Project.

The City will collect an impact fee in addition to the fair share contribution that has already been paid toward mitigation measures for roadway facilities with significant project impacts in Santa Clara, in adjacent cities, and under the control of Santa Clara County. As noted above, the EIR identified four intersections with significant impacts as a result of the 2009 Project. Impacts at three of these intersections were mitigated by payment of fees and a fair share contribution from the 2009 Project, and the fourth intersection (Bowers Avenue/Augustine Drive) was considered 100 percent the responsibility of the 2009 Project. No new mitigation is required at these or any of the other study intersections.

Santa Clara adopted a Climate Action Plan (CAP) in December, 2013. The October 2014 Project is located in Transportation District 1 (North of Caltrain), and prior to approval, the revised Office Phase II and III developments will be required to show a minimum of a 20% Vehicle Miles Traveled (VMT) reduction, 10% of which must come from TDM programs. Although the October 2014 Project includes many VMT reduction measures, both the June and October 2014 Project TIAs used a standard reduction of 10% based on TDM measures. Because Office Phase II and Office Phase III will be required to show a 20% reduction in VMT based on the CAP, the traffic impacts of the October 2014 Project will likely be less than calculated by Fehr & Peers. Furthermore, the October 2014 Project will provide traffic signal improvements on Augustine Drive, and traffic signal modifications at the Bowers/Scott and Bowers/Augustine intersections. Therefore, traffic impacts at these intersections will be less than predicted by the TIA.

Finding: The potential impacts of the October 2014 Project related to traffic are less than or the same as those analyzed in the EIR. For reasons stated above, the October 2014 Project's potential impacts related to traffic remain significant and unavoidable. While the October 2014

Project will still have significant and unavoidable impacts, these impacts will be less than or the same as those of the 2009 Project. Therefore, no new or substantially increased significant impacts will result from the October 2014 Project beyond those discussed in the EIR. No new mitigation is required.

Q. UTILITIES AND SERVICE SYSTEMS

Utilities and Service System	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	☐	☐	☐	☑
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☑
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☑
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	☐	☐	☐	☑
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☑
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	☐	☑
g) Comply with federal, state, and local statutes and regulations related to solid waste?	☐	☐	☐	☑

Sources: EIR, as amended by Addendum No. 1 and Addendum No. 2; October 2014 Project Application; RMC Water and Environment, September 29, 2014 Sanitary Sewer Capacity Evaluation for the Santa Clara Square, attached as attached as Appendix I.

EIR Conclusion: Less than significant impact.

The EIR analyzed project impacts on utilities in Section 4.11. The EIR concluded that the 2009 Project would result in a net increase in water use of 327,250 gallons per day (366.6 acre-feet per year) but concluded there was adequate water supply. Additionally, the 2009 Project would require about 51% of the total Augustine Drive sewer line capacity, but that there was

adequate sewer capacity. The EIR estimated in an increase in solid waste and recyclable materials of about 1,683 tons per year, but found adequate landfill capacity to serve the 2009 Project. Finally, the EIR concluded that because the 2009 Project reduces the amount of impervious surfaces on the 2009 Project site by about 14.8 percent, runoff from the 2009 Project site will not cause flooding or exceed the capacity of the storm drain system.

EIR Mitigation Measures: No mitigation required.

Discussion of the October 2014 Project: The October 2014 Project will generate the same type of utilities impacts as both the June 2014 and the 2009 Projects, since the October 2014 Project includes the same amount of office development and no change to retail development from the June 2014 Project.

The City approved an updated water supply assessment (WSA) for the June 2014 Project pursuant to Sections 10910 et seq. of the California Water Code. The WSA determined that the June 2014 Project would require 5.7 acre-feet per year less water than analyzed in the EIR for the 2009 Project. The October 2014 Project is proposing the exact same amount of office development in the same area, but will result in less net office development and therefore less net water usage than either the June 2014 or 2009 Projects. Like the June 2014 Project, the October 2014 Project will also use recycled water for outdoor irrigation and reduce potable water from the level of potable demand analyzed in the EIR for the 2009 Project. Finally, the WSA determined that the 2009 Project's water demand was incorporated into the City's current 2010 Urban Water Management Plan, and that the City Water Utility has sufficient water supplies to serve the June 2014 Project in addition to other water users in the City. Because the net water usage of the October 2014 Project will be less than that of either the June 2014 or 2009 Project, the City similarly has sufficient water supplies to serve the October 2014 Project.

As part of City required approvals and conditions, the October 2014 Project will complete the City's Landscape Water Efficiency Checklist. Landscape irrigation and applicable industrial water will be provided by the City's recycled water system. Prior to the issuance of a building or grading permit, the October 2014 Project proponent will provide hydraulic calculations that show impacts to the water utilities system to the satisfaction of the Director of Water and Sewer Utilities. RMC evaluated the potential sanitary sewer capacity impact of the October 2014 Project, and concluded that there was adequate capacity for the October 2014 Project, as well as for the Retail and Office Phase I projects. Finally, the October 2014 Project will provide adequate enclosures for solid waste and recycling containers.

In addition to the above, the October 2014 Project will comply with the Santa Clara Climate Action Plan. In the area of water conservation, the Climate Action Plan requires that the City reduce GHG-intensive water use practices by implementing the strategies in the City's 2010 Urban Water Management Plan ("UMWP"). The UMWP aims to meet the SB X7-7 reduction goal of saving 1,362 acre-feet through (1) implementing new water conservation development standards and building requirements, (2) revising the City's landscape design guidelines to increase efficiency in outdoor water use in new development, and (3) providing

information to residents and businesses about the economic and environmental benefits of water conservation.

In the area of waste reduction, the Climate Action Plan requires that the City increase recycling opportunities through (1) expanding existing food waste and composting collection routes to service 25% of all existing restaurants, and (2) working with regional partners to increase solid waste diversion to 80% by updating the City Code to lower the threshold for construction and demolition collection requirements, adopting recycling ordinances that incorporate updated standards for collection enclosures, working with trash providers to increase the types of recycling/organic material collected, and working with apartment buildings to implement recycling programs. Each of these measures are to be implemented by the City, and therefore do not affirmatively mandate components of project design. Moreover, the October 2014 Project will in no way hinder the City from achieving these policies and meeting these goals; therefore the project is consistent with these requirements.

Finding: The potential impacts of the October 2014 Project on utilities are the same than those analyzed in the EIR. For reasons stated above, the 2014 Project's potential impacts related to utilities are less than significant. Therefore, no new or substantially increased significant impacts will result from the October 2014 Project beyond those discussed in the EIR. No new mitigation is required.

R. MANDATORY FINDINGS OF SIGNIFICANCE

Mandatory Findings of Significance	*Potentially Significant Impact*	*Less Than Significant with Mitigation Incorporation*	*Less Than Significant Impact*	*Impacts Fully Analyzed in EIR*
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☐	☐	☐	☑
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☐	☐	☑
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☐	☐	☑

Sources: EIR, as amended by Addendum No. 1 and Addendum No. 2; October 2014 Project Application; Illingworth & Rodkin, Inc. September 16, 2014, Evaluation of 2014 Changes to

Augustine Bowers Office Park Air Quality Impacts – Santa Clara, CA attached as Appendix A.1. Fehr & Peers, Review of Revised Master Plan for Santa Clara Square Development Office Phases II and III, August 21, 2014, attached as Appendix H.

EIR Conclusion: Less than significant impacts with mitigation on biological resources and cultural resources. Significant and unavoidable cumulative impacts with respect to population and housing, traffic, air quality, and global climate change.

The EIR analyzes cumulative impacts in Section 6.1. The EIR found that the 2009 Project would have cumulatively significant impacts on population and housing, transportation, air quality, and global climate change.

With regard to population and housing, the EIR found that the implementation of the 2009 Project would significantly increase the City's jobs/housing imbalance and induce housing growth throughout the region, resulting in a significant and unavoidable cumulative impact.

With regard to transportation impacts, the EIR found that 14 intersections will be significantly impacted and the 2009 Project will have a cumulatively considerable impact on 13 of the 14 identified intersections. For the reasons discussed under Transportation/Traffic, above, the impacts at the intersections of Bowers/Augustine and Montague/De La Cruz cannot be mitigated to a less than significant level, even with the identified mitigation.

In terms of cumulative air quality impacts, the EIR found that even though the overall development proposed by the 2009 Project is consistent with some of the goals of the Clean Air Plan and many of the City's General Plan policies, the 2009 Project will have a significant and unavoidable regional air quality impact, resulting in an unavoidable cumulative regional air quality impact.

With respect to cumulative water supply impacts, the EIR found that even though the overall development proposed by the project is consistent with the 2005 Urban Water Management Plan, the increase in green space in areas without access to recycled water places an additional burden on the existing potable water supply when combined with other similar "green campus" developments. Nevertheless, the Water Supply Assessment determined that there is sufficient water supply (using both potable and recycled water) to support all the proposed "green campus" developments long term, resulting in a less than significant cumulative impact.

Finally, with regard to greenhouse gas emissions, the EIR found that the 2009 Project, even with implementation of identified energy reduction policies, will result in a significant and unavoidable contribution to cumulative global climate change impacts.

The EIR includes the following mitigation measures reduce the impacts to cumulative traffic impacts, although the impacts remain significant and unavoidable. The mitigation measure applicable to greenhouse gas emissions is discussed under Greenhouse Gas Emissions, above. These mitigation measures would be applicable to the October 2014 Project.

EIR Mitigation Measures:

Mitigation Measures for Cumulative Traffic Impacts:

1. *There is no process in place to mitigate for the cumulative impacts identified in this EIR. In addition, it is somewhat speculative to assume that all the identified projects would be approved and developed within a defined timeframe. Therefore, mitigation measures identified below are for informational purposes only. CEQA Guidelines acknowledge that mitigation for cumulative impacts may only be achieved through an ordinance or program. It is likely that a regional mechanism such as a Countywide Deficiency Plan could mitigate these multi-jurisdictional cumulative impacts. As such, the payment of impact fees has been identified as a form of possible mitigation for cumulative impacts to intersections that are part of an adopted improvement program.*

2. *Great America Parkway and Patrick Henry Drive - The identified impact could be mitigated to a less than significant level with the addition of a second northbound left-turn lane on Great America Parkway. This improvement would require modifications to the existing median islands and traffic signal equipment.*

3. *Great America Parkway and Mission College Boulevard- The identified impact could be mitigated to a less than significant level with the addition of a fourth southbound through lane.*

4. *Bowers Avenue and Augustine Drive - The identified impact could not be mitigated to a less than significant level. Even with the implementation of mitigation proposed under project conditions, the intersection would still operate at LOS F during the PM Peak Hour under the cumulative condition.*

5. *Bowers Avenue and Central Expressway - The identified impact could be mitigated to a less than significant level with the additional of a third, mixed-flow through lane in both directions on Central Expressway. This could be implemented by removing the existing HOV lane.*

6. *San Tomas Expressway and Monroe Street - The identified impact could be mitigated to a less than significant level with the addition of a second right-turn lane on the westbound approach.*

7. *San Tomas Expressway and Walsh Avenue - The identified impact could be mitigated to a less than significant level with the addition of a second eastbound left-turn lane.*

8. *San Tomas Expressway and Scott Boulevard - The identified impact could be mitigated to a less than significant level with the addition of a second westbound right-turn lane on Scott Boulevard.*

9. *Montague Expressway and De La Cruz Boulevard - The identified impact could not be mitigated to a less than significant level. There are no feasible capacity-enhancing improvements identified at this intersection.*

10. *1st Street and Montague Expressway - The identified impact could be mitigated to a less than significant level with the addition of a fourth westbound through lane on Montague Expressway. This improvement has already been identified in the North San Jose Deficiency Plan.*

11. *Zanker Road and Montague Expressway - The identified impact could be mitigated to a less than significant level by the widening of Zanker Road at its intersection with Montague Expressway to provide second left-turn lanes in both the northbound and southbound directions.*

12. *McCarthy Boulevard/O'Toole Avenue and Montague Expressway - The identified impact could be mitigated to a less than significant level with the construction of a "square-loop" interchange which has been identified by the Comprehensive County Expressway Planning Study as a Tier 1 priority and has also been identified in the North San Jose Deficiency Plan.*

13. *San Tomas Expressway and E1 Camino Real - The identified impact could be mitigated to a less than significant level with the addition of a second eastbound left-turn lane.*

14. *San Tomas Expressway and Benton Street - The identified impact could be mitigated to a less than significant level with the addition of a fourth northbound and southbound through lane. This improvement has been identified by the Comprehensive County Expressway Planning Study as a Tier 1 priority.*

15. *Lawrence Expressway and El Camino Real - The identified impact could be mitigated to a less than significant level with implementation of a separate eastbound right-turn lane.*

Discussion of the October 2014 Project: The October 2014 Project will generate the same type of cumulative impacts as both the June 2014 and 2009 Projects, since the 2009 Project includes office and retail development on and directly adjacent to the Site. The October 2014 Project does not have any significant impacts on biological or cultural resources, and will not result in environmental effects which will cause either direct or indirect substantial adverse effects on human beings. The October 2014 Project will still result in significant cumulative impacts with regard to air quality, traffic, population and housing, and greenhouse gas, but to a lesser extent than the 2009 Project because of the less intense use, and for the reasons discussed in each substantive area above, including the use of reclaimed water to reduce the use of potable water on the Site.

Finding: The potential cumulative impacts of the October 2014 Project are less than those analyzed in the EIR. For reasons stated above, the October 2014 Project's potential cumulative impacts remain significant and unavoidable, though substantially less than those of the 2009 Project. Therefore, no new or substantially increased significant impacts will result from the October 2014 Project beyond those discussed in the EIR. No new mitigation is required.

Appendix A.1 and A.2

Air Quality / Greenhouse Gas Emissions

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September 16, 2014

Carlene Matchniff
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VIA email: cmatchniff@irvinecompany.com

SUBJECT: Evaluation of 2014 Changes to Augustine Bowers Office Park Air Quality Impacts – Santa Clara, CA

Dear Carlene:

This letter provides an assessment of changes to the air quality and greenhouse gas (GHG) emission impacts associated with proposed change in office development for the proposed Santa Clara Square development. An EIR was prepared for the Augustine Bowers Office Park project in Santa Clara. That EIR air quality analysis evaluated demolition of the existing structures on the site and the construction of up to 1,969,600 square feet (sf) of office development and 35,000 sf of retail development in four towers. Illingworth & Rodkin, Inc. prepared the air quality analysis of that project that was included in the project EIR[1]. That air quality analysis was prepared following CEQA guidance provided by the Bay Area Air Quality Management District (BAAQMD) available at the time of the analysis[2].

In early 2014, the project was revised to include retail and office development. The 2014 proposed project would have provided for the development of an office campus in two phases, totaling no more than 1,243,300 million square feet of office space, and up to 125,000 square feet of retail space, on the Retail and Office Phases II and III Sites. Including the previously approved Office Phase I development (618,800 square feet of office and 13,000 square feet of accessory retail use), the total development of Santa Clara Square would include up to 2,000,100 square feet of office and retail development, which is 4,500 square feet less than the total development that was approved in the Augustine Bowers project.

The Revised 2014 Project would add two new adjacent properties to the Office Phase II and Office Phase III portions of the project. The two new properties are currently developed with 135,000 square feet of existing, underutilized office space and combined, the reconfigured Office Phase II and Office Phase III properties are currently developed with 602,000 square feet of existing underutilized office space. The

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[1] Illingworth & Rodkin, Inc. 2008. Santa Clara Office Development Project – Santa Clara, CA Air Quality Study. Prepared for David J. Powers & Associates. April 25. Note that this report evaluated a1.975 million square feet of office uses and 40,000 square feet of retail uses.
[2] BAAQMD. 1996, revised 1999. BAAQMD CEQA Guidelines – Assessing Air Quality Impacts of Projects and Plans. December.

reconfigured Office Phase II and Office Phase III properties would be developed as a single office campus that consists of up to 1,243,300 square feet of 6-8 story office buildings, with associated surface and structured parking. This development is consistent with the office component of the 2014 Santa Clara Square Project that was analyzed in Addendum No.2 and approved on June 10, 2014. The changes in air quality impacts were described in our letter dated April 13, 2014.

Air quality impacts from this proposed change are addressed in this letter.

Impact 1: Conflict with or obstruct implementation of the applicable air quality plan?

The Augustine Bowers Office Park EIR air quality study identified a significant impact associated with implementation of Clean Air Plan transportation control measures. Mitigation Measure AQ-1 identified measures the project could include to implement TCMs. This mitigation measure would apply to the Proposed 2014 Project.

Impact 2: Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable Federal or State ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?

Significant air pollutant emissions were identified for the Augustine Bowers Office Park project. The proposed project would include the same amount of functioning office and retail space and parking facilities. The revised project does not change the total amount of proposed retail and office development, but it does incorporate two additional parcels into the project. The two parcels added to the project include an additional 135,000 square feet existing office uses that will be demolished as the part of the project. This increases the size of the project site by 5.9 acres.

Construction Emissions

The revised project would involve more construction, as the project site would be larger (+5.9 acres) and there would be an additional 135,000 square feet of buildings demolished. To address this change, the California Emissions Estimator Model, Version 2013.2.2 (CalEEMod) was used to predict differences in construction emissions from both the 2014 approved and the 2014 Revised project. Construction emissions were predicted assuming the default construction assumptions that CalEEMod includes. Inputs to the model included the type and size of the projects. CalEEMod defaults to a construction start year of 2015. Note that construction of Phase 1 of the approved project began about October 1, 2013 and is currently under construction. The Retail Phase is also currently under construction. The following inputs were used in the modeling:

Project	Area (acres)	Existing office to be Demolished (SF)	New office (SF)
2014 Office	16.8	467,000	1,243,300
Revised 2014 Office	22.7	602,000	1,243,300

Total and average daily emissions are shown in Table 1 for the approved and proposed Office Phase II and Office Phase III projects. These are the emissions only associated with the office development. Emissions associated with Phase 1 office development and retail uses currently being constructed, the, parking facilities, and infrastructure were not included since they would be the same under both project scenarios. Average daily construction emissions would be slightly higher under the Proposed 2014

Project. Although CalEEMod predicts a longer construction period for the Proposed 2014 Project, this analysis conservatively assumes a similar construction period of 400 days that CalEEMod predicted for the Approved 2014 Project. Note that the 400-day period only applies to the Phase II and III office construction.

Table 1 Construction Emissions (Approved Project and Proposed Santa Clara Square Project)

Scenario	ROG	NOx	PM10	PM2.5	GHG
Emissions with 2014 Approved Project	15.99 tons	11.99 tons	0.55 tons	0.51 tons	1,819 MT
Emissions with Proposed 2014 Project	16.30 tons	14.27 tons	0.65 tons	0.61 tons	2,213 MT
Difference in total emissions (Proposed – Approved)	**0.31 tons**	**2.28 tons**	**0.10 tons**	**0.10 tons**	**394 MT**
Difference in average daily emissions (Proposed 2014 Project – Approved 2014 Project)	**1.6 lbs/day**	**11.4 lbs/day**	**0.5 lbs/day**	**0.5 lbs/day**	--
Difference in average daily emissions (Proposed 2014 Project – 2009 Approved Project)[3]	**-37.4 lbs/day**	**3.4 lbs/day**	**0.5 lbs/day**	**0.5 lbs/day**	--
Significance Thresholds	***54 lbs/day***	***54 lbs./day***	***82 lbs/day***	***54 lbs./day***	--

Note: ROG = reactive organic gases, NOx = nitrogen oxides, PM_{10} = respirable particulate matter (i.e., less than 10 micrometers in aerodynamic diameter), $PM_{2.5}$ = fine particulate matter (i.e., less than 10 micrometers in aerodynamic diameter) and GHG = greenhouse gases expressed as equivalent carbon dioxide).

The CalEEMod modeling, presented above, indicates that the change in the daily construction emissions caused by the Proposed 2014 Project compared to both the Approved 2014 Project and Approved 2009 Project would have emissions below the thresholds currently used by the City to evaluate impacts to regional air quality for projects[4].

Operation

From an operation standpoint, the Proposed 2014 Project would result in less future traffic, when compared to the Approved 2014 Project[5]. As a result, operation of the project would not significantly increase air pollutant emissions.

> **Impact 3:** Violate any air quality standard or contribute substantially to an existing or projected air quality violation?

As discussed under Impact 2 above, the change in emissions caused by operation of the proposed project would be the same or less than the previously approved project. In addition, the change in construction emissions caused by the Proposed 2014 Project would not exceed the significance thresholds previously recommended by BAAQMD and used by the City for evaluating impacts related to ozone and particulate matter. Therefore, the proposed Santa Clara Square project would not contribute substantially to existing

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[3] The 2009 Approved Project construction emissions were modeled and reported in our letter, dated April 13, 2014.
[4] The City currently uses thresholds of 54 pounds per day for ROG, NOx and $PM_{2.5}$ exhaust and 82 pounds per day for PM_{10} exhaust. These thresholds are based on average daily emissions that would occur during the construction period.
[5] Fehr & Peers. 2014. Letter to Carlene Matchniff - Review of Revised Master Plan for Santa Clara Square Development Office Phases II & III, August 21.

or projected violations of those standards. The Proposed 2014 Project would not increase traffic above levels predicted under the Approved 2014 Project, so localized emissions of air pollutants are not anticipated to change.

Impact 4: Expose sensitive receptors to substantial pollutant concentrations?

Construction activity would generate dust and equipment exhausts on a temporary basis. Operation of the project is not anticipated to expose sensitive receptors to Toxic Air Contaminants (TACs) and the project is not expected to include sensitive receptors that could be exposed to nearby air pollution sources (i.e., sources of TACs).

Construction Activity

Construction activity is anticipated to involve demolition of the existing buildings and new office and retail building construction. Construction equipment and associated heavy-duty truck traffic generates diesel exhaust, which is a known TAC. As indicated under Impacts 2 and 3, the change in emissions would not be considered to contribute substantially to existing or projected air quality violations. Emissions of diesel particulate matter from construction activities could have localized impacts to sensitive receptors. However, sensitive receptors, such as residences, schools or daycare centers, are not identified within 1,000 feet of the project site. As a result, construction of the proposed project would not result in any significant community risks.

To reduce construction impacts associated with fugitive dust, the project should incorporate the BAAQMD-recommended mitigation measures that serve as "Best Management Practices" for reducing PM10 and PM2.5 fugitive dust emissions from construction. Measures to reduce fugitive dust emissions to a less-than-significant level were identified as mitigation measures in the DEIR for the Augustine Bowers Office Park project. These would be expected to apply to the proposed project.

Project Operation

Operation of the project is not expected to cause any localized emissions that could expose sensitive receptors to unhealthy air pollutant levels. As identified in the EIR air quality study, the project could include stationary sources (i.e., emergency generators). If such sources are included, they would be subject to BAAQMD permitting and would have to comply with the District's regulations. Sources of air pollutant emissions complying with all applicable BAAQMD regulations would not be considered to result in significant air quality impacts. Stationary sources that are exempt from BAAQMD permit requirements are also not considered to result in significant impacts. If a permit is required, BAAQMD would review emissions of TACs and, if necessary, conduct a health risk assessment of any sources that have the potential to cause significant health risks. BAAQMD would not issue a permit to a source that results in significant health risks in terms of excess cancer risk of 10 per million or a non-cancer risk expressed as a Hazard Index greater than 1.0. As previously discussed, the proposed project has identified four standby emergency generators that would be powered by diesel fuel. These generators would require permits to construct and operate through the BAAQMD permitting process. BAAQMD regulations would limit operation of these generators to 50 hours of operation per year for routine testing and maintenance and impose emissions limits.

The proposed project site is near sources of air pollutant emissions that include traffic on U.S. 101, Bowers Avenue and Scott Boulevard and numerous stationary sources. These are sources of TACs; however, the proposed project, an office and project would not include any sensitive receptors.

Impact 5: Create objectionable odors affecting a substantial number of people?

The proposed project would generate localized emissions of diesel exhaust during construction equipment operation and truck activity. These emissions may be noticeable from time to time by adjacent receptors. However, they would be localized and are not likely to adversely affect people off site by resulting in confirmed odor complaints. The project is not expected to include any sources of significant odors that would cause complaints from surrounding uses.

Impact 6: Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

CalEEMod modeling indicates that the 2014 Approved Santa Clara Tech Center project would result in total construction emissions of 11,882 metric tons of equivalent CO_2 over the construction period. As indicated in Table 1, the Proposed 2014 project would result in an increase of 394 metric tons of CO2e in construction emissions since there would be a larger footprint of ground disturbance and more buildings to demolish. There are no quantified thresholds for evaluating the change in emissions from this construction activity. However, this difference is lower than operational thresholds recommended by BAAQMD at 1,100 metric tons per year. So this is not considered a significant change.

Operational emissions from the proposed 2014 project would be similar or lower than those predicted for the Approved 2014 project since the building square footage would not increase. However, traffic under the proposed project would be lower. This should result in lower GHG emissions.

* * *

This concludes our evaluation of changes to the Santa Clara Square project. Please feel free to contact us if you have any questions or need additional information.

Sincerely,

Digitally signed by James A. Reyff
DN: cn=James A. Reyff, o=Illingworth & Rodkin, Inc., ou, email=jreyff@illingworthrodkin.com, c=US
Date: 2014.09.16 14:14:01 -07'00'

James A. Reyff
Project Scientist
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14-023

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June 10, 2013

Kerry M. Williams
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VIA email: kewilliams@irvinecompany.com

SUBJECT: Effect of New Title 24 Standards on the Santa Clara Tech Center Project – Santa Clara, CA

Dear Kerry:

The purpose of this letter is to address your question about reductions of greenhouse gas emissions anticipated as a result of new Title 24 standards. We understand that the project is subject to a Mitigation Measure that requires the project reduce energy-related GHG emissions by 10 percent, assuming it meets 2005 Title 24 standards.

At the time of approval, it was assumed that the project would meet 2005 Title 24 standards for energy efficiency. The currently proposed project would have to meet energy efficiency requirements for new 2013 Title 24 standards. The California Energy Commission (CEC) highlights the major energy improvements in the 2013 California Title 24 Building Energy Efficiency Standards as follows:

- High performance windows, sensors, and controls for increasing day light use;
- Advanced lighting controls;
- Solar ready roofs;
- Occupant controlled smart thermostats; and
- Cool roof technologies

The 2008 Title 24 standards are assumed to be more stringent that 2005 standards. According to the CEC, the improvements associated with the 2013 standards are estimated to use 25% less energy than the 2008 standards. The CEC Fact Sheet is attached to this letter. Therefore, meeting the 2013 standards would result in up to 25-percent less energy consumption relative to the 2008 standards. As a result, the project would exceed the mitigation requirements by meeting 2013 Title 24 standards for energy efficiency.

Additionally, the currently proposed project would result in substantially lower GHG emissions than the original project that the mitigation measure applies. Annual emissions were computed for both the approved Augustine Bowers Office Park project and the proposed Santa Clara Tech Center project using the CalEEMod model. The proposed Santa Clara Tech Center project would result in GHG emissions that are 56% lower than the previously approved Augustine Bowers Office Park project.

Sincerely,

James A. Reyff
Project Scientist
Illingworth & Rodkin

13-068 Attachment

Building Energy Efficiency Standards | FREQUENTLY ASKED QUESTIONS

What are building energy efficiency Standards?

Building energy efficiency standards are designed to ensure new and existing buildings achieve energy efficiency and preserve outdoor and indoor environmental quality. These measures (Title 24, Part 6) are listed in the California Code of Regulations.

Why are building Standards important?

Energy efficiency Standards make buildings more comfortable, lower energy costs, and reduce greenhouse gas emissions. The Standards ensure that builders use the most energy efficient technologies and construction.

When did building Standards start?

California's first building energy efficiency Standards went into effect in 1978.

How much will these new Standards add to the cost of a new house?

On average, these Standards add an additional $2,290 to the cost of constructing a new residential building, but will return $6,200 in energy savings over 30 years. In other words, when factored into a 30-year mortgage, the Standards will add approximately $11 per month for the average home, but will save $27 on monthly heating, cooling, and lighting bills.

How much energy will the 2013 Standards save?

The 2013 Standards will use 25% less energy for lighting, heating, cooling, ventilation, and water heating than the 2008 Standards. Additionally, the Standards will save 200 million gallons of water per year (equal to more than 6.5 million wash loads) and avoid 170,500 tons of greenhouse gas emissions per year.

How much have Standards saved?

Since 1978, the California Energy Commission has saved Californians $66 billion in electricity and natural gas savings through energy efficient building and appliance standards.

What are the long term savings?

After 30 years of implementing the standards, California will save nearly 14,000 GWh or enough electricity to power 1.67 million homes.

What policy goals are addressed by the Standards?

Several state energy policy goals drive the design of the current standards: the "Loading Order," which directs California's growing demand must first be met with cost-effective energy efficiency; "Zero Net Energy" (ZNE) goals for new homes by 2020 and commercial buildings by 2030; Governor Brown's Executive Order on Green Buildings; the Green Building Standards Code, and AB 32, which mandates that California reduce its greenhouse gas emissions to 1990 levels by 2020.

What is "Zero Net Energy?"

In 2008, California set bold energy-use reduction goals, targeting zero net energy (ZNE) use in all new homes by 2020 and commercial buildings by 2030. The ZNE goal means new buildings must use a combination of improved efficiency and distributed renewable energy generation to meet 100 percent of their annual energy need.

Who are supporting the Standards?

California Building Industry Association, Natural Resources Defense Council, Pacific Gas & Electric, Southern California Edison, San Diego Gas & Electric, Southern California Gas, Alliance to Save Energy, the American Council for Energy Efficient Economy, Appliance Standards Awareness Project, and Building Code Assistance Project are supporting the energy efficiency Standards.

Why do the Standards need to be updated?

The Energy Commission is required by law to adopt Standards that are cost effective for homeowners over the 30-year lifespan of buildings. The Standards are periodically updated to allow new energy efficient technologies and construction methods for consideration and incorporation. The Standards will save energy, increase electricity supply reliability, increase indoor comfort, avoid the need to construct new power plants and preserve the natural environment.

What buildings are covered by the Standards?

All buildings except hospitals, nursing homes, correctional centers, jails, and prisons are covered.

Who oversees the Standards?

The California Energy Commission is responsible for adopting, implementing and updating energy efficiency building Standards.

Who is responsible for enforcing the Standards?

Typically, the local city or county building department has the authority to verify compliance with applicable codes and standards, including building energy efficiency.

What are some highlights of the Standards?

In addition to simplifying and streamlining compliance documents, other major improvements include:

RESIDENTIAL:

- Insulated hot water pipes save water and energy and cut the time it takes to get hot water where it is needed
- Improved window performance to reduce heat loss in the winter and heat gain in the summer
- Whole house fans to cool homes and attics with cool evening air instead of air conditioning
- "Solar ready roof" design makes it easier to install solar photovoltaic or solar thermal panels at a future date

NONRESIDENTIAL:

- High performance windows, sensors and controls that allow buildings to use "daylighting" to avoid unnecessary use of installed lighting
- Efficient process equipment in grocery stores, commercial kitchens, data centers, laboratories, and parking garages
- Advanced lighting controls to synchronize light levels with daylight and building occupancy, and provide demand response opportunities
- "Solar ready roof" design makes it easier to install solar photovoltaic or solar thermal panels at a future date
- Occupant Controlled Smart Thermostats allow an occupant to set and maintain a desired temperature and voluntarily participate in a utility's demand response programs
- Cool roof technologies

Why do the Standards vary by climate zone?

Measures that are cost effective in more extreme climates may not be cost effective in milder climates. Requiring measures by climate zone ensure that a building will have the most energy efficient features for that area.

What are solar ready requirements?

The 2013 Standards require "solar ready roofs" to accommodate future installations of solar photovoltaic panels. Solar ready requirements do not vary by climate zone.

Considering California's economy, is this the right time to adopt Standards?

Since 2010, the Energy Commission has held meetings with more than 45 industry stakeholder groups, as well as 15 public workshops on the draft standards. The Commission recognized current economic times require Standards that significantly reduce energy costs. By providing increased flexibility and multiple options for meeting energy efficiency goals, the Energy Commission and its partners developed reasonable standards that acknowledge the economic challenge facing builders.

When will the Standards be approved?

The 2013 Standards will be considered for adoption by the Energy Commission at its May 31, 2012 public meeting; if approved, they will take effect in January 2014.

How many Climate Zones are there in California?

There are sixteen climate zones in the state.

What is the benefit of installing an Occupant Controlled Smart Thermostat?

Occupant Controlled Smart Thermostats maximizes energy savings by monitoring and controlling energy use more effectively. The occupant can override demand response programs at any time.

Who benefits from the Standards?

The Economy

The Standards contribute to and support a clean energy workforce through statewide training programs.

Builders

The Standards help builders develop buildings that are more comfortable and save homeowners money on utility bills.

Building Owners and Occupants

The Standards provide lower energy costs, more occupant comfort, and higher property values.

Building Science

The Standards support ongoing research and development in energy efficiency.

The Environment

The Standards reduce greenhouse gas emissions and avoids the need to construct new power plants.

How can I learn more about the Standards?

Contact the Energy Commission's Energy Standards Hotline toll-free at (800) 772-3300 or (916) 654-5106 or email us at title24@energy.ca.gov.

Additionally, the Energy Commission's Blueprint newsletter is available at: www.energy.ca.gov/efficiency/blueprint/

Appendix B.1, B.2, B.3 and B.4

Biological Resources

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TECHNICAL REPORT

Santa Clara Square Biological Resources Assessment: Subject Property 1

Prepared for:

Carlene Matchniff
Irvine Company
690 N. McCarthy Blvd. Suite 100
Milpitas, California 95035

September 9, 2014

The purpose of this Technical Report is to provide the results of the biological resources site assessment for Subject Property 1 (Study Area) within the Santa Clara Square project area. The Study Area is located in the City of Santa Clara, Santa Clara County, California and is bounded by U.S. 101 to the north, Augustine Drive to the south, and office complexes to the east and west (see Attachment A). Specifically, this Technical Report addresses the Study Area's potential to support 1) sensitive vegetation and aquatic communities, and 2) habitat sufficient to support special-status plant and wildlife species. The entire Study Area is composed of commercial development. It contains a single office building which is surrounded by parking lots and landscaping (see Attachment B).

METHODS

On January 27 and July 7, 2014 WRA Inc. (WRA) conducted site visits to the Study Area. Prior to the site visits, background literature was reviewed to assess the potential presence of sensitive vegetation types, aquatic communities, and special-status plant and wildlife species including those listed under the federal and/or California Endangered Species Acts. Resources reviewed include aerial photography, the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDB; CDFW 2014), the National Wetland Inventory (NWI; USFWS 2014), the California Native Plant Society (CNPS) Online Inventory (2014), USFWS species list for Santa Clara County (2014), and species habitat requirements as noted in available literature (WBWG 2014, Shuford and Gardali 2008).

The Study Area was traversed on foot by a biologist familiar with vegetation and aquatic communities, and special-status species known from Santa Clara County. All plant and wildlife species observed on-site were recorded. Site conditions were documented to assess the potential for special-status plant and wildlife to occur within the Study Area. This assessment was based on the quality, presence, and/or absence of habitat elements necessary to support special-status species.

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RESULTS

Site Description

The 2.58-acre Study Area is situated within urban and commercial development, and is composed entirely of man-made features. A major transportation corridor, U.S. 101, borders the site to the north. Office complexes similar to that found in the Study Area are present to the south, east and west. The Study Area contains one structure, which is generally flat along the walls and roof, and does not have eaves (see Attachment B). The remainder of the Study Area is dominated by paved parking lots with landscape plants along the building perimeters, site boundary and rows of parking spaces.

The surface of the Study Area has been rendered largely impermeable by the construction of the office building and parking lots. The surface of the entire Study Area has been classified as Urban Land (USDA 2014). This impermeable urban development has also been designed to convey waters away from the site and into the municipal storm drain system. Neither the impenetrable surfaces nor the limited areas of penetrable surface surrounding the landscape areas showed any signs of saturation or inundation.

The landscaped areas are composed of irrigated and maintained ornamental grasses, shrubs and mature trees, with infrequent non-native weeds. Although several species native to California are included in the landscaping, such as coast redwood (*Sequoia sempervirens*), they were intentionally planted and do not constitute a native vegetation community.

Wildlife observed within the Study Area are all non-special-status species adapted to urban environments. Species present within or adjacent to the Study Area during the site visits included: Anna's hummingbird (*Calypte anna*), American crow (*Corvus brachyrhynchos*), California towhee (*Melozone crissalis*), and gulls (*Larus* sp.).

Sensitive Vegetation and Aquatic Communities

No sensitive vegetation or aquatic communities were present within the Study Area. As noted above, the site has been designed to move surface water away and prevent ponding anywhere on the site, and no evidence of saturation or inundation was observed during the site visit. No sensitive aquatic communities are present, and none will likely be permitted to form, within the Study Area. Additionally, the vegetation present within the site is not a native vegetation community, and it is maintained as landscape features which precludes the growth of native, sensitive vegetation communities throughout the site.

Habitat Sufficient to Support Special-status Plant and Wildlife Species

Special-status Plant Species

No special-status plant species were observed in the Study Area during the site assessment. Of the 64 special-status plant species documented to occur in Santa Clara County (CNPS 2014, CDFW 2014), none have potential to occur within the Study Area. The Study Area is largely covered by buildings and pavement. The limited areas that do support vegetation have no potential to support special-status plant species due to one or more of the following:

- Specific edaphic conditions, such as soils derived from serpentine or volcanics, are absent;
- Specific hydrologic conditions, such as brackish tidal action, are absent;

- Common associated plant species and vegetation communities are absent;
- The Study Area is below the documented elevation range of the species;
- Lack of a viable seed bank due to historic and contemporary soil alterations;
- Non-native species competition; and
- Regular disturbance (e.g., mowing, landscape maintenance) of the Study Area.

Special-status Wildlife Species

No special-status wildlife species were observed in the Study Area during the site assessment. Fifty special-status wildlife species have been documented in CNDDB and USFWS records for Santa Clara County (CDFW 2014, USFWS 2014). Most of the special-status species known from the vicinity occur in specific, native habitat types that do not occur within the Study Area (e.g., tidal wetlands, serpentine grassland). Based upon the literature review, of the 50 wildlife species documented to occur in the area, all are unlikely or have not potential to occur within the Study Area. The site does not contain any habitat for aquatic-associated species such as fishes, fairy shrimps, frogs or salamanders. It also lacks tidal marsh, grassland, woodland, scrub and riparian habitats, thus excluding associated species which occur elsewhere in Santa Clara County, such as western burrowing owl (*Athene cunicularia*). Burrowing owl habitat requirements include low-stature grassland and small mammal burrows, neither of which is found in the Study Area.

White-tailed kite (*Elanus leucurus*) may occasionally forage in the vicinity of the Study Area, but it is unlikely to nest there due to regular human disturbance. Bat species may occasionally forage through the site, though it is unlikely that maternity roosts would form here because 1) the majority of trees on-site are relatively young and generally lack cavities and suitably complex foliage structures, and 2) buildings on-site are regularly maintained or otherwise disturbed by people.

Though no listed species are likely to occur, some non-special-status native bird species protected under the federal Migratory Bird Treaty Act and analogous CDFW codes have the potential to nest within limited habitats of the Study Area, namely in trees, shrubs and under the eaves of buildings. Non-special-status bird species often occur in association with developed areas. The legal protection of these species includes their eggs and/or chicks during the nesting period.

Other Sensitive Resources

One protected resource was present within the Study Area: mature trees protected in the City of Santa Clara's General Plan. Conservation Policy 5.10.1-P4 of the City's General Plan states that the City will "Protect all healthy cedars, redwoods, oaks, olives, bay laurel and pepper trees of any size, and all other trees over 36 inches in circumference measured from 48 inches above-grade on private and public property as well as in the public right-of-way". Several of these protected tree species were present within the Study Area, as were several trees meeting the specified size threshold. None of the trees in the Study Area are listed on the City of Santa Clara's Heritage Tree Appendix 8.10 of the General Plan.

In addition to City protection, the County of Santa Clara may protect certain trees in the Study Area if any County-designated heritage trees were present, or for "Any tree that was required to be planted or retained by the conditions of approval for any use permit, building site approval,

grading permit, architectural and site approval (ASA), design review, special permit or subdivision" (Sec. C16-3 Santa Clara County Tree Preservation Ordinance). The arborist report for the site should specify which trees meet City and County protection requirements.

SUMMARY AND RECOMMENDATIONS

One potentially sensitive resource – trees protected by the City of Santa Clara – was identified within the Study Area. Sensitive vegetation and aquatic communities, as well as special-status plant species are not present and do not have potential to occur within the site. No special-status wildlife species have the potential to occur, though non-special-status avian species protected under the MBTA may nest within the Study Area. The following sections present recommendations to avoid or reduce potential impacts to these sensitive resources.

Sensitive Vegetation and Aquatic Communities

The Study Area has no potential to support sensitive vegetation or aquatic communities. Therefore, there are no further recommendations for these communities, and any future activities within the Study Area have no potential to impact sensitive communities.

Special-status Plant Species

The Study Area has no potential to support special-status plant species documented within Santa Clara County. Therefore, there are no further recommendations for these species, and any future activities within the Study Area have no potential to impact special-status plant species.

Special-status Wildlife Species

No special-status wildlife species have the potential to occur within the Study Area; however, common bird species protected by the Migratory Bird Treaty Act and state codes may be impacted by construction during the bird breeding season, which generally extends from February 1 through August 31. Ideally, the clearing/modification of vegetation and the initiation of new construction should be done in the non-breeding season, i.e., from September 1 through January 31. If these activities are not feasible during the non-breeding season, a qualified biologist should perform pre-construction breeding bird surveys within 14 days of the onset of ground disturbance, building demolition and/or vegetation clearing. The survey area should encompass the project footprint and up to 200 feet surrounding the project footprint. If nesting birds are discovered in the vicinity of planned activities, a buffer area around each active nest should be established until the nest is vacated. The size of the buffer would be dependent on several variables including the particular species involved, its nesting microhabitat, and the anticipated level of disturbance in the area; buffers may be as small as 25 feet for common species, and up to 200 feet for birds of prey.

Other Sensitive Resources

Though no sensitive vegetation or aquatic communities are present, the Study Area does contain protected trees. Cedars, redwoods, oaks, olives, bay laurel and pepper trees of any size, and all other trees over 36 inches in circumference measured from 48 inches above-grade may be protected under Santa Clara City and County regulations, and impacts to these trees should be avoided to the extent feasible. The following measures are recommended to avoid, minimize or mitigate impacts to protected trees:

- Trees to remain during construction should be visibly demarcated to ensure impact avoidance;
- A tree removal permit should be obtained from the City of Santa Clara and County of Santa Clara if protected trees (as described above) will be removed; and
- Trees removed during construction should be replaced as per City of Santa Clara policy, which may include on- or off-site replacement at a 2:1 ratio (in accordance with City of Santa Clara General Plan, General Land Use Policy 5.3.1-P10).

Please do not hesitate to contact our office should you have any questions, comments, or concerns.

Sincerely,

Kate Allan

Kate Allan
Wildlife Biologist

Attachments:
A: Figures
B: Site Photographs

REFERENCES

[CDFW] California Department of Fish and Wildlife. 2014. Natural Diversity Database, Wildlife and Habitat Data Analysis Branch. Sacramento, California. Accessed: January 2014.

[CNPS] California Native Plant Society. 2014. Electronic Inventory of Rare and Endangered Vascular Plants of California. California Native Plant Society, Sacramento, California.

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[USDA] U.S. Department of Agriculture. Soilweb Earth. http://casoilresource.lawr.ucdavis.edu/soilweb/. Accessed: January 2014.

[WBWG] Western Bat Working Group. 2014. Species accounts. http://www.wbwg.org/speciesinfo/species_accounts/species_accounts.html. Accessed: January 2014.

Attachment A – Figures

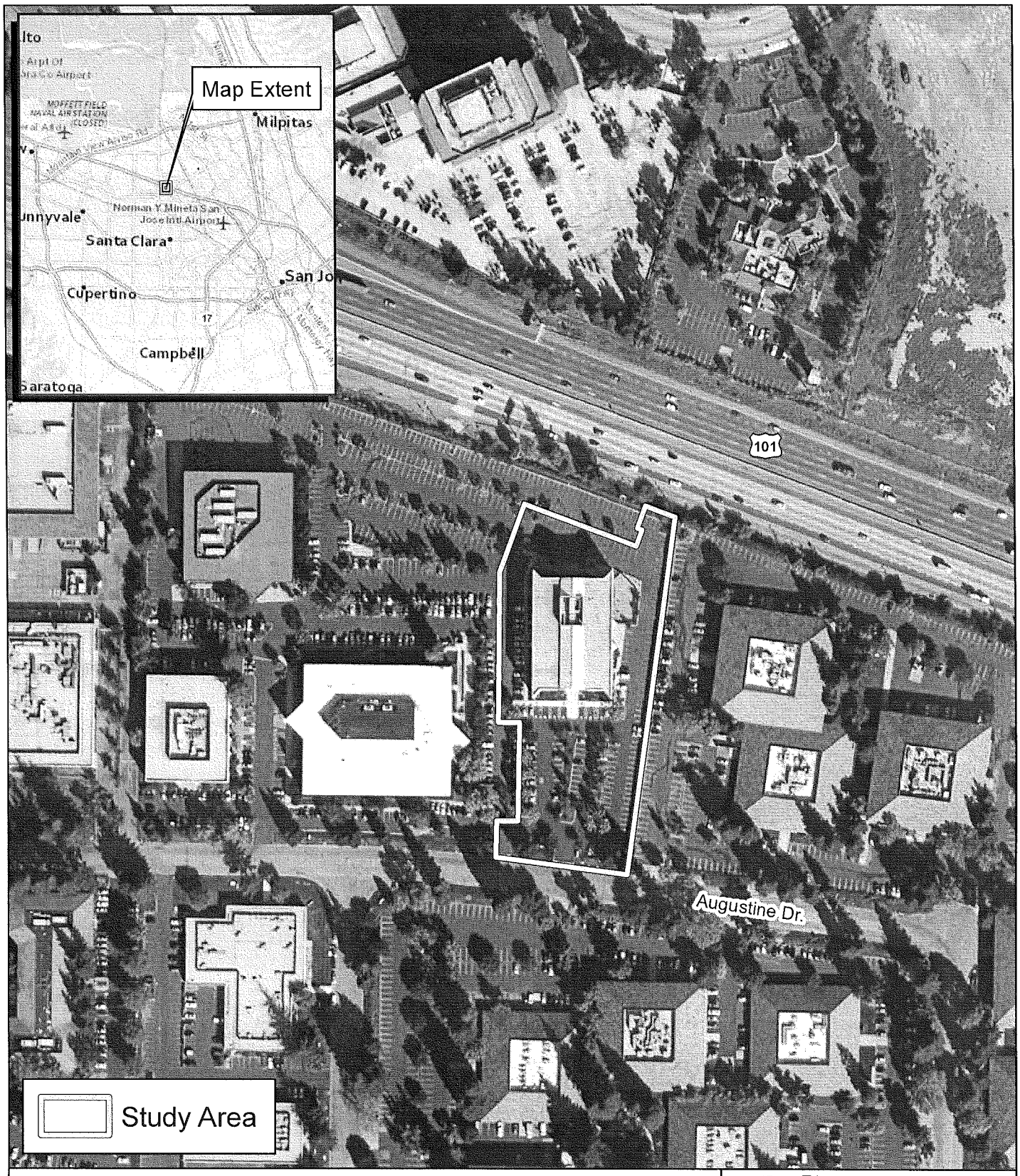

Figure 1. Study Area Location Map

Subject Property 1
Santa Clara Square
Santa Clara County, California

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Map Date: September 2014
Map By: Chris Zumwalt
Base Source: ESRi Streaming Imagery

Path: L:\Acad 2000 Files\23000\23013-2\gis\ArcMap\Property 1\Fig 1 Location Property 1.mxd

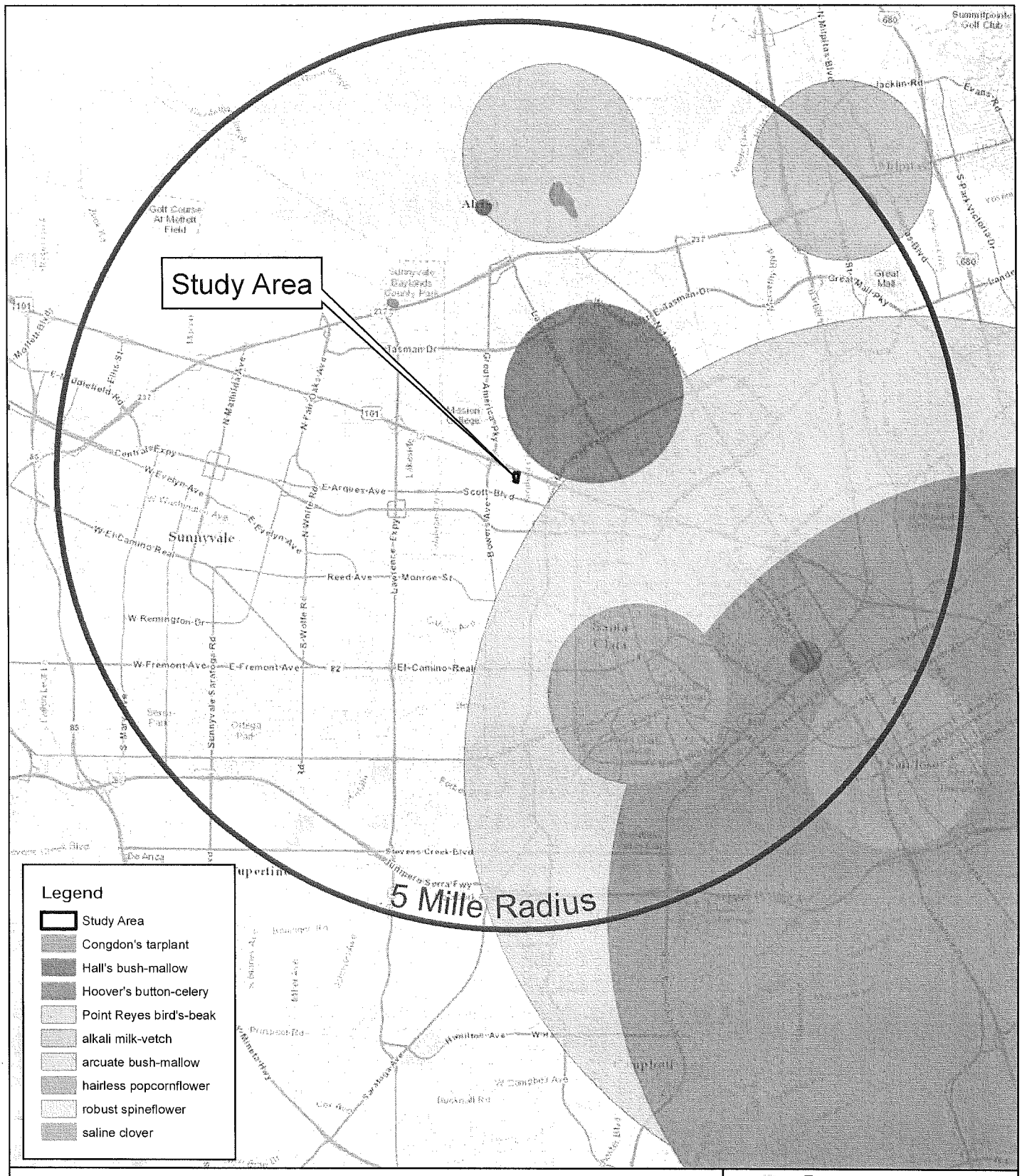

Figure 2. CNDDB Plant Occurrences within 5 Miles of the Study Area

Subject Property 1
Santa Clara Square
Santa Clara County, California

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ENVIRONMENTAL CONSULTANTS

Map Date: January 2014
Map By: Chris Zumwalt
Base Source: ESRI World Topo

Path: L:\Acad 2000 Files\23000\23013-2\gis\ArcMap\Property 1\Fig 2 CNDDB plants Property 1.mxd

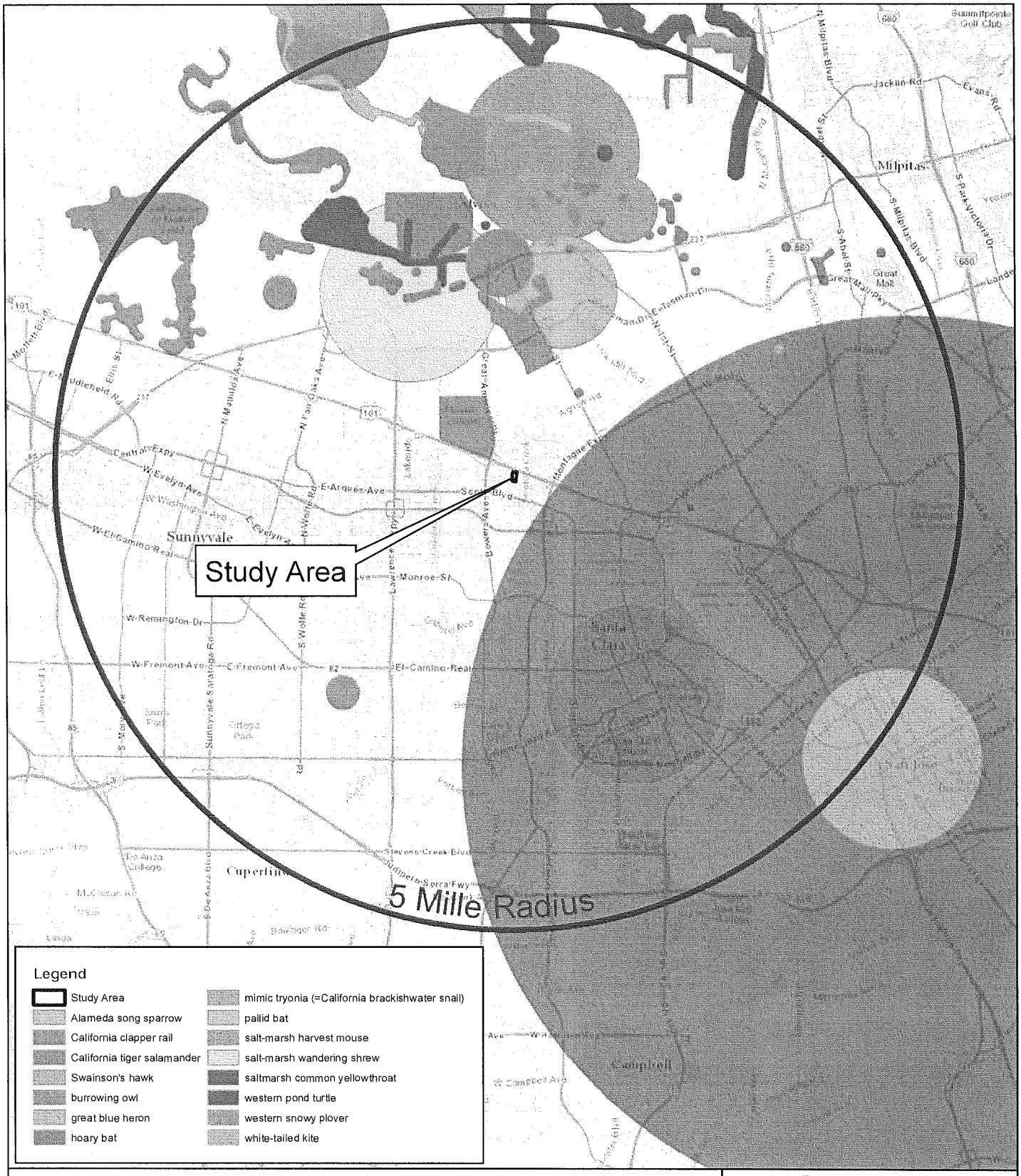

Figure 3. CNDDB Wildlife Occurrences within 5 Miles of the Study Area

Subject Property 1
Santa Clara Square
Santa Clara County, California

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Feet

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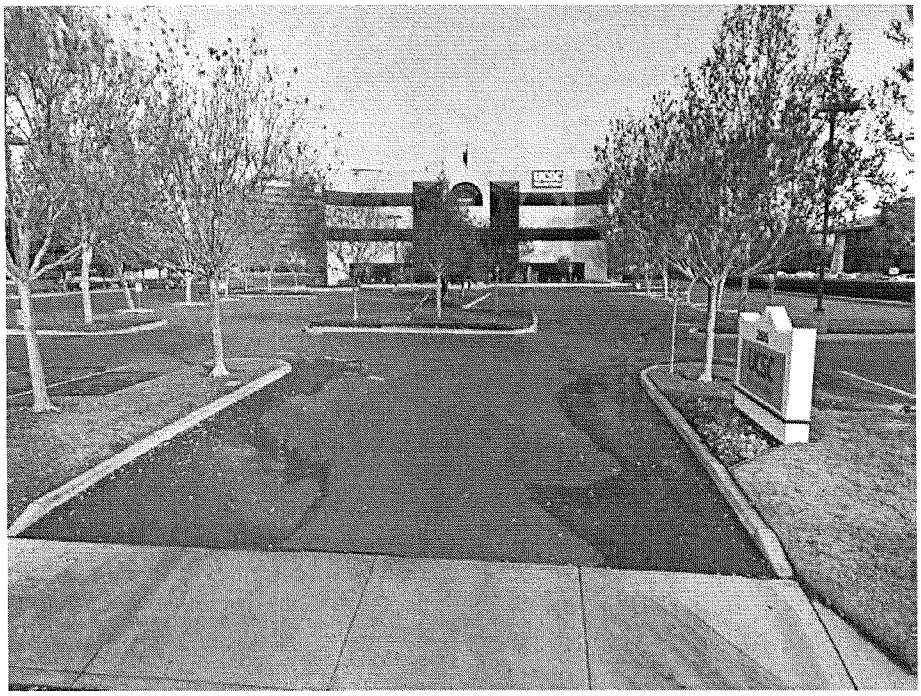
Map Date: January 2014
Map By: Chris Zumwalt
Base Source: ESRI World Topo

Path: L:\Acad 2000 Files\23000\23013-2\gis\ArcMap\Property 1\Fig 3 CNDDB wildlife Property 1.mxd

Attachment B – Site Photographs



Top: Office building, parking lot and landscaping in the Study Area. Google Earth image facing north, December 2013.

Bottom: Parking lot, landscaping and transportation corridor north of the Study Area. Photograph taken January 27, 2014.

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TECHNICAL REPORT

Santa Clara Square Biological Resources Assessment: Subject Property 2

Prepared for:

Carlene Matchniff
Irvine Company
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Milpitas, California 95035

September 9, 2014

The purpose of this Technical Report is to inform you of the results of the biological resources site assessment for the Subject Property 2 (APN: 216-045-025) (Study Area) within the Santa Clara Square project area. The Study Area is located in the City of Santa Clara, Santa Clara County, California and is bounded by an office complex to the north and south, Octavius Drive to the west, and the San Tomas Aquino Creek Trail to the east (see Attachment A). Specifically, this Technical Report addresses the Study Area's potential to support 1) sensitive vegetation and aquatic communities, and 2) habitat sufficient to support special-status plant and wildlife species. The entire Study Area is composed of commercial development. It contains an office complex consisting of two structures, which are surrounded by parking lots and landscaping (see Attachment B).

METHODS

On January 27 and July 7, 2014 WRA Inc. (WRA) conducted site visits to the Study Area. Prior to the site visits, background literature was reviewed to assess the potential presence of sensitive vegetation types, aquatic communities, and special-status plant and wildlife species including those listed under the federal and/or California Endangered Species Acts. Resources reviewed include aerial photography, the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDB; CDFW 2014), the National Wetland Inventory (NWI; USFWS 2014), the California Native Plant Society (CNPS) Online Inventory (2014), USFWS species list for Santa Clara County (2014), and species habitat requirements as noted in available literature (WBWG 2014, Shuford and Gardali 2008).

The Study Area was traversed on foot by a biologist familiar with vegetation and aquatic communities, and special-status species known from Santa Clara County. All plant and wildlife species observed on-site were recorded. Site conditions were documented to assess the potential for special-status plant and wildlife to occur within the Study Area. This assessment was based on the quality, presence, and/or absence of habitat elements necessary to support special-status species.

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RESULTS

Site Description

The 3.27-acre Study Area is situated within urban and commercial development, and is composed entirely of man-made features. An office complex and a major transportation corridor, U.S. 101, border the site to the north. Office complexes similar to that found in the Study Area are present to the south. To the west, it is bordered by Octavius Drive, and to the east, the site is bordered by a berm on which the San Tomas Aquino Creek Trail is located. San Tomas Aquino Creek is located east of the trail, approximately 50 feet from the Study Area boundary. The Study Area contains two structures, both of which are two-story office buildings with eaves that overhang the walls (see Attachment B). The remainder of the Study Area is dominated by paved parking lots with landscape plants. The surface of the Study Area has been rendered largely impermeable by the construction of office buildings and parking lots. The surface of the entire Study Area has been classified as Urban Land (USDA 2014). This impermeable urban development has been designed to convey waters away from the site and into the municipal storm drain system. Neither the impenetrable surfaces nor the limited areas of penetrable surface surrounding the landscape areas showed any signs of saturation or inundation.

The landscaped areas are composed of irrigated and maintained ornamental grasses, shrubs and mature trees, with infrequent non-native weeds. Although several species native to California are included in the landscaping, such as coast redwoods (*Sequoia sempervirens*), which were intentionally planted and do not constitute a native vegetation community.

Wildlife observed within the Study Area were all non-special-status species adapted to urban environments. Species present within or adjacent to the Study Area during the site visits included: Western scrub jay (*Aphelocoma californica*), American crow (*Corvus brachyrhynchos*), Anna's hummingbird (*Calypte anna*), dark-eyed junco (*Junco hyemalis*), yellow-rumped warbler (*Dendroica coronate*), and gull species (*Larus* spp.).

Sensitive Vegetation and Aquatic Communities

No sensitive vegetation or aquatic communities were present within the Study Area. As noted above, the site has been designed to move surface water away and prevent ponding anywhere on the site, and no evidence of saturation or inundation were observed during the site visit. Thus, no sensitive aquatic communities are present, and none will likely be permitted to form, within the Study Area. Additionally, the vegetation present within the site is not a native vegetation community, and it is maintained as such, which precludes the growth of native, sensitive vegetation communities throughout the site.

As noted above, San Tomas Aquino Creek is located approximately 50 feet east of the Study Area, and it is considered a sensitive aquatic community. Although it is located outside the project footprint, the creek may receive surface water from the Study Area via storm drains, and it has therefore been included in this assessment. The San Tomas Aquino Creek has been channelized and altered from its native state, though it still supports native plant species and several native fish species. Historic records have documented steelhead (*Oncorhynchus mykiss*) in this creek; however, recent surveys have shown that steelhead have not occupied the creek in recent years, and they are considered absent (Leidy et al. 2005).

Special-status Plant and Wildlife Species

Special-status Plant Species

No special-status plant species were observed in the Study Area during the site assessment. Of the 64 special-status plant species documented to occur in Santa Clara County (CNPS 2014, CDFW 2014), none have potential to occur within the Study Area. The Study Area is largely covered by buildings and pavement, and the limited areas that support vegetation have no potential to support special-status plant species due to one or more of the following:

- Specific edaphic conditions, such as soils derived from serpentine or volcanics, are absent;
- Specific hydrologic conditions, such as brackish tidal action, are absent;
- Common associated plant species and vegetation communities are absent;
- The Study Area is below the documented elevation range of the species;
- Lack of a viable seed bank due to historic and contemporary soil alterations;
- Non-native species competition; and
- Regular disturbance (e.g., mowing, landscape maintenance) of the Study Area.

The adjacent San Tomas Aquino Creek is channelized and highly disturbed, and it is unlikely to support special status plant species for the reasons listed above.

Special-status Wildlife Species

No special-status wildlife species were observed in the Study Area during the site assessment. Fifty special-status wildlife species have been documented in CNDDB and USFWS records for Santa Clara County (CDFW 2014, USFWS 2014). Most of the special-status species known from the vicinity occur in specific, native habitat types that do not occur within the Study Area (e.g., tidal wetlands, serpentine grassland). Based upon the literature review, of the 50 wildlife species documented to occur in the area, all are unlikely or have not potential to occur within the Study Area. The site does not contain any habitat for aquatic-associated species such as fishes, fairy shrimps, frogs or salamanders. It also lacks tidal marsh, grassland, woodland, scrub and riparian habitats, thus excluding associated species which occur elsewhere in Santa Clara County, such as western burrowing owl (*Athene cunicularia*). Burrowing owl habitat requirements include low-stature grassland and small mammal burrows, neither of which is found in the Study Area.

White-tailed kite (*Elanus leucurus*) may occasionally forage in the vicinity of the Study Area, but it is unlikely to nest there due to regular human disturbance. Bat species may occasionally forage through the site, though it is unlikely that maternity roosts would form here because 1) the majority of trees on-site are relatively young and generally lack cavities and suitably complex foliage structures, and 2) buildings on-site are regularly maintained or otherwise disturbed by people.

Though no listed species are likely to occur, some non-special-status native bird species protected under the federal Migratory Bird Treaty Act and analogous CDFW codes have the potential to nest within limited habitats of the Study Area, namely in trees, shrubs and under the eaves of buildings. Non-special-status bird species often occur in association with developed areas. The legal protection of these species includes their eggs and/or chicks during the nesting period.

The adjacent San Tomas Aquino Creek is highly disturbed and surrounded by dense urban development, and thus it provides poor habitat for special status wildlife species. In particular, steelhead, which historically occurred here, are now absent (Leidy et al. 2005). Although the creek provides poor quality habitat for sensitive species, it does support a limited amount of native fish and wildlife species.

Other Sensitive Resources

One protected resource was present within the Study Area: mature trees protected in the City of Santa Clara's General Plan. Conservation Policy 5.10.1-P4 of the City's General Plan states that the City will "Protect all healthy cedars, redwoods, oaks, olives, bay laurel and pepper trees of any size, and all other trees over 36 inches in circumference measured from 48 inches above-grade on private and public property as well as in the public right-of-way". Several of these protected tree species were present within the Study Area, as were several trees meeting the specified size threshold. None of the trees in the Study Area are listed on the City of Santa Clara's Heritage Tree Appendix 8.10 of the General Plan.

In addition to City protection, the County of Santa Clara may protect certain trees in the Study Area if any County-designated heritage trees were present, or for "Any tree that was required to be planted or retained by the conditions of approval for any use permit, building site approval, grading permit, architectural and site approval (ASA), design review, special permit or subdivision" (Sec. C16-3 Santa Clara County Tree Preservation Ordinance). The arborist report for the site should specify which trees meet City and County protection requirements.

SUMMARY AND RECOMMENDATIONS

One potentially sensitive resource – trees protected by the City of Santa Clara – was identified within the Study Area. Sensitive vegetation and aquatic communities, as well as special-status plant species are not present and do not have potential to occur within the site. No special-status wildlife species have the potential to occur, though non-special-status avian species protected under the MBTA may nest within the Study Area. The following sections present recommendations to avoid or reduce potential impacts to these sensitive resources.

Sensitive Vegetation and Aquatic Communities

The Study Area has no potential to support sensitive vegetation or aquatic communities. Therefore, there are no further recommendations for these communities within the Study Area.

Although it is not anticipated that project activities would impact San Tomas Aquino Creek, any alteration of the berm that separates the creek from the Study Area or work which could cause sediment or other objects to be discharged into the creek should be avoided. Additionally, best management practices should be implemented to prevent the spill of petrochemicals or other pollutants within the Study Area as they could potentially enter the creek via the storm drain system. Although not anticipated, if project activities have the potential to fill or pollute any portion of the creek, permits from the U.S. Army Corps of Engineers and Regional Water Quality Control Board should be obtained prior to project initiation.

Special-status Plant Species

The Study Area has no potential to support special-status plant species documented within Santa Clara County. Therefore, there are no further recommendations for these species, and any future activities within the Study Area have no potential to impact special-status plant species.

Special-status Wildlife Species

No special-status wildlife species have the potential to occur within the Study Area; however, common bird species protected by the Migratory Bird Treaty Act and state codes may be impacted by construction during the bird breeding season, which generally extends from February 1 through August 31. Ideally, the clearing/modification of vegetation and the initiation of new construction should be done in the non-breeding season, i.e., from September 1 through January 31. If these activities are not feasible during the non-breeding season, a qualified biologist should perform pre-construction breeding bird surveys within 14 days of the onset of ground disturbance, building demolition and/or vegetation clearing. The survey area should encompass the project footprint and up to 200 feet surrounding the project footprint. If nesting birds are discovered in the vicinity of planned activities, a buffer area around each active nest should be established until the nest is vacated. The size of the buffer would be dependent on several variables including the particular species involved, its nesting microhabitat, and the anticipated level of disturbance in the area; buffers may be as small as 25 feet for common species, and up to 200 feet for birds of prey.

Other Sensitive Resources

Though no sensitive vegetation or aquatic communities are present, the Study Area does contain protected trees. Cedars, redwoods, oaks, olives, bay laurel and pepper trees of any size, and all other trees over 36 inches in circumference measured from 48 inches above-grade may be protected under Santa Clara City and County regulations, and impacts to these trees should be avoided to the extent feasible. The following measures are recommended to avoid, minimize or mitigate impacts to protected trees:

- Trees to remain during construction should be visibly demarcated to ensure impact avoidance;
- A tree removal permit should be obtained from the City of Santa Clara and County of Santa Clara if protected trees (as described above) will be removed; and
- Trees removed during construction should be replaced as per City of Santa Clara policy, which may include on- or off-site replacement at a 2:1 ratio (in accordance with City of Santa Clara General Plan, General Land Use Policy 5.3.1-P10).

Please do not hesitate to contact our office should you have any questions, comments, or concerns.

Sincerely,

Kate Allan

Kate Allan
Wildlife Biologist

Attachments:
A: Figures
B: Site Photographs

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Attachment A – Figures

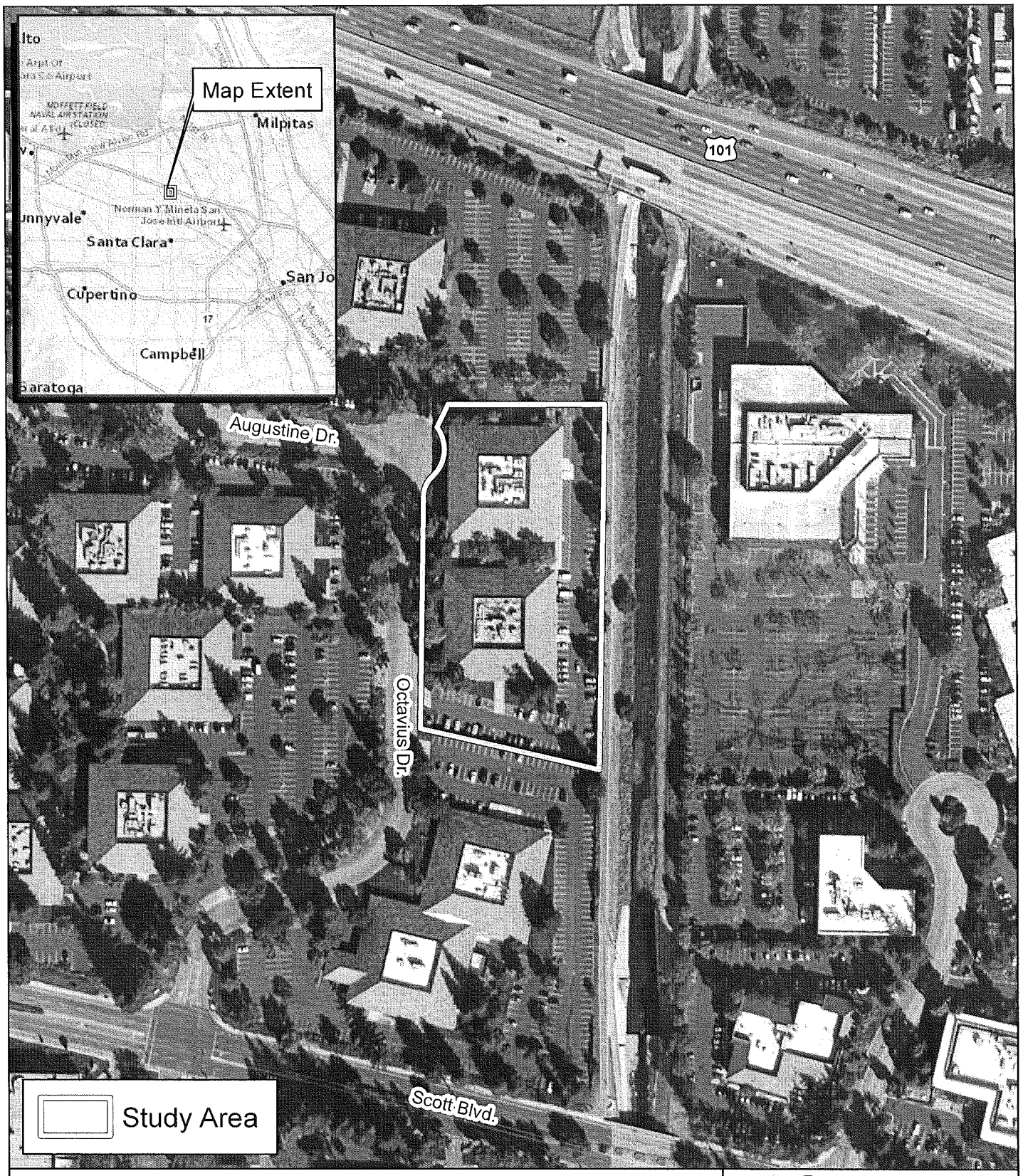

Figure 1. Study Area Location Map

Subject Property 2
Santa Clara Square
Santa Clara County, California

N
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S

0 200 400
Feet

wra
ENVIRONMENTAL CONSULTANTS

Map Date: September 2014
Map By: Chris Zumwalt
Base Source: ESRI Streaming Imagery

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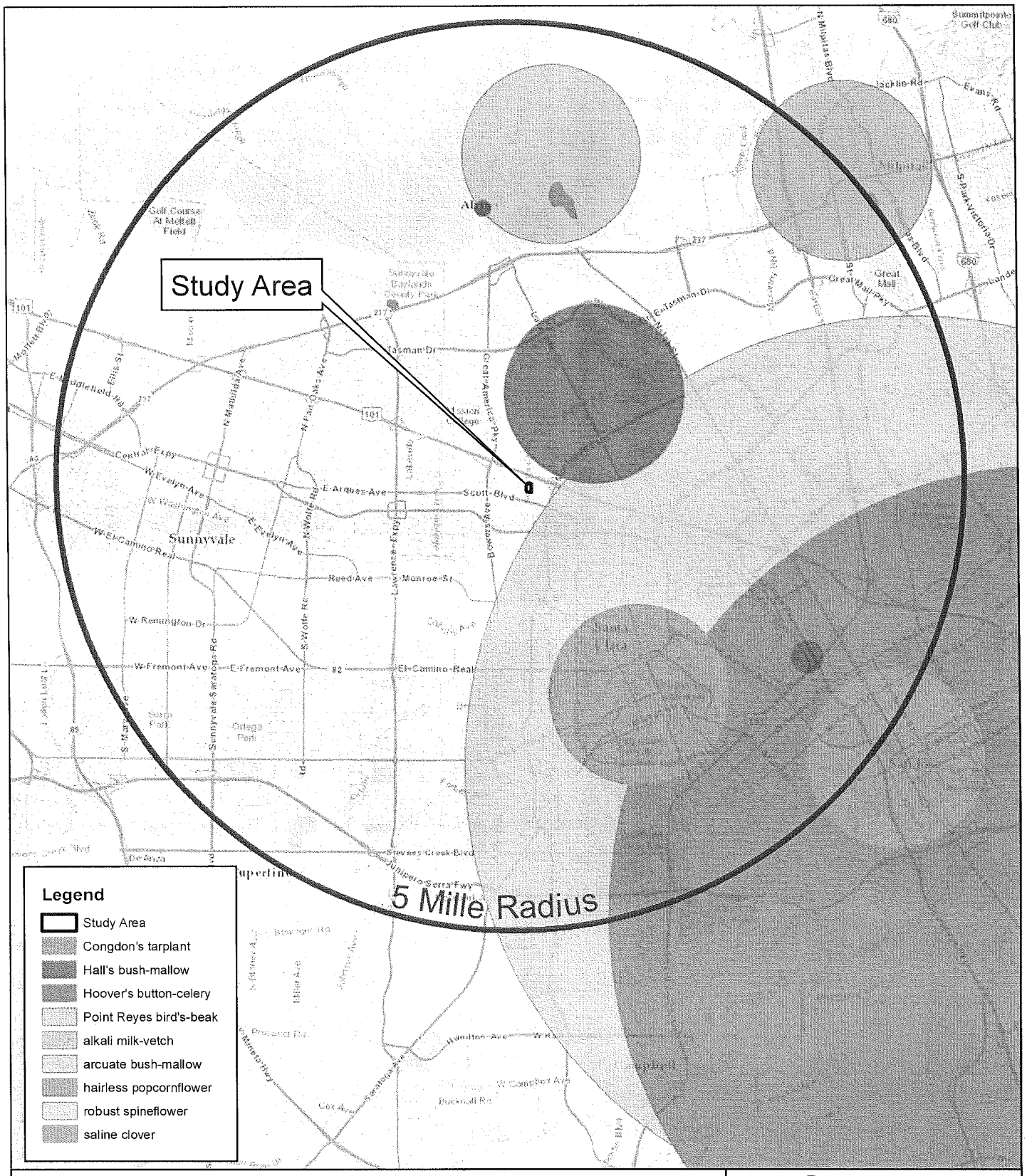

Figure 2. CNDDB Plant Occurrences within 5 Miles of the Study Area

Subject Property 2
Santa Clara Square
Santa Clara County, California

N
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Miles

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ENVIRONMENTAL CONSULTANTS

Map Date: January 2014
Map By: Chris Zumwalt
Base Source: ESRI World Topo

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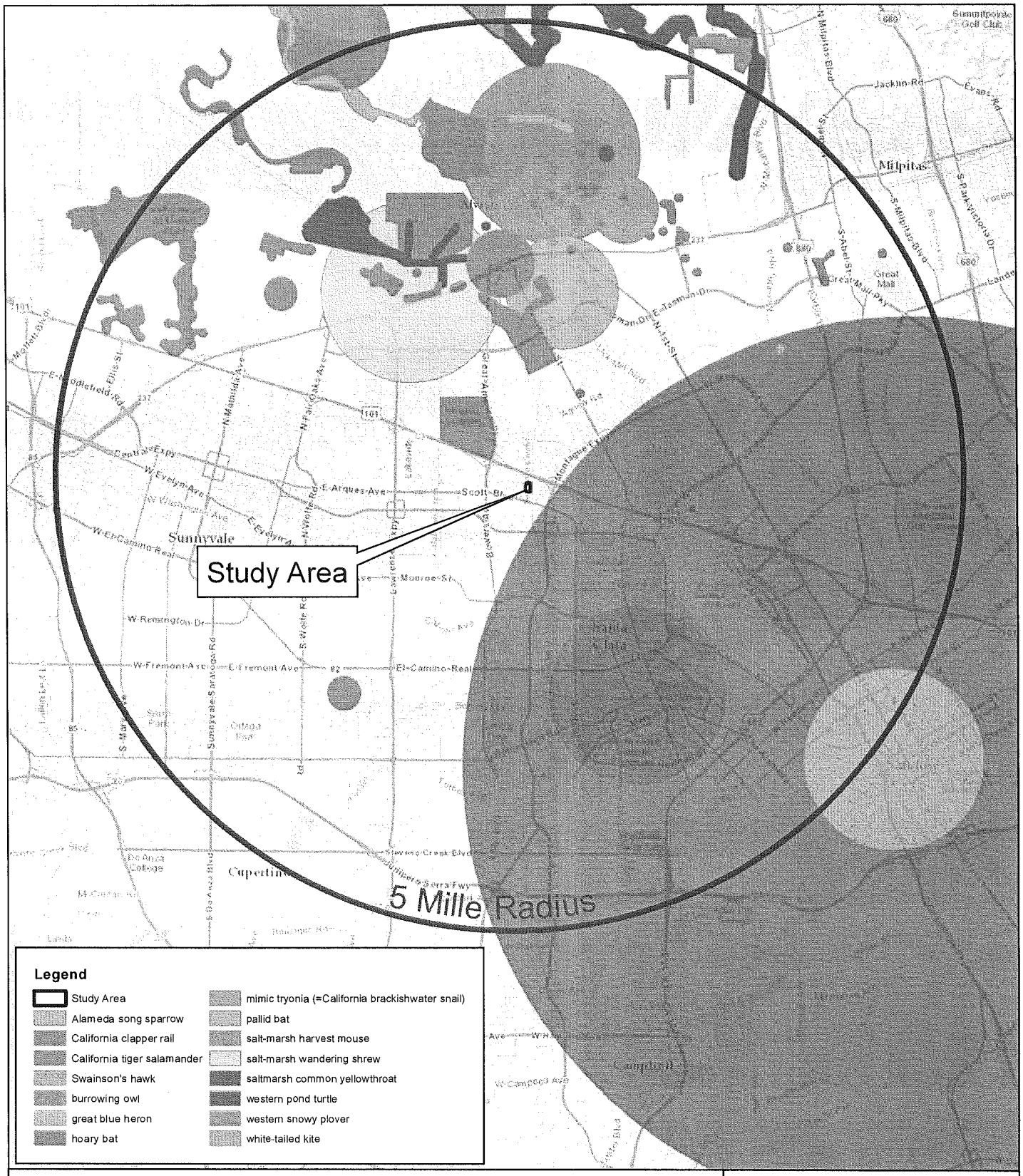

Figure 3. CNDDB Wildlife Occurrences within 5 Miles of the Study Area

Subject Property 2
Santa Clara Square
Santa Clara County, California

N
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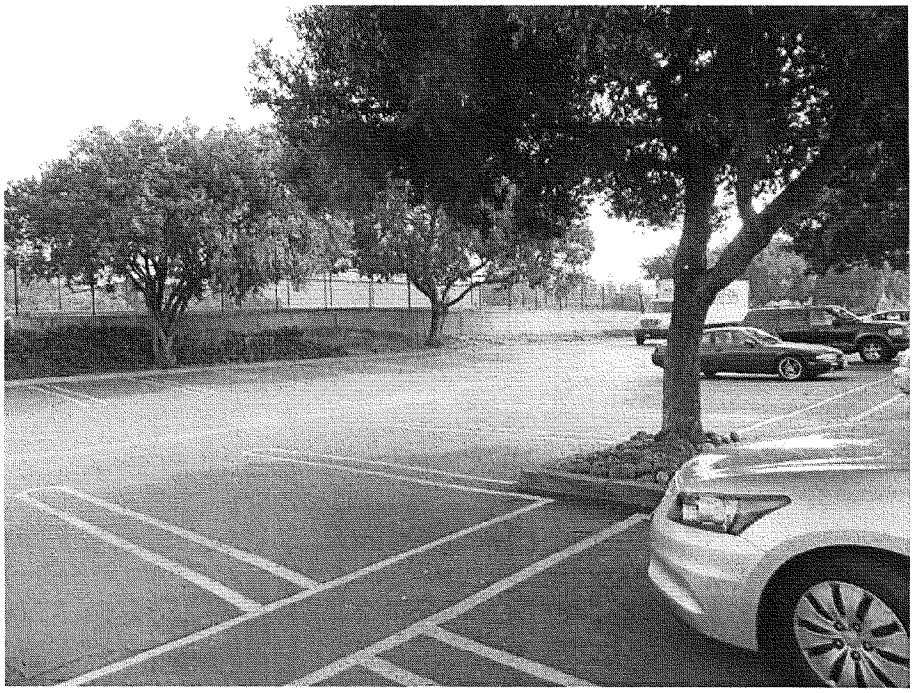
Feet

wra
ENVIRONMENTAL CONSULTANTS

Map Date: January 2014
Map By: Chris Zumwalt
Base Source: ESRI World Topo

Path: L:\Acad 2000 Files\23000\23013-2\gis\ArcMap\Property 2\Fig 3 CNDDB wildlife Property 2.mxd

Attachment B – Site Photographs



Top: Northern office building in foreground; southern building in back. Photo taken facing southwest.
Bottom: Parking lot, landscaping and berm separating the Study Area from the San Tomas Aquino Creek Trail.

Photographs taken January 27, 2014

wra
ENVIRONMENTAL CONSULTANTS

The Irvine Company

Tree Survey Report
PSAI Parcel

Prepared for:
The Irvine Company
690 N. McCarthy Blvd., #100
Milpitas CA 95035

Prepared by:
HortScience, Inc.
325 Ray Street
Pleasanton, CA 94566

September 2014

HORT SCIENCE

Tree Survey Report

PSAI Parcel
Santa Clara CA

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Attachments

Tree Assessment Form

Tree Assessment Map

Introduction and Overview

The Irvine Company is planning to redevelop the parcel located at 2485 Augustine Dr., in Santa Clara. Existing site use consists of an office building, parking and associated landscaping. The Irvine Company requested that HortScience, Inc. assess the health and structural condition of the trees, and provide preliminary recommendations for tree preservation. This report presents the following information:

1. Evaluation of tree health and structural condition.
2. Assessment of tree suitability for preservation.
3. Guidelines for tree preservation.

Survey Methods

Trees were surveyed in September 2014. Each tree larger than 12.5" in circumference (4" in diameter) was visually assessed from the ground and evaluated as follows:

1. Identifying the tree as to species.

2. Attaching a numerically coded metal tag on the trunk of each tree.

3. Measuring the trunk diameter at a point 48" above grade.

4. Evaluating the health and structural condition using a scale of 1 – 5:
   - ***5*** - A healthy, vigorous tree, reasonably free of signs and symptoms of disease, with good structure and form typical of the species.
   - ***4*** - Tree with slight decline in vigor, small amount of twig dieback, or minor structural defects that could be corrected.
   - ***3*** - Tree with moderate vigor, moderate twig and small branch dieback, thinning of crown, poor leaf color, moderate structural defects that might be mitigated with regular care.
   - ***2*** - Tree in decline, epicormic growth, extensive dieback of medium to large branches, significant structural defects that cannot be abated.
   - ***1*** - Tree in severe decline, dieback of scaffold branches and/or trunk; most of foliage from epicormic shoots (secondary shoots that arise along the trunk and branches); extensive structural defects that cannot be abated.

5. Assessing tree suitability for preservation as high, moderate or low. Suitability for preservation considers the health, age and structural condition of the tree, and its potential to remain an asset to the site for years to come.

6. Determining if the tree meets the City of Santa Clara's criteria for *Protected* status as established in General Plan Conservation Policy 5.10.1-P4: "Protect all healthy cedars, redwoods, oaks, olives, bay laurel and pepper trees of any size, and all other trees over 36 inches in circumference measured from 48 inches above-grade on private and public property as well as in the public right-of-way." Where trees had more than one stem, the circumference of all stems was added together. For the purposes of this report, trees in either good (rating of 4) or excellent (rating of 5) condition were considered "healthy."

7. Determining if any City-designated *Heritage* trees are present.

Description of Trees

Forty (40) trees were evaluated, representing six species (Table 1). Since this parcel was an addition to our previous work at the site in July, trees previously considered off-site were now on-site and as a result tree tag numbers are non-sequential. All trees were likely planted as part of landscape development when the project was constructed in the 1970s or 1980s. Descriptions of each tree are found in the ***Tree Assessment Form*** and approximate locations are plotted on the ***Tree Inventory Map*** (see Exhibits).

While native to the California coast, coast redwoods are not considered indigenous to the Santa Clara valley.

Table 1. Tree condition and frequency of occurrence.
PSAI parcel. The Irvine Company. Santa Clara CA.

Common name	Scientific name	Condition				No. of Trees	
		Poor	Fair	Good	Excell.	Protected	Total
Crape myrtle	*Lagerstroemia indica*	-	-	2	8	-	10
Canary Island pine	*Pinus canariensis*	1	-	-	-	-	1
London plane	*Platanus x hispanica*	-	1	12	1	5	14
Purpleleaf plum	*Prunus cerasifera 'Atropurpurea'*	-	-	1	1	-	2
Coast redwood	*Sequoia sempervirens*	-	2	3	7	10	12
Water gum	*Tristaniopsis laurina*	-	-	1	-	-	1
Total, all trees assessed		**1**	**3**	**19**	**17**	**15**	**40**

The City of Santa Clara's criteria for *Protected* (tree) status is established in General Plan Conservation Policy 5.10.1-P4: "Protect all healthy cedars, redwoods, oaks, olives, bay laurel and pepper trees of any size, and all other trees over 36 inches in circumference measured from 48 inches above-grade on private and public property as well as in the public right-of-way." Twelve (12) coast redwoods (*Sequoia sempervirens*) were present. We did not observe any cedars (*Cedrus* sp., *Chamaecyparis* sp., *Calocedrus decurrens*), giant sequoias (*Sequoiadendron giganteum*), dawn redwoods (*Metasequoia glyptostroboides*), oak species (*Quercus* sp.) olives (*Olea* sp.), bay laurel (*Umbellularia californica*) or peppers (*Schinus* sp.).

Appendix 8.10 of the City's General Plan lists trees given *Heritage* status. Based on our review of the list, none of the trees at the project site has *Heritage* status.

Trees considered to have *Protected* status met both of the following criteria: 1) coast redwoods of any size or any other species with trunk circumference of 36" or greater (measured at 48" above the ground) and 2) healthy (condition rating of 4 or 5). Fifteen (15) trees met these criteria, and are identified in the ***Tree Assessment Form*** (see Exhibits).

London plane, with 14 trees, was the most frequently occurring species. London planes were young to semi-mature in form and development, with trunk diameters between 7 and 14". All had been planted in parking lot islands and had performed well. Twelve (12) of the trees were in good condition, one (1) was in excellent and one (1) was in fair. They were mostly noted as having excellent form and structure. London plane #698 was the exception, with a bowed trunk (**Photo 1**).

Photo 1: London planes #698-700 (L to R). #698 was in fair condition, with the others in good condition. All had full crowns.

Coast redwood, with 12 trees was also common to the site. Four (4) of the trees were young, with diameters from 7-11", and the remaining eight (8) were semi-mature with trunk diameters from 18-24". In general, coast redwoods were in excellent condition (7 trees), with three (3) in good, and two (2) in fair. Drought stress, causing varying levels of twig and branch dieback and thin crowns, was common in those trees in fair and good conditions.

Ten (10) crape myrtles were located at the ends of the parking lot islands, helping to define drive isles. Trees were young to semi-mature in development with trunk diameters between 6" and 8". Overall, the species had performed well as an accent tree, with eight (8) in excellent condition and the remaining two (2) in good.

The remaining three (3) species were represented by one or two individuals, including:

- Two (2) purple-leaf plums which had been planted at the north end of the site, adjacent to Highway 101. Both were young (5-6" in diameter) and in good to excellent condition.

- Canary Island pine #534 was growing with the purple-leaf plums at the north end of the site. It was semi-mature, at 15" in diameter but due to its height, it had been topped for the overhead utility lines in area. As a result of the topping, it was the only tree in poor condition assessed at the site.

- A young water gum had been planted along the east side of the building. It was in good condition but leaned east, away from the structure.

Suitability for Preservation

Trees that are preserved on development sites must be carefully selected to make sure that they may survive development impacts, adapt to a new environment and perform well in the landscape. Our goal is to identify trees that have the potential for long-term health, structural stability and longevity. Evaluation of suitability for preservation considers several factors:

- **Tree health**
  Healthy, vigorous trees are better able to tolerate impacts such as root injury, demolition of existing structures, changes in soil grade and moisture, and soil compaction than are non-vigorous trees.

- **Structural integrity**
  Trees with significant amounts of wood decay and other structural defects that cannot be corrected are likely to fail. Such trees should not be preserved in areas where damage to people or property is likely.

- **Species response**
  There is a wide variation in the response of individual species to construction impacts and changes in the environment. For example, coast redwood and London plane are tolerant of construction impacts.

- **Tree age and longevity**
  Old trees, while having significant emotional and aesthetic appeal, have limited physiological capacity to adjust to an altered environment. Young trees are better able to generate new tissue and respond to change.

- **Species invasiveness**
  Species which spread across a site and displace desired vegetation are not always appropriate for retention. This is particularly true when indigenous species are displaced. The California Invasive Plant Inventory Database (http://www.cal-ipc.org/ip/inventory/weedlist.php?#key) lists species identified as having being invasive. Santa Clara is part of the Central West Floristic Province. None of the species assessed at the Office Parking Garage parcel qualified as invasive.

Each tree was rated for suitability for preservation based upon its age, health, structural condition and ability to safely coexist within a development environment (Table 2).

Table 2. Tree suitability for preservation.
PSAI parcel. The Irvine Company. Santa Clara CA.

High	Trees with good health and structural stability that have the potential for longevity at the site. Twenty-nine (29) trees were rated as having high suitability for preservation, including 10 crape myrtles, nine (9) London planes, eight (8) coast redwoods, purple-leaf plum #533 and water gum #718.

(**Continued, following page**)

Table 2. Tree suitability for preservation, continued.
PSAI parcel. The Irvine Company. Santa Clara CA.

Moderate	Trees in fair health and/or possessing structural defects that may be abated with treatment. Trees in this category require more intense management and monitoring, and may have shorter life-spans than those in the "high" category. Ten (10) trees were rated as having moderate suitability for preservation including five (5) London planes, four (4) coast redwoods, and purple-leaf plum #532.
Low	Trees in poor health or possessing significant defects in structure that cannot be abated with treatment. These trees can be expected to decline regardless of management. The species or individual tree may possess either characteristics that are undesirable in landscape settings or be unsuited for use areas. Canary Island pine #534 was the only tree assessed at the site with low suitability for preservation.

We consider trees with high suitability for preservation to be the best candidates for preservation. We do not recommend retention of trees with low suitability for preservation in areas where people or property will be present. Retention of trees with moderate suitability for preservation depends upon the intensity of proposed site changes.

Mitigation Requirements

The City of Santa Clara's applicable tree protection policies, regulations, or ordinances include the following:

- General Plan Conservation Policy 5.10.1-P4 requires that development "protect all healthy cedars, redwoods, oaks, olives, bay laurel and pepper trees of any size, and all other trees over 36 inches in circumference (12" diameter) measured from 48 inches above-grade on private and public property as well as in the public right-of-way."
- General Plan Policy 5.10.1-P3 requires "preservation of all City-designated heritage trees listed in the Heritage Tree Appendix 8.10 of the General Plan." The City also requires that tree removal be mitigated by replanting.
- General Plan Policy 5.3.1-P10 requires that new development "provide opportunities for increased landscaping and trees in the community, including requirements for new development to provide street trees and a minimum 2:1 on- or off-site replacement for trees removed as part of the project."
- Additionally, the City's Design Guidelines require that mature trees proposed for removal be replaced on-site at a 1:1 ratio with 24", 36" box or specimen size material.

Based on our assessment, there were a total of 40 trees at the PSAI parcel, including 12 coast redwoods (*Sequoia sempervirens*). No cedars, oaks, olives, bay laurel, or pepper trees of any size, and no *Heritage* trees listed in the Heritage Tree Appendix 8.10 of the General Plan, were present on the project site.

Fifteen (15) of the trees assessed had *Protected* status by meeting both of the following criteria: 1) coast redwoods of any size or any other species with trunk circumference of 36" or greater (measured at 48" above the ground) and 2) healthy (condition rating of 4 or 5). Protected are identified in the ***Tree Assessment Form*** (see Exhibits). Normal mitigation requirement would be 2 replacement trees for every *Protected* tree to be removed, with replacement trees being a minimum 24" box size.

Tree Preservation Guidelines

Plans for redevelopment of PSAI parcel have not yet been finalized. Based on my observations and assessment, I suggest that some areas have better potential for preservation than others.

The ***best*** opportunities for tree preservation are the 29 trees with good suitability for preservation. This group is dominated by crape myrtle, London plane and coast redwood because these species had performed well at the site are in good and excellent condition. The keys to successful preservation include: 1) maintaining irrigation throughout the design and construction phases and 2) holding any site re-development to at least 20' from redwood trees and 10' from crape myrtle and London plane trees.

Among tree species coast redwood, London plane, and crape myrtle offer the best potential. But the location of some trees in small planting spaces limits their potential for retention.

Trees along the northern property boundary could be retained if the existing curb were preserved. The same is true for trees Augustine Drive.

There is ***little potential*** for trees with low suitability for preservation to be retained, as they can be expected to continue to decline and would not tolerate construction impacts. Such trees should be removed and replaced.

The following are recommendations for design and construction phases that will assist in successful tree preservation.

Design recommendations

1. Verify the location and tag numbers of all trees. Include trunk locations and tag numbers on all plans.

2. Allow the Consulting Arborist the opportunity to review project plans, including but not limited to, site, grading, drainage and landscape plans

3. Use only herbicides safe for use around trees and labeled for that use, even below pavement.

4. Design irrigation systems so that no trenching will occur within the **TREE PROTECTION ZONE**.

Pre-construction and demolition treatments and recommendations

1. Prepare a site work plan which identifies access and haul routes, construction trailer and storage areas, etc.

2. Establish a **TREE PROTECTION ZONE** around each tree to be preserved. For design purposes, the **TREE PROTECTION ZONE** shall be 20' from the trunk in all directions. No grading, excavation, construction or storage of materials shall occur within that zone.

3. Install protection around all trees to be preserved. Stack and secure hay bales 6' high around tree trunks. As an alternative, employ 6' chain link with posts sunk into the ground. No entry is permitted into a tree protection zone without permission of the project manager.

4. Trees to be removed shall be felled so as to fall away from **TREE PROTECTION ZONE** and avoid pulling and breaking of roots of trees to remain. If roots are entwined, the consultant may require first severing the major woody root mass before extracting the trees, or grinding the stump below ground.

5. Trees to be retained may require pruning to provide clearance and/or correct defects in structure. All pruning is to be performed by an ISA Certified Arborist or Certified Tree Worker and shall adhere to the latest editions of the ANSI Z133 and A300 standards as well as the ISA Best Management Practices for Tree Pruning. Pruning contractor shall have the C25/D61 license specification.

Tree protection during construction

1. Prior to beginning work, the contractors working in the vicinity of trees to be preserved are required to meet with the Consulting Arborist at the site to review all work procedures, access routes, storage areas and tree protection measures.

2. Any grading, construction, demolition or other work that is expected to encounter tree roots should be monitored by the Consulting Arborist.

3. If injury should occur to any tree during construction, it should be evaluated as soon as possible by the Consulting Arborist so that appropriate treatments can be applied.

4. Fences have been erected to protect trees to be preserved. Fences are to remain until all site work has been completed. Fences may not be relocated or removed without permission of the project manager.

5. Any additional tree pruning needed for clearance during construction must be performed by a qualified arborist and not by construction personnel.

6. All trees shall be irrigated on a schedule to be determined by the Consulting Arborist. Each irrigation shall wet the soil within the **TREE PROTECTION ZONE** to a depth of 30".

Summary

Forty (40) trees were assessed at the PSAI parcel. London plane (14 trees), coast redwood (12 trees), and crape myrtle (10 trees) comprise 90% of the trees. Fifteen (15) of assessed trees met the City of Santa Clara's criteria for *Protected* status. Overall tree condition was a good (19 trees or 48%) to excellent (17 trees or 43%). Three (3) trees were in fair condition and only Canary Island pine #534 was in poor condition.

All of the species were common to Santa Clara; none could be considered either rare or unusual.

HortScience, Inc.

John Leffingwell.
Board Certified Master Arborist WE-3966B
Registered Consulting Arborist #442

ATTACHMENTS

Tree Assessment Form

Tree Assessment Map

Tree Assessment

PSAI Parcel
Santa Clara CA
September 2014

HORT SCIENCE

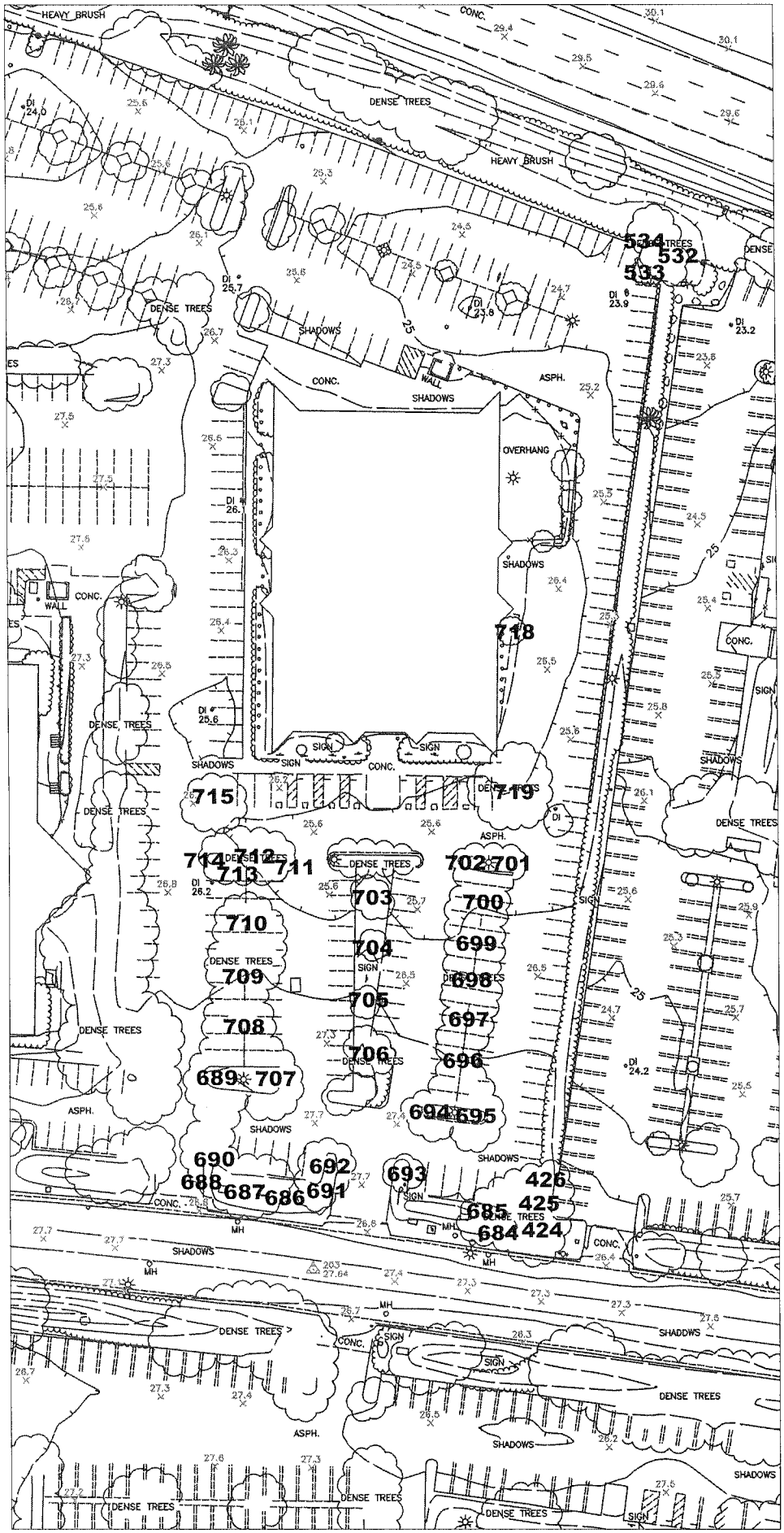
TREE No.	SPECIES	TRUNK DIAMETER (in.)	PROTECTED TREE?	CONDITION 1=poor 5=excell.	SUITABILITY for PRESERVATION	COMMENTS
424	Coast redwood	22	Yes	5	High	Good tree; 6' to back of curb.
425	Coast redwood	19	Yes	5	High	Good tree.
426	Coast redwood	20	Yes	5	High	Good tree.
532	Purpleleaf plum	6	No	4	Moderate	Multiple attachments @ 4'; one-sided to S.
533	Purpleleaf plum	5	No	5	High	Good form & structure.
534	Canary Island pine	15	No	2	Low	Topped ; under power lines.
684	Coast redwood	18	Yes	4	High	Good health and structure; top slightly thin.
685	Coast redwood	24	Yes	5	High	Excellent health and structure.
686	Coast redwood	20	Yes	5	High	Excellent health and structure.
687	Coast redwood	21	Yes	5	High	Excellent health and structure.
688	Coast redwood	22	Yes	5	High	Excellent health and structure.
689	London plane	12	Yes	4	Moderate	Crown lifted to 15'; thin; trunk wound.
690	Crape myrtle	8	No	5	High	Excellent form and structure.
691	Crape myrtle	7	No	5	High	Excellent form and structure.
692	Crape myrtle	8	No	5	High	Excellent form and structure.
693	Crape myrtle	7	No	5	High	Excellent form and structure.
694	London plane	8	No	4	High	Good form and structure; pruned on south for light standard.
695	London plane	9	No	4	High	Good form and structure; pruned on north for light standard.
696	London plane	9	No	4	High	Trunk leans west.
697	London plane	7	No	4	High	Trunk leans west.
698	London plane	9	No	3	Moderate	Trunk bows at 4'.
699	London plane	8	No	4	High	Good form and structure; slightly thin.
700	London plane	9	No	4	Moderate	Trunk leans heavy to west.
701	Crape myrtle	6	No	5	High	Excellent form and structure.

Tree Assessment

PSAI Parcel
Santa Clara CA
September 2014

HORT SCIENCE

TREE No.	SPECIES	TRUNK DIAMETER (in.)	PROTECTED TREE?	CONDITION 1=poor 5=excell.	SUITABILITY for PRESERVATION	COMMENTS
702	Crape myrtle	6	No	5	High	Excellent form and structure; minor powdery mildew.
703	Coast redwood	11	Yes	4	Moderate	Good form and structure; trunk wound.
704	Coast redwood	7	Yes	4	Moderate	Crown slighty thin; small basal wound.
705	Coast redwood	9	No	3	Moderate	Thin crown; dry.
706	Coast redwood	10	No	3	Moderate	Thin crown; dry; needles yellowing.
707	London plane	12	Yes	4	Moderate	Codominant at 9'; pruned for light standard on north.
708	London plane	12	Yes	4	Moderate	Trunk leans west; codominant at 5'.
709	London plane	12	Yes	4	High	Good form and structure; multiple attachments at 6'; full crown.
710	London plane	10	No	4	High	Good form and structure; slightly thin.
711	Crape myrtle	7	No	5	High	Excellent form and structure; minor powdery mildew.
712	Crape myrtle	6	No	4	High	Good form and structure; slightly thin.
713	Crape myrtle	6	No	4	High	Good form and structure; slightly thin.
714	Crape myrtle	6	No	5	High	Excellent form and structure.
715	London plane	10	No	4	High	Trunk leans west; full crown.
718	Water gum	6	No	4	High	Good form and structure; crown bows away from building
719	London plane	14	Yes	5	High	Excellent form and structure; full crown.



Tree Inventory Plan

PSAI
Santa Clara Square
Santa Clara, CA

Prepared for:
Irvine Company
Milpitas, CA

September 2014

No Scale

Notes:
HMH
San Jose, CA

Numbered tree locations are approximate.

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The Irvine Company

Tree Survey Report
Office Parking Garage

Prepared for:
The Irvine Company
690 N. McCarthy Blvd., #100
Milpitas CA 95035

Prepared by:
HortScience, Inc.
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Tree Assessment Form

Tree Assessment Map

Introduction and Overview

The Irvine Company is planning to redevelop the parcels located at 3333 and 3393 Octavius Dr., in Santa Clara. Existing site use consists of office buildings, parking and associated landscape. The Irvine Company requested that HortScience, Inc. assess the health and structural condition of the trees, and provide preliminary recommendations for tree preservation. This report presents the following information:

1. Evaluation of tree health and structural condition.
2. Assessment of tree suitability for preservation.
3. Guidelines for tree preservation.

Survey Methods

Trees were surveyed in July 2013 and updated in September 2014. Each tree larger than 12.5" in circumference (4" in diameter) was visually assessed from the ground and evaluated as follows:

1. Identifying the tree as to species.

2. Attaching a numerically coded metal tag on the trunk of each tree.

3. Measuring the trunk diameter at a point 48" above grade.

4. Evaluating the health and structural condition using a scale of 1 – 5:
   - ***5*** - A healthy, vigorous tree, reasonably free of signs and symptoms of disease, with good structure and form typical of the species.
   - ***4*** - Tree with slight decline in vigor, small amount of twig dieback, or minor structural defects that could be corrected.
   - ***3*** - Tree with moderate vigor, moderate twig and small branch dieback, thinning of crown, poor leaf color, moderate structural defects that might be mitigated with regular care.
   - ***2*** - Tree in decline, epicormic growth, extensive dieback of medium to large branches, significant structural defects that cannot be abated.
   - ***1*** - Tree in severe decline, dieback of scaffold branches and/or trunk; most of foliage from epicormic shoots (secondary shoots that arise along the trunk and branches); extensive structural defects that cannot be abated.

5. Assessing tree suitability for preservation as high, moderate or low. Suitability for preservation considers the health, age and structural condition of the tree, and its potential to remain an asset to the site for years to come.

6. Determining if the tree meets the City of Santa Clara's criteria for *Protected* status as established in General Plan Conservation Policy 5.10.1-P4: ""Protect all healthy cedars, redwoods, oaks, olives, bay laurel and pepper trees of any size, and all other trees over 36 inches in circumference measured from 48 inches above-grade on private and public property as well as in the public right-of-way." Where trees had more than one stem, the circumference of all stems was added together. For the purposes of this report, trees in either good (rating of 4) or excellent (rating of 5) condition were considered "healthy."

7. Determining if any City-designated *Heritage* trees are present.

Description of Trees

Thirty-five (35) trees were evaluated, representing six species (Table 1). Between the first time we were at the site in July and our most recent assessment, tree #316 had been removed. All trees were likely planted as part of landscape development when the project was constructed in the 1970s or 1980s. Descriptions of each tree are found in the ***Tree Assessment Form*** and approximate locations are plotted on the ***Tree Inventory Map*** (see Exhibits).

Coast live oak is native to the Santa Clara area but no trees appeared to be indigenous to the site. While native to the California coast, coast redwoods are not considered indigenous to the Santa Clara valley.

Table 1. Tree condition and frequency of occurrence.
Office Parking Garage. The Irvine Company. Santa Clara CA.

Common name	Scientific name	Condition				No. of Trees	
		Poor	Fair	Good	Excell.	Protected	Total
Sweetgum	*Liquidambar styraciflua*	1	1	-	-	-	2
Tuliptree	*Liriodendron tulipifera*	-	3	-	-	-	3
London plane	*Platanus x hispanica*	-	1	2	-	2	3
Coast live oak	*Quercus agrifolia*	-	1	3	2	5	6
Holly oak	*Quercus ilex*	1	2	-	1	1	4
Coast redwood	*Sequoia sempervirens*	3	3	2	9	11	17
Total, all trees assessed		**5**	**11**	**7**	**12**	**19**	**35**

The City of Santa Clara's criteria for *Protected* (tree) status is established in General Plan Conservation Policy 5.10.1-P4: ""Protect all healthy cedars, redwoods, oaks, olives, bay laurel and pepper trees of any size, and all other trees over 36 inches in circumference measured from 48 inches above-grade on private and public property as well as in the public right-of-way." Seventeen (17) coast redwoods (*Sequoia sempervirens*), six (6) coast live oaks (*Quercus agrifolia*), and four (4) holly oaks (*Q. ilex*) were present. We did not observe any cedars (*Cedrus* sp., *Chamaecyparis* sp., *Calocedrus decurrens*), giant sequoias (*Sequoiadendron giganteum*), dawn redwoods (*Metasequoia glyptostroboides*), other oak species (*Quercus* sp.) olives (*Olea* sp.), bay laurel (*Umbellularia californica*) or peppers (*Schinus* sp.).

Appendix 8.10 of the City's General Plan lists trees given *Heritage* status. Based on our review of the list, none of the trees at the project site has *Heritage* status.

Trees considered to have *Protected* status met both of the following criteria: 1) coast live oak, holly oak and coast redwoods of any size or any other species with trunk circumference of 36" or greater (measured at 48" above the ground) and 2) healthy (condition rating of 4 or 5). Nineteen (19) trees met these criteria, and are identified in the ***Tree Assessment Form*** (see Exhibits).

Coast redwood, with 17 trees, was the most frequently occurring species. Three (3) of the trees were semi-mature, with diameters from 13-17", and the remaining 14 were mature in development with trunk diameters from 23-34". In general, coast redwoods were in good condition (11 trees), with three (3) in fair and three (3) in poor. Drought stress, causing twig and branch dieback and thin crowns, was the primary factor affecting health (**Photo 1**).

Six (6) coast live oaks were located along the San Thomas trail. All were immediately adjacent to the parking lot curb (**Photo 2**). Trees were young to semi-mature in development with trunk diameters between 12" and 26". Coast live oak #324 was in fair condition and the remaining five (5) were in good to excellent condition.

Four (4) holly oaks were present. Trees were young to semi-mature in development with trunk diameters between 7" and 17". One (#323) was located in a small planter in the parking lot and two (#326 and 327) were along the San Thomas trail. The largest holly oak #296 was in a landscape area. Condition of holly oaks was fair (2 trees), with one tree in poor condition (#323), and one in excellent (#296). The growing environment was the most obvious difference between the trees and accounted for some of the differences in tree condition.

Four (4) tulip trees were assessed. All of which were in fair condition and mature in form and development. Trunk diameters ranged from 25-31". Trees had moderate amounts of twig and branch dieback.

Three (3) London planes were present. Trees were semi-mature in development, with trunk diameters from 13-19". In general, London planes had good form and structure. Canopies were often thin due to infestations of powdery mildew and other fungal diseases. Two London planes were in good condition (#311 and 312) and one (1) was in fair (#306).

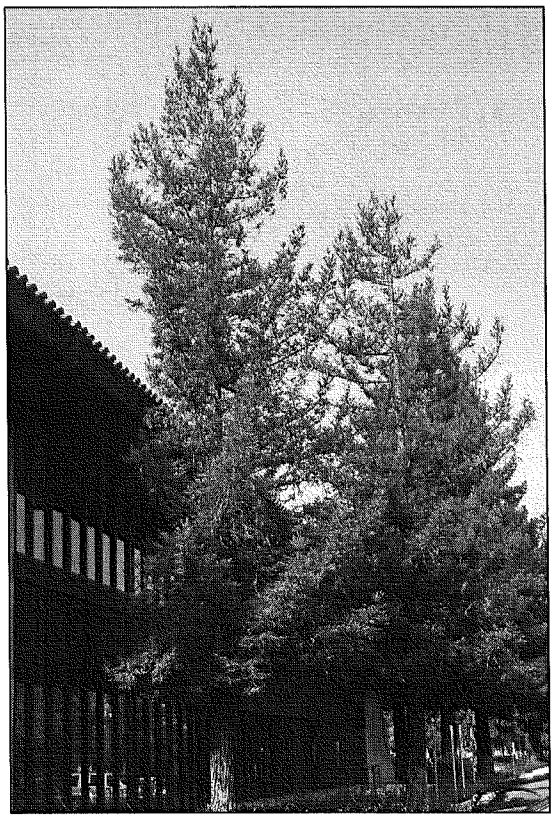
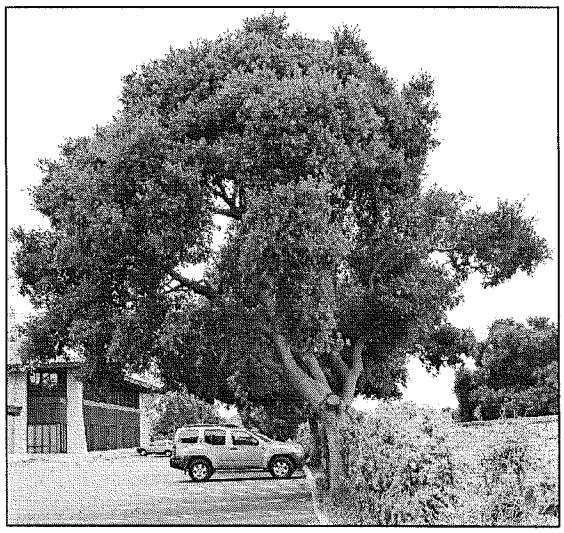


Photo 1: Coast redwood #309 (background) and #310 (foreground) were two of the coast redwoods in poor condition. Both had thin and dry canopies.

Photo 2 (below) shows the row of coast live and holly oaks planted adjacent to the curb along the San Thomas trail.



The remaining two trees were sweetgums (#317 and 318). Both trees were semi-mature in development with trunk diameters of 15" and 16", respectively. Sweetgum #317 was in poor condition and #318 was in fair. These sweetgums were located in narrow planters adjacent to the parking lot.

Suitability for Preservation

Trees that are preserved on development sites must be carefully selected to make sure that they may survive development impacts, adapt to a new environment and perform well in the landscape. Our goal is to identify trees that have the potential for long-term health, structural stability and longevity. Evaluation of suitability for preservation considers several factors:

- **Tree health**
  Healthy, vigorous trees are better able to tolerate impacts such as root injury, demolition of existing structures, changes in soil grade and moisture, and soil compaction than are non-vigorous trees.

- **Structural integrity**
  Trees with significant amounts of wood decay and other structural defects that cannot be corrected are likely to fail. Such trees should not be preserved in areas where damage to people or property is likely.

- **Species response**
  There is a wide variation in the response of individual species to construction impacts and changes in the environment. For example, coast redwood and coast live oak are tolerant of construction impacts while sweetgum and tulip tree are sensitive.

- **Tree age and longevity**
  Old trees, while having significant emotional and aesthetic appeal, have limited physiological capacity to adjust to an altered environment. Young trees are better able to generate new tissue and respond to change.

- **Species invasiveness**
  Species which spread across a site and displace desired vegetation are not always appropriate for retention. This is particularly true when indigenous species are displaced. The California Invasive Plant Inventory Database (http://www.cal-ipc.org/ip/inventory/weedlist.php?#key) lists species identified as having being invasive. Santa Clara is part of the Central West Floristic Province. None of the species assessed at the Office Parking Garage parcel qualified as invasive.

Each tree was rated for suitability for preservation based upon its age, health, structural condition and ability to safely coexist within a development environment (Table 2, following page).

Table 2. Tree suitability for preservation.
Office Parking Garage. The Irvine Company. Santa Clara CA.

High	Trees with good health and structural stability that have the potential for longevity at the site. Eleven (11) trees were rated as having high suitability for preservation including nine (9) coast redwoods, holly oak #296 and coast live oak #328.
Moderate	Trees in fair health and/or possessing structural defects that may be abated with treatment. Trees in this category require more intense management and monitoring, and may have shorter life-spans than those in the "high" category. Fifteen (15) trees were rated as having moderate suitability for preservation including five (5) coast live oaks, four (4) coast redwoods, London planes #311 and 312, tulip trees # 297 and 298, holly oak #327 and sweetgum #318.
Low	Trees in poor health or possessing significant defects in structure that cannot be abated with treatment. These trees can be expected to decline regardless of management. The species or individual tree may possess either characteristics that are undesirable in landscape settings or be unsuited for use areas. Nine (9) trees were rated as having low suitability for preservation including four (4) coast redwoods, holly oaks #323 and 326; London plane #306, sweetgum #317 and tuliptree #304.

We consider trees with high suitability for preservation to be the best candidates for preservation. We do not recommend retention of trees with low suitability for preservation in areas where people or property will be present. Retention of trees with moderate suitability for preservation depends upon the intensity of proposed site changes.

Mitigation Requirements

The City of Santa Clara's applicable tree protection policies, regulations, or ordinances include the following:

- General Plan Conservation Policy 5.10.1-P4 requires that development "protect all healthy cedars, redwoods, oaks, olives, bay laurel and pepper trees of any size, and all other trees over 36 inches in circumference (12" diameter) measured from 48 inches above-grade on private and public property as well as in the public right-of-way."
- General Plan Policy 5.10.1-P3 requires "preservation of all City-designated heritage trees listed in the Heritage Tree Appendix 8.10 of the General Plan." The City also requires that tree removal be mitigated by replanting.
- General Plan Policy 5.3.1-P10 requires that new development "provide opportunities for increased landscaping and trees in the community, including requirements for new development to provide street trees and a minimum 2:1 on- or off-site replacement for trees removed as part of the project."
- Additionally, the City's Design Guidelines require that mature trees proposed for removal be replaced on-site at a 1:1 ratio with 24", 36" box or specimen size material.

Based on our assessment, there were a total of 35 trees at the Office Parking Garage parcel. Nineteen (19) coast redwoods (*Sequoia sempervirens*), six (6) coast live oaks (*Quercus agrifolia*), and four (4) holly oaks (*Q. ilex*) were present. No cedars, olives, bay laurel, or pepper trees of any size, and no *Heritage* trees listed in the Heritage Tree Appendix 8.10 of the General Plan, were present on the project site.

Nineteen (19) of the trees assessed had *Protected* status by meeting both of the following criteria: 1) coast live oak, holly oak and coast redwoods of any size or any other species with trunk circumference of 36" or greater (measured at 48" above the ground) and 2) healthy (condition rating of 4 or 5). *Protected* trees are identified in the ***Tree Assessment Form*** (see Exhibits). Normal mitigation requirement would be 2 replacement trees for every *Protected* tree to be removed, with replacement trees being a minimum 24" box size.

Tree Preservation Guidelines

Plans for redevelopment of Office Parking Garage have not yet been finalized. Based on my observations and assessment, I suggest that some areas have better potential for preservation than others.

The ***best*** opportunities for tree preservation are the 11 trees with good suitability for preservation. These are mostly coast redwood because many redwoods at the site are in good and excellent condition. The keys to successful preservation include: 1) maintaining irrigation throughout the design and construction phases and 2) holding any site re-development to at least 20' from trees.

Among tree species coast redwood, London plane, and coast live oak offer the best potential. Holly oaks in good and excellent condition may be considered on a selective basis, but their location in small planting spaces limits their potential for retention.

For specific locations, trees along the San Thomas trail could be retained if the existing curb were preserved. The same is true for trees in other planting spaces such street frontage or around buildings.

There is ***little potential*** for trees with low suitability for preservation to be retained, as they can be expected to continue to decline and would not tolerate construction impacts. Such trees should be removed and replaced.

The following are recommendations for design and construction phases that will assist in successful tree preservation.

Design recommendations

1. Verify the location and tag numbers of all trees. Include trunk locations and tag numbers on all plans.

2. Allow the Consulting Arborist the opportunity to review project plans, including but not limited to, site, grading, drainage and landscape plans

3. Use only herbicides safe for use around trees and labeled for that use, even below pavement.

4. Design irrigation systems so that no trenching will occur within the TREE PROTECTION ZONE.

Pre-construction and demolition treatments and recommendations

1. Prepare a site work plan which identifies access and haul routes, construction trailer and storage areas, etc.

2. Establish a **TREE PROTECTION ZONE** around each tree to be preserved. For design purposes, the **TREE PROTECTION ZONE** shall be 20' from the trunk in all directions. No grading, excavation, construction or storage of materials shall occur within that zone.

3. Install protection around all trees to be preserved. Stack and secure hay bales 6' high around tree trunks. As an alternative, employ 6' chain link with posts sunk into the ground. No entry is permitted into a tree protection zone without permission of the project manager.

4. Trees to be removed shall be felled so as to fall away from **TREE PROTECTION ZONE** and avoid pulling and breaking of roots of trees to remain. If roots are entwined, the consultant may require first severing the major woody root mass before extracting the trees, or grinding the stump below ground.

5. Trees to be retained may require pruning to provide clearance and/or correct defects in structure. All pruning is to be performed by an ISA Certified Arborist or Certified Tree Worker and shall adhere to the latest editions of the ANSI Z133 and A300 standards as well as the ISA Best Management Practices for Tree Pruning. Pruning contractor shall have the C25/D61 license specification.

Tree protection during construction

1. Prior to beginning work, the contractors working in the vicinity of trees to be preserved are required to meet with the Consulting Arborist at the site to review all work procedures, access routes, storage areas and tree protection measures.

2. Any grading, construction, demolition or other work that is expected to encounter tree roots should be monitored by the Consulting Arborist.

3. If injury should occur to any tree during construction, it should be evaluated as soon as possible by the Consulting Arborist so that appropriate treatments can be applied.

4. Fences have been erected to protect trees to be preserved. Fences are to remain until all site work has been completed. Fences may not be relocated or removed without permission of the project manager.

5. Any additional tree pruning needed for clearance during construction must be performed by a qualified arborist and not by construction personnel.

6. All trees shall be irrigated on a schedule to be determined by the Consulting Arborist. Each irrigation shall wet the soil within the **TREE PROTECTION ZONE** to a depth of 30".

Summary

Thirty-five (35) trees were assessed at the Office Parking Garage parcel. Coast redwood (17 trees), coast live oak (6 trees), and holly oak (4 trees) comprise over three-quarters of the assessed trees. Nineteen (19) of assessed trees meet the City of Santa Clara's criteria for *Protected* status. Overall tree condition was a mix of excellent (23%), good (20%) and fair (31%). Tree condition varied widely by species.

All of the species were common to Santa Clara; none could be considered either rare or unusual.

HortScience, Inc.

John Leffingwell.
Board Certified Master Arborist WE-3966B
Registered Consulting Arborist #442

ATTACHMENTS

Tree Assessment Form

Tree Assessment Map

Tree Assessment

Park Square: Parking Garage
Santa Clara CA
July -- September 2013
Updated September 2014

HORT SCIENCE

TREE No.	SPECIES	TRUNK DIAMETER (in.)	PROTECTED TREE?	CONDITION 1=poor 5=excell.	SUITABILITY for PRESERVATION	COMMENTS
296	Holly oak	17	Yes	5	High	Nice tree; multiple attachments @ 14'; high crown.
297	Tuliptree	25	No	3	Moderate	Codominant trunks @ 15'; 1 stem dominates; 2nd suppressed to N; twig dieback throughout.
298	Tuliptree	28	No	3	Moderate	Multiple attachments @ 12' & 20'; twig dieback throughout.
299	Coast redwood	34	Yes	5	High	Good tree.
300	Coast redwood	28	Yes	5	High	Good tree; slightly more open.
301	Coast redwood	28	Yes	4	High	Good form; thinner.
302	Coast redwood	29	Yes	5	High	Good tree.
303	Coast redwood	29	Yes	5	High	Good tree; lifting adj. sidewalk.
304	Tuliptree	31	No	3	Low	Codominant trunks @ 8'; 1 stem dominates; 2nd suppressed to S.; pretty much defoliated.
305	Coast redwood	33	Yes	5	High	Good tree; surface roots.
306	London plane	17	No	3	Low	Good form; ext. twig dieback on periphery of crown.
307	Coast redwood	30	Yes	5	High	Good tree.
308	Coast redwood	30	Yes	5	High	Good tree; roots under sidewalk; no displacement.
309	Coast redwood	14	No	2	Low	Canopy thin and dry; 2' from curb.
310	Coast redwood	13	No	2	Low	Canopy thin and dry; roots @ sidewalk.
311	London plane	13	Yes	4	Moderate	Narrow crown.
312	London plane	19	Yes	4	Moderate	Good form; thin canopy; surface roots.
313	Coast redwood	24	Yes	4	Moderate	Corrected lean SE.; flat area @ base.

Tree Assessment

Park Square: Parking Garage
Santa Clara CA
July -- September 2013
Updated September 2014

HORT SCIENCE

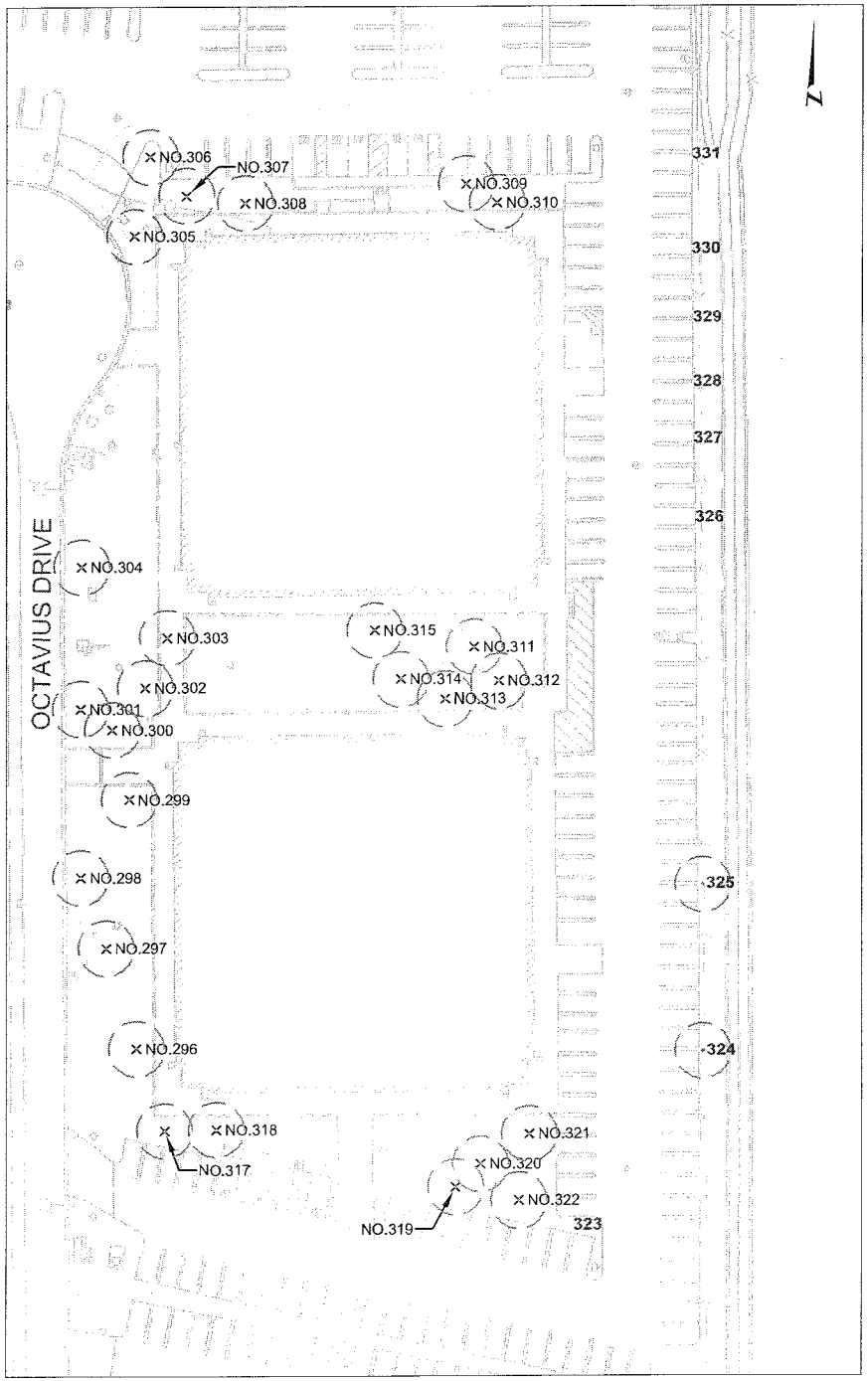
TREE No.	SPECIES	TRUNK DIAMETER (in.)	PROTECTED TREE?	CONDITION 1=poor 5=excell.	SUITABILITY for PRESERVATION	COMMENTS
314	Coast redwood	28	Yes	5	High	Good tree.
315	Coast redwood	17	No	3	Moderate	Narrow & upright; irregular form; thin crown.
316	Removed					
317	Sweetgum	15	No	2	Low	Codominant trunks @ 8' & 12'; scaffold branch failure; crown reduced; thin canopy; with extensive dieback.
318	Sweetgum	16	No	3	Moderate	Rangy & irregular; heavy lateral limb to N.; minor twig dieback.
319	Coast redwood	25	No	3	Moderate	Good form; upper crown very thin; lost central leader @ top; yellowing foliage.
320	Coast redwood	24	No	3	Moderate	Good form; upper crown very thin; lost central leader;
321	Coast redwood	29	Yes	5	Low	Good tree; lost central leader @ top?
322	Coast redwood	23	No	2	Low	Upper crown very thin; dry foliage; lost central leader.
323	Holly oak	7	No	2	Low	No vigor; multiple attachments @ 6'.
324	Coast live oak	26	No	3	Moderate	Base of curb; one-sided to W.
325	Coast live oak	22	Yes	5	Moderate	Base of curb; codominant trunks @ 8' & 10'.
326	Holly oak	13,13,12	No	3	Low	Base of curb; codominant trunks @ 3' & 4'; crown lifted.
327	Holly oak	7,7,6	No	3	Moderate	Base of curb; codominant trunks @ 1' & 3'; one-sided to SE.
328	Coast live oak	12,8	Yes	4	High	Base of curb; codominant trunks @ 4' & 7'.

Tree Assessment

Park Square: Parking Garage
Santa Clara CA
July -- September 2013
Updated September 2014

HORT SCIENCE

TREE No.	SPECIES	TRUNK DIAMETER (in.)	PROTECTED TREE?	CONDITION 1=poor 5=excell.	SUITABILITY for PRESERVATION	COMMENTS
329	Coast live oak	22	Yes	5	Moderate	Base of curb; good tree; codominant trunks @ 6' & 7'.
330	Coast live oak	19	Yes	4	Moderate	Base of curb; codominant trunks @ 8'; high crown.
331	Coast live oak	15,12	Yes	4	Moderate	Base of curb; codominant trunks @ 4' & 7'; **needs cable to retain.**



Tree Inventory Plan

G3 Parking Garage
Santa Clara Square
Santa Clara, CA

Prepared for:
Irvine Company
Milpitas, CA

June 2010
Updated September 2014

No Scale

Notes:
HMH
San Jose, CA

Numbered tree locations
are approximate.

202 = Trees approximately located by HortScience. Inc.

HORT SCIENCE

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Appendix C.1 and C.2

Cultural Resources

August 25, 2014

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Ms. Carlene Matchniff
Vice President, Project Management
Apartment Development
IRVINE COMPANY
690 N. McCarthy Boulevard, STE 100
Milpitas, CA 95035

RE: Subject Property1 (APN 216-045-038; Augustine Drive) - Archaeological Literature and Archival Search and Review - Santa Clara Square, Office Phase II Property Line Adjustment, City of Santa Clara, Santa Clara County

Dear Ms. Matchniff,

Please let this letter stand as Basin Research Associates' (BASIN) report of an archaeological records search, a limited literature review, and consultation with the Native American Heritage Commission for the proposed *Santa Clara Square, Office Phase II Property Line Adjustment for Subject Property 1 (APN 216-045-038; Augustine Drive).* This review was completed to determine if significant cultural resources under the California Environmental Quality Act (CEQA) might be affected by the proposed action. This report relies on information compiled for an earlier document completed for the Irvine Company by BASIN in February 2014 for adjacent parcels associated with Phases 2 and 3 of the Santa Clara Square Project.

PROJECT LOCATION AND DESCRIPTION

The 2.58-acre Subject Property 1 (APN 261-045-038) is located on the north side of Augustine Drive to the immediate south of US Highway 101/Bayshore Freeway and east of Bowers Avenue and west of the San Tomas Aquino Channel, City of San Clara (United States Geological Survey [hereafter USGS], Milpitas, Calif. 1980, 7.5' quadrangle topographic map, T 6S R 1W, part unsectioned and part Section 28) [Figs. 1-3].

The Revised 2014 Project will adjust the Office Phase II property lines to incorporate Subject Property 1 (2.58 acres) which is currently developed with 63,000 square feet of existing, underutilized office space [see Fig. 4]. The reconfigured properties will be developed as a single office campus that will consist of up to 1,243,300 square feet of 6-8 story office buildings, with associated surface and structure parking. This development is consistent with the office component of the 2014 Santa Clara Square Project that was analyzed in project Addendum No.2 and approved on June 10, 2014 by the City of Santa Clara.

RESEARCH PROTOCOLS

A prehistoric and historic site record and literature search was completed by the California Historical Resources Information System, Northwest Information Center, Sonoma State University, Rohnert Park (CHRIS/NWIC File No. 13-1113 dated February 4, 2014 by Hagel).

The literature review by Basin Research Associates included the *Historic Properties Directory* for Santa Clara County (CAL/OHP 2012a) and the list of *California Historical Resources* (CAL/OHP 2013) with the most recent updates of the National Register of Historic Places; California Historical Landmarks; and, California Points of Historical Interest as well as other evaluations of properties reviewed by the State of California Office of Historic Preservation. Other sources included: *California History Plan* (CAL/OHP 1973); *California Inventory of Historic Resources* (CAL/OHP 1976); *Five Views: An Ethnic Sites Survey for California* (CAL/OHP 1988); *Archaeological Determinations of Eligibility* (CAL/OHP 2012b); *Historic Civil Engineering Landmarks of San Francisco and Northern California* (ASCE 1977); list of *Historic Civil Engineering Landmarks* (ASCE 2013); and, other lists and maps (see References Cited and Consulted).

INDIVIDUALS, AGENCIES AND GROUPS

The Native American Heritage Commission (NAHC) was contacted for a search of the *Sacred Lands Inventory* on file with the Commission (Busby 2014). No other agencies, departments or local historical societies were contacted.

RESEARCH FINDINGS

This report was prepared to identify potentially significant archaeological, Native American, or built environment resources listed or eligible for the California Register of Historical Resources (CRHR) within or adjacent to the proposed project.

RECORDS SEARCH RESULTS (CHRIS/NWIC File No. 13-1113)

- No prehistoric, combined prehistoric/historic or historic sites have been recorded or reported in or adjacent the project or within 0.25 mile of the project.

- No known cultural resources compliance reports on file at the CHRIS/NWIC include the project and/or adjacent areas. [1]

---

1. A previous report completed for the Augustine-Bowers Office Park in 2007 (Holman & Associates 2007) is not on file with the CHRIS/NWIC. The summary in the Draft EIR (City of Santa Clara 2008, Section 4.7) noted no recorded resources within the project boundaries and assigned a moderate to high sensitivity for buried prehistoric resources due to the proximity of Calabazas and Saratoga creeks. Implementation of City policies for archaeological resources and project specific mitigation measures was recommended to reduce any potential cultural resources impacts to less than significant with mitigation.

ARCHAEOLOGICAL SENSITIVITY

The project area is located northwest of the *City of Santa Clara Archeologically Sensitive Boundaries* (City of Santa Clara Planning Division (SC/PD) 1997) and the *Boundaries of Identified Archaeological Sensitive Area* (SC/PD 1999) and/or Architecturally or Historically Significant Properties in the *City of Santa Clara 2010-2035 General Plan* (SC/PD 2010:Table 8.9-1, Figures 8.9-1 and -2). Holman & Associates (2007) assigned a moderate to high sensitivity for buried prehistoric resources in the general project due to the proximity of Calabazas and Saratoga creeks as archaeological research has determined that prehistoric sites are often found within 0.25 miles of flowing water in the northern Santa Clara Valley.

NATIVE AMERICAN RESOURCES - Prehistoric

None of the known Native American shell mound sites in the general area were located in or adjacent to the project (e.g., Whitney 1873; Nelson ca. 1912). The CHRIS/NWIC records search was negative for the project and areas adjacent to the project (File No. 13-1113).

NATIVE AMERICAN RESOURCES - Ethnographic

The aboriginal inhabitants of the project vicinity belonged to a group known as the *Tamyen* (*Tamien*) - a tribelet of the *Ohlone* who occupied the central Santa Clara Valley in the *San Bernardino* District (i.e., the area located west of Mission Santa Clara; Kroeber 1925:465; Levy 1978:485; Hylkema with Van Bueren 1995:36, Map 6; Milliken 1995:229, Map 5; 256; Milliken 2006:27, Fig. 5).

No known Native American villages, trails, traditional use areas or contemporary use areas have been identified in, adjacent or near the project (e.g., Elsasser 1986:48, Table 4, Fig. 10; CAL/OHP 1988; Shoup and Milliken 1999:Fig. 2).

The NAHC search of the *Sacred Lands Inventory* ". . . failed to indicate the presence of Native American cultural resources in the immediate project area" (Pilas-Treadway 2014).

HISTORIC PERIOD RESOURCES

The Spanish philosophy of government in northwestern New Spain was directed at the founding of presidios, missions, and secular towns with the land held by the Crown (1769-1821). The later Mexican Period (1822-1848) policy stressed individual ownership of the land (Hart 1987).

Hispanic Period

No known Hispanic Period resources - dwellings or features (e.g., corrals, orchards, roads, etc.) - have been identified in or adjacent to the proposed project .Early Spanish expeditions likely followed aboriginal trails and none of these trails/routes can be definitively placed in the general project area. The 1769 Gaspar de Portola and Father Juan Crespi expedition route is mapped west of the route taken by Sergeant Jose Francisco Ortega who branched off from the main expedition. His route followed the southern portion of San Francisco Bay well to the north of the project area. He later rejoined the main expedition near San Francisquito Creek in San Mateo County. The 1772 route taken by Captain Pedro Fages did not pass through the present-day City

of Santa Clara while the Juan Bautista de Anza National Historic Trail (1776) appears to follow the approximate alignment of US Highway 101 north of the project site (Beck and Haase 1974:#17; Milliken 1995:33, Map 3; Brown 1994:2, Fig. 1.1.; USNPS 1995).

Most of the project is within ungranted lands although the far northern part of the project area is located within the southwestern corner of the *Rancho Ulistac.* This rancho, bounded by Saratoga Creek on the west was granted to two Native Americans named Marcello Pio and Cristobal in 1845 by Governor Pico for approximately 2219 acres. The land was sold in 1850 to Jacob D. Hoppe and patented to his heirs in 1868 for 2217.09 acres. The project area was probably used for grazing cattle as the export of tallow and hides was a major economic pursuit of the Santa Clara Valley and California during the Hispanic Period (Freeman and Reed 1857-1866; Hendry and Bowman 1940:872-873, Map of Santa Clara County; Arbuckle and Rambo 1968:36; USGS Milpitas, Calif. 1980).

American Period

The American Period in the Santa Clara Valley is characterized by an influx of Euro-Americans and rapid growth which overwhelmed the Hispanic residents and their economic/cultural traditions which centered on missions, presidios, and ranchos. In the mid-19th century, most of the rancho and pueblo lands in California were subdivided as the result of population growth, the American takeover, and the confirmation of property titles throughout the state. The initial explosion in population was associated with the Gold Rush (1848), followed later by the construction of the transcontinental railroad (1869). Still later, the development of the refrigerator railroad car (ca. 1880s), used for the transport of agricultural produce to distant markets, had a major impact on population growth (Broek 1932; Hart 1987).

The town of Santa Clara grew up around the secularized Mission Santa Clara. The town was primarily an American creation and not a direct successor to the Mission pueblo. Santa Clara was a favorable location on account of environmental factors, the presence of former Mission lands and buildings, and roads to San Francisco and San Jose (e.g., *El Camino Real*, The Alameda).

No recorded historic American Period resources were identified in the project as part of the CHRIS/NWIC records search conducted for the proposed project.

Historic Map Review (Selected)

The 1851 General Land Office (GLO) survey plat for Township 6 South Range 1 West updated to 1866 (US/BLM 1851-1866) shows a number of cultural features in the general study area in addition to "Campbell's or Sanjon Creek" including a north-south "Road" that conforms to the approximate alignment of present-day Bowers Avenue.

Healey's 1866 *Official Map of the County of Santa Clara* has various rancho boundaries, major roads, rail road routes, as well as the locations of isolated farms/ranches and schematic city grids throughout the county . This map appears to show the alignment of a north-south road from Alviso south to the isolated square shaped "Enwright Tract" (Enright) that appears to have been just east of Bowers Road (just south of present-day Kifer Road/Central Expressway.

Thompson and West's 1876 *Historical Atlas of Santa Clara County* maps "Coffin Road" which conforms to approximate alignment of present-day Bowers Avenue and a number of irregularly shaped parcels which show buildings within the project. Subject Property 1 appears to have been within the southern part of the 33-acre parcel owned by S.N. Putnam within the boundaries of *Rancho Ulistac* and a 26-acre parcel owned by G.M. Brown on south side of southern boundary of *Rancho Ulistac*. No features including farmsteads, roads, or orchards are shown within Subject Property 1.

The 1899 USGS San Jose topographic quadrangle map shows an unnamed road east from Coffin Road north of present-day Augustine Drive and a north-south road just west of "Campbell Creek" terminating at this road. Three buildings, presumably farmsteads, clustered at the junction of the two roads.

The 1943 War Dept. topographic map is very similar, but shows US Highway 101/Bayshore Highway north of the project.

The 1961 USGS San Jose topographic quadrangle is similar to the earlier 1943 topographic map. At the time, the project and vicinity were in orchards.

By 1973 the orchard had been removed from Subject Property 1 and the parcel remained unoccupied through 1980 in spite of the construction of Augustine Drive between 1973 and 1980 (USGS 1899 [surveyed 1895], 1953, 1961, 1973, 1980; US War Dept 1943 [photography 1939]).

The *Creek & Watershed Map of* Milpitas & North San Jose shows underground culverts/storm drain passing through Subject Property 1 with Saragota Creek passing through the parcel adjacent to the west side of Subject Property 1 (Sowers and Thompson 2005).

Listed Historic Properties

No listed local, state or federal historically or architecturally significant structures, landmarks or points of interest have been identified in or adjacent to the proposed project.

CONCLUSIONS

- The records search conducted by the CHRIS/NWIC was negative for recorded and/or reported resources in or adjacent to the proposed project.
- No known ethnographic, traditional or contemporary Native American resources have been identified in or adjacent to the proposed project.
- No Hispanic Period features have been identified in or adjacent to the project.
- No surviving American Period agricultural resources as noted on historic maps are extant.
- No listed, determined or pending California Register of Historical Resources properties have been identified in or adjacent to the project area. No other significant or potentially significant local, state or federal cultural resources/historic properties, landmarks, points of interest, etc. have been identified in or adjacent to the project (CHRIS/NWIC File No. 13-1113 with other sources).

- The project appears to be located in an area of low to moderate potential for both prehistoric and historic archaeological resources. Previous subsurface impacts associated with infrastructure improvements and development over the past 50 years appear to have reduced the potential for significant subsurface cultural resources.

SUMMARY AND MANAGEMENT RECOMMENDATIONS

It is the considered opinion of Basin Research Associates, based on a review of pertinent records, maps and other documents that the proposed project can proceed as planned in regard to prehistoric and historic archaeological resources. No subsurface testing for buried archaeological resources appears necessary at this time as development over the past 50 years has probably reduced the potential for significant subsurface cultural resources.

The Augustine-Bowers Office Park Project *Mitigation Monitoring and Reporting Program* approved by the City of Santa Clara in 2009 for the project area requires that a qualified archaeologist be:

> ". . . on site to monitor the initial excavation of native soil once all pavement and engineered soil is removed from the project site. After monitoring the initial excavation, the archaeologist will make recommendations for further monitoring if it is determined that the site has cultural resources. If the archaeologist determines that no resources are likely to be found on site, no additional monitoring will be required."

The mitigation measure also provides for protective measures in the event of a discovery of prehistoric and/or historic cultural materials[2] and protocols for their treatment. Native American

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2. Significant prehistoric cultural resources are defined as human burials, features or other clusterings of finds made, modified or used by Native American peoples in the past. The prehistoric and protohistoric indicators of prior cultural occupation by Native Americans include artifacts and human bone, as well as soil discoloration, shell, animal bone, sandstone cobbles, ashy areas, and baked or vitrified clays. Prehistoric materials may include:

   a. Human bone - either isolated or intact burials.
   b. Habitation (occupation or ceremonial structures as interpreted from rock rings/features, distinct ground depressions, differences in compaction (e.g., house floors).
   c. Artifacts including chipped stone objects such as projectile points and bifaces; groundstone artifacts such as manos, metates, mortars, pestles, grinding stones, pitted hammerstones; and, shell and bone artifacts including ornaments and beads.
   d. Various features and samples including hearths (fire-cracked rock; baked and vitrified clay), artifact caches, faunal and shellfish remains (which permit dietary reconstruction), distinctive changes in soil stratigraphy indicative of prehistoric activities.
   e. Isolated artifacts

   Historic cultural materials may include finds from the late 19th through early 20th centuries. Objects and features associated with the Historic Period can include.

   a. Structural remains or portions of foundations (bricks, cobbles/boulders, stacked field stone, postholes, etc.).
   b. Trash pits, privies, wells and associated artifacts.
   c. Isolated artifacts or isolated clusters of manufactured artifacts (e.g., glass bottles, metal cans, manufactured wood items, etc.).
   d. Human remains.

burials are similarly protected and are to be treated as required by State law and the City of Santa Clara.

It is recommended that this mitigation measure be implemented for the current project.

CLOSING REMARKS

If I can provide any additional information or be of further service please don't hesitate to contact me. Thank you for retaining our firm for the project.

Sincerely,
BASIN RESEARCH ASSOCIATES, INC.

Colin I. Busby, Ph.D., RPA
Principal

CIB/dmg

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In addition, cultural materials including both artifacts and structures that can be attributed to Hispanic, Asian and other ethnic or racial groups are potentially significant. Such features or clusters of artifacts and samples include remains of structures, trash pits, and privies.

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Abbreviations

n.d.	no date	v.d.	various dates
N.P.	no publisher noted	n.p.	no place of publisher noted

The abbreviated phrase "CHRIS/NWIC, Sonoma State University, Rohnert Park" is used for material on file at the California Historical Resources Information System, Northwest Information Center, California State University Sonoma, Rohnert Park.

FIGURES

FIGURE 1	General Project Location
FIGURE 2	Project Location (USGS Milpitas, Calif. 1980 and San Jose West, Calif. 1980)
FIGURE 3	Aerial View of Project Area (Google Earth)
FIGURE 4	Santa Clara Square General Plan Rezone Exhibit (8/6/2014)

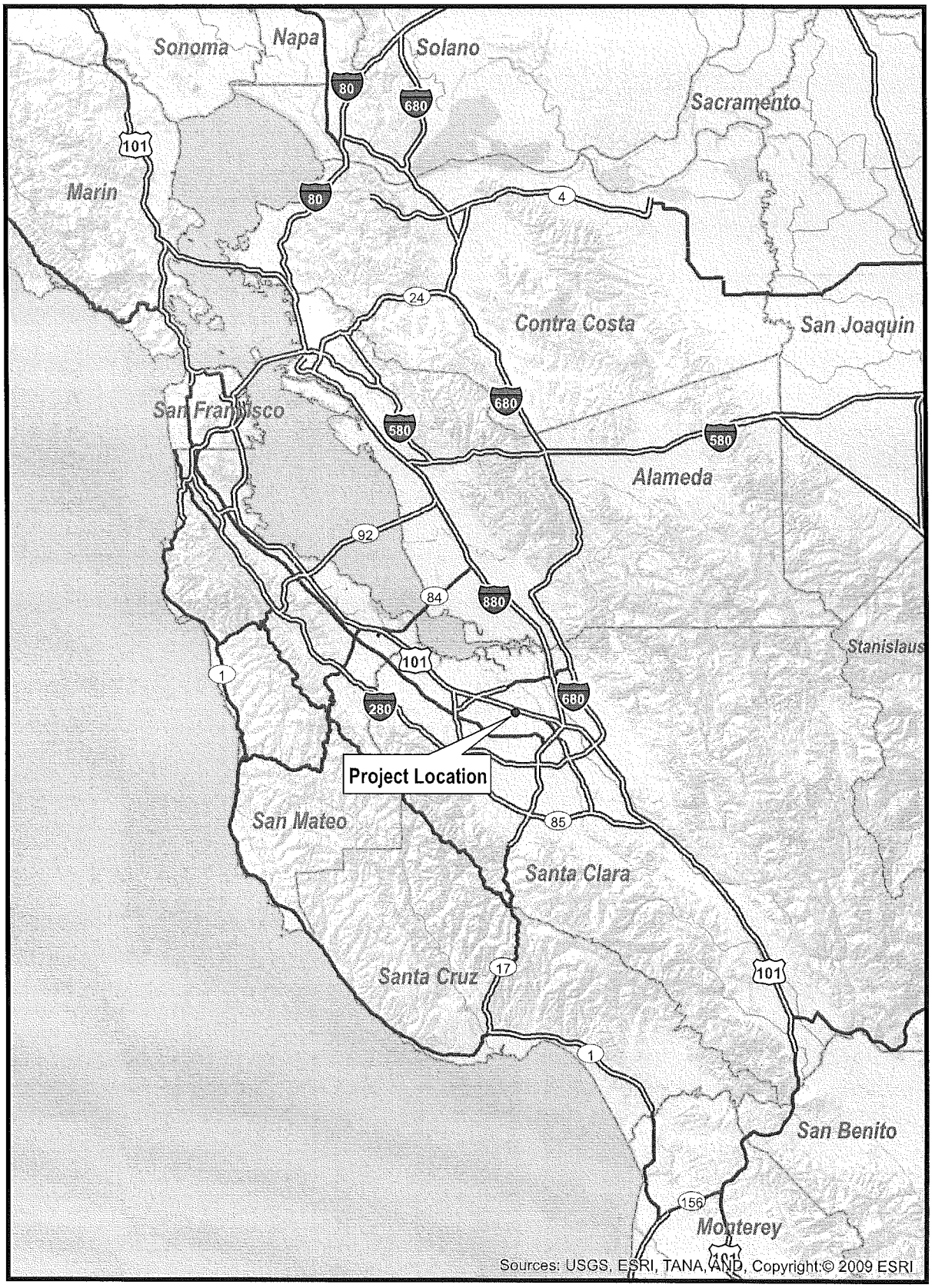

Figure 1: General Project Location

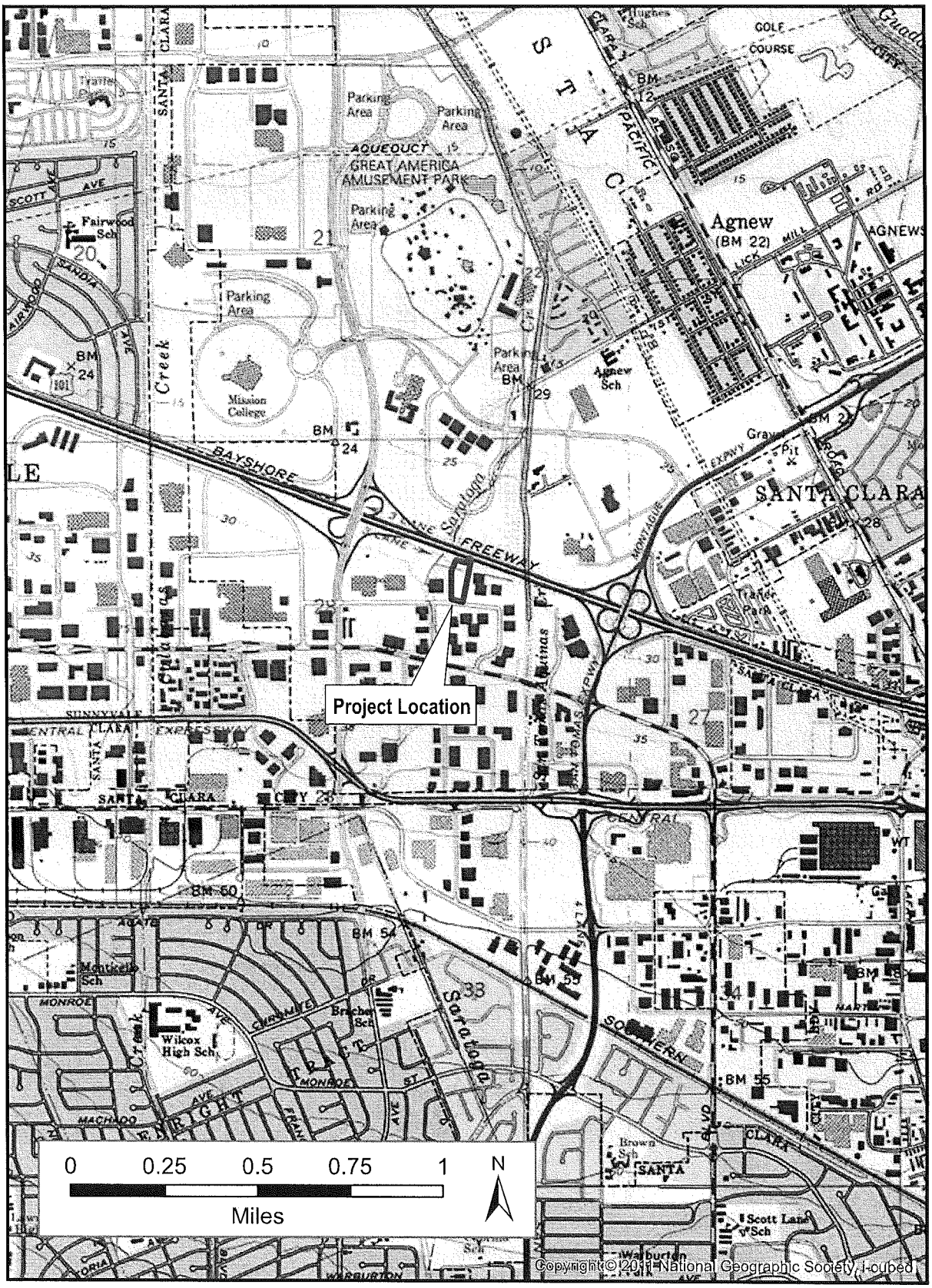

Figure 2: Project Area (USGS Milpitas, Calif. 1980 and San Jose West, Calif. 1980)

Figure 3: Aerial View of Project Area

SANTA CLARA SQUARE
SANTA CLARA, CA

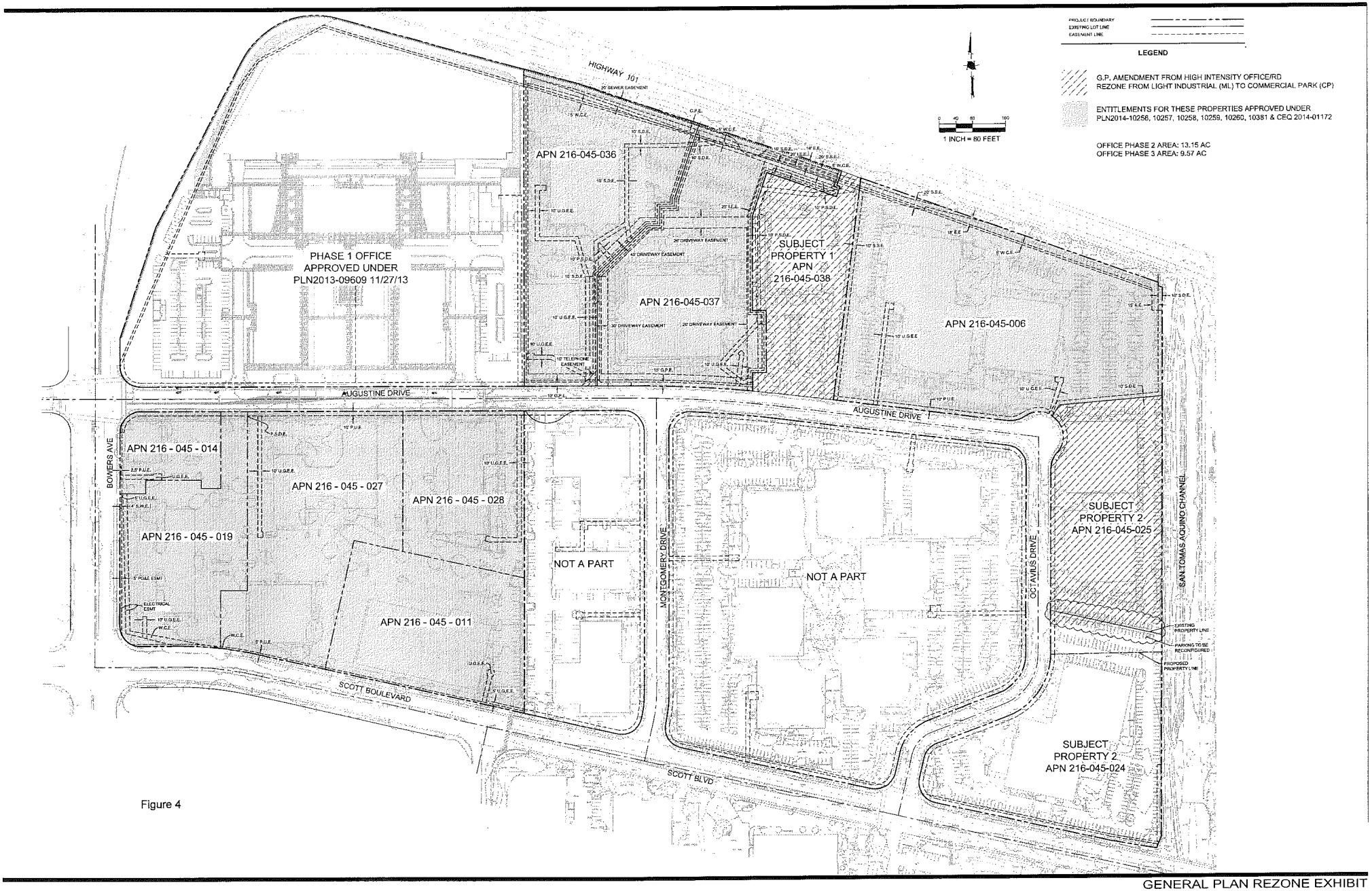

Figure 4

GENERAL PLAN REZONE EXHIBIT

Scale: 1" = 80'

Drawn: RP | Reviewed: RTH

HMH#4299.00 | 8/6/2014

HMH

1570 Oakland Road San Jose, CA 95131 (408) 487-2200 HMHcal.com

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Ms. Carlene Matchniff
Vice President, Project Management
Apartment Development
IRVINE COMPANY
690 N. McCarthy Boulevard, STE 100
Milpitas, CA 95035

RE: Subject Property 2 (APN 216-045-025; Octavius Drive) - Archaeological Literature and Archival Search and Review - Santa Clara Square, Office Phase III Property Line Adjustment, City of Santa Clara, Santa Clara County

Dear Ms. Matchniff,

Please let this letter stand as Basin Research Associates' (BASIN) report of an archaeological records search, a limited literature review, and consultation with the Native American Heritage Commission for the proposed *Santa Clara Square, Office Phase III Property Line Adjustment for Subject Property 2 (APN 216-045-025; Octavius Drive).* This review was completed to determine if significant cultural resources under the California Environmental Quality Act (CEQA) might be affected by the proposed action. This report relies on information compiled for an earlier document completed for the Irvine Company by BASIN in February 2014 for adjacent parcels associated with Phases 2 and 3 of the Santa Clara Square Project.

PROJECT LOCATION AND DESCRIPTION

The 3.27-acre Subject Property 2 (APN 261-045-025) is located at the eastern terminus of Augustine Drive along the east side of Octavius Drive, a parcel south of US Highway101/Bayshore Freeway and east of Bowers Avenue and west of San Tomas Aquino Channel, City of San Clara. This parcel is on the north side of a 4.83-acre parcel bounded on the south by Scott Boulevard (United States Geological Survey [hereafter USGS], Milpitas, Calif. 1980, 7.5' quadrangle topographic map, T 6S R 1W, part unsectioned and part Section 28) [Figs. 1-3].

The Revised 2014 Project will adjust the Office Phase III property lines to incorporate Subject Property 2 (3.27 acres) which is currently developed with 72,000 square feet of existing, underutilized office space [see Fig. 4]. The reconfigured properties will be developed as a single office campus that will consist of up to 1,243,300 square feet of 6-8 story office buildings, with associated surface and structure parking. This development is consistent with the office

component of the 2014 Santa Clara Square Project that was analyzed in project Addendum No.2 and approved on June 10, 2014 by the City of Santa Clara.

RESEARCH PROTOCOLS

A prehistoric and historic site record and literature search was completed by the California Historical Resources Information System, Northwest Information Center, Sonoma State University, Rohnert Park (CHRIS/NWIC File No. 13-1113 dated February 4, 2014 by Hagel).

The literature review by Basin Research Associates included the *Historic Properties Directory* for Santa Clara County (CAL/OHP 2012a) and the list of *California Historical Resources* (CAL/OHP 2013) with the most recent updates of the National Register of Historic Places; California Historical Landmarks; and, California Points of Historical Interest as well as other evaluations of properties reviewed by the State of California Office of Historic Preservation. Other sources included: *California History Plan* (CAL/OHP 1973); *California Inventory of Historic Resources* (CAL/OHP 1976); *Five Views: An Ethnic Sites Survey for California* (CAL/OHP 1988); *Archaeological Determinations of Eligibility* (CAL/OHP 2012b); *Historic Civil Engineering Landmarks of San Francisco and Northern California* (ASCE 1977); list of *Historic Civil Engineering Landmarks* (ASCE 2013); and, other lists and maps (see References Cited and Consulted).

INDIVIDUALS, AGENCIES AND GROUPS

The Native American Heritage Commission (NAHC) was contacted for a search of the *Sacred Lands Inventory* on file with the Commission (Busby 2014). No other agencies, departments or local historical societies were contacted.

RESEARCH FINDINGS

This report was prepared to identify potentially significant archaeological, Native American, or built environment resources listed or eligible for the California Register of Historical Resources (CRHR) within or adjacent to the proposed project.

RECORDS SEARCH RESULTS (CHRIS/NWIC File No. 13-1113)

- No prehistoric, combined prehistoric/historic or historic sites have been recorded or reported in or adjacent the project or within 0.25 miles of the project.
- One known cultural resources compliance report (Baker 1998/S-22570) includes the area adjacent to the east side of Subject 2. This report is negative for resources adjacent to the project.
- A previous report completed for the Augustine-Bowers Office Park in 2007 (Holman & Associates 2007) is not on file with the CHRIS/NWIC. The summary in the Draft EIR (City of Santa Clara 2008, Section 4.7) noted no recorded resources within the project boundaries and assigned a moderate to high sensitivity for buried prehistoric resources due to the proximity of Calabazas and Saratoga creeks. Implementation of City policies for archaeological resources and project specific mitigation measures was recommended to reduce any potential cultural resources impacts to less than significant with mitigation

ARCHAEOLOGICAL SENSITIVITY

The project area is located northwest of the *City of Santa Clara Archeologically Sensitive Boundaries* (City of Santa Clara Planning Division (SC/PD) 1997) and the *Boundaries of Identified Archaeological Sensitive Area* (SC/PD 1999) and/or Architecturally or Historically Significant Properties in the *City of Santa Clara 2010-2035 General Plan* (SC/PD 2010:Table 8.9-1, Figures 8.9-1 and -2). Holman & Associates (2007) assigned a moderate to high sensitivity for buried prehistoric resources in the general project due to the proximity of Calabazas and Saratoga creeks as archaeological research has determined that prehistoric sites are often found within 0.25 miles of flowing water in the northern Santa Clara Valley.

NATIVE AMERICAN RESOURCES - Prehistoric

None of the known Native American shell mound sites in the general area were located in or adjacent to the project (e.g., Whitney 1873; Nelson ca. 1912). The CHRIS/NWIC records search was negative for the project and areas adjacent to the project (File No. 13-1113).

NATIVE AMERICAN RESOURCES - Ethnographic

The aboriginal inhabitants of the project vicinity belonged to a group known as the *Tamyen* (*Tamien*) - a tribelet of the *Ohlone* who occupied the central Santa Clara Valley in the *San Bernardino* District (i.e., the area located west of Mission Santa Clara; Kroeber 1925:465; Levy 1978:485; Hylkema with Van Bueren 1995:36, Map 6; Milliken 1995:229, Map 5; 256; Milliken 2006:27, Fig. 5).

No known Native American villages, trails, traditional use areas or contemporary use areas have been identified in, adjacent or near the project (e.g., Elsasser 1986:48, Table 4, Fig. 10; CAL/OHP 1988; Shoup and Milliken 1999:Fig. 2).

The NAHC search of the *Sacred Lands Inventory* ". . . failed to indicate the presence of Native American cultural resources in the immediate project area" (Pilas-Treadway 2014).

HISTORIC PERIOD RESOURCES

The Spanish philosophy of government in northwestern New Spain was directed at the founding of presidios, missions, and secular towns with the land held by the Crown (1769-1821). The later Mexican Period (1822-1848) policy stressed individual ownership of the land (Hart 1987).

Hispanic Period

No known Hispanic Period resources - dwellings or features (e.g., corrals, orchards, roads, etc.) - have been identified in or adjacent to the proposed project .Early Spanish expeditions likely followed aboriginal trails and none of these trails/routes can be definitively placed in the general project area. The 1769 Gaspar de Portola and Father Juan Crespi expedition route is mapped west of the route taken by Sergeant Jose Francisco Ortega who branched off from the main expedition. His route followed the southern portion of San Francisco Bay well to the north of the project area. He later rejoined the main expedition near San Francisquito Creek in San Mateo County. The 1772 route taken by Captain Pedro Fages did not pass through the present-day City

of Santa Clara while the Juan Bautista de Anza National Historic Trail (1776) appears to follow the approximate alignment of US Highway 101 north of the project site (Beck and Haase 1974:#17; Milliken 1995:33, Map 3; Brown 1994:2, Fig. 1.1.; USNPS 1995).

The entire Subject Property 2 is within ungranted lands just south of *Rancho Ulistac* (USGS Milpitas, Calif. 1980).

American Period

The American Period in the Santa Clara Valley is characterized by an influx of Euro-Americans and rapid growth which overwhelmed the Hispanic residents and their economic/cultural traditions which centered on missions, presidios, and ranchos. In the mid-19th century, most of the rancho and pueblo lands in California were subdivided as the result of population growth, the American takeover, and the confirmation of property titles throughout the state. The initial explosion in population was associated with the Gold Rush (1848), followed later by the construction of the transcontinental railroad (1869). Still later, the development of the refrigerator railroad car (ca. 1880s), used for the transport of agricultural produce to distant markets, had a major impact on population growth (Broek 1932; Hart 1987).

The town of Santa Clara grew up around the secularized Mission Santa Clara. The town was primarily an American creation and not a direct successor to the Mission pueblo. Santa Clara was a favorable location on account of environmental factors, the presence of former Mission lands and buildings, and roads to San Francisco and San Jose (e.g., *El Camino Real*, The Alameda).

No recorded historic American Period resources were identified in the project as part of the CHRIS/NWIC records search conducted for the proposed project.

Historic Map Review (Selected)

The 1851 General Land Office (GLO) survey plat for Township 6 South Range 1 West updated to 1866 (US/BLM 1851-1866) shows a number of cultural features in the general study area in addition to "Campbell's or Sanjon Creek" including a north-south "Road" that conforms to the approximate alignment of present-day Bowers Avenue.

Healey's 1866 *Official Map of the County of Santa Clara* has various rancho boundaries, major roads, rail road routes, as well as the locations of isolated farms/ranches and schematic city grids throughout the county . This map appears to show the alignment of a north-south road from Alviso south to the isolated square shaped "Enwright Tract" (Enright) that appears to have been just east of Bowers Road (just south of present-day Kifer Road/Central Expressway.

Thompson and West's 1876 *Historical Atlas of Santa Clara County* maps "Coffin Road" which conforms to approximate alignment of present-day Bowers Avenue and a number of irregularly shaped parcels which show buildings within the project. The Subject Property 2 appears to have been within the southern part of a 26-acre parcel owned by G.M. Brown (on south side of southern boundary of *Rancho Ulistac*) No features including farmsteads, roads, or orchards are shown within the Subject Property 2.

The 1899 USGS San Jose topographic quadrangle map shows an unnamed road east from Coffin Road north of present-day Augustine Drive and a north-south road just west of "Campbell Creek" terminating at this road. Three buildings, presumably farmsteads, clustered at the junction of the two roads.

The 1943 War Dept. topographic map is very similar, but shows US Highway 101/Bayshore Highway north of the project and a road coincident with the alignment of the channelized San Tomas Aquino Creek adjacent to Subject Property 2.

The 1961 USGS San Jose topographic quadrangle is similar to the earlier 1943 topographic map. At the time, the project and vicinity were in orchards with a road adjacent to Subject Property 2. In contrast to the 1943 topographic map, the road is shown on the west side of the channelized San Tomas Aquino Creek.

By 1973 the orchard had been removed from Subject Property 2 and was unoccupied. At the time, the road on the west side of channelized San Tomas Aquino Creek was still present.

By 1980 the road on the west side of the channelized San Tomas Aquino Creek had been removed. At the time, construction included Augustine and Octavius drives as well as two buildings built on Subject Property 2 (USGS 1899 [surveyed 1895], 1953, 1961, 1973, 1980; US War Dept 1943 [photography 1939]).

The *Creek & Watershed Map of Milpitas & North San Jose* shows San Tomas Aquino Creek within an engineered channel adjacent to east side of Subject Property 2 (Sowers and Thompson 2005).

Listed Historic Properties

No listed local, state or federal historically or architecturally significant structures, landmarks or points of interest have been identified in or adjacent to the proposed project.

CONCLUSIONS

- The records search conducted by the CHRIS/NWIC was negative for recorded and/or reported resources in or adjacent to the proposed project.
- No known ethnographic, traditional or contemporary Native American resources have been identified in or adjacent to the proposed project.
- No Hispanic Period features have been identified in or adjacent to the project.
- No surviving American Period agricultural resources as noted on historic maps are extant.
- No listed, determined or pending California Register of Historical Resources properties have been identified in or adjacent to the project area. No other significant or potentially significant local, state or federal cultural resources/historic properties, landmarks, points of interest, etc. have been identified in or adjacent to the project (CHRIS/NWIC File No. 13-1113 with other sources).

- The project appears to be located in an area of low to moderate potential for both prehistoric and historic archaeological resources. Previous subsurface impacts associated with infrastructure improvements and development over the past 50 years appear to have reduced the potential for significant subsurface cultural resources.

SUMMARY AND MANAGEMENT RECOMMENDATIONS

It is the considered opinion of Basin Research Associates, based on a review of pertinent records, maps and other documents that the proposed project can proceed as planned in regard to prehistoric and historic archaeological resources. No subsurface testing for buried archaeological resources appears necessary at this time as development over the past 50 years has probably reduced the potential for significant subsurface cultural resources.

The Augustine-Bowers Office Park Project *Mitigation Monitoring and Reporting Program* approved by the City of Santa Clara in 2009 for the project area requires that a qualified archaeologist be:

> ". . . on site to monitor the initial excavation of native soil once all pavement and engineered soil is removed from the project site. After monitoring the initial excavation, the archaeologist will make recommendations for further monitoring if it is determined that the site has cultural resources. If the archaeologist determines that no resources are likely to be found on site, no additional monitoring will be required."

The mitigation measure also provides for protective measures in the event of a discovery of prehistoric and/or historic cultural materials[1] and protocols for their treatment. Native American

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1. Significant prehistoric cultural resources are defined as human burials, features or other clusterings of finds made, modified or used by Native American peoples in the past. The prehistoric and protohistoric indicators of prior cultural occupation by Native Americans include artifacts and human bone, as well as soil discoloration, shell, animal bone, sandstone cobbles, ashy areas, and baked or vitrified clays. Prehistoric materials may include:

   a. Human bone - either isolated or intact burials.
   b. Habitation (occupation or ceremonial structures as interpreted from rock rings/features, distinct ground depressions, differences in compaction (e.g., house floors).
   c. Artifacts including chipped stone objects such as projectile points and bifaces; groundstone artifacts such as manos, metates, mortars, pestles, grinding stones, pitted hammerstones; and, shell and bone artifacts including ornaments and beads.
   d. Various features and samples including hearths (fire-cracked rock; baked and vitrified clay), artifact caches, faunal and shellfish remains (which permit dietary reconstruction), distinctive changes in soil stratigraphy indicative of prehistoric activities.
   e. Isolated artifacts

   Historic cultural materials may include finds from the late 19th through early 20th centuries. Objects and features associated with the Historic Period can include.

   a. Structural remains or portions of foundations (bricks, cobbles/boulders, stacked field stone, postholes, etc.).
   b. Trash pits, privies, wells and associated artifacts.
   c. Isolated artifacts or isolated clusters of manufactured artifacts (e.g., glass bottles, metal cans, manufactured wood items, etc.).
   d. Human remains.

burials are similarly protected and are to be treated as required by State law and the City of Santa Clara.

It is recommended that this mitigation measure be implemented for the current project.

CLOSING REMARKS

If I can provide any additional information or be of further service please don't hesitate to contact me. Thank you for retaining our firm for the project.

Sincerely,
BASIN RESEARCH ASSOCIATES, INC.

Colin I. Busby, Ph.D., RPA
Principal

CIB/dmg

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Abbreviations

n.d.	no date	v.d.	various dates
N.P.	no publisher noted	n.p.	no place of publisher noted

The abbreviated phrase "CHRIS/NWIC, Sonoma State University, Rohnert Park" is used for material on file at the California Historical Resources Information System, Northwest Information Center, California State University Sonoma, Rohnert Park.

FIGURES

FIGURE 1	General Project Location
FIGURE 2	Project Location (USGS Milpitas, Calif. 1980 and San Jose West, Calif. 1980)
FIGURE 3	Aerial View of Project Area (Google Earth)
FIGURE 4	Santa Clara Square General Plan Rezone Exhibit (8/6/2014)

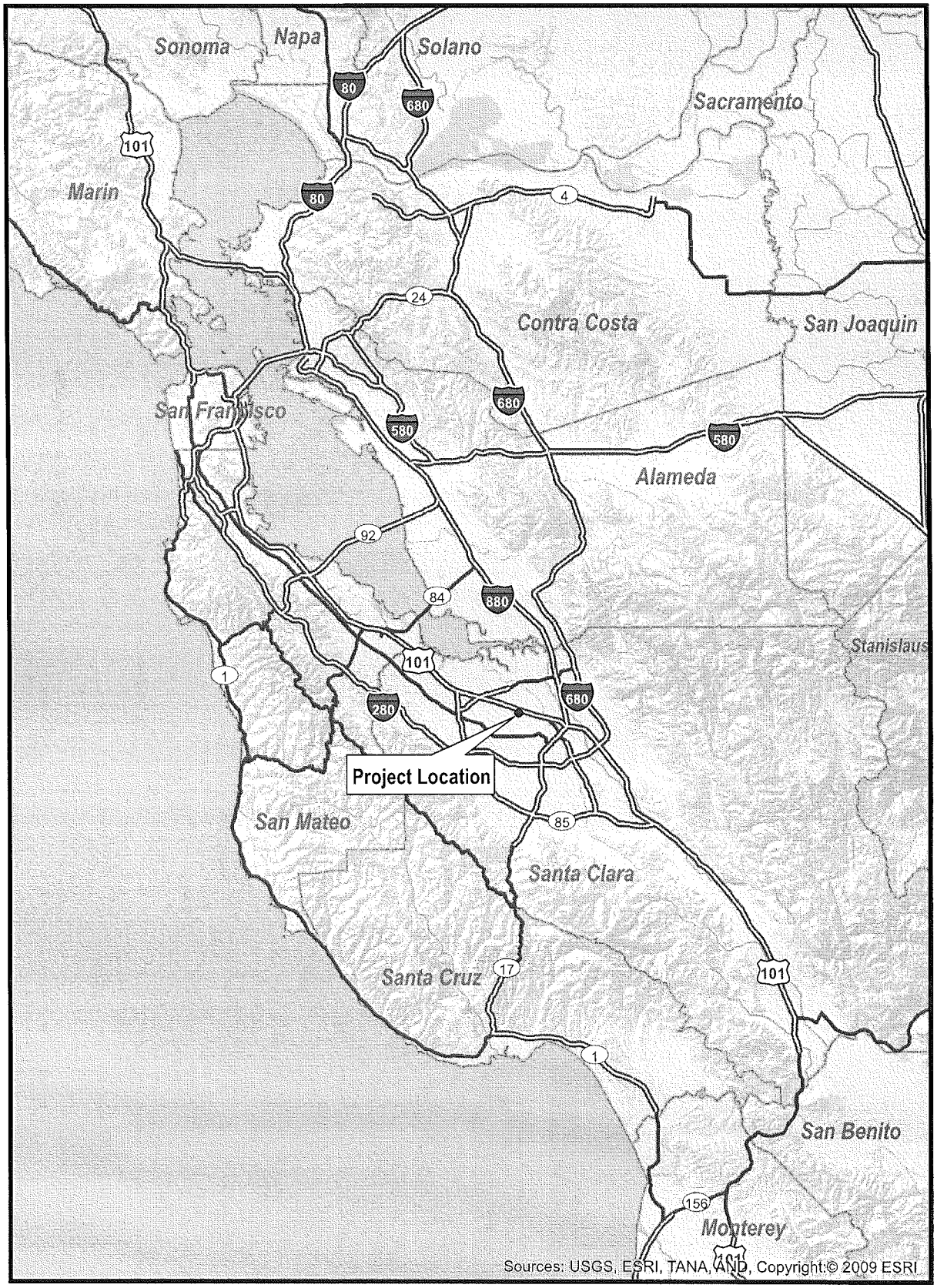

Figure 1: General Project Location

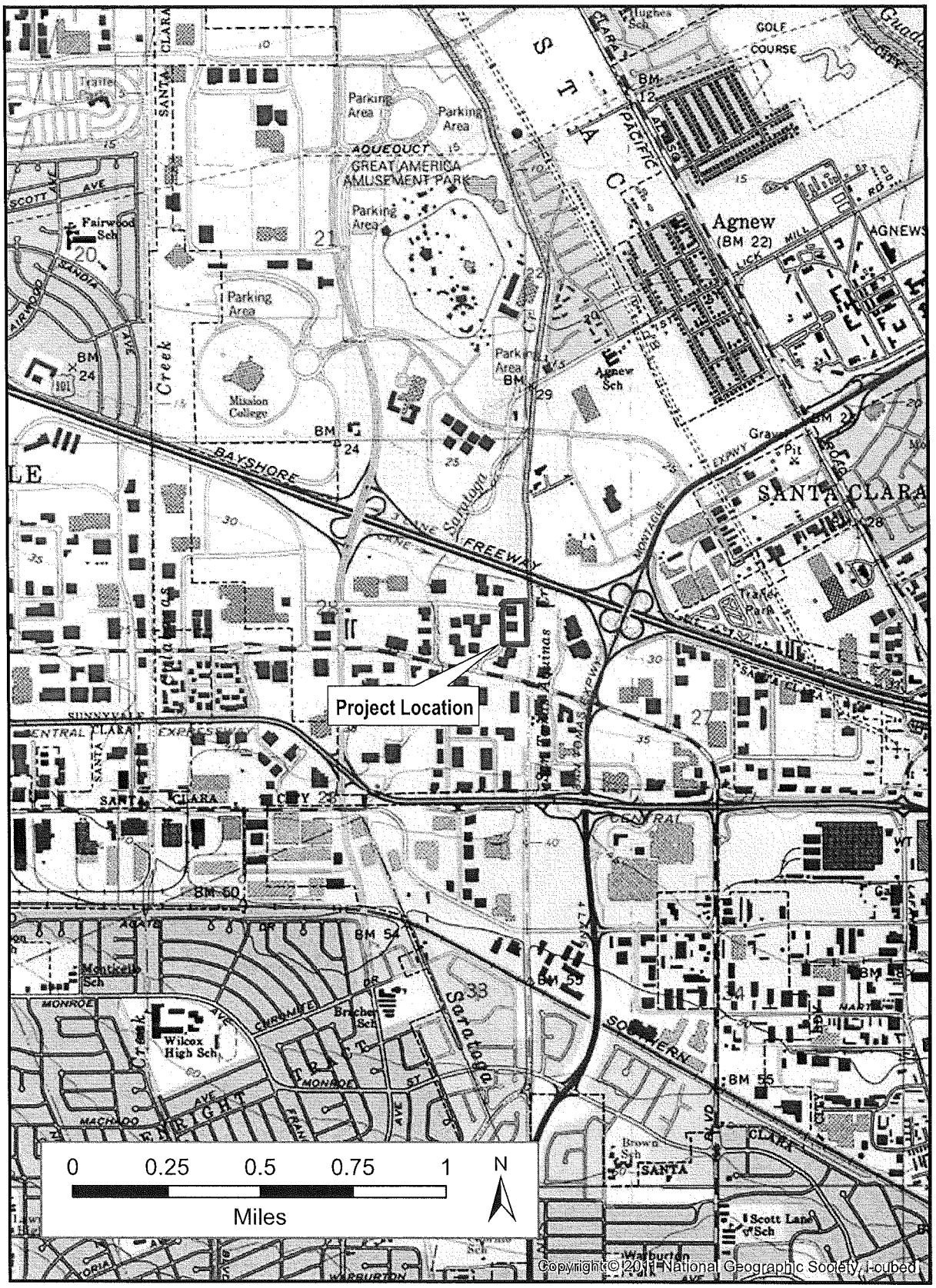

Figure 2: Project Area (USGS Milpitas, Calif. 1980 and San Jose West, Calif. 1980)

Figure 3: Aerial View of Project Area

SANTA CLARA SQUARE
SANTA CLARA, CA

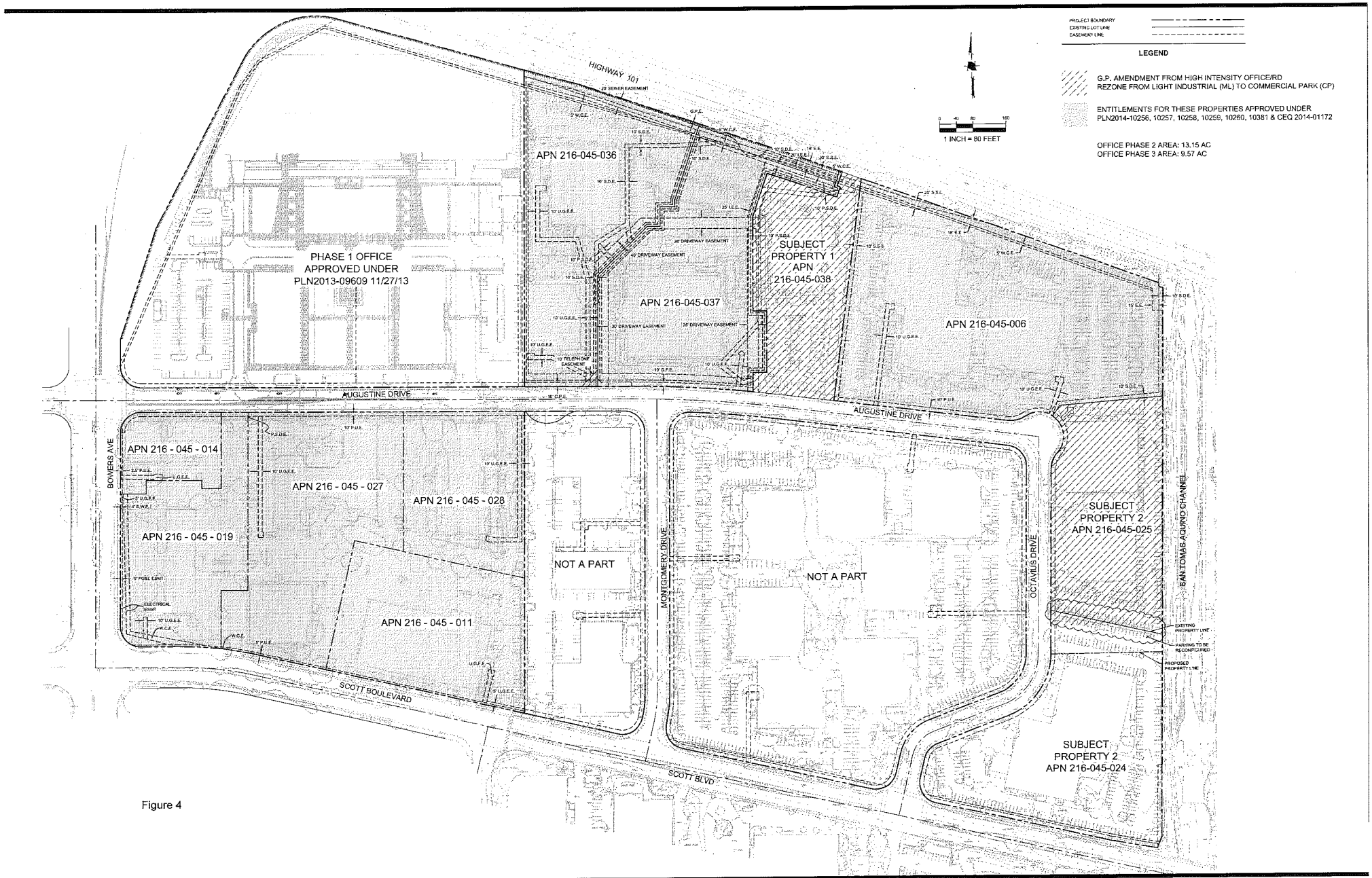

Figure 4

GENERAL PLAN REZONE EXHIBIT

Scale: 1" = 80'

Drawn: RP | Reviewed: RTH

HMH#4299.00 | 8/5/2014

HMH

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San Jose, CA 95131 HMHca.com

Appendix D.1 and D.2

Geology and Soils / Mineral Resources

CORNERSTONE
EARTH GROUP

Date:	August 22, 2014
Project No.:	146-6-3
Prepared For:	Ms. Carlene Matchniff **THE IRVINE COMPANY** 690 North McCarthy Boulevard, Suite 100 Milpitas, California 95035
Re:	Geotechnical Feasibility Study Santa Clara Square Feasiblity Augustine Drive and Montgomery Drive Santa Clara, California

Dear Ms. Matchniff:

As requested, this letter presents the results of our geotechnical feasibility study for the above referenced project, specifically for the property located at 2505 Augustine Drive in Santa Clara, California.

As you know, we previously performed a similar study with findings and preliminary recommendations provided in our February 20, 2014 report.

We have been provided the following reports for review:

- A report titled, "Preliminary Geotechnical Report, Augustine-Bowers Office Park Development, Santa Clara, California," prepared by Donald E. Banta & Associates, Inc., dated February 8, 2008

- The Geology and Soils sections of the "Draft Environmental Impact Report, Augustine-Bowers Office Park, City of Santa Clara 2008"

THE PROJECT

Once completed, the project will include a retail and several office components as part of the overall Santa Clara Square development. This feasibility study addresses the approximately 2½-acre portion of the site between the Office Phase 2 and 3 as shown on the attached Site Plan, Figure 1.

As currently planned, several buildings will straddle portions of the 2505 Augustine Drive site (current UCSC building). Portions of two larger buildings will encroach into the site. Those buildings will likely be six-story, at-grade office buildings, both with footprints of approximately 211,000 square feet each. A portion of another smaller building located near the southeast corner of the site will be a one to two-story amenity building with an approximate footprint of 10,000 square feet.

1320 Oakmead Parkway | Sunnyvale, CA 94085
T 408.245.4600 | F 408.245.4601

1270 Springbrook Road, Suite 101 | Walnut Creek, CA 94597
T 925.988.9600 | F 925.988.9601

www.cornerstoneea.com

SITE CONDITIONS

FILE REVIEW

As part of our scope of work, we have reviewed the geotechnical report provided for the Office Phase 1 and Retail portions to the northeast intersection of Bowers Avenue and Scott Boulevard. We have also reviewed available geotechnical information for several sites within about a half mile of the site contained in our files.

REGIONAL SEISMICITY (GENERAL)

The San Francisco Bay area is one of the most seismically active areas in the Country. While seismologists cannot predict earthquake events, the U.S. Geological Survey's Working Group on California Earthquake Probabilities 2007 estimates there is a 63 percent chance of at least one magnitude 6.7 or greater earthquake occurring in the Bay Area region between 2007 and 2036. As seen with damage in San Francisco and Oakland due to the 1989 Loma Prieta earthquake that was centered about 50 miles south of San Francisco, significant damage can occur at considerable distances. Higher levels of shaking and damage would be expected for earthquakes occurring at closer distances.

EXISTING SITE CONDITIONS

The site is bounded by Highway 101 on the north, Office Phase 3 site on the east, Augustine Drive to the south, and Office Phase 2 to the west.

The overall site area is relatively level with minor grade changes for surface water drainage to storm drainage facilities. The existing structure consists of a two-story office building and at-grade pavements. The existing pavement appears to be in poor to fair condition based on visual observations. In addition, the San Tomas Aquino Creek channel is located approximately 750 feet east of the site.

ANTICIPATED SUBSURFACE CONDITIONS

We anticipate that the subsurface conditions will consist of deep alluvial soils. Generally, moderately to highly plastic soils blanket this area of Santa Clara, overlying stiff to very stiff lean clays with interbedded layers of medium dense to dense sands. Based on our review of the Banta report, the sand layers ranged in thickness from several inches up to about 5 feet. Ground water is anticipated to be at depths of about 8 feet below the ground surface.

The 2008 Banta report includes laboratory testing for corrosion potential on one sample collected from the Retail site area, which indicates the soils are moderately corrosive to buried metal and non-corrosive relative to buried concrete. Testing we have on other nearby sites, including the site across Bowers to the west of the Retail site, indicates moderately corrosive to corrosive surficial soils with respect to buried metal and non-corrosive to buried concrete.

Based on our review and available information, we understand a creek bisected the Office Phase 2 Area in a north-south direction, roughly in the middle of the site. This creek was filled in by about 1980, as part of the commercial/office park development. We were not provided geotechnical observation and testing records including fill placement and compaction for review or evaluation. It does not appear that the previously filled creek crossed into this site.

GROUND WATER

Based on available data, ground water was encountered at about 8 feet below the ground surface at the time of drilling. In addition, maps published by the California Geological Survey estimate historical high ground water depth at approximately 7 to 10 feet below the ground surface (CGS, 2002). Fluctuations in the level of the ground water may occur due to variations in rainfall, underground drainage patterns, as well as numerous other factors.

GEOLOGIC HAZARDS

FAULT RUPTURE

The site is not located within a currently designated Alquist-Priolo Earthquake Fault Zone, therefore, fault rupture through the site is not anticipated (CGS, 2002). Additionally, the site is not located in a Santa Clara County Fault Rupture Hazard Zone (Santa Clara County, 2002).

GROUND SHAKING

Moderate to severe (design-level) earthquakes can cause strong ground shaking, which is the case for most sites within the Bay Area. While a seismic hazard analysis has not been prepared for this feasibility study, strong ground shaking can be expected at the site during the life of the improvement.

Potential mitigation of strong ground shaking likely includes designing new structures to meet current building codes and applicable requirements.

LANDSLIDING

The site is not located within a California Seismic Hazard Zone for landsliding (CGS, 2011) or a Santa Clara County Landslide Hazard Zone (Santa Clara County, 2012). Due to the relatively flat topography, the potential for landsliding at the site is considered low.

DIFFERENTIAL COMPACTION

Provided any near-surface undocumented fill and loose material is removed and replaced as engineered fill, in our opinion, the probability of differential compaction at the site is low.

LIQUEFACTION

The site is mapped within a California Seismic Hazard Zone for liquefaction (CGS, 2002) and a Santa Clara County Liquefaction Hazard Zone (Santa Clara County, 2002).

From review of the Banta report, based on their liquefaction analyses, they estimated about 1 to 4 inches of total seismic settlement. Reviewing the liquefaction results from our other nearby projects, total liquefaction settlements typically range up to about 2 inches. As these are alluvial deposits, there can be areas with thicker sand deposits and associated higher estimated seismic settlements. Typically, differential seismic settlements are on the order of ½- to 1½ inches between independent foundation elements. Therefore, and for the above reasons, the potential for liquefaction impacting site development is considered high.

In this area of Santa Clara, we have not encountered sufficiently thick deposits of potentially liquefiable soils at shallow enough depths for ground rupture or sand boil development.

Liquefaction potential should be evaluated further as part of the design-level geotechnical investigation.

LATERAL SPREADING

Lateral spreading is horizontal/lateral ground movement of relatively flat-lying soil deposits towards a free face such as an excavation, channel, or open body of water; typically lateral spreading is associated with liquefaction of one or more subsurface layers near the bottom of the exposed slope. As failure tends to propagate as block failures, it is difficult to analyze and estimate where the first tension crack will form.

As noted, this site is more than 750 feet west of the San Tomas Aquino Creek channel, in our opinion, the potential for lateral spreading to affect the site is likely low.

FLOODING

Based on our internet search of the Federal Emergency Management Agency (FEMA) flood map public database, the site is located within Zone X (Areas of 0.2% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood, FEMA 2009). We recommend the project civil engineer be retained to confirm this information and verify the base flood elevation, if appropriate.

The Association of Bay Area Governments has compiled a database of Dam Failure Inundation Hazard Maps (ABAG, 1995). The generalized hazard maps were prepared by dam owners as required by the State Office of Emergency Services; they are intended for planning purposes only. Based on our review of these maps, the site is located within a dam failure inundation area for the Lexington Reservoir.

CONCLUSIONS AND RECOMMENDATIONS

GEOTECHNICAL DESIGN CONSIDERATIONS

Based on our review of the available information provided to us, this project appears feasible from a geotechnical standpoint provided the following concerns are further evaluated with site-specific investigations.

Potential geotechnical concerns, design considerations, and preliminary recommendations are provided herein. A brief description of these concerns follows.

- Shallow ground water
- Potential for liquefaction-induced settlements
- Potential for high static settlements
- Plasticity and expansion potential of the surficial soils
- Re-development considerations
- Corrosion potential

Shallow Ground Water

Historic high ground water is expected to be about 7 to 10 feet below the ground surface. Below-grade excavations or planned utilities extending near or below the ground water will most likely require dewatering and/or excavation bottoms be stabilized. Potential impacts typically consist of wet and unstable pavement subgrade, difficulty achieving compaction, and difficult underground utility installation. Dewatering and shoring of utility trenches should be planned for.

Potential for Liquefaction-Induced Settlements

The site is located within State of California and County of Santa Clara liquefaction hazard zones. During strong seismic shaking, cyclically induced stresses can cause increased pore pressures within the soil matrix that can result in liquefaction triggering, soil softening due to shear stress loss, potentially significant ground deformation due to settlement within sandy liquefiable layers as pore pressures dissipate, and/or flow failures in sloping ground or where open faces are present (lateral spreading) (NCEER 1998). Limited field and laboratory data is available regarding ground deformation due to settlement; however, in clean sand layers settlement on the order of 2 to 3 percent of the liquefied layer thickness can occur. Soils most susceptible to liquefaction are loose, non-cohesive soils that are saturated and are bedded with poor drainage, such as sand and silt layers bedded with a cohesive cap.

The potential for liquefaction should be evaluated further as part of the design-level geotechnical investigation.

Potential for High Static Settlements

Though structural loads are not available at the time of this report, we estimate the loads to be relatively high for the two six-story buildings. Based on the anticipated subsurface conditions and estimated structural loads, we anticipate total and differential static settlements are above acceptable limits for conventional spread footings. If the total and/or differential settlement cannot be tolerated, alternative foundation systems or subsurface ground mitigation measures will be required. Additional comments for potential foundation alternatives are discussed below.

Re-development Considerations

The site is presently occupied by a two-story office building with associated improvements. Potential issues that are often associated with redeveloping sites include demolition of existing improvements, abandonment of existing utilities, and undocumented fill. Recommendations to address these re-development issues should be incorporated into a final geotechnical report.

Corrosion Potential

Based on our review of previous reports near this area and our experience, we anticipate that the soils may be classified as moderately corrosive to corrosive to buried metal piping. We do not anticipate a significant corrosion potential to buried concrete structures. However, site concrete including foundations should be designed in accordance with the current building code.

FOUNDATIONS

As discussed, the overall development including the portions that encroach onto this site will likely include two six-story, at-grade office buildings and a one to two-story amenity building. The exact building configurations are not known at this time; therefore, our initial recommendations provided below are intended for your project planning purposes only. They should not be used for project design.

The primary geotechnical concerns are the potential for significant static and seismic settlements of the planned buildings, and whether these structures will likely be supported on spread footings, mat foundations, or alternatively, a deep foundation system. In addition, we understand the Office Phase 1 structures are supported on driven pre-cast piles.

In our opinion, we anticipate the six-story office buildings will likely either be supported on conventional spread footings with ground improvement depending on the estimated seismic plus static differential movements, or on deep foundations such as driven, pre-cast piles or drilled displacement augercast piles. The one to two-story story amenity building may potentially be supported spread footings with ground improvement, a mat foundation, or deep foundations as mentioned above.

The feasibility of the above foundation alternatives should be evaluated further during the design-level geotechnical investigation.

EXTERIOR FLATWORK

Additional site concerns include the moderately to highly plastic soils that generally blanket the site vicinity. Slabs-on-grade will be required to be supported on a layer of non-expansive fill that can consist of imported material or a lime-treated section of native soils.

DESIGN-LEVEL GEOTECHNICAL INVESTIGATION

The design considerations and feasibility recommendations contained in this report were based on limited site development information, geotechnical data in our files, and available published information. We recommend Cornerstone Earth Group be retained to perform a design-level geotechnical investigation, once detailed site development plans are available. The recommendations provided in this letter should not be used for project design.

CLOSURE

We hope this provides the information you need at this time. The findings and preliminary recommendations presented in this letter have been prepared for the sole use of The Irvine Company specifically for the property at 2505 Augustine Drive in Santa Clara, California. Our professional services were performed, our findings obtained, and our recommendations prepared in accordance with generally accepted geotechnical engineering principles and practices at this time and location. No warranties are either expressed or implied.

If you have any questions or need any additional information from us, please call and we will be glad to discuss them with you.

CORNERSTONE
EARTH GROUP

Sincerely,

Cornerstone Earth Group, Inc.

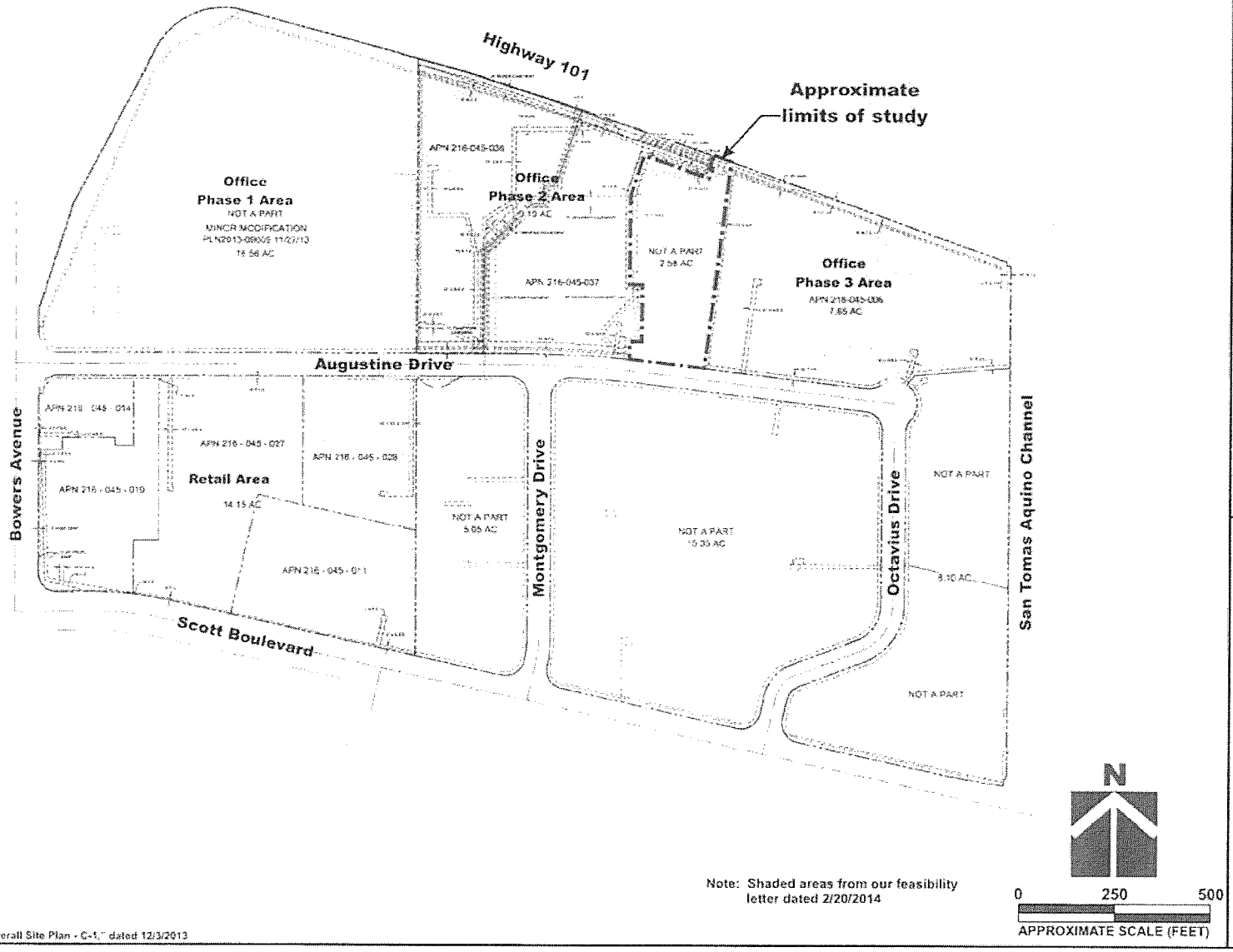
Danh T. Tran, P.E.
Senior Principal Engineer

REGISTERED PROFESSIONAL ENGINEER
DANH T. TRAN
C59705
EXP. 12/31/15
CIVIL
STATE OF CALIFORNIA

MAA:DTT:CBB

Attachment: Figure 1 Site Plan

Copies: Addressee (by email)
The Irvine Company (by email)
Mr. David Gazek
Mr. Steven Bull



Note: Shaded areas from our feasibility letter dated 2/20/2014

Base by HMH, "Existing Overall Site Plan - C-1," dated 12/3/2013

Project Number: 146-6-3

Figure Number: Figure 1

Date: August 2014

Drawn By: RRN

Site Plan

Santa Clara Square Feasibility
Santa Clara, CA

CORNERSTONE EARTH GROUP

29 August 2014

Mr. Steve Bull
Irvine Company Community Development
690 N. McCarthy Blvd., Ste. 100
Milpitas, California 95035

Re: Preliminary Geotechnical Feasibility Study
Santa Clara Square – Parking Garage G3
Santa Clara, California
Langan Project No.: 770612501

Dear Mr. Bull:

This letter presents our preliminary geotechnical conclusions and recommendations regarding the proposed Santa Clara Square Parking Garage G3 in San Jose, California. The proposed parking garage G3 will be a five level concrete structure at-grade.

1.0 BACKGROUND

The Santa Clara Square Office Phase II and III are bound by Highway 101 to the north, San Tomas Aquino Creek Trail to the east, Scott Boulevard to the south and Octavia Drive to the west and encompasses approximately three acres. The proposed parking garage G3 site is at the southeast corner of the development at Augustine Drive, as shown on Figure 1. The parking garage site is currently occupied by two one- to two-story office buildings that are surrounded by paved parking lots and landscaping. It is relatively flat, with ground surface elevations ranging from approximately Elevation 27.5 to 30.3 feet[1] (HMH Engineers, 2014).

2.0 SITE INVESTIGATION

We reviewed previous geotechnical investigations performed in the vicinity of the site. To further investigate subsurface conditions at the site, we drilled two test borings and performed two Cone Penetration Tests (CPTs) at the parking garage site.

Prior to performing the field exploration, we:

- obtained soil boring/monitoring well permit from the Santa Clara Valley Water District (SCVWD)
- notified Underground Service Alert
- checked the boring locations for underground utilities using a private utility locator

[1] All elevations reference elevations from "TOPO and Boundaries Map" dated 1/14/14 (HMH Engineers, 2014)

Details of the field exploration activities and laboratory testing are described in the remainder of this section.

2.1 Borings

The approximate locations of the borings drilled at the site are shown on Figure 2. The borings were drilled on 8 April 2014 by Exploration Geoservices Inc. using a truck mounted hollow stem auger drill rig.

Two borings, designated as BG3-1 and BG-3, were drilled to a depth of approximately 45 feet below ground surface (bgs). In addition, one shallow boring, designated as BP-1, was drilled to a depth of approximately 11½ feet bgs. During drilling, our field engineer logged the borings and obtained representative samples of soil encountered for visual classification and laboratory testing.

Logs of test borings are presented in Appendix A on Figures A-1 through A-3. The soil encountered in the borings was classified in accordance with the Classification Chart, presented on Figure A-4. All borings were backfilled with cement grout at the completion of drilling in accordance with the requirements of SCVWD.

Samples were obtained using the following split-barrel sampler types.

- Standard Penetration (SPT) sampler with a 2.0-inch-outside diameter and a 1.5-inch-inside diameter, without liners;
- Sprague and Henwood (S&H) sampler with a 3.0-inch-outside diameter, 2.5-inch-inside diameter, lined with 2.43-inch-inside diameter, stainless-steel tubes.

The sampler types were chosen on the basis of soil type and desired sample quality for laboratory testing. In general, the S&H sampler was used to obtain samples in medium stiff to very stiff cohesive soils. The SPT sampler was used to evaluate the relative density of granular soils.

The SPT and S&H samplers were driven with a 140-pound, above ground, safety hammer falling 30 inches. The SPT and S&H samplers were driven up to 18 inches and the hammer blows required to drive the samplers every six inches of penetration were recorded and are presented on the boring logs. A "blow count" is defined as the number of hammer blows per six inches of penetration. In all cases, the samples were driven 18 inches. The blow counts required to drive the S&H and SPT samples were converted to approximate SPT N-values using factors of 0.6 and 1.0, respectively, to account for sample type and hammer energy (Mobile 61 hammer) and are shown on the boring logs.

The blow counts used for this conversion were the last two blow counts of the 18-inch drive.

Upon completion of the borings they were backfilled with grout consisting of cement, bentonite, and water in accordance with the requirements of SCVWD. The soil cuttings were

placed in 55-gallon drums stored temporarily at the site, tested, and were eventually transported off-site for proper disposal.

2.2 Cone Penetration Test

The CPTs (designated as CG3-1 and CG3-2) were performed on 7 and 8 April 2014 by John Sarmiento and Associates (JSA) at the approximate locations shown on Figure 2. The CPTs were advanced to depths of approximately 100 feet bgs.

The CPTs were performed by hydraulically pushing a 1.4-inch-diameter, cone-tipped probe, with a projected area of 15 square centimeters, into the ground. The cone tip measures tip resistance, and the friction sleeve behind the cone tip measures frictional resistance. Electrical strain gauges or load cells within the cone continuously measured the cone tip resistance and frictional resistance during the entire depth of each probing. Accumulated data was processed by computer to provide engineering information, such as the types and approximate strength characteristics of the soil encountered. The CPT logs, showing tip resistance and friction ratio by depth, as well as interpreted SPT N-Values, friction angle, soil strength parameters, and interpreted soil classification, are presented in Appendix A on Figures A-5 and A-6. Soil types were estimated using the classification chart shown on Figure A-7.

Pore-pressure dissipation tests (PPDTs) were performed during the advancement of CG3-2 at a depth of 85.9 feet bgs. PPDTs are conducted at various depths to measure hydrostatic water pressures and to determine the approximate depth of the groundwater level. The variation of pore pressure with time is measured behind the tip of the cone and recorded. For the PPDT for CG3-2, the duration of the test was approximately 215 seconds. The results of the PPDT is presented on Figure A-8.

Upon completion of the field investigation, the CPT holes were backfilled with cement-bentonite grout in accordance with the requirements of SCVWD.

2.3 Laboratory Testing

The samples recovered from the field investigation were examined to verify their soil classification, and representative samples were selected for laboratory testing. Samples were tested to measure moisture content, fines contents, shear strength, and plasticity (Atterberg Limits), where appropriate. Results of the laboratory tests are included on the boring logs and on Figures A-9 through A-11 in Appendix A.

3.0 SITE AND SUBSURFACE CONDITIONS

The existing site and subsurface conditions observed and encountered, respectively, are discussed in this section.

3.1 Existing Site Conditions

The site is relatively flat, with the ground surface elevation ranging from Elevation 27.5 to 30.3 feet. Currently, the site is occupied by two office buildings and surrounding asphalt paving and landscaping. As-built drawings are not available for the existing buildings.

San Tomas Aquino Creek Trail is located along the eastern property line. Based on a topographic map (HMH Engineers, 2014), the bottom of the adjacent creek ranges from Elevation 15.5 feet to 19.6 feet.

3.2 Subsurface Conditions

The surface material encountered in the borings and CPTs consists of six inches total of asphalt concrete (AC) and aggregate base (AB). Beneath the pavement section, the borings and CPTs indicate the site is underlain by alluvial deposits. The upper 7 to 9.5 feet consists of stiff to hard clay. Laboratory tests results indicate the near surface clay layer has moderate expansion potential[2] with plasticity index of 23; however other laboratory data from the Santa Clara Square development indicate this layer is highly expansive. Where tested, the undrained shear strengths of the near surface clays is 3,390 pounds per square foot (psf). Based on laboratory test results for the nearby Santa Clara Square development, the clay is overconsolidated[3].

Medium stiff to stiff clay and sandy clay were encountered below the upper clay layer. This layer is approximately 15 to 18 feet thick and has interbedded layers of loose to medium dense sand, silty sand and clayey sand from approximately 1 to 3 feet in thickness.

Below these layers are stiff to hard clay with interbedded layers of sand and gravel to the maximum depths explored of 100 feet. Where tested, the undrained shear strength of the clay in the lower layer is 4,530 psf. A relatively continuous medium dense to very dense sand and gravel layer was encountered at depths of 25 to 33 feet in the borings and CPTs. The thickness of the sand and gravel layer ranges from approximately 4 to 9 feet, with the exception of BG3-1, where the sand layer appears to be greater than 18 feet thick.

Groundwater was encountered at depths of 7.7 feet at CG3-1 (corresponding to Elevation 18.3 feet) and 8.3 feet at CG3-2 (corresponding to Elevation 22 feet). For the PPDT performed during the CPTs, groundwater was encountered at 11.9 feet bgs at C6-2, corresponding to Elevation 18.4 feet.

Based on information from Erler & Kalinowski Inc. (EKI), the project environmental engineer for the Santa Clara Retail site, four groundwater monitoring wells, designated as MW-28A, MW-29A, MW-33A and MW-34A, are located west of the G3 parking garage within the Santa Clara Square development. Data from the monitoring wells indicated the groundwater is at about Elevation 20 feet in the vicinity of the project site.

---

2 Highly expansive soil undergoes large volume changes with changes in moisture content.

3 An overconsolidated clay has experienced a pressure greater than its current load.

4.0 SEISMIC HAZARDS

4.1 Regional Seismicity

The major active faults in the area are the San Andreas, Monte Vista-Shannon, Hayward, and Calaveras faults. These and other faults of the region are shown on Figure 3. For each of the active faults within approximately 55 km from the site, the distance from the site and estimated mean characteristic Moment magnitude[4] [2007 Working Group on California Earthquake Probabilities (WGCEP) (2008) and Cao et al. (2003)] are summarized in Table 1.

TABLE 2
Regional Faults and Seismicity

Fault Segment	Approx. Distance from fault (km)	Direction from Site	Mean Characteristic Moment Magnitude
Monte Vista-Shannon	12	Southwest	6.50
Total Hayward	14	Northeast	7.00
Total Hayward-Rodgers Creek	14	Northeast	7.33
Total Calaveras	16	East	7.03
N. San Andreas – Peninsula	17	Southwest	7.23
N. San Andreas (1906 event)	17	Southwest	8.05
N. San Andreas – Santa Cruz	23	South	7.12
Zayante-Vergeles	32	South	7.00
San Gregorio Connected	38	West	7.50
Greenville Connected	40	East	7.00
Mount Diablo Thrust	41	Northeast	6.70
Monterey Bay-Tularcitos	53	Southwest	7.30

Figure 3 also shows the earthquake epicenters for events with magnitude greater than 5.0 from January 1800 through December 2000. Since 1800, four major earthquakes have been recorded on the San Andreas Fault. In 1836 an earthquake with an estimated maximum intensity of VII on the Modified Mercalli (MM) scale (Figure 4) occurred east of Monterey Bay on the San Andreas Fault (Toppozada and Borchardt 1998). The estimated Moment magnitude, M_w, for this earthquake is about 6.25. In 1838, an earthquake occurred with an estimated intensity of about VIII-IX (MM), corresponding to a M_w of about 7.5. The San Francisco Earthquake of 1906 caused the most significant damage in the history of the Bay Area in terms of loss of lives and property damage. This earthquake created a surface rupture along the San Andreas Fault from Shelter Cove to San Juan Bautista approximately 470 kilometers in length. It had a maximum intensity of XI (MM), a M_w of about 7.9, and was felt 560 kilometers away in Oregon, Nevada, and Los Angeles. The most recent earthquake to affect the Bay Area

[4] Moment magnitude is an energy-based scale and provides a physically meaningful measure of the size of a faulting event. Moment magnitude is directly related to average slip and fault rupture area.

was the Loma Prieta Earthquake of 17 October 1989, in the Santa Cruz Mountains with a M_w of 6.9, approximately 39 km from the site.

In 1868 an earthquake with an estimated maximum intensity of X on the MM scale occurred on the southern segment (between San Leandro and Fremont) of the Hayward Fault. The estimated M_w for the earthquake is 7.0. In 1861, an earthquake of unknown magnitude (probably a M_w of about 6.5) was reported on the Calaveras Fault. The most recent significant earthquake on this fault was the 1984 Morgan Hill earthquake ($M_w = 6.2$).

The 2007 WGCEP at the U.S. Geologic Survey (USGS) predicted a 63 percent chance of a magnitude 6.7 or greater earthquake occurring in the San Francisco Bay Area in 30 years. More specific estimates of the probabilities for different faults in the Bay Area are presented in Table 2.

TABLE 2
WGCEP (2008) Estimates of 30-Year Probability of a Magnitude 6.7 or Greater Earthquake

Fault	Probability (percent)
Hayward-Rodgers Creek	31
N. San Andreas	21
Calaveras	7
San Gregorio	6

5.0 DISCUSSION AND PRELIMINARY RECOMMENDATIONS

The primary geotechnical issues that should be addressed during design development are adequate foundation support, settlement behavior, and geologic hazards. Our discussions and preliminary recommendations regarding foundation alternatives and other geotechnical aspects of the project are presented in the remainder of this report.

5.1 Geologic Hazards

The site is in a seismically active area and will be subject to very strong shaking during a major earthquake. Strong ground shaking during an earthquake can result in ground failure such as that associated with soil liquefaction[5], lateral spreading[6], and cyclic densification[7]. Each of

[5] Liquefaction is a transformation of soil from a solid to a liquefied state during which saturated soil temporally loses strength resulting from the buildup of excess pore water pressure, especially during earthquake-induced cyclic loading. Soil susceptible to liquefaction includes loose to medium dense sand and gravel, low-plasticity silt, and some low-plasticity clay deposits.

[6] Lateral spreading is a phenomenon in which surficial soil displaces along a shear zone that has formed within an underlying liquefied layer. Upon reaching mobilization, the surficial blocks are transported downslope or in the direction of a free face by earthquake and gravitational forces.

these conditions has been evaluated based on our literature review, field investigation and analyses, and is discussed in this section.

5.1.1 Liquefaction and Associated Hazards

The site is located within a zone designated with the potential for liquefaction, as identified by the California Geologic Survey (CGS) in a map titled, *State of California Seismic Hazard Zones, Milpitas Quadrangle*, prepared by the California Geologic Survey, dated October 19, 2004.

When saturated soil with little to no cohesion liquefies during a major earthquake, it experiences a temporary loss of shear strength as a result of a transient rise in excess pore water pressure generated by strong ground motion. Flow failure, lateral spreading, differential settlement, loss of bearing, ground fissures, and sand boils are evidence of excess pore pressure generation and liquefaction.

Layers of loose to medium dense saturated sand and silty sand, varying in thickness from approximately 1 to 3 feet, were encountered below the groundwater level from depths of approximately 10 to 50 feet bgs. Based on our analyses, we conclude these layers could potentially liquefy during a major earthquake and may experience liquefaction-induced settlement.

Following the procedures presented in the 1996 NCEER and the 1998 NCEER/NSF workshops on the Evaluation of Liquefaction Resistance of Soils (Youd and Idriss 2001) and a peak ground acceleration (PGA_M) of 0.5g based on the Design Earthquake (Section 5.5), we estimate liquefaction induced settlement of these layers could be on the order of ½ to 1 inch. Because the potentially liquefiable layers are discontinuous, we estimate that up to one inch of differential settlement may occur during an earthquake.

5.1.2 Cyclic Densification

Cyclic densification refers to seismically-induced differential compaction of non-saturated granular material (sand and gravel above the groundwater table) caused by earthquake vibrations. The borings and CPTs indicate that the materials above the water table are predominantly composed of stiff to hard clayey soils, and therefore seismic densification is unlikely.

5.1.3 Lateral Spreading

Lateral spreading is a phenomenon in which a surficial soil displaces along a shear zone that has formed within an underlying liquefied layer. The surficial blocks are transported downslope or in the direction of a free face, such as a channel, by earthquake and gravitational forces. Lateral spreading is generally the most pervasive and damaging type of liquefaction-induced ground failure generated by earthquakes.

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[7] Cyclic densification is a phenomenon in which non-saturated, cohesionless soil is compacted by earthquake vibrations, causing ground surface settlement.

The project site is less than 50 feet from the San Tomas Aquino Creek. According to Youd, Hansen, and Bartlett (1999), for significant lateral spreading displacements to occur, the soils should consist of saturated cohesionless sandy sediments with $(N_1)_{60}$ less than 15. The potentially liquefiable soil underlying the site generally has $(N_1)_{60}$ greater than 15 and therefore does not fall within the parameters applicable to the Youd, Hansen, and Bartlett lateral displacement model. Also, the site is relatively flat and the potentially liquefiable soils are not continuous, hence, we conclude widespread shear zones should not develop for significant lateral displacements to occur during liquefaction. Therefore, lateral spreading is not likely to affect the site.

5.1.4 Fault Rupture

Historically, ground surface ruptures closely follow the trace of geologically young faults. The site is not within an Earthquake Fault Zone, as defined by the Alquist-Priolo Earthquake Fault Zoning Act and no known active or potentially active faults exist on the site. Therefore, we conclude the risk of fault offset through the site from a known active fault is low. In a seismically active area, the remote possibility exists for future faulting in areas where no faults previously existed; however, we conclude that the risk of surficial ground deformation from faulting at the site is low.

6.1.5 Tsunami

Recent published maps (California Emergency Agency, 2009) indicate the project site is not within the tsunami inundation zone; therefore, we conclude the potential risk by inundation from tsunami to be low within the project site. However, the project civil engineer should evaluate the impact of sea level rise on the potential risk of inundation from a tsunami.

5.2 Expansive Soil Considerations

The existing near-surface soil has a moderate to high expansion potential. Moisture fluctuations in near-surface expansive soil could cause the soil to expand or contract resulting in movement and potential damage to improvements that overlie them. Potential causes of moisture fluctuations include drying during construction, and subsequent wetting from rain, capillary rise, landscape irrigation, and type of plant selection.

For improvements at-grade, the volume changes from expansive soils can cause cracking of foundations, floor slabs and exterior flatwork. Therefore, foundations, slabs and concrete flatwork should be designed and constructed to resist the effects of the expansive soil. These effects can be mitigated by moisture conditioning the expansive soil and providing select, non-expansive fill below interior and exterior slabs and supporting foundations below the zone of severe moisture change.

An alternative to importing select fill includes lime treatment of the near surface soil. Lime stabilization of the at-grade building pads and the subgrade of exterior flatwork and pavement may be a cost-effective means of improving on-site soils for use as non-expansive fill within the building pad.

If the surface soil becomes wet, it may be difficult to compact during the winter. If required, the soil can be mixed with lime to aid in compaction. Lime can also reduce the swell potential and increase the shear strength of the soil.

5.3 Foundation and Settlement

The proposed five-story parking garage structure can be supported on shallow footings that are founded near the bottom of the zone of severe moisture change. The proposed building site is susceptible to the following potential sources of settlement:

- consolidation of the underlying alluvial deposits under the weight of new building loads or new fill
- liquefaction-induced settlement.

Structural loads are presently not available for the proposed garage structure. On the basis of our previous experience in the site vicinity for structures of similar height and construction type, preliminary estimates of settlements are on the order of ½ to 1 inch. Once building loads are available, the settlement estimates can be refined.

As discussed previously, we estimate that up to one inch of liquefaction-induced settlements may occur; differential settlement between columns may be on the order of 1 inch during a major earthquake. These settlements are in addition to the predicted consolidation static settlement. The structural engineer should evaluate the impact of liquefaction-induced settlement to structures supported on shallow foundations. If the total and differential settlements are not tolerable than a stiffer foundation system such as an interconnected grid system or mat should be used.

The preliminary recommended allowable dead plus live load bearing capacity for spread footings is 3,500 psf with a one-third increase for total (wind and/or seismic loads). To reduce the potential for movement of the footings due to shrink and swell of the expansive clay, we recommend that perimeter footings be bottomed at least 36 inches below the lowest adjacent soil subgrade. Interior footings should extend at least 30 inches below the lowest adjacent soil subgrade (measured from the top of the select fill).

Footings should be at least 18 inches wide for continuous footings and 24 inches for isolated spread footings. Footings adjacent to utility trenches (or other footings) should bear below an imaginary 1.5:1 (horizontal to vertical) plane projected upward from the bottom edge of the utility trench (or adjacent footings).

Lateral forces can be resisted by a combination of friction along the base of the footing, and passive resistance against the vertical faces of the foundation and, where applicable, the basement walls perpendicular to the direction of earthquake shaking. Frictional resistance should be computed using a base friction coefficient of 0.30. Our preliminary recommendation for the passive resistance against the vertical faces of footings is an equivalent fluid weight of 250 pounds per cubic foot (pcf). The upper foot should be ignored unless confined by a slab. The values for the friction coefficient and passive pressure include a factor of safety of 1.5.

5.5 2013 California Building Code Mapped Values

For seismic design in accordance with the provisions of 2013 CBC/ASCE 7-10, we recommend the following:

- Risk Targeted Maximum Considered Earthquake (MCE_R) S_s and S_1 of 1.5g and 0.6g, respectively
- Site Class D
- Site Coefficients F_A and F_V of 1.0 and 1.5
- MCE_R spectral response acceleration parameters at short periods, S_{MS}, and at one-second period, S_{M1}, of 1.5g and 0.9g, respectively
- Design Earthquake (DE) spectral response acceleration parameters at short period, S_{DS}, and at one-second period, S_{D1}, of 1.0g and 0.6g, respectively
- Peak ground acceleration, PGA_M of 0.5g

5.6 Final Report

The conclusions and recommendations presented in this letter result from limited subsurface investigation and are preliminary. They should not be used to develop final design drawings. We will be performing engineering analysis to develop design level geotechnical recommendations that will be presented in a final report.

Sincerely yours,
Langan Treadwell Rollo

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Senior Project Manager

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Attachments: References
Figures 1 through 4
Appendix A

770612501.03_STJ_Preliminary Geotechnical Recommendations_Parking Garage G3

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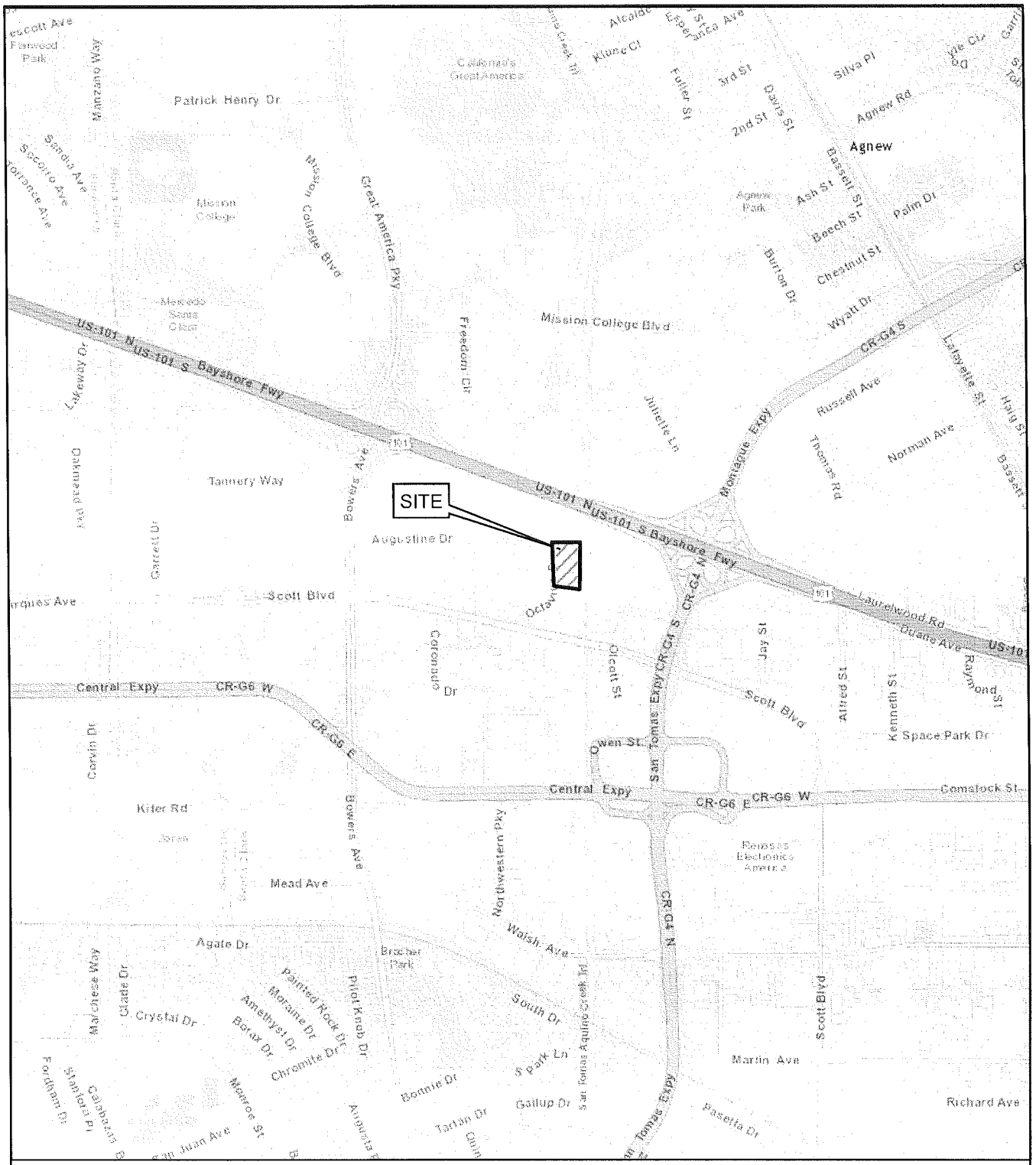
FIGURES



NOTES:

World street basemap is provided through Langan's Esri ArcGIS software licensing and ArcGIS online.
Credits: Sources: Esri, DeLorme, NAVTEQ, USGS, Intermap, iPC, NRCAN.

0 1,000 2,000
Feet

N
W E
S

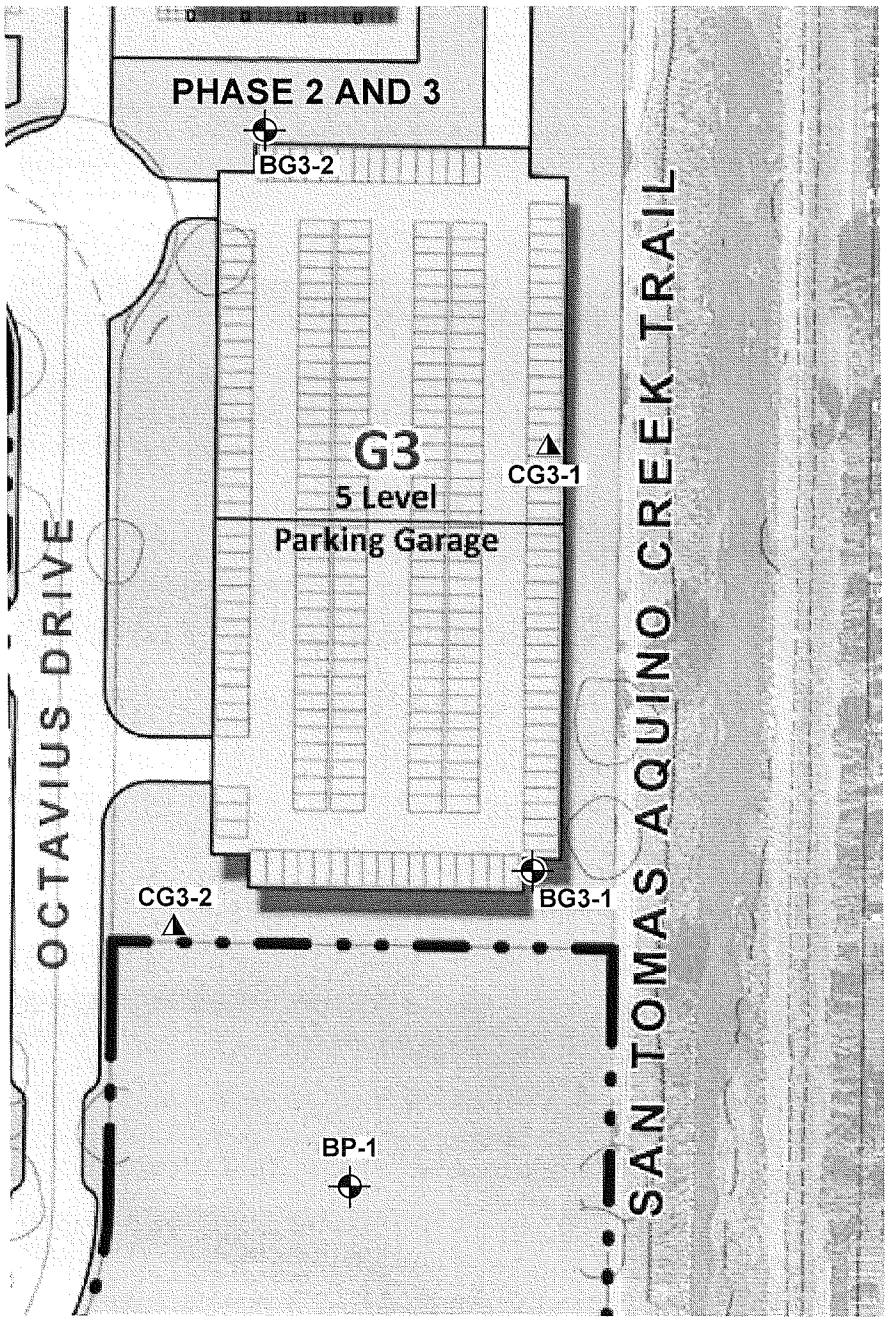
SANTA CLARA SQUARE
PARKING GARAGE G3
Santa Clara, California

LANGAN TREADWELL ROLLO

SITE LOCATION MAP

Date 08/21/14	Project No. 770612501	Figure 1

Path: \\langan.com\data\SF\data1\731626101\ArcGIS\ArcMap_Documents\Site Location Map-Garage.mxd User: jvicente



EXPLANATION

BG3-1 Approximate location of boring by Langan Treadwell Rollo, April 2014

CG3-1 Approximate location of cone penetration test by Langan Treadwell Rollo, April 2014

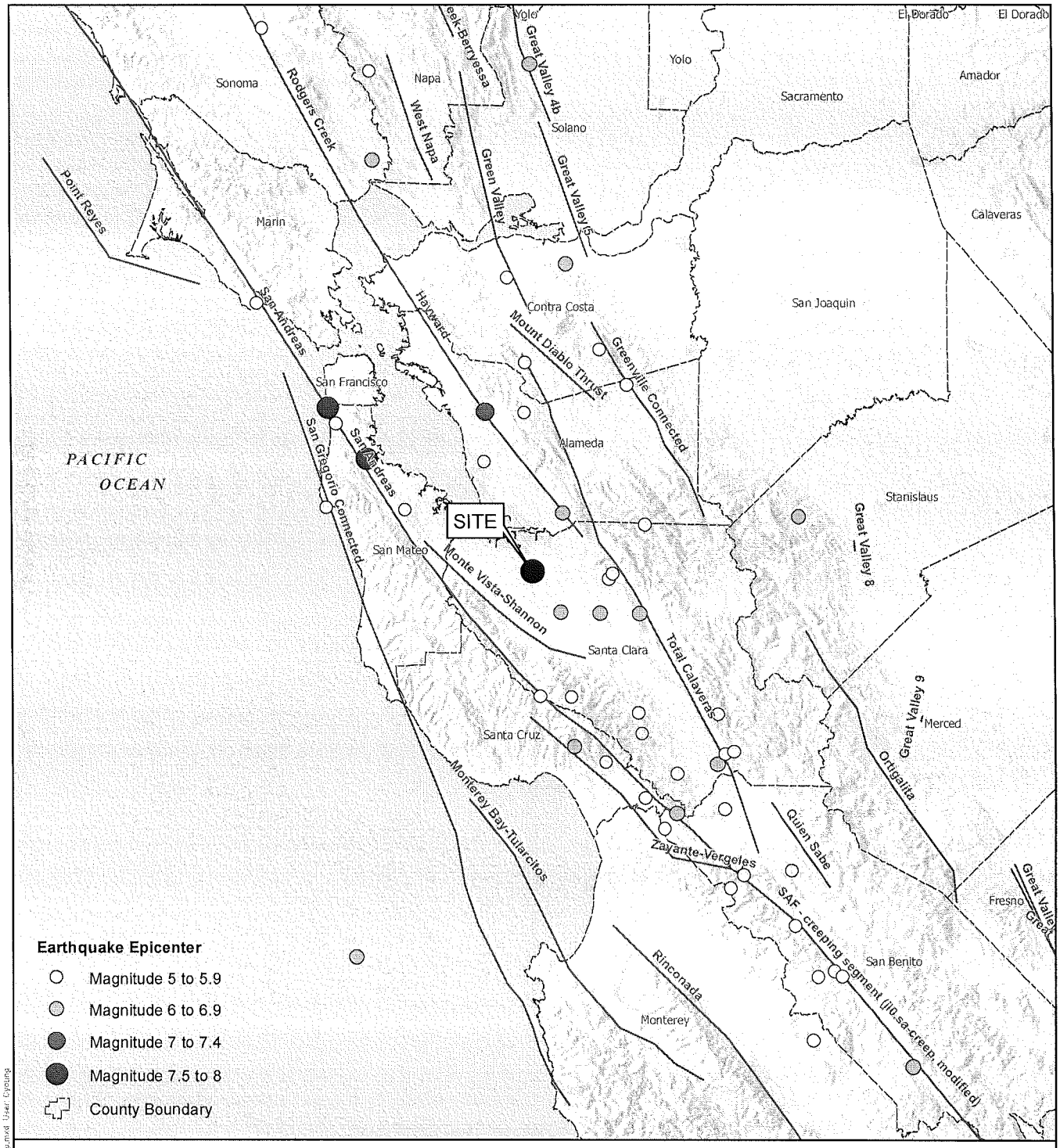
0 100 Feet

Approximate scale

Reference: Base map from a drawing titled "Conceptual Site Plan," by The Irvine Company, dated 07/22/14.

SANTA CLARA SQUARE **PARKING GARAGE G3** Santa Clara, California	**SITE PLAN**
LANGAN TREADWELL ROLLO	Date 08/29/14 | Project No. 770612501 | Figure 2

C:\Users\jvicente\appdata\local\temp\AcPublish_5784\770612501-B-SP0103.dwg 8/29/14



Notes:

1. The earthquake source data is provided by the California Department of Conservation's (DOC) California Geological Survey (CGS).
2. Basemap hillshade and County boundaries provided by USGS and California Department of Transportation.
3. Map displayed in California State Coordinate System, California (Teale) Albers, North American Datum of 1983 (NAD83), Meters.

0 5 10 20
Miles

N

SANTA CLARA SQUARE PARKING GARAGE G3
Santa Clara, California

LANGAN TREADWELL ROLLO

MAP OF MAJOR FAULTS AND EARTHQUAKE EPICENTERS IN THE SAN FRANCISCO BAY AREA

Date 08/22/14	Project No. 770612501	Figure 3

I **Not felt by people, except under especially favorable circumstances. However, dizziness or nausea may be experienced.**
Sometimes birds and animals are uneasy or disturbed. Trees, structures, liquids, bodies of water may sway gently, and doors may swing very slowly.

II **Felt indoors by a few people, especially on upper floors of multi-story buildings, and by sensitive or nervous persons.**
As in Grade I, birds and animals are disturbed, and trees, structures, liquids and bodies of water may sway. Hanging objects swing, especially if they are delicately suspended.

III **Felt indoors by several people, usually as a rapid vibration that may not be recognized as an earthquake at first. Vibration is similar to that of a light, or lightly loaded trucks, or heavy trucks some distance away. Duration may be estimated in some cases.**
Movements may be appreciable on upper levels of tall structures. Standing motor cars may rock slightly.

IV **Felt indoors by many, outdoors by a few. Awakens a few individuals, particularly light sleepers, but frightens no one except those apprehensive from previous experience. Vibration like that due to passing of heavy, or heavily loaded trucks. Sensation like a heavy body striking building, or the falling of heavy objects inside.**
Dishes, windows and doors rattle; glassware and crockery clink and clash. Walls and house frames creak, especially if intensity is in the upper range of this grade. Hanging objects often swing. Liquids in open vessels are disturbed slightly. Stationary automobiles rock noticeably.

V **Felt indoors by practically everyone, outdoors by most people. Direction can often be estimated by those outdoors. Awakens many, or most sleepers. Frightens a few people, with slight excitement; some persons run outdoors.**
Buildings tremble throughout. Dishes and glassware break to some extent. Windows crack in some cases, but not generally. Vases and small or unstable objects overturn in many instances, and a few fall. Hanging objects and doors swing generally or considerably. Pictures knock against walls, or swing out of place. Doors and shutters open or close abruptly. Pendulum clocks stop, or run fast or slow. Small objects move, and furnishings may shift to a slight extent. Small amounts of liquids spill from well-filled open containers. Trees and bushes shake slightly.

VI **Felt by everyone, indoors and outdoors. Awakens all sleepers. Frightens many people; general excitement, and some persons run outdoors.**
Persons move unsteadily. Trees and bushes shake slightly to moderately. Liquids are set in strong motion. Small bells in churches and schools ring. Poorly built buildings may be damaged. Plaster falls in small amounts. Other plaster cracks somewhat. Many dishes and glasses, and a few windows break. Knickknacks, books and pictures fall. Furniture overturns in many instances. Heavy furnishings move.

VII **Frightens everyone. General alarm, and everyone runs outdoors.**
People find it difficult to stand. Persons driving cars notice shaking. Trees and bushes shake moderately to strongly. Waves form on ponds, lakes and streams. Water is muddied. Gravel or sand stream banks cave in. Large church bells ring. Suspended objects quiver. Damage is negligible in buildings of good design and construction; slight to moderate in well-built ordinary buildings; considerable in poorly built or badly designed buildings, adobe houses, old walls (especially where laid up without mortar), spires, etc. Plaster and some stucco fall. Many windows and some furniture break. Loosened brickwork and tiles shake down. Weak chimneys break at the roofline. Cornices fall from towers and high buildings. Bricks and stones are dislodged. Heavy furniture overturns. Concrete irrigation ditches are considerably damaged.

VIII **General fright, and alarm approaches panic.**
Persons driving cars are disturbed. Trees shake strongly, and branches and trunks break off (especially palm trees). Sand and mud erupts in small amounts. Flow of springs and wells is temporarily and sometimes permanently changed. Dry wells renew flow. Temperatures of spring and well waters varies. Damage slight in brick structures built especially to withstand earthquakes; considerable in ordinary substantial buildings, with some partial collapse; heavy in some wooden houses, with some tumbling down. Panel walls break away in frame structures. Decayed pilings break off. Walls fall. Solid stone walls crack and break seriously. Wet grounds and steep slopes crack to some extent. Chimneys, columns, monuments and factory stacks and towers twist and fall. Very heavy furniture moves conspicuously or overturns.

IX **Panic is general.**
Ground cracks conspicuously. Damage is considerable in masonry structures built especially to withstand earthquakes; great in other masonry buildings - some collapse in large part. Some wood frame houses built especially to withstand earthquakes are thrown out of plumb, others are shifted wholly off foundations. Reservoirs are seriously damaged and underground pipes sometimes break.

X **Panic is general.**
Ground, especially when loose and wet, cracks up to widths of several inches; fissures up to a yard in width run parallel to canal and stream banks. Landsliding is considerable from river banks and steep coasts. Sand and mud shifts horizontally on beaches and flat land. Water level changes in wells. Water is thrown on banks of canals, lakes, rivers, etc. Dams, dikes, embankments are seriously damaged. Well-built wooden structures and bridges are severely damaged, and some collapse. Dangerous cracks develop in excellent brick walls. Most masonry and frame structures, and their foundations are destroyed. Railroad rails bend slightly. Pipe lines buried in earth tear apart or are crushed endwise. Open cracks and broad wavy folds open in cement pavements and asphalt road surfaces.

XI **Panic is general.**
Disturbances in ground are many and widespread, varying with the ground material. Broad fissures, earth slumps, and land slips develop in soft, wet ground. Water charged with sand and mud is ejected in large amounts. Sea waves of significant magnitude may develop. Damage is severe to wood frame structures, especially near shock centers, great to dams, dikes and embankments, even at long distances. Few if any masonry structures remain standing. Supporting piers or pillars of large, well-built bridges are wrecked. Wooden bridges that "give" are less affected. Railroad rails bend greatly and some thrust endwise. Pipe lines buried in earth are put completely out of service.

XII **Panic is general.**
Damage is total, and practically all works of construction are damaged greatly or destroyed. Disturbances in the ground are great and varied, and numerous shearing cracks develop. Landslides, rock falls, and slumps in river banks are numerous and extensive. Large rock masses are wrenched loose and torn off. Fault slips develop in firm rock, and horizontal and vertical offset displacements are notable. Water channels, both surface and underground, are disturbed and modified greatly. Lakes are dammed, new waterfalls are produced, rivers are deflected, etc. Surface waves are seen on ground surfaces. Lines of sight and level are distorted. Objects are thrown upward into the air.

SANTA CLARA SQUARE PARKING GARAGE G3 Santa Clara, California	**MODIFIED MERCALLI INTENSITY SCALE**
LANGAN TREADWELL ROLLO	Date 08/22/14 | Project No. 770612501 | Figure 4

APPENDIX A

PROJECT:	SANTA CLARA SQUARE PARKING GARAGE G3 Santa Clara, California	**Log of Boring BG3-1**

Boring location: See Site Plan, Figure 2

Logged by: M. Lattin

Date started: 4/8/14 | Date finished: 4/8/14

Drilling method: Hollow Stem Auger

Hammer weight/drop: 140 lbs./30 inches | Hammer type: B61 Safety

Sampler: Sprague & Henwood (S&H), Standard Penetration Test (SPT)

DEPTH (feet)	SAMPLES: Sampler Type	Sample	Blows/ 6"	SPT N-Value[1]	LITHOLOGY	MATERIAL DESCRIPTION Ground Surface Elevation: 29.0 feet[2]	LABORATORY TEST DATA: Type of Strength Test	Confining Pressure Lbs/Sq Ft	Shear Strength Lbs/Sq Ft	Fines %	Natural Moisture Content, %	Dry Density Lbs/Cu Ft
1						6 inches asphalt concrete (AC) and aggregate base (AB)						
2					CH	CLAY (CH) dark brown, dry, trace gravel and sand, moderate to high plasticity						
3						CLAY (CL) olive-brown, very stiff, dry, moderate plasticity						
4												
5	S&H		6 13 16	17	CL	LL = 43, PI = 23, see Figure A-11						
6												
7												
8	S&H		7 12 17	17		yellow-brown TxUU Test, see Figure A-9	TxUU	1,020	3,390		20.3	107
9												
10						▽ SILTY SAND (SM) brown-gray, loose, wet (04/08/14, 12:30 p.m.)						
11	S&H		5 6 7	9	SM							
12												
13						CLAY (CL) brown with gray mottling, stiff, wet, with trace decomposed organics						
14	SPT		3 6 8	14								
15												
16					CL							
17												
18												
19	S&H		5 6 6	7		CLAY with SAND (CL) gray, medium stiff, wet, fine-grained sand, some silt					24.4	103
20												
21												
22					CL							
23												
24	S&H		6 6 7	8		with fines, some organics						
25												
26					CL	SANDY CLAY (CL) gray, medium stiff to stiff, wet						
27												
28					SP-SM	SAND with SILT (SP-SM) dark gray to black, dense, wet, fine- to coarse-grained sand, with trace fine subrounded gravel						
29	SPT		11 17 22	39						9.7	16.1	
30												

LANGAN TREADWELL ROLLO

Project No.: 770612501 | Figure: A-1a

PROJECT: **SANTA CLARA SQUARE PARKING GARAGE G3**
Santa Clara, California

Log of Boring BG3-1

DEPTH (feet)	SAMPLES: Sampler Type	Sample	Blows/ 6"	SPT N-Value[1]	LITHOLOGY	MATERIAL DESCRIPTION	LABORATORY TEST DATA: Type of Strength Test	Confining Pressure Lbs/Sq Ft	Shear Strength Lbs/Sq Ft	Fines %	Natural Moisture Content, %	Dry Density Lbs/Cu Ft
						SAND with SILT (SP-SM) (continued)						
31												
32												
33												
34	SPT		18 27 26	53								
35						very dense						
36												
37					SP-SM							
38												
39	SPT		13 24 26	50		medium to coarse-grained sand						
40												
41												
42												
43												
44	SPT		31 42 39	81								
45												
46												
47												
48												
49												
50												
51												
52												
53												
54												
55												
56												
57												
58												
59												
60												

Boring terminated at a depth of 45 feet below ground surface.
Boring backfilled with cement grout.
Groundwater encountered at 10 feet below ground surface during drilling.

[1] S&H and SPT blow counts for the last two increments were converted to SPT N-Values using factors of 0.6 and 1.0, respectively to account for sampler type and hammer energy.
[2] Elevations based on "Topo and Boundaries Map," by HMH Engineers, dated 01/14/14.

LANGAN TREADWELL ROLLO

Project No.: 770612501
Figure: A-1b

PROJECT:	SANTA CLARA SQUARE PARKING GARAGE G3 Santa Clara, California	**Log of Boring BG3-2** PAGE 1 OF 2

Boring location:	See Site Plan, Figure 2	Logged by:	M. Lattin
Date started:	4/8/14	Date finished:	4/8/14
Drilling method:	Hollow Stem Auger		
Hammer weight/drop:	140 lbs./30 inches	Hammer type:	B61 Safety
Sampler:	Sprague & Henwood (S&H), Standard Penetration Test (SPT)		

DEPTH (feet)	SAMPLES: Sampler Type	SAMPLES: Sample	SAMPLES: Blows/ 6"	SAMPLES: SPT N-Value[1]	LITHOLOGY	MATERIAL DESCRIPTION (Ground Surface Elevation: 28.8 feet[2])	LABORATORY TEST DATA: Type of Strength Test	Confining Pressure Lbs/Sq Ft	Shear Strength Lbs/Sq Ft	Fines %	Natural Moisture Content, %	Dry Density Lbs/Cu Ft
						6 inches asphalt concrete (AC) and aggregate base (AB)						
1					CL	CLAY (CL) brown, dry, with trace gravel and sand						
2												
3	S&H		5 14 18	19	CH	CLAY (CH) dark brown, very stiff, dry, with some organics and gravel, moderate to high plasticity						
4												
5					CH	CLAY (CH) brown, very stiff, moist, moderate to high plasticity						
6	S&H		7 14 23	22								
7												
8	S&H		7 8 10	11	CL	GRAVELLY CLAY (CL) yellow-brown, stiff, moist, subangular fine gravel						
9												
10					SP	SAND (SP) brown to black, loose, moist, fine-grained						
11	S&H		3 5 5	6							21.0	108
12					CL	CLAY with SAND (CL) gray-brown, medium stiff, moist (04/08/14, 9:45 a.m.)						
13					SP	SAND (SP) red-brown, loose, wet, fine- to coarse-grained						
14	S&H		6 5 7	7							25.5	100
15												
16					CL	CLAY with SAND (CL) gray-brown, medium stiff, wet, coarse-grained sand, with trace fine subrounded gravel						
17												
18					CL	CLAY with SAND (CL) gray, medium stiff, with some fine-grained sand and silt						
19	S&H		3 4 5	5								
20												
21												
22					CL	CLAY (CL) gray, hard, wet TxUU Test, see Figure A-10						
23												
24	S&H		8 12 19	19			TxUU	2,040	4,530		18.7	109
25												
26												
27					CL	SANDY CLAY (CL) gray, stiff, wet, with trace gravel						
28												
29	S&H		5 7 11	11								
30												

LANGAN TREADWELL ROLLO

Project No.:	Figure:
770612501	A-2a

PROJECT: **SANTA CLARA SQUARE PARKING GARAGE G3**
Santa Clara, California

Log of Boring BG3-2

DEPTH (feet)	SAMPLES: Sampler Type	Sample	Blows/ 6"	SPT N-Value[1]	LITHOLOGY	MATERIAL DESCRIPTION	LABORATORY TEST DATA: Type of Strength Test	Confining Pressure Lbs/Sq Ft	Shear Strength Lbs/Sq Ft	Fines %	Natural Moisture Content, %	Dry Density Lbs/Cu Ft
31					CL	SANDY CLAY (CL) (continued)						
32						SAND (SP) gray, very dense, wet, fine- to coarse-grained						
33												
34	SPT		24 24 46	70								
35												
36												
37					SP							
38												
39	SPT		11 22 28	50		with some fine subrounded gravel						
40												
41												
42												
43						CLAY (CL) gray-brown, very stiff, wet, with trace fine sand						
44	S&H		12 14 16	18	CL							
45												
46												
47												
48												
49												
50												
51												
52												
53												
54												
55												
56												
57												
58												
59												
60												

Boring terminated at a depth of 45 feet below ground surface.
Boring backfilled with cement grout.
Groundwater encountered at 12.5 feet below ground surface during drilling.

[1] S&H and SPT blow counts for the last two increments were converted to SPT N-Values using factors of 0.6 and 1.0, respectively to account for sampler type and hammer energy.
[2] Elevations based on "Topo and Boundaries Map," by HMH Engineers, dated 01/14/14.

LANGAN TREADWELL ROLLO

Project No.: 770612501
Figure: A-2b

PROJECT:	SANTA CLARA SQUARE PARKING GARAGE G3 Santa Clara, California	**Log of Boring BP-1** PAGE 1 OF 1

Boring location:	See Site Plan, Figure 2	Logged by:	M. Lattin
Date started:	4/8/14	Date finished:	4/8/14
Drilling method:	Hollow Stem Auger		
Hammer weight/drop:	140 lbs./30 inches	Hammer type:	B61 Safety
Sampler:	Sprague & Henwood (S&H)		

DEPTH (feet)	SAMPLES: Sampler Type	SAMPLES: Sample	SAMPLES: Blows/ 6"	SAMPLES: SPT N-Value[1]	LITHOLOGY	MATERIAL DESCRIPTION (Ground Surface Elevation: 28.9 feet[2])	LABORATORY TEST DATA: Type of Strength Test	Confining Pressure Lbs/Sq Ft	Shear Strength Lbs/Sq Ft	Fines %	Natural Moisture Content, %	Dry Density Lbs/Cu Ft
1						6 inches asphalt concrete (AC) and aggregate base (AB)						
2	BULK				CH	CLAY (CH) dark brown, dry, some organics, gravel, and sand, moderate to high plasticity						
3												
4												
5			5			CLAY (CL) light olive-brown, stiff, moist, with some sand						
6	S&H		11 14	14	CL							
7												
8	S&H		7 9 10	11	CL	SANDY CLAY (CL) brown, stiff, moist, fine-grained sand						
9						∇ (04/08/14, 3:15 p.m.)						
10												
11	S&H		3 4 4	5	CL	SANDY CLAY (CL) brown, medium stiff, wet						
12												
13												
14												
15												
16												
17												
18												
19												
20												
21												
22												
23												
24												
25												
26												
27												
28												
29												
30												

Boring terminated at a depth of 11.5 feet below ground surface.
Boring backfilled with cement grout and cuttings.
Groundwater encountered at 9 feet below ground surface during drilling.

[1] S&H blow counts for the last two increments were converted to SPT N-Values using a factor of 0.6, to account for sampler type and hammer energy.
[2] Elevations based on "Topo and Boundaries Map," by HMH Engineers, dated 01/14/14.

LANGAN TREADWELL ROLLO

Project No.:	Figure:
770612501	A-3

TEST GEOTECH LOG 770612501 - PARKING GARAGE G3.GPJ TR.GDT 8/22/14

UNIFIED SOIL CLASSIFICATION SYSTEM

Major Divisions		Symbols	Typical Names
Coarse-Grained Soils (more than half of soil > no. 200 sieve size	Gravels (More than half of coarse fraction > no. 4 sieve size)	GW	Well-graded gravels or gravel-sand mixtures, little or no fines
		GP	Poorly-graded gravels or gravel-sand mixtures, little or no fines
		GM	Silty gravels, gravel-sand-silt mixtures
		GC	Clayey gravels, gravel-sand-clay mixtures
	Sands (More than half of coarse fraction < no. 4 sieve size)	SW	Well-graded sands or gravelly sands, little or no fines
		SP	Poorly-graded sands or gravelly sands, little or no fines
		SM	Silty sands, sand-silt mixtures
		SC	Clayey sands, sand-clay mixtures
Fine -Grained Soils (more than half of soil < no. 200 sieve size)	Silts and Clays LL = < 50	ML	Inorganic silts and clayey silts of low plasticity, sandy silts, gravelly silts
		CL	Inorganic clays of low to medium plasticity, gravelly clays, sandy clays, lean clays
		OL	Organic silts and organic silt-clays of low plasticity
	Silts and Clays LL = > 50	MH	Inorganic silts of high plasticity
		CH	Inorganic clays of high plasticity, fat clays
		OH	Organic silts and clays of high plasticity
Highly Organic Soils		PT	Peat and other highly organic soils

GRAIN SIZE CHART

Classification	Range of Grain Sizes	
	U.S. Standard Sieve Size	Grain Size in Millimeters
Boulders	Above 12"	Above 305
Cobbles	12" to 3"	305 to 76.2
Gravel	3" to No. 4	76.2 to 4.76
coarse	3" to 3/4"	76.2 to 19.1
fine	3/4" to No. 4	19.1 to 4.76
Sand	No. 4 to No. 200	4.76 to 0.075
coarse	No. 4 to No. 10	4.76 to 2.00
medium	No. 10 to No. 40	2.00 to 0.420
fine	No. 40 to No. 200	0.420 to 0.075
Silt and Clay	Below No. 200	Below 0.075

Unstabilized groundwater level

Stabilized groundwater level

SAMPLE DESIGNATIONS/SYMBOLS

Sample taken with Sprague & Henwood split-barrel sampler with a 3.0-inch outside diameter and a 2.43-inch inside diameter. Darkened area indicates soil recovered

Classification sample taken with Standard Penetration Test sampler

Undisturbed sample taken with thin-walled tube

Disturbed sample

Sampling attempted with no recovery

Core sample

Analytical laboratory sample

Sample taken with Direct Push or Drive sampler

SAMPLER TYPE

C Core barrel

CA California split-barrel sampler with 2.5-inch outside diameter and a 1.93-inch inside diameter

D&M Dames & Moore piston sampler using 2.5-inch outside diameter, thin-walled tube

O Osterberg piston sampler using 3.0-inch outside diameter, thin-walled Shelby tube

PT Pitcher tube sampler using 3.0-inch outside diameter, thin-walled Shelby tube

S&H Sprague & Henwood split-barrel sampler with a 3.0-inch outside diameter and a 2.43-inch inside diameter

SPT Standard Penetration Test (SPT) split-barrel sampler with a 2.0-inch outside diameter and a 1.5-inch inside diameter

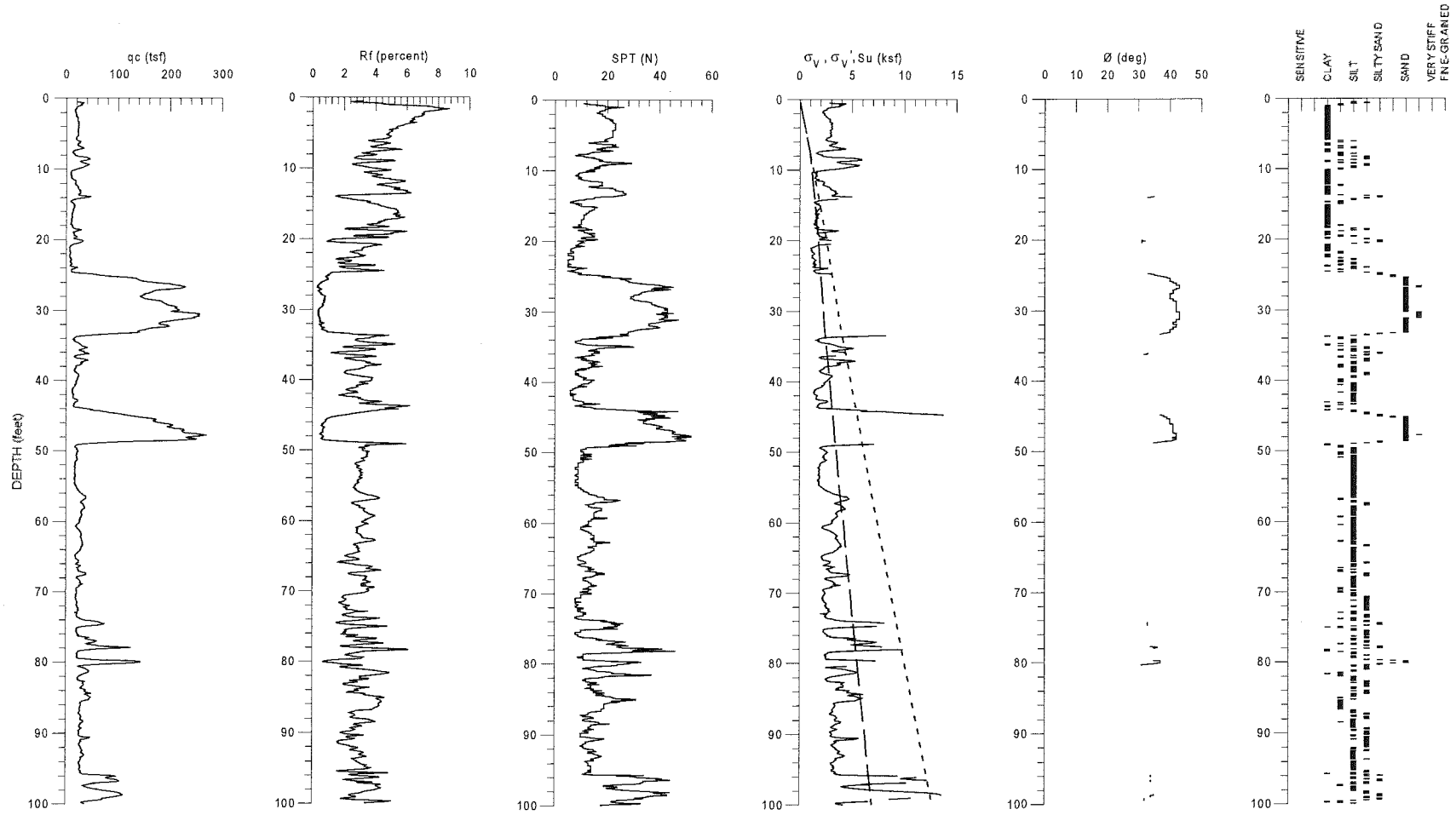
ST Shelby Tube (3.0-inch outside diameter, thin-walled tube) advanced with hydraulic pressure

SANTA CLARA SQUARE
PARKING GARAGE G3
Santa Clara, California

LANGAN TREADWELL ROLLO

CLASSIFICATION CHART

Date 08/15/14 | Project No. 770612501 | Figure A-4



Effective vertical stress, σ_V'

Total vertical stress, σ_V

Undrained Shear Strength, Su

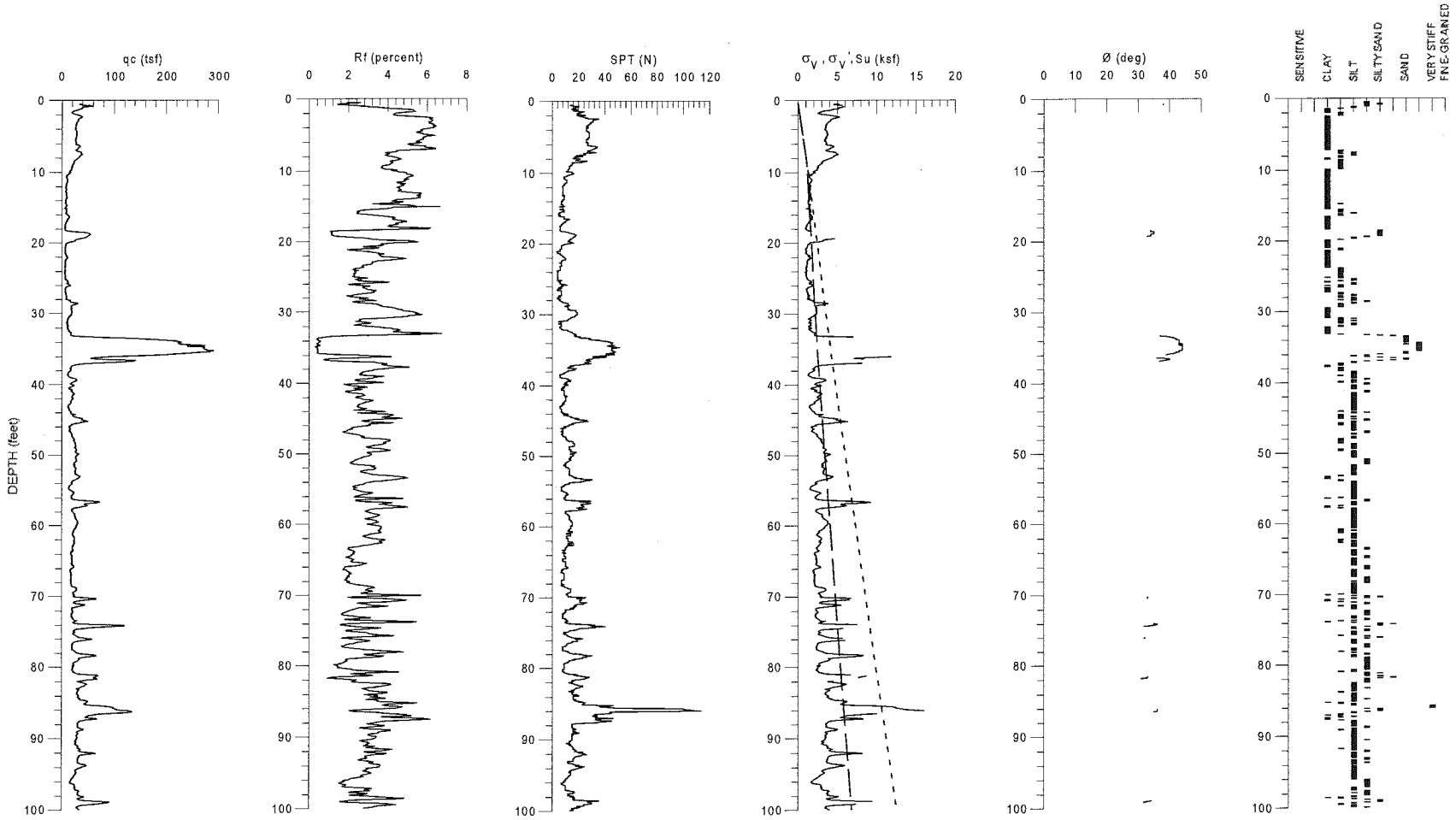
Terminated at 100.1 feet.
Groundwater encountered at 7.7 feet
Date performed 04/07/14.
Ground surface elevation: 26.0 feet, "Topo and Boundaries Map," by HMH Engineers, dated 01/14/14.

SANTA CLARA SQUARE
PARKING GARAGE G3
Santa Clara, California

CONE PENETRATION TEST RESULTS
CG3-1

Date 08/15/14	Project No. 770612501	Figure A-5

LANGAN TREADWELL ROLLO



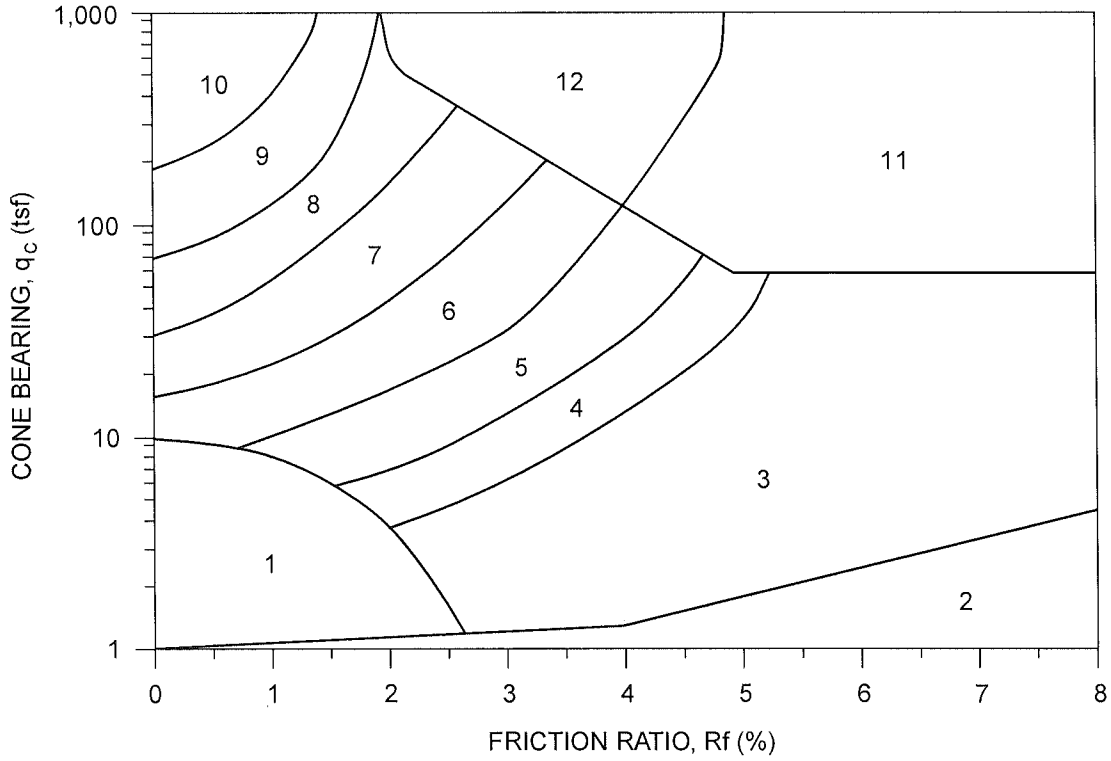
Terminated at 100 feet.
Groundwater encountered at 8.3 feet
Date performed 04/08/14.
Ground surface elevation: 30.3 feet, "Topo and Boundaries Map," by HMH Engineers, dated 01/14/14.
Pore Pressure Dissipation Test performed at 85.9 feet, see Figure B-25.

SANTA CLARA SQUARE
PARKING GARAGE G3
Santa Clara, California

CONE PENETRATION TEST RESULTS
CG3-2

Date 08/15/14	Project No. 770612501	Figure A-6

LANGAN TREADWELL ROLLO



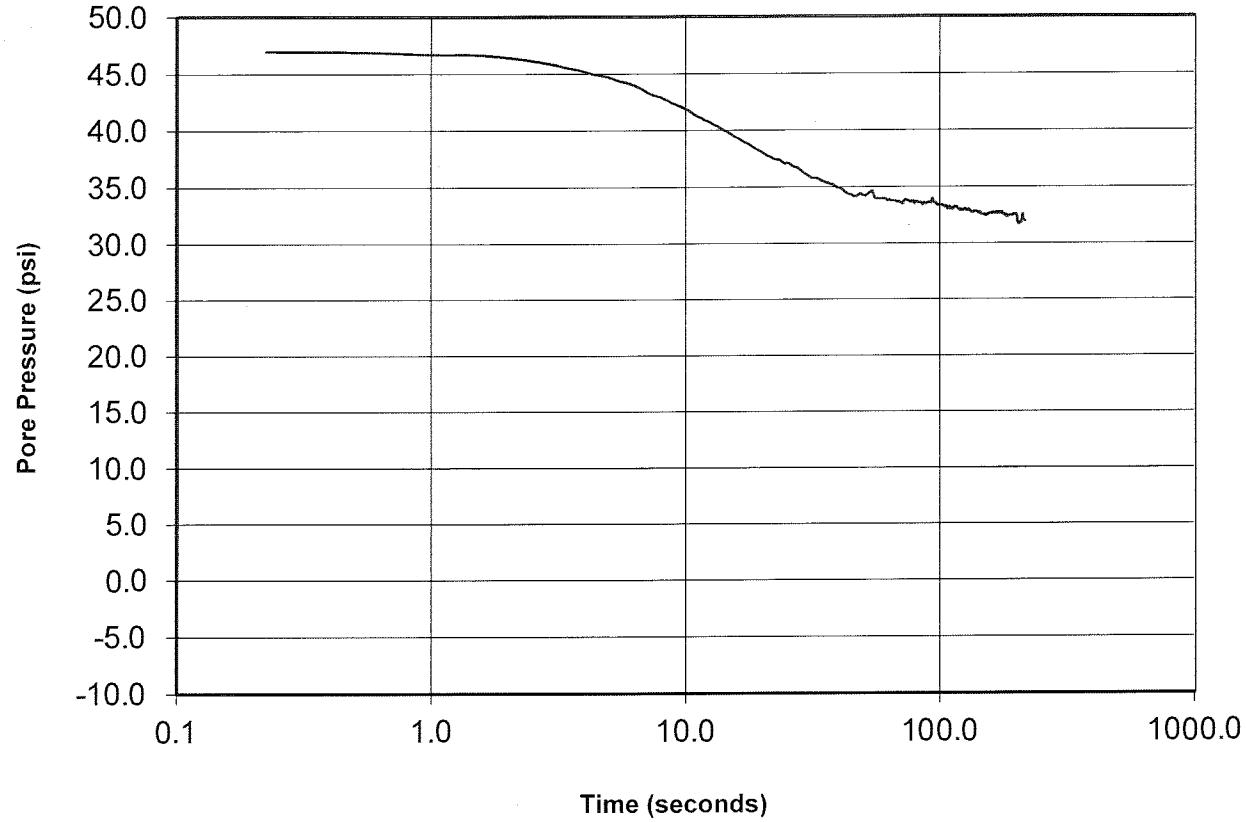
ZONE	q_c/N[1]	Su Factor (Nk)[2]	SOIL BEHAVIOR TYPE[1]
1	2	15 (10 for $q_c \leq 9$ tsf)	Sensitive Fine-Grained
2	1	15 (10 for $q_c \leq 9$ tsf)	Organic Material
3	1	15 (10 for $q_c \leq 9$ tsf)	CLAY
4	1.5	15	SILTY CLAY to CLAY
5	2	15	CLAYEY SILT to SILTY CLAY
6	2.5	15	SANDY SILT to CLAYEY SILT
7	3	---	SILTY SAND to SANDY SILT
8	4	---	SAND to SILTY SAND
9	5	---	SAND
10	6	---	GRAVELLY SAND to SAND
11	1	15	Very Stiff Fine-Grained (*)
12	2	---	SAND to CLAYEY SAND (*)

(*) Overconsolidated or Cemented
q_c = Tip Bearing
f_s = Sleeve Friction
$Rf = f_s/q_c \times 100$ = Friction Ratio

Note: Testing performed in accordance with ASTM D3441.

References: 1. Robertson, 1986, Olsen, 1988.
2. Bonaparte & Mitchell, 1979 (young Bay Mud $q_c \leq 9$).
Estimated from local experience (fine-grained soils $q_c > 9$).

SANTA CLARA SQUARE PARKING GARAGE G3 Santa Clara, California	**CLASSIFICATION CHART FOR CONE PENETRATION TESTS**
LANGAN TREADWELL ROLLO	Date 08/15/14 | Project No. 770612501 | Figure A-7



CPT (no.)	Depth (feet)	End Point (psi)	Calculated Head (feet)	Calculated GW depth (feet)
CG3-2	85.9	32.0	73.9	11.9

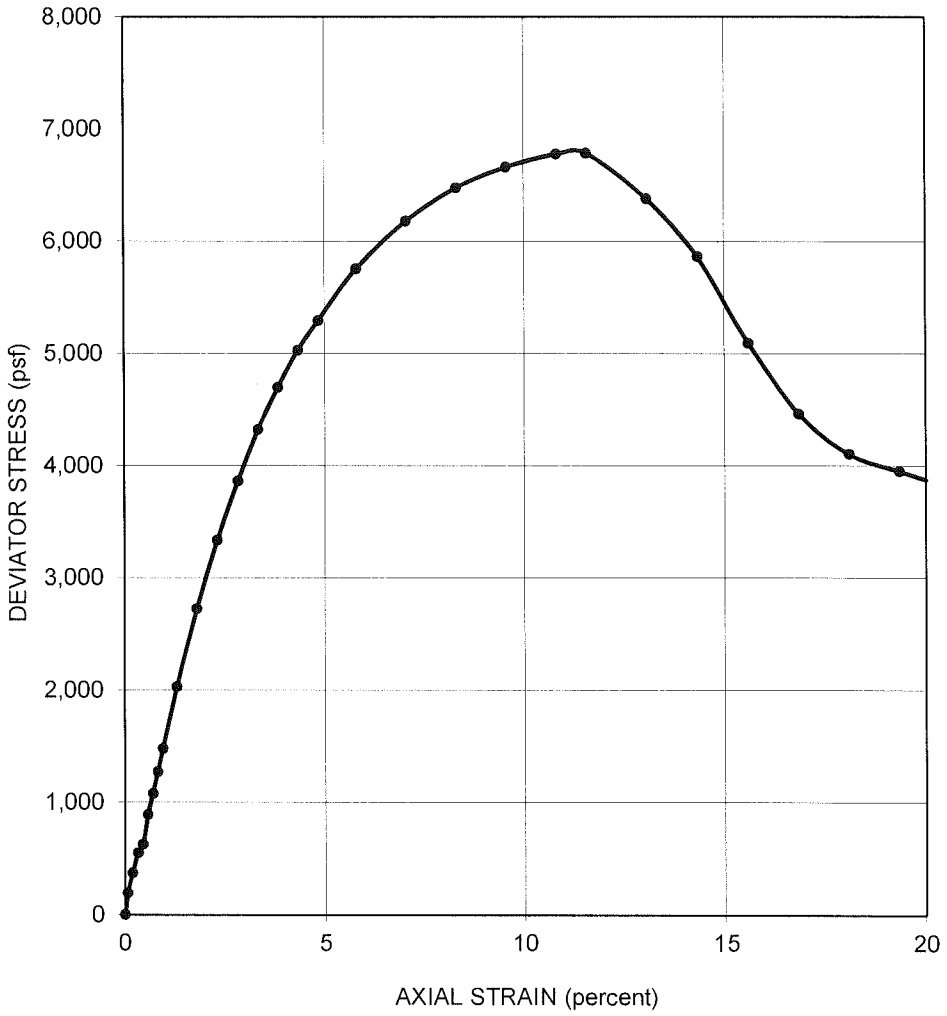
Note:
1. Ground Surface Elevation: 30.3 feet.

SANTA CLARA SQUARE
PARKING GARAGE G3
Santa Clara, California

PORE PRESSURE DISSIPATION TEST
CG3-2

Date 08/22/14 | Project No. 770612501 | Figure A-8

LANGAN TREADWELL ROLLO



SAMPLER TYPE	Sprague & Henwood			SHEAR STRENGTH	3,390	psf
DIAMETER (in.)	2.4	HEIGHT (in.)	5.5	STRAIN AT FAILURE	11.6	%
MOISTURE CONTENT	20.3	%		CONFINING PRESSURE	1,020	psf
DRY DENSITY	107	pcf		STRAIN RATE	0.75	% / min
DESCRIPTION	CLAY (CL), yellow-brown			SOURCE	BG3-1 at 8.5 feet	

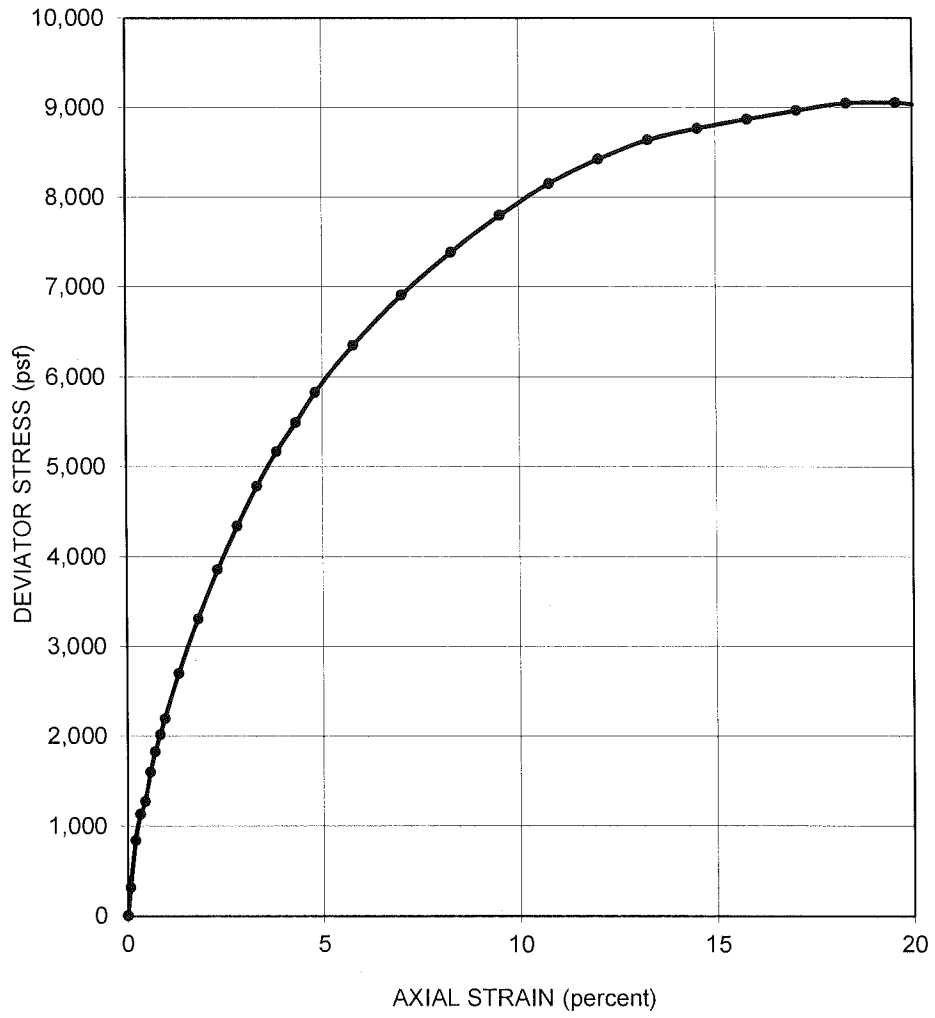
SANTA CLARA SQUARE PARKING GARAGE G3

Santa Clara, California

UNCONSOLIDATED-UNDRAINED TRIAXIAL COMPRESSION TEST

LANGAN TREADWELL ROLLO

Date: 05/06/14 | Project No. 770612501 | Figure A-9



SAMPLER TYPE	Sprague & Henwood			SHEAR STRENGTH	4,530 psf
DIAMETER (in.)	2.4	HEIGHT (in.)	5.8	STRAIN AT FAILURE	19.6 %
MOISTURE CONTENT	18.7 %			CONFINING PRESSURE	2,040 psf
DRY DENSITY	109 pcf			STRAIN RATE	0.75 % / min
DESCRIPTION	CLAY (CL), gray			SOURCE	BG3-2 at 24.5 feet

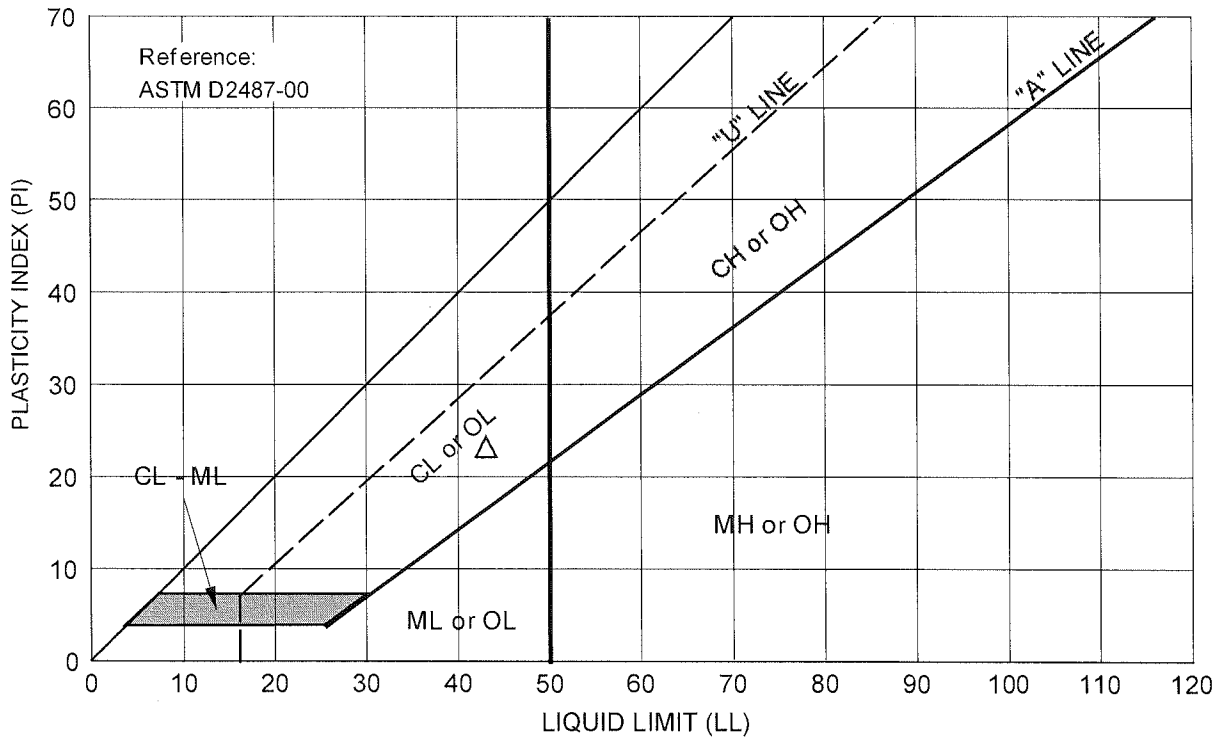
SANTA CLARA SQUARE PARKING GARAGE G3

Santa Clara, California

UNCONSOLIDATED-UNDRAINED TRIAXIAL COMPRESSION TEST

LANGAN TREADWELL ROLLO

Date: 08/15/14 | Project No: 770612501 | Figure A-10



Symbol	Source	Description and Classification	Natural M.C. (%)	Liquid Limit (%)	Plasticity Index (%)	% Passing #200 Sieve
△	BG3-1 at 6 feet	CLAY (CL), olive-brown	--	43	23	--

SANTA CLARA SQUARE
PARKING GARAGE G3
Santa Clara, California

LANGAN TREADWELL ROLLO

PLASTICITY CHART

Date 08/22/14 | Project No. 770612501 | Figure A-11

Appendix E.1 and E.2

Hazards and Hazardous Materials

Erler &
Kalinowski,
Inc.

Phase I Environmental Site Assessment

2505 Augustine Drive
Santa Clara, California

Prepared for:

2505 Augustine Drive LLC

Prepared by:

Erler & Kalinowski, Inc.
1870 Ogden Drive
Burlingame, California 94010
www.ekiconsult.com

July 2014

EKI B40041.00

Consulting engineers and scientists

Erler & Kalinowski, Inc.

Consulting Engineers and Scientists

1870 Ogden Drive
Burlingame, CA 94010
(650) 292-9100
Fax: (650) 552-9012

31 July 2014

To Potential Users of Electronic Files:

Erler & Kalinowski, Inc. ("EKI") has provided our CLIENT, 2505 Augustine Drive LLC, with an electronic copy of the *Phase I Environmental Site Assessment Report, 2505 Augustine Drive, Santa Clara, California*, dated July 2014, including text, figures, and appendices by a compact disk ("CD").

This electronic file is being provided at the request of our CLIENT. The Portable Document Format ("PDF") file on the original CD provided to and for the sole benefit of our CLIENT, constitutes our professional work product. Because the electronic media may be damaged during transfer or altered, the PDF file on the original CD provided to the CLIENT (and retained in EKI's files) shall control where there are any differences between the original CD and subsequent copies of electronic media. EKI makes no warranties, either express or implied, of the merchantability, applicability, compatibility with the recipients' computer equipment or software; of the fitness for any particular purpose for the electronic media; or that the electronic media contains no defect or is virus free.

Reuse of EKI's work product by others or modification and use by others of any document or electronic media prepared by EKI shall be at the party's sole risk.

Sincerely,

ERLER & KALINOWSKI, INC.

Michelle King, Ph.D.
President

Phase I Environmental Site Assessment

2505 Augustine Drive
Santa Clara, California
(EKI B40041.00)

July 2014

Prepared for:

2505 Augustine Drive LLC

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31 July 2014

Angie Holland
Irvine Company LLC
555 Newport Center Drive
Newport Beach, California 92660

Subject: Phase I Environmental Site Assessment for Property Referred to as 2505 Augustine Drive, Located in Santa Clara, California (EKI B40041.00)

Dear Ms. Holland:

Erler & Kalinowski, Inc. ("EKI") is pleased to present to 2505 Augustine Drive LLC ("Client") the enclosed report entitled *Phase I Environmental Site Assessment Report, 2505 Augustine Drive, Santa Clara, California*, dated July 2014. EKI's services were performed in accordance with the Project Agreement with The Irvine Company LLC and the associated scope of work, dated 16 July 2014, and the Master Services Agreement ("MSA") between EKI and The Irvine Company LLC, dated 26 November 2012.

The Phase I ESA was performed by EKI in general conformance with the scope and limitations of American Society for Testing and Materials ("ASTM") *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process*, Designation: E1527-13 (published on 1 November 2013), and the requirements issued by the U.S. Environmental Protection Agency ("U.S. EPA") in 40 CFR Part 312, *Standards and Practices for All Appropriate Inquiries, Final Rule*, dated 1 November 2005 ("Final EPA AAI Rule"). The ASTM 1527-13 standard and the Final EPA AAI Rule similarly prescribe accepted reasonable efforts to identify conditions indicative of releases and threatened releases of hazardous substances on, at, in, or to the Subject Property, e.g., Recognized Environmental Conditions ("RECs").

We declare that, to the best of our professional knowledge and belief, we meet the definition of Environmental Professional as defined in 40 CFR Section 312.10. We have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the Subject Property. We have developed and performed the all appropriate inquiries in general conformance with the standards and practices set forth in 40 CFR Part 312.

We are pleased to have the opportunity to work with you on this project. Please call if you have any questions or need further assistance.

Very truly yours,

ERLER & KALINOWSKI, INC.

Kathryn Wuelfing
Project Scientist

Michelle K. King, Ph.D.
President / Reviewer

PHASE I ENVIRONMENTAL SITE ASSESSMENT

2505 Augustine Drive
Santa Clara, California

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Appendix D Pertinent Sections of Prior Investigation Reports

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EXECUTIVE SUMMARY

Erler & Kalinowski, Inc. ("EKI") is pleased to present to 2505 Augustine Drive LLC ("Client"), this Phase I Environmental Site Assessment ("ESA") report for property located at 2505 Augustine Drive, situated northeast of the intersection of Augustine Drive and Montgomery Drive, south of Highway 101 in Santa Clara, California ("Subject Property"; see Figure 1). The Subject Property includes one 3-story office and classroom building with a parking lot area and is currently owned by SFF Realty Fund, L.P. ("Owner").

The Phase I ESA was performed by EKI in general conformance with the scope and limitations of ASTM International ("ASTM") *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process*, Designation: E1527-13 (published on 1 November 2013), and the requirements issued by the U.S. Environmental Protection Agency ("U.S. EPA") in 40 CFR Part 312, *Standards and Practices for All Appropriate Inquiries, Final Rule*, dated 1 November 2005 ("Final EPA AAI Rule"). The ASTM 1527-13 standard and the Final EPA AAI Rule similarly prescribe accepted reasonable efforts to identify conditions indicative of releases and threatened releases of hazardous substances on, at, in, or to the Subject Property, e.g., Recognized Environmental Conditions ("RECs").

The Subject Property comprises one 3-story office building situated on approximately 2.58 acres of property located in a predominantly commercial/light industrial area of Santa Clara. EKI understands that 2505 Augustine Drive LLC intends to acquire the Subject Property and may ultimately redevelop the property into a new office campus.

Summary of Phase I ESA Findings and Opinions

The following REC was identified in connection with the performance of this Phase I ESA:

- Prior to development of the Subject Property in the mid to late 1970s, the Subject Property and surrounding areas were in agricultural use, i.e., orchards. Several structures, likely a farmhouse and agricultural support buildings, were located just west of the Subject Property, along a former creek (see Figure 3). Agricultural chemicals, e.g., lead-arsenate and organochlorine pesticides, may have been applied to the Subject Property during this time period. Depending on how soil was graded at the time of development, such chemicals may be present in soil on the property. Given that the majority of the Subject Property is currently capped with a building and pavement, the potential for exposure to soil by typical site users is low under the current site condition. EKI recommends shallow soil sampling be conducted on the Subject Property to evaluate the presence of agricultural-related chemicals.

The following potential on-site environmental issues and findings (i.e., non-RECs or de minimis conditions) were identified in connection with the Phase I ESA performed for the Subject Property:

- According to records received from the City of Santa Clara Fire Department, approximately 75 to 100 gallons of radiator coolant containing ethylene glycol were released due to a failed coolant hose on the back-up generator formerly located at the northeast exterior corner of the Subject Property building in 2006. Approximately 20 gallons of leaked coolant were reportedly recovered from within the generator enclosure and from the top of the fuel tank underneath the generator and removed for disposal by a licensed hazardous waste contractor, and it is unknown if any leaked coolant reached a nearby parking lot storm drain. According to the records, this release was reported in 2006 to the California Governor's Office of Emergency Services.[1] The back-up generators and associated cooling systems have since been removed from the Subject Property. Given the limited toxicity of ethylene glycol and its tendency to rapidly degrade in the environment, EKI does not consider this release a REC.

- The Subject Property was formerly occupied by a network hosting service, Cable & Wireless, which likely used the Subject Property as a data center and offices. Two backup diesel generators, two "day tanks", and three 4,000-gallon diesel aboveground storage tanks ("ASTs") were formerly located in two separate compounds on cement pads and within cement secondary containment at the Subject Property (ACC, 2010; see Figure 2). The generators and associated tanks were removed from the property in late 2006 or early 2007 (ACC, 2010).[2] Other than the cooling system leak discussed above, no documentation of leaks from the diesel generator or storage tanks have been reviewed by EKI. Thus, it is EKI's opinion that this finding constitutes a de minimis condition.

- One pad-mounted electrical transformer, which is owned and operated by the City of Santa Clara, is present near the southeast corner of the Subject Property building. This transformer is not labeled with respect to polychlorinated biphenyl ("PCB") content, however given the age of the building, it is not likely that the transformer's dielectric fluids contain PCBs. No obvious visual indication of oily surface staining around the base of the transformer was observed at the time of the site visit by EKI. Thus, the presence of the transformer on the Subject Property does not constitute a REC. During site redevelopment, the transformer should be managed accordingly. No pole-mounted transformers were observed on or adjacent to the Subject Property.

The following potential off-site environmental issue (i.e., non-REC or de minimis condition) was identified in connection with the Phase I ESA performed for the Subject Property:

- The Synertek U.S. EPA National Priorities List ("NPL") site is located approximately 1,700 feet south and generally upgradient of the Subject Property. A volatile organic compound ("VOC") plume (consisting primarily of trichloroethene ("TCE") and its breakdown products), is emanating from the Synertek site and migrating northward toward the Subject Property. The nearest upgradient Synertek shallow groundwater

[1] The files and documents reviewed by EKI did not include any follow-up responses or clean-up requirements from any agencies in response to the coolant leak.
[2] No records of the generator or tank removal were included in agency files reviewed by EKI.

monitoring well to the Subject Property (MW-33A, located approximately 60 feet southeast of the Subject Property) was reportedly sampled in May 2013, and no TCE or its breakdown products were detected in the well (CH2MHill, 2014; see Figure 2). Freon 113 was detected in monitoring well MW-33A at a concentration of 5.9 micrograms per liter ("ug/L"), well below the California drinking water standard of 1,200 ug/L. Based on groundwater flow direction in this area and the monitoring data from upgradient wells, VOCs in groundwater from the Synertek site do not appear to be migrating onto the Subject Property and would, therefore, not be expected to result in a vapor intrusion issue for the Subject Property. Therefore, it is EKI's opinion that the Synertek plume does not constitute a REC for the Subject Property.

1 INTRODUCTION

Erler & Kalinowski, Inc. ("EKI") is pleased to present to 2505 Augustine Drive LLC ("Client"), this Phase I Environmental Site Assessment ("ESA") report for property located at 2505 Augustine Drive, situated northeast of the intersection of Augustine Drive and Montgomery Drive, south of Highway 101 in Santa Clara, California ("Subject Property"; see Figure 1). The Subject Property includes one 3-story office and classroom building with one tenant, and a parking lot area situated on approximately 2.58 acres of property and is currently owned by SFF Realty Fund, L.P. ("Owner").

The Phase I ESA was performed by EKI in general conformance with the scope and limitations of ASTM International ("ASTM") *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process*, Designation: E1527-13 (published on 1 November 2013), and the requirements issued by the U.S. Environmental Protection Agency ("U.S. EPA") in 40 CFR Part 312, *Standards and Practices for All Appropriate Inquiries, Final Rule*, dated 1 November 2005 ("Final EPA AAI Rule"). The ASTM 1527-13 standard and the Final EPA AAI Rule similarly prescribe accepted reasonable efforts to identify conditions indicative of releases and threatened releases of hazardous substances on, at, in, or to the Subject Property, e.g., Recognized Environmental Conditions ("RECs").

EKI's services were performed in accordance with the Project Agreement and associated scope of work, dated 16 July 2014, and the Master Services Agreement ("MSA") between EKI and The Irvine Company LLC, dated 26 November 2012.

1.1 Purpose for Phase I ESA

The purpose of the Phase I ESA was to identify RECs for the Subject Property as defined in ASTM E1527-13. EKI understands that 2505 Augustine Drive LLC intends to acquire the Subject Property and may ultimately redevelop the property into a new office campus.

1.2 Reliance on Phase I ESA

This report is for the sole benefit, use, and reliance of 2505 Augustine Drive LLC regarding the Subject Property. Unless specifically authorized in writing in an agreement acceptable to EKI in its reasonable discretion, reliance on this report by any other entity is not permitted or authorized. Reliance on the information contained in this report by any third party without authorization by EKI does not make such entity a third party beneficiary of EKI's work product. Any such unauthorized reliance on, modification of, or use of this report, including any of its information or conclusions, will be at such third party's sole risk. The "User" of this Phase I ESA report, as defined by ASTM E1527-13 and as accepted under the Final U.S. EPA AAI Rule, is 2505 Augustine Drive LLC.

1.3 Phase I ESA Scope of Work

EKI performed the following tasks as part of this Phase I ESA:

- Reviewed available historical land use information for the Subject Property and surrounding area, e.g., historical aerial photographs and historical topographic maps provided by Environmental Data Resources, Inc. ("EDR") (see Appendix A);

- Reviewed a Phase I ESA conducted in 2010 for the Subject Property provided by the current Owner of the Subject Property, Arden Realty, Inc., ("Owner") (ACC, 2010);

- Purchased and reviewed a regulatory agency database report for the Subject Property and surrounding area prepared by EDR, dated 15 July 2014 (referred to as EDR Radius Map Report; see Appendix E);

- Reviewed publicly-available files for the Subject Property provided by the City of Santa Clara Building Department, the City of Santa Clara Fire Department, Hazardous Materials Division, and the Bay Area Air Quality Management District ("BAAQMD");

- Reviewed environmental reports prepared for nearby upgradient reported chemical release sites available on-line through the State of California Water Resources Control Board ("SWRCB") GeoTracker database website;

- Purchased and reviewed an Environmental Lien Search report for the Subject Property, prepared by EDR, dated 15 July 2014 (see Appendix C);

- Obtained specialized knowledge of the Subject Property provided by 2505 Augustine Drive LLC, the User of the Phase I ESA, in the form of responses to a User Questionnaire (see Appendix C);

- Performed a walk-through visual survey of the Subject Property on 21 July 2014 to observe the current site setting (see photographs in Appendix B), and conducted an interview with Kevin McGowan, facilities manager for the tenant.

2 GENERAL SITE CHARACTERISTICS

2.1 Site Location

The Subject Property is located at 2505 Augustine Drive, northeast of the intersection of Augustine Drive and Montgomery Drive, south of Highway 101 in Santa Clara, California (see Figure 1). The neighborhood consists primarily of office and light industrial buildings

2.2 Site Description and Current Site Uses

The Subject Property is approximately 2.58 acres in total size. The Assessor's Parcel Number ("APN") for the Subject Property is 216-45-038. One large-three storing building is located on roughly the northern half of the property. The building is surrounded by a large parking lot area, which is shared with the buildings to the west. Landscaped areas are located around the edge of the property and in islands throughout the parking lot areas. The property is currently occupied by the University of California at Santa Cruz Silicon Valley Extension ("UCSC Extension"), which uses the building for office and classroom space.

Additional information on the current tenant, including nature of activities and chemical use and storage, if any, on the Subject Property is discussed in the Site Walk-through section of this report (see Section 6).

The Subject Property is currently owned by SFF Realty Fund, L.P.

2.3 Adjoining Properties

The Subject Property is bounded to the north by Highway 101 and to the south by Augustine Drive, with office buildings to the east and west. The buildings in the immediate vicinity of the Subject Property are all office and industrial buildings, including several multi-tenant office parks. One property, located approximately 500 feet west of the Subject Property is currently under construction as a new office campus.

3 ENVIRONMENTAL SETTING

Information on the environmental setting of the Subject Property was obtained from the following source:

> *2013 Groundwater Monitoring and Sampling Report, Former Synertek Building No. 1, 3050 Coronado Drive, Santa Clara, California*, CH2MHill, January 2014 (CH2MHill, 2014).

3.1 Regional Physiography

The Subject Property is located in the Santa Clara Valley, which is situated within the Coast Range geomorphic province. The Santa Clara Valley occupies a late-Pliocene structural trough situated between the San Andreas Fault System to the west and the Hayward/Calaveras Fault Systems to the east. The Subject Property is underlain by consolidated Quaternary alluvium deposits comprised of inter-fluvial stream deposits. The thickness of the alluvium is estimated to be 300 to 500 feet thick.

3.2 Soil and Geologic Conditions

Site stratigraphy consists of interbedded complex silts, clays, and sands to a depth of at least 465 feet below ground surface ("bgs") (CH2MHill, 20134). The first groundwater zone, the A-aquifer, generally extends from approximately 10 to 20 feet bgs. The A-aquifer is underlain by silty to sandy clays, generally ranging in thickness from 5 to 10 feet. The B-aquifer is encountered between 30 and 50 feet bgs. The B-aquifer is underlain by approximately 60 feet of clay, which provides separation from deeper water-bearing zones encountered at 100 to 108 feet bgs (CH2MHill, 2014).

3.3 Surface Water Characteristics

The majority of the Subject Property is covered with the office building and asphalt-paved parking areas. Thus, the majority of rain water that falls on the Subject Property flows over impervious surfaces to storm drain inlets located throughout the parking areas on the property. Landscaped areas are also located generally along the outer edges of the property. Surface water in these areas likely infiltrates into the ground.

3.4 Shallow Groundwater Characteristics

Based on measurements made in May 2013 and October 2012 from groundwater monitoring wells located on the Park Square property located immediately south of the Subject Property (CH2MHill, 2014), the depth to groundwater in the area of the Subject Property ranges from approximately 8.5 to 9 feet bgs. According to the CH2MHill (2014) report, the direction of shallow groundwater flow in the vicinity of the Subject Property, e.g., the A-zone aquifer, is generally to the north-northeast.

4 HISTORICAL LAND USE INFORMATION

Information on historical uses of the Subject Property and vicinity was obtained primarily from the following sources:

- Review of historical aerial photographs provide by EDR for selected years between 1939 and 2012 (see Appendix A).
- Review of historical USGS topographic maps provided by EDR for selected years between 1899 and 1980 (see Appendix A).
- Review of publically available information for the Subject Property provided by the City of Santa Clara Building Department and City of Santa Clara Fire Department, Hazardous Materials Division (see Appendix A); and
- Review of historical City Directory information provided by EDR (see Appendix A).

According to EDR, Sanborn Fire Insurance maps for the Subject Property are not available.

4.1 Late 1890s through 1970s

On the topographic map dated 1899, the Subject Property and surrounding areas are depicted on the map as vacant.

On the 1939, 1948, and 1956 aerial photographs, the Subject Property and adjoining properties are in orchard use. Saratoga Creek runs generally north-south, roughly 200 feet to the west of the Subject Property. A number of structures, likely a farmhouse and support buildings, are also located west of the Subject Property, along the creek (see Figure 3).

Bayshore Highway, north of the Subject Property, is depicted on the 1953 topographic map. Scott Boulevard, Octavius Drive, Montgomery Drive, and Augustine Drive do not yet appear to be constructed.

On the 1961 topographic map, the Subject Property and adjoining properties remain in orchard use. Bayshore Highway has been expanded and is now depicted as Bayshore "Freeway" with interchanges noted. On the 1968 aerial photograph, the Subject Property and adjoining properties remain in orchard use, with Saratoga Creek located west the property (Figure 3). San Thomas Aquino Creek, located approximately 750 feet to the east of the Subject Property is channelized in the 1965 aerial photograph.

On the 1968 and 1973 topographic maps, the Subject Property and adjoining properties remain in orchard use. No significant land use changes are noted from the prior maps reviewed.

On the 1974 aerial photograph, the Subject Property and surrounding properties north of Scott Boulevard are longer in orchard use and are vacant, e.g., no structures or apparent

agricultural use. Scott Boulevard, Octavius Drive, Montgomery Drive, and Augustine Drive are visible on the 1974 aerial photograph; however, no buildings or structures are noted adjacent to the paved roadways, with the exception of buildings located along the south side of Scott Boulevard (off the Subject Property). Saratoga Creek is no longer visible south of the Bayshore Freeway, and the area where the creek ran has been graded.

4.2 1980s Through Present-Day

On the 1980 aerial photograph, buildings have been constructed on either side of the Subject Property, and the Subject Property itself is apparently developed as a parking lot. The northern portion of the property appears to be being used to store large semi-truck trailers in the 1993 photograph. The Subject Property remains in use as a parking lot until approximately 1999, when the current Subject Property building was built. According to records received from the Santa Clara Building Department, the building was not completed and ready for occupancy until October 2001.

The Subject Property was occupied by Cable & Wireless, a network hosting company, which used the property as office and data center space from approximately 2001 until 2005. The property remained vacant until 2009 when it was renovated and leased by the University of California Santa Cruz Silicon Valley Extension, as office and classroom space. No obvious significant changes in land use or configuration of the Subject Property setting are noted on the aerial photographs from the 2010s.

The Cable & Wireless facility included two large diesel backup generators, with three 4,000-gallon diesel ASTs and two smaller "day tanks" (ACC, 2010). These are visible on aerial photographs from 2005 and 2006, located within two enclosures, one located adjacent to the northeast corner of the building, and one in the parking lot area just north of the northeast portion of the building (Figure 2). The generators and associated tanks were removed between June 2006 and July 2007 (ACC, 2010).

5 RESULTS OF PRIOR SITE INVESTIGATIONS

The Owner provided a Phase I ESA prepared by ACC Environmental Consultants ("ACC") in September 2010 ("2010 Phase I Report"). According to the 2010 Phase I Report, ACC had also performed a Phase I ESA for the Subject Property in 2006 and prepared an update to the document in 2007. Only the 2010 Phase Report was made available to EKI. A summary of this prior assessment is presented below. Pertinent sections of the 2010 Phase I Report are included in Appendix D of this report.

5.1 Summary of Findings of Prior Phase I ESA Reports (ACC, 2010)

The 2010 Phase I Report was prepared by ACC on behalf of PSAI Realty Partners. ACC identified one REC associated with the Subject Property or adjacent properties. Key findings of the 2010 Phase I ESA report are presented below:

- The Subject Property was observed to be an orchard in the 1939, 1948, and 1965 aerial photographs and in the 1953, 1961, 1968, and 1973 topographic maps. The presence of an orchard on the subject property is considered a REC by ACC, due to the likelihood of the application of arsenic containing pesticides and potentially DDT during this time frame. ACC interpreted this REC to be resolved based on the fact that the Subject Property has been redeveloped since this period and the likelihood of impacted soil remaining is low. Furthermore, the entire site is asphalt-paved and no potential exposure pathways are currently present. ACC recommended that if the Subject Property is to be redeveloped, a risk assessment should be conducted.

- ACC visually identified suspect-asbestos containing materials ("ACM") at the Subject Property and determine the materials observed to be in good condition. According to ACC (2010), based on the condition of the suspect ACM located at the Subject Property, the potential to impact the environment and/or human health is considered to be low. Sampling of potential ACM was not performed as a part of ACC's Phase I ESA.

- During the site reconnaissance, ACC did not observe any chipped and/or peeling paint (ACC, 2010). A lead-based paint survey performed by a California Certified Lead Inspector is recommended by ACC (2010) if construction work is performed that disturbs the painted surfaces by such means. According to ACC (2010), based on the age of the building it is unlikely that LBP is present. No sampling for LBP was conducted as a part of this investigation or any other investigation conducted by ACC.

- According to information provided to ACC in 2006 by the Aegon Realty Advisors, Inc. ("Aegon"), the management company for the Subject Property at the time, approximately 75 to 100 gallons of radiator coolant containing ethylene glycol was released due to a failed coolant hose on the back-up generator located at the northeast exterior corner of the building (ACC, 2010). According to ACC (2010), Aegon was unable to determine if there was a large sudden loss of coolant or if it was a slower leak over a period of time. The coolant loss is estimated to have occurred between 24 April

2006 (last date of service when no problems were noted) and 19 June 2006 (approximate date that coolant loss was discovered; ACC, 2010). Approximately 20 gallons of leaked coolant was recovered from within the generator enclosure and from the top of the fuel tank underneath the generator and removed for disposal by a licensed hazardous waste contractor (ACC, 2010). Aegon was unable to confirm whether or not any leaked coolant reached a nearby parking lot storm drain (ACC, 2010). According to ACC (2010), there was no obvious sign of any spill residue noted on the ground. The source of the leak, a faulty hose from the radiator, was replaced and coolant was added to the radiator.[3]

According to records reviewed by ACC (2010), the release was reported to the California Governor's Office of Emergency Services on 27 June 2006 who contacted six additional agencies, including the State Fish and Game, State Office of Toxic Substances, U.S. Environmental Protection Agency, and the Coast Guard; the release was also reported to the Santa Clara Fire Department Hazardous Materials Division on 6 July 2006. ACC (2010) reported that they were not informed whether any additional action may be required by the appropriate agencies and that they understood that PSAI would be indemnified by the seller from any and all liabilities arising out of the above-referenced coolant leak when they purchased the Subject Property. ACC (2010) concluded that due to the amount of rain the South Bay received between April and June 2006, it is ACC's opinion that any coolant that entered the floor drains within the generator compound and/or within the storm drain(s) located in the parking lot would have been heavily diluted. In addition, the source of the leak has been repaired and it has been reported that ethylene glycol breaks down within several days to a week in water and soil (ACC, 2010). ACC did not interpret this release to be a REC for the Subject Property.

- Two diesel generators, two day tanks, and three diesel ASTs were formerly located in two separate compounds on cement pads and within cement secondary containment at the Subject Property (ACC, 2010). ACC did not observe any staining or leaks within the two cement compounds during their 2006, 2007, or 2010 assessments. During ACC's 2006 Phase I ESA, some staining and diesel odors were observed/noted within the interior of one of the two generators; the staining was reported to be located on the metal surface of the generator itself and not on the visible areas of the cement pad located beneath the generator (ACC, 2010). ACC was unable to inspect the interior of the second generator as it was locked, but did not observe any staining in the vicinity of the diesel ASTs and/or the day tanks (ACC, 2010). ACC was unable to verify the exact size of the day tanks. According to a 23 March 2005 Phase I ESA prepared by Terracon and reviewed by ACC (2010), the day tanks were 50-gallons, but according to the City of Santa Clara Fire Department (SCFD) records also reviewed by ACC, the day tanks were 650-gallons in capacity. According to documents provided to ACC (2010) by South Bay Development Company and according to the EDR Database, the diesel ASTs were registered with the State Water Resource Control Board and the

[3] These generators and enclosures were not present at the time of EKI's site visit in 2014. Based on aerial photos reviewed, the generators were most likely located in an area currently configured as an outdoor dining area, on the northeast corner of the building. No evidence of staining was observed by EKI, although the area was covered with patio pavers.

generators were permitted with the Bay Area Air Quality Management District. No releases were reported related to these historical AST or generators (ACC, 2010). Based on the fact that these ASTs and generators have been removed from the Subject Property and there are no reported releases related to these ASTs and generators, the former presence of these ASTs and generators at the Subject Property was not interpreted by ACC (2010) to be a REC.

- Within 1.0 mile of the Subject Property, there are sites with documented releases of hazardous substances and/or petroleum products (ACC, 2010). There is no documented evidence that constituent plumes originating from any of these sites have migrated to the Subject Property (ACC, 2010).

- According to ACC (2010), no further investigation is warranted at the Subject Property at this time. However, if the Subject Property is to be redeveloped ACC recommended that a risk assessment be conducted related to the historical use of the subject property as an orchard (ACC, 2010).

6 RESULTS OF SITE WALK-THROUGH VISUAL SURVEY

On 21 July 2014, Kathryn Wuelfing of EKI conducted a visual reconnaissance of the Subject Property. Ms. Wuelfing is an Environmental Professionals as defined in 40 CFR Section 312.10, and as accepted by ASTM 1527-13 (see resume in Appendix F). EKI was accompanied on the walk-through by Mr. Kevin McGowan, the facilities manager for UCSC Extension. Mr. McGowan has been the facilities manager for the property since UCSC Extension leased the property in 2009. According to Mr. McGowan, the Subject Property building was provided as a gutted "shell" when his company took over the property. EKI was also accompanied on the walk-through by Benjamin Yu of 2505 Augustine Drive LLC.

Observations of the Subject Property and adjoining areas are discussed below. Selected photographs taken during the walk-through of the Subject Property are presented in Appendix B of this report.

6.1 Exterior Observations

One approximately 63,000 square foot, 3-story office building is located on an approximately 2.58 acre irregularly-shaped property. The building is surrounded by a large parking lot area, which is shared with the buildings to the west. Landscaped areas are located around the edge of the property and in islands throughout the parking lot areas. Storm drains are located throughout the parking lot areas and presumably direct stormwater offsite.

Power transmission lines are present along the northern property boundary shared with Highway 101. All other electrical transmission at the Subject Property is located underground. One pad-mounted electrical transformer is present near the southeast corner of the Subject Property building. This transformer is not labeled with respect to PCB content. No staining was observed around the transformer. No pole-mounted transformers were observed in the area of the Subject Property.

No evidence of chemical storage tanks, wells, past boreholes, or environmental remediation was observed on the property.

6.2 Interior Observations

The Subject Property building is configured as office and classroom space, which includes several computer laboratories and server rooms. No chemistry- or biology-type laboratory spaces are present in this facility.

Three transformers are located in electrical utility rooms throughout the building, one of which was labeled as a "dry type" distribution transformer. All of transformers appeared to be in good condition with no staining observed on the floor beneath them.

Household-type cleaning chemicals and paints were also observed in storage areas of the building. Among the cleaning products was a 1-quart bottle of Spartan M*95 Mild Acid

Cleaner, which according to the manufacturer contains 9.5% hydrochloric acid. One storage room contained a small work bench, with small benchtop quantities of petroleum solvents (i.e., WD-40 and 3-In-One Oil and adhesives.

One hydraulic elevator is located towards the south of the building. No staining was observed on the floor of the mechanical equipment room during EKI's visit.

The building's HVAC equipment is located on the roof; EKI did not access the roof to observe the equipment.

6.3 Neighborhood

The Subject Property is bounded to the north by Highway 101, and to the south by Augustine Drive, and by office buildings to the east and west. The buildings in the immediate vicinity of the Subject Property are all office and industrial buildings, including several multi-tenant office parks. The Subject Property shares a parking lot with the office buildings located to its west.

A drive-by inspection was conducted to observe the neighboring properties from adjacent streets. One property, located approximately 500 feet west of the Subject Property is currently under construction as a new office campus. Several Synertek groundwater monitoring wells are located on the property to the south of the Subject Property (CH2MHill, 2014). No obvious monitoring wells or evidence of remediation equipment were observed on other properties near the Subject Property during the drive-by inspection.

7 INFORMATION PROVIDED BY OWNER AND USER

7.1 Results of Owner Questionnaire

Through 2505 Augustine Drive LLC, EKI requested that the Owner of the property (SFF Realty Fund, L.P.) complete an environmental site assessment questionnaire, however the Owner declined to do so.

7.2 Results of User Questionnaire

Mr. Benjamin Yu with 2505 Augustine Drive LLC, the User of this Phase I ESA report, completed a User questionnaire for the Subject Property, dated 31 July 2014, a copy of which is included in Appendix C. The questionnaire is consistent with the User Questionnaire suggested in Appendix X3 of ASTM E1527-13 *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process*, published on 1 November 2013. A summary of the responses by Mr. Yu to the questionnaire is presented below.

7.2.1 Environmental Liens

According to Mr. Yu, to his knowledge, there are no environmental cleanup liens filed or recorded against the Subject Property. This is consistent with the EDR Database and public records search for the Subject Property.

7.2.2 Activity and Land Use Limitations

According to Mr. Yu, to his knowledge, there are no activity and land use limitations (i.e., engineering or institutional controls) in place on the Subject Property.

7.2.3 Specialized Knowledge or Experience

Mr. Yu indicated that he has no specialized knowledge or experience related to the Subject Property.

7.2.4 Commonly Known or Reasonably Ascertainable Information

Mr. Yu indicated that he is aware of a coolant leak that happened at the northeast corner of the Subject Property (see Sections 5.1 and 8.4.3). Aside from the coolant leak, Mr. Yu indicated he is not aware of past chemical uses on the Subject Property, and is not aware of any chemical spills or releases, or environmental cleanups performed on the Subject Property. He is not aware of any obvious indicators that point to the presence or likely presence of contamination on the Subject Property.

7.3 Results of Environmental Lien Search

EKI purchased from EDR an Environmental Lien Search report for the Subject Property parcels (APN 216-45-038). A copy of the EDR Lien Search report, dated 15 July 2014, is included in Appendix C of this Phase I ESA report. According to the Lien Search report, there are no environmental cleanup liens or activity and use limitations ("AULs") filed or recorded against the Subject Property.

8 RESULTS OF REGULATORY AGENCY FILE REVIEWS

To identify conditions indicative of releases and threatened releases of hazardous substances on, at, in, or to the Subject Property, i.e., known or potential contamination of soil or groundwater, or reported chemical use, EKI contracted with EDR to perform a search of available, selected federal, state, and local environmental regulatory agency databases. EDR performed a search for the Subject Property area and properties located within selected radii of the Subject Property. A copy of the resulting "radius map report" and an addendum to the radius map report provided by EDR are provided in Appendix E. Refer to the EDR report (pages GR-1 through GR-43) for a complete list of the federal, state, and tribal databases searched.

8.1 Results of EDR Database Search for Subject Property

According to the EDR Report, the Subject Property address is listed on three specific regulatory agency databases.

Facility Name	Agency Databases	Summary
2505 Augustine Drive	California Hazardous Material Incident Report System ("CHMIRS")	Release of generator coolant between 4/24/2006 and 6/19/2006.
CABLE & WIRELESS USA C/O STEA	Emissions Inventory Data ("CA EMI")	Air discharge permits with the BAAQMD from 2001, 2003, 2004, and 2005
CABLE & WIRELESS USA C/O STEA	U.S. EPA Facility Index System ("FINDS")	Registered in the National Emissions Inventory

These above-listed regulatory agency databases reflect documented current and historical use and storage of chemicals at the Subject Property, as well as off-site disposal of hazardous wastes from the Subject Property. The CHMIRS listing documents the release of coolant to the environment, which is described further in Section 5.1, above.

8.2 Off-site, Upgradient Properties with Reported Chemical Use

Based on the EDR Report and groundwater flow information for the area, the following facilities, which are located in within approximately one-quarter mile and upgradient (to the south-southwest) of or adjacent to the Subject Property, are listed on specific chemical use, storage, or disposal regulatory agency databases.

Building Address	Facility Name
2465 Augustine Dr.	INMAC
2525 Augustine Dr.	Digital Equipment Corp./Site Service
2600 Augustine Dr.	Planar Microwave (Raytheon)
3050 Coronado Blvd.*	Synertek
3255 Scott Blvd, No. 2	Ion Implant Services
3255 Scott Blvd, No. 3A	Perkin Elmer Inc.

Building Address	Facility Name
3255 Scott Blvd, No. 6	Prometrix Corp
3255 Scott Boulevard	Silicon Valley California LLC
3260 Scott Blvd.	Alta Devices
3260 Scott Blvd.	Solyndra Incorporated
3265 Scott Blvd.	DeHarts Printing Service
3265 Scott Blvd.	Horiba-Stec
3283 Scott Blvd.	Metal Graphics Laboratories Inc.
3310 Montgomery Dr.	Advanced Assemblies
3310 Montgomery Dr.	Medsource Technologies
3333 Octavius Dr., Ste E	Ciba-Geigy Corp.
3333A Octavius Dr.	Ciba-Geigy Corporation
3333A Octavius Dr.	Burns Research Corp.
3340 Montgomery Dr.	House of Tabs
3350 Montgomery Dr.	Helix Technology Corp.
3350 Montgomery Dr.	C T I Cryogenics
3370 Montgomery Dr.	Micro Electronics Corp.
3380 Montgomery Dr.	Dymatyx Automation Systems
3380 Montgomery Dr.	Meadows Manufacturing
3625 Scott Blvd.	Zeta Laboratories

The above-listed facilities at the addresses shown are included on regulatory agency databases that reflect use and storage of chemicals, as well as off-site disposal of hazardous wastes. It should be noted that none of the above-listed addresses or facilities, with the exception of 3050 Coronado Blvd. (i.e., the Synertek Site; see Section 8.3) is reported by EDR as a chemical release site.

8.3 Off-Site, Upgradient Properties with Reported Chemical Releases

According to the EDR Report, the only site that is a reported chemical release site located in the proximity of (within approximately one-quarter of a mile) and potentially upgradient (to the south-southwest) from the Subject Property with regard to reported shallow groundwater flow direction is the Synertek site at 3050 Coronado Drive.

EKI reviewed potentially relevant information for the reported chemical release site available on the State of California Water Resources Control Board ("CWRCB") on-line GeoTracker database system. A summary of this off-site reported release site and potential for impact to the Subject Property are discussed below.

Synertek, 3050 Coronado Drive

The Synertek site is located approximately 1,700 feet south-southeast cross gradient and potentially upgradient of the Subject Property (see Figure 2). However, as discussed below, VOCs in groundwater from the Synertek site are not likely migrating onto the Subject Property. The Synertek site is a U.S. EPA NPL (e.g., Superfund) site currently

being overseen by the RWQCB, acting as agent to the U.S. EPA. Information on the Synertek chemical release site, discussed below, was available from review of the following technical report, obtained from the GeoTracker website:

- *2013 Groundwater Monitoring and Sampling Report, Former Synertek Building No. 1, 3050 Coronado Drive, Santa Clara, California,* CH2MHill, January 2014 (CH2MHill, 2014).

In 1985, one 200-gallon waste solvent tank and three acid-waste neutralization tanks were removed from the Synertek site. During the tank removals, it was noted that soil and groundwater has been impacted primarily by TCE that had been released from the tanks. Other chemicals detected in the subsurface included, 1,1-DCE, 1,1-DCA, 1,1,1-trichloroethane ("1,1,1-TCA"), vinyl chloride, and Freon 113. Soil remedial actions were performed at the time of the tank removals. In 1987, Synertek installed and began operation of a groundwater extraction and treatment system to remediate the groundwater impacts. Synertek also installed a series of groundwater monitoring wells to monitor the lateral and vertical extents of the contaminant plume, several of which were installed on the adjacent Park Square property (discussed further below).

In 1999, the groundwater extraction and treatment system was shut-down with approval of the RWQCB, and monitored natural attenuation ("MNA") of the contaminant plume was approved. The monitoring wells have been sampled on roughly a semi-annual basis since shut-down of the groundwater treatment system. In 2005, CH2MHill reported to the RWQCB that the groundwater plume has stabilized and that MNA was being effective. In June 2013, the RWQCB granted Synertek's request for a reduction in sampling frequency of some the wells from semi-annual to annual monitoring. They are currently requesting that the RWQCB also allow number of monitoring wells in the well network be abandoned.

According to the CH2MHill (2014) report, five shallow groundwater monitoring wells are located generally south and upgradient of the Subject Property: MW-33A (approximately 60 feet southeast), MW-34A (approximately 250 feet southwest), MW-29A (approximately 850 feet southwest), and MW-35A and MW-36A (approximately 1,000 feet south). The approximate location of well MW-33A is shown on Figure 2. According to the CH2MHill (2014) report, the wells were sampled most recently in May and October 2013. According to the results, TCE was detected in May 2013 in two of the three farthest upgradient wells (MW-29A and MW-36A) at concentrations of 1.9 micrograms per liter ("ug/L") and 2.9 ug/L, respectively but was not detected in two closer downgradient wells (MW-34A and MW-33A) above the laboratory reporting limit. TCE was also detected in October 2013 in well MW-36A at a concentration of 2.4 ug/L; no samples were collected in October 2013 from the wells located closer to the Subject Property. These reported concentrations of TCE are below the current RWQCB Environmental Screening Level ("ESL") based on drinking water standards for TCE of 5 ug/L. 1,1-DCA and 1,1-DCE were also reported in groundwater at well MW-29A at concentrations up to 5.9 ug/L and 8.2 ug/L, respectively, and in MW-36A at concentrations of 22 ug/L and 35 ug/L, respectively. These reported concentrations exceed their respective drinking water RWQCB ESLs, however, they are well below their respective RWQCB ESLs for potential vapor intrusion concerns for both residential and commercial uses (Table E-1; RWQCB, 2013). TCE, 1,1-DCA, and

1,1-DCE were not-detected in the wells closest to Subject Property (MW-34A and MW-33A) during sampling performed in 2013. In May 2013, Freon 113 was detected in the monitoring well located closest to the Subject Property (MW-33A) at a concentration of 5.9 ug/L, well below the California drinking water standard of 1,200 ug/L.

Based on the groundwater flow direction in this area and sampling data from upgradient groundwater monitoring wells, VOCs in groundwater from the Synertek site are not likely migrating onto the Subject Property.

Figure 3-1 of the CH2MHill report showing the Subject Property well locations, and the data tables for the Subject Property wells are included in Appendix D of this Phase I ESA report.

8.4 Review of Available Regulatory Agency Files for Subject Property

EKI submitted requests to the following environmental regulatory and public agencies to review available files regarding the Subject Property:

- DTSC
- RWQCB
- City of Santa Clara Fire Department, Hazardous Materials Division
- City of Santa Clara Building Department
- BAAQMD

In addition, EKI searched online databases maintained by RWQCB, DTSC, and Santa Clara County Department of Environmental Health ("SCCDEH")).

No Subject Property files were received from DTSC or RWQCB, or available in the RWQCB, DTSC, or SCCDEH online databases. The City of Santa Clara Building Department, BAAQMD, and the City of Santa Clara Fire Department provided files on the Subject Property to EKI. Copies of selected files are included in Appendix A of this report. Brief summaries of the available file information reviewed by EKI are presented below.

8.4.1 Summary of City of Santa Clara Building Department Files

According to records for the Subject Property provided by the Santa Clara Building Department, permits to construct the Subject Property building was opened in October 1998 and finalized in October 2001. Included in these records, were permits for the installation of two 660-gallon diesel tanks and three 4,000-gallon diesel storage tanks at the Subject Property, dated March 2000.

The file also included records of permits to renovate the building in 2009 for occupancy by the UCSC Extension.

8.4.2 Summary of BAAQMD Files

BAAQMD provided records associated with a generator operation permit, held by Cable & Wireless USA from May 2001 until the facility ceased operation in January 2005. No other details regarding the types of generators or inspection records were provided.

8.4.3 Summary of City of Santa Clara Fire Department Files

The City of Santa Clara Fire Department provided files for the Subject Property, which included records from 2000 through 2006. The records include Hazardous Materials Business Plans ("HMBPs"), EPA Emergency Preparedness and Community Right to Know ("EPCRA") reports, and tank installation permit for three 4,000-gallon diesel ASTs, two 650-gallon diesel day tanks, and two generators that were used by the former Subject Property occupant, Cable & Wireless USA. According to the records, the Cable and Wireless facility also had 184 batteries onsite, which contained a total of 74,064 pounds of lead and 6,868 pounds of sulfuric acid.

The file also included an email from Aegon USA Realty Advisors to the City of Santa Clara Fire Department dated 7 July 2006, which reported a coolant leak from the diesel generator system, which reportedly occurred after Cable & Wireless had vacated the Subject Property. The email describes the leak as follows:

> *"The apparent leak was due to a failed coolant hose on one of the back-up generators at the NE exterior corner of the building. The best estimate of the approximate volume of coolant leaked is 75-100 gallons. We were unable to determine if there was a large sudden loss of coolant or if it was a slower leak over a period of time. The coolant loss is estimated to have occurred sometime within the period of April 24, 2006 (last date of service- no problems noted) and June 19, 2006 (approximate date that coolant loss was discovered). Approximately 20 gallons of leaked coolant was recovered from within the generator enclosure and from on top of the fuel tank underneath the generator and removed for disposal by a licensed hazardous waste contractor. We cannot confirm whether or not any leaked coolant reached a nearby parking lot storm drain. There was no obvious sign of any spill residue noted on the ground."*

The email indicated that the release had also been reported the California Governor's Office of Emergency Services and that the tracking number for the report is 06-3792. No additional information or response to this email was included in the received records. A copy of this email is included in Appendix A of this report.

9 SUMMARY OF PHASE I ESA FINDINGS AND OPINIONS

EKI's findings and opinions regarding conditions indicative of releases and threatened releases of hazardous substances on, at, in, or to the Subject Property, e.g., RECs are presented below.

9.1 Summary of Phase I ESA Findings and Opinions

The following REC was identified in connection with the performance of this Phase I ESA:

- Prior to development of the Subject Property in the mid to late 1970s, the Subject Property and surrounding areas were in agricultural use, i.e., orchards. Several structures, likely a farmhouse and agricultural support buildings, were located just west of the Subject Property, along a former creek (see Figure 3). Agricultural chemicals, e.g., lead-arsenate and organochlorine pesticides, may have been applied to the Subject Property during this time period. Depending on how soil was graded at the time of development, such chemicals may be present in soil on the property. Given that the majority of the Subject Property is currently capped with a building and pavement, the potential for exposure to soil by typical site users is low under the current site condition. EKI recommends shallow soil sampling be conducted on the Subject Property to evaluate the presence of agricultural-related chemicals.

The following potential on-site environmental issues and findings (i.e., non-RECs or de minimis conditions) were identified in connection with the Phase I ESA performed for the Subject Property:

- According to records received from the City of Santa Clara Fire Department, approximately 75 to 100 gallons of radiator coolant containing ethylene glycol were released due to a failed coolant hose on the back-up generator formerly located at the northeast exterior corner of the Subject Property building in 2006. Approximately 20 gallons of leaked coolant were reportedly recovered from within the generator enclosure and from the top of the fuel tank underneath the generator and removed for disposal by a licensed hazardous waste contractor, and it is unknown if any leaked coolant reached a nearby parking lot storm drain. According to the records, this release was reported in 2006 to the California Governor's Office of Emergency Services.[4] The back-up generators and associated cooling systems have since been removed from the Subject Property. Given the limited toxicity of ethylene glycol and its tendency to rapidly degrade in the environment, EKI does not consider this release a REC.

- The Subject Property was formerly occupied by a network hosting service, Cable & Wireless, which likely used the Subject Property as a data center and offices. Two backup diesel generators, two "day tanks", and three 4,000-gallon diesel ASTs were formerly located in two separate compounds on cement pads and within cement secondary containment at the Subject Property (ACC, 2010; see Figure 2). The

[4] The files and documents reviewed by EKI did not include any follow-up responses or clean-up requirements from any agencies in response to the coolant leak.

generators and associated tanks were removed from the property in late 2006 or early 2007 (ACC, 2010).[5] Other than the cooling system leak discussed above, no documentation of leaks from the diesel generator or storage tanks have been reviewed by EKI. Thus, it is EKI's opinion that this finding constitutes a de minimis condition.

- One pad-mounted electrical transformer, which is owned and operated by the City of Santa Clara, is present near the southeast corner of the Subject Property building. This transformer is not labeled with respect to PCB content, however given the age of the building, it is not likely that the transformer's dielectric fluids contain PCBs. No obvious visual indication of oily surface staining around the base of the transformer was observed at the time of the site visit by EKI. Thus, the presence of the transformer on the Subject Property does not constitute a REC. During site redevelopment, the transformer should be managed accordingly. No pole-mounted transformers were observed on or adjacent to the Subject Property.

The following potential off-site environmental issue (i.e., non-REC or de minimis condition) was identified in connection with the Phase I ESA performed for the Subject Property:

- The Synertek NPL site is located approximately 1,700 feet south and generally upgradient of the Subject Property. A VOC plume (consisting primarily of TCE and its breakdown products), is emanating from the Synertek site and migrating northward toward the Subject Property. The nearest upgradient Synertek shallow groundwater monitoring well to the Subject Property (MW-33A, located approximately 60 feet southeast of the Subject Property) was reportedly sampled in May 2013, and no TCE or its breakdown products were detected in the well (CH2MHill, 2014; see Figure 2). Freon 113 was detected in monitoring well MW-33A at a concentration of 5.9 ug/L, well below the California drinking water standard of 1,200 ug/L. Based on groundwater flow direction in this area and the monitoring data from upgradient wells, VOCs in groundwater from the Synertek site do not appear to be migrating onto the Subject Property and would, therefore, not be expected to result in a vapor intrusion issue for the Subject Property. Therefore, it is EKI's opinion that the Synertek plume does not constitute a REC for the Subject Property.

9.2 Identified Phase I ESA Data Gaps

According to the Final U.S. EPA AAI Rule, a "data gap" is lack of or inability to obtain information required by the AAI Rule that affects the ability of the environmental professional to identify conditions indicative of releases or threatened releases to the Subject Property despite good faith efforts made by the environmental professional.

The Owner of the Subject Property (SFF Realty Fund, L.P.) declined to complete an environmental site assessment questionnaire; however they have provided EKI with a Phase I ESAs for the Subject Property dated September 2010. Given that the use of the Subject Property has not changed significantly since the preparation of the Phase I ESA

[5] No records of the generator or tank removal were included in agency files reviewed by EKI.

report in 2010, the Owner does not likely have specialized knowledge of the Subject Property that would materially affect the findings of EKI's Phase I ESA. Therefore, no potentially significant data gaps were identified in the performance of this Phase I ESA.

10 LIMITATIONS AND EXCEPTIONS OF ASSESSMENT

The Phase I ESA is not an audit of current subject property operations for compliance with hazardous material usage laws or other regulations or operating permit requirements, including occupational health and safety issues regarding occupants of the subject property, wastewater discharge limitations such as National Pollutant Discharge Elimination System ("NPDES") permits, or hazardous waste facility operating permits such as may be required under Resource Conservation and Recovery Act ("RCRA") or State hazardous waste control laws or regulations.

The assessment by EKI did not include "non-scope considerations" as defined in ASTM Section 13.1.5, such as cultural or historic resources, ecological resources, endangered species, wetlands, drinking water quality, radon, indoor air quality, asbestos, lead paint, PCBs in building materials and equipment, and mold.

The conclusions and recommendations presented herein are our professional opinion and are not a warranty or guaranty as to the presence, absence, or extent of contamination at the Subject Property or of releases from or near the Subject Property. The facts presented herein are based on available information obtained by EKI and represent existing conditions at the Subject Property at the time the information was collected.

EKI's performance of the requirements prescribed by the Final EPA AAI Rule is limited to the processes outlined in the Project Agreement.

11 REFERENCES

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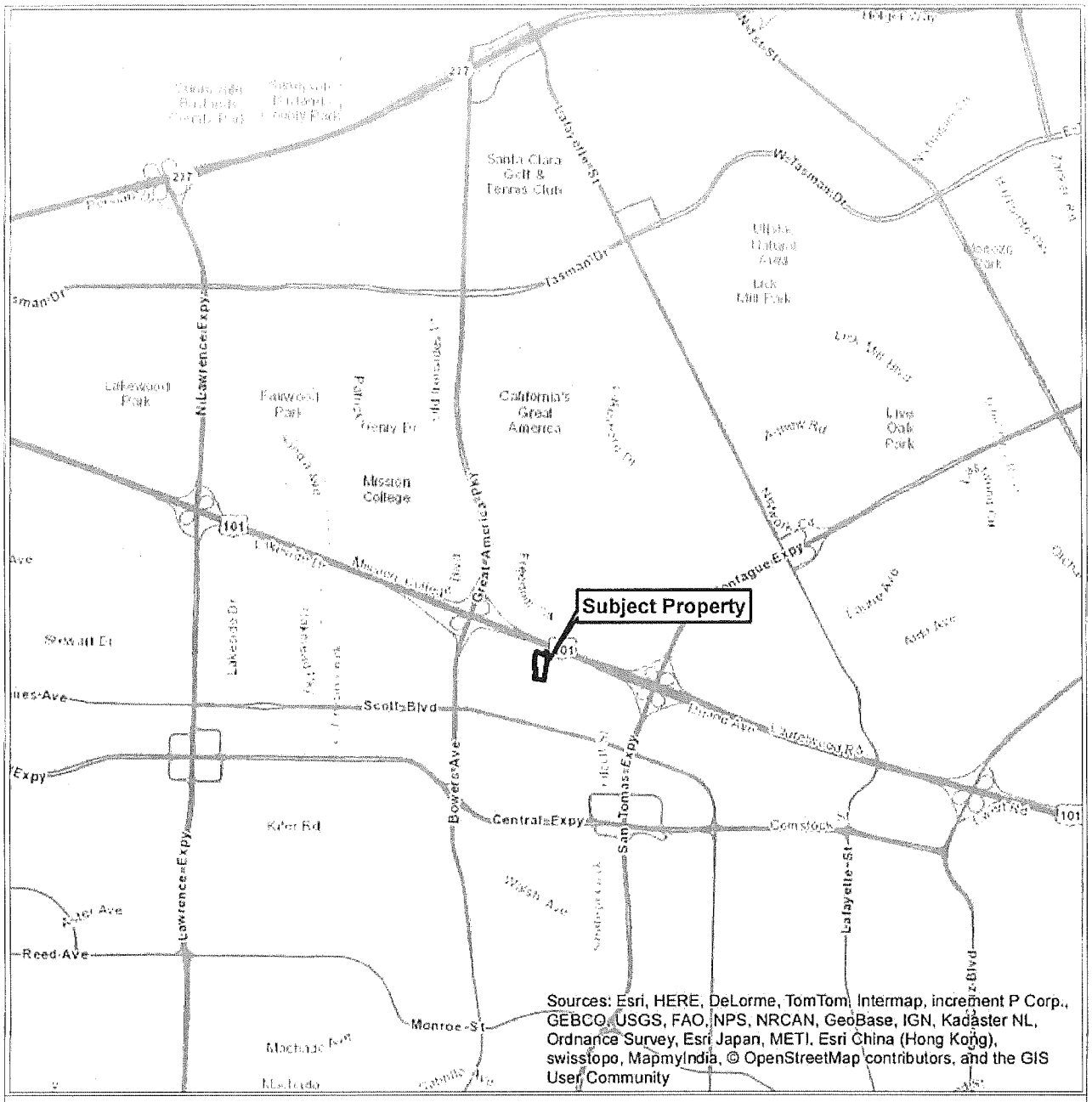


Note

1. All locations are approximate.

Source

Basemap source: http://services.arcgisonline.com/ArcGIS/rest/services/Reference/World_Transportation/MapServer

Erler & Kalinowski, Inc.

Subject Property Location

N

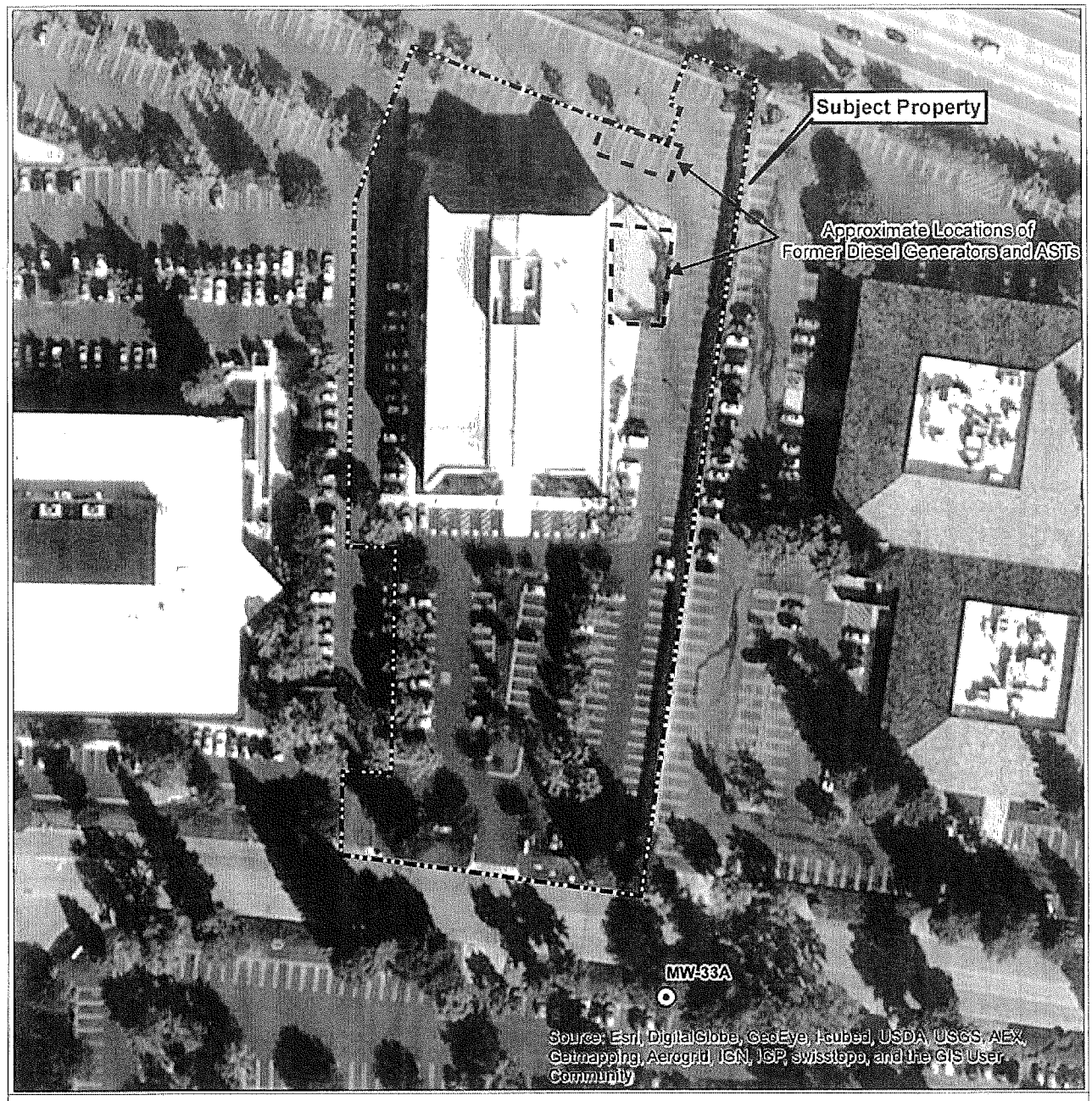
0 3,000 6,000

(Approximate Scale in Feet)

2505 Augustine Drive
Santa Clara, CA
July 2014
EKI B40041.00

Figure 1

X:\Site Location Map\Figure - Site Location.mxd



Legend

Subject Property

Synertek Monitoring Well

Notes

1. All locations are approximate.

Abbreviations

AST = aboveground storage tank

Sources

1. Basemap source: http://services.arcgisonline.com/ArcGIS/rest/services/Reference/World_Transportation/MapServer

0 100 200

(Approximate Scale in Feet)

N

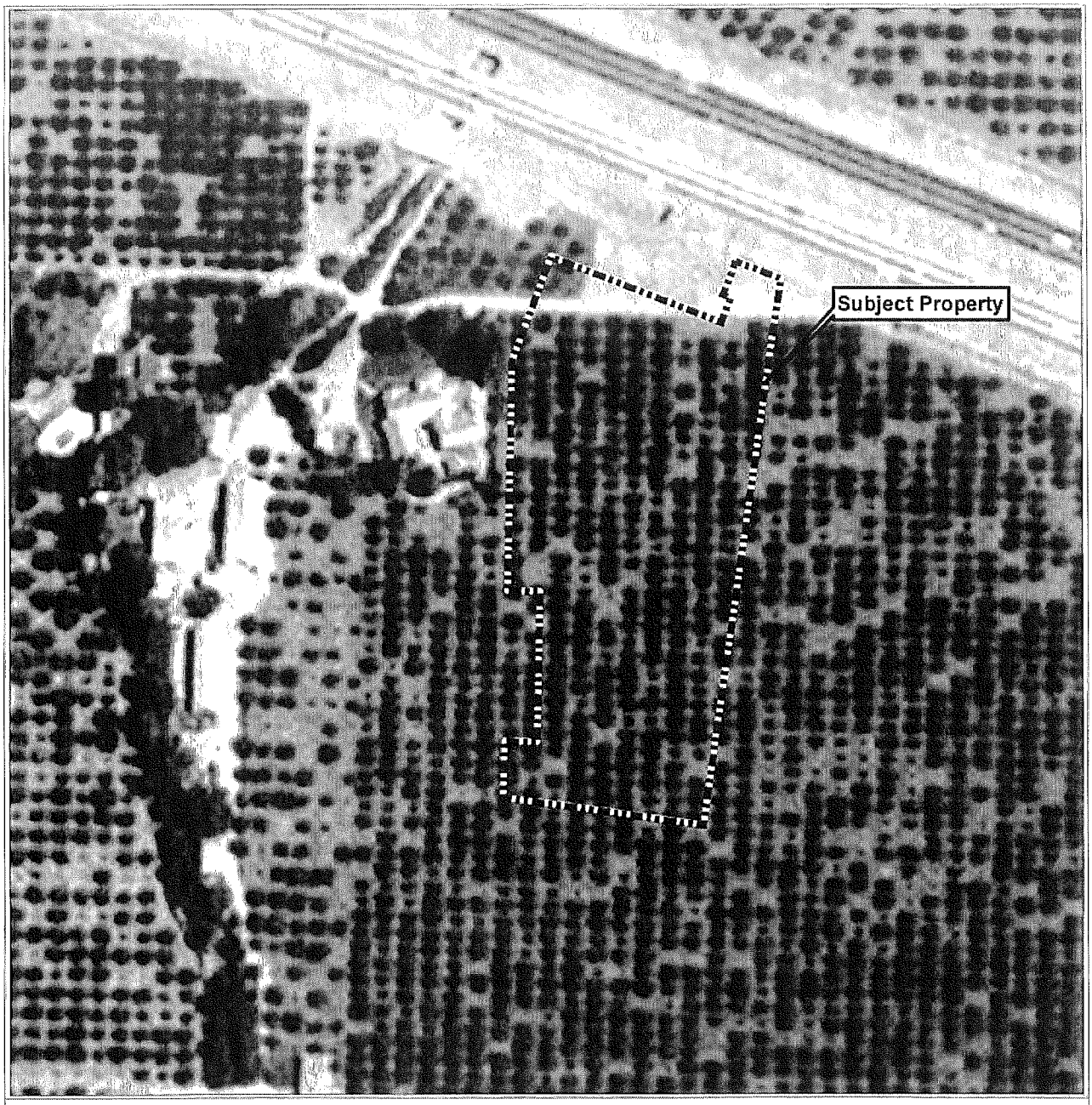
Erler & Kalinowski, Inc.

Subject Property Setting

2505 Augustine Drive
Santa Clara, CA
July 2014
EKI B40041.00

Figure 2

Path: X:\B40041\Maps\2014\07\Figure 2 - Subject Property Setting.mxd



Legend

Subject Property Boundary

Note

1. All locations are approximate.
2. Aerial photograph is from 1968 (EDR, 2014).

Source

Basemap source: EDR, 2014. *The EDR Aerial Photo Decade Package, 2505 Augustine Drive, Santa Clara, California,* Environmental Data Resources, Inc., 15 July 2014.

N

0 150 300

(Approximate Scale in Feet)

Erler & Kalinowski, Inc.

Locations of Historical Agricultural Buildings (1968)

2505 Augustine Drive
Santa Clara, CA
July 2014
EKI B40041.00

Figure 3

Document Path: X:\B40041\Maps\2014\07\Figure 3 - Historical.mxd

Erler &
Kalinowski,
Inc.

Phase I Environmental Site Assessment and Results of Phase II Investigation

3333 and 3393 Octavius Drive
Santa Clara, California

Prepared for:

The Catalina Investment Company, L.P.

Prepared by:

Erler & Kalinowski, Inc.
1870 Ogden Drive
Burlingame, California 94010

August 2014

EKI B30013.00

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22 August 2014

To Potential Users of Electronic Files:

Erler & Kalinowski, Inc. ("EKI") has provided our CLIENT, Catalina Investment Company, L.P. and The Irvine Company LLC, with an electronic copy of the *Phase I Environmental Site Assessment and Results of Phase II Investigation, 3333 and 33393 Octavius Drive, Santa Clara, California*, dated August 2014, including text, figures, and appendices by a compact disk ("CD").

This electronic file is being provided at the request of our CLIENT and for the convenience of our CLIENT. The delivery of electronic media does not constitute the delivery of our professional work product or provide rights of reliance by First parties. Only the original paper print provided to, and for the sole benefit of, our CLIENT constitutes our professional work product. Because the electronic media may be damaged during transfer or altered, the paper print shall control where there are any differences between the paper print and the electronic media. EKI makes no warranties, either express or implied, of the merchantability, applicability, compatibility with the recipients' computer equipment or software; of the fitness for any particular purpose for the electronic media; or that the electronic media contains no defect or is virus free.

Reuse of EKI's work product by others or modification and use by others of any document or electronic media prepared by EKI shall be at the party's sole risk.

Sincerely,

ERLER & KALINOWSKI, INC.

Michelle King, Ph.D.
President

Phase I Environmental Site Assessment and Results of Phase II Investigation

3333 and 3393 Octavius Drive, Santa Clara, California (EKI B30013.00)

August 2014

Prepared for:

The Catalina Investment Company, L.P.

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22 August 2014

Angie Holland
The Irvine Company LLC
555 Newport Center Drive
Newport Beach, California 92660

Subject: Phase I Environmental Site Assessment and Results of Phase II Investigation for Property Located at 3333 and 2292 Octavius Drive in Santa Clara, California (EKI B30013.00)

Dear Ms. Holland:

Erler & Kalinowski, Inc. ("EKI") is pleased to present to Catalina Investment Company, L.P. and The Irvine Company LLC ("Client") the enclosed report entitled *Phase I Environmental Site Assessment and Results of Phase II Investigation, 3333 and 33393 Octavius Drive, Santa Clara, California*, dated August 2014. EKI's services were performed in accordance with the Project Agreement with The Irvine Company LLC and the associated scopes of work, dated 19 March 2013 and 15 August 2014, and the Master Services Agreement ("MSA") between EKI and The Irvine Company LLC, dated 26 November 2012.

We are pleased to have the opportunity to work with you on this project. Please call if you have any questions or need further assistance.

Very truly yours,

ERLER & KALINOWSKI, INC.

Kat Wuelfing
Project Scientist

Michelle K. King, Ph.D.
President / Reviewer

PHASE I ENVIRONMENTAL SITE ASSESSMENT AND RESULTS OF PHASE II INVESTIGATION

3333 and 3393 Octavius Drive,
Santa Clara, California

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PHASE I ENVIRONMENTAL SITE ASSESSMENT AND RESULTS OF PHASE II INVESTIGATION

3333 and 3393 Octavius Drive,
Santa Clara, California

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EXECUTIVE SUMMARY

Erler & Kalinowski, Inc. ("EKI") is pleased to present to Catalina Investment Company, L.P. ("Client" or "Catalina"), this Phase I Environmental Site Assessment ("ESA") report for the property located at 3333 and 3393 Octavius Drive in Santa Clara, California ("Subject Property"; see Figure 1).

The Phase I ESA was initially performed by EKI in April 2013, in general conformance with the scope and limitations of American Society for Testing and Materials ("ASTM") *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process*, Designation: E1527-05 (published on 21 November 2005), and the requirements issued by the U.S. Environmental Protection Agency ("U.S. EPA") in 40 CFR Part 312, *Standards and Practices for All Appropriate Inquiries*, *Final Rule,* dated 1 November 2005 ("Final EPA AAI Rule"). The ASTM 1527-05 standard and the Final EPA AAI Rule similarly prescribe accepted reasonable efforts to identify conditions indicative of releases and threatened releases of hazardous substances on, at, in, or to the Subject Property, e.g., Recognized Environmental Conditions ("RECs").

The Subject Property comprises two buildings situated on approximately 3.27 acres of property located in a predominantly commercial/light industrial area of Santa Clara (see Figure 2). EKI understands that Catalina acquired the Subject Property in 2013 and may redevelop the property into office uses.

Summary of Phase I ESA Findings and Opinions

The following REC was identified in connection with the performance of this Phase I ESA:

- Prior to development of the Subject Property in the mid to late 1970s, the Subject Property was in orchard use. The Phase II subsurface investigation performed in June 2013 indicates that agricultural chemicals, (i.e., arsenic, lead, and several organochlorine pesticides) are present in shallow soil on the Subject Property at concentrations above risk-based ESLs and CHHSLs for residential land use, and above risk-based California Regional Water Quality Control Board, San Francisco Bay Region ("RWQCB") Environmental Screening Level ("ESLs," RWQCB, 2013) and California Human Health Screening Levels ("CHHSLs," Cal-EPA, 2010)) for commercial/industrial land use. The reported concentrations of these chemicals, however, are consistent with ordinary application of pesticides to orchards in Santa Clara County. DDT and its breakdown products are present on the Subject Property at concentrations that would result in soil being classified as a non-Resource Conservation and Recovery Act ("non-RCRA") hazardous waste if excavated and disposed off-site. The reported concentrations of lead in soil samples could also potentially classify the soil as non-RCRA hazardous waste if excavated and disposed of off-site. Given that the majority of the Subject Property is currently capped with buildings and pavement, the potential for exposure to soil by typical site users is low under the current site condition.

The following potential on-site environmental issues and findings (i.e., non-RECs or de minimis conditions) were identified in connection with the Phase I ESA performed for the Subject Property:

- Information on past uses of the Subject Property buildings is limited. Historical information and available regulatory agency files reviewed by EKI indicates that the Subject Property buildings were used in the past, e.g., the 1970s and 1980s, by industrial, research & development, and/or testing laboratory tenants. Several of these past tenants are identified in a regulatory database report (EDR report) and City of Santa Clara Fire Department records (see Section 2.9.4) as having used, stored, and/or generated hazardous materials and wastes. Although there are no documented or reported releases of chemicals to the subsurface on the Subject Property, releases may have occurred in the past, either through spills to floor surfaces, or leaks from sanitary sewers lines. In order to screen for potential vapor intrusion issues on the Subject Property, EKI collected 2 soil gas samples from temporary soil vapor probes ("SVPs") in June 2013. No volatile organic compounds ("VOCs") were detected in either sample above respective laboratory reporting limits. While the potential exists for chemicals used by past tenants to have been released to the subsurface on the Subject Property, soil vapor sampling results indicate that significant vapor intrusion risk is not present on the Subject Property. Therefore, EKI does not consider this finding a REC for the Subject Property.

- In 1988, United Soil Engineering, Inc. ("USE") conducted an Environmental Assessment of the property located at 3333 Octavius Drive that included the construction and sampling of two groundwater monitoring wells, MW-1 and MW-2, to assess for potential impacts associated with chemical use at the building, although the wells were installed east, i.e., cross-gradient, of the building (see Figure 4). The groundwater samples were reported to contain 1,1-dichloroethane ("1,1-DCA") and 1,1,1-trichloroethane ("1,1,1-TCA") at concentrations ranging up to 4.7 micrograms per liter ("ug/L") and 2.5 ug/L, respectively, which are below their current respective RWQCB ESLs based on drinking water standards and vapor intrusion for commercial and residential land use. In June 2013, EKI collected a sample from the northern Subject Property boundary, downgradient of the Subject Property buildings. No VOCs were detected in this groundwater sample above laboratory reporting limits. The source of the VOCs detected in shallow groundwater in 1988 is not known. However, the area is located generally downgradient of the Integrated Device Technology ("IDT") site at 3236 Scott Boulevard (see Figures 2 and 4). The IDT site is a reported "open-inactive" chemical release site. Groundwater is reported as being affected by a release at the IDT site; however, information on the nature of contamination (e.g., type of chemicals released), timing of the start of the release, extent of a contaminant plume in groundwater, if any, is not readily available. Given the upgradient position and the proximity of the IDT site to the Subject Property and presence of VOCs detected in groundwater at 3333 Octavius Drive in 1988, groundwater on the Subject Property may be impacted by VOCs migrating onto the Subject Property from the IDT release. It is EKI's opinion that this finding does not constitute a REC, given that the concentrations reported in groundwater in 1988 are below current regulatory screening levels, and no

significant impacts to groundwater were detected in the downgradient sample collected in 2013.

- Pad-mounted electrical transformers are present in the parking lot and landscape areas on the Subject Property. It is not known whether these transformers contain polychlorinated biphenyls ("PCBs") or not and no staining was observed around the transformers, that would indicate a likely release to the environment. Thus, EKI does not believe the presence of these transformers constitutes a REC for the Subject Property. If these transformers contain PCB-fluid, they will need to be managed appropriately at the time of property redevelopment. No pole-mounted transformers were observed in the area of the Subject Property.

1 INTRODUCTION

EKI is pleased to present to Catalina Investment Company, L.P., this Phase I ESA report for the property located at 3333 and 3393 Octavius Drive in Santa Clara, California (see Figure 1). The Subject Property is comprised of two buildings situated on approximately 3.27 acres of property located in a predominantly commercial/light industrial area of Santa Clara (Figure 2).

The Phase I ESA was initially performed by EKI in April 2013, in general conformance with the scope and limitations of ASTM *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process*, Designation: E1527-05 (published on 21 November 2005), and the requirements issued by the U.S. EPA in the Final EPA AAI Rule. The ASTM 1527-05 standard and the Final EPA AAI Rule similarly prescribe accepted reasonable efforts to identify conditions indicative of releases and threatened releases of hazardous substances on, at, in, or to the Subject Property, e.g., RECs.

EKI's services were performed in accordance with the Project Agreement and associated scopes of work, dated 19 March 2013 and 15 August 2014, and the Master Services Agreement ("MSA") between EKI and The Irvine Company LLC, dated 26 November 2012.

2 PHASE I ESA TASKS AND FINDINGS

2.1 Purpose for Phase I ESA

The purpose of the Phase I ESA performed in April 2013 was to identify RECs for the Subject Property as defined in ASTM E1527-05. EKI understands that Catalina acquired the Subject Property in 2013 and may redevelop the property into office uses.

2.2 Phase I ESA Scope of Work

EKI performed the following tasks as part of this Phase I ESA:

- Reviewed available historical land use information for the Subject Property and surrounding area, e.g., historical aerial photographs and historical topographic maps provided by Environmental Data Resources, Inc. ("EDR") (see Appendix A);

- Reviewed documents and information for the Subject Property provided by the previous owner of the Subject Property, Silicon Valley CA, LLC, including a prior Phase I ESA report prepared for the Subject Property by Golder Associates, dated 8 May 2006 (Golder, 2006) and historical site plans for select buildings;

- Purchased and reviewed a regulatory agency database report for the Subject Property and surrounding area prepared by EDR, dated 15 March 2013 (referred to as EDR Radius Map Report; see Appendix E);

- Reviewed publicly-available files for the Subject Property provided by the Santa Clara Valley Water District ("SCVWD"), City of Santa Clara Fire Department, City of Santa Clara Building Department, and the Bay Area Air Quality Management District ("BAAQMD");

- Reviewed environmental reports prepared for nearby upgradient reported chemical release sites available on-line through the State of California Water Resources Control Board GeoTracker database website;

- Purchased and reviewed an Environmental Lien Search report for the Subject Property, prepared by EDR, dated 18 March 2013 (see Appendix C);

- Obtained specialized knowledge of the Subject Property provided by The Irvine Company, the User of the Phase I ESA, in the form of responses to a User Questionnaire (see Appendix C);

- Performed a walk-through visual survey of the Subject Property on 28 March 2013 to observe the current site setting (see photographs in Appendix B), and conducted interviews with Silvino Benitez, a maintenance manager for the property.

2.3 General Site Characteristics

2.3.1 Site Location

The Subject Property is located on the eastern side of Octavius Drive, and is generally bounded to the south by Scott Boulevard, to the west by Montgomery Drive, to the north by Highway 101, and to the east by the channelized San Thomas Aquino Creek (see Figures 1 and 2). The neighborhood consists primarily of office and light industrial buildings

2.3.2 Site Description and Current Site Uses

The Subject Property comprises two buildings with the street addresses of 3333 and 3393 Octavius Drive. The Subject Property is approximately 3.27 acres in size, and is identified by the Santa Clara County Assessor's Parcel Number 216-45-025. The Subject Property is located in roughly the center of the Park Square office park, which consists of a total of 14 buildings over approximately 31.1 acres. The greater Park Square property is generally bounded by Scott Boulevard, Montgomery Drive, Highway 101, and the San Thomas Aquino Creek.

As of April 2013, the Subject Property buildings were occupied by the following tenants:

3333 Octavius Drive:	Kilopass Technology, Inc. (Suite 101) MicroPoint Bioscience (Suite 102)
3993 Octavius Drive:	Tensilica (Suite 100)

Additional information on the above-listed current tenants, including nature of activities and chemical use and storage, if any, on the Subject Property is discussed in the Site Walk-through section of this report (see Section 2.7).

2.3.3 Adjoining Properties

The Subject Property is bounded to the east by the channelized San Tomas Aquino Creek and San Tomas Aquino/Saratoga Creek Trail. The Park Square office park continues to the north, west, and south of the Subject Property, and includes twelve similar multi-tenant office buildings. The buildings in the immediate vicinity of the Park Square office park, to the northwest, west, and south appear all to be office and industrial buildings. UCSC Silicon Valley (2505 Augustine Dr.) and ST Microelectronics (2525 Augustine Dr.) are located to the northwest of the Subject Property. The buildings to the west of the Subject Property on Montgomery Drive are currently occupied by SMIC America and Meadows Manufacturing (3380 Montgomery Dr.), TEXMAC Inc. (3370 Montgomery Dr.), Power Design Manufacturing (3360 Montgomery Dr.), Starting Arts (3340 Montgomery Dr.), and Horiba (3265 Scott Blvd.). Business located to the south of the Subject Property along Scott Boulevard, include Whizz Systems (3240 Scott Blvd.), Alta Devices (3260 Scott Blvd.), and several currently vacant buildings (3230, 3236, and 3250 Scott Blvd.).

2.4 Environmental Setting

Information on the environmental setting of the Subject Property was obtained from the following sources:

- *Groundwater Sampling and Monitoring 2012 Summary Report, Synertek Building #1, 3050 Coronado Drive, Santa Clara, California,* CH2MHill, January 2013 (CH2MHill, 2013).

- *Environmental Site Assessment and Investigation, Manufacturing Facility, 3333 Octavius Drive, Santa Clara, California*, United Soil Engineering, Inc., 8 August 1988 (USE, 1988).

2.4.1 Regional Physiography

The Subject Property is located in the Santa Clara Valley, which is situated within the Coast Range geomorphic province. The Santa Clara Valley occupies a late-Pliocene structural trough situated between the San Andreas Fault System to the west and the Hayward/Calaveras Fault Systems to the east (USE, 1988). The Subject Property is underlain by consolidated Quaternary alluvium deposits comprised of inter-fluvial stream deposits. The thickness of the alluvium is estimated to be 300 to 500 feet thick (USE, 1988).

2.4.2 Soil and Geologic Conditions

Site stratigraphy consists of interbedded complex silts, clays, and sands to a depth of at least 465 feet below ground surface ("bgs") (CH2MHill, 2013). Based on a review of soil borehole logs for two boreholes advanced on the Subject Property by USE in 1988, the upper 3 to 5 feet of soil consists of an organic black clay, underlain by approximately 20 feet of a yellow, grey sandy clay. Between approximately 20 and 30 feet bgs is a grey clay with minor sand lenses (USE, 1988).

The first groundwater zone, the A-aquifer, generally extends from approximately 10 to 20 feet bgs. The A-aquifer is underlain by silty to sandy clays, generally ranging in thickness from 5 to 10 feet. The B-aquifer is encountered between 30 and 50 feet bgs. The B-aquifer is underlain by approximately 60 feet of clay, which provides separation from deeper water-bearing zones encountered at 100 to 108 feet bgs (CH2MHill, 2013).

2.4.3 Surface Water Characteristics

The majority of the Subject Property is covered with building roof tops and asphalt-paved parking areas. Thus, the majority of rain water that falls on the Subject Property flows over impervious surfaces to storm drain inlets located throughout the parking areas on the property. Landscaped areas are also located throughout the property. Surface water runoff in these areas likely infiltrates into the ground. San Tomas Aquino Creek runs along the eastern property boundary. The creek is concrete-lined and channelized in this area, and the bank is elevated significantly higher than the Subject Property grade (approximately 8 feet higher).

2.4.4 Shallow Groundwater Characteristics

Based on measurements made in May and October 2012 from groundwater monitoring wells located on the portions of the Park Square office park located west of the Subject Property, the depth to groundwater in the vicinity of the Subject Property ranges from approximately 7 to 9 feet bgs (CH2MHill, 2013). During drilling west of the Subject Property performed by Geomatrix in 1997, first encountered groundwater was noted at 10 to 15 feet bgs. During EKI's June 2013 subsurface investigation (discussed further in Section 3, below) groundwater was first encountered in sand layers located at approximately 17 feet bgs. The static water level measured during grab groundwater sampling was approximately 11.6 feet bgs.

According to the CH2MHill (2013) report, the direction of shallow groundwater flow in the vicinity of the Subject Property, e.g., the A-zone aquifer, is generally to the north-northeast.

2.5 Historical Land Use Information

Information on historical uses of the Subject Property and vicinity was obtained primarily from the following sources:

- Review of historical aerial photographs provide by EDR for selected years between 1939 and 2006 (see Appendix A).
- Review of historical USGS topographic maps provided by EDR for selected years between 1899 and 1997 (see Appendix A).
- Review of publically available information for the Subject Property provided by the City of Santa Clara Building Department and the Santa Clara Fire Department (see Appendix A); and
- Review of historical City Directory information provided by EDR for selected years between 1980 and 2012 (see Appendix A).

According to EDR, Sanborn Fire Insurance maps for the Subject Property are not available.

2.5.1 Late 1890s through 1970s

On the topographic map dated 1899, the Subject Property and surrounding areas are depicted on the map as vacant.

On the 1939 and 1956 aerial photographs, the Subject Property is in orchard use. No structures are noted on the Subject Property.

On the 1953 topographic map, the Subject Property and adjoining properties are depicted in orchard use. Bayshore Highway north of the Subject Property is depicted on the 1953 map. Scott Boulevard, Octavius Drive, Montgomery Drive, and Augustine Drive do not yet appear to be constructed.

On the 1961 topographic map, the Subject Property and adjoining properties remain in orchard use. Bayshore Highway has been expanded and is now depicted as Bayshore "Freeway" with interchanges noted. On the 1965 aerial photograph, the Subject Property and adjoining properties remain in orchard use. San Thomas Aquino Creek, which forms the eastern border of the Subject Property, is channelized in the 1965 aerial photograph.

On the 1968 and 1973 topographic maps, the Subject Property and adjoining properties remain in orchard use. No significant land use changes are noted from the prior maps reviewed.

On the 1974 aerial photograph, the Subject Property is no longer in orchard use and is vacant, e.g., no structures or apparent agricultural use. Scott Boulevard, Octavius Drive, Montgomery Drive, and Augustine Drive are noted on the 1974 aerial photograph, however, no buildings or structures are noted adjacent to the paved roadways, with the exception of buildings located along the south side of Scott Boulevard (off the Subject Property). A graded, apparent building pad is noted at the northwest corner of the intersection of Scott Boulevard and Montgomery Drive (off the Subject Property).

2.5.2 1980s Through Present-Day

On the 1984 aerial photograph, the Subject Property is developed with the two square-shaped buildings that exist at the present time. Adjoining properties have also been developed with what appear to be the present-day buildings and structures. No obvious significant changes in land use or configuration of the Subject Property setting are noted on the aerial photographs from the 1990s or 2000s.

City Directory information obtained from EDR is limited for the Subject Property buildings. The City Directory includes the following listings for the Subject Property:

3333 Octavius Drive

- 1986 – Ciarlo V
- 2007 – Broadware Technologies and Kilopass Technology Inc.
- 2012 – Micropoint Bioscience Inc. and Kilopass Technology Inc.

3393 Octavius Drive

- 1996 – Onstream Networks Inc.
- 2007 – Opti Inc.
- 2012 – First Virtual Communications

The specific activities conducted by the tenants cannot be known from review of the EDR City Directory report. These tenants may have used or stored chemicals at the Subject Property.

2.6 Results of Prior Site Investigations

Based on information provided by Silicon Valley CA, LLC, several environmental investigations have been performed on the Subject Property, including a Phase I ESA conducted in 2006 (Golder, 2006) and a subsurface soil and groundwater sampling investigation conducted in 1988 (USE, 1988). In addition, a subsurface soil and groundwater investigation was conducted in 1997 on a portion of the Park Square office park located just west of the Subject Property (Geomatrix, 1997). A summary of these prior investigations is presented below. Pertinent sections of each report are included in Appendix D of this Phase I ESA report.

2.6.1 Summary of Findings of Prior Phase I ESA Report

Silicon Valley CA, LLC provided to EKI a copy of a Phase I ESA report for the entire Park Square office park, prepared by Golder Associates, Inc., and dated 8 May 2006 (Golder, 2006). Key findings of the Golder Phase I ESA report are presented below:

- The Subject Property was in agricultural use before development of the property in 1977 and 1978.
- Multiple upgradient properties are undergoing remediation for soil and groundwater impacts, thus, groundwater beneath the Subject Property may be impacted.
- VOCs have been detected in shallow groundwater on the 3333 Octavius Drive portion of the Subject Property (discussed further below in Section 2.6.2). This was considered by Golder to be a "recognized environmental condition." Golder recommended that these two monitoring wells be abandoned.
- The IDT facility located at 3236 Scott Boulevard (discussed further in Section 2.9.3.1 of this report) is a reported chemical release site, and may have impacted groundwater beneath the Subject Property. Golder also identified several other sites located upgradient of the Subject Property that are currently undergoing remediation, e.g., Synertek site, which is discussed in Section 2.9.3.2 of this report.
- Asbestos was indentified in interior and roofing materials of nearly all buildings of the Park Square office park, including the Subject Property buildings.

2.6.2 Summary of Findings of 1988 Soil and Groundwater Investigation

In 1988, USE conducted an Environmental Assessment of the property located at 3333 Octavius Drive, which is the southern of the two Subject Property buildings (see Figure 2). The assessment by USE included the advancement of two soil boreholes on the property, the collection and analysis of soil samples, the conversion of the boreholes to groundwater monitoring wells, and the collection and analysis of groundwater samples. The approximate locations of monitoring wells MW-1 and MW-2 installed by USE in 1988 are shown on Figure 2. Well MW-1 was located during the site walk, but well MW-2 appears to have been removed or buried beneath pavement.

Soil samples were collected from each borehole at approximately 2.5 feet, 7.5 feet, and 12.5 feet bgs. Groundwater was encountered at approximately 13 feet bgs. The soil samples were found to be "free of volatile and semi-volatile organic compounds,"

according to the USE (1988) report. No data tables or laboratory reports were provided in the USE report, which was included as an attachment to the Golder Phase I ESA.

The groundwater samples were reported to contain 1,1-DCA and 1,1,1-TCA at concentrations ranging up to 4.7 ug/L and 2.5 ug/L, respectively.

The USE report concluded that the VOCs appear to be migrating onto the 3333 Octavius Drive property from an off-site, upgradient source or sources "to the south of the project site."

2.6.3 Summary of Findings of 1997 Soil and Groundwater Investigation

In May 1997, Geomatrix collected grab samples of shallow groundwater from six soil boreholes advanced around the perimeter of Building 6 located at 3255 Scott Boulevard, west and crossgradient to the Subject Property (see Figure 2). The purpose for the sampling was to screen for the presence of VOCs in shallow groundwater that may have resulted from releases at Building 6 or from off-site, upgradient properties.

The six soil boreholes were each advanced to an approximate depth of 19 feet bgs. The depth to first encountered groundwater was reported at approximately 10 to 15 feet bgs. The groundwater samples collected from each borehole were submitted for analysis for VOCs. According to the analytical results, no VOCs, including TCE, 1,1-DCA, or 1,1,1-TCA were detected above their respective laboratory reporting limits in any of the groundwater samples.

2.7 Results of Site Walk-Through Visual Survey

On 21 and 24 March 2013, Kathryn Wuelfing with EKI conducted a visual reconnaissance of the Park Square office park, including the two Subject Property buildings. Ms. Wuelfing is an Environmental Professionals as defined in 40 CFR Section 312.10, and as accepted by ASTM 1527-05 (see resume in Appendix F). EKI was accompanied on the walk-through by Mr. Silvino Benitez, a maintenance worker with CBRE.

Observations of the Subject Property and adjoining areas are discussed below. Selected photographs taken during the walk-through of the Subject Property are presented in Appendix B of this report.

2.7.1 Exterior Observations

The Subject Property consists of two buildings situated on an 3.27 acre property. The two buildings are surrounded by landscaped and parking lot areas. Storm drains are located throughout the parking lot areas and presumably direct stormwater offsite. Both buildings appear to be of the same general construction, and have large glass windows and wood siding, consistent with the other twelve Park Square office park buildings. The building roofs are all ceramic tile with a central recessed area housing HVAC equipment.

Power transmission lines are present along the northern boundary of the Park Square property, shared with Highway 101. All electrical transmission at the Subject Property is

located underground. A channelized creek and recreational trail run along the eastern property boundary. The recreational trail is elevated approximately 8 feet above the Subject Property parking lot. Signage denoting the location of a nitrogen gas pipeline owned by Air Products is present along the eastern property line, along the creek. This signage continues along Scott Boulevard.

Two transformers are present in landscape areas along Octavius Drive. No staining was observed beneath or around the transformers. No pole-mounted transformers were observed in the area of the Subject Property.

Monitoring well MW-1 from the 1988 USE study (see Section 2.6.2) was located in a landscape area southeast of 3333 Octavius Drive. Well MW-2 was not located by EKI and may be present beneath a recently paved parking lot.

2.7.2 Interior Observations

The Park Square office park consists of 14 buildings on an over 30-acre property. The Subject Property includes two of these buildings, located roughly in the middle of the office park. The 3333 Octavius Drive building is one-story with approximately 24,000 square feet of interior space, and the 3393 Octavius Drive building is two-story with approximately 48,000 square feet of interior space. The layout of each building is generally the same. Bathrooms are located centrally in each building as part of a common area. The 3393 Octavius Drive building has an elevator, with a small mechanical room on the first floor.

3333 Octavius Drive

The southern half of the building is occupied by Micropoint Bioscience, a medical testing device company, and northern half of the building is occupied by Kilopass Technology, Inc., a computer memory storage company. Micropoint has a large clean-room lab in the western end of their space. According to a Micropoint employee, the only chemical used in the facility is isopropyl alcohol, at quantities of three-liters at a time; the medical testing devices that they produce are based on biological components such as antibodies. Kilopass Technology also has a small lab at the western end of their space, but the activities in this area are limited to physical and electronic testing of materials and does not include chemical use other than liquid nitrogen.

3393 Octavius Drive

Tensilica, a silicon processor chip company, occupies the first floor and half of the second floor of the building. The remaining part of the second floor is currently vacant. Tensilica uses the space as offices with some electronic testing laboratory space. All manufacturing is done offsite, and testing is limited to physical and electronic testing that does not involve significant use of chemicals. Typical household chemicals and paint are stored in the building.

2.7.3 Neighborhood

A drive-by inspection was conducted to observe the neighboring properties from adjacent streets. The Subject Property is bounded to the east by the channelized San Tomas Aquino

Creek and San Tomas Aquino/Saratoga Creek Trail. The Park Square office park continues to the north, west, and south of the Subject Property, and includes twelve similar multi-tenant office buildings with similar types of uses. The buildings in the immediate vicinity of the Park Square office park, to the northwest, west, and south appear all to be office and industrial buildings. UCSC Silicon Valley (2505 Augustine Dr.) and ST Microelectronics (2525 Augustine Dr.) are located to the northwest of the Subject Property. The buildings to the west of the Subject Property on Montgomery Drive are currently occupied by SMIC America and Meadows Manufacturing (3380 Montgomery Dr.), TEXMAC Inc. (3370 Montgomery Dr.), Power Design Manufacturing (3360 Montgomery Dr.), Starting Arts (3340 Montgomery Dr.), and Horiba (3265 Scott Blvd.). Business located to the south of the Subject Property along Scott Boulevard, include Whizz Systems (3240 Scott Blvd.), Alta Devices (3260 Scott Blvd.), and several currently vacant buildings (3230, 3236, and 3250 Scott Blvd.).

No obvious monitoring wells or evidence of remediation equipment were observed on properties adjacent to the Subject Property during the drive-by inspection.

2.8 Information Provided by Owner and User

2.8.1 Results of Owner Questionnaire

Through Catalina, EKI requested that Silicon Valley CA, LLC, the owner of the property at the time the Phase I ESA activities were conducted, complete an environmental site assessment questionnaire, however Silicon Valley CA, LLC declined to do so.

2.8.2 Results of User Questionnaire

Mr. Brandon Jacobsen with The Irvine Company, the User of this Phase I ESA report, completed a User questionnaire for the Subject Property, dated 19 April 2013, a copy of which is included in Appendix C. The questionnaire is consistent with the User Questionnaire suggested in Appendix X3 of ASTM E1527-05 *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,* published on 21 November 2005. A summary of the responses by Mr. Jacobsen to the questionnaire is presented below.

2.8.2.1 Environmental Liens

According to Mr. Jacobsen, to his knowledge, there are no environmental cleanup liens filed or recorded against the Subject Property.

2.8.2.2 Activity and Land Use Limitations

According to Mr. Jacobsen, to his knowledge, there are no activity and land use limitations (i.e., engineering or institutional controls) in place on the Subject Property.

2.8.2.3 Specialized Knowledge or Experience

Mr. Jacobsen indicated that he has no specialized knowledge or experience related to the Subject Property, outside what was identified in this Phase I ESA.

2.8.2.4 Commonly Known or Reasonably Ascertainable Information

Mr. Jacobsen indicated that he is not aware of any past uses of the Subject Property outside of what was identified in this Phase I ESA. He is not aware of any chemical spills or releases or environmental cleanups performed on the Subject Property. Based on experiences with the property at the corner of Augustine Drive and Bowers Avenue (west of the Subject Property), Mr. Jacobsen is aware of the potential for residual pesticides in shallow soil on the Subject Property.

2.8.3 Results of Environmental Lien Search

EKI purchased from EDR an Environmental Lien Search report for the Subject Property parcels (APN 216-45-025). A copy of the EDR Lien Search report, dated 18 March 2013, is included in Appendix C of this Phase I ESA report. According to the Lien Search report, there are no environmental cleanup liens or activity and use limitations ("AULs") filed or recorded against the Subject Property.

2.9 Results of Regulatory Agency File Reviews

To identify conditions indicative of releases and threatened releases of hazardous substances on, at, in, or to the Subject Property, i.e., known or potential contamination of soil or groundwater, or reported chemical use, EKI contracted with EDR to perform a search of available, selected federal, state, and local environmental regulatory agency databases. EDR performed a search for the Subject Property area and properties located within selected radii of the Subject Property. A copy of the resulting "radius map report" prepared by EDR, dated 15 March 2013, is provided in Appendix E. Refer to the EDR report (pages GR-1 through GR-42) for a complete list of the federal, state, and tribal databases searched.

2.9.1 Results of EDR Database Search for Subject Property

According to the EDR Report, the following regulatory agency database listings were found for the Subject Property:

Building Address	Facility Name	Agency Databases
3333A Octavius Dr.	Ciba-Geigy Corporation	EMI
3333A Octavius Dr.	Burns Research Corp.	RCRA-SQG, FINDS
3333 Octavius Dr., Ste E	Ciba-Geigy Corp.	RCRA Non-Gen/NLR, FINDS

RCRA SQG = Small quantity generator of hazardous wastes.
RCRA Non-Gen/NLR = No longer generates hazardous waste at facility.
FINDS = Facility Index System
EMI = Toxics and criteria pollutant emissions data collected by local air pollution agency.

These above-listed regulatory agency databases reflect documented current and historical use and storage of chemicals at the Subject Property, as well as off-site disposal of hazardous wastes from the Subject Property. It should be noted, however, that none of the database listings in the EDR report indicate reported chemical releases at the Subject Property.

2.9.2 Off-site, Upgradient Properties with Reported Chemical Use

According to the EDR Report, the following properties located in proximity to and potentially upgradient of the Subject Property are listed on specific chemical use, storage, or disposal regulatory agency databases:

Facility Name and Address
Alta Devices, Inc., 3260 Scott Blvd.
Applied Materials Inc., 3260 Scott Blvd.
Applied Materials. 3260 Scott Blvd.
Celeritek, Inc., 3236 Scott Blvd.
CTS-Century Electronics Mfg., 3240 Scott Blvd.
Deharts Printing Service, 3265 Scott Blvd.
Digital Testing Services Inc., 3260 Scott Blvd.
Disco Hi-Tek America, Inc., 3270 Scott Blvd.
Horiba-Stec, 3265 Scott Blvd.
Integrated Device Technology (IDT), 3236 Scott Blvd.
Micrel Synergy Semiconductor, 3250 Scott Blvd.
Mimir Instruments, Inc., 3260 Scott Blvd.
San Disk Inc., 3230 Scott Blvd.
SMTEK International Inc., 3240 Scott Blvd.
Solyndra Inc., 3260 Scott Blvd.
Ultratech Stepper, 3230 Scott Blvd.
Xertex Dorhmann Division, 3240 Scott Blvd.
YMC Manufacturing Co., 3240 Scott Blvd.
Zeta Laboratories, Inc., 3265 Scott Blvd.

The above-listed facilities at the addresses shown are included on regulatory agency databases that reflect use and storage of chemicals, as well as off-site disposal of hazardous wastes. It should be noted that none of the above-listed addresses or facilities, with the exception of 3236 Scott Boulevard (the IDT Site; see Section 8.3.1), are reported by EDR as chemical release sites.

2.9.3 Off-Site, Upgradient Properties with Reported Chemical Releases

According to the EDR Report, the following sites are reported chemical release sites that are located in the proximity of (within one-quarter of a mile) and potentially upgradient (to the south-southwest) from the Subject Property with regard to reported shallow groundwater flow direction:

- Integrated Device Technology (IDT), 3236 Scott Boulevard
- Synertek, 3050 Coronado Drive

EKI reviewed potentially relevant information for the above-listed reported chemical release sites available on the State of California Water Resources Control Board ("CWRCB") on-line GeoTracker database system. A summary of these off-site reported release sites and potential for impact to the Subject Property are discussed below.

2.9.3.1 Integrated Device Technology (IDT), 3236 Scott Boulevard

The IDT site is located approximately 600 feet south of the Subject Property, across Scott Boulevard (see Figure 2). According to GeoTracker, a release from the IDT site was reported in 1993. There is no further information available on GeoTracker regarding the nature of the release or media affected, although groundwater is listed as a potential media affected. No technical reports are available for the IDT site on GeoTracker. The IDT site is listed as an "open, inactive" case (Case No. 43S0351) of April 2009, with the lead regulatory agency listed as the RWQCB. According to waste generated records reported by EDR, historical chemical use at the site included halogenated solvents.

2.9.3.2 Synertek, 3050 Coronado Drive

The Synertek site is located approximately 1,500 feet southwest of the Subject Property, although the Synertek plume extends to approximately 950 feet southwest of the Subject Property (see Figure 2). The Synertek site is a U.S. EPA National Priorities List ("NPL", e.g., Superfund), site currently being overseen by the RWQCB, acting as agent to the U.S. EPA. Information on the Synertek chemical release site, discussed below, was available from review of the following technical report, obtained from the GeoTracker website:

- *Groundwater Sampling and Monitoring, 2012 Summary Report, Synertek Building#1, 3050 Coronado Drive, Santa Clara, California,* prepared by CH2MHill, dated January 2013 (CH2MHill, 2003)

In 1985, one 200-gallon waste solvent tank and three acid-waste neutralization tanks were removed from the Synertek site. During the tank removals, it was noted that soil and groundwater has been impacted primarily by TCE that had been released from the tanks. Other chemicals detected in the subsurface included, 1,1-DCE, 1,1-DCA, 1,1,1-TCA, vinyl chloride, and Freon 113. Soil remedial actions were performed at the time of the tank removals. In 1987, Synertek installed and began operation of a groundwater extraction and treatment system to remediate the groundwater impacts. Synertek also installed a series of groundwater monitoring wells to monitor the lateral and vertical extents of the contaminant plume, several of which were installed on the Subject Property (discussed further below).

In 1999, the groundwater extraction and treatment system was shut-down with approval of the RWQCB, and monitored natural attenuation ("MNA") of the contaminant plume was approved. The monitoring wells have been sampled on roughly a semi-annual basis since shut-down of the groundwater treatment system. In 2005, CH2MHill reported to the RWQCB that the groundwater plume has stabilized that that MNA was being effective. Synertek is currently petitioning the RWQCB for a reduction in sampling frequency of the wells from semi-annual to annual monitoring and is requesting that a number of monitoring wells in the well network be abandoned.

According to the CH2MHill (2013) report, four (4) groundwater monitoring wells are located on a portion of the Park Square office park, west of the Subject Property. These wells, which monitor the shallow A-zone aquifer, are labeled as follows: MW-28A, MW-29A, MW-33A, and MW-34A. The approximate locations of these Subject Property wells

are shown on Figures 2 and 4. According to the CH2MHill (2013) report, with the exception of well MW-28A, the wells were sampled most recently in May and October 2012. According to the results, TCE was detected in MW-29A (see Figure 2) at a concentration of 1.9 ug/L, and in well MW-33A at a concentration of 0.4 ug/L. These reported concentrations of TCE are below the current RWQCB ESL based on drinking water standards for TCE of 5 ug/L. 1,1-DCA and 1,1-DCE were reported in groundwater at concentrations up to 5.9 ug/L and 9.8 ug/L, respectively. These reported concentrations exceed their respective RWQCB ESLs (drinking water standards), however, they are well below their respective RWQCB ESLs for potential vapor intrusion concerns for both residential and commercial uses (Table E-1; RWQCB, 2013). TCE, 1,1-DCA, and 1,1-DCE were generally not-detected or only detected at very low concentrations in on-site downgradient wells MW-33A and MW-34A during sampling performed in October 2012.

Figure 3-1 of the CH2MHill report showing the well locations to the west of the Subject Property, and the data tables for the wells located west of the Subject Property are included in Appendix D of this Phase I ESA report.

2.9.4 Review of Available Regulatory Agency Files for Subject Property

EKI submitted requests to the following environmental regulatory and public agencies to review available files regarding the Subject Property:

- California EPA Department of Toxic Substances Control ("DTSC")
- RWQCB
- Santa Clara Valley Water District ("SCVWD")
- City of Santa Clara Fire Department, Hazardous Materials Division
- City of Santa Clara Building Department
- BAAQMD
- Online database searches (RWQCB, DTSC, and Santa Clara County Department of Environmental Health ("SCCDEH"))

No files were received from for the Subject Property from DTSC, RWQCB, or the online databases.[1] The SCVWD, City of Santa Clara Fire Department Hazardous Materials Division, City of Santa Clara Building Department, and BAAQMD provided files to EKI. Copies of the files are included in Appendix A of this report. Brief summaries of the available file information reviewed by EKI are presented below.

2.9.4.1 Review of SCVWD Files

SCVWD provided well records for seven groundwater wells on the Subject Property. Well completion reports were provided for the four Synertek groundwater monitoring wells located on the Subject Property (see Section 8.3.2) as well as for the two groundwater

[1] EKI searched the CWRCB GeoTracker database website, which includes the DTSC EnviroStor database, for reported chemical release sites located in the vicinity of the Subject Property. The Subject Property was not listed in either online database as a chemical release site. EKI also searched for the Subject Property on the SCCDEH website (referred to as the LOP Public Record Document Search); no listings for the Subject Property were noted.

monitoring wells, which were installed by USE in 1988 (see Section 2.6.2). According to the records, the USE wells were installed in July 1988 on behalf of Peery & Arillaga, and were screened from 10 to 30 feet bgs.

2.9.4.2 Review of City of Santa Clara Fire Department, Hazardous Materials Division Files

EKI received files from the City of Santa Clara Fire Department, Hazardous Materials Division for 3333 Octavius Drive. The files included records for four businesses (i.e., CIBA-GEIGY Corporation, Burns Research Corp., Micropoint Biosciences Inc., and Kilopass Technology Inc.).

EKI reviewed records for CIBA-GEIGY Corporation, a microelectronics research company, from 1987, 1988, 1990, and 1991. According to the hazardous materials inventory, CIBA-GEIGY stored and used chemicals such as dichlorosilane, silane ester, chromic acid, trichlorofluoromethane, toluene, xylenes, cyclopentanone, gamma-butyrolactone, ammonia, and others.

The file also included records for Burns Research Corp., a research and development company, from 1987 and 1988. According to the hazardous materials inventory, Burns Research used and stored chemicals including acetone, chlorine, cyclohexanone, hexamethyldisilazane, methyl ethyl ketone, tetrafluoromethane, trichlorofluoromethane, gama-butyrolactone, tetrahydrofuran, xylene, arsenic pentafluoride, dichlorosilane, and others. According to a letter in the file, Burns Research Corp. vacated the facility sometime prior to June 1990.

Fire inspection forms for Micropoint Biosciences Inc. and Kilopass Technology Inc. from 2012 were reviewed and did not indicate the storage or use of hazardous chemicals other than cryogens (e.g., cryogenic liquids such as liquid nitrogen).

2.9.4.3 Review of City of Santa Clara Building Department

City of Santa Clara Building Department records were available for both Subject Property addresses. Permits were issued to CBRE and a variety of construction/contracting companies. Records indicate that the buildings were built 1977 as industrial buildings. The files included a building permit for 3333 Octavius Drive from 1991 that referenced a business closure with hazardous materials closure plan review (no plans available for review by EKI).

Based on these records, it is likely that hazardous chemicals were historically used at the 3333 Octavius Drive building.

2.9.4.4 Review of BAAQMD Files

BAAQMD provided information for the 3333 Octavius Drive building. According to the records received from BAAQMD, CIBA-GEIGY Corporation (3333A Octavius Drive) applied for a permit associated with a fume scrubber in 1985 (permit was waived in 1986) and held a permit associated with a polyimide coating process, which was granted in 1988.

According to available BAAQMD records, this facility ceased operation and was dismantled in August 1991.

3 PHASE II SUBSURFACE INVESTIGATION

The purpose of the investigation was to identify potential significant environmental impacts to the subsurface associated with (1) past uses of the Subject Property, (2) groundwater migrating onsite from upgradient properties, and (3) base rock brought onsite during its initial development in the 1970s. To evaluate these potential impacts, and in accordance with EKI's scope of work, the following Phase II subsurface investigations were conducted at the Subject Property:

1) Soil gas sampling to assess potential vapor mitigation needs for future development,

2) Collection and analysis of shallow grab groundwater samples to assess potential migration of chemicals onto or originating from the Subject Property,

3) Shallow soil sampling to assess the potential presence of residual agricultural chemicals in soil, and

4) Evaluation of base rock for presence of serpentine rock, which could impact soil management costs during redevelopment.

Each of these investigations and their results are discussed below.

In preparation for these subsurface investigations, EKI contracted with Subdynamic Locating Services ("SLS"), a private underground utility locating service, to investigate for buried utilities at the proposed sampling locations. EKI also notified Underground Services Alert ("USA") at least 48 hours prior to drilling. No drilling permits were required from the SCVWD given that the planned maximum depth of drilling was not expected to exceed 45 feet bgs and the soil vapor probes were considered temporary by SCVWD.

3.1 Soil Gas Assessment

3.1.1 Soil Gas Sampling Approach and Rationale

The Subject Property buildings were used by various industrial, research & development, and testing laboratory tenants in the 1970s and 1980s. Past tenants are identified in a regulatory database report (EDR report) and City of Santa Clara Fire Department records as having used, stored, and/or generated hazardous materials and wastes, and information on the exact locations of such tenants is limited. There are no reported releases of hazardous materials on the Subject Property; however, given the past uses of these buildings, there is a potential for chemicals to be present in the subsurface due to unknown or unreported releases of chemicals to the subsurface. The presence of VOCs in the subsurface, if any, caused by a potential past release of such chemicals could result in potential vapor intrusion concerns for building occupants. In addition, potential migration of VOCs from upgradient offsite sources could result in vapor intrusion concerns.

In order to screen for potential vapor intrusion issues for the proposed development, EKI installed and collected soil gas samples from two soil vapor probe ("SVP") locations (Figure 3). SVPs were located with the intent of providing general coverage in areas of the Subject Property where groundwater data are not available. Soil gas samples collected from these probes were analyzed for VOCs.

3.1.2 Soil Gas Sampling Methods

EKI retained Gregg Drilling and Testing, Inc. ("Gregg"), a California-licensed drilling subcontractor, to install two temporary SVPs at the Subject Property on 8 June 2013 (Figure 3). Each borehole was hand-augered by Gregg to 5.5 feet bgs using decontaminated hand augers. Base rock and shallow soil samples were collected from each SVP borehole as described further below in Sections 3.3 and 3.4.

Each borehole was logged using the Unified Soil Classification System by a Professional Geologist licensed by the State of California. While logging, soil was also screened in the field for the presence of VOCs using an organic vapor monitor ("OVM") that was calibrated each day. Total VOC screening concentrations detected by the OVM were noted on the borehole logs. As shown on the borehole logs, elevated OVM readings were not encountered at any of the SVPs. Borehole logs are included in Appendix G.

The SVPs were constructed and sampled in general accordance with the California Environmental Protection Agency's ("Cal-EPA's") guidance, entitled *Advisory – Active Soil Gas Investigations*, dated April 2012. Each SVP consisted of a 6-inch long, ½-inch diameter stainless-steel wire mesh screen attached to approximately 6 feet of continuous ¼-inch diameter tetrafluroethylene ("TFE") tubing, fitted at the top with a stainless-steel laboratory-grade ball valve with Swagelok-type compression fittings. Each SVP was emplaced using an approximately 1-inch diameter threaded flush-joint PVC emplacement "guide" pipe, to keep the screen and tubing centered in the borehole at the proper depth.

The center of each SVP screen was set at 5 feet bgs and a 1.5-foot vertical filter pack consisting of prewashed silica sand was placed around the SVP screen. Above the sand pack, each SVP was sealed with a half-foot layer of dry granular bentonite, per Cal-EPA guidance. Above the dry bentonite, each borehole was backfilled to approximately one foot below existing grade with hydrated bentonite. The SVP located in an active traffic area (PSSV-6) was completed at the surface with a traffic-rated steel vault set flush with existing grade and finished with neat cement grout to protect the sampling valve.

In accordance with Cal-EPA guidance, soil vapor samples were collected on 12 June 2013, which was more than 48 hours after installation of the SVPs, in order to allow subsurface conditions to re-equilibrate from drilling and SVP construction.

Sampling was conducted by attaching a dedicated laboratory-supplied evacuated stainless-steel "Summa" canister and valved sampling manifold to the down-hole tubing of each SVP. Each laboratory-supplied manifold included an inlet flow controller designed for a sample collection at a rate of 100 to 200 milliliters per minute, in accordance with Cal-EPA

guidance. Laboratory-supplied Summa canisters and manifolds were not re-used during the sampling.

Immediately before sampling, each SVP was purged of 100 mL (at least 10 tubing volumes) using a manual syringe and valve. The Summa canister was then attached to the SVP tubing via the manifold, and a static vacuum check was conducted to insure that the Summa canister, manifold, and connections held a vacuum. Once the system appeared to hold vacuum, indicating that there were no gross leaks in the system, a plastic bag ("shroud") was placed around the Summa canister, manifold, and the top of the SVP to allow a controlled atmosphere containing the leak-detection compound, 1,1,1,2-tetrafluoroethane ("TeFA"), to be maintained around the system during sample collection.

The air inside the shroud was spiked with TeFA and soil vapor sampling was initiated by opening the Summa canister valve. Each Summa canister was allowed to fill with soil gas until the vacuum gauge read approximately 5 inches of mercury (Hg) or less and then the valve was closed.

This soil gas sampling event was performed concurrently with sampling at the surrounding Park Square office park. At two SVP locations on adjacent properties (PSSV-5 and PSSV-12), the air inside the shroud was sampled with an additional Summa canister to determine the concentration of leak-detection compound around the sampling apparatus. These "leak-check" samples are assumed to represent TeFA concentrations in the air inside the shrouds of all SVPs sampled during this event.

Once sample collection was complete, each Summa canister was labeled with a unique sample identification number, sampling start and finish time, final vacuum reading, and the date of when the sample was collected. Each of the soil gas samples were submitted under chain-of-custody procedures to K-Prime Analytical, Inc. ("K-Prime") of Santa Rosa, California for VOC and TeFA analysis using EPA Method TO-15. The leak check shroud samples were analyzed for TeFA using EPA Method TO-3 to quantitatively assess any potential representative leak check compound concentrations in the shrouds.

On 5 July 2013, Gregg returned to the Subject Property to destroy the SVPs in accordance with SCVWD and California Department of Water Resources requirements. The well boxes, if present, were removed and all SVP materials, including tubing, screens, bentonite, and sand were augered out using a hand auger. After SVP removal, the boreholes were grouted to ground surface with neat cement.

3.1.3 Soil Gas Results

The analytical results for the soil gas samples are presented in Table 1 and sampling locations and results are shown on Figure 3. Laboratory data sheets are included in Appendix H.

As Table 1 shows, no VOCs were detected in either sample above analytical laboratory reporting limits. The leak detection compound, TeFA, was not reported above laboratory reporting limits in either soil gas samples collected at the Subject Property. Based on these results, no vapor intrusion risk was identified in the areas sampled.

3.2 Grab Groundwater Assessment

3.2.1 Grab Groundwater Sampling Approach and Rationale

One known chemical release site is present generally upgradient of the Subject Property, the IDT site at 3236 Scott Boulevard, which is reported on the SWRCB Geotracker website as a reported "open-inactive" chemical release site (see Section 2.9.3.1 above). In addition, there the Synertek NPL site, also a known release site (see Section 2.9.3.2 above), is located presumably crossgradient to the Subject Property. Given the reported direction of shallow groundwater flow (to the northeast), there is a potential for VOCs to exist in shallow groundwater on the Subject Property. Limited groundwater sampling has previously been conducted on the Subject Property (Section 2.8 above). Based on available information, tenants have historically used chemicals on the Subject Property. While there is no report of any onsite release, if significant concentrations of VOCs in shallow groundwater were present on the Subject Property, such chemicals could pose a vapor intrusion risk. Also, if dewatering were to be required as part of construction of the potential future development, VOCs in groundwater could affect discharge requirements for the extracted groundwater.

In order to screen for the presence of chemicals in shallow groundwater on the Subject Property, EKI collected grab samples of shallow groundwater from one location along the northern (downgradient) property boundary, downgradient of buildings with historical chemical use (Figure 4). This sample was analyzed for VOCs and dissolved metals. Sampling methods and results for these groundwater samples are discussed below.

EKI's scope of work included the collection groundwater samples from monitoring wells that were previously installed at the Subject Property (i.e., wells MW-1 and MW-2). Upon inspection of the Subject Property, EKI found that both of the wells had been destroyed. Therefore, groundwater samples were not collected from the wells.

3.2.2 Groundwater Sampling Methods

EKI retained Gregg to drill one borehole on the northern edge of the Subject Property for grab groundwater sampling (see Figure 4). The borehole was drilled to 20 feet bgs using a truck-mounted direct-push drilling rig. Prior to drilling, the borehole was hand-augured to five feet bgs to confirm no buried utilities would be encountered during drilling.

The borehole was logged using the Unified Soil Classification System by a Professional Geologist licensed by the State of California. While logging, soil was also screened in the field for the presence of VOCs using an OVM that was calibrated each day. Total VOC screening concentrations detected by the OVM were noted on the borehole log. As shown on the borehole logs, elevated OVM readings were not encountered (Appendix G).

A grab groundwater sample was collected from the borehole. The sample is described as a "grab" groundwater sample because it was collected from a temporary, open borehole and not from a completed monitoring well, which generally provides lower turbidity water samples and more repeatable results. Grab groundwater samples are commonly obtained for screening level assessments of groundwater quality as part of Phase II site investigations, such as EKI's investigation described herein. As such, grab groundwater sampling results are typically interpreted as an indication of occurrences of chemicals of concern, if found above screening criteria at the sampled locations, and the need for further investigations, if necessary, is then evaluated.

The borehole was advanced to approximately 3 feet below first-encountered groundwater. Upon reaching the total depth, a temporary PVC well screen was placed into the hole and the drilling rods were retracted. The temporary well screen consisted of a new, unused ¾-inch diameter slotted PVC casing.

The grab groundwater sample was collected using a peristaltic pump with new, unused polyethylene tubing placed down the hole and new, unused, flexible tubing installed in the pump. Prior to sample collection, approximately 0.25 liters of groundwater were purged. The grab groundwater sample was collected from the outflow of the pump directly into laboratory-supplied sampling container specific to the analysis requested from the laboratory. The sample for dissolved metals analysis was filtered in the field using a 0.45-micron filter attached to the outflow of the pump.

Before and after each use, all down-hole drilling and sampling equipment was either steam-cleaned or washed with a non-phosphate containing soap (i.e., Liquinox) and rinsed twice with potable water.

A sample label was attached to the groundwater sample container. The label included a unique sample identification number, the time, and the date of when the sample was collected. The samples were then placed in a cooler for temporary storage and transport by courier to Curtis & Tompkins Analytical Laboratories ("Curtis & Tompkins") of Berkeley, California for chemical analysis. Chain-of-custody records are included with the laboratory analytical reports in Appendix H of this report.

The groundwater sample was analyzed for the following constituents:

- VOCs by EPA Method 8260; and
- Title 22 metals by EPA Method 6020 (dissolved).

All soil boreholes advanced on the Subject Property were backfilled with neat cement grout to the total depth of the boreholes, in accordance with SCVWD requirements. All soil cuttings were placed in 55-gallon metal drums, which were labeled, sealed, and left on the Subject Property at a location designated by the tenant for temporary storage and off-site disposal in accordance with applicable state and federal laws.

EKI's scope of work included the collection groundwater samples from monitoring wells that were previously installed at the Subject Property (i.e., wells MW-1 and MW-2). Upon inspection of the Subject Property, the wells were found to have been destroyed. Therefore, groundwater samples were not collected from the wells.

3.2.3 Groundwater Results

The subsurface geology encountered during the drilling and grab groundwater sampling included a sequence of clays, silts, and silty or clayey sand layers in the upper 15 feet. Groundwater was first encountered in sand layers located at approximately 17 feet bgs. The static water level measured during grab groundwater sampling was approximately 11.6 feet bgs.

The analytical results for the grab groundwater sampling are summarized in Table 2. No VOCs were detected at concentrations above analytical laboratory reporting limits in the sample, which indicates that no vapor intrusion risk resulting from groundwater is present in this area.

Selenium was detected in the groundwater sample at a concentration of 19 ug/L, which is above the ESL for groundwater based on protection of aquatic habitat of 5 ug/L, but less than the drinking water standard for selenium of 50 ug/L. This concentration is generally consistent with background concentrations of selenium in groundwater in the area.

3.3 Shallow Soil Assessment

3.3.1 Shallow Soil Sampling Approach and Rationale

Prior to its development in the 1970s, the Subject Property was used as orchards. Given the timeframe of agricultural use, there is the potential for pesticide residues to be present in shallow soil on the Subject Property. The presence of residual pesticides in soils on the Subject Property could require special management associated with planned future earthwork as part of redevelopment and/or result in the need for long-term on-site management of soils.

In order to evaluate the presence of agricultural chemicals in shallow soil on the Subject Property, EKI collected shallow soil samples from two locations on the Subject Property, from locations coincident with soil gas sampling locations (Figure 5). These shallow soil samples were composited and analyzed as a two-point composite sample for arsenic, lead, and organochlorine pesticides.

3.3.2 Shallow Soil Sampling Methods

Shallow soil samples were collected from two locations (Figure 5). EKI personnel collected a sample of the first-encountered soil (approximately 0- to 6-inches below base rock), a sample of soil from approximately 1 to 1.5 feet below base rock, and a third sample from approximately 1.5 to 2 feet below the first-encountered soil to evaluate the vertical extent of impact, if any. Two soil samples from each depth were collected and

submitted to the analytical laboratory. The samples from the middle depth at each location were submitted to the laboratory on hold, pending the analysis of the top and bottom depths.

The soil samples were placed in pre-cleaned glass jars provided by the analytical laboratory. Jars were labeled with a unique identification number and placed in a chilled cooler for transport to Curtis & Tompkins under chain-of-custody procedures.

The shallow soil samples from a given depth range were composited by Curtis & Tompkins into one 2-point composite sample for each depth range. The soil sample locations and composite grouping are shown on Figure 5. Thus, one composite shallow soil sample and one composite deeper soil sample were initially submitted for analysis, and a total of two composite samples were analyzed for the following constituents:

- Organochlorine pesticides by EPA Method 8081;
- Arsenic and lead by EPA Method 6020; and
- Moisture content to allow for comparison to risk-based screening criteria.

Prior to analysis of the soil samples, Curtis & Tompkins used a multi-increment sampling preparation that includes the homogenization of the composite sample and analysis of 10 grams of the material, rather than the standard 1 gram of material. This extra preparation step is intended to obtain a more representative characterization of the arsenic, lead, and pesticide concentrations in soil samples.

3.3.3 Shallow Soil Results

Shallow soils at the Subject Property consisted of dark brown silty clay, clayey silt, and silt. The analytical results for shallow soil samples are summarized in Table 3. Figure 5 shows shallow soil sampling locations, and concentrations of detected pesticides, arsenic, lead, dieldrin, and DDT and its breakdown products.

Arsenic was detected in both shallow soil samples at concentrations exceeding the ESLs and CHHSLs for both residential and commercial/industrial land use. Because these risk-based screening levels are well below naturally-occurring concentrations of arsenic in soil and regulatory agencies do not require remediation of arsenic below background concentrations, the screening criteria for arsenic is the background concentration. Based on a study of background metals concentration for northern Santa Clara County, a typical upper-bound background arsenic concentration in this area is 20 milligrams per kilogram ("mg/kg") (Scott, 1995). Arsenic was detected above 20 mg/kg in both soil samples (one collected from the first encountered soil below baserock and one collected from approximately 1.5 to 2.0 feet below baserock.

Lead concentrations in both samples exceeded the ESL and CHHSL for residential land use of 80 mg/kg, but were below the ESL and CHHSL for commercial/ industrial land use of 320 mg/kg. Lead was detected in both samples above 50 mg/kg, or ten times the Soluble Threshold Limit Concentration ("STLC"). If this soil were excavated and planned for disposal, the samples would be subjected to the Waste Extraction Test ("WET") with

analysis for lead. If the soluble lead concentration exceeds the STLC value (5 milligrams per liter "mg/L"), the soil would be considered a non-RCRA hazardous waste on the basis of its soluble lead content.[2]

Organochlorine pesticides, specifically 4,4'-dichlorodiphenyldichloroethylene ("DDE") and dieldrin, were detected in selected samples at concentrations above their respective risk-based CHHSLs and/or ESLs for residential land use. DDE was detected in the sample collected just below the baserock at 2.5 mg/kg, above its ESL and CHHSL for residential land use of 1.7 mg/kg and 1.6 mg/kg, respectively, but below its ESL and CHHSL for commercial/industrial land use of 4.0 mg/kg and 6.3 mg/kg, respectively. Dieldrin was detected in both samples at above its ESL for commercial/industrial land use of 0.0023 mg/kg and its CHHSL for commercial/industrial land use of 0.13 mg/kg. Both samples contained organochlorine pesticides at concentrations greater than the California hazardous waste disposal criteria (i.e., the Total Threshold Limit Concentration ("TTLC")) of 1 mg/kg (total DDT, DDD, and DDE), which would classify the soil as non-RCRA hazardous waste if excavated and disposed of off-site.

3.3.4 Laboratory QA/QC Discussion

Laboratory quality assurance/ quality control ("QA/QC") parameters for arsenic and lead were reviewed and the data were determined to be of sufficient quality to support project decision making. The organochlorine pesticide results received from Curtis & Tompkins, however, included a number of laboratory flags indicating potential quality issues associated with the analyses. The soil sampling and analysis program at the Subject Property was performed coincident with a similar sampling and analysis program on a nearby property, and both sets of analytical data included similar laboratory flagging. As a result, EKI reviewed the QA/QC procedures and results for these sets of analyses by (1) discussing the results with Curtis & Tompkins, (2) reviewing a "level 3" package of data quality parameters provided by the laboratory, and (3) submitted a subset of four samples to a second analytical laboratory (K Prime, Inc. of Santa Rosa, California) for verification. Following this review of QA/QC procedures, EKI concludes that the pesticide analyses reported herein are of sufficient quality to support project decision making. Details of the QA/QC assessment are provided below.

Although organochlorine pesticide analysis by US EPA Method 8081A is considered a "routine" soil test, there are complications in the analysis that can affect data quality. Interferences occur that must be removed (or corrected for) prior to actually identifying and quantifying the different pesticide species present. For example, Curtis & Tompkins needed to treat all the soil sample extracts of site samples using two sequential "cleanup" methods, one for sulfur and one for organic compounds. The actual pesticide analysis of the extracts is then done simultaneously using two independent and differently configured gas chromatography columns. Two sets of results are produced, which the laboratory then

[2] Samples with lead concentrations exceeding 100 mg/kg would also be subjected to the Toxicity Characteristic Leaching Procedure ("TCLP"), and if the resultant lead concentration exceeded the TCLP value, excavated soil would be classified as a RCRA hazardous waste. However, based on professional experience, lead concentrations in the ranges detected on the Subject Property are not likely to exceed the RCRA regulatory level.

evaluates according to set protocols; together, these results and protocols determine is the result that is finally reported. When the two results differ by more than 40%, the laboratory is required to "flag" the reported data so that the data user is aware of the differences between the two tests. In addition, the laboratory is required to flag other kinds of irregularities that occurred during the analysis of the samples, such as small deviations in the concentrations of standard calibration samples. The Curtis & Tompkins 8081A pesticide results reported for this project contained data flags for some portion of the analytes in every soil sample where organochlorine pesticides were detected.

To allay any concerns that these flags represented poor quality data, EKI selected a subset of four soil samples (collected from the afore mentioned nearby property) to be reanalyzed by a second laboratory (K Prime) using a variant of the method with mass spectrometry that eliminates interferences and other sample effects. The four samples selected for confirmation encompassed a range of pesticide species and concentrations. The agreement between the original sample results and the confirmation results was excellent in terms of pesticide species identified and concentrations measured. Based on the QA/QC review and secondary analysis, EKI concludes that the pesticide analyses performed by Curtis & Tompkins and reported herein are of sufficient quality to support project decision making.

3.4 Base Rock Assessment

Serpentine rock was commonly used historically as imported base rock on development sites in the South Bay, e.g., base rock used as structural fill beneath paved parking areas. Serpentine rock contains chromium and nickel at elevated concentrations, and can contain naturally-occurring asbestos. The California Air Resources Board ("CARB") has special handling and management requirements for grading operations if serpentine is present. Thus, serpentine rock can be more expensive than non-serpentine base rock to handle, manage, and dispose. It is likely existing base rock on the Subject Property would be disturbed to some extent during grading and redevelopment of the Subject Property. Assessment for the presence of serpentine rock, if any, on the Subject Property will allow Irvine to prepare for the handling and management of the base rock during construction.

In order to evaluate the presence of serpentine base rock at the Subject Property, base rock encountered at the soil gas and groundwater sampling locations was screened and evaluated in the field by a Professional Geologist experienced with Bay Area serpentine soils and rock. Based on the geologist's observations, base rock on the Subject Property was not consistent with serpentine and therefore no base rock samples were submitted for laboratory analysis.

3.5 Investigation-Derived Waste Disposal

All investigation-derived waste ("IDW") from the Subject Property investigation and investigations performed concurrently on adjacent properties was placed into 55-gallon drums and stored on the Park Square property. The subsurface investigations generated four (4) drums of soil cuttings. EKI personnel collected one representative composite IDW sample of the soil cuttings (sample PARKSQDRUM) and submitted the sample under chain-of-custody procedures to Curtis & Tompkins. The IDW sample was analyzed for the following constituents:

- VOCs by EPA Method 8260;
- TPHg by EPA Method 8015M;
- Diesel-range petroleum hydrocarbons ("TPHd") and motor oil-range petroleum hydrocarbons ("TPHmo") by EPA Method 8015M with silica-gel cleanup;
- Title 22 Metals by EPA Method 6020; and
- Organochlorine pesticides by EPA Method 8081.

EKI coordinated with Belshire Environmental Services, Inc. of Foothill Ranch, California ("Belshire") to complete the waste profile forms and to schedule a pick-up and off-site disposal of the drums. Belshire requested that a WET be performed and the leachate analyzed for chromium, since the detected total chromium concentration in the IDW sample was greater than 50 mg/kg. Curtis & Tompkins performed the WET and the chromium concentration in the leachate was reported as non-detected above a reporting limit of 0.25 mg/L. Based upon the analytical results, the drums were classified as a non-hazardous waste.

On 17 July 2013, Belshire removed the IDW soil drums and disposed them off-site as non-hazardous waste.

4 SUMMARY OF PHASE I ESA FINDINGS AND OPINIONS AND PHASE II SUBSURFACE INVESTIGATION

EKI's findings and opinions regarding conditions indicative of releases and threatened releases of hazardous substances on, at, in, or to the Subject Property, e.g., RECs are presented below.

4.1 Summary of Phase I ESA Findings and Opinions

The following REC was identified in connection with the performance of this Phase I ESA:

- Prior to development of the Subject Property in the mid to late 1970s, the Subject Property was in orchard use. The Phase II subsurface investigation performed in June 2013 indicates that agricultural chemicals, (i.e., arsenic, lead, and several organochlorine pesticides) are present in shallow soil on the Subject Property at concentrations above risk-based ESLs and CHHSLs for residential land use, and above risk-based RWQCB ESLs (RWQCB, 2013) and CHHSLs (Cal-EPA, 2010)) for commercial/industrial land use. The reported concentrations of these chemicals, however, are consistent with ordinary application of pesticides to orchards in Santa Clara County. DDT and its breakdown products are present on the Subject Property at concentrations that would result in soil being classified as a non-RCRA hazardous waste if excavated and disposed off-site. The reported concentrations of lead in soil samples could also potentially classify the soil as non-RCRA hazardous waste if excavated and disposed of off-site. Given that the majority of the Subject Property is currently capped with buildings and pavement, the potential for exposure to soil by typical site users is low under the current site condition.

The following potential on-site environmental issues and findings (i.e., non-RECs or de minimis conditions) were identified in connection with the Phase I ESA performed for the Subject Property:

- Information on past uses of the Subject Property buildings is limited. Historical information and available regulatory agency files reviewed by EKI indicates that the Subject Property buildings were used in the past, e.g., the 1970s and 1980s, by industrial, research & development, and/or testing laboratory tenants. Several of these past tenants are identified in a regulatory database report (EDR report) and City of Santa Clara Fire Department records (see Section 2.9.4) as having used, stored, and/or generated hazardous materials and wastes. Although there are no documented or reported releases of chemicals to the subsurface on the Subject Property, releases may have occurred in the past, either through spills to floor surfaces, or leaks from sanitary sewers lines. In order to screen for potential vapor intrusion issues on the Subject Property, EKI collected 2 soil gas samples from temporary SVPs in June 2013. No VOCs were detected in either sample above respective laboratory reporting limits. While the potential exists for chemicals used by past tenants to have been released to the subsurface on the Subject Property, soil vapor sampling results indicate that

significant vapor intrusion risk is not present on the Subject Property. Therefore, EKI does not consider this finding a REC for the Subject Property.

- In 1988, USE conducted an Environmental Assessment of the property located at 3333 Octavius Drive that included the construction and sampling of two groundwater monitoring wells, MW-1 and MW-2, to assess for potential impacts associated with chemical use at the building, although the wells were installed east, i.e., cross-gradient, of the building (see Figure 4). The groundwater samples were reported to contain 1,1-DCA and 1,1,1-TCA at concentrations ranging up to 4.7 ug/L and 2.5 ug/L, respectively, which are below their current respective RWQCB ESLs based on drinking water standards and vapor intrusion for commercial and residential land use. In June 2013, EKI collected a sample from the northern Subject Property boundary, downgradient of the Subject Property buildings. No VOCs were detected in this groundwater sample above laboratory reporting limits. The source of the VOCs detected in shallow groundwater in 1988 is not known. However, the area is located generally downgradient of the IIDT site at 3236 Scott Boulevard (see Figures 2 and 4). The IDT site is a reported "open-inactive" chemical release site. Groundwater is reported as being affected by a release at the IDT site; however, information on the nature of contamination (e.g., type of chemicals released), timing of the start of the release, extent of a contaminant plume in groundwater, if any, is not readily available. Given the upgradient position and the proximity of the IDT site to the Subject Property and presence of VOCs detected in groundwater at 3333 Octavius Drive in 1988, groundwater on the Subject Property may be impacted by VOCs migrating onto the Subject Property from the IDT release. It is EKI's opinion that this finding does not constitute a REC, given that the concentrations reported in groundwater in 1988 are below current regulatory screening levels, and no significant impacts to groundwater were detected in the downgradient sample collected in 2013.

- Pad-mounted electrical transformers are present in the parking lot and landscape areas on the Subject Property. It is not known whether these transformers contain PCBs or not and no staining was observed around the transformers, that would indicate a likely release to the environment. Thus, EKI does not believe the presence of these transformers constitutes a REC for the Subject Property. If these transformers contain PCB-fluid, they will need to be managed appropriately at the time of property redevelopment. No pole-mounted transformers were observed in the area of the Subject Property.

4.2 Identified Phase I ESA Data Gaps

According to the Final U.S. EPA AAI Rule, a "data gap" is lack of or inability to obtain information required by the AAI Rule that affects the ability of the environmental professional to identify conditions indicative of releases or threatened releases to the Subject Property despite good faith efforts made by the environmental professional.

Silicon Valley CA, LLC, the owner of the Subject Property at the time the Phase I ESA activities were performed, declined to complete an environmental site assessment

questionnaire; however they did provide EKI with a Phase I ESA for the Subject Property dated 2006. Given that the use of the Subject Property has not changed significantly since the preparation of the last Phase I ESA report in 2006, Silicon Valley CA, LLC does not likely have specialized knowledge of the Subject Property that would materially affect the findings of EKI's Phase I ESA. Therefore, no potentially significant data gaps were identified in the performance of this Phase I ESA.

5 LIMITATIONS AND EXCEPTIONS OF ASSESSMENT

5.1 Report Reliance

This report is for the sole benefit, use, and reliance of Catalina Investment Company, L.P. and The Irvine Company regarding the Subject Property. Unless specifically authorized in writing in an agreement acceptable to EKI in its sole discretion, reliance on this report by any other entity is not permitted or authorized. Reliance on the information contained in this report by any third party without authorization by EKI does not make such entity a third party beneficiary of EKI's work product. Any such unauthorized reliance on, modification of, or use of this report, including any of its information or conclusions, will be at such third party's sole risk. The "User" of this Phase I ESA report, as defined by ASTM E1527-05 and as accepted under the Final U.S. EPA AAI Rule, is Catalina Investment Company, L.P. and The Irvine Company.

5.2 Limitations and Exceptions of Assessment

The Phase I ESA is not an audit of current subject property operations for compliance with hazardous material usage laws or other regulations or operating permit requirements, including occupational health and safety issues regarding occupants of the subject property, wastewater discharge limitations such as National Pollutant Discharge Elimination System ("NPDES") permits, or hazardous waste facility operating permits such as may be required under Resource Conservation and Recovery Act ("RCRA") or State hazardous waste control laws or regulations.

The assessment by EKI did not include "non-scope considerations" as defined in ASTM Section 13.1.5, such as cultural or historic resources, ecological resources, endangered species, wetlands, drinking water quality, radon, or indoor air quality. This assessment included an evaluation of the Subject Property for the potential for vapor intrusion concerns; however, the evaluation was not intended to conform to ASTM E2600-08 *Standard Practice for Assessment of Vapor Intrusion into Structures on Property Involved in Real Estate Transactions*.

This ESA did not include an assessment of asbestos, lead paint, PCBs in building materials and equipment, and mold.

The conclusions and recommendations presented herein are our professional opinion and are not a warranty or guaranty as to the presence, absence, or extent of contamination at the Subject Property or of releases from or near the Subject Property. The facts presented herein are based on available information obtained by EKI and represent existing conditions at the Subject Property at the time the information was collected.

EKI's performance of the requirements prescribed by the Final EPA AAI Rule is limited to the processes outlined in the Proposal for Environmental Consulting Services, dated 14 March 2013.

6 REFERENCES

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TABLE 1
SUMMARY OF SOIL GAS SAMPLE ANALYTICAL RESULTS
3333 and 3393 Octavius Drive
Santa Clara, CA

Soil Gas Sample ID (a)	Sample Date	Analytical Results in ug/m^3 (b)(c)(d) VOCs	Leak Check Compound TeFA (ppmv)
PSSV-6	6/12/2013	ND	<10
PSSV-7	6/12/2013	ND	<10
PSSV-SHROUD-5	6/12/2013	ND	4310
PSSV-SHROUD-12	6/12/2013	ND	4440
Soil Gas Screening Criteria			
Cal-EPA CHHSL for Soil Gas (Residential)		**na**	**na**
Cal-EPA CHHSL for Soil Gas (Commercial/Industrial)		**na**	**na**
RWQCB ESL for Soil Gas (Residential)		**na**	**na**
RWQCB ESL for Soil Gas (Commercial/Industrial)		**na**	**na**

Abbreviations:
<3.19 - Compound not detected at or above indicated laboratory reporting limit

ESL - Environmental Screening Level
CHHSL - California Human Health Screening Level
na - not available
ND - not detected
ppmv - parts per million by volume
TeFA - 1,1,1,2-Tetrafluoroethane
ug/m^3 - micrograms per cubic meter
VOCs - volatile organic compounds

Notes:
(a) Soil gas sample were collected from probes screened at a depth of 5 to 5.5 feet.
(b) VOCs were analyzed using EPA Method TO-15 GC/MS. Samples were analyzed by K-Prime, Inc., Santa Rosa, CA.
(c) **Bold** value indicates detected concentration exceeds its respective screening criterion.
(d) Only detected VOCs are shown.

References:
Cal-EPA, 2010. *California Human Health Screening Levels ("CHHSLs"), Use of California Human Health Screening Levels (CHHSLs) in Evaluation of Contaminated Properties,* California EPA, Department of Toxic Substances Control, January 2005 (Updated September 2010).
RWQCB, 2013. *Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater, Interim Final,* California Regional Water Quality Control Board, Region 2, November 2007 (Updated December 2013).

TABLE 2
SUMMARY OF GRAB GROUNDWATER SAMPLE ANALYTICAL RESULTS
3333 and 3393 Octavius Drive
Santa Clara, CA

		Analytical Results (ug/L) (a,b)																	
			Dissolved Metals																
Sample ID	Sample Date	VOCs	Antimony	Arsenic	Barium	Beryllium	Cadmium	Chromium	Cobalt	Copper	Lead	Mercury	Molybdenum	Nickel	Selenium	Silver	Thallium	Vanadium	Zinc
PSGW-3W	6/8/2013	ND	<1.0	1.4	62	<4.3	<1.3	<1.0	<1.0	<1.0	<1.0	<0.2	3.7	<3.0	**19**	<1.0	<1.0	4.3	<16
Groundwater Screening Criteria																			
RWQCB ESLs for Groundwater (Potential Drinking Water Source) (c)		**na**	**6.0**	**10**	**1,000**	**0.53**	**0.25**	**50**	**3.0**	**3.1**	**2.5**	**0.025**	**78**	**8.2**	**5.0**	**0.19**	**2**	**19**	**81**
California Drinking Water MCLs (d)		**na**	**na**	**10**	**1,000**	**4**	**5**	**50**	**na**	**1,000 (e)**	**15 (e)**	**2**	**na**	**100**	**50**	**na**	**2**	**na**	**5,000 (f)**

Abbreviations:

<0.50 - Compound not detected at or above indicated laboratory reporting limit
ESL - Environmental Screening Level
MCL - Maximum Contaminant Level
na - not available
ND - not detected
RWQCB - Regional Water Quality Control Board, San Francisco Bay
ug/L - micrograms per liter
VOCs - Volatile Organic Compounds

Notes:

(a) The groundwater sample was analyzed by Curtis & Tompkins of Berkeley, California for the following: (1) VOCs using EPA Method 8260 and (2) dissolved Title 22 metals using EPA Methods 6020. Samples were filtered in the field prior to analysis for dissolved metals.
(b) Concentrations shown in **bold** exceed one or more screening criterion.
(c) RWQCB ESL - Table F-1a, Groundwater Screening Levels (Groundwater is a Current or Potential Source of Drinking Water) (RWQCB, 2013). Values include protection of aquatic life in addition to drinking water standards.
(d) California Department of Public Health MCLs from Title 22 California Code of Regulations Section 64444, Table 64444-A, 24 June 2010.
(e) Indicated value is an Action Level.
(f) Indicated value is a secondary MCL.

References:

RWQCB, 2013. *Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater. Interim Final.* RWQCB, November 2007 (updated December 2013).

TABLE 3
SUMMARY OF SHALLOW SOIL SAMPLE ANALYTICAL RESULTS
3333 and 3393 Octavius Drive
Santa Clara, CA

Sample ID	Sample Date	Sample Depth (ft bgs)	Sample Depth (ft bbr)	Sample Type	Analytical Results (a,, c)									
					Organochlorine Pesticides (mg/kg)								Metals (mg/kg)	
					4,4'-DDE	4,4'-DDD	4,4'-DDT	Sum of 4,4'-DDE, 4,4'-DDD, and 4,4'-DDT	Dieldrin	alpha-Chlordane	gamma-Chlordane	Other Pesticides	Arsenic	Lead
SV6SV7COMPA	6/8/2013	0.5-0.75	0-0.5	composite	**2.5**	0.75	0.24	*3.49*	**0.91**	0.068	<0.036	ND	**47**	***240***
SV6SV7COMPB	6/8/2013	1.5-2.75	1.5-2.0	composite	0.93	0.30	0.081	*1.31*	**0.23**	0.0098 J	0.0089 J	ND	**27**	***82***
Soil Screening Criteria														
Hazardous Waste Criteria (TTLC) (d)					**na**	**na**	**na**	**1**	**8**	**2.5**		**na**	**500**	**1,000**
Hazardous Waste Criteria (10X STLC) (e)					**na**	**na**	**na**	**1**	**8**	**2.5**		**na**	**50**	**50**
Hazardous Waste Criteria (20X RCRA Regulatory Level) (f)					**na**	**na**	**na**	**na**	**na**	**0.60**		**na**	**100**	**100**
RWQCB ESLs for Shallow Soils (<3 m bgs), Residential Land Use (GW is a DW resource) (g)					**1.7**	**2.4**	**1.7**	**na**	**0.0023**	**0.44**		**na**	**20 (j)**	**80**
Cal-EPA CHHSLs, Residential Land Use (h)					**1.6**	**2.3**	**1.6**	**na**	**0.035**	**0.43**		**na**	**20 (j)**	**80**
RWQCB ESLs for Shallow Soils (<3 m bgs), Commercial/ Industrial Land Use (GW is a DW resource) (i)					**4.0**	**10**	**4.0**	**na**	**0.0023**	**1.7**		**na**	**20 (j)**	**320**
Cal-EPA CHHSLs, Commercial/ Industrial Land Use (h)					**6.3**	**9.0**	**6.3**	**na**	**0.13**	**1.7**		**na**	**20 (j)**	**320**

Abbreviations:
-- - not analyzed
<0.50 - Compound not detected at or above indicated laboratory reporting limit
Cal-EPA - California Environmental Protection Agency
CHHSL - California Human Health Screening Level
4,4'-DDE - 4,4'-Dichlorodiphenyldichloroethylene
4,4'-DDD - 4,4'-Dichlorodiphenyldichloroethane
4,4'-DDT - 4,4'-Dichlorodiphenyltrichloroethane
ESL - Environmental Screening Level
ft bbr - feet below baserock
ft bgs - feet below ground surface
GW - groundwater
J - Estimated Value
mg/kg - milligrams per kilogram
na - not available
ND - not detected
RCRA - Resource Conservation and Recovery Act
RWQCB - Regional Water Quality Control Board, San Francisco Bay
STLC - Soluble Threshold Limit Concentration
TCLP - Toxicity Characteristic Leaching Procedure
TTLC - Total Threshold Limit Concentration
WET - Waste Extraction Test

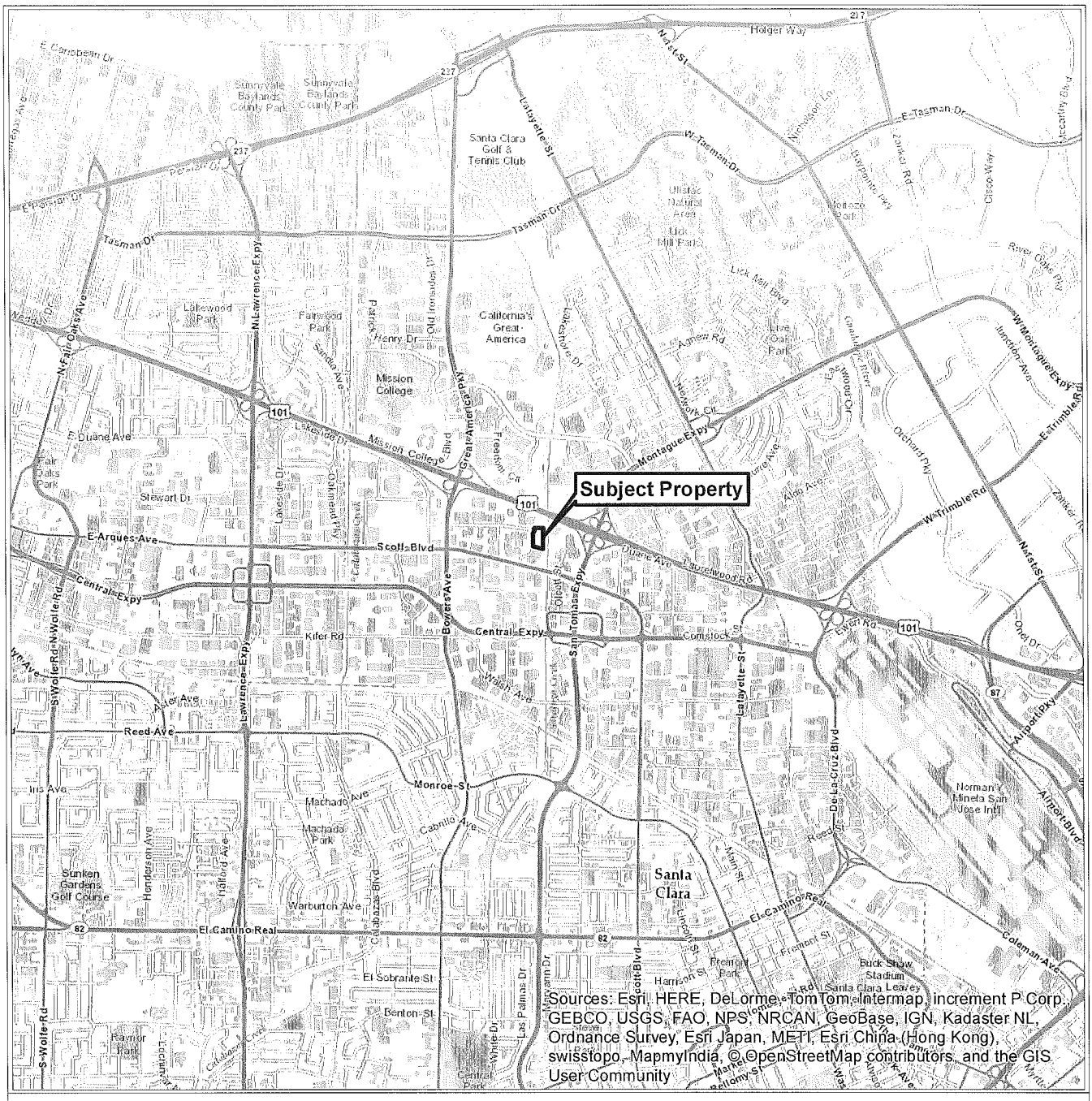
TABLE 3
SUMMARY OF SHALLOW SOIL SAMPLE ANALYTICAL RESULTS
3333 and 3393 Octavius Drive
Santa Clara, CA

Notes:

(a) Samples were analyzed by Curtis & Tompkins of Berkeley, California, (1) Organochlorine pesticides by EPA Method 8081 and (2) arsenic and lead by EPA Method 6020.
(b) Concentrations shown in bold exceed environmental screening levels (ESLs or CHHSLs) for shallow soils. Concentrations shown in italics exceed one or more hazardous waste screening criteria.
(c) Results are shown on a dry weight basis.
(d) Total Threshold Limit Concentration (TTLC) values (California Code of Regulations (CCR), Title 22, Article 3, Table II).
(e) Ten times (10x) the STLC values. If a compound is present at concentrations that exceed ten times the STLC, the compound may exceed the STLC if the sample is subjected to the WET.
(f) Twenty times (20x) the RCRA regulatory level values. If a compound is present at concentrations that exceed twenty times the RCRA regulatory level, the concentration of a compound may exceed RCRA hazardous waste criteria if the sample is subjected to the TCLP.
(g) RWQCB ESL - Table A-1 Shallow Soil Screening Levels (<3m bgs), Residential Land Use, (groundwater is a current or potential drinking water resource) (RWQCB, 2013).
(h) Cal-EPA CHHSL - Table 1. California Human Health Screening Levels for Soil and Comparison to Other Potential Environmental Concerns (Cal-EPA, 2010).
(i) RWQCB ESL - Table A-2 Shallow Soil Screening Levels (<3m bgs), Commercial/Industrial Land Use, (groundwater is a current or potential drinking water resource) (RWQCB, 2013).
(j) The environmental screening levels (ESLs or CHHSLs) for arsenic are less than the typical background concentration in soil. The value shown is from Scott (1995) and represents an upper-bound background concentration for arsenic for northern Santa Clara County.

References:

Cal-EPA, 2010. *California Human Health Screening Levels ("CHHSLs"), Use of California Human Health Screening Levels (CHHSLs) in Evaluation of Contaminated Properties,* California EPA, Department of Toxic Substances Control (Updated September 2010).
RWQCB, 2013. *Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater, Interim Final,* RWQCB, November 2007 (updated December 2013).
Scott, C.M. 1995. Background Metal Concentrations in Soils in Northern Santa Clara County, California in: Recent Geological Studies in the San Francisco Bay Area, Pacific Section of the Society of Economic Paleontologists and Mineralogists, Volume 76.



Note

1. All locations are approximate.

Source

Basemap source: http://services.arcgisonline.com/ArcGIS/rest/services/Reference/World_Transportation/MapServer

Erler & Kalinowski, Inc.

Subject Property Location

N

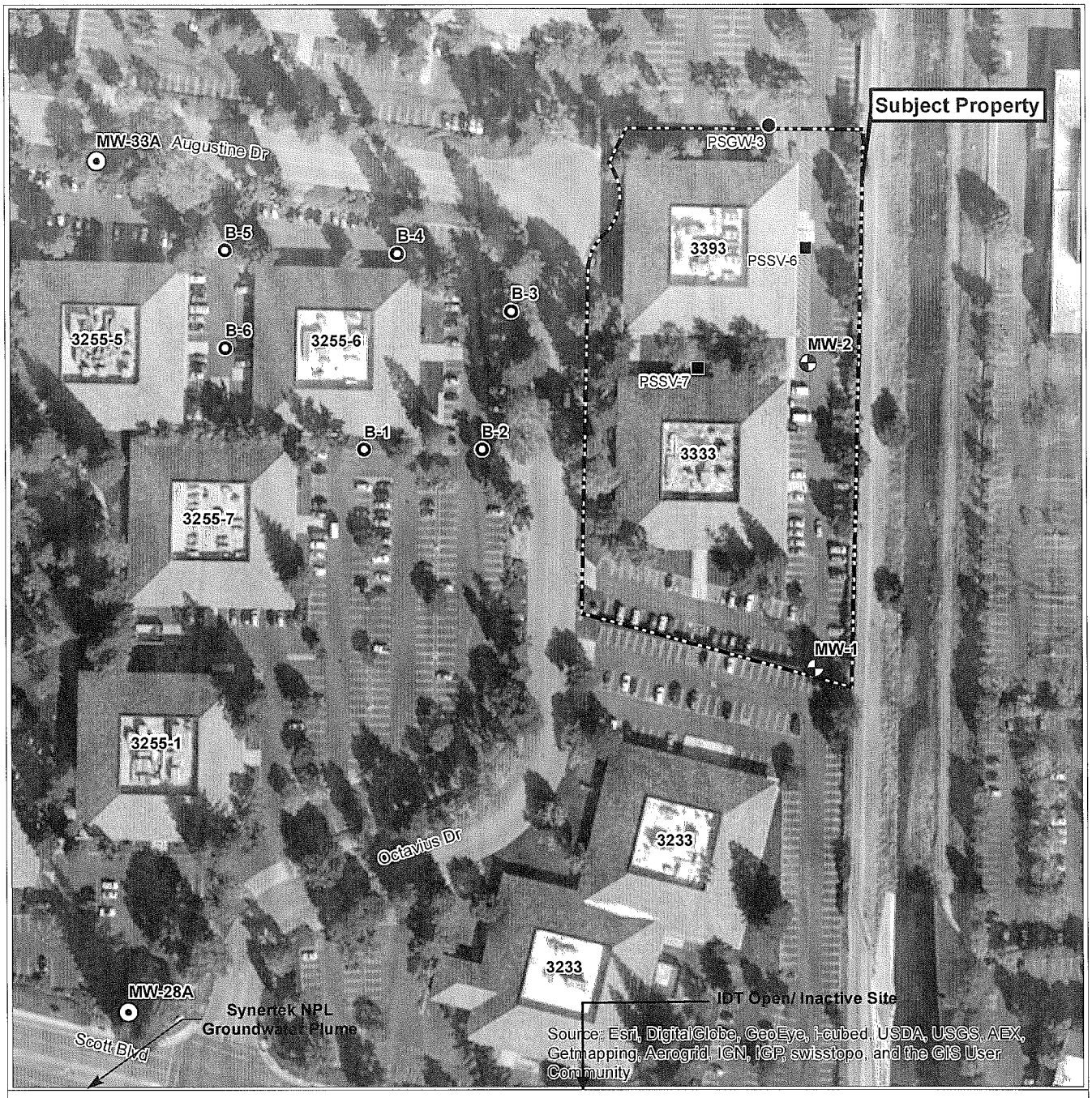
0 4,000 8,000

(Approximate Scale in Feet)

3333 and 3393 Octavius Drive
Santa Clara, CA
August 2014
EKI B30013.00

Figure 1

X:\Site Location Map\Figure - Site Location.mxd



Legend

- Grab Groundwater and Shallow Soil Sampling Location (EKI, 2013)
- Soil Gas and Shallow Soil Sampling Location (EKI, 2013)
- Shallow Soil Sampling Location (EKI, 2013)
- Synertek Monitoring Well
- Grab Groundwater Sample (Geomatrix, 1997)
- Abandonded Groundwater Monitoring Well (United Soil Engineering, 1988)

Note

1. All locations are approximate.

Source

Basemap source: http://services.arcgisonline.com/ArcGIS/rest/services/Reference/World_Transportation/MapServer

N

0 150 300

(Approximate Scale in Feet)

Erler & Kalinowski, Inc.

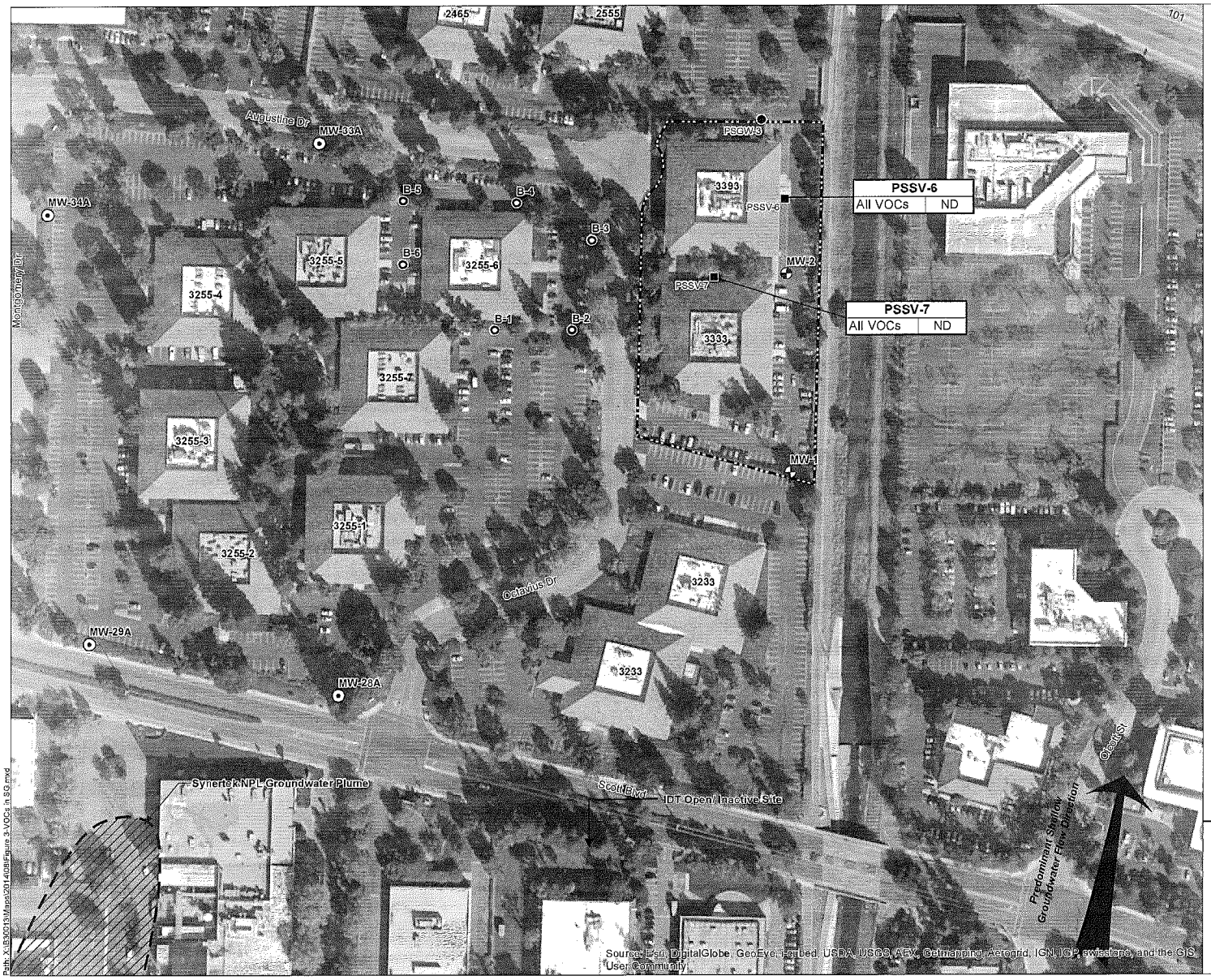
Sampling Locations

3333 and 3393 Octavius Drive

Santa Clara, CA
August 2014
EKI B30013.00

Figure 2

X:\Site Location Map\Figure __ - Site Location.mxd



PSSV-6	
All VOCs	ND

PSSV-7	
All VOCs	ND

N

0 150 300

(Approximate Scale in Feet)

Legend

- Subject Property Boundary
- Grab Groundwater and Shallow Soil Sampling Location (EKI, 2013)
- Soil Gas and Shallow Soil Sampling Location (EKI, 2013)
- Shallow Soil Sampling Location (EKI, 2013)
- Synertek Monitoring Well
- Grab Groundwater Sample (Geomatrix, 1997)
- Abandonded Groundwater Monitoring Well (United Soil Engineering, 1988)

Abbreviations

ND = Not Detected
NPL = National Priorities List
VOC = Volatile Organic Compound

Notes

1. All locations are approximate.

Sources

1. Basemap source: http://services.arcgisonline.com/ArcGIS/ rest/ services/Reference/World_Transportation/MapServer
2. CH2MHill, 2013. *Groundwater Sampling and Monitoring 2012 Summary Report, Synertek Building #1, 3050 Coronado Drive, Santa Clara, California*, CH2MHill, January 2013.

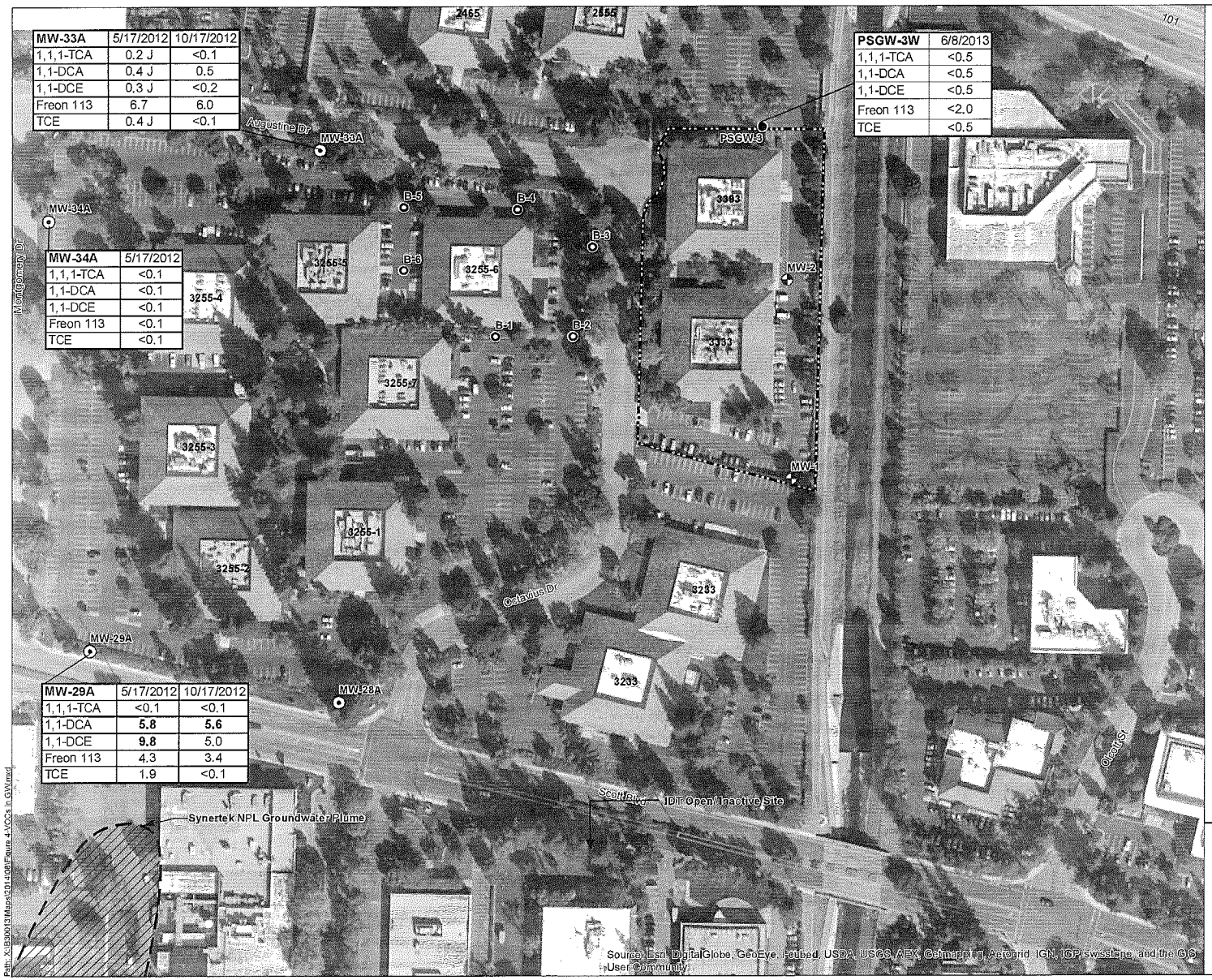
Erler & Kalinowski, Inc.

VOCs Detected in Soil Gas

3333 and 3393 Octavius Drive
Santa Clara, CA
August 2014
EKI B30013.00

Figure 3

Path: X:\B30013\Maps\2014\08\Figure 3-VOCs in SG.mxd



MW-33A	5/17/2012	10/17/2012
1,1,1-TCA	0.2 J	<0.1
1,1-DCA	0.4 J	0.5
1,1-DCE	0.3 J	<0.2
Freon 113	6.7	6.0
TCE	0.4 J	<0.1

PSGW-3W	6/8/2013
1,1,1-TCA	<0.5
1,1-DCA	<0.5
1,1-DCE	<0.5
Freon 113	<2.0
TCE	<0.5

MW-34A	5/17/2012
1,1,1-TCA	<0.1
1,1-DCA	<0.1
1,1-DCE	<0.1
Freon 113	<0.1
TCE	<0.1

MW-29A	5/17/2012	10/17/2012
1,1,1-TCA	<0.1	<0.1
1,1-DCA	**5.8**	**5.6**
1,1-DCE	**9.8**	5.0
Freon 113	4.3	3.4
TCE	1.9	<0.1

N

0 150 300

(Approximate Scale in Feet)

Legend

- Subject Property Boundary
- Grab Groundwater and Shallow Soil Sampling Location (EKI, 2013)
- Synertek Monitoring Well
- Grab Groundwater Sample (Geomatrix, 1997)
- Abandonded Groundwater Monitoring Well (United Soil Engineering, 1988)

Abbreviations

1,1,1-TCA = 1,1,1-Trichloroethane
1,1-DCA = 1,1-Dichloroethane
1,1-DCE = 1,1-Dichloroethene
Freon 113 = 1,1,2-Trichloro-1,2,2-trifluoroethane
J = Estimated Value
NPL = National Priorities List
TCE = Trichloroethene

Note

1. All locations are approximate.
2. Posted concentrations are in units of micrograms per liter (ug/L).
3. Only VOCs detected in recent shallow groundwater samples are shown. No VOCs were reportedly detected in samples samples collected in 1997. Samples collected in 1988 were reported to contain 1,1-DCA and 1,1,1-TCA at concentrations ranging up to 4.7 ug/L and 2.5 ug/L, respectively. Concentrations above screening criteria are shown in bold. Refer to Table 2 for screening criteria.

Source

1. Basemap source: http://services.arcgisonline.com/ArcGIS/ rest/services/Reference/World_Transportation/MapServer
2. CH2MHill, 2013, *Groundwater Sampling and Monitoring 2012 Summary Report, Synertek Building #1, 3050 Coronado Drive, Santa Clara, California*, CH2MHill, January 2013.

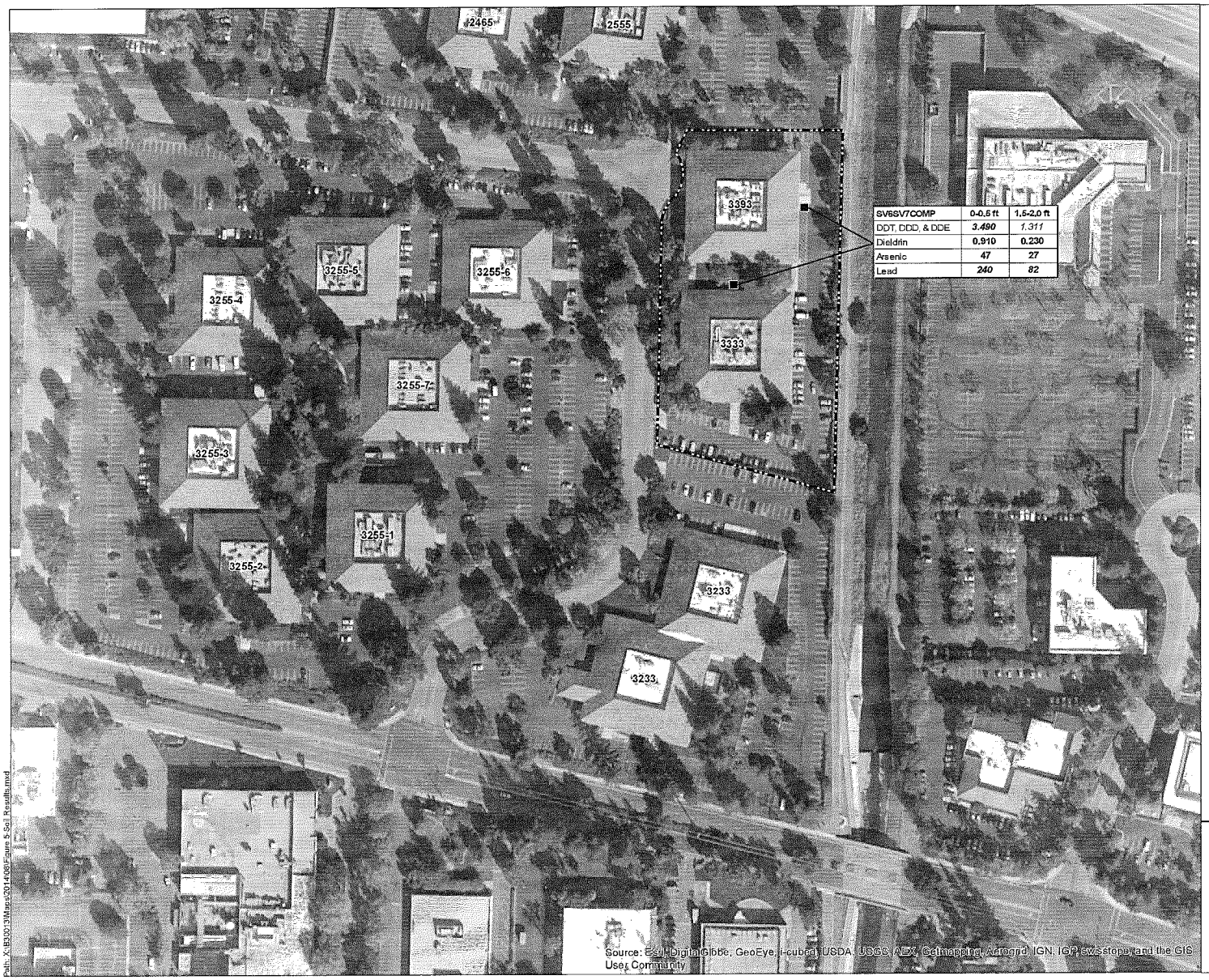
Erler & Kalinowski, Inc.

VOCs Detected in Shallow Groundwater

3333 and 3393 Octavius Drive
Santa Clara, CA
August 2014
EKI B30013.00

Figure 4

Path: X:\B30013\Maps\20140814\Figure 4-VOCs in GW.mxd



SV6SV7COMP	0-0.5 ft	1.5-2.0 ft
DDT, DDD, & DDE	***3.490***	*1.311*
Dieldrin	**0.910**	**0.230**
Arsenic	**47**	**27**
Lead	***240***	***82***

N

0 150 300

(Approximate Scale in Feet)

Legend

- Grab Groundwater and Shallow Soil Sampling Location (EKI, 2013)
- Soil Gas and Shallow Soil Sampling Location (EKI, 2013)
- Shallow Soil Sampling Location (EKI, 2013)

Abbreviations

ft = Feet
J = Estimated Value
ND = Not Detected

Notes

1. All locations are approximate.
2. Concentrations in *italics* exceed potential hazardous waste criteria. Concentrations in **bold** exceed environmentall screening levels (or background for arsenic). See Table 3 for screening values.
3. Sample depths are shown in feet below baserock.

Source

Basemap source: http://services.arcgisonline.com/ArcGIS/rest/services/Reference/World_Transportation/MapServer

Erler & Kalinowski, Inc.

Composite Sampling Locations and Shallow Soil Sampling Results

3333 and 3393 Octavius Drive
Santa Clara, CA
August 2014
EKI B30013.00

Figure 5

Path: X:\B30013\Maps\2014\06\Figure 5-Soil Results.mxd

Appendix F

Hydrology and Water Quality

September 4, 2014
4299.00

Carlene Matchniff
The Irvine Company
690 N. McCarthy Blvd., Ste.100
Milpitas, CA 95035

Re: Santa Clara Square Retail and Phase II/III Office Stormwater Analysis for the EIR Addendum

Dear Carlene,

Generally speaking, the potential hydrology impacts of the new site plans (Retail Area, Phase II, Phase III, PSAI Property and the Phase III Parking Garage Areas) related to post-construction stormwater runoff would not be significantly different than those identified in the referenced Draft EIR. There will be net reductions in the amounts of impervious surface area generated by the new plans in comparison with the existing conditions. Stormwater Control Plans developed for these sites will incorporate the same basic concepts used in the previous plans – minimization of impervious surface area through the use of landscaping and pervious paving materials, utilization of source control techniques, and installation of treatment controls to reduce pollutants from runoff prior to its discharge to the public storm drain system.

It should be noted that the Draft EIR (dated December 2008) contains impact discussions and references to mitigation measures that are not consistent with the State Water Resources Control Board and Regional Water Quality Control Board stormwater regulations currently in effect. For example, when discussing post-construction treatment measures, references to the SWRCB NPDES Permit should be replaced with references to the Municipal Regional Permit (MRP), which is the San Francisco Bay Regional Water Quality Control Board's municipal discharge permit affecting all of the South San Francisco Bay permitting jurisdictions, including Santa Clara that has been in effect since 2009. One of the key provisions of the MRP was the modification of Provision C.3 to require the use of Low Impact Development (LID) techniques for onsite treatment of runoff. The structural treatment systems described in the Draft EIR as mitigation (CDS units, etc.) are not allowed under the MRP, except in very restricted circumstances. The Stormwater Control Plans for the new site plans will utilize LID treatment controls, in conformance with the MRP. The specific type of LID controls will be bioretention cells, which will be located adjacent to paved areas and roof downspout discharge areas throughout the sites.

It is our opinion that a project's conformance with the applicable provisions of the MRP, namely Provision C.3, reasonably allows a lead agency to find that the project would result in less than significant post-construction impacts to Hydrology and Water Quality. Construction-related impacts, such as those discussed on Page 35 of the Draft EIR, are typically addressed through conformance with the Statewide Construction General Permit (CGP), which requires the project applicant to file an NOI and prepare a SWPPP. The project-specific measures listed under Section 4.4.3 on Page 36 are examples of CGP measures. For technical accuracy, it would be

useful to add a bullet to the last one on Page 37 that mentions the use of bioretention cells to conform to the LID requirements of Provision C.3 of the MRP.

Sincerely,

HMH

REGISTERED PROFESSIONAL ENGINEER
ANTHONY W. VIGNOLO
C 63461
CIVIL
STATE OF CALIFORNIA

Tony Vignolo, P.E.
Senior Civil Engineer

CC:

Appendix G

Noise

Charles M. **Salter**
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22 September 2014

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690 N. McCarthy Boulevard, Suite 100
Milpitas, CA 95035
Email: cmatchniff@irvinecompany.com

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Elizabeth F. Trocker
Jennifer G. Palmer
Jodessa G. Cortez
Susan E. Lonergan
Courtney H. Vineys
Erin D. Gorton
Megan C. Santos

Subject: **Santa Clara Square – Santa Clara, CA**
Noise Analysis Addendum
CSA Project: 14-0166

Dear Carlene:

This letter provides a comparison of the modified project to the addendum noise analysis dated 4 April 2014. It is based on our review of the updated site plan and correspondence from the project traffic engineer regarding the additional of two new parcels in Office Phases II, and III.

CRITERIA

To determine whether the modified project will have a significant impact, we are evaluating it based on previously identified potential noise impacts in section 4.10.2 of the original EIR. Our analysis is based on site plans dated 6 August 2014 and updated traffic analysis dated 21 August 2014.

Section 4.10.1.2 of the previous EIR noise study identifies the following significance criteria for noise increases.

- Increase of 3 dB or more where exterior noise levels would exceed the normally acceptable noise level standard
- Increase of 5 dB or more where exterior noise levels would remain below the normally acceptable noise level standard

The normally acceptable noise level threshold is a CNEL of 65 dB as identified in Table 5.10-2 of the City of Santa Clara General Plan.

IMPACT ANALYSIS

The following is our analysis of the modified project based on the previous addendum and original EIR.

Noise Impacts to Project Site

Based on noise contours for the site shown in Figure 5.10-4 of the City of Santa Clara General Plan, noise levels are expected to range from CNEL 60 dB to higher than 75 dB at buildings closest to US-101, which are approximately 160-ft from the center median of US-101.

The project will comply with all applicable City, County, and State requirements by implementing appropriate noise reduction measures. For example, sound-rated windows, exterior doors, and walls will be provided to reduce interior noise levels. Outdoor-use spaces will be located in areas with lower noise levels and exterior noise barriers constructed as necessary. By reducing interior and exterior noise levels to normally acceptable levels there would be no change in the impacts identified in the original EIR. It should be noted that existing office use is located on this site with a similar setback (170-ft) from US-101. (**No change in impact**)

Project-Generated Traffic Noise Impacts

The updated traffic analysis provided by Fehr and Peers dated 21 August 2014 concludes that the modified project will result in fewer net trips as compared to the original master plan approved in April 2014. Since fewer net trips will be generated by the modified project, we would expect noise levels to remain unchanged as compared to our previous addendum traffic noise analysis. (**No change in impact**)

Construction Impacts

The original EIR identifies the nearest noise-sensitive receiver (residential), approximately 4,500 feet south of the project site. The updated project site plan does not include additional development south of the original overall project site, which includes retail buildings along Scott Boulevard. Therefore, the modified project is the same distance away from noise-sensitive receivers that were identified in the original EIR. (**No change in impact**)

* * *

This concludes our current comments. Please let us know if you have any questions or comments.

Sincerely,

CHARLES M. SALTER ASSOCIATES

Alexander K. Salter, PE
Principal Consultant

P: 22Sep2014_Sana Clara Square – Santa Clara, CA – Noise Analysis Addendum

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Charles M. **Salter**
ASSOCIATES INC.

Appendix H

Transportation / Traffic

FEHR PEERS

August 21, 2014

Carlene Matchniff, Vice President
Irvine Company Community Development
690 N. McCarthy Blvd. Suite 100
Milpitas, California 95035

Subject: Review of Revised Master Plan for Santa Clara Square Development Office Phases II & III

Dear Carlene:

This letter summarizes the findings and conclusions of our review of a revised site master plan for the Santa Clara Square project. The proposed Santa Clara Square development will replace the existing buildings located on multiple parcels along Augustine Drive east of Bowers Avenue between Scott Boulevard and US-101 and construct new, higher-density office buildings and a retail complex. In April 2014, Fehr & Peers prepared a traffic impact analysis (TIA) update for the retail complex and Phases II & III of the office uses. The Retail and Phase II and III sites of the proposed project provide for the development of an office campus in two phases totaling no more than 1,243,300 square feet of office space and up to 125,000 square feet of retail space.

The revised master plan does not change the total amount of proposed retail and office development, but it does incorporate two additional parcels into the master planning area. The added parcels have been used to create a campus environment with parking located on the east and west ends of the planning area. The two parcels added to the master planning area include a total of 135,000 square feet existing office uses that will be demolished as the part of the project. The removal of this additional existing office space reduces the number of net new trips added to the transportation network by the project.

To determine the level of trip reduction, Fehr & Peers prepared new trip generation calculations for the revised master plan using the same methodology as in our previous study and accounting for the demolition of an additional 135,000 square feet of existing office uses. **Table 1** shows that there will be a reduction in the daily trips by approximately 1,600 trips and a reduction of over 200 trips in both the AM and PM peak hours. For consistency with our previous analysis, we have presented estimates using both the 7th and 9th Editions of the Institute of Transportation Engineers (ITE) Trip Generation Manual.

TABLE 1 PROJECT TRIP GENERATION ESTIMATES							
Site Plan	Daily	AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
7th Edition Comparison							
Santa Clara Square – April 2014	12,181	826	194	1,020	457	850	1,308
Santa Clara Square – August 2014	10,534	621	165	787	419	663	1,082
Net New Trip Comparison (April – August)	(1,647)	(205)	(29)	(233)	(38)	(187)	(226)
9th Edition Comparison							
Santa Clara Square – April 2014	12,167	852	185	1,037	435	825	1,260
Santa Clara Square – August 2014	10,551	643	156	799	397	638	1,034
Net New Trip Comparison (April – August)	(1,616)	(209)	(29)	(238)	(38)	(187)	(226)
Source: Fehr & Peers, August 2014							

Based on the trip generation calculations presented above, the revised master plan generates fewer net new trips that the master plan approved in April 2014. Access to the adjacent roadways will remain the unchanged with parking structures that will have access to Augustine, Octavius, and Montgomery Drives. Therefore, the revised master plan will have less impact on the transportation network than the previously approved plan.

Please feel free to call me at (408) 645-7021 if you have any questions on our review of the updated master plan.

Sincerely,

FEHR & PEERS

Robert H. Eckols, P.E.
Senior Associate

SJ14-1496

Appendix I

Utilities

Technical Memorandum

RMC Water and Environment

Subject: **Sanitary Sewer Capacity Evaluation for the Santa Clara Square (APN 216-045-006, 009, 011, 014, 019, 027, 028, 031, 032, 036, and 037)**

Prepared For: Falguni Amin, City of Santa Clara

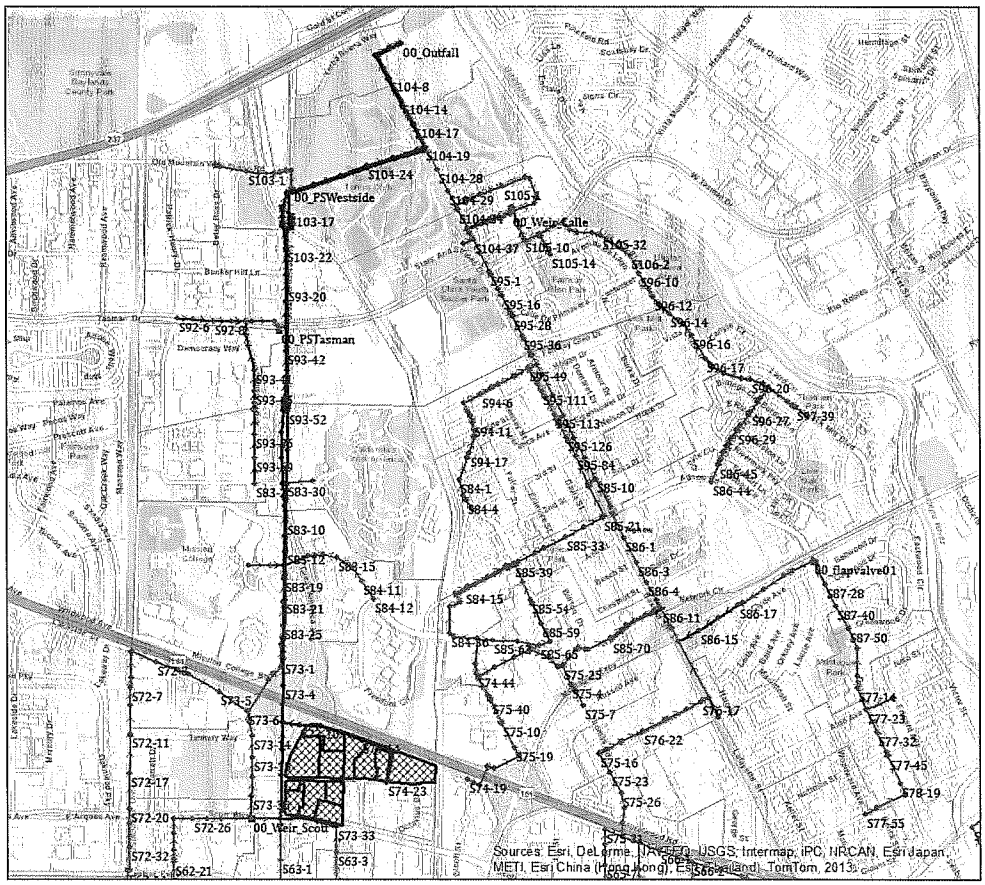
Prepared by: Winola Cheong, RMC Water and Environment

Date: September 29, 2014

At the request of the City of Santa Clara (City), RMC evaluated the potential sanitary sewer capacity impact of the proposed Santa Clara Square development project near Augustine Dr. and Bowers Ave. using the City's sanitary sewer hydraulic model. This technical memorandum (TM) summarizes the approach, model input, and results of the analysis.

Flow from the proposed development would enter the City's sanitary sewer system at multiple manholes and drain northward via a 33-inch line on Bowers Ave.; flow would then split into two parallel lines along Great America Parkway and continue east toward Lafayette Street, then northward again to the Rabello Pump Station. Figure 1 shows the trunk sewer lines that are affected by the additional flow from this development (affected lines in red).

Figure 1: Trunk Sewers Affected by Flow from the Santa Clara Technology Campus Site



1 Approach

To evaluate the potential sewer capacity impact of the proposed development, the following model configurations were used:

- *Sewer network*: the City's most current network was used. The network consists of the City's existing trunk sewer system plus the recently completed sewer main improvement project along Walsh Avenue as well as the planned Capital Improvement Projects (CIPs) 4A, 4B, 5, and 6.
- *Sanitary Sewer load*: General Plan Phase 3 load (aka 2035 load) was used for this analysis. It includes all currently planned major developments and redevelopments as well as potential increased densities in certain areas consistent with the City's 2035 General Plan. The network also includes loads from additional developments that were approved after the development of the 2035 load.
- *Design storm*: System capacity was evaluated based on the ability of the sanitary sewer system to convey peak wet weather flow under design storm conditions. To be consistent with previous capacity studies, this analysis used the same 10-year design storm that was used for the City's 2007 Capacity Assessment Study.

The development was modeled as individual sanitary sewer subcatchments that discharge sanitary sewer into the City's trunk system at the proposed connection manholes.

2 Model Input

The following settings were used for the subcatchment:

- *Sanitary Sewer load*: According to the information provided, the development consists of about 2 million square feet of office, restaurant, and café spaces. Table 1 below summarizes the square footage of each building, their planned use, estimated sanitary sewer flow, and the connection point.

Table 1: Development Summary

Building[1]	Building Square Footage (SF)[1]	Usage[1]	Unit Flow (gpd/SF)[2,3]	Est. Flow (gpd)[4]	Discharge Point[1]	Loading Manhole[5]
O3	244,660	Office	0.15	36,699	H1	S74-16
O4	244,660	Office	0.15	36,699	H1	S74-16
O5	244,660	Office	0.15	36,699	H1	S74-16
Amenity	10,000	Café	0.90	9,000	H1	S74-16
Amenity	10,000	Café	0.90	9,000	H2	S74-15
O1	244,660	Office	0.15	36,699	H3	S74-14
O2	244,660	Office	0.15	36,699	H3	S74-14
Garage A	0	Parking	0.00	0	H3	S74-14
1C	240,600	Office	0.15	36,090	H4	S73-12
1D	6,515	Café	0.90	5,864	H4	S73-12
1E	6,515	Café	0.90	5,864	H4	S73-12
Garage 1A	0	Parking	0.00	0	H5	S73-12
Garage B	0	Parking	0.00	0	A1	S74-16
1B	180,450	Office	0.15	27,068	A2	S73-20
F	1,860	Restaurant	1.04	1,934	A2	S73-20

Building [1]	Building Square Footage (SF) [1]	Usage [1]	Unit Flow (gpd/SF) [2,3]	Est. Flow (gpd) [4]	Discharge Point [1]	Loading Manhole [5]
G	4,250	Restaurant	1.04	4,420	A2	S73-20
F	6,940	Restaurant	1.04	7,218	A3	S73-20
G	19,150	Restaurant	1.04	19,916	A3	S73-20
1A	180,450	Office	0.15	27,068	A4	S73-20
D	6,502	Restaurant	1.04	6,762	B1	S73-27
E	6,502	Restaurant	1.04	6,762	B1	S73-27
M	40,000	Restaurant	1.04	41,600	B1	S73-27
A	6,517	Restaurant	1.04	6,778	B2	S73-27
B	6,555	Restaurant	1.04	6,817	B2	S73-27
C	3,600	Restaurant	1.04	3,744	B2	S73-27
H	9,000	Restaurant	1.04	9,360	S1	S73-32
Market M	10,000	Restaurant	1.04	10,400	S1	S73-32
Total:	**1,978,706**			**420,158**		

Footnotes:

1. Source: Santa Clara Square Sewer Modeling Information, HMH, September 2014 (from 2014 09 17 Revised Santa Clara Square Sanitary Sewer Model.pdf, provided by City staff via email).
2. Per the City's 2007 Sanitary Sewer Capacity Assessment (SSCA), office/R&D development was assigned a unit flow factor of 0.15 gallons per day per square foot (gpd/SF). The unit flow factor used in HMH's document is 0.14 gpd/SF. To be conservative, the higher factor from the City's SSCA was used for this analysis.
3. The City's 2007 SSCA did not have unit flow factors for restaurant or café developments. The following unit factors from the *San Jose – Santa Clara Water Pollution Control Plan Specific Use Code & Sewage Coefficient* document were used in this analysis:
   - Restaurant (full service): 1.04 gpd/SF
   - Café/Restaurant (fast food): 0.9 gpd/SF
4. Estimated flow = Building Area x Unit Flow Factor
5. This is the City's manhole ID that corresponds to each discharge point. If a discharge point is not in the model, the load is assigned to the downstream modeled manhole.

This development site was previously modeled in early 2014 based on its original plan. To avoid double-counting any flows, loads from the previous modeling effort was removed from the model. Also, since the existing buildings would be demolished, existing flow was also removed from the model. The net increase of flow added to the model was about 0.4 mgd.

- *Wastewater Profile:* A commercial diurnal flow pattern was applied to the development subcatchment.
- *Rainfall Profile:* The City's design storm profile (i.e. 10-year, 6-hour storm) was applied to the subcatchment to determine wet weather flows. The storm was timed to cause peak rainfall-dependent infiltration/inflow (RDI/I) at approximately the same time as the peak weekday base wastewater flow.
- *GWI and RDI/I*: Groundwater infiltration (GWI) rate and RDI/I rate were applied to the subcatchment based on those used for the current subcatchment where the development is located on.

3 Model Results

Profiles of the sewers downstream of the loading manholes under peak wet weather flow (PWWF) conditions were evaluated.

Without the development, the model showed that the 12-in downstream of S74-23 would be about 25 to 30 percent full, with a mild surcharge between S73-9 and S73-10 due to backwater. The 12-in downstream of S73-32 would be about 70 percent full; and the 33-in immediately downstream of S73-30 would be almost 100 percent full with a mild surcharge of about 2 inches at S73-16. Further downstream, one of the parallel lines ("East Line") on Great America Parkway would be almost full, while the other line ("West Line") showed a surcharge of about 8 inches near Tasman Drive. Since the West line is relatively deep and has over 5 feet of freeboard (distance between ground level and water level), the surcharge was considered acceptable.

With the development, the model showed that the 12-in downstream of S74-23 would be about 30 to 60 percent full, with a mild surcharge between S73-9 and S73-11 due to backwater. The 12-in downstream of S73-32 would be about 72 percent full; and the 33-in downstream of S73-30 would have a mild surcharge of about 4 inches at S73-16. Further downstream, flow in the East Line slightly increased by about 2 percent, while the West Line showed a slightly worsened surcharge. Since the West line is relatively deep and has over 5 feet of freeboard, the surcharge was considered acceptable.

8.C.	**File No.(s):**	**PLN2014-10256, PLN2014-10257, PLN2014-10258, PLN2014-10259, PLN2014-10260, PLN2014-10381, CEQ2014-01172** ***(Santa Clara Square Project Phase II and III)***
	Location:	2465, 2505, 2525,2575 Augustine Drive and 3393, 3333 Octavius Drive, a 27.5-acre project site comprised of six parcels located on the north side of Augustine Drive, and east of Octavius Drive (APNs: 216-45-036, 037, 038, 006, 025, 024)
	Applicant/Owner:	The Irvine Company LLC
	Request:	**Adopt Addendum No.3** to previously certified EIR; **General Plan Amendment #81** from Light Industrial to High Intensity Office/R&D (APN's 216-45-038 and 025), Rezone from Light Industrial (ML) to Commercial Park (CP) (APN's 216-45-038 and 025), Vesting Tentative Parcel Map combining 6 parcels to create 3 parcels, Architectural Review and Development Agreement Amendment No. 3 with The Irvine Company LLC, 2525 Augustine Drive LLC and 3255 Scott Boulevard LLC to allow the construction of up to 1,243,300 square feet of office space for a total (inclusive of Office Phase I and Retail) of up to 2,000,100 square feet of development, and Adopt EIR Addendum No. 3 to the Certified EIR,
	CEQA Determination:	Addendum to Certified Environmental Impact Report SCH# 2008052065
	Project Planner:	Yen Han Chen, Associate Planner
	Staff Recommendation:	**Recommend City Council Approval**, subject to conditions

Notice: The notice of public hearing for Item 8.C. was posted within 500 feet of the site and mailed to property owners within 500 feet. In addition, a newspaper notice was published in the Santa Clara Weekly publication.

Discussion: Steve Lynch gave a brief presentation on the project on behalf of Project Planner, Yen Chen. Carlene Matchniff of the Irvine Company gave a brief Powerpoint presentation on the project.

The Commission had questions regarding office space square footage and the indoor gym facilities. It was explained that there will be no increase to the office space square footage and the gyms will be maintained by the Irvine Company. Hans Le of the Irvine Company further added that the gym facility design is user driven and spoke about the flexibility of the outdoor activity space.

The Public Hearing was opened and closed with no comments received.

The Commission discussed whether the project should go to the Architectural Review Committee again. Carlene Matchniff clarified that Phase I went to Architectural review and that Phase II and III are consistent with that approval. She requested that the project bypass Architectural Review because the architecture, which was previously approved, has not changed.

Motion/Action: The Commission motioned to recommend that the City Council refer the project design to the Architectural Review Committee for review (4-2-1-0,Commissioners Sweeney and Costa dissenting, Ikezi absent).

Motion/Action: The Commission motioned to adopt resolutions recommending that the City Council approve the EIR Addendum No. 3; the General Plan Amendment from Light Industrial to High Intensity Office/R&D (APN's 216-45-038 and 025); Rezone from Light Industrial (ML) to Commercial Park (CP) (APN's 216-45-038 and 025); and that the City Council adopt an Ordinance to approve the Development Agreement Amendment No. 3 (6-0-1-0, Ikezi absent).

Planning Commission

STAFF REPORT

Meeting Date: 10/22/14

Agenda Item # 8.C.

Planning and Inspection Department
City of Santa Clara, California

Project Name:	**Santa Clara Square Project (Office Phase II & III)**
File:	**PLN2014-10577, PLN2014-10578, PLN2014-10579, PLN2014-10580, PLN2014-10581, CEQ2014-01181**
Location:	2465, 2505, 2525, 2575 Augustine Drive and 3393, 3333 Octavius Drive, a 27.5-acre project site comprised of six parcels located on the north side of Augustine Drive and east of Octavius Drive (APNs: 216-45-036, -037,-038-, -006, -025, -024)
Applicant / Owner:	Carlene Matchniff, The Irvine Company
Subject:	A General Plan Amendment from Light Industrial to High Intensity Office/R&D (APN's 216-45-038 and 025), Rezone from Light Industrial (ML) to Commercial Park (CP) (APN's 216-45-038 and 025), Vesting Tentative Parcel Map combining 6 parcels to create 3 parcels, Architectural Review and Development Agreement Amendment No. 3 with The Irvine Company LLC, 2525 Augustine Drive LLC and 3255 Scott Boulevard LLC to allow the construction of up to 1,243,300 square feet of office space for a total (inclusive of Office Phase I and Retail) of up to 2,000,100 square feet of development, and Adopt EIR Addendum No. 3 to the Certified EIR, SCH# 2008052065
CEQA Determination:	Addendum to the Certified EIR
Project Planner:	Yen Han Chen, Associate Planner, (408) 615-2450, ychen@santaclaraca.gov

EXECUTIVE SUMMARY:

The applicant is requesting to amend the previously approved "2009 and June 2014 Projects". The Original Office Phase II and III approved in June 2014 consists of no more than 1,243,300 square feet of office use located in six to eight story office buildings associated surface and structure parking at a ratio of 3.3/1000 on 16.84-acres. The new project adds two parcels allowing for the redesign of the campus for Office Phase II and III on 22.79-acres.

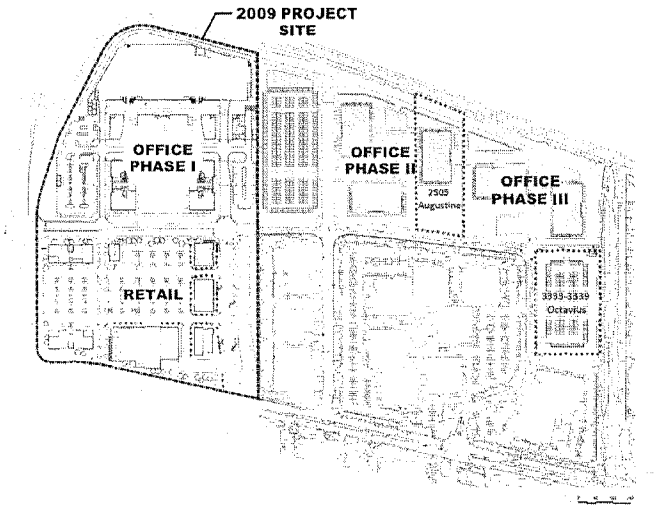
The Santa Clara Square Office Phase I, the Retail Center, and Office Phase II and III entitlements allow for development up to 2,000,100 square feet. The prior approvals allowed for the development of 125,000 square feet of specialty retail development on the retail property, and construction of up to 1,243,300 square feet of corporate office development on Original Office Phase II and III Properties. The June 2014 Project proposed three office buildings served by two parking garages in two phases separated by a parcel under separate ownership.

The applicant was able to acquire the property separating the office campus and added a parcel on Octavius Drive to increase the Office Phase II and III development area from 16.84-acres to 22.79-acres. The applicant proposes to redistribute the 1,243,300 square feet into five office buildings, one amenity building and two parking garages. The new campus design clusters the buildings together to create a unified campus with the garages at the ends of the project site. The proposed office development location directly adjacent to the Highway 101 is more suitable for office use and could serve as a buffer for the future residential use in areas south of Augustine Drive as designated in Phase III of the 2010-2035 General Plan.

The applicant is requesting that the approval of the architectural design and sign program for the current proposal be considered by the Director of Planning and Inspection. Major modifications to the architecture of buildings from that currently proposed would require Architectural Committee review and approval.

Prior Approvals

	Approved (2009 Project)	**Approved (June 2014 Project)**
General Plan Designation	High Intensity Office/R&D	High Intensity Office/R&D [Office Phases I, II & III] / Community Commercial [Retail]
Zoning District	PD (Planned Development)	PD (Planned Development) [Office Phase I] CP (Commercial Park) [Office Phases II & II] / PD (Planned Development) [Retail]
Land Use	Office and Retail	Office Retail
Lot Size	30.73 acres	47.57 acres
Floor Area (FAR%)	Maximum 1.50	Max 2.0 [Office Phases] Max 0.5 [Retail]
Building Square Footage (sf.)	1,969,600 sf. of office / 35,000 sf of retail	618,800 sf. of office / 13,000 sf. of retail [Office Phase I] 1,243,300 sf. of office [Office Phase II & III] 125,000 sf of retail [Retail]
Parking Ratio	3.3spaces/1000 sf.	3.3spaces/1000 sf. [Office Phases] 1 space/200 sf. [Retail] 1 space/3 outdoor seats [Retail]



Santa Clara Square Project – October 2014 Project Site Plan

Site Location and Context

Surrounding Land Uses: Development in the project area includes commercial and light industrial uses with building heights up to 12 stories tall. The project site is bound by US 101 to the north, Bowers Avenue to the west, Scott Boulevard to the south, and San Tomas Aquino Creek to the east. To the north of US 101 are several high density office buildings. To the east and south of the project site, on both Scott Boulevard and Augustine Drive, are numerous one- and two-story office/industrial buildings similar to those located on the project site. To the west of the project site, on the west side of Bowers Avenue, are several fast food restaurants, a 10-story hotel, a gas station, and the City of Santa Clara Central Substation.

To the north, south and west, the surrounding area has designations of Office/Research and Development in the City of Santa Clara General Plan and are zoned PD (Planned Development), CP (Commercial Park) and ML (Light Industrial); and properties designated Light Industrial and zoned ML (Light Industrial) are located to the east and south of the project.

Aerial Photo

Project Analysis

Project Description: Santa Clara Square Office Project (Phases II and III) proposes to amend the previously approved 2014 Project. The project adds two parcels allowing for the redesign of the campus from 16.84-acres to 22.79 acres. Office Phases II and III as proposed consist of 6-8 story office buildings with associated surface and structured parking at a ratio of 3.3/1000. The proposed Santa Clara Square Project will provide bicycle and pedestrian connectivity to the existing San Tomas Aquino Creek Trail, and both Office Phases will provide open space for employee activities. Accessory, or secondary, small-scale supporting retail uses that serve local employees and visitors are also permitted. Santa Clara Square Office Phase I and Retail Center are approved and under construction.

Environmental Determination: The EIR Addendum concludes that the proposed October 2014 Project (Santa Clara Square Project) would not result in new significant adverse impacts or an increase in severity of any previously identified significant impacts identified and studied in the EIR. The addendum provides an analysis of each environmental issue identified in the EIR to determine whether new effects would occur or new mitigation measures should be required. The Proposed Project's potential impacts are less than those analyzed in the EIR. The Proposed Project's potential impacts related to cumulative impacts remain significant and unavoidable, though less severe than the 2009 Project and June 2014 Project. No new or substantially increased significant impacts will result from the Project. The previous Mitigation Monitoring or Reporting Program remains in effect for this project, although the prior Addendums included minor modifications to the mitigation measures.

General Plan and Zoning Conformance:
The General Plan will be amended to change the designation of the two parcels added to the Office Phase II and III properties from Light Industrial to High Intensity Office/R&D. In addition, the project proposes to rezone these two parcels from Light Industrial (ML) to Commercial Park (CP). The proposal is consistent with the General Plan designation of High Intensity Office/R&D, which encourages campus-like developments for corporate headquarters, R&D and supporting uses. The General Plan states that development in this classification should not exceed a Floor Area Ratio (FAR) of 2.00, while parking should be designed within structures or below-grade. The majority of parking is accommodated within multi-level garages in Office Phases II and III. These multi-level garages are encouraged to create significant landscaping within CP Zoning District. As such, these parking structures are not included in the building coverage. The CP Zoning District calls for buildings not to cover a total of more than 25% of the area of any lot. The proposal conforms to the CP Zoning District in that the project creates a campus at the desired FAR outlined in the General Plan that utilizes exemplary design principles.

The proposed Office Phase II and III does not conflict with the General Plan and could serve as a buffer between the noise and particulate matter generated by Highway 101 and future residential use in areas south of Augustine Drive as designated in the long-term Land Use Diagram.

Circulation and Parking: The project is located in Climate Action Plan District 1 (north of Caltrain) where the Office Phase II and III developments will be required to achieve 20% Vehicle Miles Traveled reduction, 10% of which must come from a Transportation Demand Management "TDM" program. Bike lanes will be provided along the property's Augustine Drive and Octavius Drive. The project continues to provide a creek trail connecting Augustine/Octavius Drive to the San Tomas Aquino Creek Trail. Various traffic signal improvements and modifications are proposed for the intersections and roadways surrounding the project site, including right-of-way dedications. As a condition of approval, bicycle facilities shall be provided at the main entrance and/or high visible areas. The number of bike lockers and racks will depend on the building square footage of development and proposed parking stalls.

The Office Phase II and III properties are accessed from Augustine Drive and Octavius Drive. Office Phase II primary driveway is aligned with Montgomery Drive. Office Phase III is served by one access driveway and entrance to the parking garage. Office Phases II and III are served by surface parking and parking garages and connected by an onsite loop road. The proposed parking ratio remains the same as 2009 Project at 3.3/1000.

Vesting Tentative Parcel Map:
The Vesting Tentative Parcel Map was reviewed by the City's Subdivision Committee and determined to be complete on September 30, 2014. The 27.5-acres, 6 parcels, will be combined to create 3 parcels. Office Phase II and III are reconfigured to occupy two of the three new parcels, approximately 22.79-acres. The remaining 4.73-acre parcel continues on with the General Plan designation as Light Industrial and Zoned Light Industrial-ML. The street bulb at Augustine Drive and Octavius Drive is proposed to be replaced with standard curb. The consideration and action on the Vesting Tentative Parcel Map is a function of the City Council.

Architecture: Office Phases II & III are designed to reflect the similar elements of the Santa Clara Gateway development and Office Phase I that is currently under construction and reflects the unique nature of this site and its surroundings. The campus will feature a generously landscaped central courtyard promoting interaction among the future employees. The project is conditioned to provide street trees, a minimum 2:1 on- or off-site replacement for trees removed as part of the proposal. The landscape concept for the office development provides a central space between the buildings which may include campus serving amenities, such as sports courts, event space, and seating areas. If there are no significant changes to the design and architecture, and where the project is consistent with Gateway or Office Phase I, final architectural review is proposed to be handled by the Director of Planning and Inspection.

The project will also incorporate "Green Building" design and aim for LEED Silver certification, or equivalent, to support sustainable building practices, promote energy conservation in design, materials and use. Final building design, including all green building measures, will be approved as part of the final architectural review and issuance of building permits. Key sustainable elements will include energy efficient systems and materials, employee showers, and bicycle lockers to promote alternative modes of transportation, the use of recycled water for flushable fixtures and outdoor landscaping, and electric vehicle charging stations.

Development Agreement
The Amendment to the Development Agreement allows for a phased development of the project and its associated facilities and improvements. Additional provisions were added to address street bulb improvements at the intersection of Augustine Drive and Octavius Drive, and to require the developer to make additional improvements at this intersection in the future, if the developer undertakes further projects in the vicinity. There is no change to the contributions set forth in the Original DA to the City's Housing Fund. The project also contributes to the City's Trails, Open Space and Parks, and included contributions to mitigate traffic impacts.

Public Contact
Public Notices and Comments: Public Notices and Comments: A notice of public hearing for this item was posted within 500 feet of the site and was mailed to property owners within 500 feet of the project site. A Notice of Hearing for the General Plan Amendment and proposed project was published in the Santa Clara Weekly on October 8, 2014. No public comments in opposition were received on the proposed project.

ADVANTAGES AND DISADVANTAGES OF ISSUE:
The project site is located in an urbanized area served by existing municipal services, and the physical development of the project site would localize employment in a central geographic area. The landscape and

open space concept for the office development include campus serving amenities, such as sports courts, event space, and seating areas. These onsite private open space and recreational facility help to meet the needs of tenants and patrons of this project. The project includes the payment of local and regional traffic impact fees and fair share contributions toward the cost of road way improvements. The project will also provide a creek trail connecting Augustine/Octavius Drive to the San Tomas Aquino Creek Trail.

RECOMMENDATION:

That the Planning Commission adopt resolutions for the project, subject to conditions approval, to:

1) Recommend that the City Council approve the EIR Addendum No. 3;
2) Recommend that the City Council approve the General Plan Amendment from Light Industrial to High Intensity Office/R&D (APN's 216-45-038 and 025);
3) Recommend that the City Council approve the Rezone from Light Industrial (ML) to Commercial Park (CP) (APN's 216-45-038 and 025); and
4) Recommend that the City Council adopt an Ordinance to approve the Development Agreement Amendment.
5) Recommend that the City Council refer the project to the Director of Planning and Inspection for final architectural review.

Documents Related to this Report:

1) ***Resolution EIR Addendum***
2) ***Resolution General Plan Amendment***
3) ***Resolution Rezoning***
4) ***Resolution Development Agreement***
5) ***Development Agreement***
6) ***Conditions of Approval***
7) ***EIR Addendum***
8) ***Applicant Letter of Justification dated August 7, 2014***
9) ***Development Plans***

I:\ \PLANNING\2014\Project Files Active\PLN2014-10577 2505 Augustine Dr (SCSQ Rev)\PC\PC Staff Rpt SCSQ Office_v4.doc

8/7/14

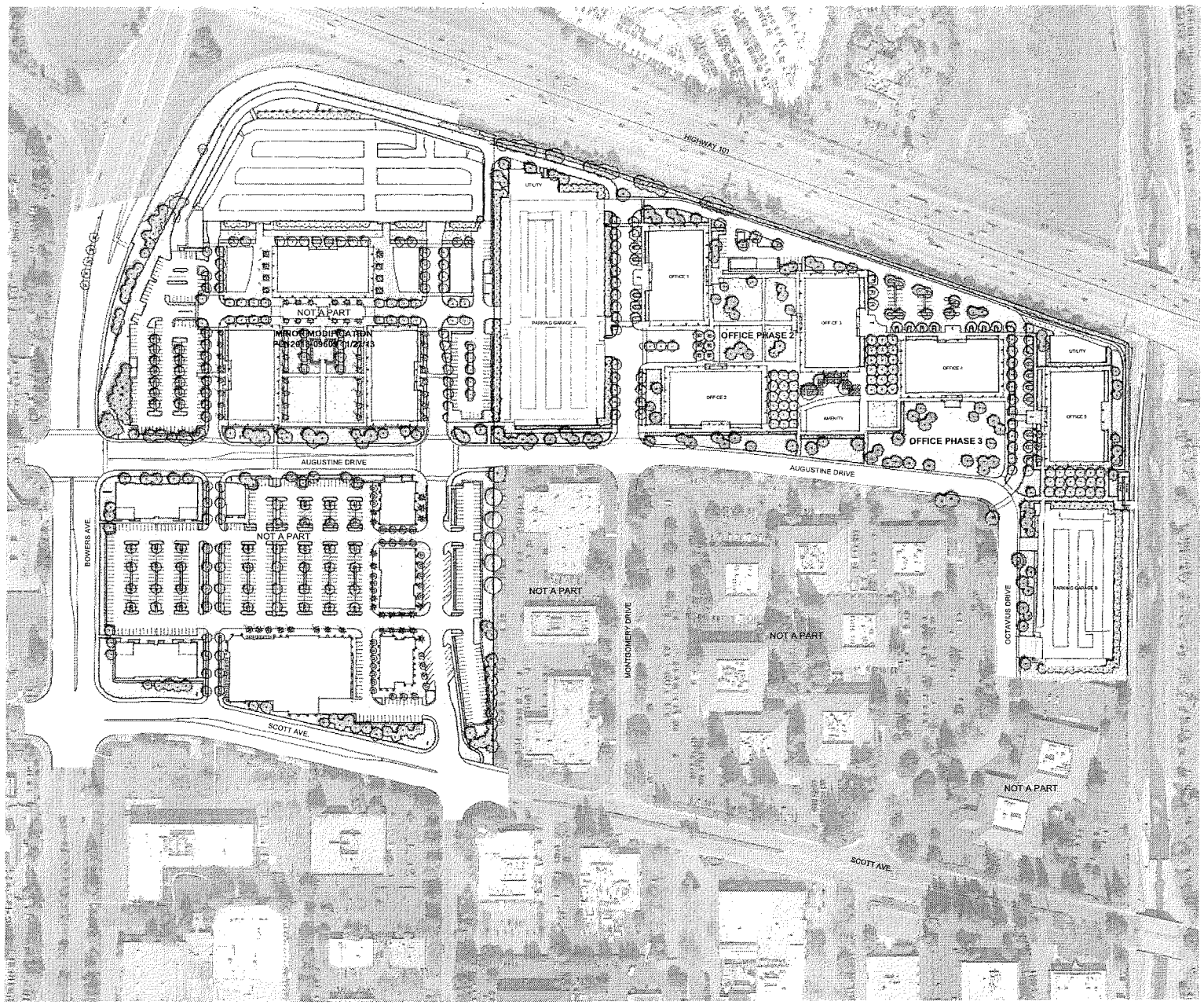
The Irvine Company

General Plan Amendment and Rezoning
Santa Clara Square
Office Phases II and III

Statement of Justification

With the recent purchase of 2505 Augustine Drive (PSAI), the Irvine Company has the opportunity to create a coherent office campus parallel to Highway 101 for the entire length of Augustine Drive, and also include a parcel east of Octavius Drive. To accomplish this, the Office Phase II and Office Phase III property lines will be adjusted so 2505 Augustine (PSAI), 3333 Octavius Drive and 3393 Octavius Drive may be added to the Office Campus for the previously entitled property under the Second Amendment to Development Agreement approved by Ordinance No. 1927 on June 24, 2014. The reconfigured Office Phase II and III properties will be developed as a single office campus that consists of up to 1,243,300 square feet of 6-8 story office buildings, with associated surface and structured parking. This development is consistent with the office component of the 2014 Santa Clara Square Project that was approved on June 10, 2014. This minor revision to the approved 2014 Project allows the approved office development to encompass the PSAI parcel so that there is no gap between the Office Phase II and Office Phase III developments and add the other land to accommodate the anticipated future design of the Office campus .

In order to fold these two parcels into the design of the Office Park, these properties require a General Plan Amendment [from Light Industrial to High-Intensity Office/Research & Development (R&D)] and a Zone Change [Light Industrial (ML) to Commercial Park (CP)] to allow flexibility in how the approved office development from the 2014 Project can be configured. The Santa Clara Square office and retail development (including the approved Retail Center and Office Phase I that are currently under construction and the Office development on the revised properties) will not exceed the total development of 2,004,600 square feet that was approved in 2009.



LPA

PEI COBB FREED & PARTNERS

HMH

burton

CPC

Davis Planning Documents, Inc.
15005 Van Ness Ave., Suite 330
Torrance, CA 90505
Telephone: 949-474-0880
Facsimile: 949-474-3420

Bevins Associates

SANTA CLARA SQUARE PHASES II & III

SANTA CLARA, CA

Developed for IRVINE COMPANY

Since 1894

Revision	Date

Schedule	Date
FINAL PLANNING APPLICATION SUBMITTAL	11/17/2014

Job No. 13154.10

Date 11/17/2014

Checked by JK

Scale

OVERALL SITE PLAN

A-050

SANTA CLARA UNIFIED SCHOOL DISTRICT

1889 Lawrence Rd.
Santa Clara, CA
95051
(408) 423-2000
STANLEY ROSE III, Ed.D.
SUPERINTENDENT

October 16, 2014

Yen Han Chen
Associate Planner
City of Santa Clara
1500 Warbuton Avenue
Santa Clara, CA 95050

NOT a Will Serve Letter

Re General Plan Amendment #84 PLN2014-10577
(Santa Clara Square Office Project)

Dear Yen Han Chen,

The Santa Clara Unified School District appreciates the opportunity to respond to the proposed development, which is requesting a General Plan Amendment (#84) to change land use designation from Light Industrial to High Density Office/R&D (APNs 216-45-038, 025, and a portion of 024). The District does not have capacity to accommodate all of the students from new developments in this area.

The new development will attract new employees to the area and they will create a need for additional housing units. Every 1,664 square feet of commercial or industrial development creates the need for one additional housing unit in the Santa Clara area for new employees of the businesses. The District's schools do not have the capacity to accommodate the students from these homes until new schools are built.

During the California Environmental Quality Act review, the District requests studies are completed for increases in traffic and air emissions. Students are highly susceptible to air pollution and an increase in the area may have an effect on students' health. The District expects all development to fully mitigate its' impact.

Based on the current estimated cost of building new elementary, middle, and high schools, we request the developments mitigate their impact on the District by paying the full mitigation amount per square foot of commercial/industrial construction. The Santa Clara Unified School District is requesting the developers work with the District to mitigate these impacts as well as fees related to additional classrooms and/or schools.

Please contact Michal Healy, mhealy@scusd.net with any questions.

Sincerely,

Mark Allgire, CPA, Assistant Superintendent, Business Services

MA:mh

BOARD OF EDUCATION

INA K. BENDIS
JIM CANOVA
ALBERT GONZALEZ
CHRISTINE KOLTERMANN
ANDREW RATERMANN
MICHELE RYAN
CHRISTOPHER STAMPOLIS

"The mission of Santa Clara Unified School District is to prepare students of all ages and abilities to succeed in an ever-changing world."

Letter of Transmittal

SANTA CLARA
UNIFIED SCHOOL DISTRICT

Date: October 20, 2014

Via Email To:

Yen Han Chen
City of Santa Clara
Planning Division
1500 Warburton Avenue
Santa Clara, CA 95050

From:

Michal Healy
Santa Clara Unified School District
Bond Project Office
1889 Lawrence Road
Santa Clara, CA 95051
408.423.2085 mhealy@scusd.net

Dear Yen Han Chen,

Attached is the Santa Clara Unified School District's response letter for the General Plan Amendment #84 PLN2014-10577, the Santa Clara Square Project.

Please contact me with any questions.

SANTA CLARA
Valley Transportation Authority

October 27, 2014

City of Santa Clara
Department of Planning
1500 Warburton Avenue
Santa Clara, CA 95050

Attention: Yen Chen

Subject: City File No. PLN2014-10577 / Santa Clara Square

Dear Mr. Chen:

Santa Clara Valley Transportation Authority (VTA) staff have reviewed the General Plan Amendment for High-Intensity Office/R&D on 16.84 acres for a site located south of US 101, north of Scott Boulevard, on both sides of Augustine Drive. We have the following comments.

Transportation Impact Analysis (TIA) Report
VTA's Congestion Management Program (CMP) requires a Transportation Impact Analysis (TIA) for any project that is expected to generate 100 or more new peak-hour trips. Based on the information provided on the size of this project, a TIA may be required. Please refer to Section 2.1, Items 5) and 6) of VTA's *TIA Guidelines* when determining whether a TIA will be completed for the project.

VTA recently adopted updated *TIA Guidelines,* which apply prospectively to projects that start their analysis after the effective date (10/2/2014). As this General Plan Amendment (GPA) was received prior to the effective date, the City may continue to use the 2009 Guidelines or use the new Guidelines, completely or partially, as long as there is no conflict. The new Guidelines, which are attached, contain updated procedures for documenting auto trip reductions, analyzing non-auto modes, and evaluating mitigation measures and improvements to address project impacts and effects on the transportation system. For any questions about the updated *TIA Guidelines*, please contact Robert Swierk of the VTA Planning and Program Development Division at 408-321-5949 or Robert.Swierk@vta.org.

If the City determines that a TIA Report is not necessary according to the VTA CMP Guidelines, the Addendum to the EIR should clearly state any assumptions behind the determination. VTA also requests that the City send the Addendum to VTA if that is the outcome.

Transportation Demand Management / Trip Reduction
The area of the project is not a transit-rich area, based on present transit service levels, dispersed land uses and lack of a fine-grained street network surrounding the project. The project site is directly served only by Local Lines 57 and 58, which run at half-hourly intervals, and the

Limited 304 and ACE Yellow Line Shuttle, which only run during commute hours. The site is approximately 2 miles from the nearest Caltrain station. Given the project's location, VTA encourages the City to work with the project sponsor to identify other Transportation Demand Management (TDM) measures to reduce single-occupant vehicle trips to the project site. Effective TDM measures to improve non-auto mode share could include parking cash-out or parking pricing, carpool incentives, and/or public-private partnerships or employer contributions to provide improved transit service in the area (for example, shuttles to Caltrain, ACE, or VTA Light Rail). VTA also encourages the City to establish an enforceable trip reduction target for the project with a monitoring component.

Existing Bus Service

VTA provides bus service along Bowers Avenue adjacent to the overall project site and maintains a bus stop on Bowers Avenue, north of Scott Boulevard. In order to provide convenient access to transit service, VTA recommends that the project provide the following improvements for this bus stop:

- Minimum 22' wide curb lane or bus duckout consistent with VTA standards
- Minimum 10' X 55' PCC bus stop pavement pad
- Minimum 8' X 40' sidewalk adjacent to the bus stop area
- Place trees and landscaping back of the sidewalk in the bus stop area, away from the bus stop loading zone

Thank you for the opportunity to review this project. If you have any questions, please call me at (408) 321-5784.

Sincerely,

Roy Molseed
Senior Environmental Planner

Attachment

SC1406

SANTA CLARA SQUARE PHASES II & III

Santa Clara, CA

FINAL PLANNING APPLICATION SUBMITTAL
NOVEMBER 7, 2014

PROJECT INFORMATION

EXISTING ASSESSOR'S PARCEL NUMBER(S)	
PHASE II:	216-045-006, 216-045-036, 216-045-037, & 216-045-038
PHASE III:	216-045-008, 216-045-024, & 216-045-025
EXISTING BUILDING ADDRESSES	2455-2457, 2465-2475 AUGUSTINE DRIVE (216-45-006)
	3333 & 3393 OCTAVIUS DRIVE (216-45-025)
	2375 & 2385 AUGUSTINE DRIVE (216-45-036)
	2525 AUGUSTINE DRIVE (216-45-037)
	2505 AUGUSTINE DRIVE (216-45-038)
PROPOSED ASSESSOR'S PARCEL NUMBER(S)	TO BE DETERMINED
PROPOSED BUILDING ADDRESSES	TO BE DETERMINED
PLANNING/ZONING	
EXISTING ZONING DESIGNATION	ML (LIGHT INDUSTRIAL): 216-045-025, & 216-045-038
	CP (COMMERCIAL PARK): 216-045-006, 216-045-036, & 216-045-037
EXISTING GENERAL PLAN DESIGNATION	LIGHT INDUSTRIAL: 216-045-025, & 216-045-038
	HIGH INTENSITY OFFICE/R&D: 216-045-006, 216-045-036, & 216-045-037
PROPOSED ZONING DESIGNATION	CP (COMMERCIAL PARK)
PROPOSED GENERAL PLAN DESIGNATION	HIGH INTENSITY OFFICE/R&D
PHASE II	
GROSS SITE AREA:	±13.66 ACRES (±594,998 SF)
TOTAL NET SITE AREA:	±594,998 SF
PROPOSED SITE BUILDING COVERAGE:	±118,750 SF (20.0%)
PROPOSED SITE PARKING STRUCTURE COVERAGE:	±150,900 SF (25.4%)
PROPOSED LANDSCAPE COVERAGE:	±153,397 SF (25.8%)
PROPOSED BUILDING GROSS AREA:	±651,788 GSF
PROPOSED F.A.R.:	1.10
MIN. PARKING RATIO:	1 SPACE/300 GROSS BUILDING SF
MIN. PARKING REQUIRED:	2,173 SPACES
PROPOSED PARKING WITHIN PARKING STRUCTURES	2,270 SPACES
PROPOSED PARKING ON-GRADE	33 SPACES
TOTAL PARKING PROVIDED	2,303 SPACES (3.53 SPACES/1,000 GROSS BUILDING SF)
PHASE III	
GROSS SITE AREA:	±9.13 ACRES (±397,620 SF)
TOTAL NET SITE AREA:	±397,620 SF
PROPOSED SITE BUILDING COVERAGE:	±72,500 SF (18.2%)
PROPOSED SITE PARKING STRUCTURE COVERAGE:	±74,842 SF (18.8%)
PROPOSED LANDSCAPE COVERAGE:	±167,878 SF (42.2%)
PROPOSED BUILDING GROSS AREA:	±421,182 GSF
PROPOSED F.A.R.:	1.06
MIN. PARKING RATIO:	1 SPACE/300 GROSS BUILDING SF
MIN. PARKING REQUIRED:	1,404 SPACES
PROPOSED PARKING WITHIN PARKING STRUCTURES	1,380 SPACES
PROPOSED PARKING ON-GRADE	46 SPACES
TOTAL PARKING PROVIDED	1,426 SPACES (3.38 SPACES/1,000 GROSS BUILDING SF)

BUILDING HEIGHT

- MAXIMUM HEIGHT OF BUILDINGS IS 150 FEET AND SUBJECT TO FEDERAL AVIATION ADMINISTRATION (FAA) REGULATIONS PART 77 HEIGHT RESTRICTIONS.

BUILDING AREA

- MAXIMUM BUILDING SQUARE FOOTAGE OFFICE PHASES I, II, & III: 1,969,800 SQUARE FEET.
- BUILDING SQUARE FOOTAGE SHALL NOT INCLUDE PARKING STRUCTURES.

PROJECT DIRECTORY

OWNER
IRVINE COMPANY
690 N. McCarthy Blvd., Suite 100
Milpitas, CA 95035
Tele: (408) 957-1265 Fax: (408) 957-0408
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E-mail: cketchoff@irvinecompany.com
Contact: Roger DeWames
E-mail: rdewames@irvinecompany.com

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Contact: Laura Wagner
E-mail: lwagner@pei-p.com

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Irvine, CA 92617
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Contact: Jim Kelly, Principal
E-mail: jkelly@lpainc.com
Contact: Justin Kerfoot, Project Manager
E-mail: jkerfoot@lpainc.com

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San Jose, CA 95131
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Contact: Ray Hashimoto
E-mail: rhashimoto@hmhfirm.com
Contact: Joey Vignola
E-mail: jvignola@hmhfirm.com

LANDSCAPE ARCHITECT
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387 S Cedros Avenue
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Contact: Brad Emerson
E-mail: brad@burton-studio.com

PARKING STRUCTURE ARCHITECT
CHASTE PARKING CONSULTANTS, INC.
18964 Von Karman, Suite 230
Irvine, CA 92612
Tele: (949) 474-9889 Fax: (949) 474-2420
Contact: Rick Chaste
E-mail: rick@chasteparking.com
Contact: Jacob Ohl
E-mail: jacob@chasteparking.com

SIGNAGE
DAVIES ASSOCIATES, INC.
9424 Dayton Way, Suite 217
Beverly Hills, CA 90210
Tele: (310) 247-8572 Fax: (310) 247-9300
Contact: Neil Davies
E-mail: ndavies@davieslab.com
Contact: Brad Donahue
E-mail: bdonahue@davieslab.com

SHEET INDEX

LAST ISSUED	CHANGED IN THIS ISSUE	REVISED AT		
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11-07-14			S-1	STORMWATER CONTROL PLAN – OFFICE PHASES II & III
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11-07-14			P3A-273	PARKING GARAGE B – TOP LEVEL FLOOR PLAN
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				SIGNAGE
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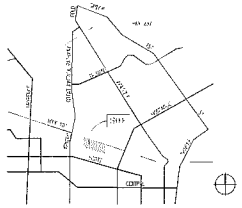
11-07-14			GS-402	SIGNAGE ELEVATIONS
				RENDERINGS
11-07-14			R-1	RENDERING VIEWS
11-07-14			R-2	RENDERING VIEWS

VICINITY MAP



IRVINE COMPANY
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LPA
PEI COBB FREED & PARTNERS

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CPC
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Irvine, CA 92612
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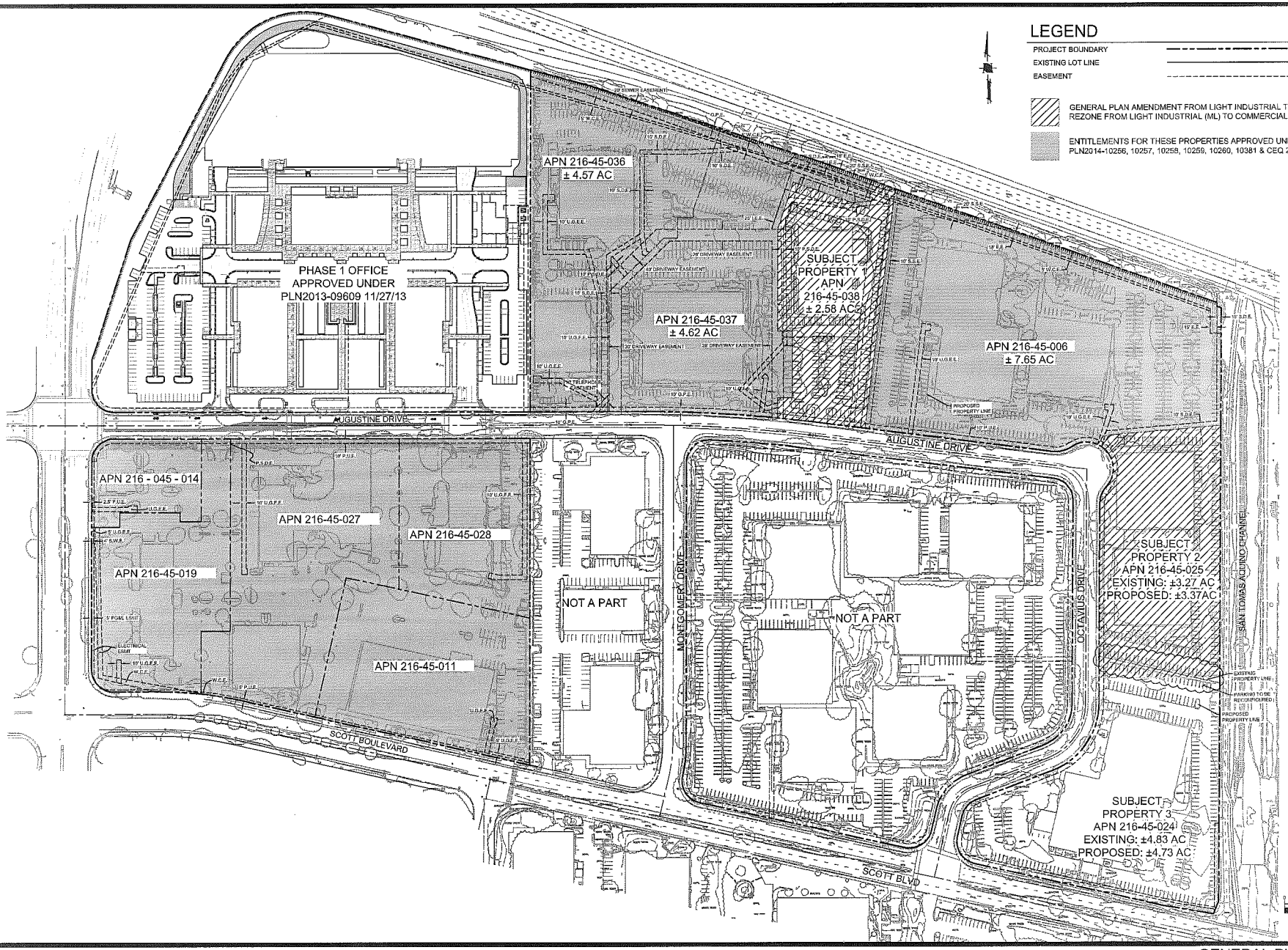
9424 Dayton Way
Suite 217
Beverly Hills, CA 90210
tel 310 247 8572
fax 310 247 9300
www.davieslab.com

11-07-14

COVER SHEET

SANTA CLARA SQUARE
SANTA CLARA, CA



SHEET
C-1

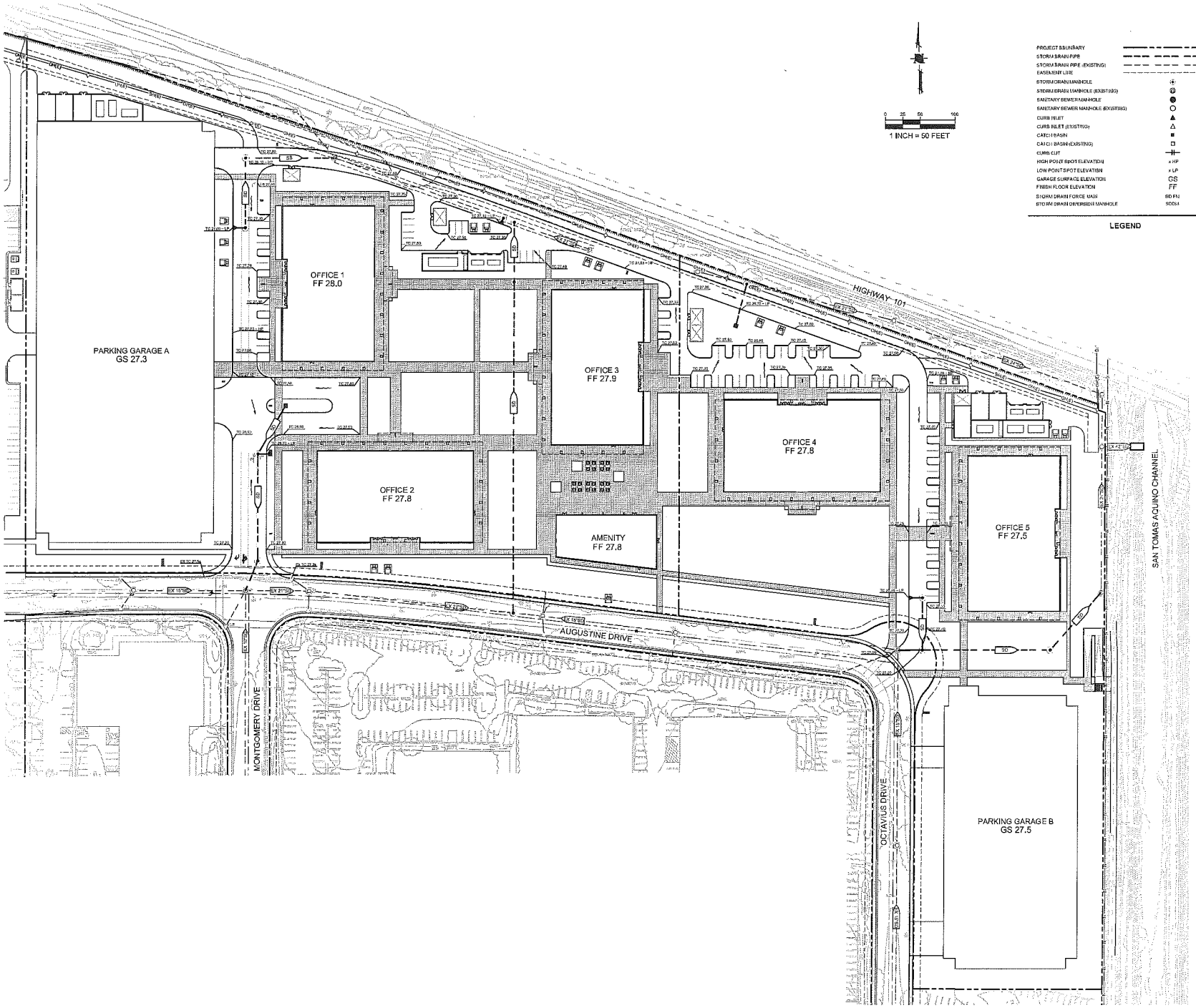
GENERAL PLAN REZONE EXHIBIT

Scale: 1" = 80'

Drawn: RP | Reviewed: RTH

HMH4269.00 9/13/2014

HMH
1570 Oakland Road (408) 487-2200
San Jose, CA 95131 hmhca.com



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SANTA CLARA SQUARE PHASES II & III

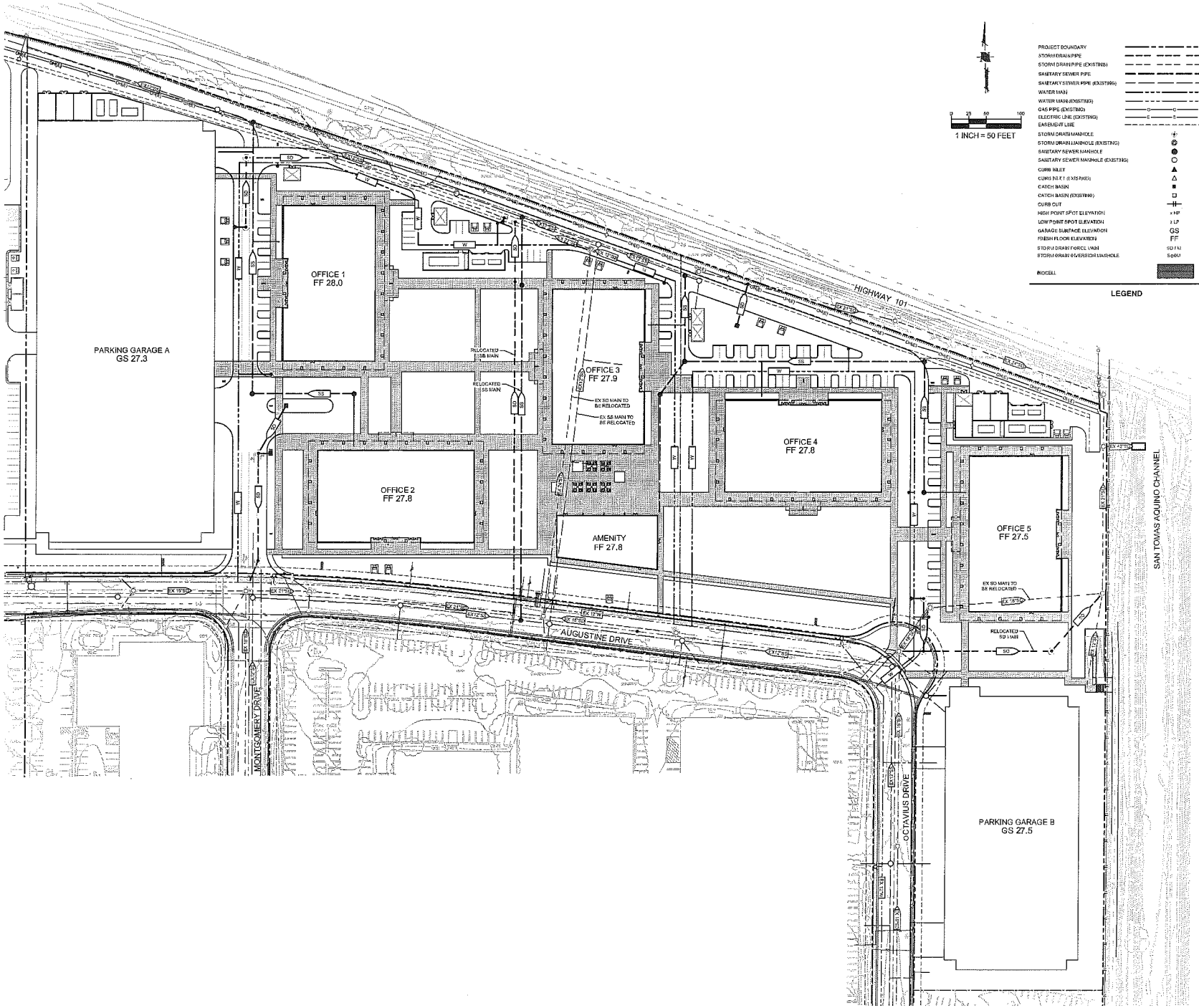
SANTA CLARA, CA

Developed for IRVINE COMPANY Since 1864

Job No. 15104.01
Date 01/12/2016
Checked by TJ
Scale 1" = 50'

GRADING AND DRAINAGE PLAN OFFICE PHASES II & III

C-4



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SANTA CLARA SQUARE PHASES II & III

SANTA CLARA, CA

Developed for IRVINE COMPANY Since 1864

Date	Revision

Issued	Date
PRELIMINARY DEVELOPMENT PLAN	07/17/2014
PRELIMINARY DEVELOPMENT PLAN	09/19/2014
PRELIMINARY DEVELOPMENT PLAN	10/17/2014
PRELIMINARY DEVELOPMENT PLAN	12/17/2014

Job No. 13154.19

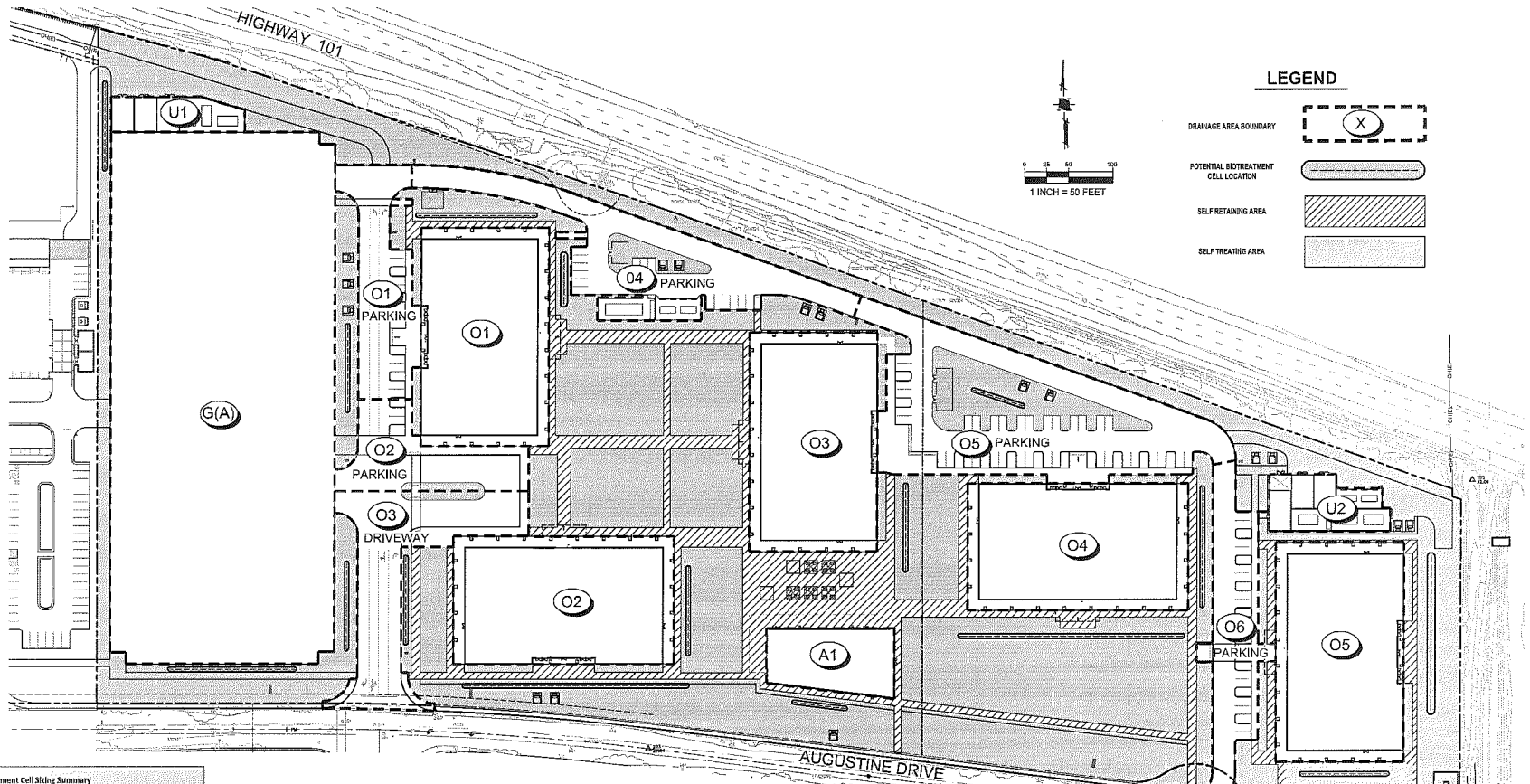
Date 11/17/2014

Checked by TV

Scale 1" = 50'

CONCEPTUAL
UTILITY PLAN
OFFICE PHASES II & III

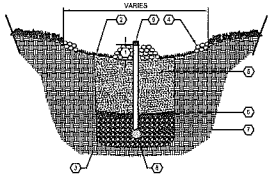
C-5



Biotreatment Cell Sizing Summary

Drainage Area	Impervious Surface Area Types	Size (sq. ft.)	% Impervious	Treatment Control Type	Min. Surface Area Required (sq. ft.)	Surface Area Provided (sq. ft.)
Garage A	Garage Roof, Surface Parking	153,200	100	Biotreatment Cell	3,447	3,500
Garage B	Garage Roof, Surface Parking	74,700	100	Biotreatment Cell	1,681	1,700
O1	Office Bldg. Roof	36,300	100	Biotreatment Cell	817	820
O2	Office Bldg. Roof	36,300	100	Biotreatment Cell	817	820
O3	Office Bldg. Roof	36,300	100	Biotreatment Cell	817	820
O4	Office Bldg. Roof	36,300	100	Biotreatment Cell	817	820
O5	Office Bldg. Roof	36,300	100	Biotreatment Cell	817	820
A1	Bldg. Roof	10,300	100	Biotreatment Cell	232	240
U1	Bldg. Roof	5,600	100	Biotreatment Cell	126	150
U2	Bldg. Roof	7,700	100	Biotreatment Cell	173	200
O1 Parking	Surface Parking, Driveway	16,400	100	Biotreatment Cell	369	400
O2 Parking	Surface Parking, Driveway	14,100	100	Biotreatment Cell	317	350
O3 Driveway	Driveway	22,600	100	Biotreatment Cell	509	550
O4 Parking	Surface Parking, Driveway	28,800	100	Biotreatment Cell	648	700
O5 Parking	Surface Parking, Driveway	49,100	100	Biotreatment Cell	1,105	1,150
O6 Parking	Surface Parking, Driveway	18,100	100	Biotreatment Cell	407	450

NOTES:
1. SEE CALCULATIONS ON STORMWATER PLANS FOR DIMENSIONS.
2. SEE LANDSCAPE PLANS FOR PLANTING AND IRRIGATION.
3. ANY EXPOSED EARTH IN BIOTREATMENT SOIL SHALL RECEIVE A MINIMUM OF 2" OF A FLAT-RESISTANT MULCH.



TYP BIOTREATMENT CELL - OPEN LANDSCAPE
SCALE: N.T.S.

1. PONDING DEPTH FROM INLET OPENING TO GRADE (MAX. 12" DEPTH, 10" AVERAGE)
2. VEGETATION (SEE LANDSCAPE PLANS)
3. NATIVE GRADE OR CERTIFIED COMPACTED SUBGRADE
4. COBBLE STONE DISSIPATOR ALONG EDGE OF BIORETENTION CELL ADJACENT TO IMPERVIOUS SURFACE
5. BIOTREATMENT SOIL MIX WITH PERCOLATION RATE OF 5" TO 10" PER HOUR (MINIMUM 18" DEPTH). SHALL CONFORM TO THE SAN FRANCISCO BAY MUNICIPAL REGIONAL PERMIT-REQUIRED "MODEL BIORETENTION SOIL MEDIA SPECIFICATION" OR EQUIVALENT.
6. PEA GRAVEL (MIN. 2" DEPTH)
7. DRAIN ROCK (MIN. 12" DEPTH)
8. PERFORATED PVC SUBDRAIN PIPE
9. OVERFLOW PIPE WITH ATRIUM GRATE

	Drainage Area Number	G(A)	G(B)	O1	O2	O3	O4	O5	A1	UTILITY1	UTILITY2	O1 PARKING	O2 PARKING	O3 DRIVEWAY	O4 PARKING	O5 PARKING	O6 PARKING
1	Total Drainage Area to BMP - A (ft^2)	153,200	74,700	36,300	36,300	36,300	36,300	36,300	10,300	5,600	7,700	16,400	14,100	22,600	28,800	49,100	18,100
2	Equivalent Impervious Area = $A ft^2$ x (0.90 x perv. area)	153,200	74,700	36,300	36,300	36,300	36,300	36,300	10,300	5,600	7,700	16,400	14,100	22,600	28,800	49,100	18,100
	Area discounted from Tree Credits (TC)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Equivalent Impervious Area - Tree Credits (AT)	153,200	74,700	36,300	36,300	36,300	36,300	36,300	10,300	5,600	7,700	16,400	14,100	22,600	28,800	49,100	18,100
3	Mean Annual Precipitation = 13.7 in.																
4	Rain gage closest to the site - San Jose Airport MAP_{gage} = 13.9 in.																
5	Rain gage correction factor = 13.7 in / 13.9 in. = 0.99																
6	Soil type for drainage area - D (clay loam)																
7	Average slope for the drainage area = 1%																
8	Adjusted unit basin storage from sizing curves = 0.99 x 0.58 = 0.57 in.																
9	Adjusted UBS volume (ft^3) = 0.57 in. x AT ft^2 x (1 ft/12 in.)	7,277	3,548	1,724	1,724	1,724	1,724	1,724	489	266	366	779	670	1,074	1,368	2,332	860
	Water Quality Design Volume (ft^3)	7,277	3,548	1,724	1,724	1,724	1,724	1,724	489	266	366	779	670	1,074	1,368	2,332	860
	Biotreatment Sizing																
1	V_{WQ} (ft^3) (Unit Basin Storage = .58 in.)	7,277	3,548	1,724	1,724	1,724	1,724	1,724	489	266	366	779	670	1,074	1,368	2,332	860
2	Assume rainfall intensity of .20 in/hr for flow-based sizing criteria																
3	Duration of the rain event = .57 in / .20 in/hr = 2.85 hr																
4	Preliminary estimate of total surface area - AP (ft^2) = .03 x AT	4,596	2,241	1,089	1,089	1,089	1,089	1,089	309	168	231	492	423	678	864	1,473	543
5	Assume 25% smaller surface area than calculated in 4 - AA (ft^2) = .75 x AP	3,447	1,681	817	817	817	817	817	232	126	173	369	317	509	648	1,105	407
6	Vol. of runoff fleeing through treatment soil = VR (ft^3) = AA x 5 in/hr x (1 ft/12 in) x 2.9 hr	4,165	2,031	987	987	987	987	987	280	152	209	446	383	614	783	1,335	492
7	Portion of V_{WQ} req'd to be stored in ponding area: VP (ft^3) = VWQ – VR	3,112	1,517	737	737	737	737	737	209	114	156	333	286	459	585	997	368
8	Average ponding depth is between 6 and 12 in – HP (in) = VP ft^3 / AA ft^2 x 12 in/ft	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8
	Minimum required biotreatment cell surface area (ft^2)	3,447	1,681	817	817	817	817	817	232	126	173	369	317	509	648	1,105	407

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Devine Associates

SANTA CLARA SQUARE PHASES II & III

SANTA CLARA, CA

Developed for IRVINE COMPANY Since 1864

Revision	Date

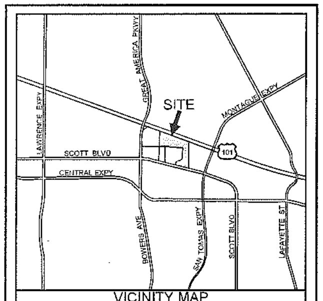
Issued	Date
PRELIMINARY DEVELOPMENT PLAN	2/28/2014
PRELIMINARY DEVELOPMENT PLAN	10/17/2014
PRE-APPLICATION SUBMITTAL	11/17/2014

Job No. 13164.19
Date 11/17/2014
Checked by TC
Drawn by [illegible]

CONCEPTUAL STORM WATER CONTROL PLAN

S-1

CONTRACTOR AGREES THAT HE SHALL ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THIS PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY; THAT THIS REQUIREMENT SHALL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS, AND THAT THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD THE OWNER AND HMH HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT, EXCEPTING FOR LIABILITY ARISING FROM THE SOLE NEGLIGENCE OF THE OWNER OR HMH.



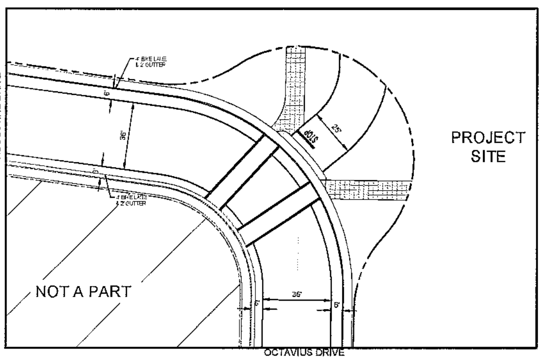
VICINITY MAP
NOT TO SCALE

GENERAL NOTES

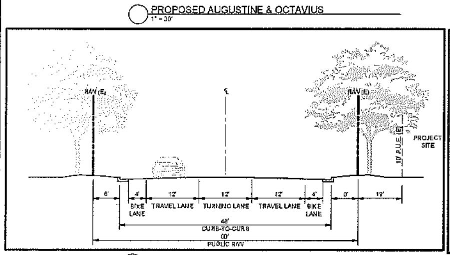
- PROJECT NAME: SANTA CLARA SQUARE
- OWNER: THE IRVINE COMPANY, 690 N. MCCARTHY BLVD, MILPITAS, CA 95035
  PSAI, 155 MONTGOMERY ST, SAN FRANCISCO, CA 94104
- SUBDIVIDER: THE IRVINE COMPANY
- ENGINEER: HMH ENGINEERS, 1570 OAKLAND ROAD, SAN JOSE, CA 95131
- STREET LOCATION: AUGUSTINE DRIVE & OCTAVIUS DRIVE
- EXISTING ZONING: ML-LIGHT INDUSTRIAL
- EXISTING GP DESIGNATION: LIGHT INDUSTRIAL
- EXISTING USE: OFFICE PARK
- PROPOSED USE: OFFICES
- WATER SUPPLY: CITY OF SANTA CLARA
- SEWAGE DISPOSAL: CITY OF SANTA CLARA
- ASSESSOR'S PARCEL #(S): 216-45-005, 024, 025, 036, 037, 038
- STREET TREES: SHALL CONFORM TO CITY OF SANTA CLARA STANDARDS
- TOTAL SITE AREA: ± 27.5 ACRES
- EXISTING LOTS: 5 LOTS
- PROPOSED LOTS: 3 LOTS
- FLOOD ZONE: ZONE X
- ASSOCIATED PARCELS WITHIN THE PROJECT BOUNDARY WILL UNDERGO A GENERAL PLAN AMENDMENT TO CHANGE THE LAND USE DESIGNATION TO HIGH INTENSITY OFFICE/R&D. THESE PARCELS WILL BE REZONED TO COMMERCIAL PARK. SEE SHEET C-1 FOR DETAILS.
- THIS SUBDIVISION WILL CONFORM TO THE STREET TREE PLAN OF THE CITY OF SANTA CLARA.
- DEMOLITION PERMITS MAY BE ISSUED PRIOR TO ISSUANCE OF FINAL BUILDING PERMITS AND RECORDATION OF FINAL MAP.
- ALL DIMENSIONS DEPICTED HEREON ARE APPROXIMATE AND ARE SUBJECT TO REVISION AT FINAL MAP(S) STAGE.
- TOPOGRAPHY PROVIDED BY HMH, DATED OCTOBER 1, 2013.
- ALL EXISTING BUILDINGS WILL BE REMOVED, PRIOR TO FINAL SUBDIVISION OF PROPERTY.

LEGEND

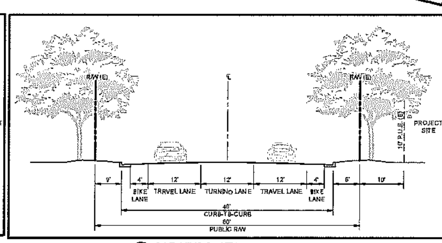
TENTATIVE MAP BOUNDARY	
PROPOSED LOT LINE	
EXISTING PROPERTY LINE	
EXISTING EASEMENT	
CENTER LINE	
U.G.E.E.	UNDERGROUND ELECTRIC EASEMENT
W.C.L.E.	ELECTRIC & WIRE CLEARANCE EASEMENT
P.S.D.E.	PRIVATE STORM DRAIN EASEMENT
P.U.E.	PUBLIC UTILITY EASEMENT
E.A.E.	EMERGENCY ACCESS EASEMENT
S.D.E.	PUBLIC STORM DRAIN EASEMENT
P.I.E.E.	PRIVATE INGRESS & EGRESS EASEMENT
S.S.E.	SEWER EASEMENT
L.E.	LANDSCAPE EASEMENT
E.E.	ELECTRIC EASEMENT



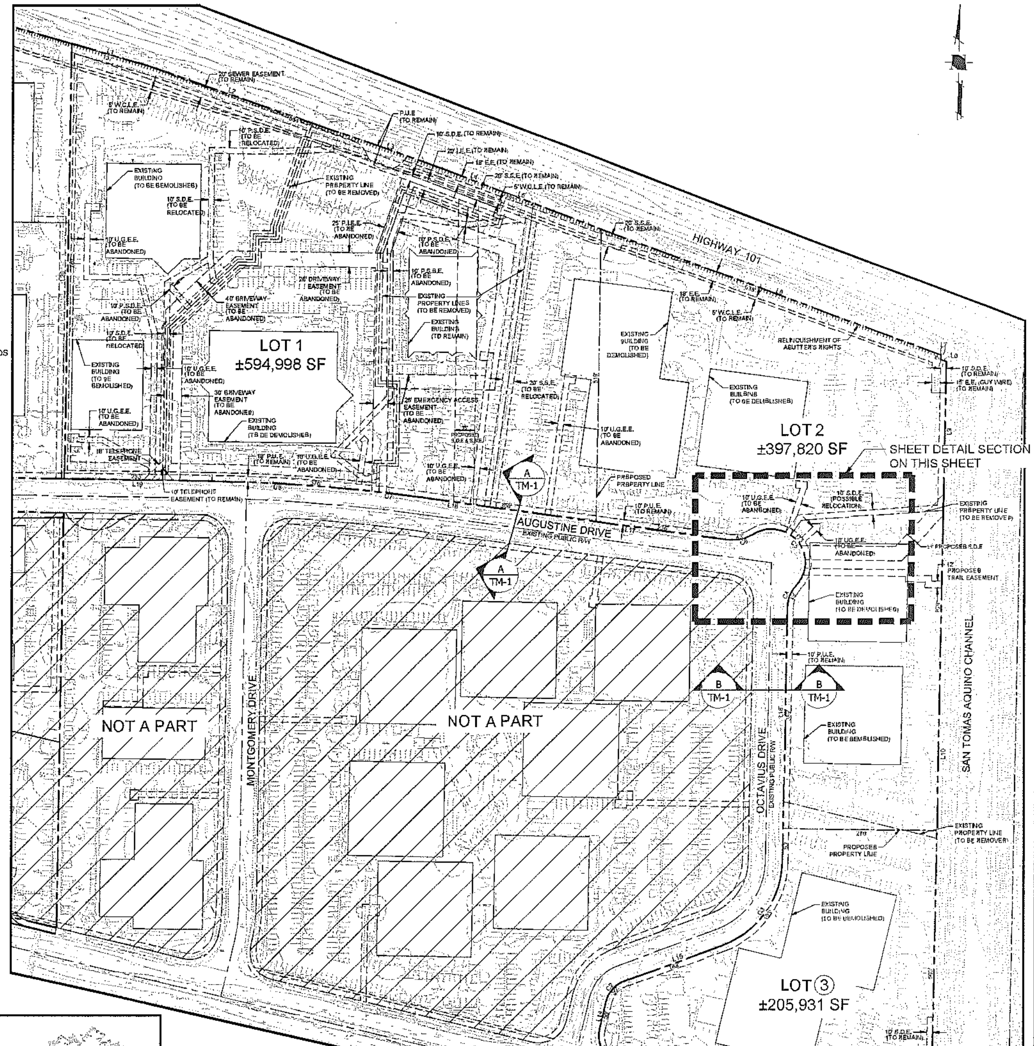
PROPOSED AUGUSTINE & OCTAVIUS
1" = 30'



A AUGUSTINE SECTION
NTS



B OCTAVIUS SECTION
NTS



LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	136.60'	N74° 10'39"W
L2	308.82'	N70° 45'48"W
L3	245.23'	N70° 45'48"W
L4	119.15'	N69° 24'38"W
L5	88.77'	N69° 24'38"W
L6	764.66'	S69° 24'38"E
L7	8.54'	S01° 00'36"W
L8	10.61'	S69° 24'54"E
L9	263.72'	S01° 00'36"W
L10	1068.39'	N01° 00'36"E
L11	29.52'	N22° 58'38"E
L12	216.17'	S79° 44'05"E
L13	431.34'	S76° 31'07"E
L14	50.00'	S13° 28'53"W
L15	182.72'	S69° 59'49"W
L16	447.63'	S01° 00'36"W
L17	424.11'	N82° 12'28"W
L18	128.73'	N82° 12'28"W
L19	253.48'	N89° 09'18"W
L20	767.28'	N00° 58'18"E

CURVE TABLE		
CURVE #	LENGTH	RADIUS
C1	78.54'	50'
C2	49.32'	50'
C3	192.65'	160'
C4	117.36'	60'
C5	177.78'	60'
C6	43.35'	60'
C7	78.00'	3038'
C8	300.2	3039'

0 50 100 200
1 INCH = 100 FEET

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Civil Engineering
Utility Design
Land Surveying
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(408) 487-2200
HMHca.com

VESTING TENTATIVE MAP
PLN2014-10579
SANTA CLARA SQUARE

NO	DATE	DESCRIPTION
5		
4	10/30/14	PER CITY COMMENTS
3	10/20/14	PER CITY COMMENTS
2	9/29/2014	PER CITY COMMENTS
1	8/12/2014	PER CITY COMMENTS

PROJECT NO:	3643.10
CAD DWG FILE:	364310TM.DWG
DESIGNED BY:	RB
DRAWN BY:	RG
CHECKED BY:	RTH
DATE:	AUGUST 13, 2014
SCALE:	1" = 100'
© HMH	

VESTING TENTATIVE MAP

TM-1

N

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HMH

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Davies Associates

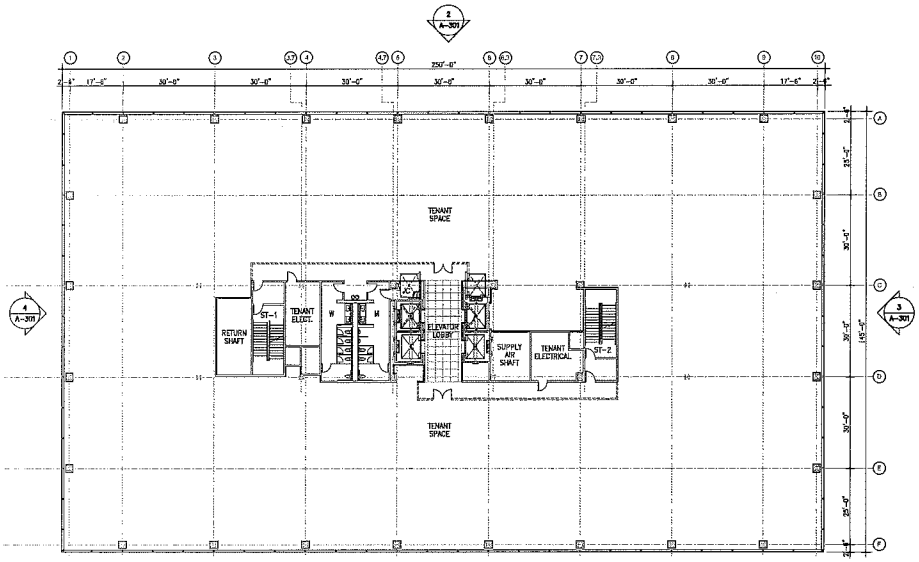
SANTA CLARA SQUARE PHASES II & III

SANTA CLARA, CA

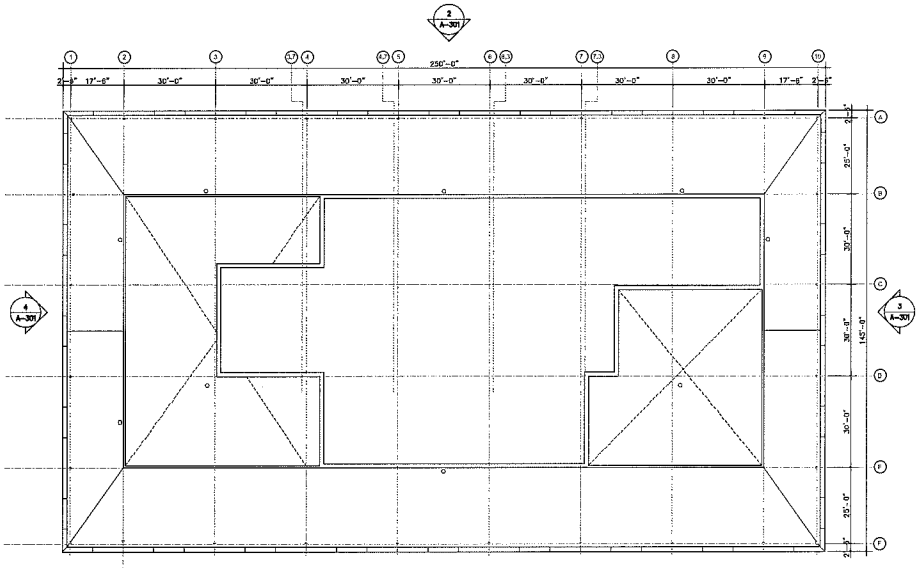
Developed for IRVINE COMPANY
Since 1864

OVERALL
SITE PLAN

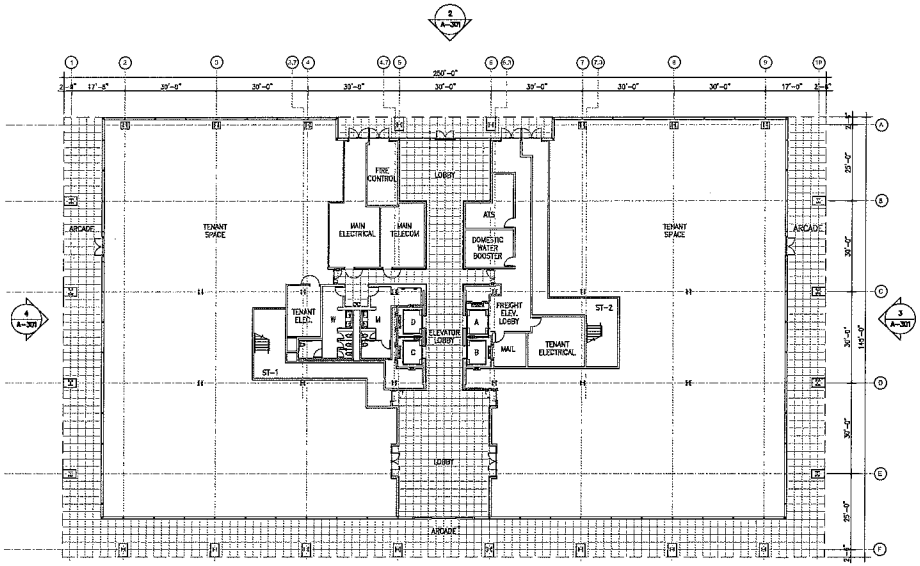
A-050



2 A-101 TYPICAL UPPER FLOOR PLAN 1/16"=1'-0"



3 A-101 ROOF PLAN 1/16"=1'-0"



1 A-101 GROUND FLOOR PLAN 1/16"=1'-0"

GENERAL NOTES
-ALL DIMENSIONS ARE TO MODULE LINES
-ALL PLANS AND ELEVATIONS ARE CONCEPTUAL

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SANTA CLARA SQUARE PHASES II & III

SANTA CLARA, CA

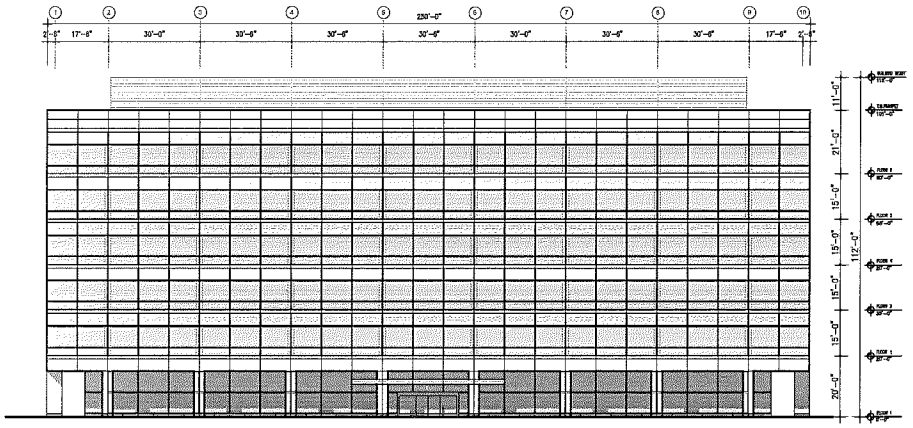
Developed by: IRVINE COMPANY Since 1864

Date	Description
1/15/14	SITE PLANNING APPLICATION FINAL FTR.

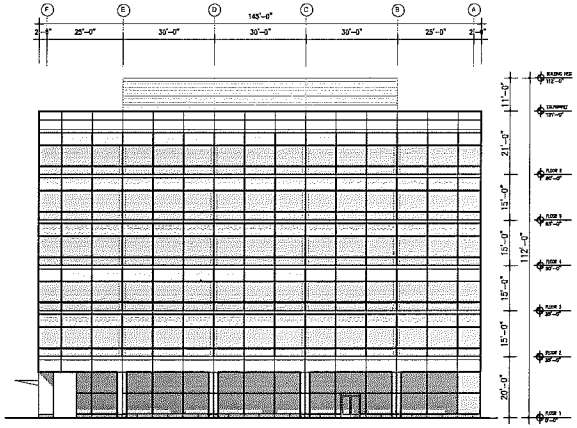
Job No. 13156.58
Date 1/15/2014
Drawn by
Scale

BUILDING FLOOR PLANS (GROUND, TYPICAL, ROOF)

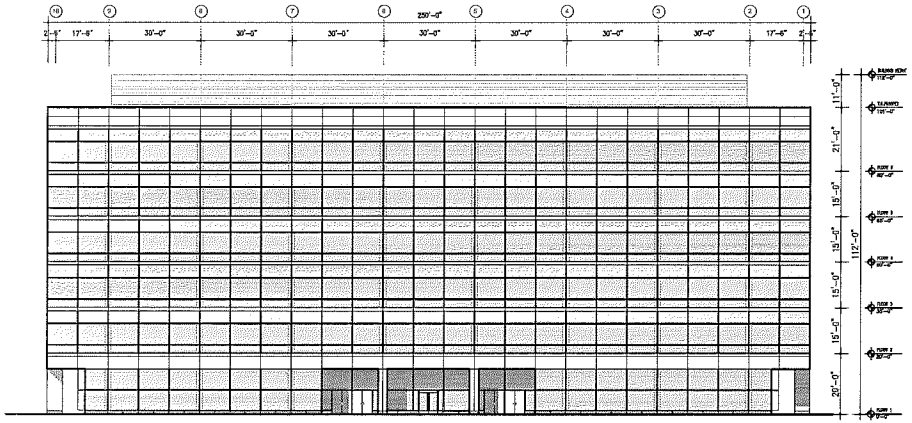
A-101



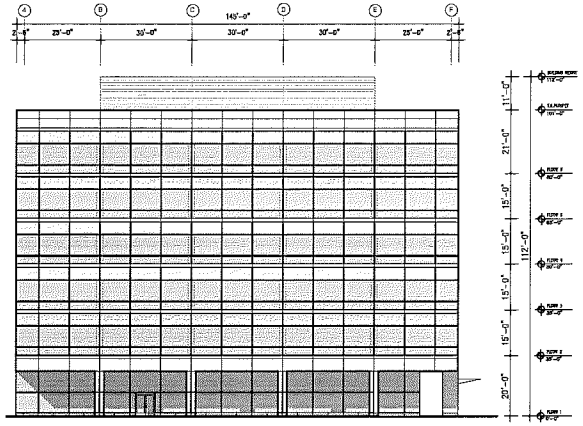
1 A-301 FRONT EXTERIOR ELEVATION 1/16"=1'-0"



3 A-301 SIDE EXTERIOR ELEVATION (LEFT) 1/16"=1'-0"



2 A-301 REAR EXTERIOR ELEVATION 1/16"=1'-0"



4 A-301 SIDE EXTERIOR ELEVATION (RIGHT) 1/16"=1'-0"

GENERAL NOTES

-ALL DIMENSIONS ARE TO MODULE LINES

-ALL PLANS AND ELEVATIONS ARE CONCEPTUAL

LPA

FSI COBB FREED & PARTNERS Architects LLP

HMH

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SANTA CLARA SQUARE PHASES II & III

SANTA CLARA, CA

Developed for IRVINE COMPANY Since 1864

Revision	Date

Issued	Date
FINAL PLANNING APPROVAL (US LITTRA)	11-13-2014

Job No. 13154.10

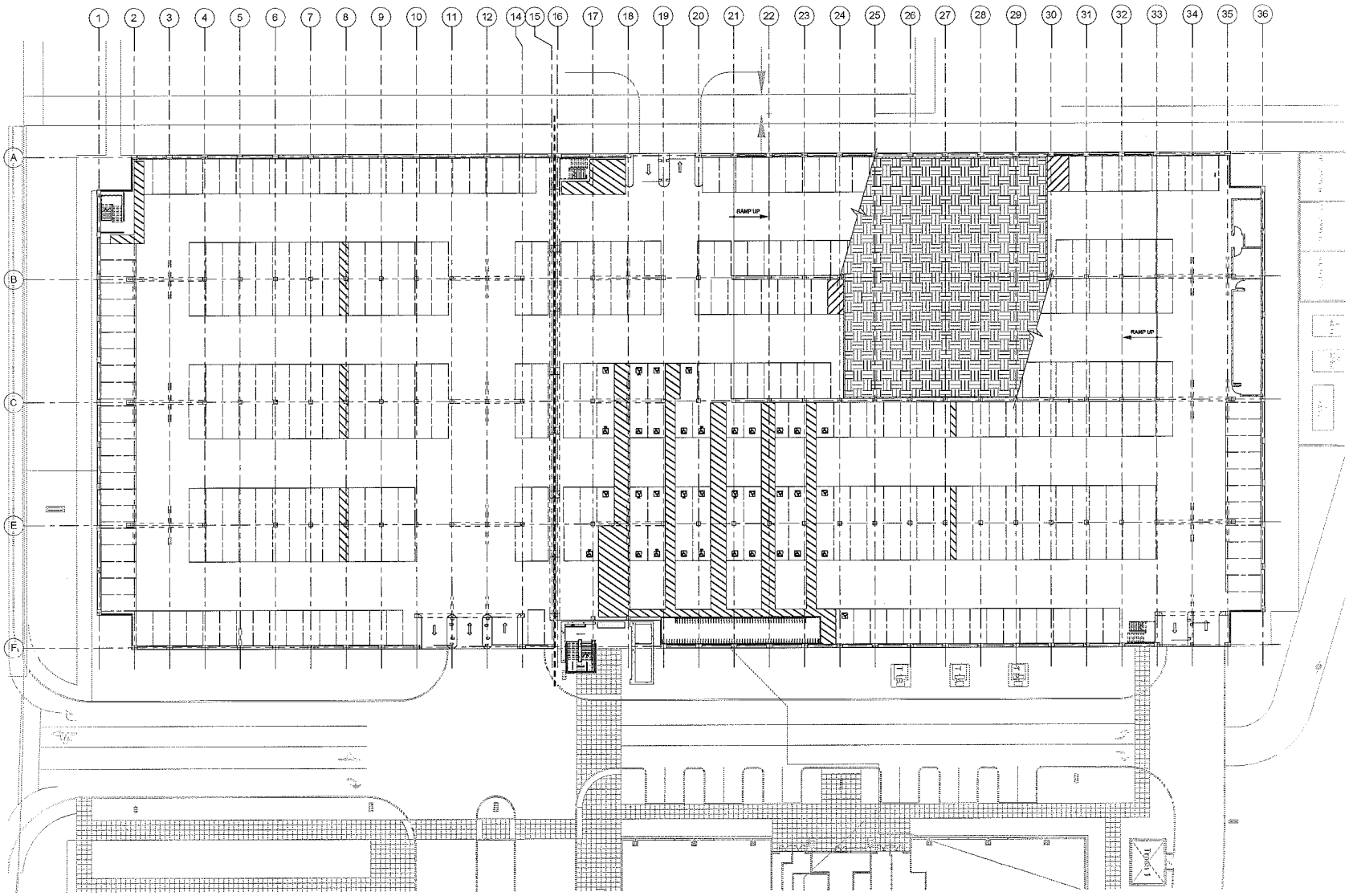
Date 11/07/2014

Drawn by

Scale

BUILDING EXTERIOR ELEVATIONS

A-301



1 GROUND LEVEL
1" = 20'-0"

0' 10' 20' 40'
SCALE: 1" = 20'-0"

N

LPA

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SANTA CLARA SQUARE PHASES II & III

SANTA CLARA, CA

Developed for: IRVINE COMPANY
Since 1894

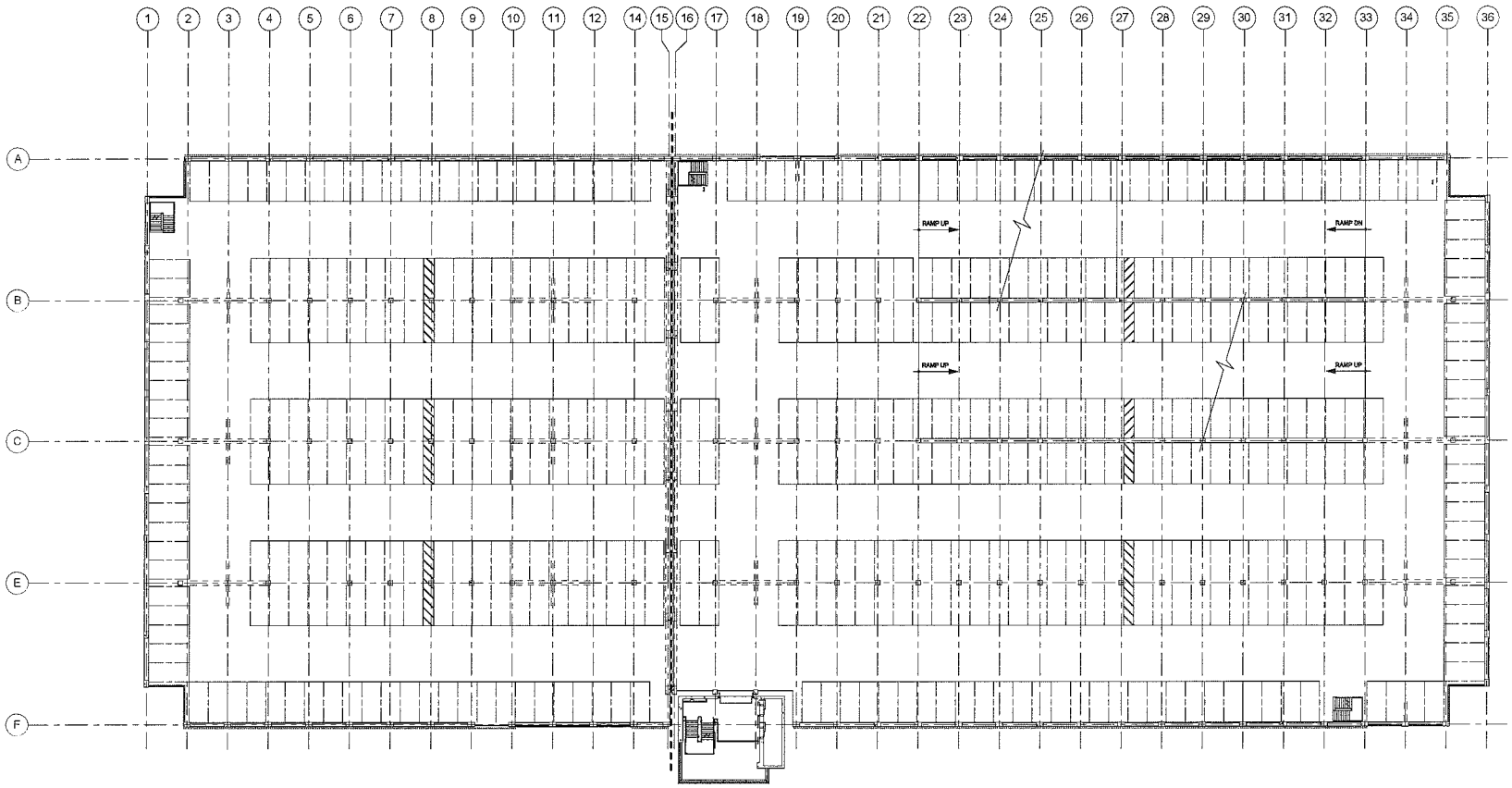
Revisions	Date
1	
2	
3	
4	

Issued	Date
FOR PLANNING APPLICATION SUBMITTAL	11/20/01

Job No. 16-001
Date 10/22/01
Checked by
Scale 1" = 20'-0"

PARKING GARAGE A - GROUND LEVEL

P2A-271



1 TYPICAL LEVEL
1" = 20'-0"

0' 10' 20' 40'
SCALE: 1" = 20'-0"

N

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SANTA CLARA SQUARE PHASES II & III

SANTA CLARA, CA

Developed for IRVINE COMPANY
Since 1864

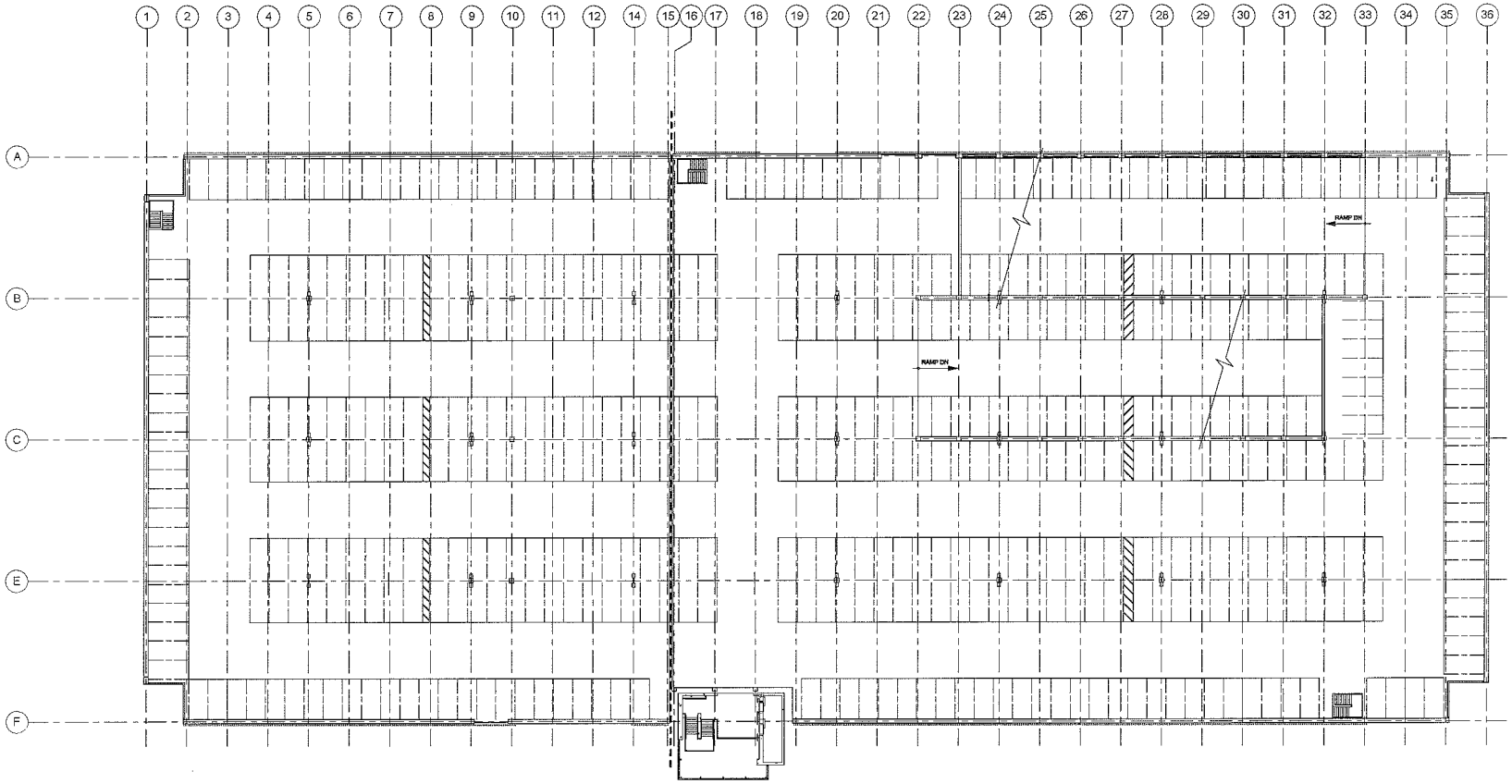
Revision	Date
1	

Issued	Date
TP-PLR-PARKING APPLICATION SUBMITTAL	10/17/14

Job No. 14-112
Drn. PEI/HMH
Checked By
Scale 1" = 20'-0"

PARKING GARAGE A - TYPICAL LEVEL

P2A-272



1 TOP LEVEL
1" = 20'-0"

0' 10' 20' 40'
SCALE: 1" = 20'-0"

N

LPA

PEI COBB FREED & PARTNERS

HMH

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Dunlap Associates

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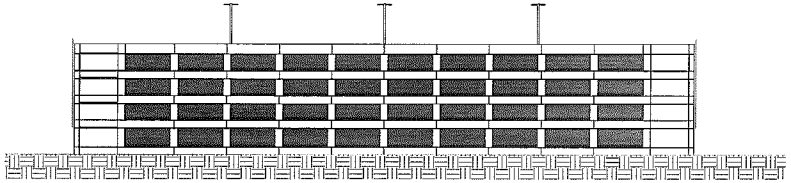
Issued
TI SL PLANNING / NPS / CUP/DD SUBMITTAL 11/17/09

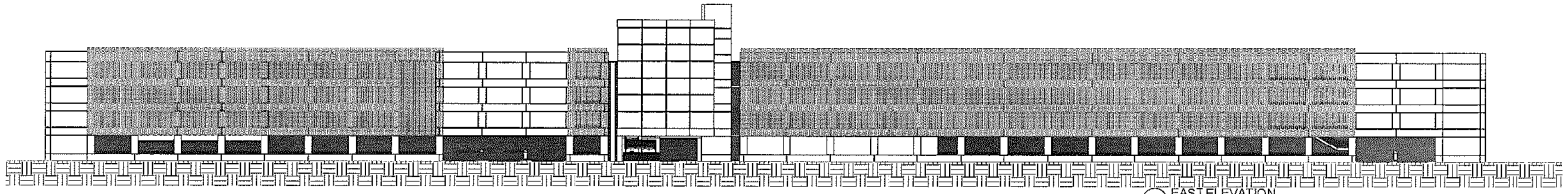
Job No. 84433
Date 11/17/09
Drawn by
Scale 1" = 20'-0"

PARKING GARAGE A - TOP LEVEL

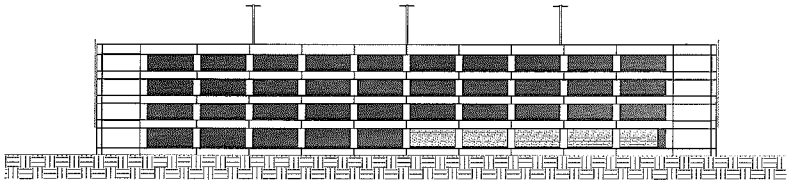
P2A-273



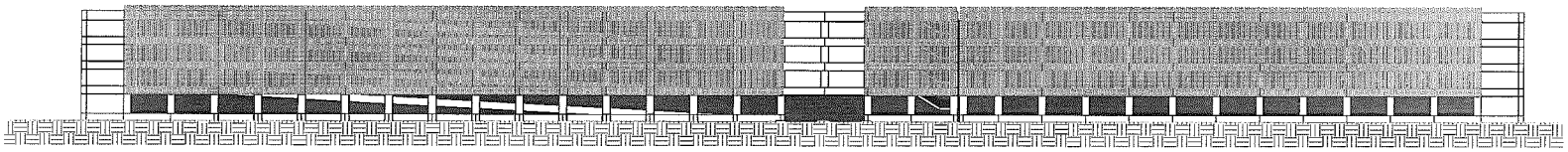
4 SOUTH ELEVATION
1" = 20'-0"



3 EAST ELEVATION
1" = 20'-0"



2 NORTH ELEVATION
1" = 20'-0"



1 WEST ELEVATION
1" = 20'-0"

LPA

PEI COBB FREED & PARTNERS
Architects
[illegible]

HMH
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San Jose, CA 95131 HMHcourse

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facsimile 949-474-2420

Davies Associates
Consultants in Security
[illegible]

SANTA CLARA SQUARE PHASES II & III

SANTA CLARA, CA

Developed for IRVINE COMPANY
Since 1864

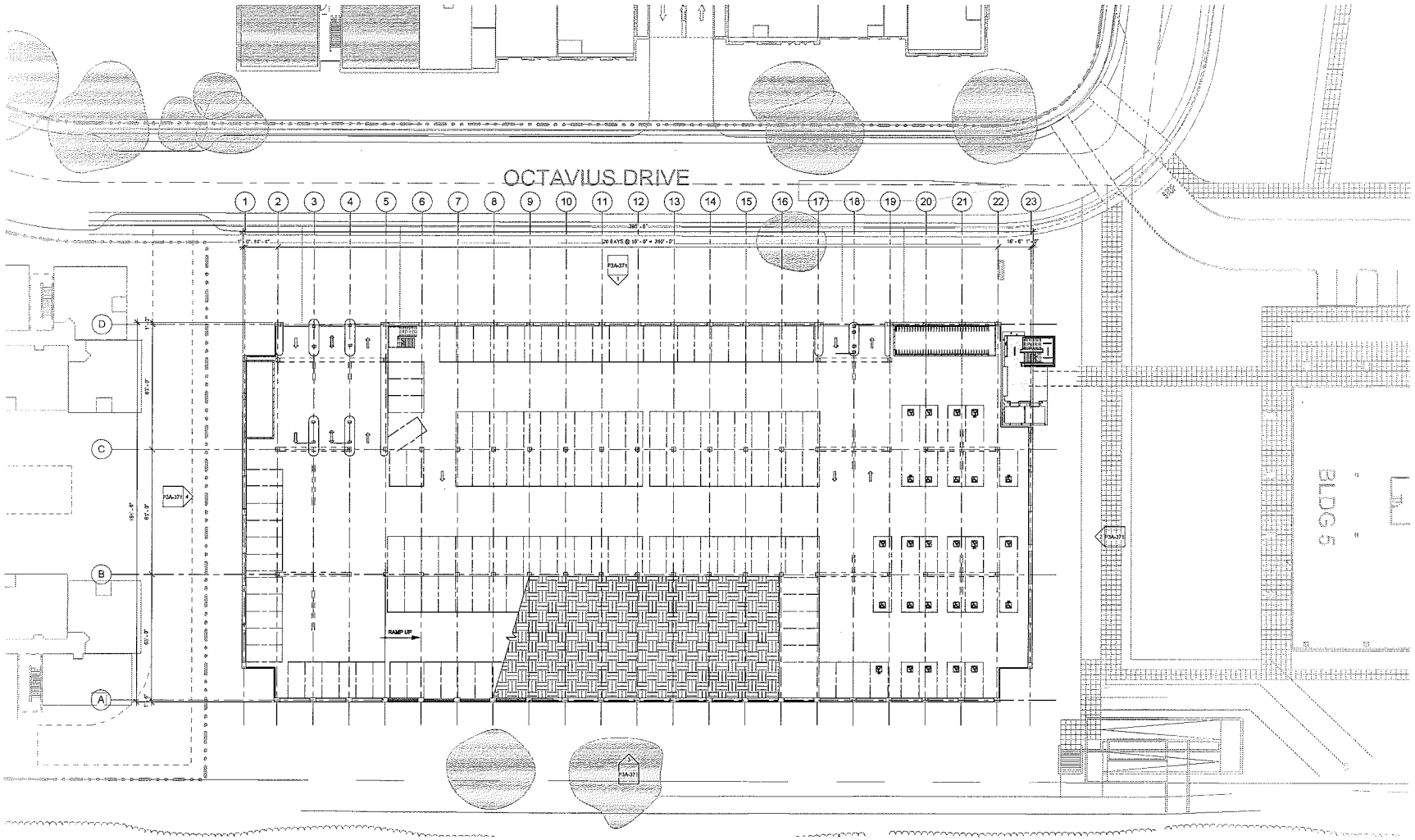
Issued	Date
FOR PLANNING APPROVAL/SUBMITTAL	10/02/04

Revision	Date
1	

Job No. 14-901
Date 10/01/04
Drawn by
Scale 1" = 20-0"

PARKING GARAGE A - BUILDING ELEVATIONS

P2A-371



1 GROUND LEVEL
1" = 20'-0"

0' 10' 20' 40'
SCALE: 1" = 20'-0"

N

LPA

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SANTA CLARA SQUARE PHASES II & III

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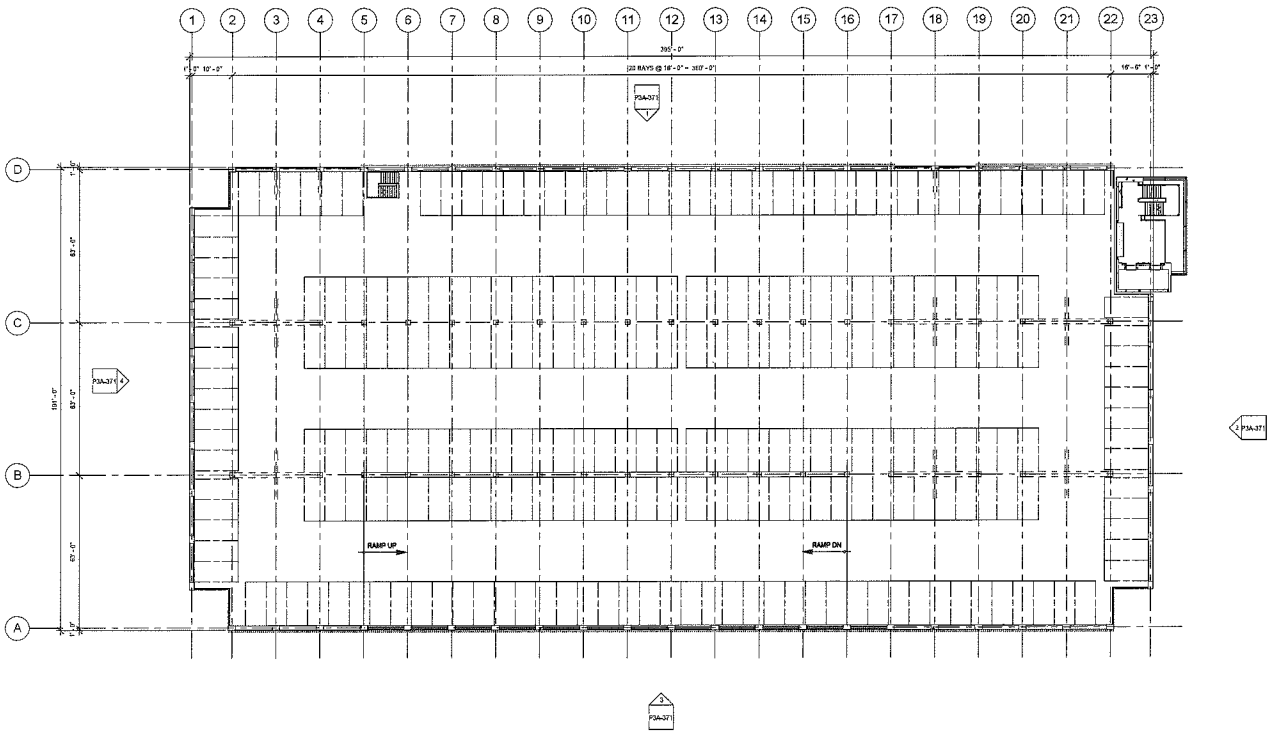
PARKING GARAGE B - GROUND LEVEL

P3A-271



1 TYPICAL LEVEL
1" = 20'-0"

0' 10' 20' 40'
SCALE : 1" = 20'-0"

N

LPA

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415 788 3112

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SANTA CLARA SQUARE PHASES II & III

SANTA CLARA, CA

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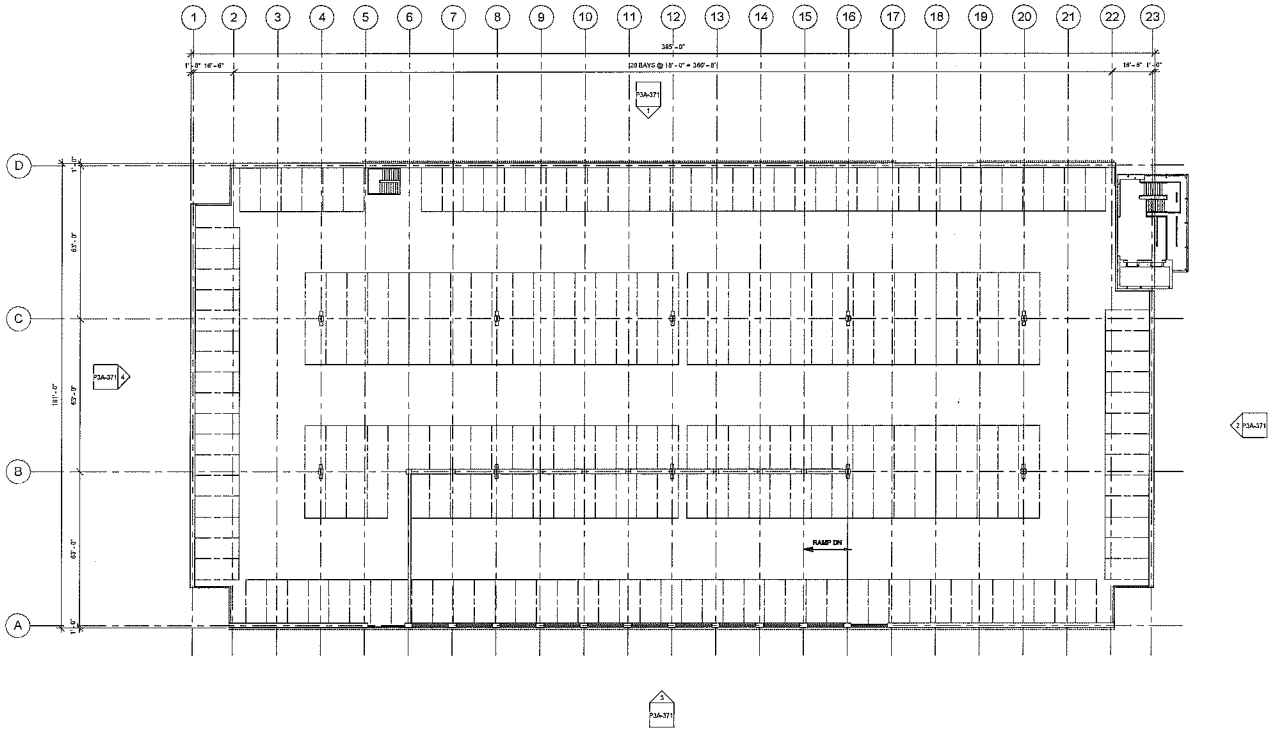
Revisions	Date
A	

Issued	Date
P.E.A. Review / APPLICATION SUBMITTAL	1/18/2011

Job No. 08-402
Date 11/15/07
Drawn by
Scale 1" = 20'-0"

PARKING GARAGE B - TYPICAL LEVEL

P3A-272



1 TOP LEVEL
1" = 20'-0"

6' 13' 20' 40'
SCALE: 1" = 20'-0"

N

LPA

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SANTA CLARA SQUARE PHASES II & III

SANTA CLARA, CA

Developed for: IRVINE COMPANY Since 1864

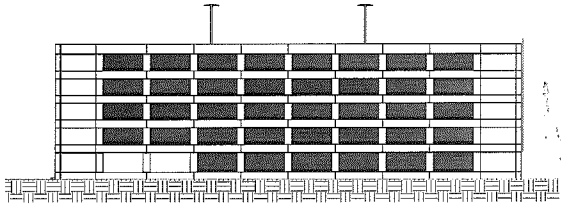
Revisions	Date

Issued	Date
PERMIT/APPROVAL SUBMITTAL	10/07/04

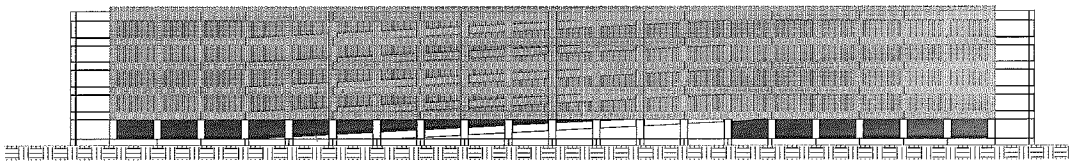
Job No. 13-503
Date 10/07/04
Drawn by
Checked by
Scale 1" = 20'-0"

PARKING GARAGE B - TOP LEVEL

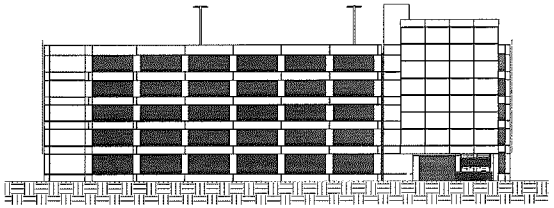
P3A-273



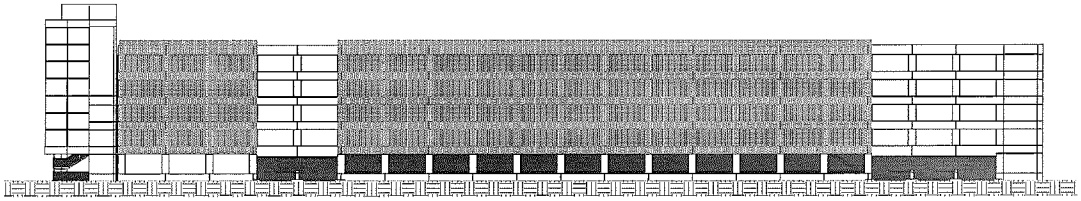
4 SOUTH ELEVATION
1" = 20'-0"



3 EAST ELEVATION
1" = 20'-0"



2 NORTH ELEVATION
1" = 20'-0"



1 WEST ELEVATION
1" = 20'-0"

LPA

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SANTA CLARA SQUARE PHASES II & III

SANTA CLARA, CA

Developed for IRVINE COMPANY Since 1864

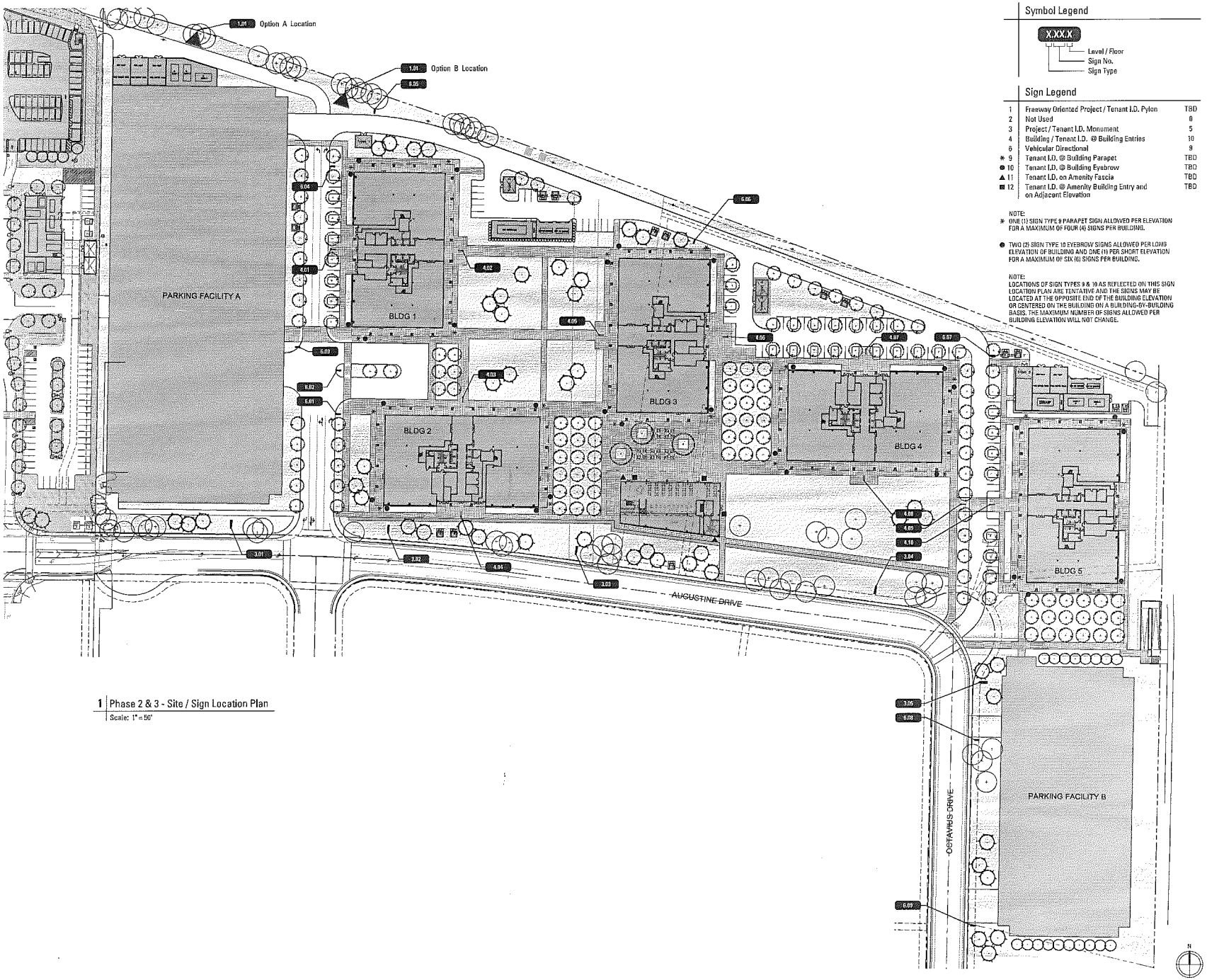
Revision	Date

Submittal	Date

Job No. 06-160
Date 10/07/14
Checked by
Scale 1" = 20'-0"

PARKING GARAGE B - BUILDING ELEVATIONS

P3A-371



1 Phase 2 & 3 - Site / Sign Location Plan

Scale: 1" = 50'

Symbol Legend

X.XX.X

- Level / Floor
- Sign No.
- Sign Type

Sign Legend

1	Freeway Oriented Project / Tenant I.D. Pylon	TBD
2	Not Used	0
3	Project / Tenant I.D. Monument	5
4	Building / Tenant I.D. @ Building Entries	10
6	Vehicular Directional	9
* 9	Tenant I.D. @ Building Parapet	TBD
● 10	Tenant I.D. @ Building Eyebrow	TBD
▲ 11	Tenant I.D. on Amenity Fascia	TBD
■ 12	Tenant I.D. @ Amenity Building Entry and on Adjacent Elevation	TBD

NOTE:
* ONE (1) SIGN TYPE 9 PARAPET SIGN ALLOWED PER ELEVATION FOR A MAXIMUM OF FOUR (4) SIGNS PER BUILDING.

● TWO (2) SIGN TYPE 10 EYEBROW SIGNS ALLOWED PER LONG ELEVATION OF BUILDING AND ONE (1) PER SHORT ELEVATION FOR A MAXIMUM OF SIX (6) SIGNS PER BUILDING.

NOTE:
LOCATIONS OF SIGN TYPES 9 & 10 AS REFLECTED ON THIS SIGN LOCATION PLAN ARE TENTATIVE AND THE SIGNS MAY BE LOCATED AT THE OPPOSITE END OF THE BUILDING ELEVATION OR CENTERED ON THE BUILDING ON A BUILDING-BY-BUILDING BASIS. THE MAXIMUM NUMBER OF SIGNS ALLOWED PER BUILDING ELEVATION WILL NOT CHANGE.

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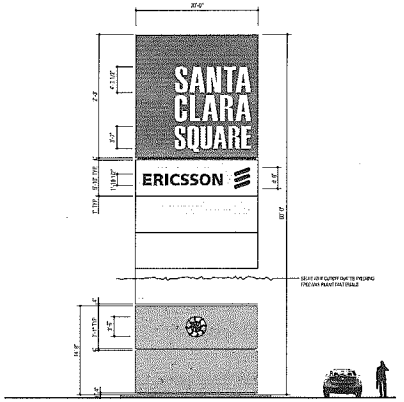
SANTA CLARA SQUARE PHASES II & III

SANTA CLARA, CA

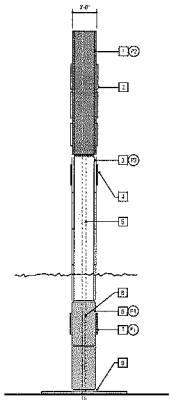
Developed for IRVINE COMPANY Since 1864

SITE / SIGN LOCATION PLAN

GS-1.1



1 ELEVATION - SIGN TYPE 1 - PROJECT/TENANT ID FREEWAY PYLON - OPTION 2
SCALE: 1/8" = 1'-0"



2 SIDE ELEVATION
SCALE: 1/8" = 1'-0"

NOTES

1 INTERNALLY ILLUMINATED, FACE-LIT CHANNEL LETTERS WITH WHITE LED'S AND CLEAR ACRYLIC FACES TO CAST SOFT, DIFFUSED LIGHT ONTO PANEL BACKGROUND

2 3" RAISED DIMENSIONAL ALUMINUM LETTERS WITH WHITE LED'S AND CLEAR ACRYLIC FACES TO CAST SOFT, DIFFUSED LIGHT ONTO PANEL BACKGROUND

3 INTERNALLY ILLUMINATED, FACE-LIT, FABRICATED ALUMINUM SIGN WITH ACRYLIC TENANT SIGN PANELS

4 3/4" THICK TEMPERED GLASS WITH SILKSCREENED PATTERN ON FRONT SURFACE TO CAST SOFT, DIFFUSED LIGHT ONTO PANEL BACKGROUND

5 INTERNALLY ILLUMINATED, FABRICATED STEEL FRAME WITH LED'S AND CLEAR ACRYLIC FACES TO CAST SOFT, DIFFUSED LIGHT ONTO PANEL BACKGROUND

6 INTERNALLY ILLUMINATED, FABRICATED STEEL FRAME WITH LED'S AND CLEAR ACRYLIC FACES TO CAST SOFT, DIFFUSED LIGHT ONTO PANEL BACKGROUND

7 3/4" THICK TEMPERED GLASS WITH SILKSCREENED PATTERN ON FRONT SURFACE TO CAST SOFT, DIFFUSED LIGHT ONTO PANEL BACKGROUND

8 PRIMARY ELECTRICAL SERVICE

9 CONCRETE FOOTING, REFER TO STRUCTURAL DRAWINGS FOR DETAILS

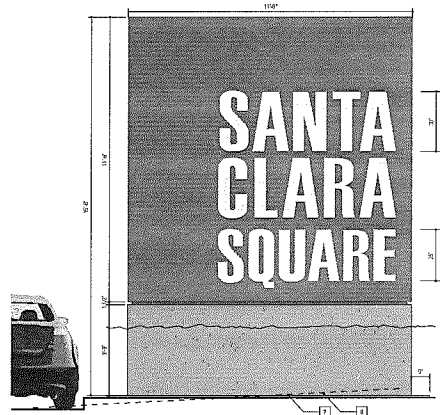
PA1 SATINAL ALUMINUM FINISH

PA2 STAINLESS FINISH TO MATCH PANTONE 877

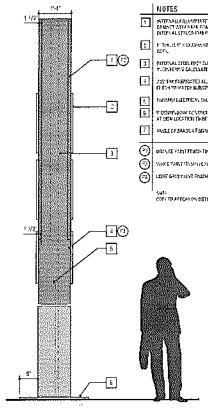
PA3 WHITE PAINT FINISH

PA4 LIGHT GREY PAINT FINISH TO MATCH BUILDING METAL COMPONENTS

NOTE:
SIGN TO BE PAINTED ON BOTH SIDES



3 ELEVATION - SIGN TYPE 2 - PRIMARY PROJECT ID - OPTION 2
SCALE: 1/8" = 1'-0"



4 SIDE ELEVATION
SCALE: 1/2" = 1'-0"

NOTES

1 INTERNALLY ILLUMINATED, FACE-LIT CHANNEL LETTERS WITH WHITE LED'S AND CLEAR ACRYLIC FACES TO CAST SOFT, DIFFUSED LIGHT ONTO PANEL BACKGROUND

2 3" RAISED DIMENSIONAL ALUMINUM LETTERS WITH WHITE LED'S AND CLEAR ACRYLIC FACES TO CAST SOFT, DIFFUSED LIGHT ONTO PANEL BACKGROUND

3 INTERNALLY ILLUMINATED, FACE-LIT, FABRICATED ALUMINUM SIGN WITH ACRYLIC TENANT SIGN PANELS

4 PRIMARY ELECTRICAL SERVICE

5 CONCRETE FOOTING, REFER TO STRUCTURAL DRAWINGS FOR DETAILS

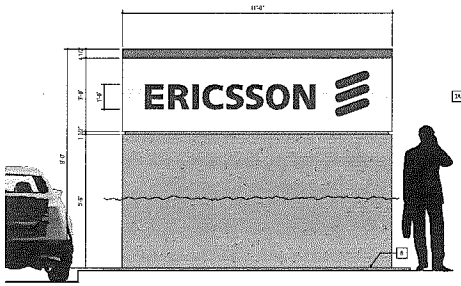
PA1 SATINAL ALUMINUM FINISH

PA2 STAINLESS FINISH TO MATCH PANTONE 877

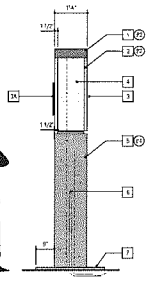
PA3 WHITE PAINT FINISH

PA4 LIGHT GREY PAINT FINISH TO MATCH BUILDING METAL COMPONENTS

NOTE:
SIGN TO BE PAINTED ON BOTH SIDES OF SIGN.



5 ELEVATION - SIGN TYPE 2 - SIGN NO. 3.1 - PROJECT/TENANT ID - OPTION 2
SCALE: 1/8" = 1'-0"



6 SIDE ELEVATION
SCALE: 1/2" = 1'-0"

NOTES

1 1/4" STAINLESS STEEL ASSEMBLY PAINTING & PRIMER FINISH, ALT. ALUMINUM WITH APPROVED DESIGN

2 INTERNALLY ILLUMINATED, FACE-LIT, FABRICATED ALUMINUM CHANNEL LETTERS WITH LED'S, AND CLEAR ACRYLIC INTERNAL STRUCTURAL FRAMING

3 1/4" THICK, 24" RAISED, WHITE TRANSLUCENT ACRYLIC FACES TO BE COPY

4 1/4" THICK, 24" RAISED, WHITE TRANSLUCENT ACRYLIC FACES TO BE COPY WITH ELECTRONIC APPLIED FILM FACE

5 INTERNAL STEEL FRAME SUPPORTED ALUMINUM FRAME, PER STRUCTURAL ENGINEERING CALCULATIONS & DRAWINGS BY SIGN CONTRACTOR

6 LED TYPE WHITE LIGHTING SIGN FACE WITH LED'S ONLY WHERE WHITE COPY ON ALUMINUM FACE, SEE DETAILS

7 PRIMARY ELECTRICAL SERVICE

8 CONCRETE FOOTING, REFER TO STRUCTURAL DRAWINGS FOR DETAILS

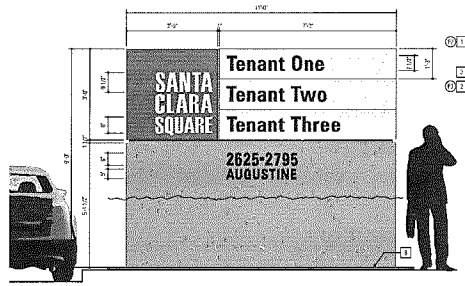
9 FINISH OF CHASSIS AT SIGN LOCATION TBD.

PA1 ORANGE PAINT FINISH TO MATCH PANTONE 165

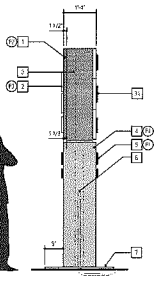
PA2 WHITE PAINT FINISH

PA3 LIGHT GREY PAINT FINISH TO MATCH BUILDING METAL COMPONENTS

NOTE:
SIGN TO BE PAINTED ON BOTH SIDES OF SIGN.



7 ELEVATION - SIGN TYPE 3 - SIGN NO. 3.2 - PROJECT/TENANT ID - OPTION 2
SCALE: 1/8" = 1'-0"



8 SIDE ELEVATION
SCALE: 1/2" = 1'-0"

NOTES

1 INTERNALLY ILLUMINATED, FACE-LIT CHANNEL LETTERS WITH WHITE LED'S AND CLEAR ACRYLIC FACES TO CAST SOFT, DIFFUSED LIGHT ONTO PANEL BACKGROUND

2 3" RAISED DIMENSIONAL ALUMINUM LETTERS WITH WHITE LED'S AND CLEAR ACRYLIC FACES TO CAST SOFT, DIFFUSED LIGHT ONTO PANEL BACKGROUND

3 1/4" THICK, 24" RAISED, WHITE TRANSLUCENT ACRYLIC FACES TO BE COPY

4 1/4" THICK, 24" RAISED, WHITE TRANSLUCENT ACRYLIC FACES TO BE COPY WITH ELECTRONIC APPLIED FILM FACE

5 INTERNAL STEEL FRAME SUPPORTED ALUMINUM FRAME, PER STRUCTURAL ENGINEERING CALCULATIONS & DRAWINGS BY SIGN CONTRACTOR

6 LED TYPE WHITE LIGHTING SIGN FACE WITH LED'S ONLY WHERE WHITE COPY ON ALUMINUM FACE, SEE DETAILS

7 PRIMARY ELECTRICAL SERVICE

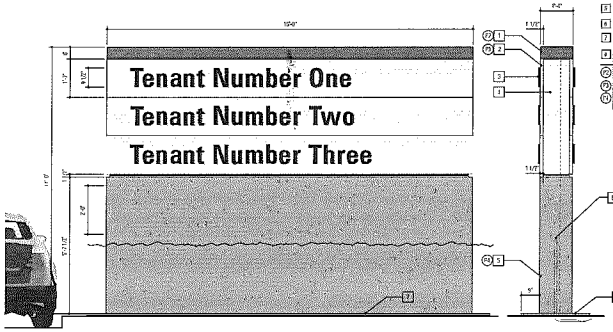
8 CONCRETE FOOTING, REFER TO STRUCTURAL DRAWINGS FOR DETAILS

9 FINISH OF CHASSIS AT SIGN LOCATION TBD.

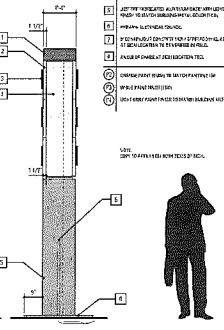
PA1 ORANGE PAINT FINISH TO MATCH PANTONE 165

PA2 WHITE PAINT FINISH

PA3 LIGHT GREY PAINT FINISH TO MATCH BUILDING METAL COMPONENTS



9 ELEVATION - SIGN TYPE 3 - SIGN NO. 3.2 - PROJECT/TENANT ID - OPTION 2A
SCALE: 1/8" = 1'-0"



10 SIDE ELEVATION
SCALE: 1/2" = 1'-0"

NOTES

1 ALUMINUM CABINET WITH PAINT FINISH, PER PA1

2 INTERNALLY ILLUMINATED, FACE-LIT, CHANNEL LETTERS WITH WHITE LED'S AND CLEAR ACRYLIC FACES TO CAST SOFT, DIFFUSED LIGHT ONTO PANEL BACKGROUND

3 1/4" THICK, 24" RAISED, WHITE TRANSLUCENT ACRYLIC FACES TO BE COPY

4 INTERNALLY LIT, FABRICATED ALUMINUM CABINET WITH LED'S ONLY WHERE WHITE COPY ON ALUMINUM FACE, SEE DETAILS

5 LED TYPE WHITE LIGHTING SIGN FACE WITH LED'S ONLY WHERE WHITE COPY ON ALUMINUM FACE, SEE DETAILS

6 PRIMARY ELECTRICAL SERVICE

7 CONCRETE FOOTING, REFER TO STRUCTURAL DRAWINGS FOR DETAILS

8 FINISH OF CHASSIS AT SIGN LOCATION TBD.

PA1 ORANGE PAINT FINISH TO MATCH PANTONE 165

PA2 WHITE PAINT FINISH

PA3 LIGHT GREY PAINT FINISH TO MATCH BUILDING METAL COMPONENTS

NOTE:
SIGN TO BE PAINTED ON BOTH SIDES OF SIGN.

COLORS

PA1 SATINAL ALUMINUM FINISH

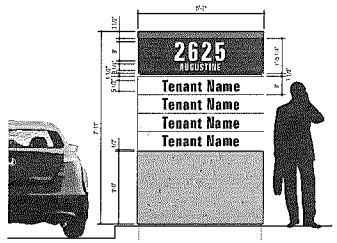
PA2 ORANGE PAINT FINISH TO MATCH PANTONE 165

PA3 WHITE PAINT FINISH

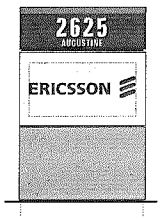
PA4 LIGHT GREY PAINT FINISH TO MATCH BUILDING METAL COMPONENTS

PA5 BLACK PAINT FINISH

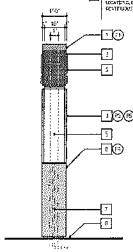
NOTE:
SIGN TO BE PAINTED ON BOTH SIDES



11 ELEVATION - SIGN TYPE 4 - BUILDING/MULTI-TENANT ID MONUMENT @ BUILDING ENTRY
SCALE: 1/2" = 1'-0"



12 ALTERNATE ELEVATION - SINGLE TENANT PANEL
SCALE: 1/2" = 1'-0"



13 SIDE ELEVATION
SCALE: 1/2" = 1'-0"

LPA

PEI COBB FREED & PARTNERS
Architects LLP

HMH

burton

CPC

Davies Associates

SANTA CLARA SQUARE PHASES II & III

SANTA CLARA, CA

Developed for IRVINE COMPANY Since 1864

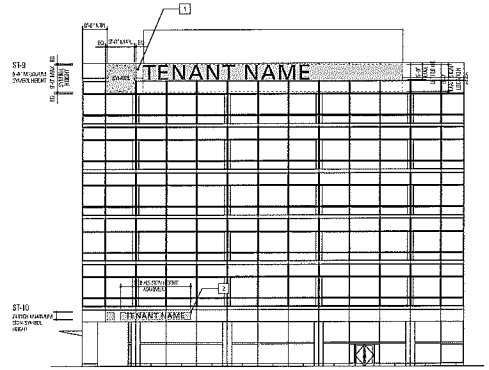
Date	Description

Date	Description

Job No. 13254.00
Date 11.18.14
Checked By RD LV
Scale AS NOTED

SIGN ELEVATIONS

GS-401

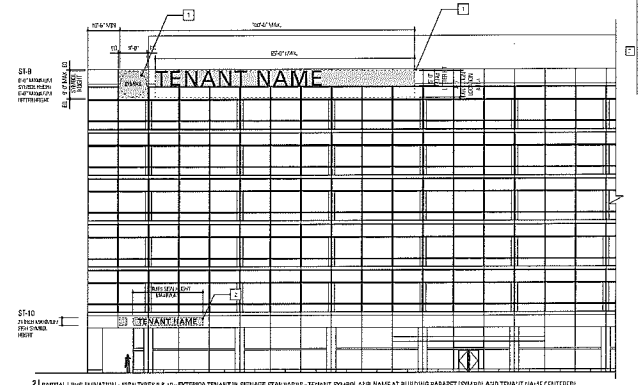


1 PARTIAL SHOW ELEVATION - SIGN TYPES 9 & 10 - EXTERIOR TENANT ID SIGNAGE STANDARDS - TENANT SYMBOL AND NAME AT BUILDING PARAPET (SYMBOL AND TENANT NAME CENTERED)
SCALE: 1/16" = 1'-0"

NOTES

1 [illegible]

2 [illegible]

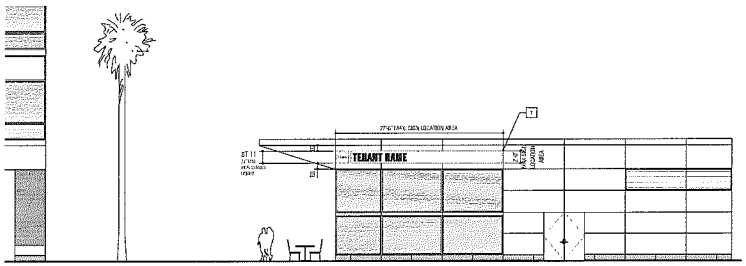


2 PARTIAL LIVING ELEVATION - SIGN TYPES 9 & 10 - EXTERIOR TENANT ID SIGNAGE STANDARDS - TENANT SYMBOL AND NAME AT BUILDING PARAPET (SYMBOL AND TENANT NAME CENTERED)
SCALE: 1/16" = 1'-0"

NOTES

1 [illegible]

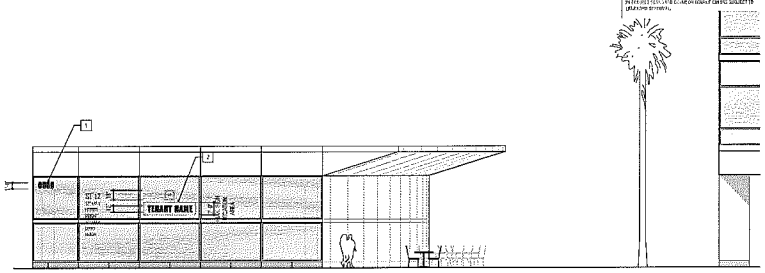
2 [illegible]



3 NORTH ELEVATION - BUILDING - SIGN TYPE 11 ▲
SCALE: 1/8" = 1'-0"

NOTES

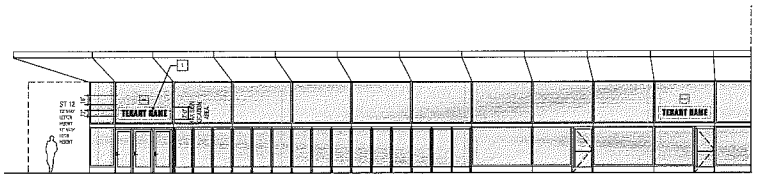
1 [illegible]



4 SOUTH ELEVATION - BUILDING - SIGN TYPE 8 & SIGN TYPE 12 ■
SCALE: 1/8" = 1'-0"

NOTES

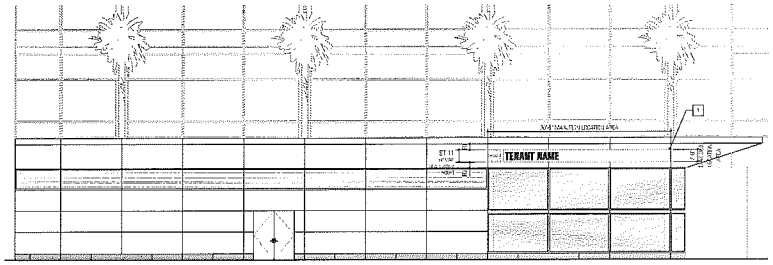
1 [illegible]



5 EAST ELEVATION - BUILDING - SIGN TYPE 12 ■
SCALE: 1/8" = 1'-0"

NOTES

1 [illegible]



6 WEST ELEVATION - BUILDING - SIGN TYPE 11 ▲
SCALE: 1/8" = 1'-0"

LPA

PEI COBB FREED & PARTNERS
Architects LLP

HMH

burton
Landscape Architecture Studio

CPC

Davis Associates

SANTA CLARA SQUARE PHASES II & III

SANTA CLARA, CA

Developed by IRVINE COMPANY
Since 1864

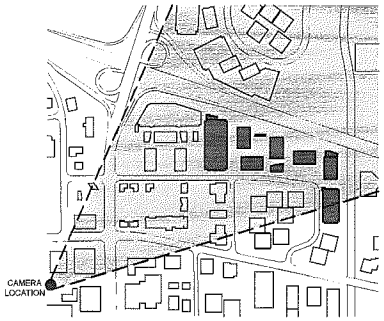
Date	Revision

Date	Issued
10/01/04	IRWIN DESIGN REVIEW SUBMITTAL

Job No.	1514.L.III
Date	10.01.04
Checked by	BDEV
Scale	AS NOTED

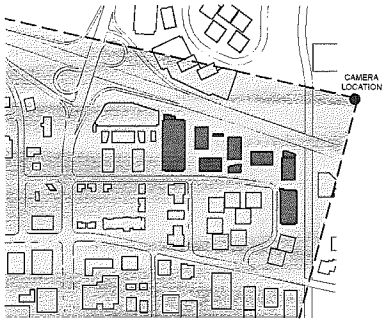
SIGNAGE ELEVATIONS

GS-402



VIEW KEYPLAN

PROPOSED OVERALL PROJECT AERIAL VIEW LOOKING NORTHEAST | 01



VIEW KEYPLAN

PROPOSED OVERALL PROJECT AERIAL VIEW LOOKING WEST | 02

LPA

PEI COBB FREED & PARTNERS

HMH

burton
Landscape Architecture Studio

CPC

Dowler Associates

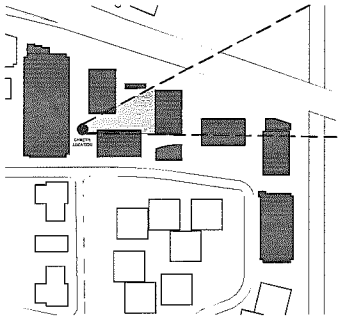
SANTA CLARA SQUARE PHASES II & III

SANTA CLARA, CA

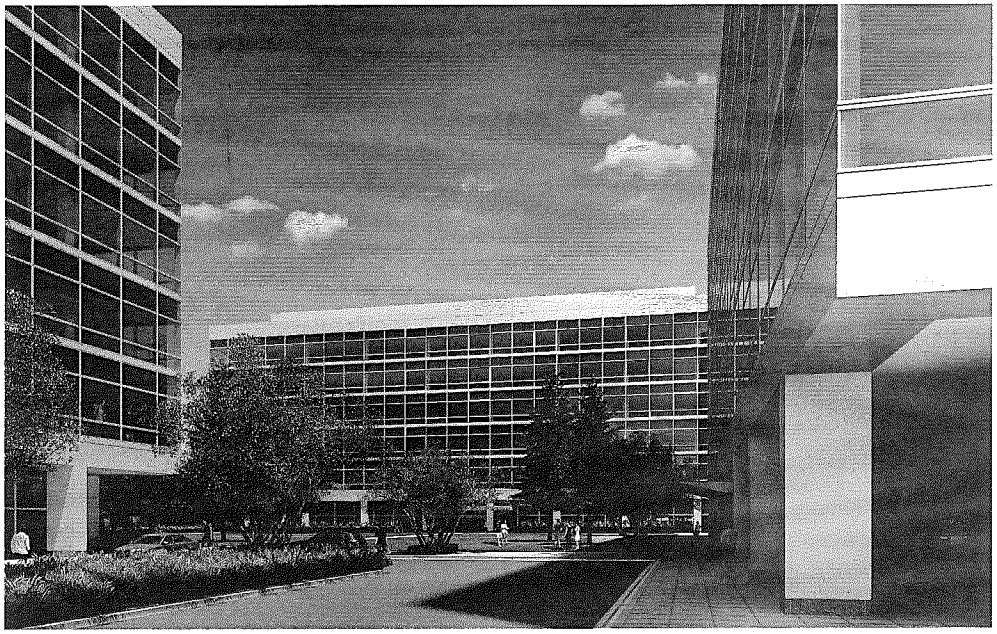
Developed for IRVINE COMPANY Since 1864

RENDERING VIEWS

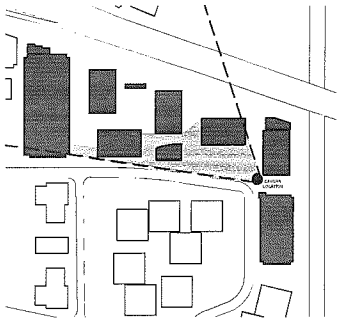
R-1



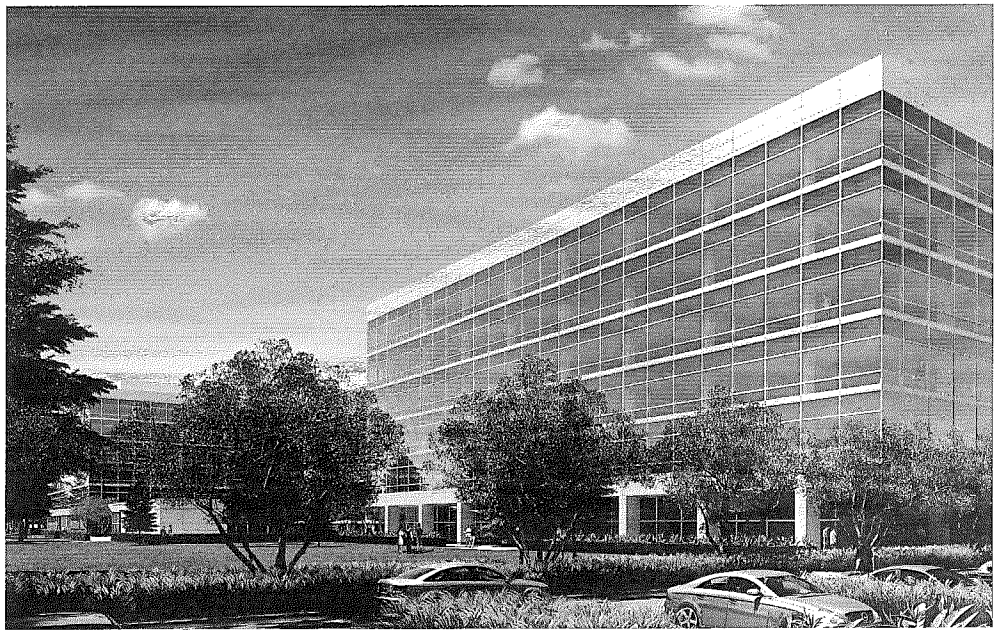
VIEW KEYPLAN



PROPOSED MOTORCOURT VIEW LOOKING EAST | 01



VIEW KEYPLAN



PROPOSED OPEN SPACE VIEW LOOKING NORTHWEST | 02

LPA

HMH

burton
Landscape Architecture Studio

CPC

Davies Associates

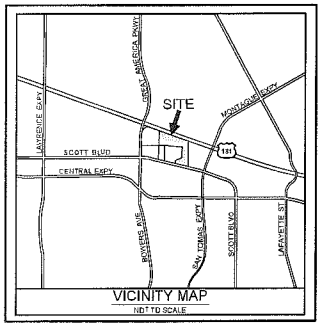
SANTA CLARA SQUARE PHASES II & III

SANTA CLARA, CA

Developed for: IRVINE COMPANY Since 1894

RENDERING VIEWS

R-2



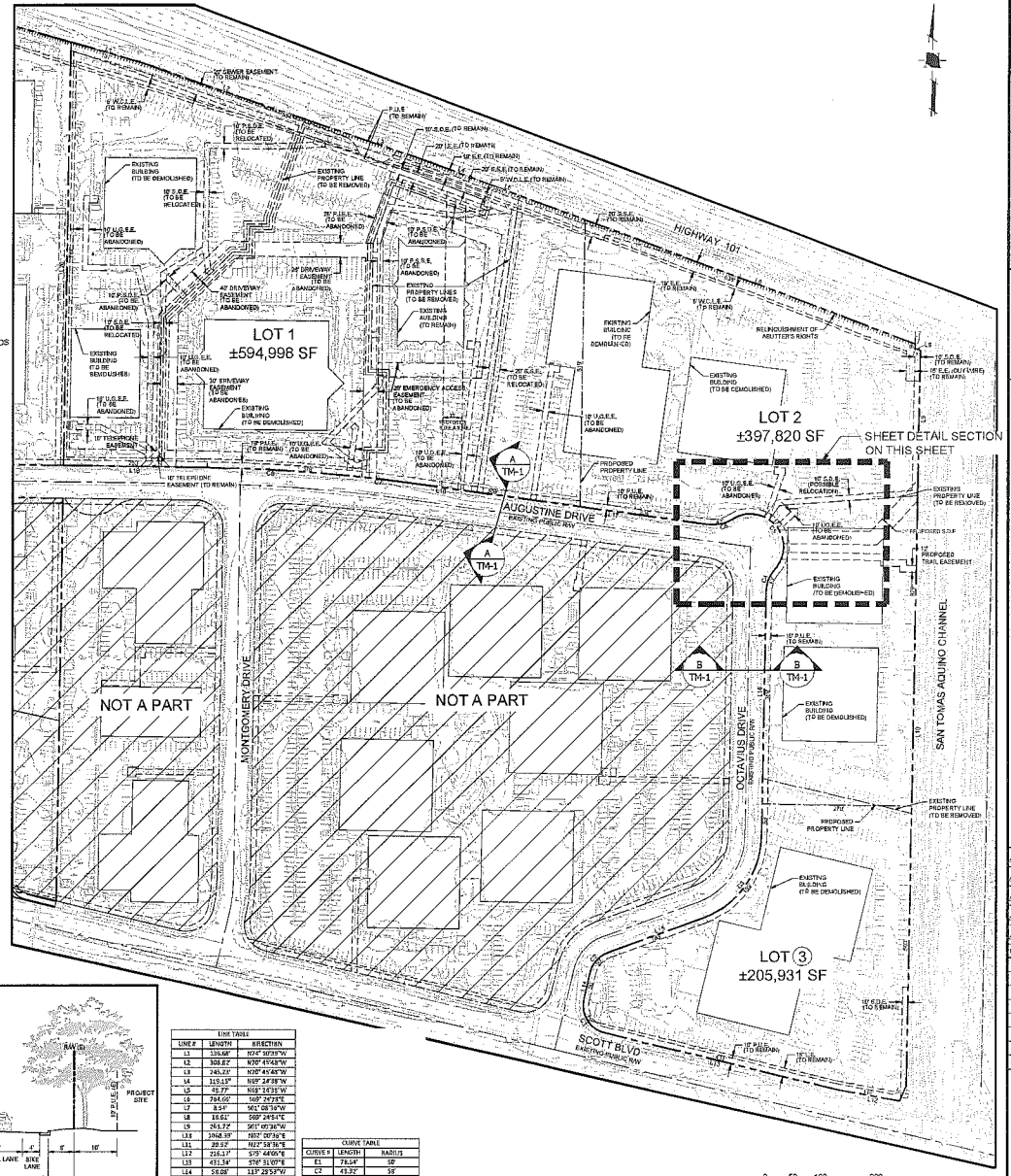
VICINITY MAP
NOT TO SCALE

GENERAL NOTES

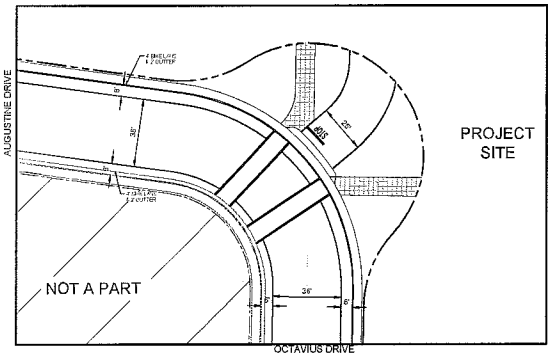
- PROJECT NAME: SANTA CLARA SQUARE
- OWNER: THE IRVINE COMPANY, 690 N. MCCARTHY BLVD, MILPITAS, CA 95035; PSAI, 155 MONTGOMERY ST, SAN FRANCISCO, CA 94104
- SUBDIVIDER: THE IRVINE COMPANY
- ENGINEER: HMH ENGINEERS, 1570 OAKLAND ROAD, SAN JOSE, CA 95131
- STREET LOCATION: AUGUSTINE DRIVE & OCTAVIUS DRIVE
- EXISTING ZONING: ML-LIGHT INDUSTRIAL
- EXISTING GP DESIGNATION: LIGHT INDUSTRIAL
- EXISTING USE: OFFICE PARK
- PROPOSED USE: OFFICES
- WATER SUPPLY: CITY OF SANTA CLARA
- SEWAGE DISPOSAL: CITY OF SANTA CLARA
- ASSESSOR'S PARCEL #(S): 216-45-006, 024, 025, 036, 037, 038
- STREET TREES: SHALL CONFORM TO CITY OF SANTA CLARA STANDARDS
- TOTAL SITE AREA: ± 27.5 ACRES
- EXISTING LOTS: 6 LOTS
- PROPOSED LOTS: 3 LOTS
- FLOOD ZONE: ZONE X
- ASSOCIATED PARCELS WITHIN THE PROJECT BOUNDARY WILL UNDERGO A GENERAL PLAN AMENDMENT TO CHANGE THE LAND USE DESIGNATION TO HIGH INTENSITY OFFICE/R&D. THESE PARCELS WILL BE REZONED TO COMMERCIAL PARK. SEE SHEET C-1 FOR DETAILS.
- THIS SUBDIVISION WILL CONFORM TO THE STREET TREE PLAN OF THE CITY OF SANTA CLARA.
- DEMOLITION PERMITS MAY BE ISSUED PRIOR TO ISSUANCE OF FINAL BUILDING PERMITS AND RECORDATION OF FINAL MAP.
- ALL DIMENSIONS DEPICTED HEREON ARE APPROXIMATE AND ARE SUBJECT TO REVISION AT FINAL MAP(S) STAGE.
- TOPOGRAPHY PROVIDED BY HMH, DATED OCTOBER 1, 2013.
- ALL EXISTING BUILDINGS WILL BE REMOVED, PRIOR TO FINAL SUBDIVISION OF PROPERTY.

LEGEND

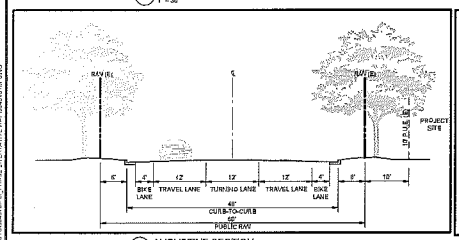
TENTATIVE MAP BOUNDARY	
PROPOSED LOT LINE	
EXISTING PROPERTY LINE	
EXISTING EASEMENT	
CENTER LINE	
U.G.E.E.	UNDERGROUND ELECTRIC EASEMENT
W.C.L.E.	ELECTRIC & WIRE CLEARANCE EASEMENT
P.S.D.E.	PRIVATE STORM DRAIN EASEMENT
P.U.E.	PUBLIC UTILITY EASEMENT
E.A.E.	EMERGENCY ACCESS EASEMENT
S.D.E.	PUBLIC STORM DRAIN EASEMENT
P.I.E.E.	PRIVATE INGRESS & EGRESS EASEMENT
S.S.E.	SEWER EASEMENT
L.E.	LANDSCAPE EASEMENT
E.E.	ELECTRIC EASEMENT



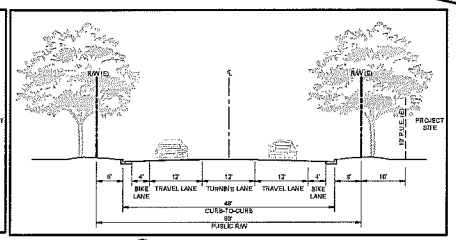
1 INCH = 100 FEET



(C) PROPOSED AUGUSTINE & OCTAVIUS
1" = 30'



(A) AUGUSTINE SECTION
NTS



(B) OCTAVIUS SECTION
NTS

LINE TABLE

LINE #	LENGTH	DIRECTION
L1	136.66'	N74° 50'39"W
L2	308.82'	N70° 45'49"W
L3	245.23'	N70° 45'49"W
L4	115.15'	N65° 24'38"W
L5	45.77'	N55° 14'35"W
L6	764.00'	N68° 24'23"E
L7	8.54'	N1° 08'58"W
L8	18.61'	S68° 24'54"E
L9	263.72'	S61° 05'36"W
L10	1968.95'	N82° 09'56"E
L11	20.92'	N12° 58'56"E
L12	216.17'	S70° 44'05"E
L13	451.34'	S76° 51'07"E
L14	58.06'	S13° 28'53"W
L15	582.73'	S69° 59'48"W
L16	447.67'	S01° 08'16"W
L17	424.11'	N82° 02'28"W
L18	138.79'	N82° 02'28"W
L19	262.40'	N85° 09'18"W
L20	707.20'	N00° 50'18"E

CURVE TABLE

CURVE #	LENGTH	RADIUS
C1	78.54'	50'
C2	43.32'	55'
C3	157.05'	100'
C4	45.36'	55'
C5	173.73'	50'
C6	43.36'	55'
C7	78.00'	50.00'
C8	309.2	383.00'

HMH
Land Use Entitlements
Land Planning
Landscape Architecture
Civil Engineering
Utility Design
Land Surveying
Stormwater Compliance
1570 Oakland Road San Jose, CA 95131
(408) 487-2200 HMHca.com

VESTING TENTATIVE MAP
PLN2014-10579
SANTA CLARA SQUARE

NO	DATE	DESCRIPTION
4	10/30/14	PER CITY COMMENTS
3	10/28/14	PER CITY COMMENTS
2	9/28/2014	PER CITY COMMENTS
1	9/12/2014	PER CITY COMMENTS

PROJECT NO:	3043.10
CAD DWG FILE:	3043TBLDWG
DESIGNED BY:	RB
DRAWN BY:	RB
CHECKED BY:	RTH
DATE:	AUGUST 13, 2014
SCALE:	1" = 100'

© HMH

VESTING TENTATIVE MAP

TM-1

CONTRACTOR AGREES THAT HE SHALL ASSUME FULL RESPONSIBILITY FOR JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THIS PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY. THAT THIS REQUIREMENT SHALL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS, AND THAT THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD THE OWNER AND HMH HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT, EXCEPTING FOR LIABILITY ARISING FROM THE SOLE NEGLIGENCE OF THE OWNER OR HMH.

S:\PROJECTS\3043\PSAI_PHASE 2\TENTATIVE MAP\3043TBLDWG.DWG
PLOTTED: Nov 27, 2014 10:20:00 AM

PROOF OF PUBLICATION

Santa Clara Weekly

P.O. Box 580, Santa Clara, California 95052

IN THE
City of Santa Clara,
State of California,
County of Santa Clara

CITY OF SANTA CLARA NOTICE OF CITY COUNCIL PUBLIC HEARING SANTA CLARA SQUARE PROJECT (OFFICE PHASE II & III) TUESDAY, NOVEMBER 18, 2014

State of California,
County of Santa Clara } SS.

The undersigned, being first duly sworn, deposes and says: That at all times hereinafter mentioned affiant was and still is a citizen of the United States, over the age of eighteen years, and not a party to nor interested in the above entitled proceeding; and was at and during all said times and still is publisher of the Santa Clara Weekly, a newspaper of general circulation printed and published weekly in the County of Santa Clara, State of California, and said Santa Clara Weekly is and was at all times hereinmentioned a newspaper of general circulation as that term is defined by sections 6000 and following, of the government code of the State of California, and, as provided by said sections, is published for the dissemination of local or telegraphic news and intelligence of a general character, having a bonafide subscription list of paying subscribers, and is not devoted to the interest or published for the entertainment or instruction of a particular class, profession, trade, calling, race or denomination, or for the entertainment and instruction of any number of such classes, professions, trades, callings, races or denominations; that at all times said newspaper has been established, printed and published in the said County of Santa Clara and State of California at regular intervals for more than one year proceeding the first publication of the notice herein mentioned; that said notice was set in type not smaller than non-parell, describing and expessing in general terms the purport and character of the notice intended to be given; that the clipping of which the annexed is a true printed copy, was published and printed in said newspaper on the following dates to wit:

Pub: 11/5/2014

Dated at Santa Clara, California

This 5TH day of NOVEMBER, 2014

I declared under penalty of perjury that the foregoing is true and correct.

Signed: _____
(Assoc.) Publisher of the Santa Clara Weekly

The Santa Clara Weekly was adjudicated a newspaper of general circulation in and for the County of Santa Clara on September 3, 1974 (Case No. 314617). The Santa Clara Weekly was adjudicated a newspaper of general circulation within the City of Santa Clara on April 2, 1976 (Case No. 347776).

CITY OF SANTA CLARA NOTICE OF
CITY COUNCIL PUBLIC HEARING
Tuesday, November 18, 2014

Project Name: Santa Clara Square Project (Office Phase II & III). You are hereby notified that on Tuesday, **November 18, 2014** at the hour of 7:00 p.m. in the City Council Chambers of City Hall, 1500 Warburton Avenue, Santa Clara, CA, the **City Council** will consider: **File Numbers: PLN2014-10577** General Plan Amendment #84 from Light Industrial to High Intensity Office/R&D (APN's 216-45-038 and 025); **PLN2014-10578** Rezone from Light Industrial (ML) to Commercial Park (CP) (APN's 216-45-038 and 025); PLN2014-10579 Vesting Tentative Parcel Map; **PLN2014-10580** Development Agreement Amendment and Ordinance; **PLN2014-10381** Architectural Review; and **CEQ2014-01181** Addendum to previously certified EIR. **Project Location: 2465, 2505, 2525, 2575 Augustine Drive and 3393, 3333 Octavius Drive,** a 27.5-acre project site comprised of six parcels located on the north side of Augustine Drive and east side of Octavius Drive. (APNs: 216-45-036, -037, -038, -006, -025, -024) **Applicant/Owner: The Irvine Company.**

Request: ***Santa Clara Square Office Project (Phase II and III)*** proposes to amend the previously approved 2014 Project which consists of no more than 1,243,300 square feet of office use located in six to eight story office buildings with associated surface and structure parking at a ratio of 3.3/1000 on 16.84-acres. The project adds two parcels allowing for the redesign of the campus on 22.79-acres. The Vesting Tentative Parcel Map proposal combines 6 parcels to create 3 parcels. The total development on Phase I, the Retail Center, Office Phases II and Office Phase III will be no more than 2,000,100 square feet. Office Phase II and III will be no more than 1,243,300 square feet.

Actions to be considered include approval of the Addendum to the previously certified EIR, General Plan Amendment, Planned Development Rezoning, Tentative Parcel Map, Development Agreement Amendment and Ordinance and Architectural Review. At the meeting you may be heard on this matter if you so desire. If you challenge this land use decision in court, you may be limited to raising only those issues you or someone else raised at these public hearings or in written correspondence delivered to the City at or prior to the close of the public hearings. The City's Project Clearance Committee and Subdivision Clearance Committee have evaluated the potential environmental impacts of these projects. The results of this evaluation are a part of the minutes of the Committee's and are available in the project file in the Planning Division office. Should you have any questions, please call the Planning Division office at (408) 615-2450. Written comments on this item are encouraged to be submitted to the Planning Division, City Hall, 1500 Warburton Avenue, Santa Clara 95050, by Wednesday morning of the week prior to the meeting so they can be included in the City Council Members' packets.

AMERICANS WITH DISABILITIES ACT (ADA) In accordance with the Americans with Disabilities Act of 1990, the City of Santa Clara will ensure that all existing facilities will be made accessible to the maximum extent feasible. Reasonable modifications in policies, procedures and/or practices will be made as necessary to ensure full and equal access and enjoyment of all programs and activities for all individuals with a disability. Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should contact the City's ADA office (408) 615-3000, to discuss meeting accessibility. In order to allow participation by such individuals, please do not wear scented products to meetings at City facilities.

Pub.: 11/5/2014

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 8B

Date: November 13, 2014

To: City Manager for Council Action

From: Director of Planning and Inspection

Subject: Public Hearing for the Project Located at 166 Saratoga Avenue: General Plan Amendment from Community Mixed Use to Medium Density Residential, Rezone from R1-6L (Single-Family Residential) to PD (Planned Development), Vesting Subdivision Map for 33 lots and Architectural Approval for 33, three-story townhomes [PLN2013-10111 and CEQ2014-01169]

EXECUTIVE SUMMARY:

This is a proposed General Plan Amendment (GPA), Rezone and Vesting Tentative Map application to allow construction of 33 for-sale 3-story townhomes at a proposed density of 19 dwelling units per acre at the subject property currently occupied by two single-family residential structures on a remnant orchard that all will be removed as part of the project. City staff has supported the project as good site for infill development of ownership housing at a medium density in close proximity to services.

The project was reviewed by the Historical and Landmarks Commission (HLC) at their May 1, 2014 meeting. Following public comment and a discussion, the HLC recommended approval of the application with a recommendation to provide as much open space as possible in order to preserve the remnant orchard that is currently a part of the property. Additional motions were passed by the HLC to recommend that the property be recognized for its historical significance by naming the access driveway across the site after the original family owners, recognizing the historic past of the farm and providing placards or markers on the site to memorialize the original farm that occupied the area prior to being sold and subdivided. The applicant has agreed to do these things and has designed a corner of the site to acknowledge the orchard heritage.

The project was subsequently reviewed at the August 6, 2014 Planning Commission meeting. The project applicant was present for the meeting and presented the request to the Commission. Several residents from nearby properties spoke at the meeting and expressed concerns about the density, traffic, landscape and privacy impacts associated with the project. Following a discussion, the Commission was split on support in their deliberations and finally recommended denial of the project on the basis that they could not make the findings to support the Mitigated Negative Declaration. Subsequently, they made motions and acted to recommend denial of the Rezone, and Vesting Tentative Map, but could not reach consensus on the GPA and following two failed motions moved to forward the project to the Council without a recommendation on the amendment. Commissioners not in support cited insufficient guest parking, a lack of a commercial element to the project and privacy concerns along abutting residential parcels as justification to deny the project.

As noted, while the Planning Commission could not reach a consensus of support, the HLC did, and staff has supported the project as a suitable infill project, based upon the following factors:

- The site is simply the last of many surrounding developed parcels that represent the former orchard;
- The site was not found to merit historic significance by professional evaluation, but the applicant has responded to HLC recommendations to recognize the past use as an orchard;
- The irregular trapezoidal shape of the lot and existing access easement across the site limit opportunities for mixed use and higher densities;
- The location is served by substantial retail services in the vicinity

- The site provides one of few remaining parcels suitable for moderate density townhouse-style ownership development; and
- The project, through a series of revisions from working with neighbors and staff, meets standards for guest parking and for privacy mitigations with respect to neighboring residential properties;

The meeting minutes and staff report from the May 1, 2014 Historical and Landmarks Commission and August 6, 2014 Planning Commission meeting are attached for reference.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The General Plan Amendment, Rezone and Vesting Tentative Map helps the City achieve its housing goals by providing a variety of housing types and sizes with 33 new townhomes, in which at least three units shall be designated for Below Market Rate affordability. Denying the project will still allow for the opportunity to develop the site under the existing Community Mixed Use land use designation, which allows for mixed use projects at a residential density of 19-36 dwelling units per acre. Should the Council choose to approve the application, the project would be subject to the conditions of approval as attached.

ECONOMIC/FISCAL IMPACT:

There is no cost to the City other than administrative staff time and expense.

RECOMMENDATION:

The Planning Commission has recommended that the Council adopt the following actions for the project located at 166 Saratoga Avenue (PLN2013-10111 and CEQ2014-01169):

1. Adopt a Resolution to Disapprove the Mitigated Negative Declaration (MND) and disapprove a Mitigation Monitoring or Reporting Program for 33 dwelling units;
2. Adopt a Resolution to Deny a Rezone from R1-6L (Single-Family Residential) to PD (Planned Development; and
3. Adopt a Resolution to Deny a Vesting Tentative Subdivision Map for 33 Residential Lots.

Insofar as the Planning Commission has recommended denial of MND, zoning and map, if the Council supports the Planning Commission recommendation to deny the project, it is further recommended that the Council move to:

4. Adopt a Resolution to Deny a General Plan Amendment from Community Mixed Use to Medium Density Residential;

APPROVED:

Kevin L. Riley
Director of Planning and Inspection

Julio J. Fuentes
City Manager

Documents Related to this Report:

1) ***City Council Mitigated Negative Declaration Resolution***
2) ***City Council General Plan Amendment Resolution***
3) ***City Council Rezone Resolution***
4) ***City Council Vesting Tentative Map Resolution***
5) ***Conditions of Approval***
6) ***Mitigation Monitoring and Reporting Program***
7) ***Planning Commission Meeting Minutes Dated August 6, 2014***
8) ***Planning Commission Staff Report Dated August 6, 2014***
9) ***Historical and Landmarks Commission Meeting Minutes Dated May 1, 2014***
10) ***Historical and Landmarks Commission Staff Report Dated May 1, 2014***
11) ***Bayto Property Project Initial Study (previously distributed)***
12) ***Correspondence***
13) ***Development Plans***

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, DISAPPROVING A MITIGATED NEGATIVE DECLARATION, MAKING FINDINGS WITH RESPECT THERETO, AND DISAPPROVING A MITIGATION MONITORING OR REPORTING PROGRAM FOR THE PROJECT LOCATED AT 166 SARATOGA AVENUE, SANTA CLARA

SCH# 2014032071
CEQ2014-01169 (Mitigated Negative Declaration)
PLN2013-10111 (General Plan Amendment, Rezone and Vesting Tentative Map)

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on November 12, 2013, Charles McKeag, on behalf of TNHC Land Company, LLC ("Applicant") applied for a General Plan Amendment, Rezone and Vesting Tentative Map in connection with development of a parcel totaling 1.7 acres located at 166 Saratoga Avenue, which is currently occupied by two single-family residential buildings ("Project Site"), in order to change the General Plan Land Use Designation from Community Mixed Use to Medium Density Residential on the Project Site;

WHEREAS, the Applicant has simultaneously applied to rezone the Project Site from Single-Family Residential (R1-6L) to Planned Development (PD) to construct a three-story, 33 unit townhouse complex, with 72 vehicle spaces, common recreation and outdoor open space, landscaping and site improvements on the Project Site as shown on the Development Plans attached hereto and incorporated herein by reference;

WHEREAS, the Project will include Resolution No. _____ ("City Council General Plan Amendment Resolution"); Resolution No. _____ ("City Council Rezoning Resolution");

Resolution No. _____ ("City Council Tentative Map Resolution"); and this California Environmental Quality Act ("CEQA") Resolution;

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), and the regulations implementing the Act, specifically 14 Cal. Code of Regs § 15070, this project was determined after an Initial Study to identify potentially significant effects on the environment which potentially could be avoided with the implementation of mitigation measures, resulting in the drafting of a Mitigated Negative Declaration ("MND");

WHEREAS, in conformance with CEQA, the MND was noticed and circulated for a 30-day public review period to the State Office of Planning and Research, Santa Clara County Clerk's Office, interested parties, and property owners within 500 feet of the Project Site, from March 26, 2014 to April 28, 2014;

WHEREAS, the City Council has reviewed the MND prepared for the Project, City Staff reports pertaining to the MND and all evidence received at a duly noticed public hearing on November 18, 2014. All of these documents and evidence are herein incorporated by reference into this Resolution; and

WHEREAS, although many of the potentially significant environmental effects associated with the Project could be substantially lessened or avoided through the inclusion of mitigation measures proposed in the MND, the Project would still result in significant impacts to land use and transportation.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. The City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. The City Council hereby finds that the MND has been completed in compliance with CEQA.

3. The City Council hereby finds, pursuant to California Code of Regulations, Title 14, Section 15074, that the Council has reviewed and considered the information and analysis contained in the MND before making its determination, and that the MND reflects the Council's independent judgment and analysis. Nevertheless, the Council cannot adopt the MND because there is substantial evidence that even after mitigation, the Project will still have a significant effect on the environment with respect to transportation and land use, and the Council therefore disapproves the MND.

4. Pursuant to California Code of Regulations, Title 14, Section 15074(c), the City Council hereby designates the Director of Planning and Inspection as the Custodian of Records for the Project, and the Planning and Inspection Division at City Hall, 1500 Warburton Avenue, Santa Clara, California, is the location of the documents and other material that constitute the record of proceedings upon which this decision is based;

5. In order to comply with Public Resources Code Section 21081.6, the City Council hereby disapproves the Mitigation Monitoring and Reporting Program (MMRP) as attached and referenced herein.

6. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and

word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

7. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ___ DAY OF _____, 2014, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments Incorporated by Reference:
1. Mitigation Monitoring and Reporting Program (MMRP)
2. Development Plans

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, DENYING A GENERAL PLAN AMENDMENT OF THE PROPERTY LOCATED AT 166 SARATOGA AVENUE, SANTA CLARA, TO CHANGE THE LAND USE DESIGNATION FROM COMMUNITY MIXED USE TO MEDIUM DENSITY RESIDENTIAL

SCH# 2014032071
CEQ2014-01169 (Mitigated Negative Declaration)
PLN2013-10111 (General Plan Amendment, Rezone and Vesting Tentative Map)

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on November 12, 2013, Charles McKeag, on behalf of TNHC Land Company, LLC ("Applicant") applied for a General Plan Amendment, Rezone and Vesting Tentative Map in connection with development of a parcel totaling 1.7 acres located at 166 Saratoga Avenue, which is currently occupied by two single-family residential buildings ("Project Site"), in order to change the General Plan Land Use Designation from Community Mixed Use to Medium Density Residential on the Project Site;

WHEREAS, the Applicant has simultaneously applied to rezone the Project Site from Single-Family Residential (R1-6L) to Planned Development (PD) to construct a three-story, 33 unit townhouse complex, with 72 vehicle spaces, common recreation and outdoor open space, landscaping and site improvements on the Project Site as shown on the Development Plans attached hereto and incorporated herein by reference, and has applied for a tentative map to subdivide the Project Site into 33 parcels;

WHEREAS, pursuant to Government Code Section 65353, on August 6, 2014, the Planning Commission held a public hearing to consider the proposed General Plan Amendment, at the

conclusion of which the Commission voted to forward the application to the City Council with no recommendation;

WHEREAS, notice of the public hearing on the proposed General Plan Amendment was published in the *Santa Clara Weekly*, a newspaper of general circulation for the City on November 5, 2014 for the City Council hearing on November 18, 2014;

WHEREAS, on November 7, 2014, notices of the public hearing on the General Plan Amendment were mailed to all property owners within 500 feet of the Project Site, according to the most recent assessor's roll and interested parties; and

WHEREAS, the City Council has reviewed the General Plan Amendment and on November 18, 2014, the City Council conducted a public hearing. At the hearing, the City Council invited and considered any and all verbal and written testimony offered in favor of and in opposition to the proposed Amendment.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. General Plan Amendment Findings. The City Council finds and determines that the General Plan Amendment would not be in the interest of the public good for the following reasons:

A. The proposed General Plan Amendment is inconsistent and incompatible with the rest of the General Plan and any implementation programs that may be affected in that the proposed General Plan change would allow the development of a housing project in a manner that is incompatible with the development in the vicinity of the Project Site.

B. The potential impacts of the proposed amendment have been assessed and have been determined to be detrimental to the public health, safety, or welfare in that the proposal has

been analyzed in accordance with the California Environmental Quality Act (CEQA) and even with the adoption of all feasible mitigation measures, the Project would still result in significant environmental impacts to land use and transportation.

2. That, based on the findings set forth in this Resolution, the MND Resolution and the evidence in the City Staff Report and such other evidence as received at the public hearing on this matter, the City Council hereby denies the amendment of the General Plan.

3. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

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4. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ___ DAY OF _____, 2014, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____
ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments Incorporated by Reference:
1. Development Plans

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, TO DENY THE REZONING OF THE PROPERTY LOCATED AT 166 SARATOGA AVENUE, SANTA CLARA, FROM SINGLE-FAMILY RESIDENTIAL (R1-6L) TO PLANNED DEVELOPMENT (PD)

SCH# 2014032071
CEQ2014-01169 (Mitigated Negative Declaration)
PLN2013-10111 (General Plan Amendment, Rezone and Vesting Tentative Map)

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on November 12, 2013, Charles McKeag, on behalf of TNHC Land Company, LLC ("Applicant") applied for a General Plan Amendment, Rezone and Vesting Tentative Map in connection with development of a parcel totaling 1.7 acres located at 166 Saratoga Avenue, which is currently occupied by two single-family residential buildings ("Project Site"), in order to change the General Plan Land Use Designation from Community Mixed Use to Medium Density Residential on the Project Site;

WHEREAS, the Applicant has simultaneously applied to amend the 2010-2035 City of Santa Clara General Plan designation of the Project Site from Community Mixed Use to Medium Density Residential, and has applied for a tentative map to subdivide the Project Site into 33 parcels;

WHEREAS, in order to effectuate the development application and its change in use, the Applicant proposes to rezone the Project Site to Planned Development (PD) to allow construction of a 33 unit townhouse complex with 72 vehicle spaces, common recreation and outdoor space, landscaping and site improvements on the Project Site, as shown on the Development Plans attached hereto and incorporated herein by reference;

WHEREAS, before considering the rezoning of the Project Site, the City Council reviewed and considered the information contained in the Mitigated Negative Declaration (MND) (SCH#2014032071) and Mitigation Monitoring and Reporting Program (MMRP) for the Project;

WHEREAS, the City Council ultimately disapproved the MND, concluding that even after mitigation, the Project will still have a significant effect on the environment with respect to transportation and land use;

WHEREAS, pursuant to SCCC Sections 18.112.030 and 18.112.040, at its August 6, 2014 meeting, the Planning Commission conducted a public hearing and voted to recommend that the City Council deny the requested rezoning;

WHEREAS, in compliance with SCCC Section 18.112.060, on November 7, 2014, the City posted notice of the public hearing at three locations within five hundred (500) feet of the Project Site;

WHEREAS, on November 7, 2014, notices of the public hearing on the proposed rezoning were also mailed to all property owners located within 500 feet of the Project Site, according to the most recent assessor's roll; and

WHEREAS, on November 18, 2014, the City Council conducted a public hearing to consider the proposed rezoning. At the hearing, the City Council considered the Planning Commission's recommendation, as well as inviting and considering any and all verbal and written testimony offered in favor of and in opposition to the proposed rezoning.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. The City Council hereby finds that the above Recitals are true and correct and by this reference makes them part hereof.

2. The City Council hereby denies the proposed rezoning of the Project Site, shown on the attached Development Plans, incorporated by this reference, from R1-6L to PD to allow construction of a 33 unit multi-family residential project with 72 total parking spaces, common recreation and outdoor space, landscaping and site improvements on the Project Site.

3. Pursuant to SCCC Section 18.112.010, the City Council determines that the following findings exist in opposition of the rezoning:

A. The proposed zone change will not conserve property values, protect or improve the existing character and stability of the area in question, and will not promote the orderly and beneficial development of such area, in that the proposed townhouse complex would have insufficient parking, site improvements, landscaping, and streetscape enhancements on the Project Site.

4. That, based on the findings set forth in this Resolution, the MND Resolution, the evidence in the City Staff Reports, and all evidence presented at the hearing, the City Council hereby denies the rezoning of the Project Site as set forth herein.

5. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

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6. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ___ DAY OF _____, 2014, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____
ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments Incorporated by Reference:
1. Conditions of Approval
2. Development Plans

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, TO DENY A VESTING TENTATIVE MAP AT 166 SARATOGA AVENUE, SANTA CLARA, FOR 33 LOTS

SCH# 2014032071
CEQ2014-01169 (Mitigated Negative Declaration)
PLN2013-10111 (General Plan Amendment, Rezone and Vesting Tentative Map)

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on November 12, 2013, Charles McKeag, on behalf of TNHC Land Company, LLC ("Applicant") applied for a General Plan Amendment, Rezone and Vesting Tentative Map in connection with development of a parcel totaling 1.7 acres located at 166 Saratoga Avenue, which is currently occupied by two single-family residential buildings ("Project Site"), in order to change the General Plan Land Use Designation from Community Mixed Use to Medium Density Residential on the Project Site;

WHEREAS, pursuant to Section 17.05.210 of the Code of the City of Santa Clara ("SCCC"), a tentative map shall be required for all divisions of land into five or more parcels;

WHEREAS, on August 6, 2014, the Planning Commission reviewed the application and recommended denial of the proposed Vesting Tentative Map to the City Council in conformance with Section 17.05.300 of the SCCC;

WHEREAS, the proposal is to subdivide the project into 33 parcels as shown on Exhibit "Vesting Tentative Map";

WHEREAS, notices of the public hearing on the Vesting Tentative Map were posted and mailed to all property owners within three hundred (500) feet of the proposed Vesting Tentative Map; and

WHEREAS, the City Council has reviewed the Vesting Tentative Map and conducted a public hearing, at which time all interested persons were given an opportunity to provide testimony and the City Council considered all verbal and written evidence.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That this Resolution incorporates, and by this reference makes a part hereof, that certain Vesting Tentative Map, attached hereto as Exhibit "Vesting Tentative Map".

2. Vesting Tentative Map Findings. Pursuant to California Government Code Section 66426 and SCCC Section 17.05.300(h), the City Council finds and determines that:

A. The Vesting Tentative Map is inconsistent with the objectives, policies, general land uses and programs specified in the City's General Plan, in that the Vesting Tentative Map would subdivide the land into parcels that would not be used for mixed-use development as required in the General Plan.

B. The design and improvements of the proposed subdivision are inconsistent with the City's General Plan, in that the Project would subdivide the 1.7-acre Project Site into residential parcels in a configuration that would have adverse visual and privacy impacts to neighboring properties and result in inadequate parking.

3. Based on the findings set forth in this Resolution and the evidence in the Agenda Report and such other evidence as received at the public hearings on this matter before the City Council, the City Council hereby denies the Vesting Tentative Map, substantially in the form on file as shown in Exhibit "Vesting Tentative Map".

4. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the

remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

5. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE _____ DAY OF _____, 2014, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____
ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments Incorporated by Reference:
1. Exhibit "Vesting Tentative Map"
2. Exhibit "Conditions of Approval"

CONDITIONS OF APPROVAL

In addition to complying with all applicable codes, regulations, ordinances and resolutions, the following **conditions of approval** are recommended:

GENERAL

G1. If relocation of an existing public facility becomes necessary due to a conflict with the developer's new improvements, then the cost of said relocation shall be borne by the developer.

G2. Comply with all applicable codes, regulations, ordinances and resolutions.

ATTORNEY'S OFFICE

A1. The Developer agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, attorneys' fees, injuries, costs, and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed by a third party against the City by reason of its approval of developer's project.

PLANNING AND BUILDING INSPECTION

P1. It shall be the developer's responsibility through his engineer to provide written certification that the drainage design for the subject property will prevent flood water intrusion in the event of a storm of 100-year return period. The developer's engineer shall verify that the site will be protected from off-site water intrusion by designing the on-site grading and storm water collection system using the 100-year hydraulic grade line elevation provided by the City's Engineering Department or the Federal Flood Insurance Rate Map, whichever is more restrictive. Said certification shall be submitted to the City Building Inspection Division prior to issuance of building permits.

P2. The project site is located in Seismic Hazard Zone as identified by the State Geologist for potential hazards associated with liquefaction, pursuant to the Seismic Hazard Mapping Act (Div.2 Ch7.8 PRC), and the developer shall prepare and submit a geotechnical hazards investigation report acceptable to the City of Santa Clara Building Official prior to issuance of permits.

P3. Obtain required permits and inspections from the Building Official and comply with the conditions thereof. If this project involves land area of one acre or more, the developer shall file a Notice of Intent (NOI) with the State Water Resources Control Board prior to issuance of any building permit for grading, or construction; a copy of the NOI shall be sent to the City Building Inspection Division. A stormwater pollution prevention plan is also required with the NOI.

P4. Submit as-built on-site plans prepared by a registered civil engineer showing all utilities serving the subject property.

P5. Submit plans for final architectural review to the Planning Division for Architectural Committee review and approval prior to issuance of building permits. Said plans to include, but not be limited to: site plans, floor plans, elevations, landscaping, lighting and signage.

P6. Submit complete landscape plans, including irrigation plan and composite utility and tree layout overlay plan, for Planning review and approval with installation of required landscaping prior to the issuance of occupancy and or final building permits. Landscape

plan to include type and size of proposed trees. Type and size of tree replacement on project site shall be at the direction of the City Arborist and require Planning review and approval. Coordinate with the Street Department and City Arborist for the type, location, installation and maintenance of street trees fronting the project site along the public right-of-way. Installation of root barriers and super-soil may be required with the installation of trees where electric, water, and sewer utilities are in proximity.

P7. The overlay plan is to show the location of all utilities, storm drains, catch basins, sewer mains, joint trenches, building footprints, driveways, walkways, and trees. Trees are required to be 10 feet from public water, storm and sewer facilities unless a City approved Tree Root Barrier (TRB) is used. If a City approved TRB is used the TRB must be a minimum of five feet from the public water, storm and sewer facility with the tree behind the TRB, and specified on the plan. Landscaping installation shall meet City water conservation criteria in a manner acceptable to the Director of Planning and Inspection.

P8. Developer is responsible for collection and pick-up of all trash and debris on-site and adjacent public right-of-way.

P9. Prior to issuance of a demolition permit, Developer/Owner shall have an asbestos survey of the proposed site performed by a certified individual. Survey results and notice of the proposed demolition are to be sent to the Bay Area Air Quality Management District (BAAQMD). No demolition shall be performed without a demolition permit and BAAQMD approval and, if necessary, proper asbestos removal.

P10. The developer shall submit a truck hauling route for demolition, soil, debris and material removal, and construction to the Director of Planning and Inspection for review and approval prior to the issuance of demolition and building permits.

P11. Provide trash enclosure, the location and design of which shall be approved by the Director of Planning and Inspection prior to issuance of any building permits. Roofed enclosures with masonry walls and solid gates are the preferred design. All trash enclosures should be constructed to drain to the sanitary sewer.

P12. The Developer shall provide not less than ten percent (10%) of the housing units at an affordable level. Ownership housing shall be made affordable for households at the current median-income (100% area median income) level based on household size in accordance with the City's Below Market Purchase (BMP) Program. The household sized used for determining affordability shall be based on the number of bedrooms plus one. Affordable housing units shall be provided in the general proportion to the mix of housing unit types and sizes in the development. Prior to the issuance of building permits, the Developer shall enter in an Affordable Housing Agreement with the City that will apply covenants guaranteeing the prescribed affordability, to the satisfaction of the Director of Planning & Inspection.

P13. Construction activity not confined within a building shall be limited to the hours of 7:00 a.m. to 6:00 p.m. weekdays and not permitted on Saturdays and Sundays for projects within 500 feet of a residential use. Construction activity confined within a building shall be limited to the hours of 7:00 a.m. to 6:00 p.m. weekdays and 9:00 a.m. to 6:00 p.m. Saturdays for projects within 500 feet of a residential use, and prohibited on Sundays. Construction activity shall not be allowed on recognized State and Federal holidays.

P14. The project shall comply with the mitigation measures identified in the Mitigated Negative Declaration for the 166 Saratoga Avenue Residential Project.

P15. Applicant/Developer shall strive to fulfill LEED certification for multi-family residential development requirements and obtain LEED certification. Upon certification, applicant/developer shall submit certification document to the City.

P16. The developer shall comply with disability accessibility requirements of applicable State and Federal Fair Housing regulations.

P17. The developer shall pay additional fees for future tree planting considerations off-site to comply with the City's 2:1 tree replacement policy as outlined in the General Plan.

P18. Prior to final inspection, the applicant shall work with the Historical & Landmarks Commission on providing historical identifiers throughout the property (i.e. signs, placards, etc.) pertaining to the original ownership of the land.

ENGINEERING

E1. Obtain site clearance through Engineering Department prior to issuance of Building Permit. Site clearance will require payment of applicable development fees prior to issuance of the Building Permit. Other requirements may be identified for compliance during the site clearance process. Contact Engineering Department at (408) 615-3000 for further information.

E2. All work within the public right-of-way and/or public easement, which is to be performed by the Developer/Owner, the general contractor, and all subcontractors shall be included within a Single Encroachment Permit issued by the City Engineering Department. Issuance of the Encroachment Permit and payment of all appropriate fees shall be completed prior to commencement of work, and all work under the permit shall be completed prior to issuance of occupancy permit.

E3. Developer shall provide a complete storm drain study for the 10-year and 100-year storm events. The grading plans shall include the overland release for the 100-year storm event and any localized flooding areas. System improvements, if needed, will be at developer's expense.

E4. Developer is responsible for cost of relocation or modification of any public facility necessary to accommodate subject development.

E5. No trees shall be planted within 10' of the existing public storm drain and sanitary sewer lines.

E6. Provide root barrier when trees are within 5' to 10' of the sidewalk. Root barriers shall be 12' long x 2' deep, centered on trees, and placed away from the trees (closer to the back of walk).

E7. Dedicate, as required, on-site easements for new public utilities and sidewalk by means of final map or approved instrument at time of development.

E8. Damaged curb, gutter, and sidewalk within the public right-of-way along property's frontage shall be repaired or replaced (to the nearest score mark) in a manner acceptable to the City Engineer or his designee. The extents of said repair or replacement within the property frontage shall be at the discretion of the City Engineer or his designee.

E9. Existing non-standard or non-ADA compliant frontage improvements shall be replaced with current City standard frontage improvements as directed by the City Engineer or his designee.

E10. Replace unused driveways with sidewalk, curb and gutter. Sidewalk, curb and gutter shall be per City Standard Detail ST-12.
E11. Minimum on-site drive aisle's width shall be 22'.
E12. Driveway for Emergency Vehicle Access (EVA) shall be per City Standard Detail ST-9. Driveway at development's main entrance shall be City Standard Detail ST-10. Any proposed non-standard driveway will require approval of the City Engineer and the developer's execution of an agreement to maintain the driveway.
E13. Execute Covenant(s) Running with the Land to assume maintenance responsibility for non-standard street improvements.
E14. Show and comply with City's driveway and intersection vision triangle requirements. Visual obstructions over three feet in height will not be allowed within the driver's sight triangle near driveways and intersections in order to allow an unobstructed view of oncoming traffic. Contact Traffic Engineering at (408) 615-3000 for further information.
E15. On-street parking along property's Saratoga frontage is prohibited. Install R26S (CA) signs on existing street lights.
E16. Provide 4 Class II bicycle rack spaces at the main entrance or high visible area of the development.
E17. File and record subdivision map to create parcels for proposed development and pay all appropriate fee(s) prior to Building Permit issuance.

ELECTRICAL

EL1. Prior to submitting any project for Electric Department review, applicant shall provide a site plan showing all existing utilities, structures, easements and trees. Applicant shall also include a "Load Survey" form showing all current and proposed electric loads. A new customer with a load of 500KVA or greater or 100 residential units will have to fill out a "Service Investigation Form" and submit this form to the Electric Planning Department for review by the Electric Planning Engineer. Silicon Valley Power (SVP) will do exact design of required substructures after plans are submitted for building permits.
EL2. The Developer shall provide and install electric facilities per Santa Clara City Code chapter 17.15.210.
EL3. Electric service shall be underground. See Electric Department Rules and Regulations for available services.
EL4. Installation of underground facilities shall be in accordance with City of Santa Clara Electric Department standard UG-1000, latest version, and Santa Clara City Code chapter 17.15.050.
EL5. Underground service entrance conduits and conductors shall be "privately" owned, maintained, and installed per City Building Inspection Division Codes. Electric meters and main disconnects shall be installed per SVP Standard MS-G7, Rev. 2.
EL6. The developer shall grant to the City, without cost, all easements and/or right-of- way necessary for serving the property of the developer and for the installation of utilities (Santa Clara City Code chapter 17.15.110).
EL7. All electric meters and services disconnects shall be grouped at one location, outside of the building or in a utility room accessible directly from the outside. A double hasp locking arrangement shall be provided on the main switchboard door(s). Utility room

door(s) shall have a double hasp locking arrangement or a lock box shall be provided. Utility room door(s) shall not be alarmed.

EL8. If transformer pads are required, City Electric Department requires an area of 17' x 16'-2", which is clear of all utilities, trees, walls, etc. This area includes a 5'-0" area away from the actual transformer pad. This area in front of the transformer may be reduced from an 8'-0" apron to a 3'-0", providing the apron is back of a 5'-0" minimum wide sidewalk. Transformer pad must be a minimum of 10'-0 from all doors and windows, and shall be located next to a level, drivable area that will support a large crane or truck.

EL9. All trees, existing and proposed, shall be a minimum of 5'-0" from any existing or proposed Electric Department facilities. Existing trees in conflict will have to be removed. Trees shall not be planted in PUE's or electric easements.

EL10. Any relocation of existing electric facilities shall be at Developer's expense.

EL11. Electric Load Increase fees may be applicable.

EL12. The developer shall provide the City, in accordance with current City standards and specifications, all trenching, backfill, resurfacing, landscaping, conduit, junction boxes, vaults, street light foundations, equipment pads and subsurface housings required for power distribution, street lighting, and signal communication systems, as required by the City in the development of frontage and on-site property. Upon completion of improvements satisfactory to the City, the City shall accept the work. Developer shall further install at his cost the service facilities, consisting of service wires, cables, conductors, and associated equipment necessary to connect a customer to the electrical supply system of and by the City. After completion of the facilities installed by developer, the City shall furnish and install all cable, switches, street lighting poles, luminaries, transformers, meters, and other equipment that it deems necessary for the betterment of the system (Santa Clara City Code chapter 17.15.210 (2)).

EL13. Electrical improvements (including underground electrical conduits along frontage of properties) may be required if any single non-residential private improvement valued at $200,000 or more or any series of non-residential private improvements made within a three-year period valued at $200,000 or more (Santa Clara City Code Title 17 Appendix A (Table III)).

EL14. Non-Utility Generator equipment shall not operate in parallel with the electric utility, unless approved and reviewed by the Electric Engineering Division. All switching operations shall be "Open-Transition-Mode", unless specifically authorized by SVP Electric Engineering Division. A Generating Facility Interconnection Application must be submitted with building permit plans. Review process may take several months depending on size and type of generator. No interconnection of a generation facility with SVP is allowed without written authorization from SVP Electric Engineering Division.

EL15. Applicant is advised to contact SVP (CSC Electric Department) to obtain specific design and utility requirements that are required for building permit review/approval submittal. Please provide a site plan to Leonard Buttitta at 408-261-5469 to facilitate plan review.

WATER

W1. All on-site fire hydrants shall be part of a private system.

W2. All on-site water distribution facilities shall be private and shall be maintained by owner or property owner's association. Water needs shall be served by a master meter(s) at the public street right-of-way.

W3. All landscaping and irrigation systems shall meet water conservation requirements as per City's Rules and Regulations for Water Service.

W4. Developer is advised that building height may require pumping to maintain adequate pressure for fire and domestic water.

W5. Approved Backflow prevention are required on any all water service connections at developer's expense.

W6. All sanitary sewer lateral(s), either proposed or existing, shall be equipped with a clean-out at the property line.

W7. Decorative water features such as fountains and ponds shall be designed and constructed to include provisions for operating the system without City potable water supply. All decorative water features shall be capable of being physically disconnected from source of potable water supply during City declared water conservation periods.

W8. Property Landscaping irrigation water needs shall be provided by a separate water service(s).

W9. Developer is advised that adequate plumbing must be designed and installed for the proposed development and the affected building, or reduced residual water pressure may be experienced due to added water demand.

W10. All trees, existing and proposed, must maintain minimum of ten (10) feet from any existing or proposed Water Department facilities. Existing trees that conflict must be removed by developer. Trees shall not be planted in water easements or public utility easements.

W11. Any relocation of existing Water Department facilities shall be at Developer's expense.

W12. Water and sewer service shall be independent, that is, the said property shall not be connected to lines from the adjacent properties unless approved by the City Building Official.

W13. Prior to issuance of Building Permits, the applicant shall submit plans for independent water service to each individual parcel connected to a public main in the public right-of-way to the satisfaction of the Director of Water & Sewer Utilities. Additionally, different types of water use (domestic, irrigation, fire) shall be served by individual water services.

W14. Prior to the issuance of Building or Grading Permits, the applicant must indicate the disposition of all existing water services on the plans. The applicant must properly abandon all existing water services on the property that will not be used per Water & Sewer Utilities standards.

W15. Upon completion of construction and prior to the City's issuance of a Certificate of Occupancy, the applicant shall provide "as-built" drawings of the on-site public water utility infrastructure prepared by a registered civil engineer to the satisfaction of the Director of Water & Sewer Utilities.

W16. Separate landscape service must be installed for the project

W17. 10-feet clearance must be maintained between the trees and the water meter and services.

FIRE

FD1. Fire At time of building permit application, state on the title sheet what type of sprinkler system will be required (NFPA 13 or 13R). If a sprinkler system is used for increases in height/stories/area allowable, etc., it shall be a NFPA 13 system. **NOTE: According to the our last meeting on 12/3/13 the Architect stated these townhomes are classified as R-3 single family homes, and will be utilizing a 13D sprinkler system. Upon**

review of recent plans, it appears that these homes are classified as R-2 occupancies. It also appears that this will now be a NFPA 13 system because an increase in height was taken. Please confirm.

FD2. **Any increases in height shall conform to the 2013 CBC. <u>NOTE: The State has amended Section 504.2 of the 2013 CBC and only Type VA Group R-2 occupancies can utilize both the area and height increase at the same time.</u>**

FD3. Confirm Occupancy classification.

FD4 Approved fire apparatus access roads (public/private) shall be established and maintained to within 150 feet of all exterior walls of any building.

FD5. Approved fire apparatus access roads shall have a minimum 20-foot width, have a minimum 13 ½-foot vertical clearances and have a minimum 36-foot inside turning radius.

FD6. Dead-end fire apparatus access roads that exceed 150-feet in length shall be provided with a 75-foot diameter vehicle turnaround or an approved hammerhead turnaround (incorporating the minimum 36-foot inside turning radius).

FD7. Adjacent private emergency access roads from lands adjoining a property required to have access shall not be considered unless such access is designated as a "shared Emergency Access Easement" (E.A.E.). **Note: When parcels are subdivided, E.A.E. will most likely be required.**

FD8. Private fire hydrants and mains capable of supplying the required fire flow shall be installed when any portion of the building protected is in excess of 150 feet from a water supply, as measured by an approved route around the exterior of the facility or building. On-site fire hydrants and mains capable of supplying the required fire flow shall be provided. Fire flow for hydrants shall be in accordance with Appendix B and C of the 2010 CFC. Show all existing and proposed on-site and city fire hydrants on the site plan at time of Building Permit application. Also show the proposed fire service line with FDC, PIV and ASR.

FD9. A fire service underground permit may be required directly with SCFD, depending on whether or not the fire sprinkler system will be an NFPA 13 system.

F10. A separate Fire Department permit is required for the sprinkler system (*Sprinkler main drain test valves shall discharge to the sanitary sewer system (via an indirect connection) or shall discharge onto a landscape area of sufficient size.)*

FD11. In new residential buildings, smoke alarms shall be hardwired with battery backup and be located in accordance with CBC Section 907.2.11

FD12. A fire alarm system shall be provided in accordance with the Fire Code.

FD13. **In all <u>new</u> Group R buildings**, an approved carbon monoxide alarm (with listing and approval from the Office of the State Fire Marshal) shall be installed in dwelling units and in sleeping units within which fuel-burning appliances are installed; and in dwelling units that have attached garages. The primary power source shall be from the building wiring from a commercial power source, and be equipped with battery back-up. Alarm wiring shall be directly connected to the permanent building wiring without a disconnecting switch other than as required for overcurrent protection (Exception: In existing dwelling units, a carbon monoxide alarm is permitted to be solely battery operated where repairs or alterations do not result in the removal of wall and ceiling

finishes or there is no access by means of attic, basement or crawl space) (2010 CBC, 420.4). **Interconnection**: Where more than one carbon monoxide alarm is required to be installed within the dwelling unit or within a sleeping unit, the alarm shall be interconnected in a manner that activation of one alarm shall activate all of the alarms in the individual unit. (Exception: Interconnection is not required in existing dwelling units or within sleeping units where repairs do not result in the removal or wall and ceiling finishes, there is no access by means of attic, basement or crawl space, and no previous method for interconnection existed) (2010 CBC, 420.4.1.2).

FD14. Where a permit is required for alterations, repairs or additions exceeding $1,000, existing dwellings or sleeping units that have attached garages or fuel-burning appliances shall be provided with a carbon monoxide alarm whose primary power source is from building wiring, and listed and approved by the Office of the State Fire Marshal. Carbon monoxide alarms shall only be required in the specific dwelling unit or sleeping unit for which the permit was obtained (2010 CBC, 420.4.2).

FD15. **Installation locations of carbon monoxide alarms:** 1. Outside of each separate dwelling unit sleeping area in the immediate vicinity of the bedroom(s). 2. On every level of a dwelling unit including basements. 3. For R-1 (i.e. hotels) only: On the ceiling of sleeping units with permanently installed fuel-burning appliances. NOTE: It is recommended to install "multi-purpose alarms" – Carbon monoxide alarms combined with smoke alarms, that are listed and approved by the Office of the State Fire Marshal.

FD16. Rubbish containers: Containers that are 1.5 cubic yards (40.5 cubic feet) or more shall not be stored in buildings or placed within 5 feet of combustible walls, openings, property lines or combustible roof eave lines unless protected by approved fire sprinklers (CFC 304.3.3). Exceptions may apply. If a roof over the trash enclosure is to be provided, then it shall be of non-combustible construction.

FD17. **At the time of permit application, submit** a construction **"Fire Safety Plan"** to the Fire Department for review and approval. The "Fire Safety Plan" shall address fire protection (i.e., access roads, water mains, on-site fire hydrants, fire extinguishers and standpipes) be installed and made serviceable prior to the time of construction. Include in the safety plan the location of fire extinguishers, fire hydrants (public and private), storage of combustible construction materials, propane tanks, and "NO SMOKING" signs. Plus the Safety plan shall address the how the following items will be used: temporary heating devices, temporary electrical wiring, cutting/welding and other open-flame devices. See "Standards for Construction site fire Safety" handout or website at www.unidocs.org/fire

FD18. **At the time of Building Permit application,** submit Civil Drawings that denote existing and proposed locations of fire hydrants, underground sectional valves, fire department connections and post indicator valves for fire department review and approval.

FD19. Prior to combustible materials being brought onto the site, approved fire apparatus access roads shall be constructed. These shall be capable of supporting the imposed fire apparatus load (75,000 lbs.) and have a FD approved all-weather driving surface.

FD20. Construction materials shall not obstruct access roads, access to buildings, hydrants or fire appliances.

FD21. Combustible construction in excess of 100 feet from the street shall not commence until emergency access roads; underground fire service lines and permanent on-site hydrants are in service and have been tested, flushed and approved by the Fire Department.

FD22. During construction of a building and until permanent fire-extinguishers have been installed, portable fire extinguishers are required within 50 feet travel distance to any part of the building in accordance with California Fire Code and the Santa Clara Municipal Fire and Environmental Code.

FD23. General Permit Storm Water Discharges Associated with Construction Activity-Water Quality through the State (order 99-08-DWQ) shall be adhered to regarding non-point source issues on construction sites. (i.e., prevention of paints, debris, etc. from going down storm drains). The Permit is issued by the State Water Resources Control Board. Information regarding the permit can be found at www.waterboards.ca.gov/stormwtr/index.html.

FD24. Internal-combustion-powered construction equipment shall be used as follows; (a) Equipment shall not be refueled while in operation, (b) Exhausts shall be piped to the outside of the building.

POLICE

PD1. The Developer shall provide a minimum average illumination of one-foot candle in carport, parking areas and in all common pedestrian or landscaped areas of the development, subject to adjustments by the Police Chief in consultation with Silicon Valley Power and Planning Department as necessary for the project to meet LEED Certification, or equivalent, objectives. The illumination should be deployed in fixtures that are both weather and vandal resistant.

PD2. Address numbers of the individual units shall be clearly visible from the street and shall be a minimum of six (6) inches in height and of a color contrasting with the background material. Numbers shall be illuminated during the hours of darkness. Individual apartment numbers shall be a minimum of six (6) inches in height and a color contrasting to the background material and either visible from the street or from the center area of the project. Where multiple units/buildings occupy the same property, unit/building address shall be clearly visible.

PD3. The Developer shall meet the City's guidelines established for radio signal penetration, detailed in the Santa Clara Police Department's Public Safety Radio System Building Penetration Guidelines. The intended use of telecommunications sites shall be clearly and accurately stated in the project description. The signal, of whatever nature, of any communications facility or system, shall in no way whatsoever interfere with or affect any Police communication or Police communication system.

PD4. The Developer shall provide enclosure fencing (trash area, utility equipment, etc.) that is either see-through or that has a six (6) inch opening along the bottom for clear visibility. Any gates or access doors to these enclosures should be locked.

PD5. The Owner/Developer shall ensure that exterior elevators are see-through for maximum visibility. The Owner/Developer shall ensure that all elevators are well lit and equipped with a security mirror to provide interior and exterior visibility prior to entry or exit.

PD6. In a development where there is an alley, driveway, etc. providing a rear entrance or access, the Developer shall ensure that addresses are displayed to both the front and rear of the individual buildings. Where an alley, driveway, etc. provides vehicular access, address numbers shall be clearly visible from that access.

PD7. When in the opinion of the fire code official, a new structure obstructs the line of sight of emergency radio communications to existing buildings or to any other locations, the

developer of the structure shall provide and install the radio retransmission equipment necessary to restore communications capabilities. The equipment shall be located in an approved space or area within the new structure.

PD8. Parking structures, including ramps, corners and entrances, should be illuminated at a minimum of an average of 5-foot candles at all hours by the Developer, subject to adjustments by the Police Chief in consultation with Silicon Valley Power and Planning Department as necessary for the project to meet LEED Certification, or equivalent, objectives.

PD9. The Developer should equip the parking structure/site with an emergency panic alarm system that reports to a central office and/or 9-1-1. If more than one button is installed, they should be placed no more than 100 ft. apart.

PD10. All entrances to parking areas (surface, structure, sub-terranean, etc.) should be posted with appropriate signage to discourage trespassing, unauthorized parking, etc. (See California Vehicle Code Section 22658(a) for guidance).

PD11. The developer should install skate stoppers on any low clearance wall of 36 inches in height or lower to prevent vandalism to the wall.

PD12. If the development includes any benches, these benches should not be longer in five feet in length and have arm rests at both ends. If the benches are longer than five feet in length, there should be a divider (arm rest or similar) in the middle of the bench in addition to the arm rests on both ends.

STREET

ST1. Prior to submitting any project for Street Department review, applicant shall provide a site plan showing all existing trees 4" or larger (measured 30" from grade including size and species), proposed trees (including size and species), existing stormwater drainage facilities, proposed storm water drainage facilities, proposed locations of solid waste containers and, if applicable, a statement on the site plan confirming compliance with Fire Department approved fire apparatus access roads (1998 CFC 902.2.2.1 & 902.2.2.3). Trees are to be noted as to whether they are proposed to be saved or removed. City tree preservation specifications are to be included on all plans where existing trees are to be saved during construction. A copy of these specifications can be obtained from the City Arborist at 408-615-3080.

ST1. Prepare a tree protection plan for review and approval by the City prior to any demolition, grading or other earthwork in the vicinity of existing trees on the site, including adjacent property if impacted.

ST3. The Developer is to supply and install City street trees per City specifications; spacing, specie, and size (15 gallon minimum) to be determined by City Arborist.

ST4. No cutting of any part of City trees, including roots, shall be done without following City Tree Preservation Specifications and securing approval and direct supervision from the City Arborist at 408- 615-3080.

ST5. No cutting of any part of private trees, including roots, shall be done without direct supervision of a certified arborist (Certification of International Society of Arboriculture).

ST6. Applicant is advised to contact Street Department to obtain required tree removal permits in the event trees are removed at 408-615-3080 to facilitate plan review.

ST7. All landscaping and irrigation systems shall meet City standard specifications.

ST8. If the project involves disturbing a land area of one acre or more, the developer shall file a Notice of Intent (NOI) with the State Water Resources Control Board for coverage under the State Construction General Permit (Order No. 2009-0009-DWQ) prior to issuance of any building permit for grading, or construction; a copy of the NOI shall be sent to the City Building Inspection Division. A stormwater pollution prevention plan is also required with the NOI.

ST9. Incorporate Best Management Practices (BMPs) into construction plans and incorporate post construction water runoff measures into project plans in accordance with the City's Urban Runoff Pollution Prevention Program standards prior to the issuance of permits. Proposed BMPs shall be submitted to and thereafter reviewed and approved by the Planning Division and the Building Inspection Division for incorporation into construction drawings and specifications.

ST10. An erosion control plan shall be prepared and copies provided to the Planning Division and to the Building Inspection Division for review and approval prior to the issuance of grading permits or building permits that involve substantial disturbance of substantial ground area.

ST11. The project shall incorporate C3 measures into grading and site design. Identify C3 measures and provide C3 calculations. All proposed storm water treatment vaults shall have internal treated distribution plumbing. No external folding racks are permitted. A Maintenance Agreement for post-construction maintenance of C3 devices/measures shall be required and recorded prior to issuance of building permits.

ST12. All post construction structural controls, if installed, shall require property owner to execute with City a Stormwater Treatment Measures Inspection and Maintenance Agreement.

ST13. Decorative water features such as fountains and ponds shall be designed and constructed to drain to sanitary sewer only. No discharges allowed to storm drain.

ST14. Provide the Street Department with information to evaluate proposed stormwater pollution prevention improvements, if applicable. Applicant to coordinate with Dave Staub of the Street Department at 408-615-3080 prior to re-submittal.

ST15. Applicant to comply with City Development Guidelines for Solid Waste Services as specified by development type. Set up meeting with Dave Staub of the Street Department at 408-615-3080 to discuss the requirements.

ST16. The size and shape of the trash enclosure(s) must be adequate to serve the estimated solid waste and recycling needs and size of the structure, and should be designed and located on the property so as to allow ease of access by collection vehicles. As a general rule, the size of the enclosure(s) for the recycling containers should be similar to the size of the trash enclosure(s) provided onsite.

ST17. Applicant to comply with City Code Section 8.25.285 and recycle or divert at least fifty percent (50%) of materials generated for discards by the project during demolition and construction activities. No building, demolition or site development permit shall be issued unless and until applicant has submitted a construction and demolition debris materials check-off list. After completion of project, applicant shall submit a construction and demolition debris recycling report as stipulated by ordinance, or be subject to monetary, civil, and/or criminal penalties.

As identified in the Initial Study, a number of mitigation measures would be required to avoid and reduce potentially significant adverse impacts of the proposed Project. To mitigate potential impacts, the mitigation measures listed below will be implemented as part of the proposed Project.

Mitigation, Monitoring, and Reporting Program

Environmental Topic and Impact	*Mitigation Measures*	*Mitigation Timing*	*Monitoring/Reporting Responsibility and Action*	*Monitoring Schedule*
Biological Resources	**MM BIO-1:** The nesting season for most birds, including raptors in the San Francisco Bay area, extends from February **1** through August 31. If demolition and construction are scheduled between September and January, pre-construction surveys for nesting birds shall be completed by a qualified biologist to ensure that no nests will be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1 through April 30) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May **1** through August 31). During this survey, the biologist will inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with California Department Fish and Wildlife, will determine the extent of a construction-free buffer zone to be established around the nest, to ensure that raptor or migratory bird nests will not be disturbed during project construction.	Prior to construction	City of Santa Clara Planning and Inspection Department shall oversee implementation of pre-construction surveys.	Compliance with project conditions of approval.

Mitigation, Monitoring, and Reporting Program

Environmental Topic and Impact	*Mitigation Measures*	*Mitigation Timing*	*Monitoring/Reporting Responsibility and Action*	*Monitoring Schedule*
Cultural Resources	**MM CUL-1:** In the event that prehistoric traces (human remains, artifacts, concentrations of shell/bone/rock/ash) are encountered, all construction within a fifty- foot meter radius of the find should be stopped, the Planning Department notified, and an archaeologist retained to examine the find and make appropriate recommendations.	During construction	City of Santa Clara Planning and Inspection Department shall oversee retention of archeologist.	Construction inspection.
	MM CUL-2: In the event that human remains are discovered during excavation and/or grading of the site, all activity within a 50-foot radius of the find will be stopped. The Santa Clara County Coroner will be notified and shall make a determination as to whether the remains are of Native American origin or whether an investigation into the cause of death is required. If the remains are determined to be Native American, the Coroner will notify the Native American Heritage Commission (NAHC) immediately. Once NAHC identifies the most likely descendants, the descendants will make recommendations regarding proper burial, which will be implemented in accordance with Section 15064.5(e) of the CEQA Guidelines.	During construction	City of Santa Clara Planning and Inspection Department shall oversee the Santa Clara County Coroner.	Construction inspection.
Geology and Soils	**MM GEO-1:** Adhere to the recommendations of the geotechnical investigation for site grading, ground improvement and the design and construction of foundations and utilities, and incorporate sound engineering practices in the design and construction of the project.	Prior to and during construction	City of Santa Clara Planning and Inspection Department shall oversee implementation of geotechnical investigation.	Construction inspection.

Mitigation, Monitoring, and Reporting Program

Environmental Topic and Impact	*Mitigation Measures*	*Mitigation Timing*	*Monitoring/Reporting Responsibility and Action*	*Monitoring Schedule*
Hazards and Hazardous Materials	**MM HAZ-1:** If an underground storage tank is identified, then it should be removed in accordance with federal, state and local requirements.	During construction	City of Santa Clara Planning and Inspection Department shall oversee removal of underground storage tank if identified.	Construction inspection.
	MM HAZ-2: Given contaminated soils (Class I and Class II) were found in concentrations above established thresholds in the southern portion of the property, contaminated soils (approximately 250 cubic yards of Class I material and approximately 750 cubic yards of Class II material as described in the March 2014 Supplemental Environmental Assessment) shall be excavated and hauled to an appropriate off-site waste disposal facility. Alternatively, contaminated soil can be treated using an in-situ bioremediation treatment method.	Prior to and during construction.	City of Santa Clara Planning and Inspection Department shall oversee excavation and disposal.	Construction inspection.
	MM HAZ-3: Given contaminated soils (Class I) were found in concentrations above established thresholds in the northern portion of the property, contaminated soils (approximately 1,000 to 1,500 cubic yards of Class I material as described in the March 2014 Supplemental Environmental Assessment) shall be excavated and hauled to an appropriate off-site waste disposal facility. Alternatively, contaminated soil can be treated using an in-situ bioremediation treatment method.	Prior to and during construction.	City of Santa Clara Planning and Inspection Department shall oversee excavation and disposal.	Construction inspection.
	MM HAZ -4: A Site Management Plan (SMP) shall be prepared and implemented (as outlined below). The SMP will be prepared to establish management practices for	Prior to construction.	City of Santa Clara Planning and Inspection Department shall approve SMP.	Compliance with project conditions of approval.

Mitigation, Monitoring, and Reporting Program

Environmental Topic and Impact	*Mitigation Measures*	*Mitigation Timing*	*Monitoring/Reporting Responsibility and Action*	*Monitoring Schedule*
	handling impacted soil material that may be encountered during site development and soil-disturbing activities. Components of the SMP will include: a detailed discussion of the site background; preparation of a Health and Safety Plan by an industrial hygienist; notification procedures if previously undiscovered significantly impacted soil or free fuel product is encountered during construction; on-site soil reuse guidelines based on the California Regional Water Quality Control Board, San Francisco Bay Region's reuse policy; sampling and laboratory analyses of excess soil requiring disposal at an appropriate off-site waste disposal facility; soil stockpiling protocols; and protocols to manage ground water that may be encountered during trenching and/or subsurface excavation activities. Prior to issuance of grading permits, a copy of the SMP must be approved by the City's Director of Planning and Inspection, and the Santa Clara Fire Chief.			
	MM HAZ-5: In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site buildings to determine the presence of asbestos-containing materials and/or lead-based paint.	Prior to demolition of existing buildings.	City of Santa Clara Planning and Inspection Department shall oversee surveys and sampling.	Pre- demolition inspection.
	MM HAZ-6: Prior to demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code of Regulations 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings would be disposed of at landfills that meet acceptance	Prior to demolition of existing buildings.	City of Santa Clara Planning and Inspection Department shall oversee removal of lead-based paint.	Pre- demolition inspection.

Mitigation, Monitoring, and Reporting Program

Environmental Topic and Impact	*Mitigation Measures*	*Mitigation Timing*	*Monitoring/Reporting Responsibility and Action*	*Monitoring Schedule*
	criteria for the waste being disposed.			
	MM HAZ-7: All potentially friable ACMs shall be removed in accordance with National Emissions Standards for Hazardous Air Pollutants (NESHAP) guidelines prior to any building demolition or renovation that may disturb the materials. All demolition activities will be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from exposure to asbestos.	Prior to demolition of existing buildings.	City of Santa Clara Planning and Inspection Department shall oversee removal of potentially friable ACMs.	Pre-demolition inspection.
	MM HAZ-8: A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.	Prior to demolition of existing buildings.	City of Santa Clara Planning and Inspection Department shall oversee the registered asbestos abatement contractor.	Pre-demolition inspection.
	MM HAZ-9: Materials containing more than one percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements.	Prior to demolition of existing buildings.	City of Santa Clara Planning and Inspection Department shall oversee the registered asbestos abatement contractor.	Pre-demolition inspection.
Noise	**MM NOISE-1:** Prior to issuance of building permit, a project-specific acoustical analysis shall be prepared for residential development within 100 feet of Saratoga Avenue's centerline and within the 67 CNEL noise contour to verify that the design of the project would reduce interior and exterior noise levels to meet the 2010 California Building Code and Santa Clara City Code. Forced air mechanical ventilation, satisfactory to	Prior to issuance of building permit	City of Santa Clara Planning and Inspection Department shall review acoustical analysis.	Document prior to and after project construction.

Mitigation, Monitoring, and Reporting Program

Environmental Topic and Impact	*Mitigation Measures*	*Mitigation Timing*	*Monitoring/Reporting Responsibility and Action*	*Monitoring Schedule*
	the local building official, shall be incorporated into all residential units facing Saratoga Avenue to allow occupants the option of keeping windows closed to control noise intrusion. **MM NOISE-2:** Special building sound insulation treatments shall be installed on a unit-by-unit basis, as needed, to achieve acceptable noise levels inside the living units with facades facing Saratoga Avenue. These treatments could include sound rated windows and doors, sound rated wall constructions, acoustical caulking, protected ventilation openings, etc. The specific determination of what treatments are necessary would be determined on a unit-by-unit basis, consistent with the findings of the project-specific acoustical analysis. The results of the analysis shall be submitted to the City, along with the building plans. The analysis shall be approved by the City prior to issuance of building permit.	During Construction	City of Santa Clara Planning and Inspection Department shall review acoustical analysis and building plans.	Document during and after project construction.

Meeting Date: 08/6/14

Planning Commission
STAFF REPORT

Agenda Item # 8.B.

Planning and Inspection Department
City of Santa Clara, California

File No.(s):	PLN2013-10111/CEQ2014-01169
Location:	166 Saratoga Avenue, APN 294-38-001
Applicant/Owner:	Charles McKeag / Boyto Family Trust
Subject:	General Plan Amendment from Community Mixed Use to Medium Density Residential, Rezone from R1-6L (Single-Family Residential) to PD (Planned Development), Vesting Tentative Map for 33 lots and Architectural Approval for 33, three-story townhomes at a proposed density of 19 dwelling units per acre
CEQA Determination:	Mitigated Negative Declaration
Project Planner:	Shaun Lacey, AICP, Assistant Planner II, (408) 615-2454, slacey@santaclaraca.gov

EXECUTIVE SUMMARY:

The applicant requests a General Plan Amendment from Community Mixed Use to Medium Density Residential, rezoning the property from R1-6L (Single-Family Residential) to PD (Planned Development) and processing a Vesting Tentative Map in order to allow individual ownership and sale of 33, three-story townhomes at a proposed density of 19 dwelling units per acre at the subject property.

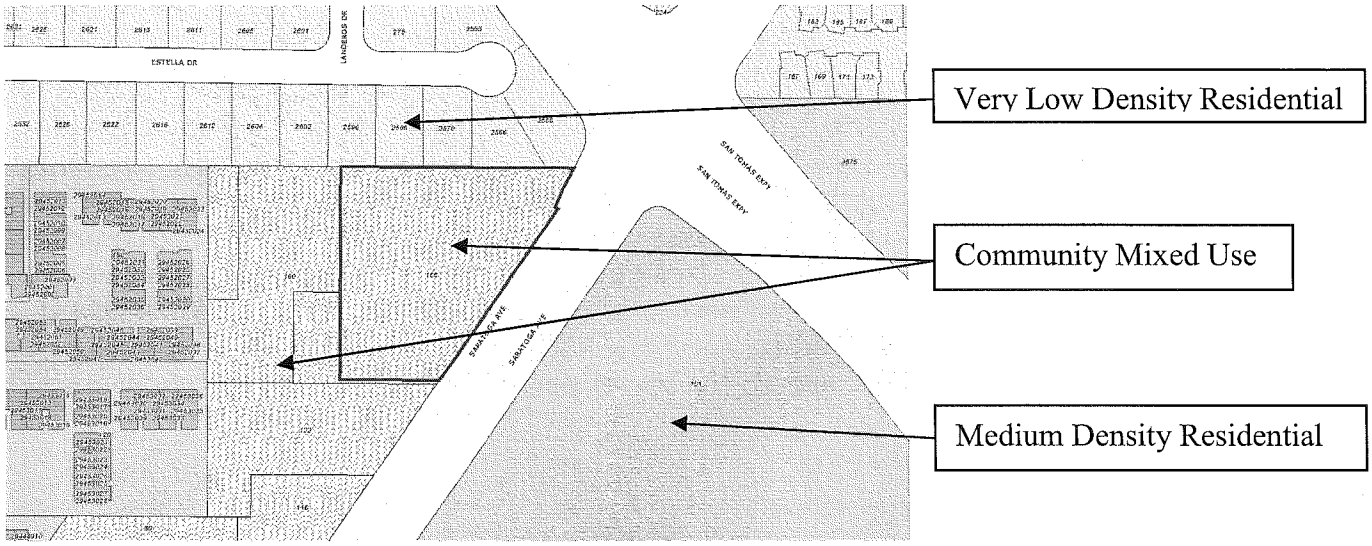
Project Data

	Existing	Proposed
General Plan Designation	Community Mixed Use	Medium Density Residential
Zoning District	R1-6L (Single-Family Residential)	PD (Planned Development)
Land Use	Residential	Same
Lot Size	74,052 square feet	Same
Lot Coverage	0.08 (approximate)	0.39
Density	19-36 du/acre	Same
Building Square Footage	6,150 square feet (approximate)	52,207 square feet
Parking	8 spaces (approximate)	72 spaces

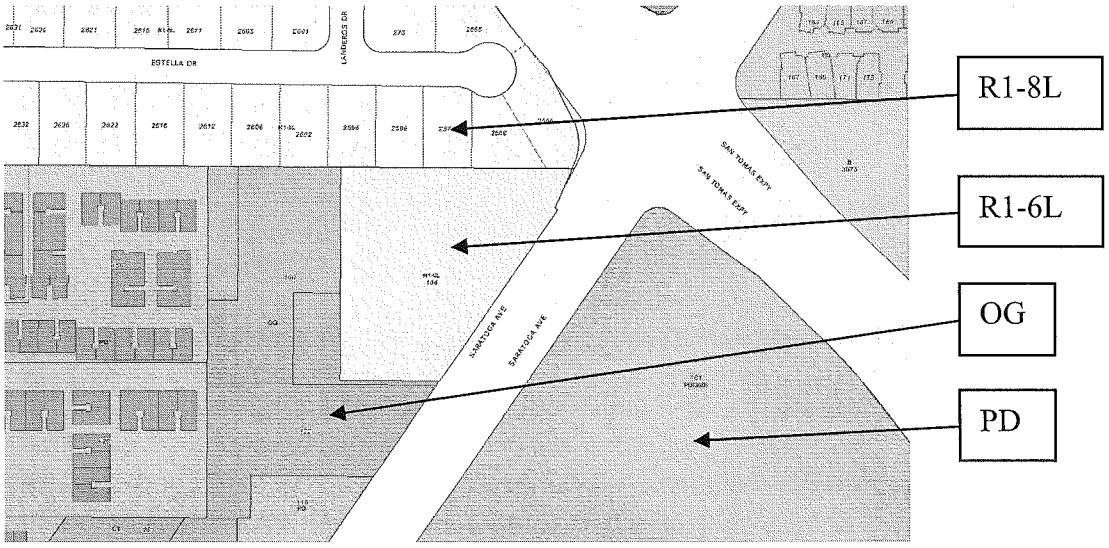
Site Location and Context

The project site is located near the southwest intersection of Saratoga Avenue and San Tomas Expressway. The project site and nearby properties along the westerly portion of Saratoga Avenue have a General Plan designation of Community Mixed Use (19 to 36 units per acre with a 10 percent floor area ratio for commercial uses). Neighboring properties on the easterly portion of Saratoga Avenue have a General Plan designation of Medium Density Residential (19 to 36 units per acre) and Community Mixed Use. The property abuts a single-family residential neighborhood to the north, which has a General Plan designation of Very Low Density Residential (up to 10 units per acre). The subject property is zoned R1-6L (Single-Family Residential) and is surrounded by an office district (OG) to the west and south. The single-family residential neighborhood to the north is zoned R1-8L. The property has an easement that runs across the property, which permits vehicular access to office buildings and a condominium community (Vista del Lago) to the west.

General Plan Map



Zoning Map



Background

There are two single-family residential structures occupying the site. The structures were built around 1915 and 1953. Given the age of the buildings, the project was reviewed by the Historical and Landmarks Commission (HLC) at their May 1, 2014 meeting. Following public comment and a discussion, the HLC recommended approval of the application with a recommendation to provide as much open space as possible in order to preserve the remnant orchard that is currently a part of the property. Additional motions were passed by the HLC to declare the property historically significant, to name the access driveway to the site

after the original family owners, and to provide identifiers (such as placards or signs) throughout the site to memorialize the original farm that occupied the area prior to being sold and subdivided. Staff added a condition to reconvene with the HLC to review property identifier proposals. The meeting minutes and staff report from the May 1, 2014 HLC meeting is attached for reference.

Following the May 1, 2014 HLC meeting, the applicant worked with the surrounding neighborhood and responded to the HLC's recommendations with project modifications. These modifications included:

- Increased setbacks to the single-family residential neighborhood to the north of the site;
- Reduced building heights facing the north property line to provide a reasonable transition to the single-family residential neighborhood to the north;
- A robust landscape plan along the north property line to minimize privacy impacts; and
- Additional open space along the street frontage with proposed fruit trees to recognize the existing remnant orchard owned by the Bayto family.

Project Analysis

Project Description: The Community Mixed Use General Plan land use designation is primarily designed to encourage a mix of residential and commercial uses along major streets. Projects within this land use designation are required to provide a minimum of 10 percent floor area towards commercial use in conjunction with residential development between 19 and 36 units per acre. The applicant provided an economic feasibility study of the site and nearby commercial corridors to evaluate the impacts associated with designing a project that conforms to the existing land use designation. The study concludes that the site would not yield a significant source of sales tax revenue to the City by providing a commercial element to the project. The study is attached for reference.

Since the proposal does not provide a commercial element to the project, the applicant has filed a General Plan Amendment to change the land use designation from Community Mixed Use to Medium Density Residential. The applicant has also filed a request to rezone the property from R1-6L (Single-Family Residential) to PD (Planned Development). The application also includes a Vesting Tentative Map to create 33 residential lots. The project provides three affordable housing units, which must be sold at a below-market rate.

Circulation and Parking: Access to the property is served by two driveways off of Saratoga Avenue. Exiting the site would be limited to right-hand turns along the street by virtue of an existing median that prohibits vehicles from crossing into on-coming traffic. A total of 72 parking spaces (including six guest spaces) serve the residences within individual garages and ground-level parking throughout the property. The project also includes four bicycle lockers that are integrated into the landscape plan. The easement that permits vehicular access to Vista del Lago and the office buildings behind the property will remain intact.

Architecture and Site Plan: The applicant worked with the neighborhood to the north of the site to minimize impacts along the common property line. The project is a contemporary style that borrows from Mediterranean Revival architecture. The project uses gabled roofs, articulated walls, recessed windows and balconies to minimize bulk from the street and from the abutting single-family residences to the north. The project maintains 15 to 32 foot setbacks from the single-family residential neighborhood to the north and is landscaped with evergreen trees for added buffering and privacy mitigation. The overall building height is 40

feet. To minimize impacts onto property owners whose homes back onto the site, the building height was lowered to two-stories nearest the north property line. Building materials reflect a high quality and include stucco siding, "S"-tile roof, wood panels and corbels, brick accent trim, and wrought iron railing.

Landscaping: The project proposes removal of all existing trees on the property. To balance the loss of these trees and to respond to the HLC's recommendation of providing as much open space as possible to the project, the applicant worked with staff and the neighbors to develop a comprehensive landscape plan that maximizes available open space while maintaining sensitivity to the adjoining properties. A variety of evergreen screening trees are proposed along the north and south property boundaries to provide a reasonable landscape buffer and maintain appropriate privacy. The landscape plan includes Pear and Cherry trees along the street frontage. Raised planter boxes, seat walls, walkways and bioretention areas are incorporated into the plan to provide additional landscaped open space in between each building. To comply with the City's 2:1 tree replacement policy, staff added a condition to collect additional fees from the applicant for future tree planting considerations off-site.

Environmental Determination: An Initial Study and Mitigated Negative Declaration (MND) were prepared by environmental consultants Kimley-Horn and Associates, Inc. The MND identifies mitigation measures for potential Biological, Cultural, Geological and Hazardous Materials impacts associated with the project. No significant impacts will occur as a result of the project, subject to the on-going implementation of the mitigation measures as outlined in the MND. A condition of approval was added that the applicant comply with these mitigation measures.

General Plan and Zoning Conformance: Subject to the proposed General Plan Amendment, the project is consistent with the land use designation of Medium Density Residential. The General Plan states that residential development in this classification should range from 19 to 36 units per acre, while parking should be designed within the structures themselves. The proposed project is designed to a density of 19 units per acre, while parking is accommodated within the garages of each unit.

The PD zoning district is intended to accommodate development that is compatible with the community, utilizing creative planning and design concepts that would otherwise be restricted in the existing R1-6L zoning district. The PD zone also encourages residential community ownership projects, such as the townhomes proposed. The proposal conforms to the PD zoning district in that the project creates a community ownership project at the desired density range outlined in the General Plan that utilizes good design principles and careful site planning. The aforementioned project mitigation measures avoid significant impacts to the surrounding area and will not be detrimental to the neighborhood.

Public Contact

Public Notices and Comments: A notice of public hearing for this item was posted within 500 feet of the site and was mailed to property owners within 500 feet of the project site. Notice of Availability for the MND was made available for public review pursuant to State requirements. Two neighborhood outreach meetings were held at the City Library, where the applicant presented the renderings and discussed potential impacts with neighbors. Approximately 30 members of the public attended the meetings and expressed concerns regarding the proposed density, traffic impacts, parking layout and a potential loss of privacy. The applicant worked with the neighborhood to minimize these impacts as mentioned above.

Correspondence

Staff received letters from residents who expressed concerns about the height, density and parking for the project. Although the overall height of the project is 40 feet and taller than the single-story homes to the north, the project height is reduced nearest properties to the north and uses appropriately scaled building forms, raised sill heights and landscaping to minimize privacy impacts. As mentioned above, the project falls within the desired density range outlined within the General Plan. The 72 parking spaces provided on-site conform to the residential parking requirement of two spaces for each dwelling with additional guest parking spaces.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The General Plan Amendment, Rezone and Vesting Tentative Map helps the City achieve its housing goals by providing a variety of housing types and sizes with 33 new townhomes, in which at least three units shall be designated for Below Market Rate affordability.

RECOMMENDATION:

That the Planning Commission adopt resolutions for the project located at 166 Saratoga Avenue, subject to conditions of approval, to:

1) Recommend that the City Council adopt a Resolution to approve the Mitigated Negative Declaration for 33 dwelling units;
2) Recommend that the City Council adopt a Resolution to approve a General Plan Amendment from Community Mixed Use to Medium Density Residential;
3) Recommend that the City Council adopt a Resolution to approve a Rezone from R1-6L (Single-Family Residential) to PD (Planned Development); and
4) Recommend that the City Council adopt a Resolution to approve a Vesting Tentative Map for 33 residential lots.

Documents Related to this Report:

1) ***Planning Commission MND Resolution***
2) ***Planning Commission General Plan Amendment Resolution***
3) ***Planning Commission Rezone Resolution***
4) ***Planning Commission Vesting Tentative Map Resolution***
5) ***Conditions of Approval***
6) ***Mitigation Monitoring and Reporting Program***
7) ***Historical & Landmarks Commission Meeting Minutes Dated May 1, 2014***
8) ***Historical & Landmarks Commission Staff Report Dated May 1, 2014***
9) ***Historical Evaluations and DPR Form***
10) ***Bayto Property Project Initial Study/Mitigated Negative Declaration (previously distributed)***
11) ***Economic Feasibility Study Dated January 9, 2014***
12) ***Correspondence***
13) ***Letter of Intent***
14) ***Development Plans***

Discussion: Shaun Lacey gave a brief presentation on the project and introduced Leslie Lowe of Environmental Science Associates (ESA) who gave a PowerPoint highlighting the Draft Housing Element.

The Commission confirmed that all public comments will be reviewed and considered for the final draft of the Housing Element that will be brought forward for adoption. It was clarified that correspondence had been received the same morning as the public hearing and will be considered in development of the final draft.

The Commission stated the importance of continuing to provide affordable housing. The Commission also expressed concern that the goals in the Housing Element are too low and that the City should aim higher to stay ahead of growth curves. Ms. Lowe noted that the goals are for a minimum number of additional housing units and that acquiring above the minimum is highly encouraged. The Commission noted that the Zoning Code needs to be updated to help implement the goals of the Housing Element.

Pilar Furlong, Bill Wilson Center Director, thanked the City for support of the Bill Wilson Center and stated that he was pleased to see the recommendation for continued support for the at-risk youth.

The Public Hearing was closed.

The Commission reemphasized that the goals presented in the Housing Element are minimum goals and that the City should be encouraging even more housing.

Motion/Action: The Commission provided general feedback to the consultants preparing the Housing Element for inclusion in the City of Santa Clara Housing Element.

8.B.	**File No.(s):**	**PLN2013-10111/CEQ2014-01169**
	Location:	166 Saratoga Avenue, a 74,052 square foot parcel located near the southwest corner of Saratoga Avenue and San Tomas Expressway (APN: 294-38-001)
	Applicant/Owner:	Charles McKeag/Jack Bayto Family Trust
	Request:	**General Plan Amendment** from Community Mixed Use to Medium Density Residential, **Rezone** from R1-6L (Single-Family Residential) to PD (Planned Development) **Vesting Subdivision Map** creating 33 lots, Architectural Approval for 33, three-story townhomes at a proposed density of 19 dwelling units per acre;
	CEQA Determination:	Mitigated Negative Declaration
	Project Planner:	Shaun Lacey, AICP, Assistant Planner II
	Staff Recommendation:	**Recommend City Council Approval**, subject to conditions

Notice: The notice of public hearing for Item 8.C. was posted within 300 feet of the site and mailed to property owners within 300 feet.

Discussion: Shaun Lacey gave a brief presentation on the project.

The Commission inquired about the lack of commercial space in the proposal. Staff stated that the mixed-use component would have required roughly 7,000 square feet of retail which would not have been economically viable given the existing retail in the area.

The Commission inquired about the historical significance of the site. Staff reviewed the findings made at the Historical and Landmarks Commission meetings of April and May.

The Commission deliberated on the proposed density of the project. It was noted that while the proposal presented a significant change in land use from what currently exists, the proposal was near the minimum density designated for the site.

Keith McCoy, applicant, gave a presentation on the project highlighting the existing conditions and the design concept of the 33-unit proposal. Mr. McCoy noted that many community meetings were held along with a collaborative effort with City Departments. Mr. McCoy introduced the project architect John Thatch who highlighted the site plan, landscaping, and architecture of the proposal.

The Commission inquired about the easement between the proposal and the abutting office property, in conjunction with the Vista Del Lago community. The applicant noted that more research was necessary to clearly define the rules and restrictions associated with the easement.

The Public Hearing was opened.

Philip Riverman, neighboring resident, expressed concern for the increased traffic that would result from the proposal and requested that a restricted access gate be placed between the project site and the existing offices.

Caroline Jones, neighboring resident, stated that the proposal is not what the community wants as it does not maintain and preserve the established community. Ms. Jones added that there is not enough parking, the traffic congestion in the area will be increased, and that the site should be retained as an orchard or converted to a park.

Rob Avina, neighboring resident, stated that there is historic significance in the orchard as it is the last orchard in the City. Mr. Avina added that a Heritage Orchard would benefit the community and honor the past.

Mary-Jo Cremer, neighboring resident, stated that the density is too high, the proposal is too tall, and that the development isn't fitting with the existing community.

Sylvia Felix, neighboring resident, expressed concern about the proximity of this kind of density to traditional single-family residence homes. Ms. Felix added that not enough changes have been made to accommodate existing homes and asked that the buildings near the property line be given an increased setback, along with adding more parking to the proposal.

Andy Cell, neighboring resident, stated that the shadow studies prepared for the proposal show significant impact to existing properties and that some of the balconies will look directly into the backyards of the single family residences. Mr. Cell added that there is not enough parking, poorly designed egress, and the proposal will have a negative impact on traffic patterns in the area.

David Bayto, co-owner of property, stated that he is supportive of the project as the development would be good for the community. Mr. Bayto added that several developers were interviewed to take on the project and that they selected the New Homes Company because of their proven reputation as a quality builder.

Marley Matune stated that her mother, Anne Matusich, moved in to this property in 1955 and that the trees were planted in 1960. Ms. Matune noted that the family has always allowed the community to harvest fruit, cross thru the orchard, and enjoy the property as a good neighbor. Ms. Matune stated that the family is ready to move on and decided on townhomes instead of

apartments to benefit the community with pride in ownership.

Frank Jackameli, neighboring resident, stated that the Vista Del Lago community had not been represented in the proposal and that there had not been sufficient communication. Mr. Jackameli added that clarity on the easement and access is needed prior to approval of the proposal.

Elisabeth Felix, neighboring resident, stated that she would be impacted by development as the three-story building will be less than 15 feet from her yard. Ms. Felix added that the proposal is too dense, tall, and close to the existing homes.

Alejandra (last name unknown), neighboring resident, stated that the community objects to this proposal as the developer has been unable to address neighborhood concerns. Alejandra added that he wants the orchard preserved, at least in part, and urged the Commission to deny the project.

Royanna Gasley, Santa Clara resident, stated that she sympathizes with the community. Ms. Gasley stated that the proposal is too tall, too dense, and that the traffic flow is too complicated with the limited access to the property.

In a rebuttal statement, the applicant stated that they have tried to address the concerns presented by the neighbors and that the density of the project meets the housing goals of the City. Mr. McCoy added that the proposal strikes a balance between what the community has asked for and what was originally proposed to the City.

The Public Hearing was closed.

The Commission deliberated on the density of the project, the lack of a commercial component, and the proposed parking. The Commission noted that the City needs more housing and that the General Plan would support a much higher density than proposed on the site. However, the Commission expressed significant concern about the lack of sufficient parking, the uncertainty of the easement rights, and the privacy impacts on the single-family neighborhood. The Commission confirmed that the project design would be subject to formal review by the Architectural Review Committee.

Motion/Action: The Commission motioned to recommend that the City Council deny the Mitigated Negative Declaration for the project located at 166 Saratoga (5-1-1-0, Kelly dissenting, Sweeney absent).

A motion to deny the General Plan Amendment was discussed, called to a vote, and failed. A subsequent motion to approve the General Plan Amendment was called to a vote and failed.

Motion/Action: The Commission motioned to make no recommendation to the City Council on the General Plan Amendment for the project located at 166 Saratoga (6-0-1-0, Sweeney absent).

Motion/Action: The Commission motioned to recommend that the City Council deny the request to rezone the property located at 166 Saratoga (6-0-1-0, Sweeney absent).

Motion/Action: The Commission motioned to recommend that the City Council deny the Vesting Subdivision Map for the project located at 166 Saratoga (6-0-1-0, Sweeney absent).

It was noted that resolutions representing the Commission's actions would be brought forward for adoption at the August 20, 2014, meeting and that the Public Hearing would not be reopened.

6. ORAL PETITIONS/ANNOUNCEMENTS AND COMMUNICATIONS

- Judy Tucker passed out letter from Donald Soukop in reference to his Victorian at Benton and Madison. She noted that Mr. Soukop was asked to change the triplex into a duplex. She noted Mr. Soukop would prefer to rent to families at below market than to change to student housing with the reduction in units.
- Sarah Doty asked whether there will be a final historic review of 1091 Harrison Street before the HLC. Mr. Chen noted that the Preservation Plan is part of the building plans. He noted that the Planning Division and Building Inspection will be responsible for the final historic review. Ms. Doty requested that Craig Mineweaser, HLC Advisor, be included in the historic review process.
- Lou Faria noted that neighborhood concern over Mr. Soukop's property. Mr. Faria commented that many of the historic features required on the Plans for 1091 Harrison Street have not been installed. Mr. Faria noted that the neighborhood is concerned over the Netos property, specifically over the height, lack of parking, density of the project and impact to surrounding historic properties. He noted that the neighborhood did not look upon the project favorably as reported by Planning staff. Mr. Faria noted that Historic booklets are nice handouts for those moving into the neighborhood and asked the Commission to allocate funds to reprint this resource.

7. CONSENT CALENDAR

Consent Calendar items may be enacted, approved or adopted, based upon the findings prepared and provided in the written staff report, by one motion unless requested to be removed by anyone for discussion or explanation. If any member of the Historical and Landmarks Commission, staff, the applicant or a member of the public wishes to comment on a Consent Calendar item, or would like the item to be heard on the regular agenda, please notify Planning staff, or request this action at the Historical and Landmarks Commission meeting when the Chair calls for these requests during the Consent Calendar review.

7.A. Approval of FY 2014-15 Commission Budget

Mr. Chen gave a brief overview of the proposed budget. He referred to the 2014-2015 Budget Memo from Director of Finance/Assistant City Manager.

Motion/Action: It was moved by Commissioner Motyka seconded by Commissioner Luckinbill and was carried (6-0-1-0, McKee absent), to approved FY 2014-15 Commission Budget.

7.B. Approval of Historical and Landmarks Commission Minutes for the meeting of March 6, 2014.

7.C. Approval of Historical and Landmarks Commission Minutes for the meeting of April 3, 2014.

Motion/Action: It was moved by Commissioner Johns seconded by Commissioner Mahan and was carried (6-0-1-0, McKee absent), to move the review of minutes to next meeting.

**********END OF CONSENT CALENDAR**********

PUBLIC MEETNG ITEMS

8.A.	File No.(s):	**PLN2013-10111 & CEQ2014-01169**
	Location:	166 Saratoga Avenue, a 74,052 square foot parcel located near the southwest corner of Saratoga Avenue and San Tomas Expressway (APN: 294-38-001); Property is zoned Single-Family, Residential (R1-6L)
	Applicant:	Charles McKeag
	Owner:	Jack Bayto Family Trust

Request:	**General Plan Amendment, Rezone and Vesting Tentative Map** to construct 33 townhomes
CEQA Determination:	Mitigated Negative Declaration
Project Planner:	Shaun Lacey, AICP, Assistant Planner II
Staff Recommendation:	Recommend approval of the General Plan Amendment, Rezone, Vesting Tentative Map and Mitigated Negative Declaration to the Planning Commission

Notice: The notice of public meeting for these items was posted within 300 feet of the site and was mailed to property owners within 300 feet.

Discussion:
Mr. Lacey gave a brief presentation of the project. The applicant was then called up to speak on the item and requested that the Commission arrive at a conclusion for the project so that the development review process may continue.

Chair Johns opened the item for public comments. Members of the Vista del Lago Homeowners' Association requested that the property be retained as a historic orchard and provided presentations pertaining to the history of the site. The presentations included information pre-dating the Boyto family's ownership of the site and detailed the agricultural heritage associated with the property. Other residents living near the property noted concerns about the project, including the loss of the remnant orchard as a resource to the neighborhood and the surrounding community. A descendant of the Shartzer family, who owned the land prior to the Boyto family, noted that the parcel had sentimental value given that it was the last remaining parcel of the original tract of land owned by his ancestors. A descendant of the Boyto family also spoke about the property, adding that the older house on the site was moved to the location from San Jose, but that the farm owned by her ancestors had little relevance in guiding the City's growth and development over the years. Chair Johns then closed the item for public comments.

The Commission discussed the proposal before them. Commissioners Motyka, Mahan and Standifer felt that the property qualified for local historical significance and should be preserved based on the testimony presented by the public, as it represented a link to the City's agricultural heritage. Commissioner Mahan added that there may be an opportunity to find a compromise between preserving portions of the remnant orchard and redeveloping the site. Commissioners Motyka and Hyams noted that although the older house on the property was not original to the site, efforts should be made to move it to an alternative location or to salvage it. In response to the Commission's comments, the applicant offered to consider moving the house to an off-site location but was not comfortable with a significant redesign to the site. Commissioner Luckinbill stated that he could make the findings that the property is ineligible for historic listing and could also support the project based on the historical evaluation conducted on the property.

Motion/Action:
It was moved by Commissioner Luckinbill seconded by Commissioner Mahan and was carried (5-1-1-0, Standifer dissenting, McKee absent), to approve the project, with a recommendation to provide as much preserved open space as possible.

It was moved by Commissioner Luckinbill seconded by Commissioner Hyams and was carried (5-0-1-1, McKee absent, Standifer abstaining), to name the driveway access to the site after the Shartzer and Boyto family.

It was moved by Commissioner Motyka seconded by Commissioner Luckinbill and was carried (6-0-1-0, McKee absent), that prior to final inspection, the applicant reconvene with the Historical & Landmarks Commission to review identifier proposals throughout the property to memorialize the agricultural heritage of the property.

It was moved by Commissioner Standifer seconded by Commissioner Motyka and was carried (3-2-1-1, Luckinbill and Hyams dissenting, McKee absent, Johns abstaining), to declare the property historically-significant in a local context.

8B.	File No.(s):	**PLN2014-10346**
	Location:	500 El Camino Real, Nobili Residence Hall located between Homestead Road and Lexington Street on the Santa Clara University campus (APN: 269-23-073); Project site is zoned Public/Quasi-Public
	Applicant:	Joe Sugg, Santa Clara University
	Owner:	Santa Clara University
	Request:	**Design Review of structural repairs to arcade columns**
	CEQA Determination:	Categorically Exempt per CEQA Section 15331, Historical Resource Restoration Rehabilitation
	Project Planner:	Debby Fernandez, Associate Planner
	Staff Recommendation:	Recommend Approval, subject to conditions

Notice: The notice of public meeting for these items was posted within 300 feet of the site and was mailed to property owners within 300 feet.

Discussion:
Mr. Chen gave a brief presentation of the project. He noted that this project is to repair unreinforced columns. Mr. Joe Sugg from Santa Clara University was present to answer questions. Mr. Chen noted that the University has done a good job to document the repair and replacement materials. No comments were received from the public during public comment period.

Motion/Action:
It was moved by Commissioner Luckinbill seconded by Commissioner Hyams and was carried (6-0-1-0, McKee absent), to approve the project, subject to the following conditions:

1. Retain a geotechnical engineer to determine the nature and suitability of the underlying soils to support the arcade. This will require soil borings and determinations by the engineer as to the type of foundations that will be appropriate for construction.
2. Replace walkway with new slabs on grade where settlement has created cracks and offsets.
3. Implement the adopted Cultural Resources Treatment Plan for Santa Clara University during excavation, grading and ground disturbance activities.

8C.	File No.(s):	**PLN2014-10267**
	Location:	500 El Camino Real, Dunne Residence Hall located at the northeast corner of Market Street and Lafayette Street of the Santa Clara University campus (APN: 269-38-110). Project site is zoned Public/Quasi-Public
	Applicant:	Joe Sugg, Santa Clara University
	Owner:	Santa Clara University
	Request:	Design Review for installation of solar shade awnings on all exterior windows of the Dunne Residence Hall facing Market Street and Lafayette Street
	CEQA Determination:	Categorically Exempt per CEQA Section 15301, Existing Facilities
	Project Planner:	Debby Fernandez, Associate Planner
	Staff Recommendation:	Recommend Approval

Notice: The notice of public meeting for these items was posted within 300 feet of the site and was mailed to property owners within 300 feet.

Historical & Landmarks Commission Staff Report – May 1, 2014

Agenda Item # 8.A.

File:	**PLN2013-10111 & CEQ2014-01169**
Location:	166 Saratoga Avenue, a 74,052 square foot parcel located near the southwest corner of Saratoga Avenue and San Tomas Expressway (APN: 294-38-001). Property is zoned Single-Family, Residential (R1-6L).
Applicant/Owner:	Charles McKeag / Jack Boyto Family Trust
Request:	**General Plan Amendment, Rezone and Vesting Tentative Map** to construct 33 townhomes
CEQA Determination:	Mitigated Negative Declaration
Project Planner:	Shaun Lacey, AICP, Assistant Planner II
Recommendation:	**Motion to recommend approval of the General Plan Amendment, Rezone, Vesting Tentative Map and Mitigated Negative Declaration to the Planning Commission**

PROJECT DESCRIPTION

The project applicant is requesting a General Plan Amendment, Rezone and Vesting Tentative Map to construct 33 townhomes at 166 Saratoga Avenue at a residential density range of 19 dwelling units per acre. The project proposes to demolish two single-family residential structures as part of the development.

The project was presented to the Historical & Landmarks Commission at the April 3, 2014 meeting. Following public comment and a discussion, the Commission unanimously voted to continue the item to the May 1, 2014 meeting subject to the direction that the applicant evaluate the subject property in relationship to other agricultural properties throughout the City and provide a methodology as to how land once used for agriculture is evaluated in the context of local historic listings. The draft meeting minutes and staff report (including attachments) from the April 3, 2014 Historical & Landmarks Commission meeting are attached for reference.

An assessment of the historic significance of the property and a DPR 523A form was prepared by Archives & Architecture, LLC. Two single-family residential structures currently exist on the property; one built in 1915, while the second was built in 1953. The buildings were designed in Craftsman and Minimal Traditional styles, respectively. To respond to the direction provided by the Commission at the April 3, 2014 meeting, the applicant provided additional documentation pertaining to the history of the Boyto property, including comments from the family's surviving members. The additional documentation supports the original historical evaluation's conclusion that the property does not appear eligible as a historical resource since the architecture of the homes is not especially unique, nor is there substantial evidence that the Boyto family and their property had a significant role in Santa Clara's growth and development over the years. The applicant's support documentation is attached for reference.

ANALYSIS

The General Plan land use designation for the property is currently listed as Community Mixed Use. This designation requires that at least 10 percent of the property provide a commercial component, such as retail or restaurant use. Since the project proposes 33 townhomes without a commercial presence, the application includes a General Plan Amendment to change the land use designation from Community Mixed Use to Medium Density Residential. The project also

includes a rezone from R1-6L (single-family residential) to PD (Planned Development), which allows flexibility in the development concept and site plan.

The project utilizes Spanish-influenced architectural details, such as stucco siding, recessed windows, S-tile roofing, wrought iron railings and wood corbels. The proposed building height is 40 feet. 72 parking spaces are provided and the property will be landscaped with a generous variety of new trees, shrubs and groundcover.

Environmental Determination

Pursuant to the California Environmental Quality Act (CEQA), an Initial Study and Mitigated Negative Declaration (MND) were prepared by environmental consultants Kimley-Horn and Associates, Inc. The MND identifies mitigation measures for potential Biological, Cultural, Geological and Hazardous Materials impacts. These measures will be incorporated into the project to reduce all impacts to a less than significant level. No significant impacts will occur as a result of the project, subject to the on-going implementation of the mitigation measures. Since the existing single-family residential structures on the property are not eligible for historic listing, there would be no significant impact to the property in a historical context.

Public Notices and Comments

The notice of public meeting for this item was posted at three locations within 300 feet of the project site and was mailed to property owners within 300 feet of the project site.

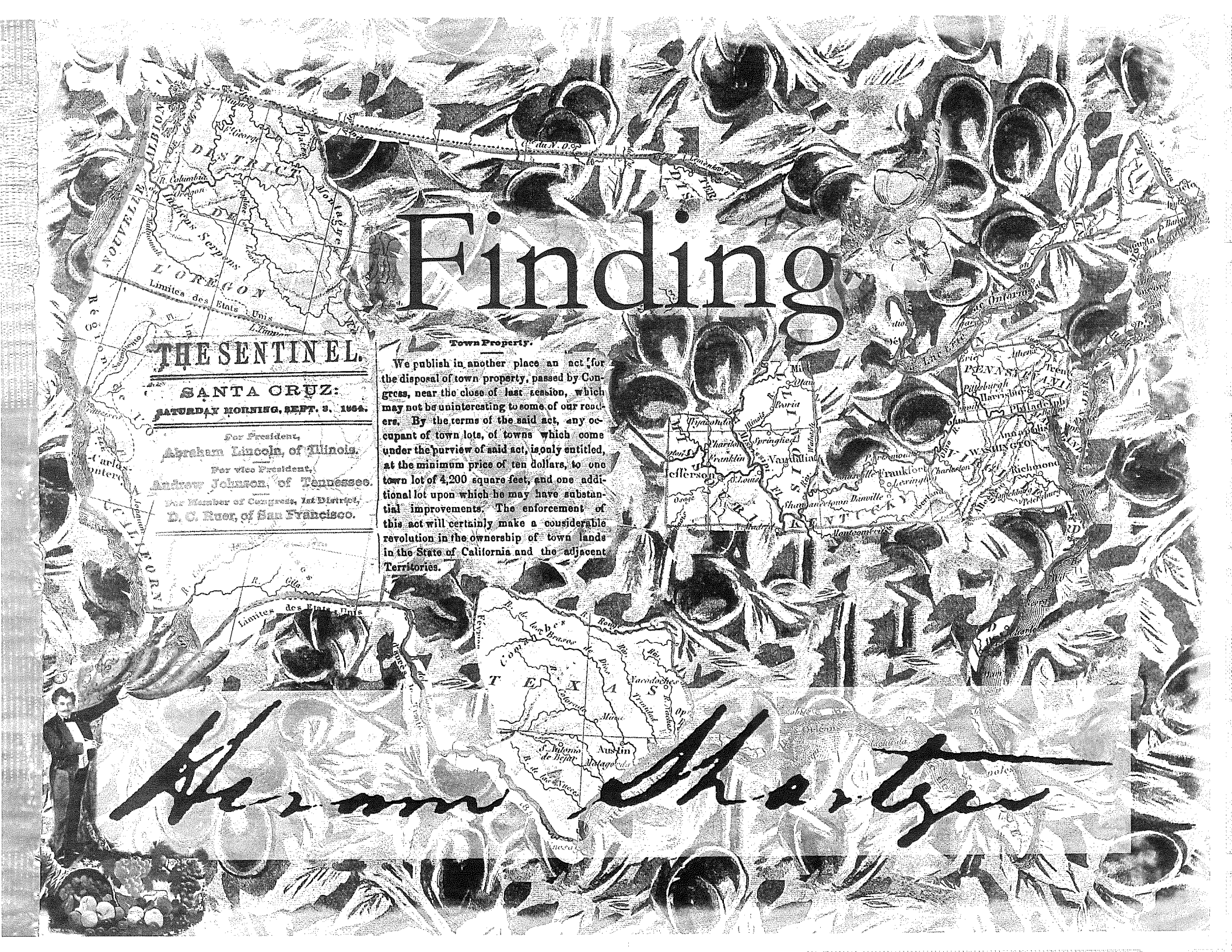
STAFF FINDINGS AND RECOMMENDATIONS

Staff finds that the proposed project has no effect on the subject property or the surrounding area in a historical context. Therefore, staff recommends that the Commission make a motion to recommend approval of the General Plan Amendment, Rezone, Vesting Tentative Map and the Mitigated Negative Declaration to the Planning Commission.

DOCUMENTS RELATED TO THIS REPORT:

1) Historical & Landmarks Commission Excerpt Minutes from the meeting of April 3, 2014
2) Historical & Landmarks Commission Staff Report Dated April 3, 2014 (including attachments)
3) Letter from Franklin Maggi Dated April 12, 2014
4) Written Correspondence from Marlene Mattoon Dated April 10, 2014
5) Letter from Erin Epperson Dated April 22, 2014
6) Bayto Property Project Initial Study/Mitigated Negative Declaration (previously distributed)
7) Development Plans

Finding



THE SENTINEL.

SANTA CRUZ:

SATURDAY MORNING, SEPT. 3, 1864.

For President,
Abraham Lincoln, of Illinois.

For vice President,
Andrew Johnson, of Tennessee.

For Member of Congress, 1st District,
D. C. Ruer, of San Francisco.

Town Property.

We publish in another place an act for the disposal of town property, passed by Congress, near the close of last session, which may not be uninteresting to some of our readers. By the terms of the said act, any occupant of town lots, of towns which come under the purview of said act, is only entitled, at the minimum price of ten dollars, to one town lot of 4,200 square feet, and one additional lot upon which he may have substantial improvements. The enforcement of this act will certainly make a considerable revolution in the ownership of town lands in the State of California and the adjacent Territories.

DAILY TRANSCRIPT.

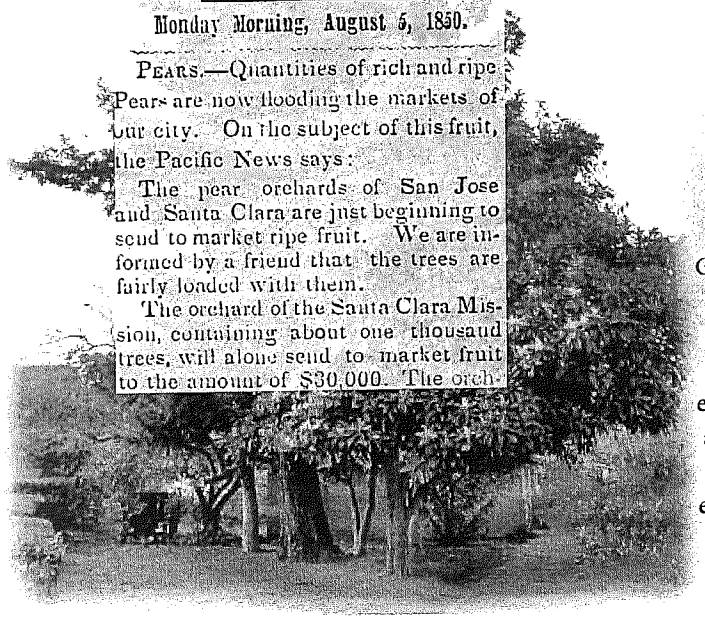
SACRAMENTO CITY:

Monday Morning, August 5, 1850.

PEARS.—Quantities of rich and ripe Pears are now flooding the markets of our city. On the subject of this fruit, the Pacific News says:

The pear orchards of San Jose and Santa Clara are just beginning to send to market ripe fruit. We are informed by a friend that the trees are fairly loaded with them.

The orchard of the Santa Clara Mission, containing about one thousand trees, will alone send to market fruit to the amount of $30,000. The orch-



UNION HOTEL.

SANTA CLARA, CAL.

PERSONS visiting Santa Clara will here find a good House. The Table is supplied with the best the market affords, and choice liquors at the Bar. Good STABLES are attached, and stock well cared for. A liberal share of patronage is solicited.

JOHN H. CAMERON Proprietor.

Thank you for this contribution:

HISTORICAL EVALUATION

Boyto Ranch Houses

166-170 Saratoga Ave., Santa Clara, Santa Clara County, California

For aesthetic and practical reasons these fruit and nut trees are not suitable for use in the townhouse landscape. Those fruit and nut trees with a visually acceptable presence will burden residents with ongoing maintenance for pruning and litter. Preservation of the walnuts will be risky at best. The English walnut is considered to be intolerant of soil disturbances. The fruit and nut trees should be considered for removal.

2014 Arborist Tree Report -Bayto Property, Santa Clara, California

The two-house property located on the westerly side of Saratoga Avenue, between San Tomas Expressway and Keystone Avenue was developed in unincorporated Santa Clara County prior to annexation to the City of Santa Clara in the 1960s. These early tracts are part of the subdivision of the Quito Rancho following its patent in 1866. The 1.734-acre parcel, with an easement and driveway dividing the site into two sections, was once part of a larger 10-acre parcel of Santa Clara-Saratoga Road, located on the outskirts of the Santa Clara city limits at mid-twentieth century when the subject house was moved onto the site. When the larger property was created earlier in the century it was part of the Leonard Tract (a resubdivision of two nineteenth century tracts; Bollinger and Shartzer). The property has been owned by members of the same family for about 93 years. The most recent owner, Jack Boyto, lived in the adjacent house at 166 Saratoga Ave. which he apparently built or had built in the early 1950s. At about the same time, the family had this older ca. 1915 house moved onto the site. It is not known what members of the Boyto family occupied the house over the last 60 or so years.

SANTA CLARA.

A city of 3000 inhabitants, 3 miles west of San Jose on the S P R R. Telegraph, post, express and telephone offices; is also connected with San Jose by electric railway line. Has a number of colleges, among which is the famous Santa Clara College.

"For the purposes of this part, a qualified historical building or structure is any structure or collection of structures, and their associated sites deemed of importance to the history, architecture or culture of an area by an appropriate local or state governmental jurisdiction. This shall include structures on existing or future national, state or local historical registers or official inventories, such as the National Register of Historic Places, State Historical Landmarks, State Points of Historical Interest, and city or county registers or inventories of historical or architecturally significant sites, places, historic districts or landmarks."

Santa Clara

Public Resources Code, Section 18955

California

savetheorchard.tumblr.com

Lands outside of the towns were only valuable for grazing purposes. For this use, every citizen of good character, having cattle, could, for the asking, and by paying a fee to the officials, and a tax upon the paper on which it was written, get a grant for a grazing tract of from one to eleven square leagues of land. These domains were called Ranchos, the only improvements on them being usually a house and a corral. They were never inclosed; they were never surveyed, but extended from one well defined landmark to another, and whether they contained two or three leagues, more or less, was regarded as a matter of no consequence, for the land itself was of no value to the Government.

Homer, "Odyssey." Philip Worsley's translation.

"There in full prime the orchard trees grow tall—
Sweet fig, pomegranate, apple fruited fair,
Pear, and the healthful olive. Each and all
Both summer droughts and chills of winter spare:
All the year round they flourish. Some the air
Of zephyr warms to life, some doth mature.
Apple grows old on apple, pear on pear,
Fig follows fig, vintage doth vintage lure:
Thus the rich revolution doth for aye endure."

All sizes and all ages picked prunes: the little ones, six or seven years old, were provided with small lard buckets. Others used the standard sixteen-quart bucket while still some others used five-gallon buckets. If the small ones got tired, they would curl up on a blanket and have a nap. The babies that were taken into the orchards often spent most of their time on a blanket or in a fruit box on a blanket.

VINCE S. GARROD
GULCHIN' OUT

Died.

At the residence of Mr. Huguelet in McMinnville, May 4, 1899, Hiram Shartzer.

Deceased was born in Virginia, August 14, 1817. His parents emigrated to Illinois when he was a small boy. In 1837, at the age of twenty, he went to Texas, but not liking the country, returned to Illinois and went to farming. In 1843 he was married and moved to Missouri, where he carried on farming quite extensively until 1849, when he crossed the plains to California and settled in what is now Lake county. By his business tact he became the second largest landholder in the county. He was energetic and amassed a large fortune, and fitted up and improved what is now the great Highland medical springs at an expense of over thirty thousand dollars.

But reverses caused by sickness came and all his family save one son and daughter, who are still living in California, sickened and died. The reverses of fortune and loss of property left him comparatively alone.

He came to Oregon in 1884 and was united in marriage to the widow of E. M. Adams. They lived together about twelve years. Since her death deceased had lived alone, without a relative to soothe or care for his ills and pains in his declining years. He had an erratic disposition; strong will power, inclined to drive, instead of using the more conciliatory art of reasoning.

His funeral was held at the Secular church; ceremonies conducted by Nettie Olds-Haight; not a relative to follow him to his last resting place.

This is to certify that Hiram Shartzer enlisted under my command in the ranging service of Texas for the term of three months, commencing Decr. 9th 1837 is this day honorably discharged by order of the Secretary of War.

County of Bastrop — John L. Lynch Capt

Feby 20th 1838

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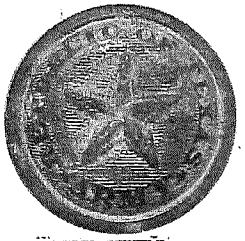
County of Bastrop — John L. Lynch Capt

Feby 20th 1838

HISTORY OF MORGAN COUNTY.

The care of the poor, review of roads, justices' districts, and such matters, engaged the attention of the County Court at its first sessions. As the county increased in population, its division into smaller road and justices' districts was made. The first juries lists are now lost. The first one preserved is that drawn for the April term of court in 1828. The grand jury was composed of the following gentlemen: William Wood, Barrows, James D. Morrison, William Jarrod, Benjamin Shartzer, Peter William Wyatt, Solomon Perkins, Samuel Matthews, and James Redman.



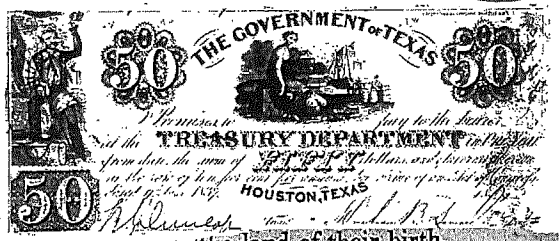
Dept. of War — Dept of War

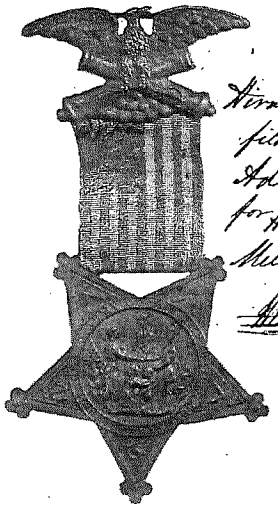
Jany 1839 — Jany 21/39

The within claim proved with the roll on file

C Mason

Chief Clk





8773

$54,21

Hiram Shartzer

filed 22 Jany 1839

Admitted to receive

for $54,21

Military Services as ranger

Witnesses

n the land of their birth.
Let the brave rally to our standard!
SAM. HOUSTON,
Commander-in-chief of the Army.

Army of the Republic
Texas Adjutant General
Service Records, 1836-1935

OREGON DONATION LAND CLAIM APPLICATIONS

No. 207 JOUETT, John, Linn Co; b 1804, Shelby Co, Ky; Arr. Ore. T. 29/30 Aug 1852; SC 7 Sept 1853; m Lavinia 16 Feb 1832, Morgan Co, Ill. Shows letters dated 13 July 1854 from Morgan Co Ill which stated wife Lavinia is alive & well. Wishes to enter c so he can go to Ill and bring wife to Ore. Aff: Hiram Shartzer (MA), Wm. W. Allingham, Thomas McCoy, Wm. Mason.

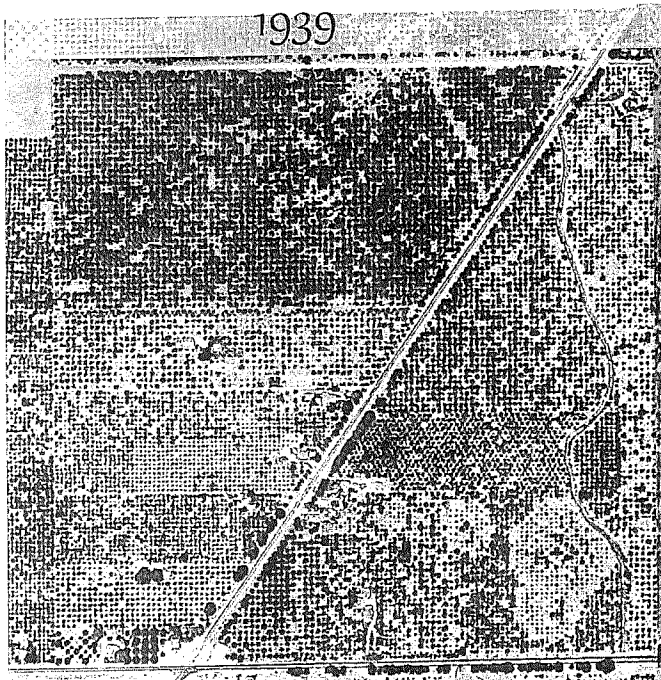
To save space the following abbreviations have been employed:

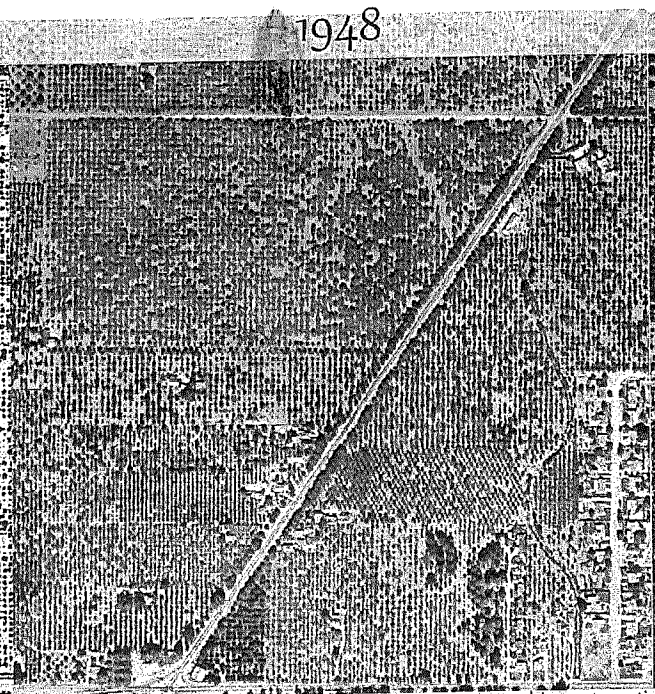
b	born	SC	settled claim
co	county	c	claim
arr. Ore.	arrival in Oregon	m	marriage
Ore. T.	Oregon Territory	aff.	affidavit

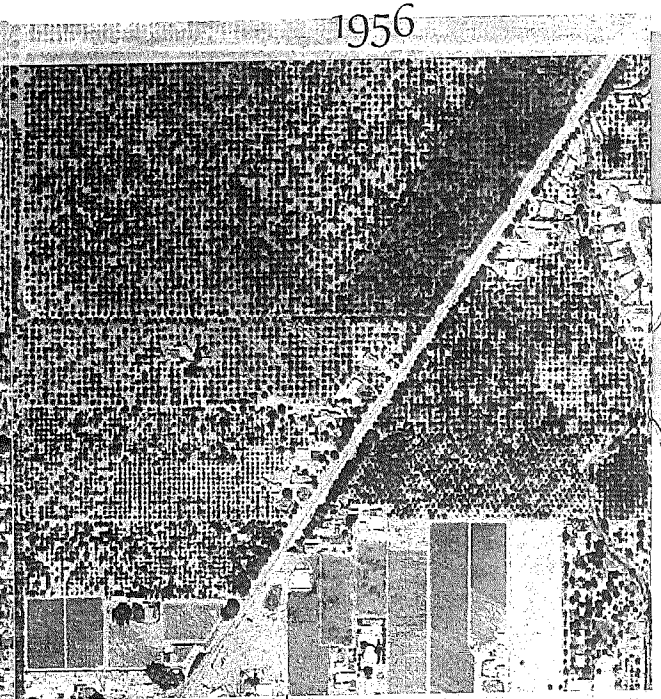
(MA) this following a person's name shows this person gave affidavit that he had known them as husband and wife since day of marriage.

TX

Hiram Shartzer, His parents emigrated to Illinois when he was a small boy. In 1837, born in Virginia, August 14, 1817.

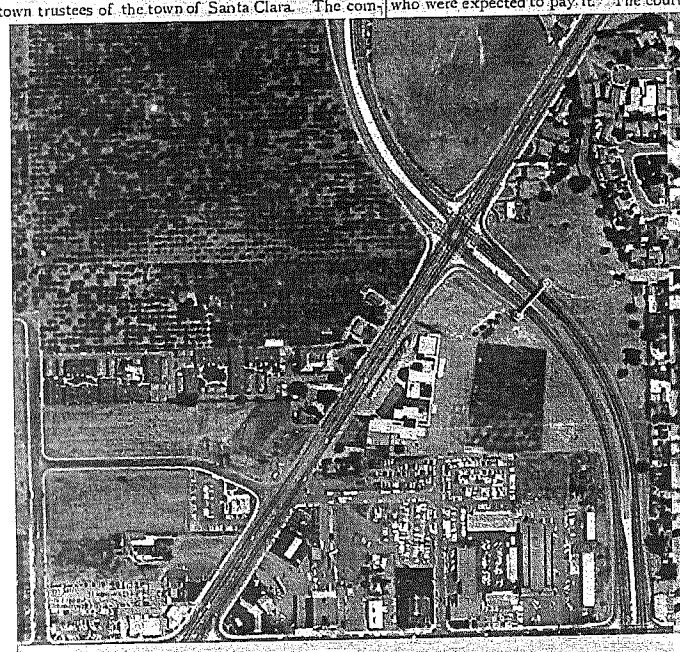


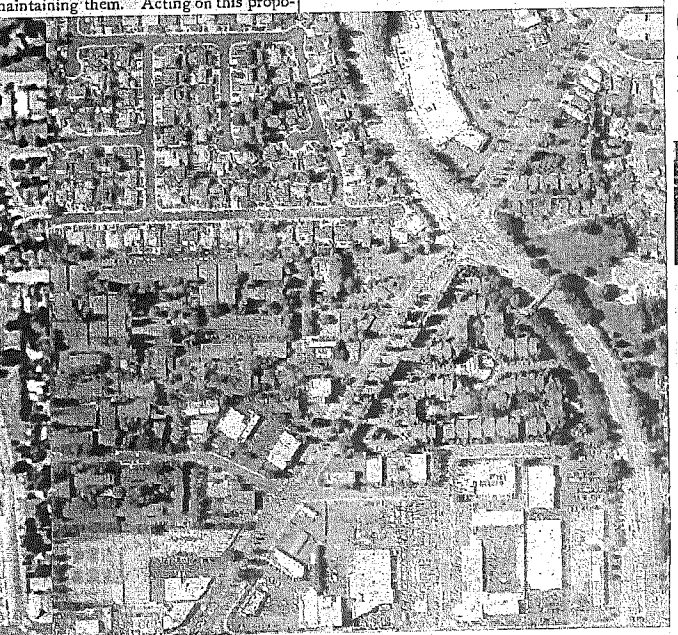


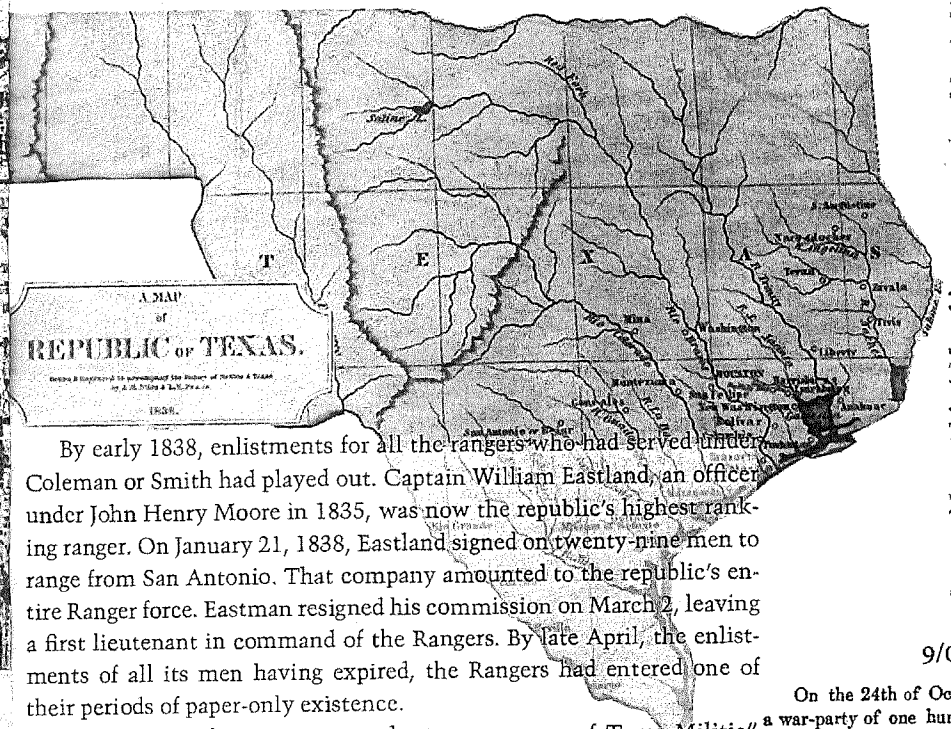


The "Saratoga Avenue" was created at the same session of the Legislature, and in the same manner as the Santa Clara Avenue, except that the act provided that the road should be a hundred feet wide and that the special tax should be levied and collected by the town trustees of the town of Santa Clara. The commissioners began work, laid out and opened the road, but some of the outside property owners protested against paying the tax. The objection was that it was an unconstitutional assessment, inasmuch as it was to be levied and collected by officers not elected, who were expected to pay it. The courts decided the objection to be valid, and the road went into the hands of the county government as a public highway, and all improvements were paid for from the road fund of the district. Not having a special revenue, it has not been improved as thoroughly as Santa Clara Avenue.

In early days there seemed to be an impression that the most practical way to improve the county roads was to grant franchises for toll companies, who were to keep the roads in repair in consideration of the privilege of collecting tolls. The argument used was that the people who used the roads ought to pay the expense of maintaining them. Acting on this proposition, many such franchises were granted, some by the Board of Supervisors and some by the Legislature. The toll-gate on the Alameda was the outgrowth of this idea.

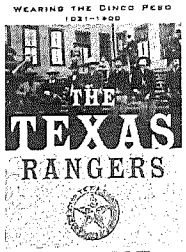






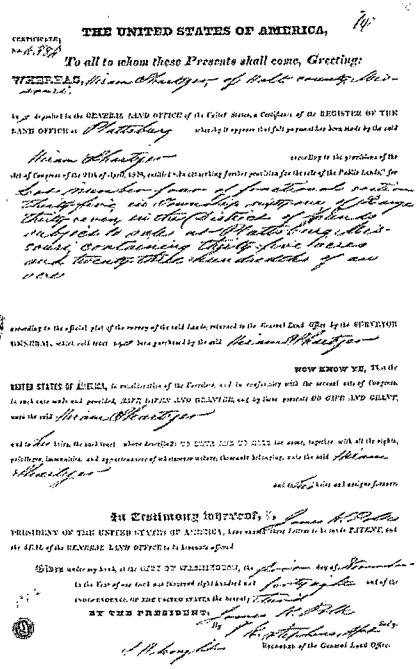
By early 1838, enlistments for all the rangers who had served under Coleman or Smith had played out. Captain William Eastland, an officer under John Henry Moore in 1835, was now the republic's highest ranking ranger. On January 21, 1838, Eastland signed on twenty-nine men to range from San Antonio. That company amounted to the republic's entire Ranger force. Eastman resigned his commission on March 2, leaving a first lieutenant in command of the Rangers. By late April, the enlistments of all its men having expired, the Rangers had entered one of their periods of paper-only existence.

as a private in "the permanent volunteer company of Texas Militia" (1835); under William W. Hill in "the ranging service on the frontier" (1836); under Jesse Billingsley in "the militia service of Texas" (1836); and under John L. Lynch in "the ranging service of Texas" (1838).[49] Nomenclature varied but function did not.



66 · 67

JAMES T. DESHIELDS.
BELTON, TEXAS.
THE UNITED SERVICE.
INDIAN WARS IN TEXAS.
558 · 559


THE UNITED STATES OF AMERICA,

To all to whom these Presents shall come, Greeting:

WHEREAS, Hiram Shartzer, of Holt county, Mis-souri,

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the Premises, and in conformity with the several acts of Congress in such case made and provided, HAVE GIVEN AND GRANTED, and by these presents DO GIVE AND GRANT, unto the said Hiram Shartzer

In Testimony whereof, James K. Polk, PRESIDENT OF THE UNITED STATES OF AMERICA, have caused these Letters to be made PATENT, and the SEAL of the GENERAL LAND OFFICE to be hereunto affixed.

GIVEN under my hand, at the CITY OF WASHINGTON, the ninth day of November in the Year of our Lord one thousand eight hundred and forty-eight, and of the INDEPENDENCE of the UNITED STATES the seventy-third.

BY THE PRESIDENT: James K. Polk

By J. M. Bonney, Secretary of the General Land Office.

9/01/1848 Land Grant in Plattsburg, MO

On the 24th of October, Captain Thomas B. Howard encountered a war-party of one hundred and forty well-mounted prairie Indians. The rangers came upon them in an open prairie between the San Gabriel and Little Rivers. A skirmishing fight at once ensued, in which three or four Indians were killed and several wounded. The Texans succeeded in escaping unhurt.[26] Again on the 25th of December, General Burleson had a severe engagement with a party of Cherokees, on Cherokee Creek, in San Saba County. When come upon by Burleson, they sent forward one of their number with a message, asking to have a talk; but believing this to be a blind in order to gain more time in which to prepare to defend themselves, Burleson took their messenger into custody. Seeing their plans thus defeated, they at once opened a heavy fire upon the rangers, who now attacked them with such vigor and determination that the Indians were compelled to leave the field, despite their desperate effort to hold their position. In this sanguinary engagement six warriors were left dead upon the field; besides these, one man (the messenger), five women, and nineteen children were taken prisoners. Among the captives were the unfortunate wife and children of the celebrated Cherokee chief, Bowles, who had been killed while bravely fighting for the disputed rights of his people in East Texas. The Texans lost in this fight the gallant Captain Lynch, who met his untimely fate while bravely performing his duty in the first charge. "These conflicts," says Mr. Yoakum, "were some of the fruits of the 'Indian policy' of those days." Thus closed the eventful year of 1839, which might properly be denominated the "year of wars" in the history of Indian wars in Texas.

HISTORY OF
Holt County, Missouri
From the Time of the Platte Purchase to
the End of the Year 1916
By the History Publishing Company

HISTORY OF HOLT COUNTY, MISSOURI.

HICKORY TOWNSHIP.

Nickell's Grove, including about thirty square miles of territory and the seat of the earliest settlements in this part of the country, is partly embraced in Hickory township. Robert Nickell and John Nickell settled here in 1839, and gave their name to the grove. Among the early settlers of the grove in Hickory township were Thomas S. Bragg, who came in 1846, and settled on section 32, of township 61, range 37, where he now resides; Peter Long, who came from Ohio, and settled on the present farm of William Shields; Isaac Massie, who located on section 31; Daniel Hudson, who came from Kentucky in 1846, and likewise settled on section 31; and John B. Ish, who came from Saline county. In 1846 there was no settlement north of the Ish farm till Whig Valley was reached. Anderson Hall and E. C. Owens came soon after the Nickells. Owens was from Kentucky, and Hall from Virginia. The farm of Thomas S. Bragg was first settled by Hiram Shartzer about the year 1843. Henry Debolt came to this township about 1853. The Lackey road, which ran through Hickory township, was that part of the main traveled highway which led from North Point (now Mound City) to Lackey's ferry on the Nodaway, and was a part of the great thoroughfare leading from St. Joseph to Council Bluffs. Lackey's ferry was established by Andrew Lackey, and has since been called the Thrailkill ferry, and now is known as the Praisewater ferry. Lackey afterward located a short distance below the ferry, and established a trading post and saloon which was frequented by nearly all the trappers who ranged through the upper country. Michael and James Debolt, William Noland, John, Joseph and Noble Hodgins, Robert Morris, and Capt. Peter Price, are present old settlers of this township.

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NICKOLS' GROVE.

Nickols' Grove, in the immediate vicinity of the village, lies along the waters of Nickols' Creek. The main body of the timber was in the southeast corner of the township and extended, as before stated, into Nodaway Township, to the southward.

At some time during the year 1838, it is generally conceded, Robert Nickols, the pioneer, arrived from Virginia and settled on the northeast quarter of section 33, township 61, range 37, near the northeast corner of which now stands the flourishing hamlet of New Point, one of the most prosperous and active business centers of its size in the county. This quarter section is now owned by J. P. Ruhl and others.

John Nickols died of cholera, on his way to California in the early days of the gold fever. Emigration from the older states and settled portions of Missouri flowed to the neighborhood of the Stephenson settlement, six or seven miles farther south, but it was some time before these early settlers of the grove, of whom A. C. Bevan was also one, had any neighbors. In 1840, Isaac Long, from Ohio, settled in the neighborhood. Hiram Schotzer and Zach Winkler, both from Pennsylvania, arrived in the neighborhood and there settled between 1840 and 1845. These both subsequently moved to California. John B. Ish came in an early day to the neighborhood, from Saline County, Missouri, whither he afterwards returned. He settled the magnificent farm adjoining New Point, later owned by the late John G. Cowan, and now owned by the William Kneale estate.

Among others also came Cain Owens, from Kentucky, and Jacob Ham, a Tenesseean, who had come to the settlement from Saline County. Thomas S. Bragg, came to Missouri, in 1845, and purchased a splendid farm west of New Point, which is still owned by his estate. This farm was settled by Hiram Shartzer, in 1843. In the same year, also, came Andrew Pope and Lapsley Embree, from Lincoln County, Kentucky. Daniel

at the age of twenty, he went to Texas, but not liking the country, returned to Illinois and went to farming. In 1843 he was married and

ROADS AND HIGHWAYS.

ated evaporation. While during the summer months the Alameda was a most charming drive, for four or five months in the year it was almost impassable for vehicles. Travelers passing between the town of Santa Clara and San Jose were compelled to seek the side of the road, and often to make a circuit of four or five miles. After dark it was not unusual for people to lose their way and be compelled to pass the night in the open air.

To meet this trouble, the county government opened another road to Santa Clara by way of what is now known as Union Avenue, back of the fair grounds. This did not entirely obviate the difficulties, and in 1862 a franchise was granted to a company called the "Alameda Turnpike Company," granting them the privilege of collecting toll on the Alameda, they to keep the road in good condition for travel. This company erected gates, but, owing to the nature of the soil, could never make a road good in all its parts, at all seasons. Many complaints were made, and finally, in 1868, the county purchased the franchise of the company and declared the road free. The price paid by the county was $17,737.50. In 1870 the report went abroad that the road occupied more ground than belonged to it, and that several feet on the south side was government land, and subject to preemption. One night a gang of squatters carried lumber out on the road and inclosed strips of land on the south side, and in the morning many of the residents found themselves shut off from the highway. The squatters, however, had nothing but their labor for their pains, as they were compelled to abandon their claims unconditionally. To prevent a recurrence of the dispute, an act of Congress was procured in 1871, granting to the county a right of way for the road, 115 feet wide, and defining its location. Accurate official surveys were made and granite monuments placed so that the exact lines should be always preserved. The final location was accomplished in 1873. After this date extraordinary efforts were made to keep the road in repair and maintain its beauty. These efforts were measurably successful. One of the greatest obstacles in the way of improvement was the shade cast by the center row of trees, and propositions for their removal were made from time to time, but each proposition was met with a remonstrance from the people, who looked upon the gnarled willows as a link connecting the past with the present, and, although many of the trees had died, and others were in advanced stages of decay, they were retained. Finally, in 1887, a proposition was made to construct an electric railroad along the center of the avenue. In view of this improvement, the people consented to part with the trees, and in the same year they were removed. In the meantime a portion of the road has been macadamized, and it will be paved throughout its entire length as rapidly as circumstances will permit.

THE MENLO PARK AND SANTA CRUZ TURNPIKE ROAD COMPANY.—This Company, says the San Mateo *Gazette*, of February 29th, have already commenced work upon this end of the road, and the work will be pushed forward with all possible dispatch as far as the summit of the Coast Range Mountains, at which point it intersects the Saratoga, and Pescadero Turnpike. If our Santa Cruz neighbors consult their interests they will see that they rush the work upon the San Lorenzo road, so as to form a connection with the Menlo Park road to the summit. When this route is opened, it will be an easy day's drive from Redwood City, Menlo Park or San Mateo, to Santa Cruz, and that too through a section of country unsurpassed in attractive scenery. **Santa Cruz Sentinel.**

Saturday, March 7th, 1868.

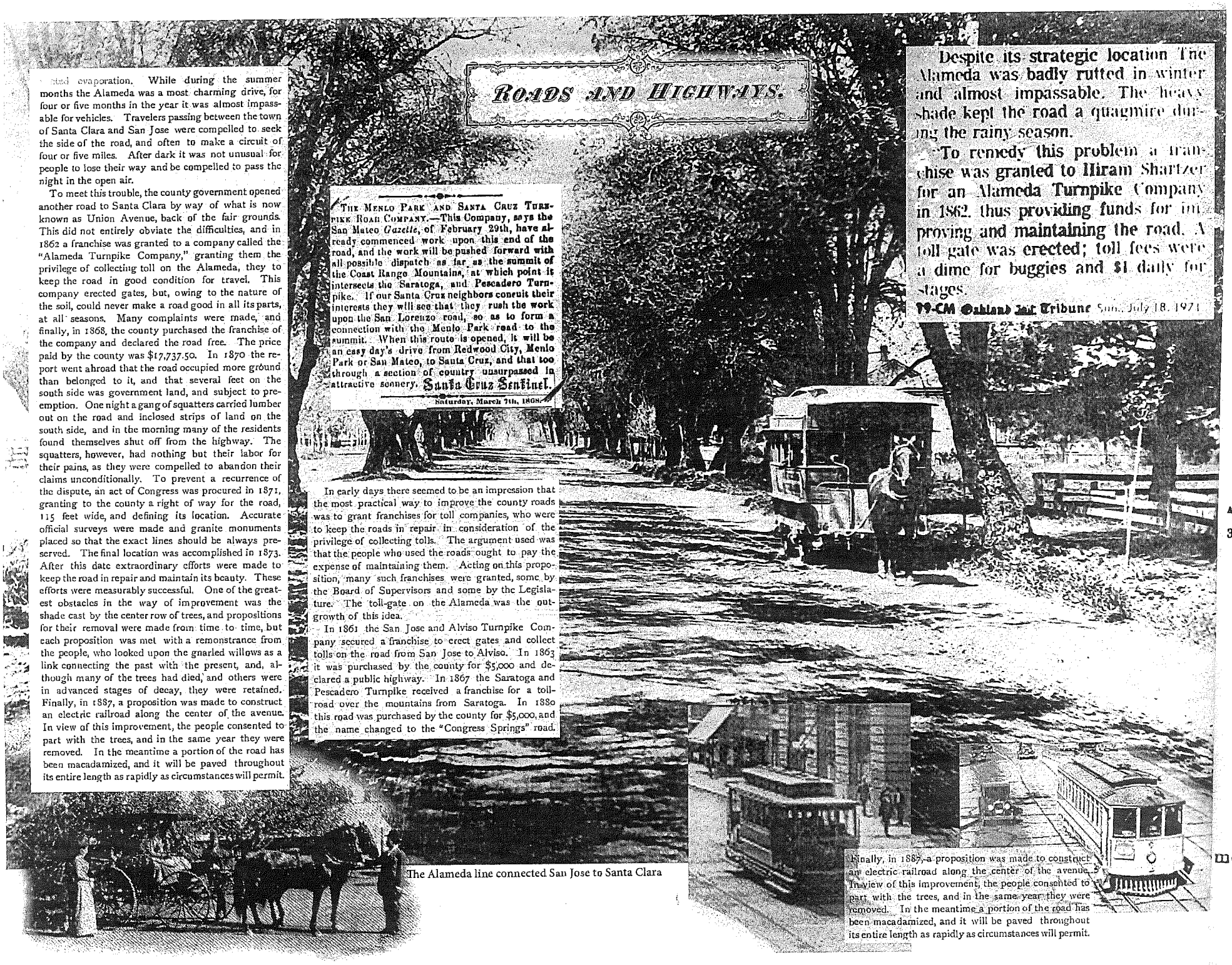
In early days there seemed to be an impression that the most practical way to improve the county roads was to grant franchises for toll companies, who were to keep the roads in repair in consideration of the privilege of collecting tolls. The argument used was that the people who used the roads ought to pay the expense of maintaining them. Acting on this proposition, many such franchises were granted, some by the Board of Supervisors and some by the Legislature. The toll-gate on the Alameda was the outgrowth of this idea.

In 1861 the San Jose and Alviso Turnpike Company secured a franchise to erect gates and collect tolls on the road from San Jose to Alviso. In 1863 it was purchased by the county for $5,000 and declared a public highway. In 1867 the Saratoga and Pescadero Turnpike received a franchise for a toll-road over the mountains from Saratoga. In 1880 this road was purchased by the county for $5,000, and the name changed to the "Congress Springs" road.

Despite its strategic location The Alameda was badly rutted in winter and almost impassable. The heavy shade kept the road a quagmire during the rainy season.

To remedy this problem a franchise was granted to Hiram Shartzer for an Alameda Turnpike Company in 1862, thus providing funds for improving and maintaining the road. A toll gate was erected; toll fees were a dime for buggies and $1 daily for stages.

79-CM Oakland Daily Tribune Sun., July 18, 1971



The Alameda line connected San Jose to Santa Clara

Finally, in 1887, a proposition was made to construct an electric railroad along the center of the avenue. In view of this improvement, the people consented to part with the trees, and in the same year they were removed. In the meantime a portion of the road has been macadamized, and it will be paved throughout its entire length as rapidly as circumstances will permit.

AGE.

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CATALOGUE OF MEMBERS.

TERRITORIAL PIONEERS OF CALIFORNIA

It is our purpose to collate all facts and historical material connected with the early settlement of the Territory, now forming the State, and to preserve it in an authentic form; and so long as our Society shall maintain an existence, we will celebrate the 9th day of September, as one event to be remembered equally with the Fourth Day of July, by the whole people of the Union and the people of this State, especially. To-day, we have participated by invitation of our elder brothers, "THE CALIFORNIA PIONEERS," in their commemorative exercises at Badger's Park, where we enjoyed ourselves as only Pioneer Californians can; and we are pleased to welcome here, this evening, many of that organization, whose happy and healthful faces we see before and around us. The devotion of all Californians to their adopted State is only excelled by the love extended by all to the home and country of their nativity. And we venture to They each and all, with us, rejoice in the prosperity of California. We love the beautiful slope of the Pacific. We love her mountains and her valleys, her long and beautiful rivers and her mountain lakes; her rich and inexhaustible mines of gold and silver; her large and ever navigable bays and harbors, unparalleled for beauty and safety; her immense vineyards, never failing; her fertile fields groaning under the weight of unequaled cerial growths; her enterprising industries, and her vigorous commerce; but above all we love her unrivaled climate, which adds so much to the healthful vigor and longevity of her sons. Yes, we may indeed assert that of California, which may not in truth be said of any other State of the Union, and probably not of any other land on Earth; that upon her mountains the snows never melt, and in her valleys the roses never fade.

AGE.	NAMES.	DATE OF ARRIVAL.	RESIDENCE.
32.	Shartzer, Hiram	September 7, 1849	San Francisco

SANTA CRUZ NEWS SATURDAY, MAY 25. 1929

TWO COUNTIES UNITE TO OPEN NEW HIGHWAY

History of Road

The road the magnificent new highway replaces was originally the Saratoga-Pescadero turnpike, built by Charles MacClay and Hiram Thompson in 1848. The road began at Saratoga and ended at Felton. It was 24.52 miles in length. Only six miles was in Santa Clara county. The rebuilt road, in this county, is 8.54 miles in length, the increase in length being necessary to permit the reduction in grade.

The toll road was first surveyed in 1866-7. It was fostered by Charles MacClay, who formed the Saratoga-Pescadero Turnpike company, and, September 19, 1868, was authorized to erect gates and collect tolls.

The road was built to open the great redwood forest in the vicinity of the present Big Basin Park, to bring its product to Santa Clara valley. There was also a wonderful virgin forest in the San Lorenzo river basin, which Santa Cruz commercial interests viewed with hungry eyes. Through that influence the route was changed so the road terminated at Santa Cruz, instead of at Pescadero.

Forest Is Saved

If this change of routing had not been made we would not have the Big Basin Park today, for that body of virgin trees would have been made readily accessible and would long since have been felled and sawed into lumber.

The highway practically bankrupted its builders. In February, 1880, Santa Clara county bought the section between Saratoga and the summit for $5000, removing the toll gates, making it a free road and renaming it Congress Springs road. Santa Cruz county owned some of the road on the coast side as far back as 1876, but continued collecting toll on parts of it until 1890 to create revenue to maintain it.

Mr. MacClay wrote a description of the opening of the road, which is taken from the collection of "Californiana" of Luther Cunningham, of Saratoga, and reads, in part, as follows:

Opening of Highway

"The first stage ever driven with a full load of passengers over this road was under the charge of Albert Millard of stage and omnibus fame, in Santa Clara; an old pioneer who explored the pass before even a trail had been prospected. After crossing the mountains to Santa Cruz, Mr. Millard says he can drive it in six hours from San Jose to Santa Cruz and not injure his horses, or require a passenger to walk a part of the road. A happier or wayer man I never saw than Millard when he returned to Saratoga, after making his trial trip. Three times three hearty cheers were given for him by the delighted Saratogans on his return.

"The picnic celebrating the opening of the road was a very pleasant affair; all units in saying a happier crowd never assembled in the shady grove. From seven in the morning until noon gay excursionists were passing the toll-gate at Bank's mill. The gate was nicely arched overhead with evergreens and flowers; one large flag in the center and a number of smaller ones. Brewer's on the summit, tollhouse on the Santa Cruz side, the wagons, carriages, stages and horsemen all flagged and evergreened, interspersed with fragrant roses. For miles you could see the excursionists, in vehicles of every description, winding along the hillsides and around deep ravines. When within several miles of the picnic grounds the Santa Cruz people met us and gave us a grand welcome.

"Dinner was soon prepared, and all hands indulged freely in the good things of life. Such trout, the largest weighing from two to three pounds each.

"Night closed in on the first picnic held on the San Lorenzo, amid the music of the almost topless redwoods and the singing of the river close by. The joyful throng assembled around the picnic fire."

CALIFORNIA FARMER AND JOURNAL OF USEFUL SCIENCES

VOLUME XII. SAN FRANCISCO, CALIFORNIA, FRIDAY MORNING, NOVEMBER 4, 1859. NUMBER 18.

Santa Clara Fair.

THE Agricultural Fair and Cattle Show of this county may well be said to be the best County Fair that has taken place in our State, so far as the exhibitions of fruit and stock are concerned. Those who visited the City Hall in San José, where the fruit, vegetables, etc., were shown, will all agree with us that the show of apples, pears, grapes, potatoes and squashes, were the largest and finest, the best collection that has ever been brought together in any State or country. They exceeded even the glorious display of our State Fair at Sacramento, and that show surpassed any ever before known. The display too, of horses and horned stock, though not so large as at Sacramento, yet there were a greater number of *fine* animals than were exhibited at the State Fair. This statement does no discredit to the State Show. It is proof however, that there is a larger proportion of fine stock in the lower counties, and being in training for their *own County Fair*, it was not deemed advisable to take it to the State Fair lest it should not be in good order for the County Fair, the distance being too great for the hot season.

FRUIT.

The City Hall where the Fair was held, was neatly festooned, and the tables literally groaned with the Fruit which was contributed in abundance by the various nurserymen and orchardists of that county. Among the contributors of large collections were Judge Daniels, the President of the Society; H. Shartzer, of Santa Clara; B. S. Fox, D. T. Adams, Monsieur Delmas, Dr. China Smith, Joseph Aram, Monsieur Pellier, W. B. Thornburgh, L. A. Gould, E. W. Case, Dr. Bascom, James Lick, Thomas Fallon, William O. Donnel, N. R. Gwinn, Joseph Lee, B. P. Watkins, F. G. Appleton, Wm. M. Lent, Major Hensley, M. Fine, and many other contributors. Of all these we have record of which we shall speak in detail when the smoke and dust of the excitement is over.

SACRAMENTO DAILY UNION.

SANTA CLARA COUNTY FAIR.

AWARDS IN FRUITS.—For the best collection of apples, forty-two varieties, first premium to Hiram Shartzer, of Santa Clara

THE YEAR 1858.

ORCHARD OF HIRAM SHARTZER.

CALIFORNIA AGRICULTURAL SOCIETY

At a little distance from Mr. Gould, Mr. Hiram Shartzer has an orchard of six thousand trees, planted in one thousand eight hundred and fifty-four, and cultivated thus far without irrigation. Mr. S. trains his trees much higher before permitting them to "head," than is generally practiced in this climate, and also allows them to *grow up* without heading back. Yet the trees are doing very well, and many of them in full bearing. Mr. S. showed us a graft set last April, which now has three well-developed and thrifty looking apples upon it. The squirrels and gophers are troublesome in all this part of the valley.

The California Farmer.

SAN FRANCISCO:

FRIDAY.....NOVEMBER 4, 1859.

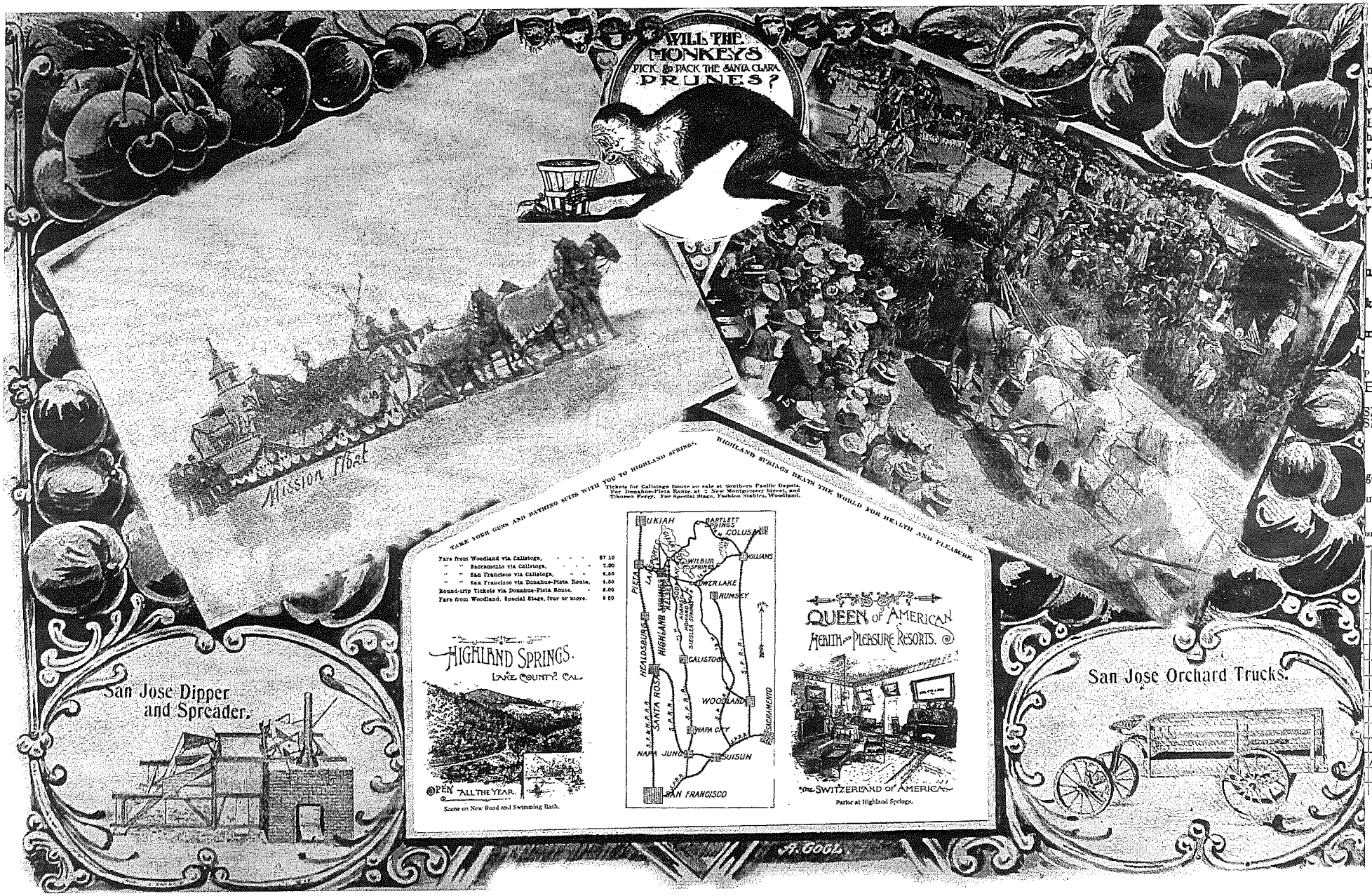
Hiram Shartzer, Esq., of Santa Clara, exhibited with a desire to aid the show, fifty varieties of apples. Some sixty or seventy dishes upon two tables made a very creditable display, for which he deserves credit for his public spirit. We hear from Mr. Shartzer that his fruit is all grown without the use of water except the dews of heaven, besides what the trees get by a *deep* and constant cultivation, and says Mr. Shartzer, "I would not have an artesian well in my orchard to flood it for *ten thousand dollars*. Artesian wells are good for many purposes, for stock, but not for orchards, in my opinion, and I do not use them for trees."

County of Santa Clara Heritage Resource Inventory Update - Page 87

4.1.2 The Alameda

A beautiful tree-lined street, The Alameda, between San José and Santa Clara and linking to El Camino Real on the San Francisco Peninsula was another road that the county found difficult to maintain. The triple row of willow trees that shaded The Alameda during the hot summers prevented evaporation of moisture from the adobe soil during the winter months. Figure 23 Historic view of The Alameda (photo by Lorya & Macaulay). The resulting quagmire made vehicular traffic almost impossible for four or five months out of the year. Hoping to escape the high maintenance costs for this road, the Board of Supervisors awarded a franchise to the Alameda Turnpike Company in 1862. The county promised the company, organized by Hiram Shartzer, an 18 percent annual return on his improvements and to repay the full cost in 1872, when the franchise expired. Despite the tolls collected and subsidies from the county, the turnpike company never successfully kept the road repaired year round. The poor condition of The Alameda and the opening of other free roads through nearby fields cut into the toll company's revenues, forcing the county to make good its 18 percent guarantee. Finally, responding to citizen complaints, the board purchased the franchise in 1868 for $17,737 and declared the road free once again.

moved to Missouri, where he carried on farming quite extensively until 1849, when he crossed the plains to California and settled in what



Hiram Shartzer
August 14, 1817
May 4, 1899
81

Jack Boyto
June 10, 1917
July 26, 2006
89

The Santa Clara County Fair.

Daily Alta SAN JOSE, Sept. 23, 1858

FRUITS.

In fruits the collection is extremely large and magnificent; there are one hundred and sixty-three different lots.

In apples, W. B. Thornburgh has thirty-one varieties. H. Shartzer has forty varieties, Dr. Bascom has twenty-two varieties, E. W. Case has twenty-two varieties, Delmas has sixteen varieties, Mrs. S. J. Hensley, twenty-five varieties; Pellier, ten varieties; Le Provost, fourteen varieties; Dr. C. Smith, twelve varieties; Jas. Lick, eighteen varieties. Jos. Aram, thirty-two varieties.

SAN JOSE, Sept. 25, 1858.

CARRIAGES ANT WAGONS.

Best express wagon and best buggy; premiums to J. E. Brown & Co.

Best two horse wagon; premium to Haskell & Porter.

Best two horse express wagon; special premium to H. Shartzer.

April, 1876

PACIFIC COAST BUSINESS DIRECTORY.

Highland Springs, Lake Co, P O, 7 miles — of Lakeport

Shartzer Hiram, postmaster

Shartzer and McCray, hotel and springs proprietors

SACRAMENTO DAILY UNION.

JULY 9, 1863

DEMOCRATIC STATE CONVENTION.

[PHONOGRAPHICALLY REPORTED FOR THE UNION.]

First Day.

The Committee on Credentials reported as follows:

Your Committee on Credentials beg leave to report the following list of delegates as accredited to this Convention:

LIST OF DELEGATES.

Santa Clara—W. S. Wallace, P. O. Minor, J. M. Murphy, J. W. Easton (A. Matthew, proxy), William Bruen, George O'Doherty, H. Shartzer, Henry Esbrook (J. H. Moore, proxy), Wm. McCann (J. H. Moore, proxy)—9.

HISTORICAL AND DESCRIPTIVE

SKETCH BOOK

OF

Napa, Sonoma, Lake and Mendocino,

COMPRISING SKETCHES OF

THEIR TOPOGRAPHY, PRODUCTIONS, HISTORY, SCENERY, AND PECULIAR ATTRACTIONS.

NAPA CITY:

REPORTER PUBLISHING HOUSE.

BY C. A. MENEFEE.

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PACIFIC RURAL PRESS.

[April 14, 1877.

Lake County Mineral Springs.

EDITORS PRESS:—Of the many mineral springs of central and northern California, none have of late years attracted so much attention as those within the hill-environed county of Lake. Each year witnesses the advent of thousands of health-seekers from the bay and valley counties, and among the readers of the RURAL there are sure to be many who are planning trips in that direction this season. To such it is hoped the following notes upon the principal springs, their location, the routes, prices, etc., may be of use.

How to Get There.

To get into Lake county the most-traveled and best route from San Francisco is by steamer to Vallejo and thence by rail to Calistoga, the distance now being accomplished in four hours; fare, $3.50. From Calistoga there are two lines of stages, one overland via Kelseyville to Lakeport, leaving Tuesdays, Thursdays and Saturdays, the other via Lower Lake and the Clear lake steamboat to the same destination on Mondays, Wednesdays and Fridays. The road winds up a four-mile grade over a shoulder of Mt. St. Helena and then descends a shady canyon into Loconoma valley. Eighteen miles from Calistoga, Middletown is reached. Fare, $2. Here the two stage routes to Lakeport part company, and it is also a point of divergence to the principal springs of this part of the county.

Highland or Caldwell Springs.

These springs are beautifully located on the edge of Big valley, close under the mountains, five miles from Kelseyville and 18 miles from Cloverdale, on the road from that place to Lakeport, on which there is this summer to be a daily stage line, so that from the city the springs may be reached either via Sonoma valley and Cloverdale or Napa valley and Calistoga. There are some 30 or 40 springs here, warm and cold, containing chiefly magnesia, soda and sulphur, in various combinations. The water is used for both bathing and drinking purposes.

1873.

TOWNS AND WATERING PLACES.

LAKE COUNTY.

CALDWELL SPRINGS.

These Springs are situated about eight miles from Lakeport, near the road towards Cloverdale. There are fifty or more of these Springs which burst from the banks of Limestone Creek. An analysis shows them to be impregnated with sulphate of magnesia, carbonate of magnesia, muriate sodium, carbonate manganese, potassium, silica and calcium, containing a trace of sulphur, and highly charged with carbonic acid gas. These Springs have been known for several years as a neighborhood resort for invalids afflicted with various chronic diseases, and many remarkable cures have been effected. No improvements or accommodations for the public had been made until they were purchased last Summer by Dr. Caldwell. The baths are very invigorating, the water from some of the springs being warm enough for a pleasant bath, just as it flows from the springs. Visitors can choose the waters that best suit individual cases, or as their feelings may indicate. The situation is a very pretty one, and the hills and mountains surrounding are very romantic and picturesque.—Small game is quite abundant, and occasionally deer may be found in the hills, and the fishing in the neighborhood is fine. These Springs may be reached daily from Cloverdale, Sonoma county, by stage, or from Kelseyville, Lake county. It may be remarked that an old bath tub at these Springs which has been in use for about ten years, is almost entirely petrified; the sides and bottom have become beautiful hard stone, having the appearance of quartz.

HIGHLAND MINERAL SPRINGS.

(Formerly Caldwell's, now Shartzer's.)

Location.—Napa County, seven miles from Lakeport, and four miles from Kelseyville.

Access.—Daily communication from San Francisco, via Cloverdale or Calistoga routes.

Analysis.—An incomplete examination of these waters show them to be impregnated with sulphate and carbonate of magnesia, chloride of sodium, manganese, potassium, silica, and calcium; also, a trace of sulphur. They are, likewise, highly charged with carbonic acid gas.

Properties.—These springs have been known for several years as a resort for invalids afflicted with rheumatism and various chronic diseases. The baths are very invigorating, the water from some of the springs being warm enough just as it flows from the springs.

Remarks.—Menefee, to whose interesting "Sketch Book" I am indebted for much information respecting the springs of this region, says that the waters of this, as well as of Seigler's Springs, about six miles westerly from Lower Lake, "have effected many remarkable cures," and that these springs have been known for several years as a neighborhood resort for invalids.

REPORT

OF THE

STATE BOARD OF HEALTH.

Respectfully submitted, in behalf of the California State Board of Health.

SACRAMENTO, July 1st, 1873.

THOS. M. LOGAN, M. D., Permanent Secretary.

Page No. 13

Inquiries numbered 7, 16, and 17 are not to be asked in respect to infants. Inquiries numbered 11, 12, 15, 16, 17, 19, and 20 are to be answered (if at all) merely by an affirmative mark, as /.

SCHEDULE 1.—Inhabitants in Santa Clara Township, in the County of Santa Clara, State of California, enumerated by me on the 8th day of June, 1870.

Post Office: San Jose

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Richard B. Hall, Ass't Marshal.

Dwelling	Family	The name of every person whose place of abode on the first day of June, 1870, was in this family.	Age	Sex	Color	Profession, Occupation, or Trade of each person, male or female.	Value of Real Estate	Value of Personal Estate	Place of Birth, naming State or Territory of U. S.; or the Country, if of foreign birth.	If born within the year, state month	Constitutional Relations
1[illegible]	78	Shartzer Hiram	53	M	W	Farmer	6000	7340	Virginia		/
		— Martha	51	F	W	Keeping House			Kentucky		
		— Frances A	21	F	W				California		
		— Stephen A	13	M	W				California		
		— Benjamin	10	M	W				California		
		— Lizzie	7	F	W				Oregon		
		Shartzer [illegible]	36	M	W	Farm laborer	[illegible]	300	Missouri		/
		— Mary	22	F	W	Keeping House			California		
		— Clara	[illegible]	F	W				California	Jan	
[illegible]	100	Shartzer Benjamin	[illegible]	M	W	Farmer	[illegible]	200	Missouri		/
		— Maggie	18	F	W	Keeping House			Ohio		

The 11 Shartzer Family Members of 1870

Hiram 53, Martha 51, Frances 21, Stephan 13, Benjiman 10, Lizzie 7

SACRAMENTO DAILY UNION.

LANDHOLDERS OF CALIFORNIA.

Table compiled from the records of the State Board of Equalization showing the names of all persons assessed in 1872, in the counties named, for $10,000 and upwards; giving the amount and value of the land in each case where it amounts to 500 acres and upwards. The names marked thus (*) are landholders, but in quantities less than 500 acres:

Santa Clara County.

*Berryessa, Gaudalupe....	....	....	12,739
*Bank of San Jose........	....	....	171,625
Home Mutual Insurance Co., San Jose Branch....	....	....	12,625
Hamilton, W..............	500	38,400	43,245
*Lick, James.............	....	....	42,000
*Levy, M. & J............	....	...	90,400
*Murphy, Martin..........	....	....	116,000
Murphy, Martin...........	1,090	488,825	588,277
Murphy Daniel............	22,587	825,009	858,590
*Southern Pacific R. R. Co.	....	....	899,525
*Santa Clara Valley Ag. S..	....	....	33,400
*Shartzer, Hiram.........	....	....	46,655
*University of the Pacific.	....	....	78,900

is now Lake county. He was energetic and amassed a large fortune, and fitted up and improved what is now the great Highland

APPLE.—(*Pyrus Malus.*)

THE apple is a large, wide-spreading tree; the leaves are ovate; the flowers, which are produced on the wood or spurs of the former year, or of two years' growth, are in terminating umbels; the fruit is a roundish pome, its base umbilicate, of a color varying from green or white to yellow, to red, or violet; of a sweet or subacid flavor.

In its wild state it is denominated a *crab-apple*, and is a thorny tree, with small leaves, and a small, unpleasant, acid fruit; and from the crab-apple it is supposed all our finest varieties have been produced by cultivation. The apple is supposed to have been introduced into Britain by the Romans; and although Mr. Bartram has described a crab-apple, a native of our country, the *Pyrus coronaria*, a globular-formed, beautiful yellow fruit, an inch in diameter, excellent for preserving, with blossoms of a gay and beautiful appearance in spring, yet it is supposed that our stock of apples originated not from this, but from Europe.

The apple is said to flourish in every part of the United States, except the low lands of the maritime districts of Carolina, Georgia, and Florida, and the low prairies or savannas bounding on the Gulf of Mexico; and good judges assert that the apples of England, and of the north of France, are not to be compared, for excellence of flavor, to those produced in our climate.

48. SEEK-NO-FURTHER *of Antrim.*
The tree is of medium vigor; its branches incline downwards; a moderate bearer. The fruit is large, round, or conical, of a greenish yellow color, covered with broken stripes of red, especially next the sun; the flesh yellow, tender, juicy, rich, subacid, and excellent. October and November. A New England variety.

211. *POMEROYAL.
A beautiful and most superior fruit, of good size, of a regular but flattened form, the stalk short; of a bright gold color, with an occasional blush next the sun: a winter fruit, of an excellent and delicious flavor. This fruit was lately introduced to this vicinity by John Tappan, Esq., of Boston, and was so named for the late General Pomeroy, of Northampton, an officer of the revolution and old French war. On the farm at that place, formerly his, the tree is still flourishing. Brought by him from an unknown source. The tree bears well.

CLASS I.

A SELECT DESCRIPTIVE LIST OF THE APPLES IN CULTIVATION IN THE UNITED STATES.

SECTION I.

SUMMER APPLE.

1.—*AMERICAN SUMMER PEARMAIN.
The tree bears abundantly. The fruit is of medium size, oblong; of a bright red, streaked and blotched with deeper red next the sun; occasionally a fine yellow ground is visible; the flesh very tender, very juicy, full-flavored and excellent either for the dessert or for cooking. It ripens the middle of August, and is highly deserving of cultivation.

2. BEAU. *Judge Hull.*
"Fruit three inches in diameter, two and one fourth deep; ere in a regular and shallow cavity; stalk short, not projecting beyond; the base; skin yellowish green with a faint flush on the sun side, and dotted with white; flesh white and crisp; juice abundant and agreeably acid. A fine dessert and culinary fruit from end of Aug. to Oct."

3. *BENONI.
Medium-sized, of a fine red color, flavor subacid and good. One of the best apples of the season, ripening the first of July." A native, introduced to notice by Mr. L. M. Richards, of Dedham.

4. *EARLY SWEET BOUGH.
The size varies from medium to large; the form is oblong; the skin smooth, of a pale yellow color; the stalk is short; the flesh is white, tender, juicy, sweet, and excellent. One of the very best dessert apples of its season, which is early in August.

5. *EARLY HARVEST.
Prince's Harvest. } *of Lee.*
Early Pearmain Romanite. }
The tree is of medium vigor; not very productive. At Salem this variety begins to show evident symptoms of decay. A fruit above the medium size; globular, depressed; of a pale yellow color; the flesh white, juicy, tender, rather acid, but pleasant. Last of July. It is good for cooking.

200. *BLACK PIPPIN.
New, very large and handsome; oblong; of a fine yellow color, and excellent flavor. A highly popular and much admired fruit, from a place of that name, near the River Hudson. Very productive, and ripening in August.

14. SAPSON.
Sapsavine.
The fruit is of medium size; of a bright red color, deeply stained in its flesh, which is very juicy and pleasant. A very beautiful fruit, an abundant bearer, and much esteemed. Ripe from August to October.

16. *SOPSAVINE.
A very early summer fruit, of medium size; covered with stripes of red on a greenish yellow ground; a pleasant and beautiful fruit, ripening the last of July.

THE

NEW AMERICAN ORCHARDIST:

OR, AN ATTEMPT TO

THE MOST VALUABLE VARIETIES

OF

FRUIT,

OF ALL SEASONS,

ADAPTED TO CULTIVATION IN THE UNITED STATES;

WITH THEIR

HISTORY, MODES OF CULTURE, MANAGEMENT, USES, &c.

BY WILLIAM KENRICK.

BOSTON:
OTIS, BROADERS, AND COMPANY.

1844.

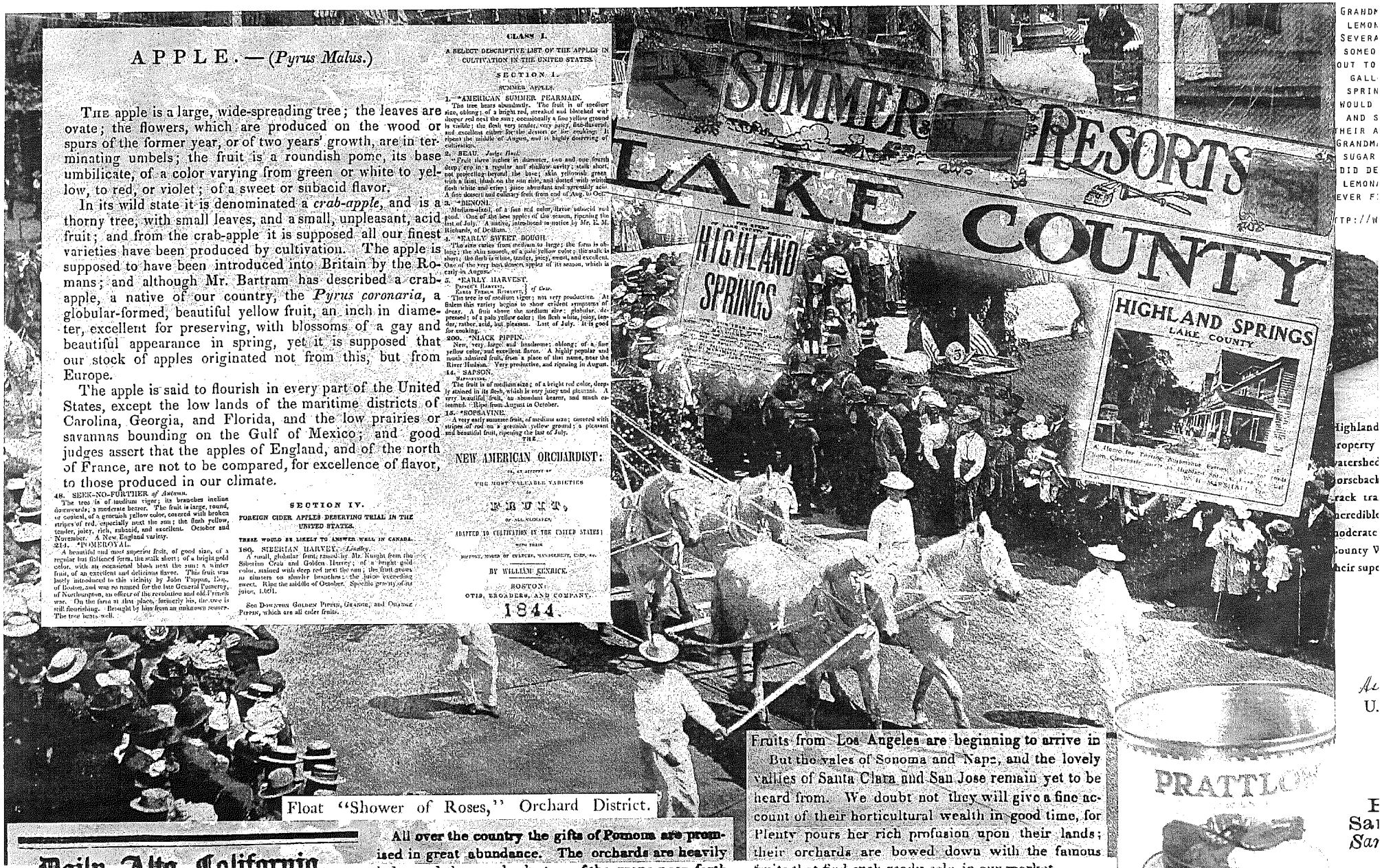
SECTION IV.

FOREIGN CIDER APPLES DESERVING TRIAL IN THE UNITED STATES.

THESE WOULD BE LIKELY TO ANSWER WELL IN CANADA.

189. SIBERIAN HARVEY. *Lindley.*
A small, globular fruit; raised by Mr. Knight from the Siberian Crab and Golden Harvey; of a bright gold color, stained with deep red next the sun; the fruit grows in clusters on slender branches; the juice exceeding sweet. Ripe the middle of October. Specific gravity of its juice, 1.091.

See Downton Golden Pippin, Grange, and Orange Pippin, which are all cider fruits.



Float "Shower of Roses," Orchard District.

Daily Alta California.

SUNDAY MORNING, JULY 27.

HORTICULTURAL.—Spring blossoms have had their season, and summer flowers are fast ripening into autumn fruits. The gay colors have left the hillside, the rich hue has faded from the orchard, and the grey mantle of midsummer is flung abroad over the sleeping form of Nature. Like the siesta that follows the feast, her sleep is the sleep of fullness.

All over the country the gifts of Pomona are promised in great abundance. The orchards are heavily laden and the purple clusters of the grape peep forth in rich profusion, while the orange, the peach, the pear and apple crown the mellow autumnal glories of the year.

The products of the more genial clime of the South, have already begun to ripen and fall to the lap of mother Earth, to be dispensed among her sons of industry, and feast the appetite of the city gourmand.

Fruits from Los Angeles are beginning to arrive in

But the vales of Sonoma and Napa, and the lovely valleys of Santa Clara and San Jose remain yet to be heard from. We doubt not they will give a fine account of their horticultural wealth in good time, for Plenty pours her rich profusion upon their lands; their orchards are bowed down with the famous fruits that find such ready sale in our market.

"Great country this!" Fine farming lands and fruit orchards everywhere. Warm Winters with "heavy wet," early Springs with bland winds, buds and blossoms; beautiful Summers of serene skies and full harvests; and mild Autumns, with the mellow gifts of the Goddess of Plenty. "Great country this!"

GRANDMA RUTH HAD THIS ODD TASTE FOR LEMONADE MADE WITH MINERAL WATER. SEVERAL TIMES A YEAR SHE WOULD HAVE SOMEONE DRIVE HER FROM KELSEYVILLE OUT TO HIGHLAND SPRINGS TO COLLECT A GALLON OR SO OF WATER OUT OF THE SPRING NEAR THIS CACHE. THEN HOME WOULD GO THE WATER, INTO A PITCHER, AND SOME 5 OR 6 LEMONS WOULD GIVE THEIR ALL TO TRY TO REFINE THE TASTE. GRANDMA WOULD ADD A HEALTHY SCOOP OF SUGAR, AND ... VOILA! ICK! I NEVER DID DEVELOP A TASTE FOR HER SPECIAL LEMONADE, AND HAD A VERY HARD TIME EVER FINISHING A SINGLE GLASS SERVED TO MY WEE YOUNG SELF.
HTTP://WWW.GEOCACHING.COM/GEOCACHE/GC12TBW_GRANDMAS-LEMONADE

UKIAH DAILY JOURNAL, UKIAH, CALIFORNIA

Groundbreaking For Adobe Creek Project Tuesday

Local and government officials will join in groundbreaking ceremonies Tuesday afternoon near Lakeport to mark the first construction phase of the $1 million Adobe Creek flood prevention project.

The project, co-sponsored by the West Lake Soil Conservation District and Lake county board of supervisors, is one of the first flood projects in California to get into the operations stage under the federal Small Watershed Act.

Structural works are being cost-shared with local, state and federal funds and will include as the first of several contracts, construction of a $140,000 floodwater retarding dam.

Target date for completion of the project is 1967.

Watershed, conservation and agricultural leaders expected to attend the program include Cong. Clem Miller, Sen. Jack Slattery, Assemblyman Lloyd W. Lowrey, president of the California Association of Soil Conservation Districts, William Hansen, Lake County flood control manager; members of the Lake County board of supervisors; directors of the West Lake Soil Conservation District.

highlandspringstrailsvolunteers.com
Highland Springs Trails Volunteers

Highland Springs Recreation Area is an extremely rugged and diverse 3200 acre property in Lake County, California which includes a variety of different watersheds, ecosystems and habitats. Historically, trails developed by hunters on horseback have existed for over 130 years. They consist mainly of narrow, single-track trails that often traverse very steep terrain. The access and views are incredible; most of these trails are recoverable, and seem fairly sustainable with moderate hiking and horseback use. This watershed property is managed by Lake County Water Resources. All trail maintenance and trail recovery is done under their supervision.

Lake County, California.

Highland Springs ✓ Hiram Shartzer 12 Mar. 1873

Astoria & Goods 5 May 8th Hiram Shartzer - 12 Dec. 1873

U.S., Appointments of U. S. Postmasters, 1832-1971

Post Office.	*County.*	*Postmaster.*
Highland Springs	Lake	Hiram Shartzer
Santa Clara A	Santa Clara	James M. Billings
Santa Cruz A B C G	Santa Cruz	John Brazer

THE PACIFIC RURAL PRESS.

Highland Springs.

A brief visit to this popular health resort impressed the writer favorably for several reasons. The springs are favorably situated in one of the healthiest hill and tableland districts in Lake county. It is completely encompassed by little hills and by valleys, with grand mountains in distant view. Morning and evening rides, really charming, are to be had in the vicinity. The hotel and cottages look commodious and comfortable, with shady groves attached. A large number of bath rooms are arranged along the raving, handy by, supplied with natural tapid water flowing down from springs on the hillside. Several of these springs are recorded as having produced remarkable cures of different disorders, according to their variable qualities. The Soda spring, nearly in front of the hotel, pleased our taste best. It holds its taste and properties well when bottled. It is quite palatable and refreshing. Properly placed for sale in the San Francisco market, it might well be expected to rapidly gain popular favor. The springs have been comparatively well patronized, and with the advent of flush times we believe, with the proprietor, that he will again number his patrons by the hundred. The altitude of the place is 1,700 ft. above the sea. Its distance 16 miles from the railroad at Cloverdale. The road hence affords a picturesque ride via the Blue lakes. Uncle Sam has just established his Highland P. O. here. It is four miles from Kelseyville and seven miles from Lakeport, the county seat. Distance to Soda Bay on Clear lake, eight miles. S. D. Shartzer and Mrs. J. C. Goods are the owners and present occupants of the place. They own a large and valuable farm surrounding the springs.

[August 21, 1880.

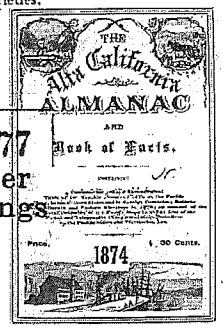
The Santa Clara County Fair.

Daily Alta SAN JOSE, Sept. 23, 1858.

FRUITS.

In fruits the collection is extremely large and magnificent; there are one hundred and sixty-three different lots.

In apples, W. B. Thornburgh has thirty-one varieties. H. Shartzer has forty varieties, Dr. Bascom has twenty-two varieties, E. W. Case has twenty-two varieties, Delmas has sixteen varieties, Mrs. S. J. Hensley, twenty-five varieties; Pellier, ten varieties; Le Provost, fourteen varieties; Dr. C. Smith, twelve varieties; Jas. Lick, eighteen varieties. Jos. Aram, thirty-two varieties.



HIGHLAND SPRINGS.—These springs are situated at the extreme southwestern corner of Big Valley, about eight miles from Lakeport and six from Kelseyville, and the stages from Cloverdale to the latter place pass by the door. An old hunter by the name of Ripley discovered and located upon them away back in the "sixties" sometime. He did not do much in the way of improving the place, and, in fact, he erected no buildings at all except his own cabin. He dug a small tunnel into the bank of the creek, and in this epsom salts and alum formed in crystals; also, carbonate of soda. A strong odor of petroleum was said to be emitted from this tunnel.

Ripley sold the property to H. H. Nunnally, and he to Dr. A. B. Caldwell, who began making improvements in 1871 by erecting the north wing of the main hotel. In the fall of 1872 H. Shartzer and S. M. Putnam purchased the place, and the following year Mr. Shartzer bought Mr. Putnam's interest. In 1875 the main part of the hotel wes erected, and they can now accommodate sixty guests in the building, besides those who can be accommodated in the five cottages on the grounds and adjacent to the springs.

There are nine springs at this place, as follows: One cold iron and magnesia spring, located in the bed of the creek; this is a strong spring, and the water is very palatable, and is in fact the favorite of the guests. The next spring, to the south, is a warm magnesia and iron spring, with a temperature of 82 degrees, and it is from this one and two others of similar character and temperature—all three lying adjacent to each other—that the water for the baths is obtained. The next spring has borax for its chief characteristic, and is thermal. The next one is a magnesia spring, and is also warm. The last one in this coterie is a magnetic iron spring, with a temperature of about 60 degrees. There is, at some distance to the eastward of the above-named, a cold soda spring, the waters of which are very fine indeed, and have performed some almost miraculous cures of dyspepsia. About one-half mile east of the hotel is a spring that has equal parts of soda, sulphur, and iron, and is a veritable curiosity, for soda and sulphur are not generally good friends, or rather are too good friends, and are too apt to form a union, glauber salts being the result.

This is a lovely place for camping and spending the season. The ground around it is quite level, hence there is ample opportunity for exercise, while the best of level roads lead from the place in several directions, so that fine drives may be had. Game is abundant and easy of access, while there is no end to the trout. It is easy of access and the accommodations the best. No finer camping place can be found in the State, than the cool shady plot of ground just south of the springs.

medical springs at an expense of over thirty thousand dollars.

The reverses caused by sickness came and all his family save one son and daughter,

SACRAMENTO DAILY UNION.

SATURDAY, JULY 2, 1864.

NEWS OF THE MORNING.

No dispatches were received from the East yesterday. The latest news from Grant's army was under date of June 24th, and from Sherman we have had no advices since the partial retreat of Johnston on the 21st of June. The approach of the National anniversary stimulates anxiety for news.

Our San Francisco dispatch states that Major General McDowell has appointed Brigadier General Wright to the command of the District of California.

A dispatch from Benicia says that the rival steamers Washoe and Yosemite came in collision at the wharf at that point. The Washoe was cut down to the water's edge and was run ashore in a sinking condition. The Yosemite suffered no damage. No lives were lost.

By telegraph from Placerville we learn that on the night of June 30th the stage from Virginia was stopped at a point near the Thirteen-Mile House by six highwaymen, and robbed of eight bags of bullion. The passengers were not molested. Sheriff Rogers and a party went in pursuit of the robbers. Deputy Sheriff Staples and Constable Ramsey found the gang at the Somerset House, where a fight ensued, in which Staples was killed and Ramsey wounded. One of the gang was wounded by Staples. This affair created much excitement at Placerville, and various parties went in pursuit of the brigands, who claim to be "Confederates."

Telegraph to Lincoln.

LINCOLN, July 1st.

The lines of the California State Telegraph Company have been extended to this place, and an office opened for business to-day.

Later.

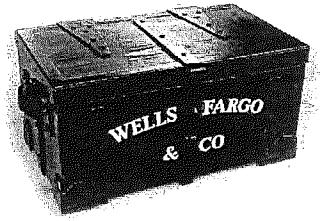
PLACERVILLE, July 1st—2 P. M.

We have learned the following particulars from a courier just in from the Somerset House, the scene of the fight between officers Staples and Ranney and the six highwaymen: Upon reaching the Somerset House, Staples, having been assured by the landlady that the gang were in the house, procured a shotgun, opened the door and informed them they were his prisoners; whereupon, they fired, instantly killing Staples and wounding Ranney. Staples wounded one of the gang in the head. The robbers robbed Staples' body of his watch, and would have killed Ranney had not the landlady pleaded for his life. The gang assert that they are good Jeff. Davis men, and are not to be taken by Union officers. A party is just leaving for the body of Staples and the wounded prisoner. The other five had left, declaring they would return and rescue their wounded friend. Staples had long been a Deputy Sheriff of this county, and was a much esteemed citizen.

DARING STAGE ROBBERY.—During yesterday forenoon, the town was full of rumors and extravagant statements concerning the robbery of Wells, Fargo & Co.'s Express, the other side of Placerville. The amount of coin and bullion reported to have been taken was variously stated at from five thousand to forty thousand dollars. But little specific information was received at Wells, Fargo & Co.'s office concerning the affair; but in the opinion of A. M. Hayden the aggregate amount of coin and bullion taken did not exceed three thousand dollars. The robbery occurred at ten o'clock on Thursday night, about twenty miles beyond Placerville. The Pioneer Company's stage was stopped at that point by six or seven men armed with shotguns and pistols. Compelling a halt, a part of the robbers watched the progress, while others broke open the chest and took out the contents. Twelve silver bricks and a small quantity of gold coin were taken. After the first stage had been started forward, one of the passengers, a Virginia City police officer, is reported to have fired two shots at one of the robbers. It is probable, however, that no injury was done, as they stopped the second stage which came along a few minutes afterward. They took a quantity of gold coin from this stage, but did not disturb the bullion; they probably had as much as they could carry obtained from the first. On the arrival of the stages at Placerville considerable excitement ensued, and a party started out after the robbers. It will be seen by reference to our telegraphic column that Deputy Sheriff Staples and Constable Ranney overtook the gang at the Somerset House, and that the first named officer was unfortunately killed and his companion wounded. One of the robbers was wounded and the others escaped. As yet the details of both the robbery and fight are meager and unsatisfactory. The Somerset House is on the road which leads to Grizzly Flat. It will be recollected that about a month ago Under Sheriff Hume and Deputy Sheriff Staples with others followed a gang of robbers to the edge of Amador county and had a desperate fight with them, wounding several, but capturing none. Hume passed through this city yesterday morning on his way from Stockton. The robbers are reported to have given the stage driver the following receipt, which accords with their statement at the Somerset House that they were good Jeff. Davis men, etc.:

Received of Wells, Fargo & Co. the sum of ——— dollars, said amount to be used in securing enlistments in this State for the Confederate service.

HENRY M. INGRAHAM,
Captain Commanding, C. S. A.



Highway Robbery in the Mountains—Seizure of Wells, Fargo & Co's Treasure—Subsequent Fight with the Robbers—Officer Staples Killed.

PLACERVILLE, July 1st.

The down stages from Virginia were stopped last night about ten o'clock by a gang of six men at a point about a mile above the Thirteen-Mile House, on Bartram's new grade. The robbers held the drivers in check with shot guns while overhauling the baggage for treasure. They took eight bags of bullion and Wells, Fargo & Co.'s treasure box. Passengers were not molested, but assured that they were only after Wells, Fargo & Co.'s treasure. After detaining the stages about ten minutes they allowed them to pass. On arrival here Sheriff Rogers and party went in pursuit of two men who were recognized by the drivers and arrested at the Thirteen Mile House. The other four had left for Cosumnes via Pleasant Valley. Two officers were started on their track. About ten o'clock a courier arrived here from the Somerset House stating there had been a fight between the robbers and officers, in which two robbers were killed—one wounded very badly, and Deputy Sheriff Staples wounded. [See dispatch below. EDS. UNION.] There is considerable excitement here. Parties are leaving for the scene every hour.

A Young Mark Twain wrote about this in the SF Daily Morning Call 1864 entitled

A STAGE ROBBER AMONGST US
and
MORE STAGE ROBBERS AND THEIR CONFEDERATES CAPTURED

The Democrat.

PLACERVILLE.

SATURDAY, SEPT. 22, 1855.

☞Thanks to Ned Blair of Conder's Stage Line, and friend Platte, of the Georgetown Line, for numerous favors done this office during the past week. If the Lines to which these gentlemen belong do not do a good business it is not for the want of good coaches or clever and competent drivers, for the gentlemen who "hold the reins" are—but "there's no use in talking," for every body knows "Ned" and "Platt," and what's more, they re already doing a *driving* business.

Chapter Four.

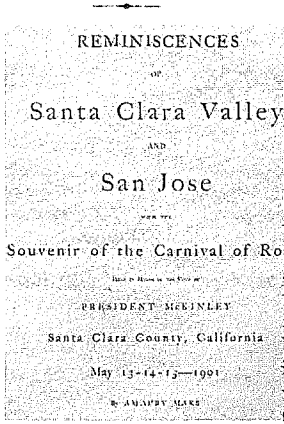
CHRISTIAN CHARITY—SALVATION ARMY—CHINESE—THE JEWS.

The Chinese are certainly worthy of a few remarks. Though possessing a stamp of its own, Chinatown in San Jose is but a poor reminder of the conglomeration of curious, artistic and sumptuous abodes in the Celestial Empire; and one who has traveled in China is painfully surprised at the appearance of the slovenly huts and the poor specimens of the industrious children of the Orient that are met with here.

The odor *sui generis* emanating from the surroundings is decidedly noticeable, one might even say strong, and if it really delights the olfactory organs of those good "coolies," it certainly goes a long way towards making them detested by the American people.

The Chinese, whom it would be difficult to dispense with at the present time in California, being actuated by a spirit of revenge, retaliate to the contumely with which they are treated by contempt, and if an occasion presents itself, they do not hesitate to make the white people feel the need of their assistance, for they are cooks, servants and laborers. Some years ago, even here in San Jose, an attempt was made to boycott them. Are you desirous to learn the result of this proceeding? The people were compelled to take them into favor again, and they became more exacting and impertinent than before. Then why should people complain of these poor Celestials, when they have done everything in their power to make them what they are.

It is quite comprehensible that the inhabitants of a great country should have a certain repugnance to bestowing the privileges to which they are entitled on people who only came to it for the sole purpose of making money, that they may return with it and spend it in their own birthplace. But can these people imagine that by persecuting a race, they improve its condition? Persecution has never achieved a success of any value; it tends to affect the organization of those who are persecuted, and though the united number may not be large, it always leads to a certain amount of contention.



SAN JOSE.

CHURCHES.

METHODIST EPISCOPAL CHURCH.—Is situated on the west side of Second Street, near its intersection with Santa Clara Street.

In 1850, July, 1853, it was moved to the corner of Second and Santa Clara Streets, and enlarged.

In 1868 a frame building, capable of holding six hundred persons, was erected on the lot upon which the present edifice now stands. On the twenty-second of February, 1868, this church was burned to the ground by a supposed anti-Chinese incendiary. The loss was $18,000. Another building was erected on the same site, at a cost of $21,000, and was dedicated on the eighteenth of July, 1869, Bishop Kingsley preaching

A person claiming under a Mexican grant is not estopped from obtaining possession of the land, after the requisite survey and confirmation by the United States government, by his declaration before the survey that it was not within the original grant, and was public land.—Love v. Shartzer, 31 Cal. 487.

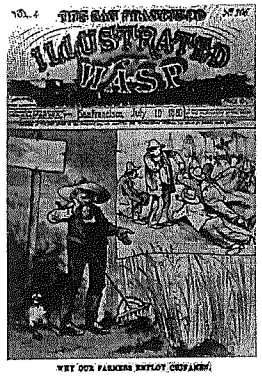
quit-claim deed from one Hiram Shartzer, dated January 17th, 1876, of record in Book 31, at page 290 of the real estate records of Holt County, Missouri, conveying to them Lot One [1] of the North East Quarter of Section Thirty-five [35] in Township Sixty-one [61] of Range Thirty-seven [37];

DAILY ALTA CALIFORNIA, FRIDAY, JANUARY 15, 1886.

SAN JOSE GOSSIP.

The Recorder of Enterprise Lodge, No. 17, A. O. U. W., paid yesterday $2,000 to Mrs. Fred. Lundin, and $2,000 to-day to Mrs. N. J. Shartzer, insurance on the death of their husbands. Thus the good of such institutions can be seen on every side, and many a California widow and orphan child will rise up and bless the A. O. U. W.

S. A. Bishop, a street-car President and genial citizen, has been suffering from a severe attack of pneumonia, but is rapidly recovering.



A person who enters and occupies land forming part of a Mexican grant to another before the final survey and confirmation by the United States government, though the grant was imperfect and inchoate until such survey, and though he was led to so occupy by the assertions of the grantee that the lands in question formed no part of the grant, is nevertheless guilty of ouster.—Love v. Shartzer, 31 Cal. 487.

A grantee of lands from Mexico is not estopped from recovering possession according to the boundaries afterward surveyed by the United States, by having told the occupant before such survey that the land in controversy was public land and not within the limit of his grant, and that the occupant after such declaration put valuable improvements on the land, it not appearing that he willfully made the statements, or intended to deceive the occupant.—Love v. Shartzer, 31 Cal. 487.

The Santa Cruz Sentinel.

SATURDAY, JULY 23, 1870.

CHINAMEN.—Santa Clara county has got a bad name abroad for her conduct toward working men. In the "Black list" lately published by the Workingmen's *Journal*, we see that Don Murphy employs 85 Chinamen; Moran Brothers from 40 to 50; John Cook 75; and Hiram Shartzer 180. We do not know how correct these figures are; but we think that starving white men should have the preference over these foul pagans. All Democrats do not realize, or Republicans either, that nearly every cent paid a Coolie goes out of the country. The conduct of England towards Ireland will be eclipsed if we persist in enriching the Chinamen at the expense of our citizens.

SACRAMENTO DAILY UNION.

VOL. XXXVI.—WHOLE NO. 5599. SACRAMENTO, MONDAY MORNING, MARCH 8, 1869. PRICE TEN CENTS.

Since the burning of the Methodist Episcopal Church, Isaac Bird, Superintendent of the Chinese Sunday School, has had his premises guarded at night. On Friday night last, at about one o'clock, two suspicious persons were seen approaching his barn. They were alarmed by a dog which the guard was unable to keep quiet, whereupon they started to run, when the guard fired at them, first hailing them to stop. One of them returned the fire with pistols. They made their escape.

The following letter was received by Hiram Shartzer through the Post Office at Santa Clara. It bears the San Jose Post Office stamp, and appears to have been mailed at San Jose on February 27th. There was also on the letter a three-cent Post Office stamp. The letter was presented to the Grand Jury for consideration, and was handed us for publication. It is, in general, a well written letter, showing some attention to punctuation, and the spelling, with few exceptions, is good

SAN JOSE, February 26, 1869.

Mr. SHARTZER—Respected Sir: We wish to inform you that we have commenced our work in earnest, and we intend to drive every John to the Bay from whence he came Therefore take notice, put out all Chinese living in your houses or insure well. For the *Big Oll will will* be around and may deposit his burning fluid. *Fire Fire* is his *motto* without bloodshed we are going to do our work regardless of Politicks or Religion. We will work on all who employs Cninese in place of white men. It is daming to our country. This is a White mans Country, and we mean it shall be so or destroy by fire the whole of it. Harvest fields and everything, where you employ Chinese.

The *Big Olls* are everywhere around looking down on you and all others. So friends be on the look out. We don't want to hurt you or any one else. Burlingame has made his great Treaty, but we will *Burst* it with fire, not fire arms. The *Olls* are now Hooting in the mountains and down here in the valley of Santa Clara. The Olls have plead for the poor working man and woman, but he has been booted at. Now it his time to boot, and he is going to do it. Both *Political* parties promised to work against the *Johns*, but on the contrary they are all showing them more favor. They are now importing their women by the hundreds, let San Francisco keep them, we will not have one of them, we will not have one of them among us if fire will keep them out of our midst.

THE Voice.

You can Publish this so as to guard our Friends. Thats all.

The San Jose *Patriot* of same date says:

The Grand Jury found a true bill of indictment against the man Melown for arson in burning the Methodist Episcopal church. He was arrested at about half past three o'clock this afternoon by Deputy Sheriff Hall, in Justice Barnett's office, where the examination of the charge was being made.

SACRAMENTO DAILY UNION.

The El Dorado Robbers.

PLACERVILLE, December 6th—8:30 P. M.

The Board of Supervisors have this day appropriated the sum of $2,000 to retain J. C. Goods, of Sacramento, to prosecute the balance of the Confederate highwaymen and murderers of Deputy Sheriff Staples.

THE MOUNTAIN DEMOCRAT.

"Our country, always right; but, right or wrong, our country."

PLACERVILLE, CAL.

Saturday.....November 19, 1864.

NOL. PROS.—In the County Court, on Thursday, the District Attorney had a nol pros. entered in the case of Mr. Hiram Shartzer and two brothers named Freer, indicted as accessories to the noted stage robbery about which the small abolition orators had so much to say during the Presidential canvass. There was no evidence against them. The Grand Jury that indicted them must have drawn on their own imaginations for facts to justify them in finding "true bills," where there was not even sufficient proof to justify suspicion!

Unrelated? Coincidence?

THE OWL

Vol. I. DECEMBER, 1869.

No. 1 EDITED BY THE BOYS OF SANTA CLARA COLLEGE, S. J.

DEVOTED TO MENTAL IMPROVEMENT.

The Owl was the University's first literary magazine in 1869

who are still living in California, sickened and died. The reverses of fortune and loss of property left him comparatively alone.

CALIFORNIA FRUIT NEWS

Blossom Festival in Santa Clara Valley

"Nothing like this is to be seen anywhere else, and the whole world ought to know it."

"To one who has not seen the valley it may perhaps be hard to comprehend its pre-eminence in spring-time loveliness. Orchards of deciduous fruits are common enough elsewhere in California and individually are all, probably, equally beautiful in bloom. But the Santa Clara Valley, more than any other equal area in California, or anywhere else in the world, has been given over to orchards of apricot, almond, plum, cherry and prune. One may stand on a hill slope at Sartoga, or in a score of other places, and look out upon league after league of bloom, covering the whole broad, long valley and the slopes that rise into the hills with a mist of tender color.

All sleep, deep silence reigns. How sweet the dreams must be of this fair vale of Santa Clara. Here in summer as in winter, there is no heat prostration, no epidemic, no troublesome insects. It seems to the inhabitants cool and comfortable in comparison to the accounts of excessive humidity which makes so many victims during the summer in the other parts of the United States.

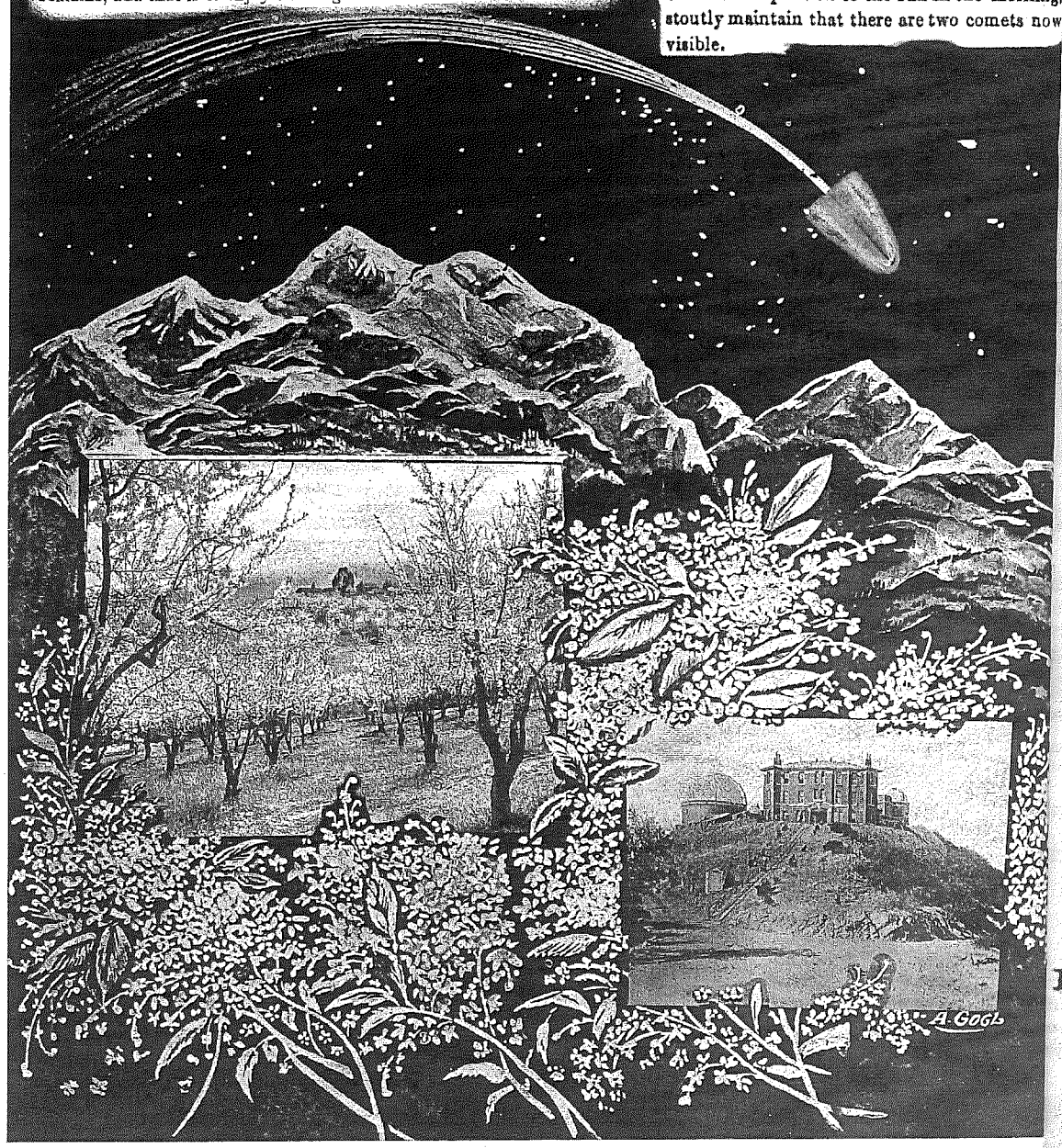
During the warm months, the evenings are cool and exceedingly refreshing after the heat of the day. The nights are fine and clear, the heavens glitter with stars from one end of the firmament to the other, and after once having enjoyed such nights, there is but one pleasure that remains, and that is to enjoy them again and forever.

OUR PLACERVILLE CORRESPONDENCE.

THE COMET

PLACERVILLE, Sept. 20, 1858.

The comet, which for a week past has nightly astonished the natives in this locality, is still visible in the northwestern heavens. From the eccentric circle which the fiery courser cuts in the northern hemisphere, many who have observed its position to the sun in the morning, stoutly maintain that there are two comets now visible.



NEWS ITEMS.

Los Angeles Herald.

TUESDAY.....MARCH 3, 1874.

The Santa Clara Jute Factory enterprise is taking shape. A meeting of the stockholders was held recently, and a committee appointed to locate the site of the establishment. An assessment of five per cent on each share was levied and ordered to be paid in at once. Mr. Shartzer subscribed $1,000, and also agreed to pay a like sum for the first thousand sacks made.

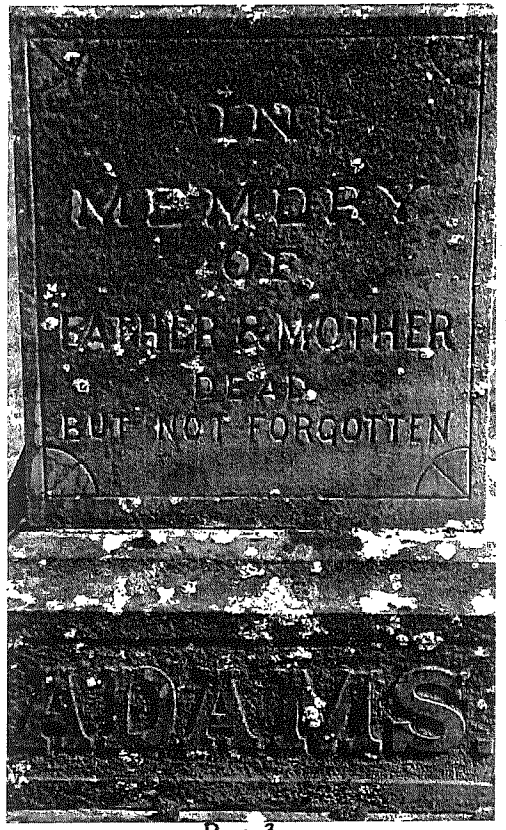
SACRAMENTO DAILY UNION.

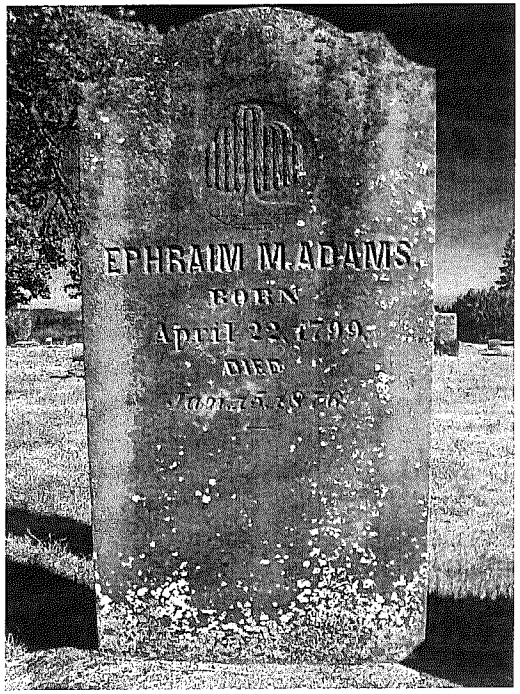
MONDAY, MARCH 13, 1876.

Mortality Report.

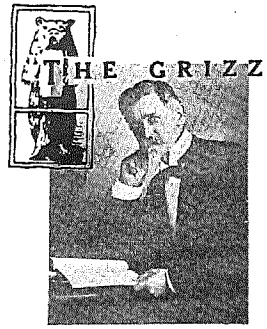
For the week ending March 11, 1876, made by J. F. CLARK, Superintendent of the City Cemetery, Office, at Clark & Davis', No. 49 and 51 Fourth street, where all the records may be found:

March 5—H. P. Shartzer, 17 years, 2 months and 14 days, California.





THE GRIZZLY BEAR March, 1912



"ALEX" MURGOTTEN,
For Twenty Years Publisher of the "Pioneer."

"PIONEER" PUBLISHER TELLS OF THE EARLY DAYS

(Prepared at the Request of The Grizzly Bear by ALEXANDER PHILIP MURGOTTEN, of San Jose, California.)

E. Ellard Beans, Dr. Knox and E. P. Reed, the bankers; Donald McKenzie, founder of McKenzie's foundry; Josiah Belden, who became a millionaire; S. A. Bishop and J. Rich, who built our street-car system; S. A. Clark, T. W. Spring, William Erkson, M. Stern, H. Messing, the Levys, H. Hart, John and E. Auzerais, the pioneer merchants; John M. Murphy, former sheriff, and Nick Harris, R. J. Langford and J. H. Adams, also sheriffs; Martin Murphy, John Trimble, J. S. Selby, Hiram Shartzer, Thomas Rea, William Quinn, Sam C. Young, the early farmers; Charles Lefrance, the pioneer winegrower; the Leddys, John S. Carter and Moses Schallenberger, often called the boy hero of the Sierras; Sam F. Ayer, many years on our co

SACRAMENTO DAILY UNION.

MONDAY, JUNE 22, 1874.

DIED.

Santa Clara, June 18—Martha Jane, wife of Hiram Shartzer, 54 years.

He came to Oregon in 1884 and was united in marriage to the widow of E. M. Adams. They lived together about twelve years.

The Pacific Rural Press.

March 13 1897.

California Dried Fruits at New York.

NEW YORK, March 6.—Apricots, bags, 9@11c. Peaches, unpeeled, bags, 6½@9c; peeled, boxes, 10@15c. Prunes, four sizes, 4@4½c. Raisins, 2-crown, L. M., 4¼; 3-crown, L. M., 5¼c; 4-crown, 6@6½c; London layers, $1.35@1.40; do clusters, $1.40@1.75. Almonds, softshell, 7½@8½c; papershell, 10@12c. Walnuts, standard, 7c; softshell, 9c.

NEW YORK, March 10.—Apricots, bags, 9@11c. Peaches, unpeeled, bags, 6@9c; peeled, boxes, 10@15c. Prunes, firm, four sizes, 4@4½c. Raisins, 3-crown, L. M., 4½c; 3-crown, 5@5½c; 4-crown, 6@6½c; London layers, per box, $1.35@1.40; clusters, $1.40@1.75. Almonds, softshell, 7½@8½c; papershell, 10@12c. Walnuts, standard, 7c; softshell, 9c.

Tree Inspection in Santa Clara County.

If anybody imagines there is no tree planting going on in California he will do well to glance over the following figures in the report of Horticultural Commissioner Erhorn of Santa Clara county for the month of February:

The following nursery stock arrived during this month and was thoroughly inspected and found free from pests and diseases:

Prune trees	17,720
Apricot trees	1,325
Cherry trees	2,555
Almond and walnut trees	990
Apple and pear trees	940
Orange and lemon trees	520
Peach trees	455
Olive trees	305
Ornamental plants	866
Grape vines and cuttings	26,148
Berry plants	600
Total	52,425
From the State of Oregon:	
Apple trees	1,375
Cherry trees	250
Pear trees	20
Berry plants	500
Total	2,145
From France:	
Myrobolan seedlings	62,000
Cherry seedlings	12,000
Apple seedlings	200
Resistant vine cuttings	10,000
Total	84,200
Total plants inspected	138,770

Continuing, Mr. Erborn says:

A great many resistant vines are being planted, some in nursery for next year's replanting and some as new vineyards. Quantities of infested vines are being dug up and the land will be given a rest for a year before planting resistants.

My attention was called to a few vineyards where several blocks of vines are dying and which gave the appearance of phylloxera, but a closer examination did not show the pest. The cause of death was poor drainage and a strata of cold, sticky clay. The main roots were rotten and the surface roots just gave enough vitality to a few vines to make a very short growth.

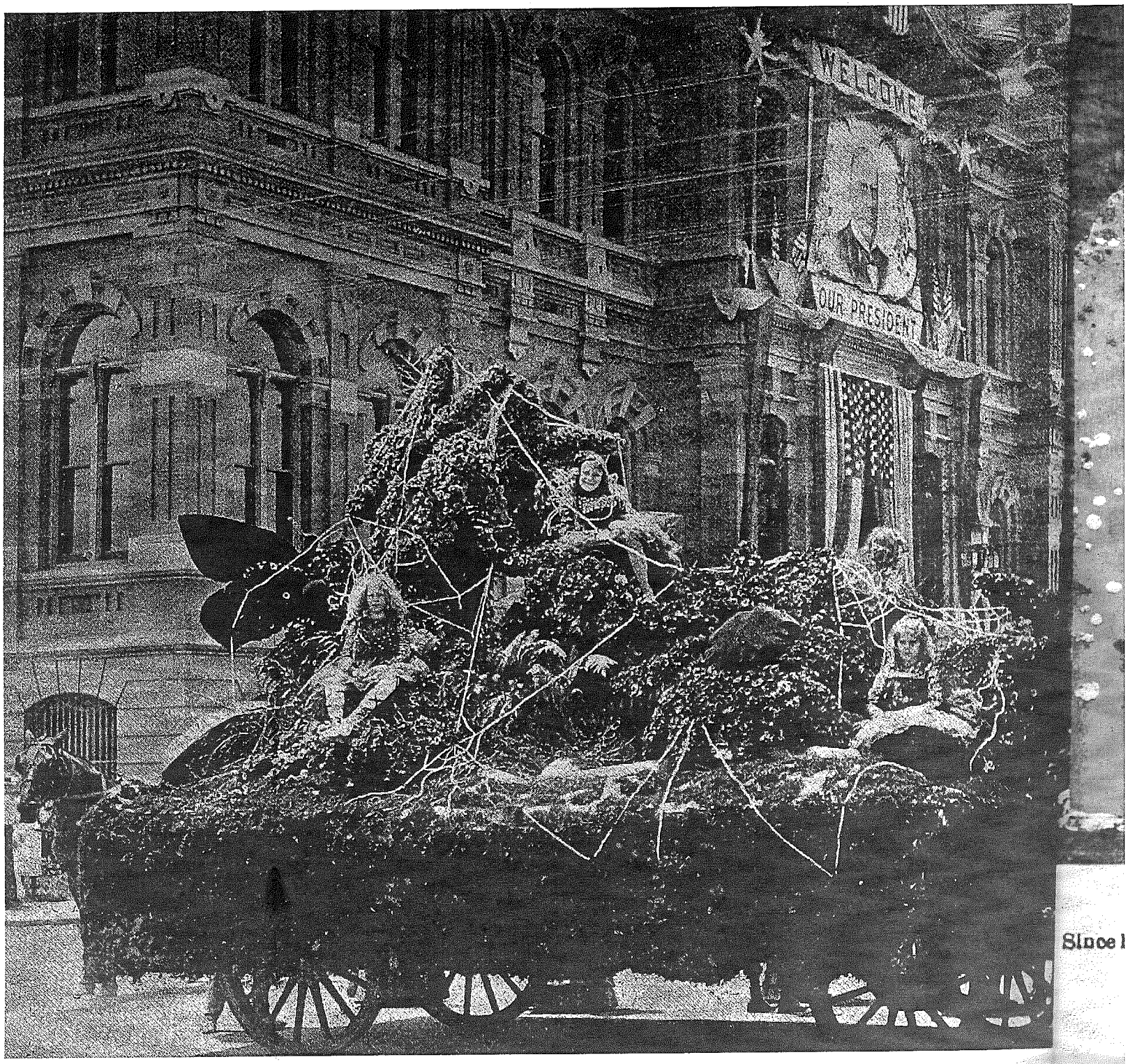
The heavy rains during the month made spraying late for some of the pests and work in general is behind. The trees have a very healthy look and the fruit buds of some early varieties show great vigor at present.

Beware of Ointments for Catarrh that Contain Mercury,

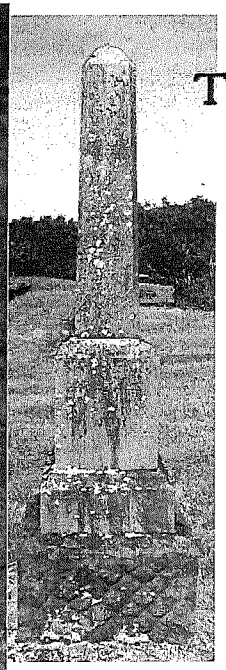
as mercury will surely destroy the sense of smell and completely derange the whole system when entering it through the mucous surfaces. Such articles should never be used except on prescriptions from reputable physicians, as the damage they will do is ten-fold to the good you can possibly derive from them. Hall's Catarrh Cure, manufactured by F. J. Cheney & Co., Toledo, O., contains no mercury, and is taken internally, acting directly upon the blood and mucous surfaces of the system. In buying Hall's Catarrh Cure be sure you get the genuine. It is taken internally, and made in Toledo, Ohio, by F. J. Cheney & Co. Testimonials free.

Sold by Druggists, price 75c. per bottle.

Hall's Family Pills are the best.



Since I



The pastor was humble, efficient and faithful; but he resigned in 1897 to go to Medford, and was followed in 1898 by Rev. A. J. Huguelet, who had just been ordained at McMinnville. A revival in March, in which the pastor was assisted by Rev. R. W. King, of McMinnville, resulted in 32 additions and restorations; three hard drinkers were among the converts. Miss [illegible]

[illegible] church. On June 2, 1897, Brother Alfred Huguelet was ordained, and called to the pastorate at Ashland. In May, 1899, Brother Huguelet resigned to go to California, and was succeeded by Rev. A. M.

Morgan Hill—Rev. A. J. Huguelet, Mrs. A. J. Huguelet, Mrs. G. McMullen.

Rev. A. B. Banks presided at the meeting of the Educational Society. The topic for discussion was "Educated and Consecrated Laymen." There were four ten-minute addresses, two on "Our Need of a Larger Number," R. H. E. Espey of Oakland and Rev. A. J. Huguelet of Morgan Hill speaking on the subject, and two on "How to Secure Them," by Professor H. T. Wallace of California Baptist College, Oakland, and Rev. J. H. Heisley of Ceres.

We have helped during the past year the church at Morgan Hill. Rev. Walter Ross was aided at the rate of $100 a year, the church raising at the rate of $300 a year. Brother Ross closed his work May 1, 1899, and was succeeded by Rev. A. J. Huguelet. The aid has been increased to $150 a year on condition that the church raise $350. The parsonage has been sold and the discouraging debt upon the church property has been cleared off. There are a good many young members here, and, with reasonably good crops, in a year or two this field should be able to relieve the Convention to some extent, if not altogether, of the necessity of giving aid.

The North Carolinian.

Wednesday, February 10, 1897,

Sarah Jane Shartzer, who went to Oregon by ox team in 1847, recently died at McMinnville at the age of eighty-five. She was married twice, her first husband having been E. M. Adams, of Frankfort, N. J., her native place.

Since her death deceased had lived alone, without a relative to soothe or care for his ills and pains in his declining years.

He had an erratic disposition; strong will power, inclined to drive, instead of using the more conciliatory art of reasoning.

SANTA CLARA COUNTY PIONEERS.

1—Coleman Younger
2—John Trimble
3—Alex. P. Murgotten
4—Isaac Branham
5—S. O. Houghton
6—J. J Owen
7—T. W. Spring
8—John Stock
9—Edward Younger
10—Wm. A. January
11—Sam'l A. Bishop
12—C. W. Pomeroy
13—Wm. Erkson
14—M. Schallenberger
15—J. A. Moultrie
16—D. C. Bailey
17—Jas. T. Murphy
18—Martin Murphy
19—B D. Murphy
20—N. R Harris
21—Jas. A. Clayton
22—Adolph Pfister
23—T. Ellard Beans
24—David Belden
25—C T. Ryland
26—W. H. Patton
27—H. Messing
28—J. H. Adams
29—J. W. Marshall
30—Gen. J. A. Sutter
31—H. P. Reed
32—Martin Corcoran
33—R. B. Buckner
34—C J. Martin
35—Jos. E. Brown
36—L. Lion
37—Abram King
38—D. M. Delmas
39—Patrick Tallon
40—Gus Nelson
41—Wm. Quinn
42—Geo. E. Thomas
43—A. S. Williams
44—J. C. Morris
45—Benj. Cory
46—John Morse
47—C. Finley
48—Jas. W. Rastin
49—S. Radcliffe
50—C. S Crydenwise
51—M. Stern
52—John Balbach
53—Chas. Lefranc
54—J. W Kottinger
55—J. R. Arques
56—D. A. Leddy
57—Wm. Tennant
58—L. Krumb
59—A. Schoenheit
60—Wm. Sexton
61—Peter Etchebarne
62—F. M. Pfister
63—Jas. Leddy
64—S. P. Stockton
65—Jno. S. Selby
66—C. W. Young
67—W. M. Lubbock
68—John B. Hewson
69—Isaac Dixon
70—Levi Goodrich
71—J. O McKee
72—Calvin Martin
73—Edward Ford
74—E J. Delaney
75 Stephen Holmes
76—Geo. Holmes
77—J. R. Weller
78—E. J. Wilcox
79—Chas Otter
80—Jacob Rich
81—Freeman B. Smith
82—Robt Caldwell
83—J. H. Cornthwaite
84—Geo. E. Buckman
85—James Ford
86—Francis D. Clark
87—David Wight
88—W. W. Clendennin
89—Ant. Matty
90—Harry J. Bee
91—Jno. S. Carter
92—Sterling Ashworth
93—Jos. Waterman
94—Robt. Page
95—C. L. W. Sikes
96—Wm. Page
97—Wm. B. Shoemaker
98—Jos. E. Rucker
99—Jos. T. Middleton
100—Henry Lux
101—S. I. Jamison
102 E S. Smith
103—J E. Knoche
104—John Kar
105—W. B. Rogers
106—James R. Lowe

foreigners came to this valley. Overland travel to California did not commence until the forties. The

ELI HUGH EVANS, son of Hugh and Jerusha (Cone) Evans, was born in Oneida County, New York, June 5, 1824. His father was a native of New Hampshire and his mother of New York. They both died in New York. Of fourteen children they reared twelve, the subject of this sketch being the youngest of the family. At the age of twenty he went to Wisconsin, where he worked in different parts of the State for four years. In 1849 he came to California, making the trip overland with ox teams. When the party was organized at the Missouri River, it numbered eighty-one persons, under Captain Haraszthy. Mr. Evans acted as cook for the mess to which he belonged. It took them eleven months to make the trip, by the southern route. The party went into camp twenty-five miles south of Santa Fe, in New Mexico, where it remained six weeks recruiting the cattle. The party reached San Diego on Christmas-day. Mr. Evans remained there about three weeks, when he took passage on a sailing vessel and reached San Francisco in February, 1850. The next month he went to the Yuba River mines and began mining, remaining there four months, when he returned to San Francisco and went into the Redwoods, back of Redwood City. There he engaged in hauling logs. After going to the mines again and to the Redwoods back of Oakland, in 1853 he came to San Jose, where he remained four years running a grist-mill. In 1857, with some others, he organized a stock company and took a contract for making a part of the Santa Cruz Turnpike toll-road. In 1858 he bought his present place, of eighty acres, where he has since resided.

JOHN SNYDER was born in Harrison County, Indiana, February 11, 1828. His father, Joseph K. Snyder, was a native of Philadelphia, where John Snyder remained with his parents until he was twenty-one years old. In the spring of 1849 he made the trip to California, coming overland, there being two wagons in the party when they started. At the Missouri River they were joined by others, but while traveling over the country some of the party were slow in their movements, while the two wagons belonging to Mr. Snyder's party, together with another one making faster time, soon outstripped the others, and stayed together during the remainder of the journey. With the party was Mr. Snyder's

DAVID UMBARGER, residing on the Monterey road, south of San Jose, has the honor of being one of the "Forty-niners" of California. He is a native of Wythe County, West Virginia, born in October, 1815, his parents being Leonard and Margaret (Cooper) Umbarger, both of them residents of Virginia. David was reared in his native county, and resided there until 1838, when he went to Clark County, Illinois. In 1846 he removed to Kentucky. On the second day of April, 1849, he set out for California, and at West Liberty, Missouri, he became one of a party bound for the golden coast. Their journey was a long one, the route adopted taking them by way of San Diego, from which point they went by water to San Francisco, sailing through the Golden Gate on the eleventh of January, 1850. He at once went into the mines of Mariposa County, and afterward to a camp on Curtis Creek, near Sonora. He spent the winter in San Francisco, and in the spring resumed mining at Auburn. From there he went to Nevada, and thence to the Yubas, and on Feather River. In 1853 he came to Santa Clara County, locating where he now resides, he having bought land at this place in 1851. He has made every vestige of improvement to be seen here, and has been an eye-witness to the great transformation which has since occurred in this valley. His ranch is an attractive place of 138 acres, devoted to grain and pasture. It is productive land, and is well kept up.

Mr. Umbarger is a member of the Christian Church, and is a Democrat in politics.

Hiram Shartzer & the Women & Men of all cultures, the first of many generations of commingling and contributing members of Santa Clara, sketched, illustrated, and pictured by both pen and lens, these digitized historical documents need a permanent home.

Some of the only frontier left is online. The city of Santa Clara needs it's own Public Historical Digital Archive .

The house on the property would be a nice home for one. People donate bricks all the time, why not for bricks of data to record the history of their families and others.

LOS ANGELES SUNDAY HERALD

SUNDAY MORNING, JANUARY 3, 1909.

Dr. A. T. Still,
FOUNDER OF OSTEOPATHY

One of the busiest women in the city and one of the best known in the profession at large is Dr. Nettie Olds-Haight, osteopathic specialist in women's and children's diseases. Dr. Haight came to Los Angeles two years ago and immediately began a campaign of education along osteopathic lines, giving during the winter two courses of ten lectures each to women and girls. She has also given several public addresses upon invitation from progressive societies in this city and in neighboring towns.

Dr. Haight graduated from the American School of Osteopathy, Kirksville, Mo., under the founder and discoverer of the science, Dr. Andrew

EXPOSITION WEDDING PROVES NOVEL EVENT

This piece of decoration was of the bridegroom's own workmanship.

Despite the severe injuries sustained in a recent automobile accident, Mayor Harper appeared in time to escort the bride to the altar and give her away.

The path to the altar was formed by members of the bridegroom's musical organizations, lined on either side. The officiating clergyman, Rev. Edwin J. Inwood, escorted by Manager T. Newman, led the procession, followed by the groom, accompanied by his brother, Carl F. Horn, as best man. Little Claire Smith, flower girl, accompanied by the prettiest boy baby in Los Angeles (prize winner of diamond ring), Howard D. Morris, as ring bearer, carrying a calla lily bearing the ring, followed by Dr. Nettie Olds-Haight, matron of honor, after whom followed Miss Lora G. Booth of Portland, Ore., bridesmaid, accompanied by Dr. George W. Zimmerman of Pittsburg, Pa., as groomsman. Then came the bride, accompanied by Mayor Harper.

After receiving congratulations and best wishes from the immense throng of friends and relatives the happy couple departed amid cheers and good wishes and a shower of rice for a brief honeymoon trip.

The dresses worn by the bride [illegible]

McMINNVILLE COLLEGE

Annual Catalogue,

McMINNVILLE,

1339-40.

OREGON.

NAMES OF STUDENTS.

NAME	RESIDENCE	DEPARTMENT
Florence Alexander	Independence	Academic
Nettie Olds	McMinnville	"
John Loder	Carlton	"
George N. Maddock	Heppner	Collegiate

BRIEF NOTES.

Everybody is praying for clear weather and more sunshine. Colds and bronchial ailments are quite prevalent.

The duck shooters are at last beginning to have some sport. The wild fowl is said to be quite plentiful these days.

At Pioneer Hall, on Thursday evening, Nettie Olds-Haight of Oregon will deliver a free lecture on "The Need of a Practical Religion." Before the lecture a musical program will be rendered.

SANTA CRUZ DAILY SENTINEL

FRIDAY MORNING, AUGUST 4, 1899.

At the Baptist Convention at Twin Lakes the report on Foreign Missions was given by Rev. C. H. Hobart of Oakland. The receipts of the American Baptist Missionary Union since its organization amounted to $15,506,854.-39; the average amount per year, $460,000; the largest amount any single year in 1898, $782,414.17; the amount contributed per member throughout the country 28 cents; in California 38 cents. In China the work has advanced 20 per cent and in Africa the work the past year was the best in the history of the mission. For every twenty dollars spent for self support the home churches gave one dollar to foreign missions.

On Thursday evening there were addresses by Rev. A. P. Brown and Rev. S. G. Adams.

The program for today is as follows: 9:30 A. M.—Convention business; election of officers; Educational Society, Rev. A. D. Banks presiding.

11:00—"Educated and Consecrated Laymen": four ten-minute addresses, 1—"Our Need of a Larger Number," Rev. A. J. Huguelet, R. H. E. Espey; 2—"How to Secure Them," Prof. J. T. Wallace, Rev. J. H. Heisley; five-minute speeches.

2:30 P. M.—Historical Society, Rev.

SARATOGA TOLL ROAD

The Saratoga and Pescadero Turnpike and Wagonroad Company was organized on May 12, 1863 to build a wagon road between the two respective points. On June 7, 1871 the Company completed a branch of the road that paralleled the San Lorenzo River from the Ferguson Ranch near Boulder Creek to Saratoga Gap (the present location of the junction of State Highways 9 and 35). Until the opening of the South Pacific Coast Railroad in 1880 the road was a main artery from Santa Cruz to the Santa Clara Valley. Commerce included fruit, lumber and wine. With the opening of the railroad the road's use diminished, and on April 8, 1890, the road from Saratoga Gap to Santa Cruz was deeded to the County of Santa Cruz. In 1915 the State of California purchased the necessary right-of-way for a road to the new California Redwood Park (now Big Basin Redwoods State Park) from Saratoga Gap. Later, in the 1930's, a link was built from the new State road near Waterman Gap, the present junction of State Highways 9 and 236) to the Saratoga Toll Road thus eliminating the need for the Saratoga Toll Road down the upper and of the San Lorenzo Valley. On March 14, 1964, the County of Santa Cruz leased the unused portion of the old Saratoga Toll Road to the State of California for use as a riding and hiking trail. After the lease expired in 2004, the County of Santa Cruz transferred all interests in the old Toll Road to the State and today it remains a trail open to the public for pedestrian and equestrian use.

To assure everyone's enjoyment of the Saratoga Toll Road please remember that motor vehicles, firearms, dogs, smoking, bicycles and fires are not permitted. Camping is only permitted in designated areas. Campsites at the Waterman Gap Trail Camp are subject to reservation; but the Castle Rock Trail Camp is open on a first-come, first-served basis. For further information please call the park at (408) 867-2952, and to make a reservation for the Waterman Gap Trail Camp please call (831) 338-8861. Fees may be paid at the Castle Rock main parking lot or Big Basin headquarters. Rangers will check to see if fees have been paid. Vehicles may only be left overnight at the Castle Rock State Park main parking lot or Big Basin headquarters.

Except for registered campers in their designated campsites Castle Rock State Park is only open for day use from 8 a.m. to sunset.

REMEMBER: Take nothing but pictures and leave nothing but footprints.

MARCH 13, 1910.

OSTEOPATHY—A STEP FORWARD IN THE HEALING ART

BY NETTIE OLDS-HAIGHT, D. O.

Periodically in the world's history the minds of the masses of the people have been swept by a tremendous THOUGHT wave. During these mental uprisings great things have come to pass—kings have been dethroned, revolutions have occurred, empires have fallen, ancient customs have been overthrown, prejudice and bigotry have, for the time, lost their sway, and the earth has been bathed in the light of progress and human understanding.

Thirty-seven years ago a lone spirit, wandering along the shores of the great sea of human thought, cast a pebble into its depths. That pebble was a question: "Has nature's God an abundance of skill to do good work in her own work shops?" As the thought waves expanded into larger and larger circles, there evolved from the force of this original pebble a mighty wave of philosophy, embodying a new and masterful concept of the SELF-SUFFICIENCY of the human

LOS ANGELES HERALD SUNDAY MAGAZINE

PERSONAL

Nettie Olds-Haight, who is called Oregon's brilliant woman orator, will lecture this evening at Turnverein hall on "The Need of a Practical Religion." Vocal and instrumental music and several dramatic recitations will be given during the evening. The admission is free.

LOS ANGELES HERALD: WEDNESDAY MORNING.

DECEMBER 13, 1899

THE LADY ORATOR OF OREGON

Preaches the Gospel of Humanitarianism—Practical Counsel

The need of a practical religion that will bring its meed of comfort to those whose hearts are hardened by the trials and the poverty existing under the present social conditions, was ably demonstrated last night at Turner hall to an enthusiastic and interested audience. The apostle who preached this new doctrine of regeneration was a woman, and to the convincing manner of a special pleader she added the force of a logic that, while it may have gone out of the bounds of scientific rules, yet had the strength given by close connection with a subject in which all people are interested and particularly the poor, who need the comforts of a religion the most.

This special pleader who pointed the finger of condemnation at modern religions was Nettie Olds-Haight, who is called the "Lady Orator of Oregon." For the past three years she has been the "pastor" of the First Secular church of McMinnville, Oregon, 50 miles from Portland, and she is abroad spreading the light of humanitarianism.

The speaker began by referring to the environments that mould the human mind and direct it along certain lines. Back in the gray dawn of history men's natures were warped by the ignorance and brutality of savagery. They were ruled by kings and chiefs of physical superiority, whose influence was forever dominant. As they ruled their soldiers by superior force and practically directed their every action in war ,they came to exercise the same authority in peace. From being a slave in battle these semi-savages lost none of their obedience in peace and from following their leaders in war they followed them in peace. It was thus that men came to take their opinions from their leaders as they had taken their commands. Following out this idea, we come to the great truth of the world that the disease that has destroyed every nation in the world is embodied in the fact that the great spirit of responsibility and authority rests in a superior being instead of in the people themselves. On this rock has been wrecked the happiness of the world. For this reason the skies of the world have been darkened for hundreds of years by murders and countless nameless crimes committed in perpetuation of the idea that one must think for another. This was the foundation of all religious wars that have reddened the earth with human blood.

The speaker then treated of the encroachment of religion upon the domain of civil rights and the attempted union of church and state. The doctrine had already invaded the public schools, chaplains were already in our schools, navies and armies, and constant efforts were made to pass Sunday laws. What we want is a practical religion and not a network of theories and visions; something that will do us good and make us better. Now we pay $70,000,000 to preachers every year to tell us what will become of us after we are dead and don't care. More good could be accomplished with one-third of the amount spent in teaching us how to be good. This is the doctrine of humanitarianism—a religion the best to live by and the best to die by. This is the kind the world wants. If a man is bad all the gods in creation can't make a good angel out of him. Teach that kind of a man that if there is a higher future life he must so live here as to be worthy of it. Thomas Paine said: "The world is my country, to do good my religion." Teach your children the laws of health, teach them how to live; that if they commit crimes they must suffer for them and also that their happiness in any future life depends on what good they do in their present life. That is the religion of humanitarianism.

We expect soon to have this new religion in Los Angeles. By it we will instruct the children to love each other, the women not to be jealous of their sisters' clothes, not to backbite each other, not to sneer at each other; and the men that it is better to help a man in business than to cheat him. This is a practical religion that there is a great need of. This is the religion we need to make the world worth living in and the only one that will lift it up out of the mist of petty hatreds and make all men happy. It is the only way to civilize the human race. Don't preach the doctrine of love one another, but go and practice it.

Miss Olds-Haight is a bright, forceful, rapid, magnetic speaker, and holds the attention of her audience to the end. In addition to being a most entertaining speaker, Miss Haight favored the audience with several violin solos, recitations and songs, and in every way delighted her hearers.

The Holt County Sentinel.

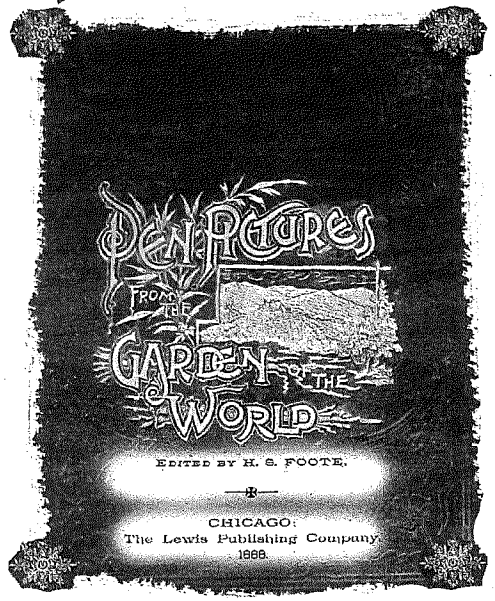
40TH YEAR. OREGON, MISSOURI, FRIDAY, APRIL 15, 1904. NUMBER 16.

[illegible] deceased, that the heirs of Thomas Smither are named as grantees in a quit claim deed from one Hiram Shartzer, dated January 17th, 1876, of record in Book 31, at page 230 of the real estate records of Holt County, Missouri, conveying to them Lot One [1] of the North East Quarter of Section Thirty-five [35] in Township Sixty-one [61] of Range Thirty-seven [37]; that in the said deed, the grantees are named as above stated. The heirs

At the residence of Mr. Huguelet in McMinnville, May 4, 1899, Hiram Shartzer, died. His funeral was held at the Secular church; ceremonies conducted by Nettie Olds-Haight; not a relative to follow him to his last resting place.

others.

Absent sources, ignorance is victorious:



The Yolt County Sentinel.
LOS ANGELES HERALD
Santa Cruz Sentinel.
Los Angeles Herald.
THE MOUNTAIN DEMOCRAT.
SACRAMENTO DAILY UNION.
The North Carolinian.
PACIFIC RURAL PRESS.
Daily Alta
The California Farmer.
THE GRIZZLY BEAR
SANTA CRUZ NEWS
HARPER'S WEEKLY.

by
Henry Louis Walsh
University of Santa Clara

The PRUNE
A Justification for its Existence

"CROWNED favorite at feast of kings
Or millionaire's saloon,
No Epicure but proudly sings:
'Long Live the Festive Prune!'

SEAL OF THE
EUREKA

I have not been chary of either my admiration or enthusiasm regarding the marvels of the Valley and San Jose, nature's exuberance, the delicious climate, the charitable institutions that cover this portion of the Golden West with glory I have been perfectly sincere and have stinted my praise in no manner, and it seems to me that as long as I have been so truthful in matters concerning the beautiful, I am forced to adhere as faithfully to the real facts in all pertaining to the opposite. And it is this very contrast that tends to give the veracity its incontestible value.

Though the private life of an individual does not appertain to the public, the biography of the masses is a part of the history of a country, and though the historian should be as accurate as possible in recording the results of his inquiries, while giving vent to his information, he should never overstep the bounds that are forbidden by the laws of morality.

A. MARS.

An Arboreal Song.

Gone are the fathers all!
In the chapel's crypt they lie,
Where no tender rain may fall,
Or gleam from our sunny sky.
No sculptured marble doth show
Each old historic name;
No blazoned window doth glow
With the record of their fame,

But their living monument stands to-day
In The Alameda—The Beautiful Way!

THE ALAMEDA

#9/20

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Assembled by:
ROB AVINA
savetheorchard.tumblr.com

thanks to:

SANTA CLARA.

The early history of San Jose and Santa Clara run in parallel lines. The connection between the two places has been so intimate, and they are so closely joined by location, that they will before many years become one city. Tradition has it that William Clark was the first American to locate in Santa Clara.

This is the man who first reduced the ore from the New Almaden mines. In 1846 there came the Harlands, Van Gorden, Samuel Young, Tabor, Allen, Jones, Dickinson, and Bennett. In 1848 we find J. Alex. Forbes, Jonathan and Charles Parr, William Booth, Fielding Lard, Riley Moutry, Cobeb Rand, George W. Bellamy, Dr. H. H. Warburton, — Bazard, William McCutchen, William Haun, Washington Moody, John Whisman, William Campbell, Thomas Hudson, James Linns, Anson Angel and others.

There were two stores, one kept by Robert Scott, where the cracker factory is now located, and one by a Frenchman at the corner of Franklin and Alviso Streets. The only hotel was the Bellamy House.

The first frame building was built as a residence for Father Real, the priest in charge of the mission at the southwest corner of Santa Clara and Alviso Streets. The lumber was sawed with a whipsaw by Fielding Lard, in the Pulgas Redwoods. Immediately aferwards, buildings were erected by Lard, Scott & Haun. In 1850 a building was erected on Liberty Street, to be used as a school-house. It was built by subscription and was long known as the "little brick school-house." It was used as a place of worship by all denominations. In 1853 the first church was built by the Methodists. In the same year the female seminary was erected to the west of Main Street between Liberty and Lexington. In 1850 Peleg Rush imported twenty-three houses from Boston and set them up in the town. The Union Hotel was built in 1850, and conducted by Appleton & Ainslee. In 1851 the Santa Clara College was established, and this institution is now the prominent feature of the town.

In 1850 the town site was surveyed by William Campbell into lots a hundred yards square, and one lot given to each citizen, with the understanding that he was to build a house on it within three months: failing to do so, the lot could be taken by another. There was no town government until 1852, when the following officers were chosen trustees: F. Lard, S. S. Johnson, A. D. Hight, F. Cooper, Riley Moutry; Clerk, C. W. Adams; Assessor, A. Madan; Marshal, William Fosgate. In 1862 a regular charter was obtained in accordance with the State laws, and the following gentlemen chosen as trustees: J. R. Johnson, A. B. Caldwell, R. K. Ham, J. L. Guernsey, Henry Uhrbroock. This charter was amended in 1866, and again in 1872. The town, as at present laid out, is two miles long and a mile and a half wide: it is handsomely laid out and beautifully ornamented with shrubbery, flowers, and rare plants. It is a quiet place as becomes a seat of learning, and is much sought after as a place of residence. Its easy communication with San Jose and San Francisco, and the social nature of its intelligent people, render it especially desirable for this purpose. It is well equipped with all the necessities and conveniences of a modern town, having a gas and water company, many churches, excellent schools, besides the colleges, a bank, and, in fact, everything to be desired in the neighborhood of a home. The newspaper of the town, the Santa Clara *Journal*, is a dignified journal, ably edited and conducted. It is entirely devoted to the interests of the community, and deserves the warm support that it receives from the people.

Nearly all the secret societies and beneficial organizations have full lodges, while musical and literary societies find here a natural home. The town is surrounded by fruitful orchards and vineyards, and it is one of the first places to which the San Josean conducts the Eastern tourist who desires to see the country west. It is the historic spot of this county.

FRATERNAL AND BENEFICIAL ASSOCIATIONS.

California is renowned for the rapid and substantial growth of the many social, fraternal, and beneficial organizations which have sprung up within its borders during the past thirty-five years. In numerical strength, wealth, and influence the Order of American Odd Fellowship, with its three hundred and fifteen lodges, embracing a membership of over twenty-five thousand, scattered throughout the length and breadth of the State, is entitled, perhaps, to rank first among the associations of this character on the Pacific Coast. The Order of Free and Accepted Masons, with its two hundred and thirty lodges, and a membership of over fifteen thousand, the Ancient Order of United Workmen, with a membership of nearly twenty thousand, the Chosen Friends, the Knights of Honor, the Knights of Pythias and the Red Men,

are only a very few of the many fraternal societies which have gained a firm and lasting foothold in the Golden State. It is not our purpose, however, to attempt a history of these institutions, nor of any particular one of them, but merely to make a brief review of the Order of Odd Fellowship in Santa Clara County, and more particularly of the two subordinate lodges of that order located in our own beautiful little city.

There are, at the present time, in our county, ten lodges of the Independent Order of Odd Fellows, with a membership of about one thousand—or, one Odd Fellow to every seven and a half voters. In point of lodges there are seven counties in the State having a greater number than Santa Clara County, while in point of membership our county ranks fifth.

The town of Santa Clara, and the country adjacent thereto, has indeed proved to be a prolific field for this popular organization. Here are at present established two subordinate lodges, with a combined membership of nearly two hundred and fifty; an Encampment of Patriarchs, numbering over one hundred members; a Rebekah Lodge, with a membership of one hundred and ten, and a Canton of Patriarchs Militant, well equipped, well drilled, and a most potent auxiliary to the older branches of the order. Santa Clara Lodge, No. 52, ranks among the pioneer lodges of the State in the work of the Independent Order of Odd Fellows of California. It was instituted on the eighteenth day of January, 1856, with eight charter members, whose names appear upon the charter in the following order: James H. Morgan, Z. L. Garwood, E. Smith, Hiram Hamilton, Jno. West, M. C. Baker, James Barr, and William Cameron. Of labored faithfully and well for the lodge's interests during its early history we note the names of A. Madan, J. M. Billings, N. Cook, M. W. Whittle, D. W. Herrington, John H. Dibble, and A. J. Landrum. To the sagacity and good judgment of these devoted adherents the lodge owes much of its prosperity and standing. Of the brothers last named, A. Madan has "passed out through the valley of the shadow of death," leaving behind him a name honored and beloved by all. Brothers Billings, Cook, Herrington, Dibble, and Landrum are still regular attendants at their lodge meetings, directing its movements and assisting with their counsels. The membership at the present time is one hundred and thirty; the average age of the members is forty-four years; number of past grands, forty-two, among whom are seven past district deputy grand masters, and one—Nathaniel Cook—has attained the rank of past grand master of the jurisdiction of California.

True Fellowship Lodge, No. 238, I. O. O. F., is a worthy scion of Santa Clara Lodge, No. 52, and for good work and good management ranks high among the lodges in the jurisdiction of California. This lodge was instituted by Grand Master D. D. Welty, on the tenth day of November, 1875, with fourteen charter members. The names, as they appear in the charter, are: E. V. Thorne, M. Beck, J. H. Howard, E. R. Dille, Jacob Eberhard, C. W. Vandegrift, G. A. Elliot, J. H. Dinegan, I. Hyman, B. F. Fish, A. V. Fatjo, J. W. Canfield, W. W. Smead, and J. Cherry.

Eight of the charter members held withdrawal cards from Santa Clara Lodge, five held cards from various Eastern lodges, and one signed the petition for a charter as an ancient Odd Fellow. Two of the charter members have died; three have been suspended for non-payment of dues; one has withdrawn from the order and eight still retain their membership in the lodge. The number of members at the present time is about one hundred, twenty-four of whom are past grands, and three of these are past district deputy grand masters. The average age of the membership is thirty-seven years.

Numerical strength is not the only evidence of prosperity, to which the young lodge may justly lay claim, for it has been equally successful in its financial affairs. During the thirteen years of its existence, the lodge has provided amply for its own wants; it has taken excellent care of its sick and disabled brethren, and it has scattered its charities with a generous hand, besides accumulating funds and property more than sufficient to guarantee against possible financial embarrassment, present or future.

The advent of True Fellowship Lodge, No. 238, gave an impetus to Odd Fellowship in Santa Clara never before experienced. A good-natured rivalry between the two lodges was inaugurated, which resulted in the enrollment, under the banner of the "Triple Links," and in the furtherance of the principles of Friendship, Love, and Truth, many of our most honored and respected citizens.

SKETCH OF METHODISM.

Methodism in California was first planted in Santa Clara, unless a class organized by Rev. W. Robertson in San Francisco is entitled to an earlier date.

In early November of 1846, William Campbell, a member of the Methodist Episcopal Church, from Saline County, Missouri, arrived at Santa Clara, then a military post under command of Captain Maddux, of the U. S. Marine. On the first Sabbath in November, Adney A. Heacox, a local preacher, just arrived from Galena, Illinois, preached in an adobe building fifty feet west of the present Catholic Church, used at the time by Mr. Campbell as a temporary residence, by permission of an Irish Catholic named Norris. Mr. Heacock continued to preach until February, 1847, when he removed to Santa Cruz. William Campbell

HISTORY

held prayer-meetings, assisted every two weeks by an exhorter from Benicia named Jones, who continued services through the spring and summer of 1847.

Later, in 1849, William Taylor (now Bishop Taylor) visited the valley and preached in the house of Wallace Finley, on the land of William Campbell, south of Santa Clara. A little later Isaac Owen visited the valley, and he and Taylor greatly encouraged the work.

In 1851 Charles Maclay came out from the Baltimore Conference, was appointed pastor of the charge, and in 1852 erected the first Methodist Episcopal Church in Santa Clara. It was built of adobe, and stood near the place now occupied by the large brick house of worship. Dr. William Morrow had previously been pastor, but resigned on the arrival of Maclay. The first quarterly conference was held September 8, 1851.

Rev. William Hulbert succeeded Maclay, and he in turn was succeeded by N. P. Heath, in 1854, Adam Bland being presiding elder. Rev. J. Daniels succeeded Heath in 1856, A. S. Gibbons, president of the University of the Pacific, at that time located in Santa Clara, being superintendent of the Sabbath-school.

In 1857–58 R. B. Stratton was preacher in charge, and M. C. Briggs presiding elder. In 1858–59, W. S. Urmy was pastor. This was a prosperous pastoral term.

In 1859–60 C. V. Anthony was pastor, followed by J. B. Hill in 1860–61. In 1861–62, M. C. Briggs was pastor. The faithful labors of Mr. Hill had prepared the way, the large basement of the new church was ready for use, and a very gracious and important revival added a large number to the membership, among them two of the present members of the California Conference.

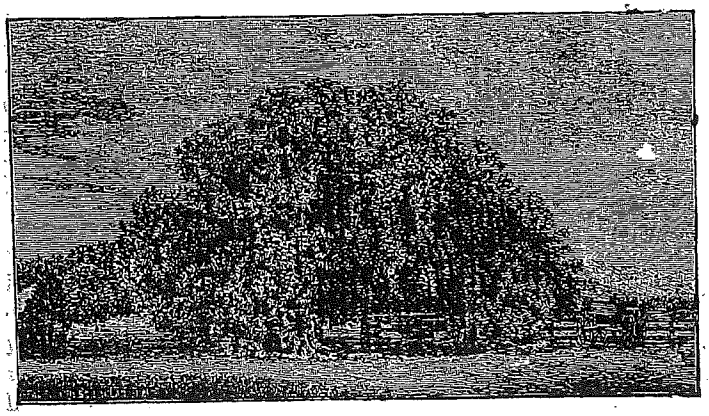
In 1863–64 J. T. Peck, afterwards bishop, was in charge. In 1864–65 T. H. Sinex was pastor, and I. Owen, P. E. During Dr. Sinex' term the present church was completed, and named the Centenary Methodist Episcopal Church. In October of 1868 a severe earthquake shook the pinnacles from the church and damaged the walls.

In 1867–68 J. A. Bruner was preacher in charge, and remained a full pastoral term of three years.

In 1870–72 J. H. Wythe was pastor. He was succeeded by Q. J. Collin, who remained until 1876, when E. R. Dille came into the pulpit for a three-years term. At the conference of 1878–79, Wesley Dennett was appointed to the charge, and remained three years, when George Clifford took the pastorate for a similar term.

In September, 1887, M. C. Briggs, the present incumbent, was appointed to the place. The length of his term must be "relegated" to the arbitrament of the future.

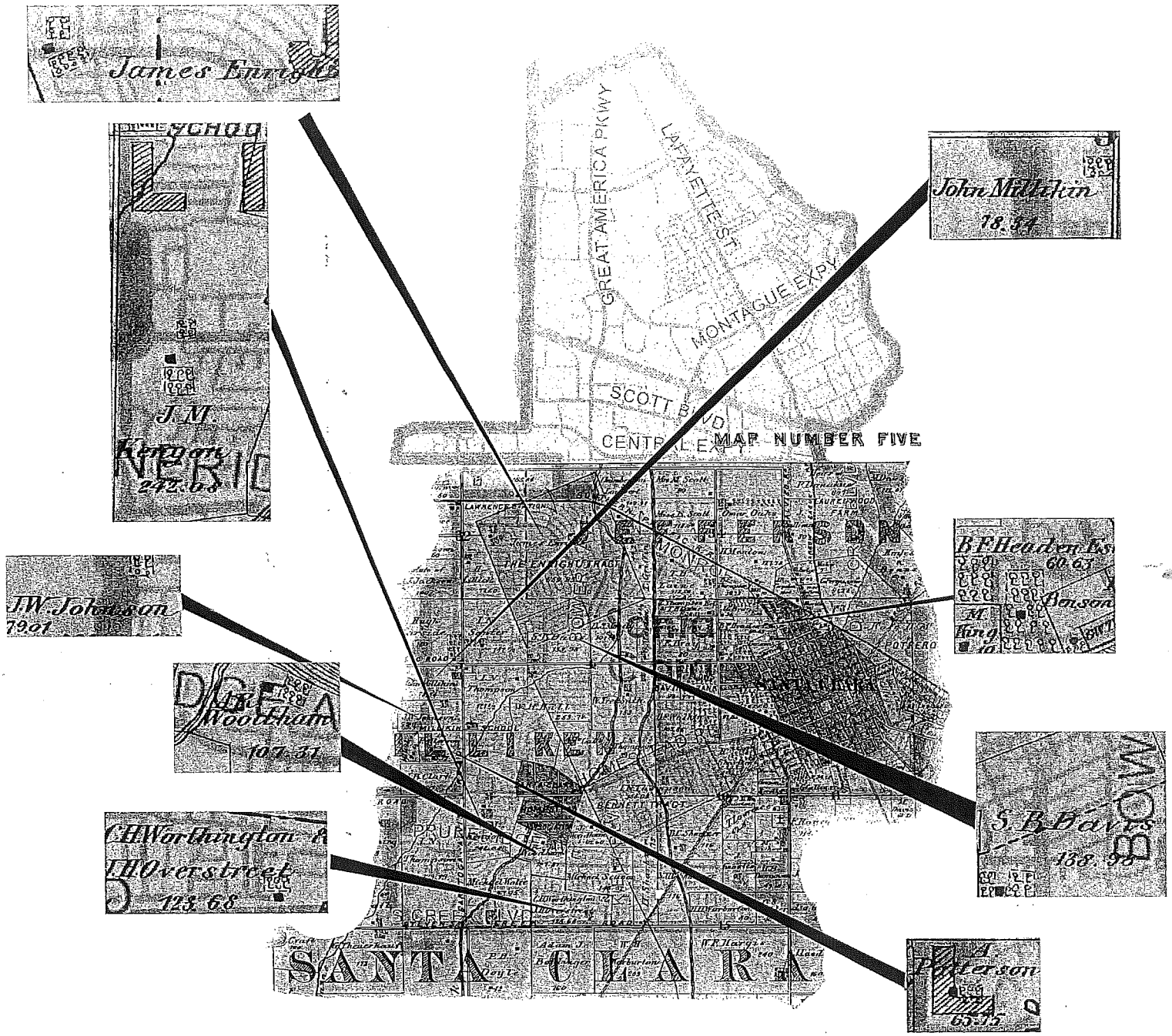
From this sketch it would appear that Santa Clara is the oldest university town in the State, and the Santa Clara Church is the pioneer, the mother, grandmother, and great-grandmother of all the churches. Yet her eye is not dimmed nor her natural force abated.



Attachment 12

BIOGRAPHICAL SKETCHES

of pioneer Orchardists from around modern day Santa Clara



AS IT IS NOW.

JAMES ENRIGHT was born in Limerick County, Ireland, in 1826. His parents, James and Mary (Mann) Enright, emigrated to Canada in 1830, and purchased and conducted quite an extensive farm near Quebec. There they resided until the son was fourteen years of age, removing in 1840 to Atchison County, Missouri, where they continued the occupation of farming. Thus Mr. Enright was thoroughly trained in youth to the business which he has made his life-work. In Missouri his parents spent the remainder of their lives, both dying in 1845. The home was thus broken up, and in the following year Mr. Enright, accompanied by his brother Thomas and his sister Mary, crossed the plains to California. He reached the end of his journey in the Sacramento Valley, October 3, 1846, and went to the old Mission of San Jose. There he spent a few months, not in idleness, for, after manufacturing his plows himself, he seeded about thirty acres with wheat, which he eventually sold to James Reed. He also seeded and sold to Samuel Brannan thirty acres. These lands belonged to the mission, but Mr. Enright obtained permission to cultivate them.

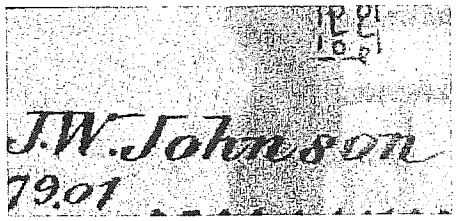
In the spring of 1847, he left the mission for San Francisco, where he engaged in teaming, taking government transportation contracts. He transferred the stores and baggage of the famous Stevenson Regiment from the landing to the Presidio of San Francisco. He sustained a severe loss in the death of both the brother and sister who came to this State with him, his sister Mary (who had married Patrick Doyle, of San Francisco) dying at the Mission of San Juan in 1848, while his brother Thomas, who was an invalid, followed her two years later, his death occurring at the Mission of San Jose. His sister Bridget, who came to California at a later date, and who married Patrick Farrell, of Mitchell County, Canada, is now a resident of San Jose.

In 1847 the subject of our sketch purchased the lands which he now occupies, a magnificent farm of 600 acres, situated on the Saratoga and Alviso road, at Lawrence Station, about three miles west of Santa Clara. Eight acres is in fruit-trees of different varieties, and fourteen acres in a vineyard, which furnishes a choice selection of table and wine grapes. But by far the larger part of this vast estate is given to the production of grain and hay, for which the results show the soil is well fitted. Mr. Enright also engages quite extensively in the raising of stock, principally work horses. He built a house on the land in the year that he made the purchase, it being the first one built on the farming lands of the county. In the year following his purchase (1848) he went to the mines on the American River, near the present site of Folsom, being among the very first who engaged in mining in the State. He was quite successful in this venture and spent four or five months there. During the disturbed state of the country during these exciting times, he was compelled to use the greatest care, and he slept with a loaded rifle by his bed for months. Such volunteer forces as were in this county were of the most reckless character, disregarding all show of courtesy or fair dealing.

In 1850 Mr. Enright took up a permanent residence on his property, thus becoming one of the pioneer farmers of the county, as he had been a pioneer of the State and of mining; for it must be remembered that his coming to the State antedated the discovery of gold, and even the acquisition of the country by the United States Government. He has carried to a successful issue all his business undertakings, and has achieved a goodly amount of this world's goods. Without the advantage of education, he has supplied the lack by native shrewdness and thorough understanding of his business. He is well known throughout the county as one of its most successful and enterprising pioneer farmers.

Mr. Enright was united in marriage, in 1850, to Miss Margaret Duncan, the daughter of Robert and Ann Duncan, natives of Scotland, but residents of San Francisco. They came to this State in 1846, by way of Cape Horn. From this marriage eleven children were born, nine being now living. Mary Ann, the wife of John G. Robertson, lives at Santa Cruz; Frances is the wife of Dr. James Murphy, of San Francisco; Charles is a physician in San Francisco; James E., Margaret, Joseph D., John B., Nellie, and Louisa G. make their home with their parents. Robert D. died in 1881, at the age of twenty-five years.

Attachment 12



JAMES WILLIAM JOHNSON, residing on the Saratoga and Alviso road, in the Millikin District, is the owner of a farm of eighty acres, twelve acres of which is in vineyard, containing about an equal proportion of Mission and Charbano grapes. The remainder of the land is devoted to the raising of hay and grain, and such stock as is needed for farm operations.

The subject of this sketch was born in Washington County, Missouri, in 1828. He is the son of James Clarkson and Susannah Johnson, both natives of Virginia, and descendants of old families of that State. They removed to Missouri at an early date, and were among the pioneers of the county in which they resided. Mr. Johnson's early life was spent upon his father's farm, and was devoted to such tasks as usually fall to the lot of youths in his situation. For schooling he was dependent upon the primitive schools of that date and place. Whatever may have been the deficiencies of his early education, his energy and natural intelligence have enabled him successfully to overcome them, and have thus insured him the success in life and the accumulation of this world's goods that are acquired by those who start with the prestige that high educational advantages give. In 1849 he, accompanied by his father, started across the plains for California, and after months of slow and toiling travel with ox teams, undergoing the fatigue and hardships attendant upon this emigration, they arrived at their destination in September of that year, thus enrolling themselves among the pioneers of this great State. Immediately after their arrival, they located in what is now known as El Dorado County, and, with the gold fever commenced an active pursuit of the shining dust, in which occupation they were engaged, with varying success, until 1856, when J. W. Johnson ceased his mining operations and came to Santa Clara County. Here he purchased land, and took up his residence in the locality now occupied by him.

In 1858 Mr. Johnson was united in marriage with Miss Elizabeth England, daughter of John England, of Crawford County, Missouri. From this marriage five children have been born, whose names and ages at the present time (1888) are as follows: John Hunter, aged twenty-eight years, married Miss Lois Hartwick, of Santa Clara County; Mary Ann, twenty-five years of age, the wife of Charles E. Mallette, of British Columbia; Kitty Laura, twenty-two years of age; Joseph Beverly, twenty-one years of age; and Willie Rowe, sixteen years of age.

In 1863 his father left the mines and came and resided with him two years, and then went East. He died in 1874; his mother died two years later.

DR. BENJAMIN FRANKLIN HEADEN, the son of Joseph and Mary Headen, was born in Virginia, November 24, 1813. His parents moved to Kentucky, where most of his youth was passed, in Shelby County, that State. The village in which they lived, Headenville, was named in honor of his father, Joseph Headen, who was a man greatly respected for his integrity and piety. A chapel which he built in the village also bears the name of Headen Chapel. Deciding to educate himself for the medical profession, Dr. Headen took a course in the Worthington Medical College, Ohio, at which he was graduated with high honors, in May, 1837. He went to Indiana, opened an office, and commenced the practice of his profession the same year. In January of the following year he married, and continued his practice of medicine in Indiana until 1852, when he came with his family across the plains to California, arriving in the Santa Clara Valley in October. He bought a tract of sixty-one acres just outside the town of Santa Clara, and at once began to improve it, by erecting a house for his family. The rainy season came on, and the building materials being very scarce and hard to procure, many difficulties were experienced in accomplishing this task. This done, the Doctor next turned his attention to clearing off the land and preparing it for cultivation. It was in a state of nature, untouched by the hand of man, and covered with a forest of mustard so high that in hunting for his cattle the Doctor had to stand on the back of one ox to enable him to find the others! But despite the obstacles, the work of improving progressed. Flower seeds, many of which were carried across the plains in the Doctor's pockets, were planted, young trees were brought from the mountains in little sacks of earth and set out, and soon "the wilderness began to blossom as the rose," under the deft hand and good taste of Dr. Headen. The land was rapidly brought under cultivation, first to the cereals, then largely to strawberries and other small fruits, and later to orchard and vineyard, of the choicest varieties of fruits.

In March, 1853, Dr. Headen was elected one of the Trustees of the University of the Pacific, then a young and struggling institution. It soon became the idol of his heart, and he devoted much of his time and labor to it for about twenty years, in that official capacity. Many of these years he was Secretary of the Board, and during the time of the erection of the main college building he was Treasurer. From the time he settled in this valley, Dr. Headen was a faithful and consistent member of the Methodist Episcopal Church, of which he was Steward and Trustee. He passed from this life to the reward beyond, on the twenty-eighth of August, 1875, and his remains were buried according to the ceremonial of the Masonic Order, of which he was a member. He left the widow, a son, and three daughters, to mourn their sore bereavement. Since the Doctor's decease, Mrs. Headen has occupied the splendid homestead, one of the most beautiful in the valley, and now within the town limits, and has successfully managed the orchard and vineyard, realizing a fine income therefrom. More than one first prize has been won by the product of her trees and vines. The vineyard consists of the choicest varieties of table grapes—Muscats, Tokays, and others. Three years ago Mrs. Headen sold the crop of grapes on a little over six acres, on the vines, for $2,500. As high as ten tons to the acre have been produced; and from a single plum tree of the Washington variety she gathered one year nine hundred pounds of fruit!

Attachment 12

CHARLES H. WORTHINGTON, one of the pioneers of the State, resides on the Stevens Creek road, in the Doyle District, about five miles west of San Jose. He was born in the State of North Carolina, November 22, 1828. When he was twelve years of age his parents, Brooks and Hannah (Greene) Worthington, emigrated to the State of Missouri, and there made their home in Lafayette County. In that county the subject of this sketch spent his youthful years, engaged in labor on his father's farm, receiving his education in the schools of the county. Upon attaining his majority he determined to make his future home in the Golden State, and for this purpose left his home, April 25, 1850, and joined an overland train of emigrants, which reached Hangtown (now Placerville) July 16 of the same year. He first engaged in placer mining on the Middle Fork of the American River, but not long afterward spent a short time in Grass Valley, Nevada County.

About five months after his arrival in the State he could have been found in Mountain View, of which place he became a pioneer, settling there on the twentieth of December, 1850. He soon became identified with the agricultural interests of the county, and spent the succeeding nine years in that vicinity, engaged in farming. In 1859 he took possession of his present home,—a farm containing sixty acres of choice land, which, by diversified farming, he has kept in excellent condition.

In this county, on the eighteenth of October, 1855, Mr. Worthington was united in marriage with Miss Margaret Meador, the daughter of John S. and Lucinda (Lemons) Meador. She was born in Jackson County, Missouri, and came with her parents to this county in 1852. Her father established his family on a farm near Mountain View, but lived only about two years after becoming a resident of this State. Her mother now resides with herself and her husband. Mr. and Mrs. Worthington are the parents of six children: Alice, born November 14, 1856; Lucinda Frances, born October 18, 1858; John B., born April 5, 1861; Martha Ellen, born December 1, 1862; Willet, born September 25, 1873; and Clara, born February 1, 1878.

Mr. Worthington is now devoting his attention partly to horticulture, having an orchard of fifteen acres, all but three acres being yet too young to be in bearing, but promising much for the future. The subject of our sketch stands well to the front among the active, enterprising, and public-spirited agriculturists of Santa Clara County. No enterprise tending to advance the interests of his county fails to find in him a strong supporter. In politics he is identified with the Democratic party. He is a member of Santa Clara Encampment, of Santa Clara Lodge, No. 52, I. O. O. F., and also of Canton No. 10, of the Uniformed Degree of Odd Fellows. In the Order of Odd Fellows he occupies a high position, having passed all the chairs of the subordinate lodge, and being a member of the Grand Lodge of the State.

ALFRED ROE WOODHAMS is the proprietor of the "Roble Alto Farm," which is located on the Homestead road, in the Milliken District, near the western limits of the town of Santa Clara. This farm contains 143 acres of choice land, upon which stands a fine residence surrounded by beautiful grounds. It is the old homestead occupied so many years by his father, who was one of the pioneers of this county, and whose sketch will be found in this connection. The ranch is devoted principally to the growing of hay and grain, and to stock-raising. Twenty-five acres, however, are in orchard, the principal trees of which are prunes in full bearing.

The subject of this sketch was born in Orange County, New York, May 30, 1832. His father, Joseph Woodhams, and his mother, Annie (Maurice) Woodhams, were natives of England. His youth was spent in obtaining an education, and in helping his father in his trade, which was that of a miller and millwright. In 1844 he accompanied his mother and family to Chili, South America, where they joined his father and eldest brother, who had preceded them the year before. He remained with the family until December, 1848, when he left for the gold-fields of California, landing at San Francisco in April, 1849. Though but seventeen years of age, he entered into the whirl and rush of the pioneer life of California, being first engaged at carpenter work at $6.00 per day. After working at this for some months he went to the mines and commenced operations at Hawkins' Bar on Tuolumne River, where he remained from August, 1849, until the following January, when he returned to San Francisco and engaged in teaming until the arrival of his father's family from Chili. He then joined the family, and in the fall of 1850 came to Santa Clara County, where they took up their residence upon the property now owned and occupied by the subject of this sketch. From that time until the present (1888) Mr. Woodhams has been closely identified with the growth and building up of this beautiful valley, and has ever been an ardent supporter of all enterprises which tended to increase the prosperity of the section in which he lives. An intelligent, observant, and public-spirited man, trained to habits of business, his action in matters of public interest are duly noted and appreciated by the community in which he resides.

He is a member of the San Jose Grange, and of the American Legion of Honor. He was also one of the promoters and incorporators of the San Jose Horticultural Hall Association. Politically, he is an independent Republican, and was a prominent member of the Union League during the war.

He has been twice married, his first marriage, in 1865, uniting him with Miss Cynthia Dopking, daughter of Daniel Dopking, of Yolo County. She died in 1876, leaving no children. Mr. Woodhams married, in 1877, Miss Lizzie Saul, the daughter of Thomas Saul, of Boston, Massachusetts, who died while she was an infant. Her mother, Sarah (Halpin) Saul, is now a resident of Essex, Massachusetts. Mrs. Woodhams was born April 17, 1844. She is the mother of four children, of whom but two are now living, viz.: Laurola Saul Woodhams and Willie Elmo Woodhams.

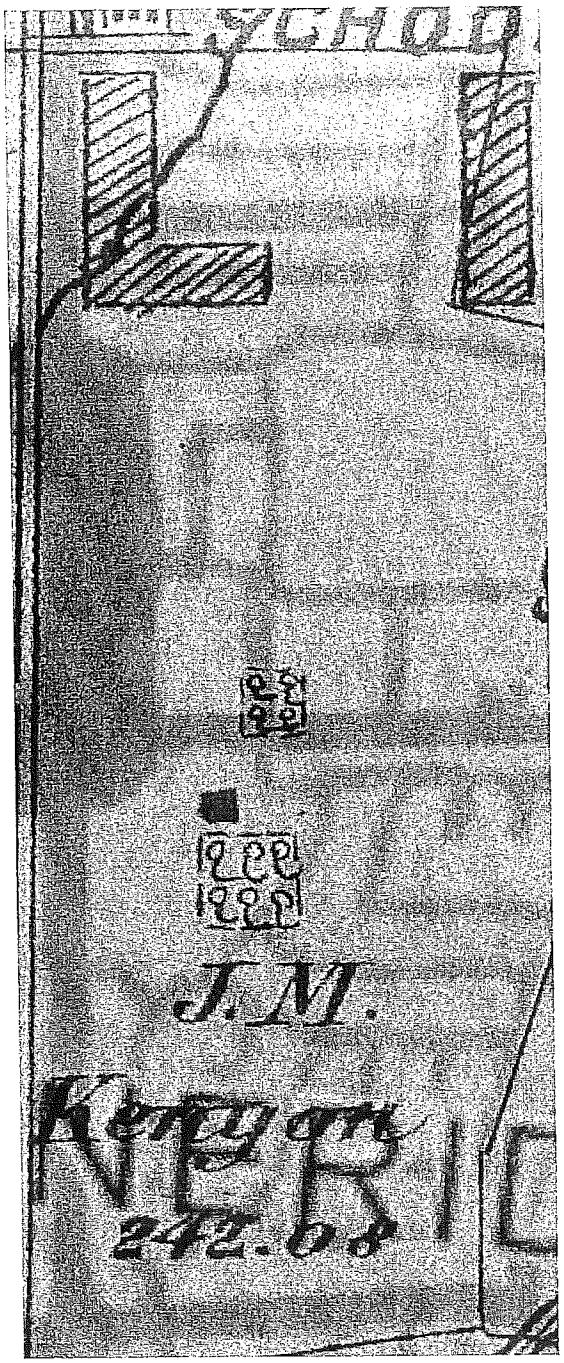
Attachment 12

JAMES M. KENYON resides in Santa Clara, but is the owner of a fine farm of 242 acres, situated on the Saratoga and Alviso road, at its junction with the Homestead road, about two miles west of Santa Clara. This land, with the exception of about eight acres, which is planted with prune-trees, is devoted to the production of hay and grain and stock-raising.

Mr. Kenyon was born in Adams County, Ohio, May 29, 1817. There his father, Jonathan Kenyon, and his mother, Sarah (Stratton) Kenyon, made their home for many years. His early youth was spent upon his father's farm, until the age of sixteen years, when he left home to learn the carpenter's trade. He was successful in his undertaking, and became an intelligent and skilled workman, and a thorough master of his trade, at which he worked for over twenty-five years. Mr. Kenyon is a California pioneer of 1849, as well as an early settler of this county, being one of the hardy men who, with their families, at that early day made their slow and laborious way across the immense plains of our country with ox teams. On his arrival he followed the example of thousands and sought for wealth in the mines, but soon tiring of this life, in 1850 he took up his residence in San Jose, where he built for himself a house and prepared to follow his trade as a carpenter and builder. Finding but little building in progress, and small prospect of much being done in the immediate future, he turned his attention to other business ventures. Having been reared to a farm life, and seeing the rich and uncultivated lands lying unoccupied around him, he was soon induced to purchase the property above mentioned. The same business tact and foresight that he had displayed in the pursuit of his trade soon assured him of success in his new business and placed him in the ranks of the leading farmers of the county.

In 1837 Mr. Kenyon went from Ohio into Missouri, where he married Miss Martha Roberts, daughter of Woodford Roberts, of Andrew County, Missouri. Of the children born of this marriage there are now living the following: John Fletcher, of Saratoga, Santa Clara County; Benjamin Franklin, who is married and lives upon the farm above mentioned; James Monroe; Sarah, the wife of Daniel Gardiner, of Saratoga, Santa Clara County; and Emma, the wife of H. H. Slavans, of Woodland, Yolo County, this State.

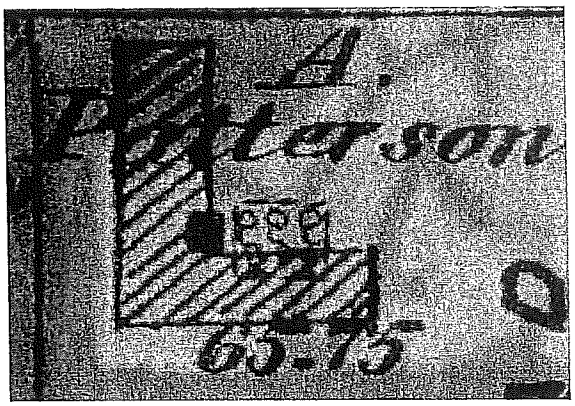
Although hale and hearty, and in full possession of all his faculties, the subject of our sketch has retired from the active pursuits and operations of the farm, turning the same over to his son, whom he has trained to succeed him in its successful management, and, with his wife, is living in comfort in Santa Clara, enjoying the rest which an active and successful business life of nearly sixty years has made a necessity.



ARCHIBALD PATTERSON. Among the productive grain ranches of the Milliken District must be mentioned the one owned by the subject of this sketch. It is situated on the Saratoga and Alviso road, about three miles west of Santa Clara, and now contains fifty-two acres, fourteen acres having been sold in 1887. Mr. Patterson never has entered into the cultivation of orchard or vineyard, but has devoted his land to the raising of hay and grain, also raising each year a few head of stock.

He was born in the city of Edinburgh, Scotland, in 1822, and is the son of Archibald and Nancy (Baxter) Patterson, both natives of Scotland. Being orphaned in his youth, he was reared by his uncle, Richard Lisbett (who resided on a farm near Tremont, about ten miles from Edinburgh), and was educated in the excellent schools of that neighborhood. He continued his labor as a farmer on his uncle's land until he had reached the age of thirty years, when, desirous of improving his condition in life, and wishing to gain the experience that contact with the people of other lands gives, he embarked at London, in May, 1852, on the ship *John Mitchell*, for a voyage around Cape Horn to San Francisco. He arrived in the last-named port in the fall of the same year, after a tedious passage of seven months' duration. He made but a short stay in San Francisco, and then came to Santa Clara County, where he worked on a farm near Alviso for about eight months. He then proceeded to Sonoma and Napa Counties, and engaged in those counties for nearly two years in stock-raising. Thence returning to Santa Clara County, he purchased the land upon which he now resides, and entered heartily in the business of farmer in the country of his adoption. Ever proving a worthy citizen and a good neighbor, taking a deep interest in the welfare and building up of the community and section in which he makes his home, he has justly won the respect of those around him.

In 1863 he married Miss Sarah Hanks, daughter of George Hanks, a native of England. No children have blessed this union. Both Mr. and Mrs. Patterson are prominent members of the Baptist Church, and for a period of more than twenty-five years have been among its strongest supporters.



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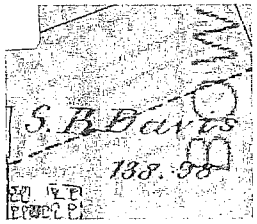


SCHUYLER B. DAVIS, deceased. The subject of this sketch was born in North Carolina, December 24, 1824. His father, Col. P. I. Davis, was a veteran of the Mexican War, and a prominent man in the different sections in which he lived. Mr. Davis received his schooling and his education as a farmer at the place of his birth. In 1836 he commenced a three years' course at the Estabrook College, after the completion of which he engaged in teaming between Knoxville and Augusta, Georgia. After spending about two years in this occupation, he took charge of a toll-road, owned by his father. In 1842 he accompanied his father's family in their emigration to Missouri, where he followed agriculture for a time. He engaged in cattle dealing, selling largely, in 1845, to Samuels and Hoynes, Liverpool packers. During the following year he continued the business with the United States Government, filling large contracts for beef cattle to be used in the Mexican campaign. He also superintended the herding and driving of these cattle to Santa Fe. Returning home from this trip, he engaged in various pursuits until 1850, when he crossed the plains to California, following his father's family, who had come to the State the preceding year. His overland trip, with emigrant train, was unaccompanied by any startling events, with the exception of some pillaging by the Indians, who levied upon them for forced contributions of clothing, provisions, cattle, etc., the smallness of the party being such as to render submission on their part necessary.

Upon his arrival in California he proceeded directly to Santa Clara County, arriving here September 8, 1850, thus becoming one of its early settlers. In the following year Mr. Davis returned to Missouri, leaving San Francisco on the second of September, by way of the Panama route. The steamer upon which he took passage was wrecked off Cape St. Lucas, and was towed into the port Acapulco. Thence he proceeded to the city of Mexico by mule train, thence by stage to Vera Cruz, thence by water to New Orleans, going from that city directly to his home, which he reached on the sixth of November after a long and adventurous journey.

Early in 1852, accompanied by his family, he again made the overland trip to California, arriving at Placerville July 17, whence he went directly to Santa Clara County. Settling his family in the village of Santa Clara, he purchased a farm on the Alviso road about a mile southwest of that place, which he cultivated with success until 1857, when he purchased and established his residence upon the land upon which his widow now makes her home. By intelligent and well-directed efforts, he brought the estate to its present high state of cultivation. An energetic and cultured man, he was greatly esteemed by his associates and by every member of the community in which he lived. As one of its pioneers, he was always deeply interested in the development of the interests and products of this county. In 1868 he established large grain warehouses at Lawrence Station, on the Southern Pacific Railroad, thus affording storage and ready shipment for the products of that section of the county. He successfully conducted this enterprise until his death, which occurred February 27, 1882, as the result of a fall from the roof of his warehouse, suddenly ending a useful career while he was yet in the prime of his life.

In 1843 Mr. Davis married Miss Lucinda F. Beaty (a sketch of whom is given below). From this marriage were born three children: Mary E., married Edwin Baker, at this time (1888) a real estate agent in San Luis Obispo, California; Emma H. is the wife of Ora N. Kent, now a resident of Boston, Massachusetts, and one of its most prominent merchants, and a descendant of the old house of Kent, so well known throughout New England; Charles C. died in Santa Clara County, November 18, 1887.

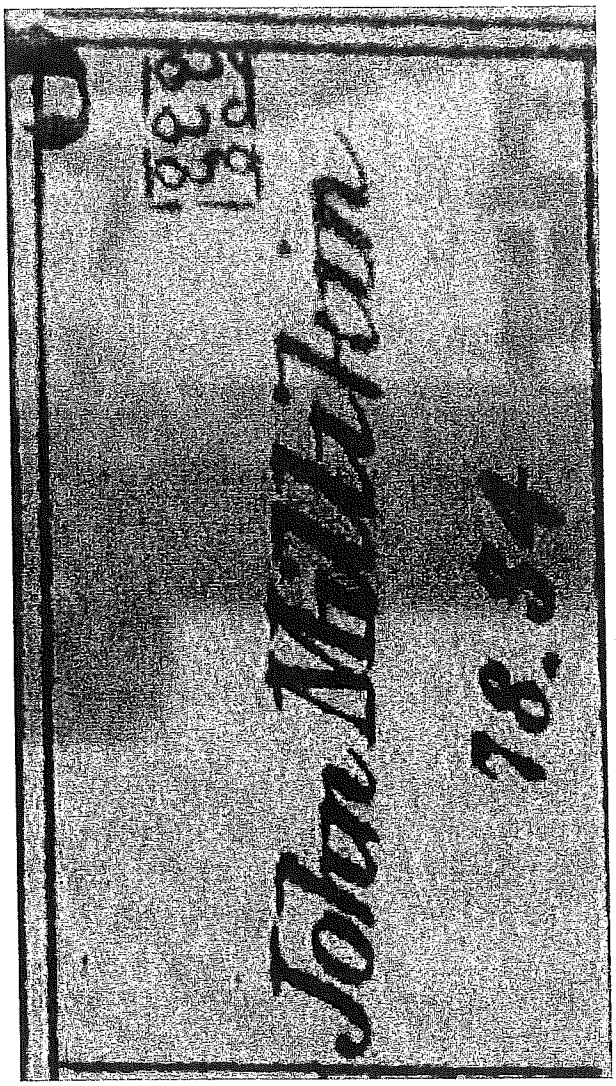
Lucinda F. Davis, the widow of Schuyler B. Davis, resides on the San Francisco road, about two and one-half miles west of Santa Clara, and is the owner of an extensive farm of 140 acres, upon which she has a pleasant and commodious residence, surrounded by well-ordered out-buildings. Formerly the land was principally devoted to grain and hay raising, with a small acreage in fruit trees, but of late years, since her husband's death, Mrs. Davis has rented quite a large tract to C. C. Morse, of the Pacific Seed Gardens, whose lands adjoin this farm. She is thus afforded much needed rest from the cares and labors attendant upon the successful cultivation of the ranch. Mrs. Davis was born in Tennessee, in 1825, being the daughter of John and Julia (Carter) Beaty. Her father was a native of Tennessee, while her mother was born in Virginia. When she was very young, her parents became pioneers of Chariton County, Missouri. In 1843 (as stated above) she married Schuyler B. Davis, and, through their long married life, shared with him all the trials and disappointments, as well as enjoyed the success they achieved, finally reaping the well-earned reward of their combined labors in the tranquil enjoyments of the comforts and even luxuries of her beautiful home.

JOHN MILLIKIN, deceased. The subject of this sketch was born in Westmoreland County, Pennsylvania, in 1807. The first five years of his life were spent there, and his father in 1812 removed his family to Licking County, Ohio, becoming one of the earliest settlers of that State. The son, John, was there taught all the duties of an agricultural life, and spent his early manhood in that work in his native county. In 1832 he married Miss Nancy Heron, a native of the same county. Three years after their marriage, Mr. and Mrs. Milliken went to La Salle County, Illinois, where they established their home on a rich prairie farm. But Mr. Millikin's love of a frontier life soon prompted another move, and in 1837 his residence was changed to Iowa, where he settled in what was then known as the Black Hawk Tract, and continued his work of tilling the soil and raising stock. He was there during the exciting times of the Black Hawk War, and was a volunteer in the same.

In 1852 he became one of the large army of emigrants who were straggling across the plains to California. Soon after his arrival in this State, he settled his family in Santa Clara County, on eighty acres of land, located on the San Francisco road about three miles west of Santa Clara, on what is now known as Millikin's Corner. Then commenced a useful life (spent in the cultivation of his farm), which lasted for twenty-five years, his death occurring in 1877. Early inured to hard labor, and possessed of a large amount of energy and a strong will, none of the obstacles always to be encountered in a frontier life seemed to daunt him. He was always in the vanguard of the army of pioneers, who cleared the way for the hosts who followed and built up the great centers of American civilization. Mr. Millikin, by virtue of his long residence in the county, was well known and highly respected. Naturally he was deeply interested in the marvelous development which he had witnessed, and was ever ready to assist in every way in his power in bringing about that development.

By the death of her husband, Mrs. Millikin was left with seven children, viz.: Samuel, whose sketch appears in this connection; James, a resident of Santa Cruz County; David C., a resident of Los Angeles County, who married Miss Mary Nash, of Santa Clara County; Thomas B., a resident of Lompoc, Santa Barbara County; Elizabeth, the wife of James Turner, of Gilroy, Santa Clara County, but now residing in Fresno County; Mary, the wife of John S. Henning, of Santa Clara, now living at Lompoc; and Margaret, the wife of Augustus Hollet, of San Jose, also living at present at Lompoc.

Mrs. Millikin was left to her children for five years after the loss of the father, her death occurring in Santa Clara County July 3, 1882.



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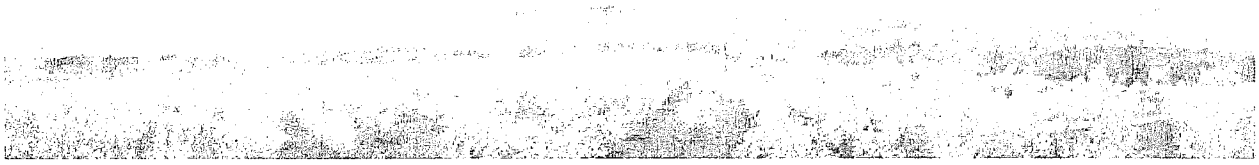
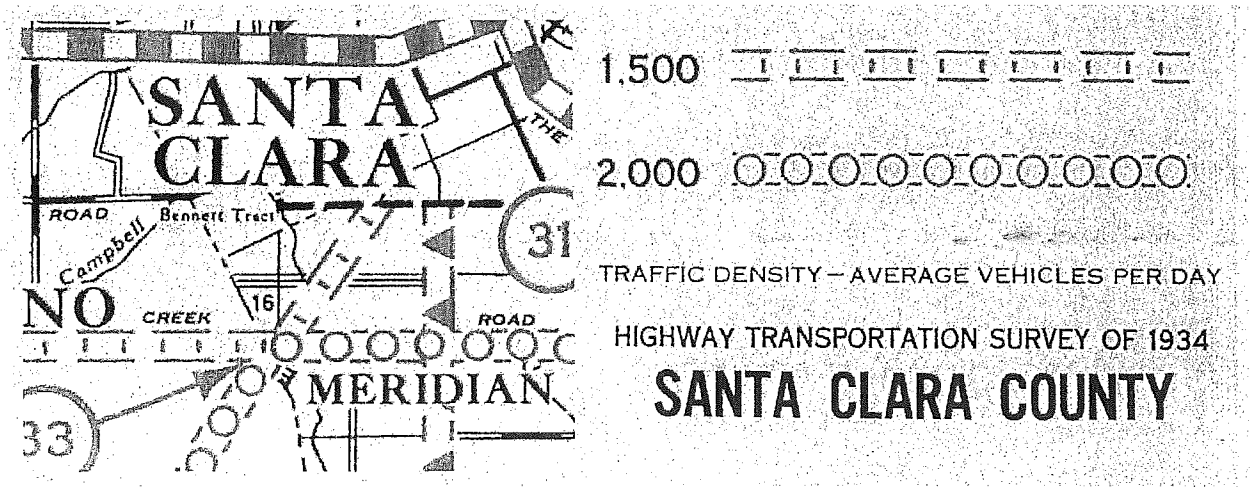
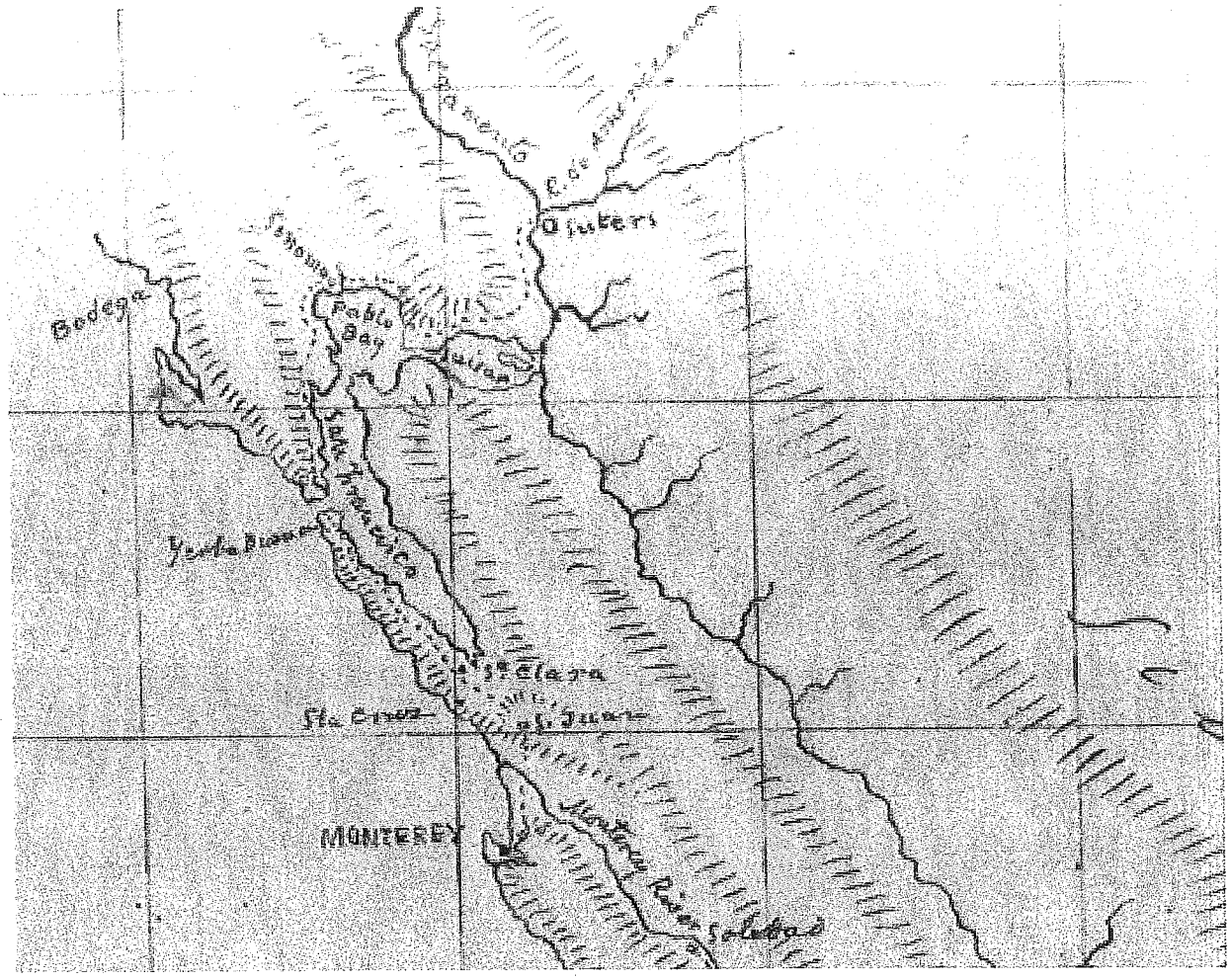


My name is Rob Avina and I live at 150 Saratoga Ave #357, Santa Clara, directly behind the property in question. Hello to you, Santa Clara Historical & Landmark Commissioners, thank you for this time to speak, and for hearing the public on what I believe is one of the most important sites of historic interest left unprotected in this area. I want to show you some of the research I and others have done recently. For you to meet some people that remember the property and to see if you ultimately agree with us, that this orchard really is something very special, historic, and worthy of saving.

To start, we travel back in time to the mid 1700's. Spanish explorers arrive bringing missions, missionaries and early settlers. In 1841, Saratoga, Campbell, and Cupertino are added by and from Mexico via the Rancho Quito(kee toe) Land Grant. Pretty soon, the gold rush brings many more settlers to the area and to the valley. The nutrient quality of the land in Santa Clara is found to be some of the very best in the world, and the great orchards of early Santa Clara, both City and Valley, are soon born. By 1943 vehicle traffic by this property has over 2000 cars a day passing by. Millions have eaten from and seen these iconic orchards of Santa Clara.



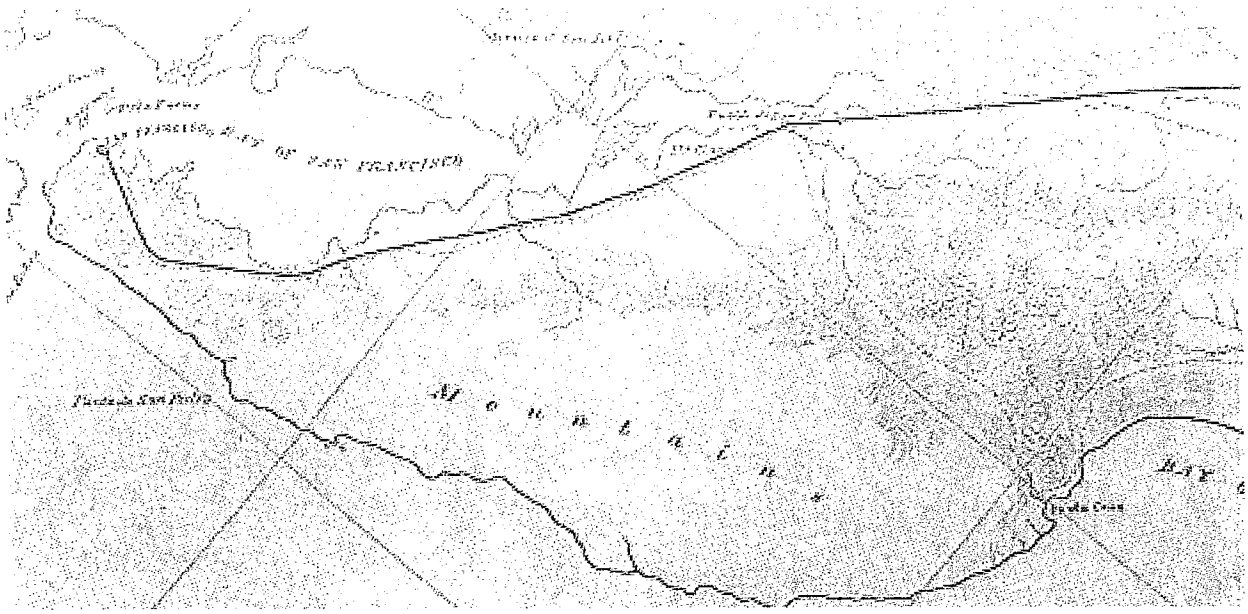


1847 Just below the Bay is St. Clara

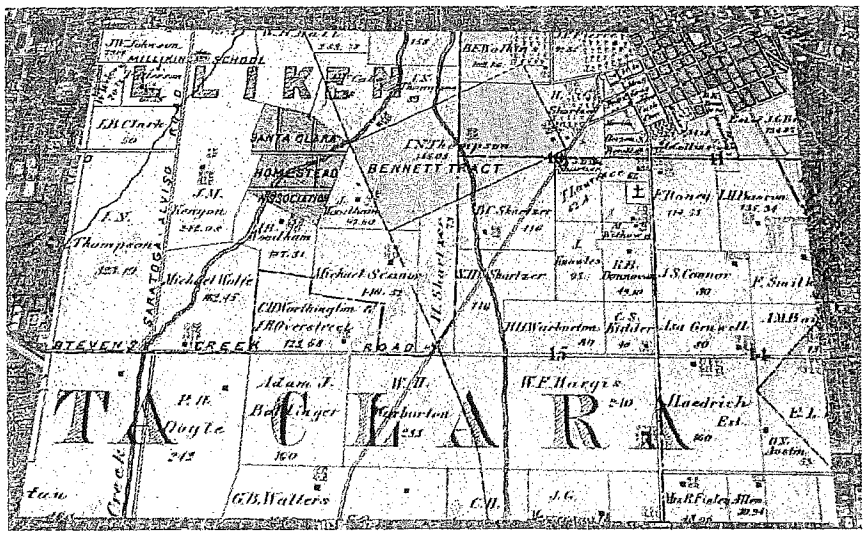
In 1851 a year after the blossoming Santa Clara County incorporates and California gains it's statehood, the area that will very soon be the town of Santa Clara, is looking forward towards the future, with the founding of Santa Clara College. Then abouts, begins the history of Saratoga Avenue.

One sixty six and and one seventy were not numbers associated with the road then. Stretching between Market Street and the Hills of both Saratoga and Santa Cruz. It was created in the same legislative session as Santa Clara Ave in 1851, though Saratoga Avenue is not seen on maps even up until 1855.

Attachment 12



1855 Railroad Survey map



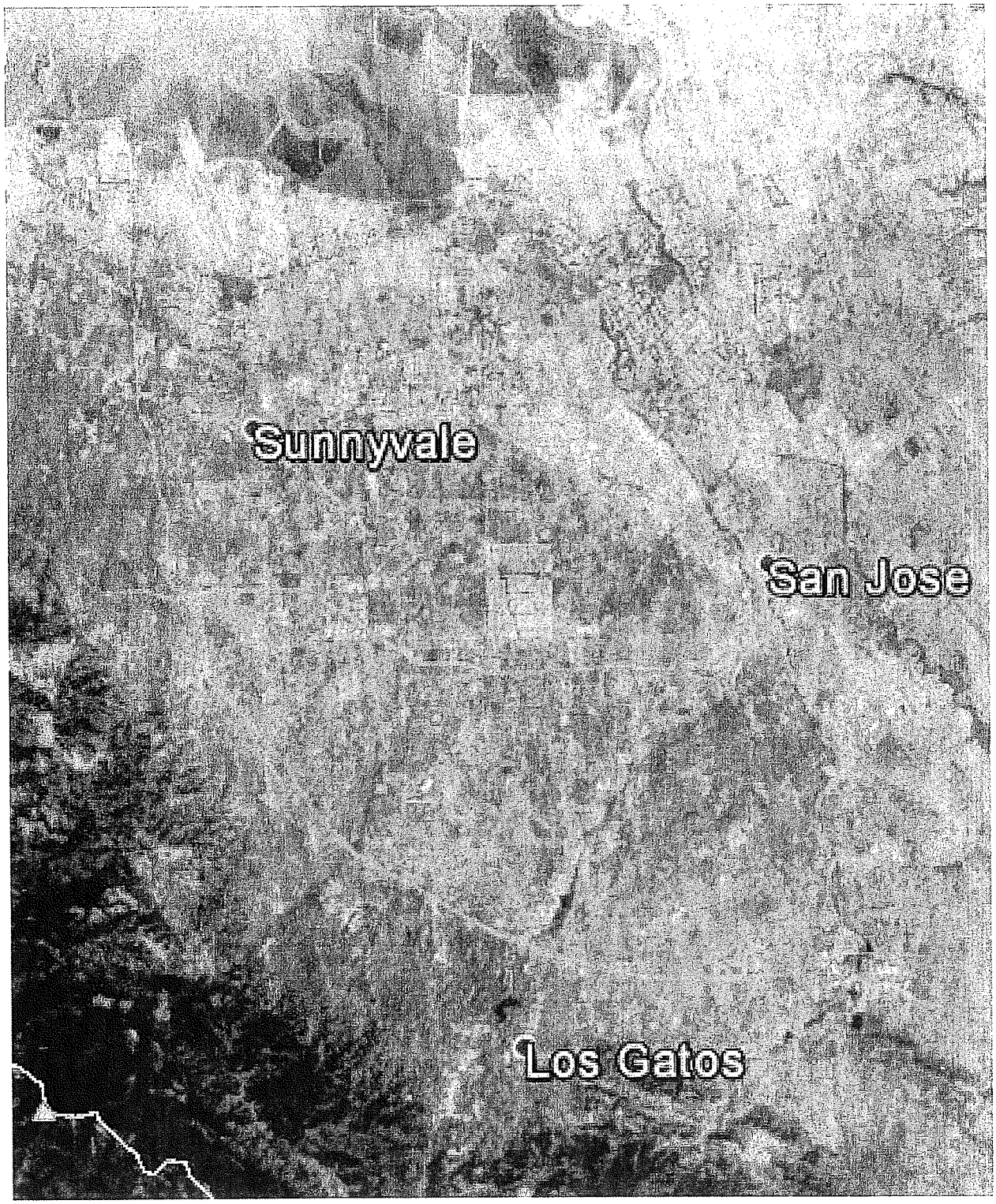
Maps are one of the best ways we have to track the property throughout history. In 1876 there are many property owners shown. Many of these founders have been recognized through the naming of streets, buildings and boulevards, in modern day Santa Clara Valley, many by this very commission. As such, you may recognize some of the names. Warburton, Bascom, Scott, Lawrence, Woodham, and Wolfe just to name a few. One name I did not recognize, but has come to be very familiar in the last few days is Shartzer. Their family and many like them, began a tradition in this area, that would last for more than a hundred years, and then migrate to places like Gilroy, and Watsonville where the tradition continues today. The art of orchard farming, planting and maintaining trees for food production. They it did well. Of all the people that have

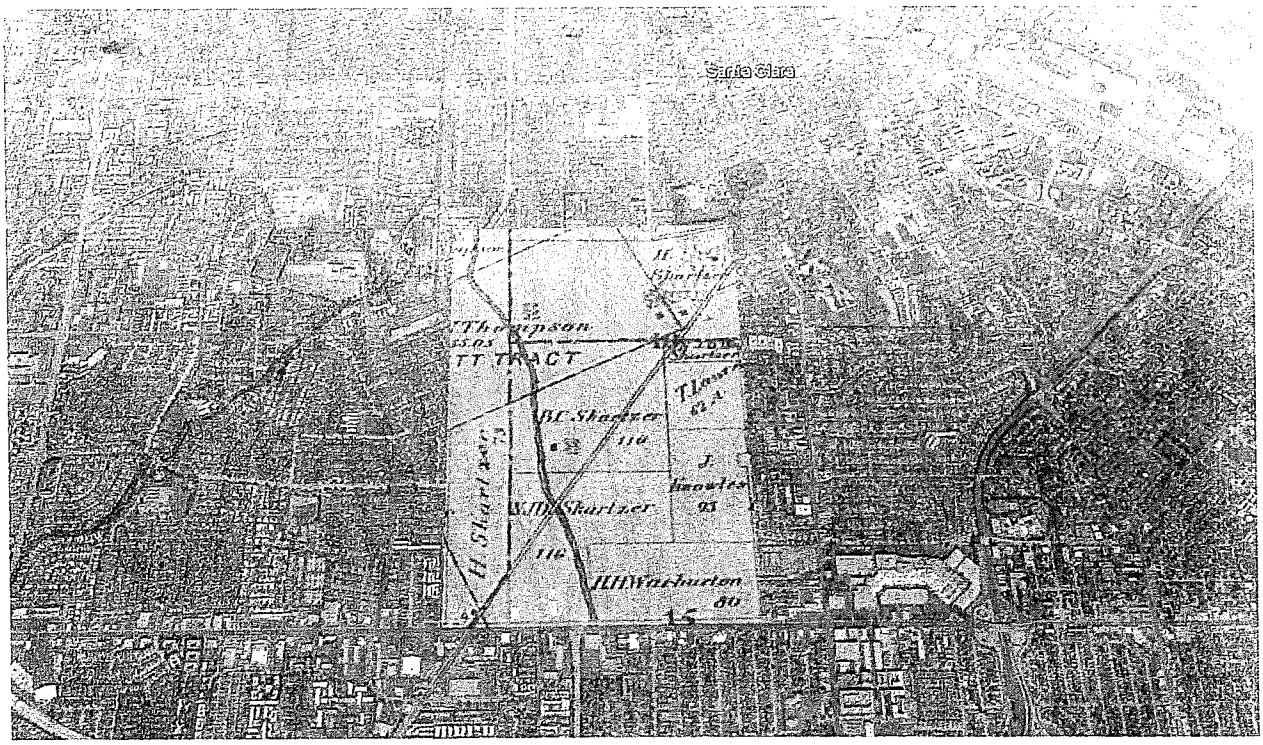
lived here, and all the people that will ever live here, Hiram Shartzer, a 6000-tree-strong orchard owner, father to as many as 8 children, and an early entrepreneur who ran both a horse drawn trolley, and later organized the Alameda Turnpike Company, which operated one of the first toll roads commissioned by the county. Though it was wildly unsuccessful, it did serve to spawn many of the free roads around The Alameda and surrounding area today. We have here with us today a man by the name of Paul Dietrich(dee trick), who is the great great great grandson of Hiram Schartzer. He and his family now live in the Palo Alto Area. He was nice enough to come join us, on very short notice today. We will see if we can jog any memories of the area, and of his family, and to cement the fact that they were an important part of this area.

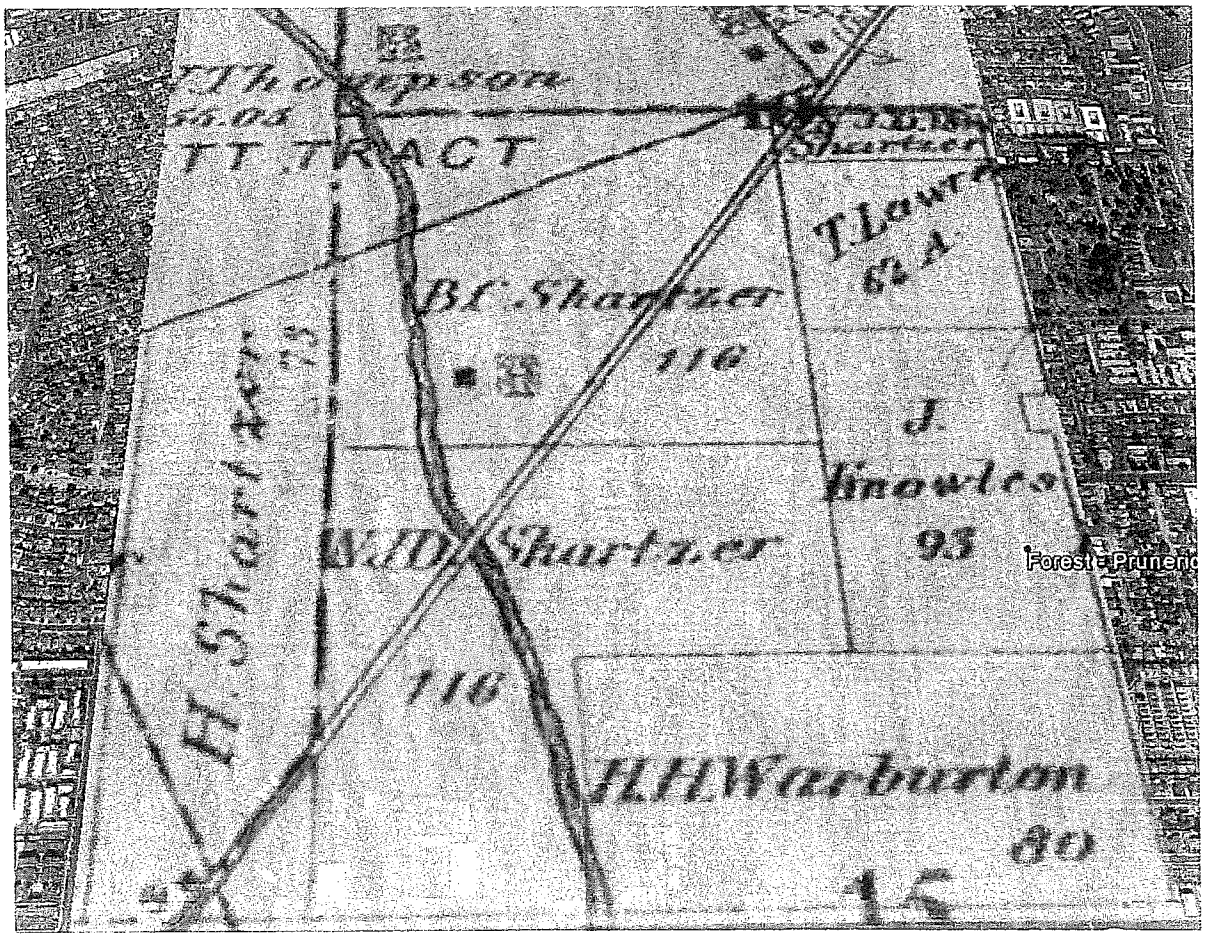
Mamie Dunn Shartzer
granddaughter of Hiram Shartzer
1897

Attachment 12

Original Shartzer property over 166 Saratoga Ave. 95051




Santa Clara
TT TRACT
BL Shartzer
116
J.
Knowles
93
W.D. Shartzer
116
H.H.Warburton
80
15


TT TRACT
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Knowles
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W.D. Shartzer
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H.H.Warburton
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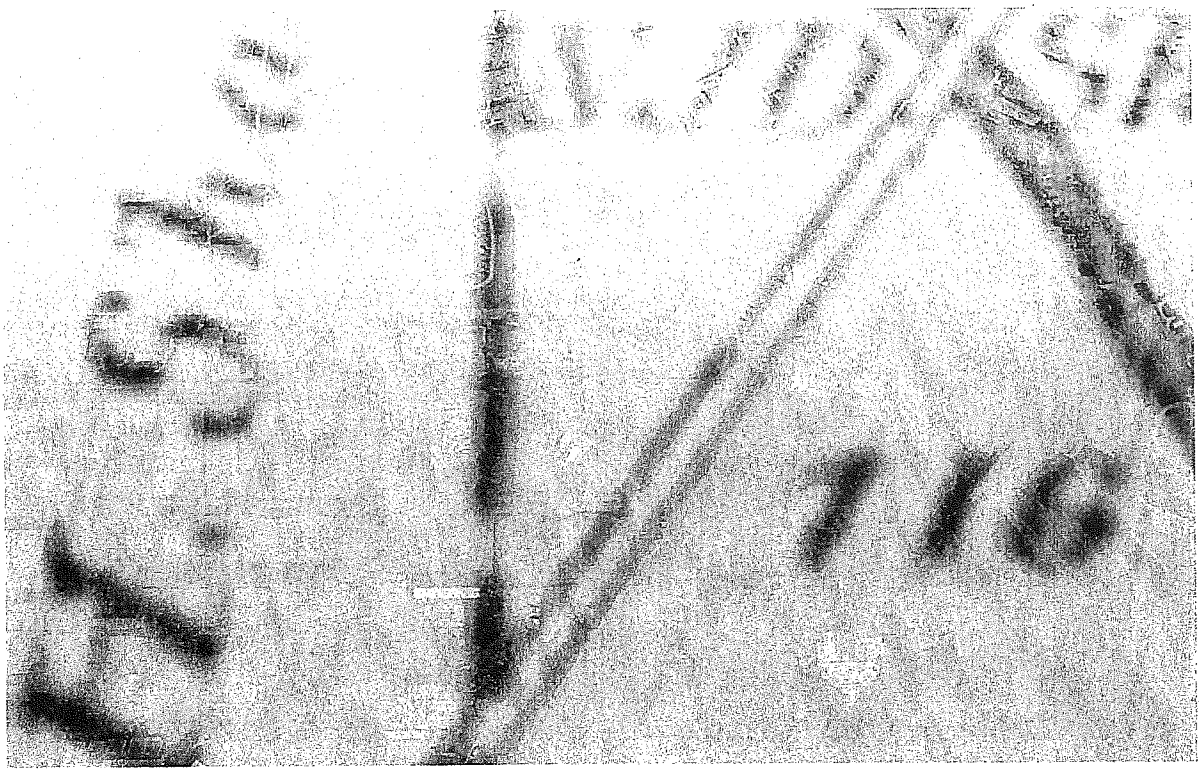
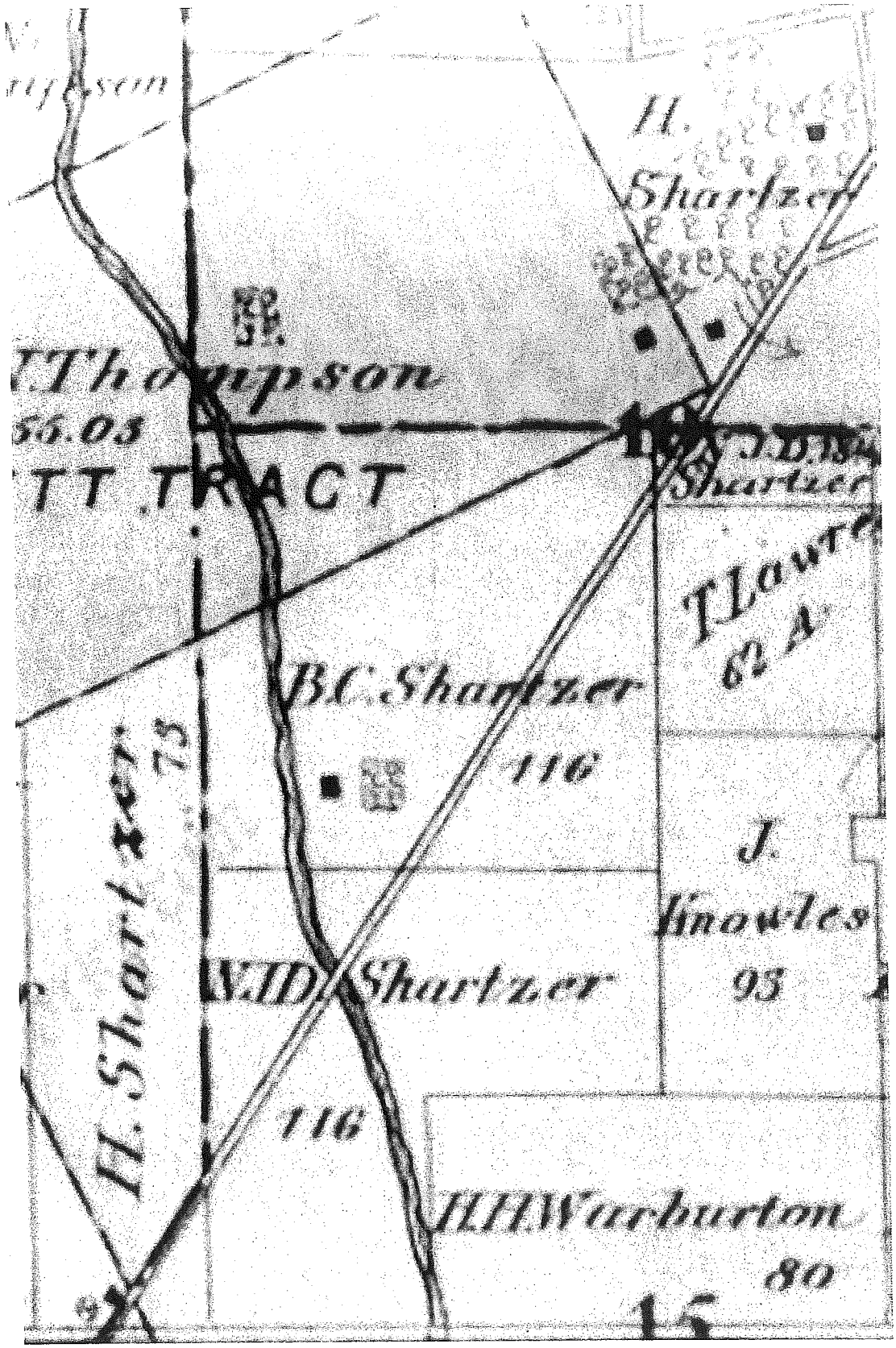
Forest Pruneri

Attachment 12

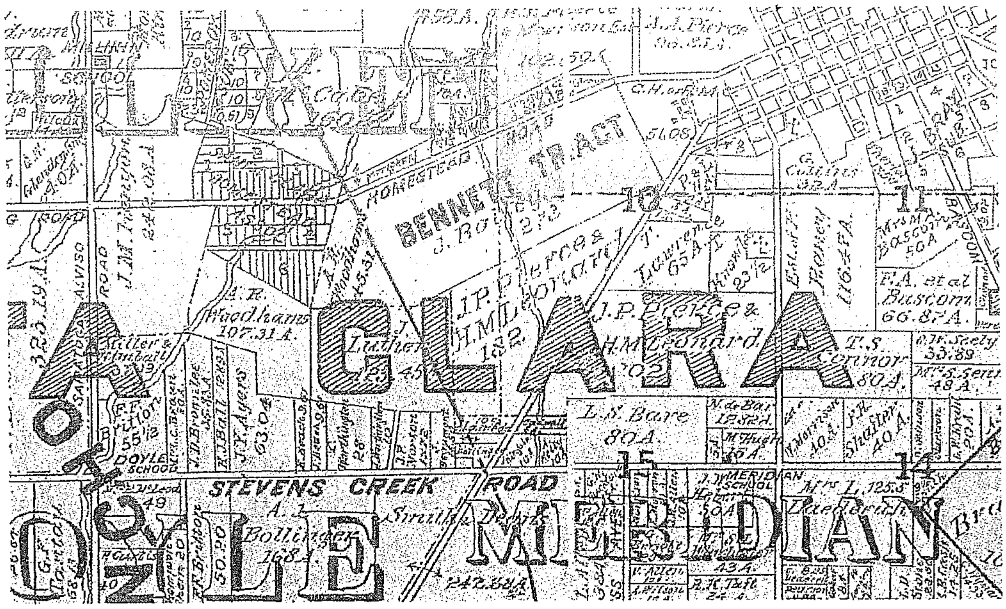


1.7 acres. This is all that remains of the original orchard.



In 1876 there are over 400 acres of Shartzer property

Attachment 12

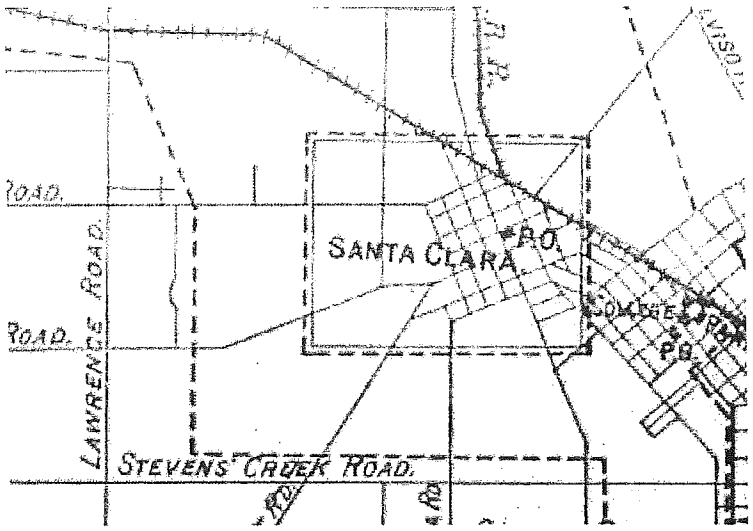


1889 showing JP Pierce as owner

By 1889 the land was much smaller, but still an orchard as it is today. It's owner now a Mr. and Mrs. James Pieronnet (peer oh nay)Pierce. James, the president of The Bank of Santa Clara County, and the original owner of the grounds that is now the Carmelite Monastery, he was also Founder of the Pacific Manufacturing Company, the first Band-Saw Mill in California, and in modern times, now, he even has a Wikipedia page. Mr. Pierce passed away in 1897, and the land was passed on shortly thereafter to the current family of caretakers, known as the Jack Bayto Family Trust.

552 HISTORY OF SANTA CLARA COUNTY, CALIFORNIA.

The Bank of Santa Clara County.—Is situated on Franklin street, near Washington, and was incorporated May 30, 1875, with an authorized capital of three hundred thousand dollars. The present officers are: J. P. Pierce, President; H. M. Leonard, Vice-President and Manager; C. C. Hayward, Cashier and Secretary.



1897

A map of the area from 1897 shows Santa Clara as a small town, the great orchards having no signs but the open land surrounding it. Receding and giving way to the new faster pace, of an ever more modernized society, with horseless carriages, condos, Wifi, 49ers and solar panels. Wanting to preserve the land for the future, the people of the town of Santa Clara had a Board of Trustees, which then voted to become a City and whose City Council, created an advisory board, the Historical & Landmarks Commission. You.

Commission Members

Michael Hyams
Term Expires: June 30, 2017
(First Term)

Gerald "Jerry" McKee
Term Expires: June 30, 2015
(Second Term))

Brian Johns, Chair
Term Expires: June 30, 2014
(First Term)

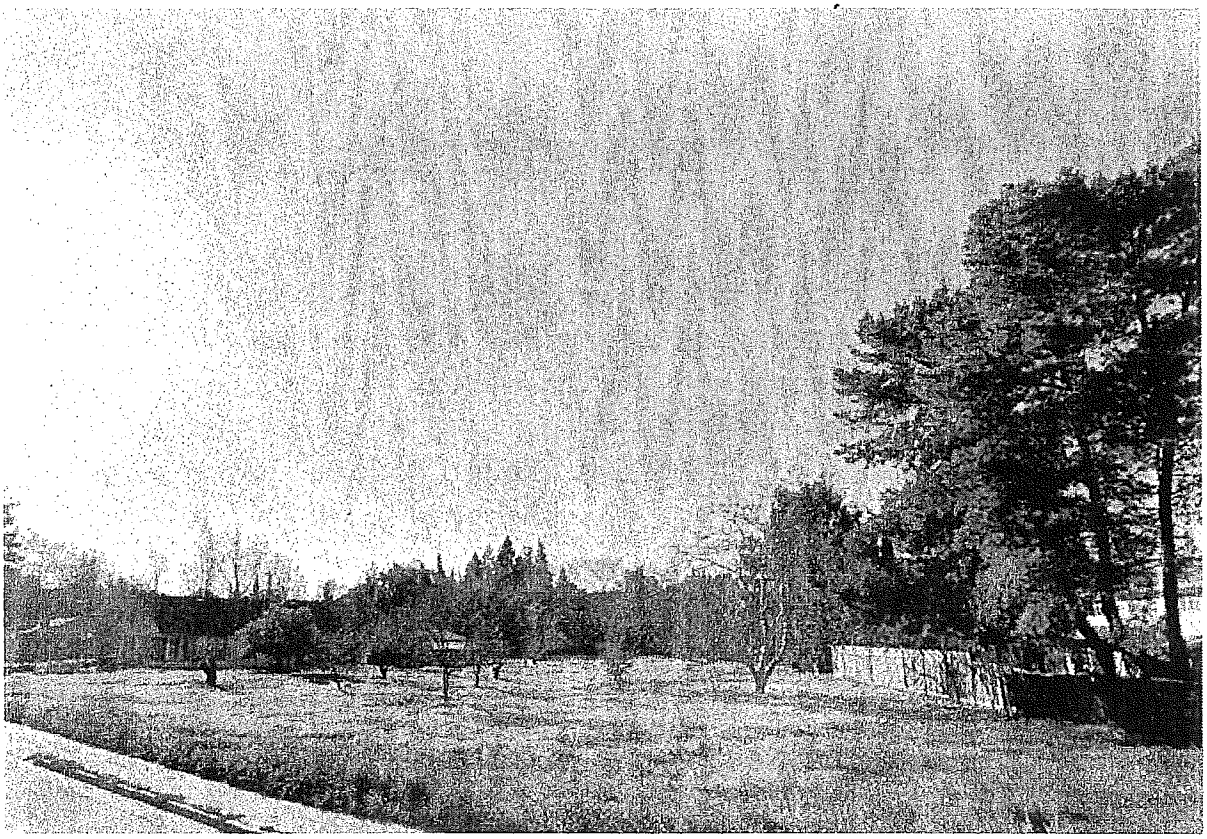
Kris Motyka
Term Expires: June 30, 2016
(Second Term)

Robert W. Luckinbill
Term Expires: June 30, 2015
(First Term)

J.L. "Spike" Standifer
Term Expires: June 30, 2017
(First Term)

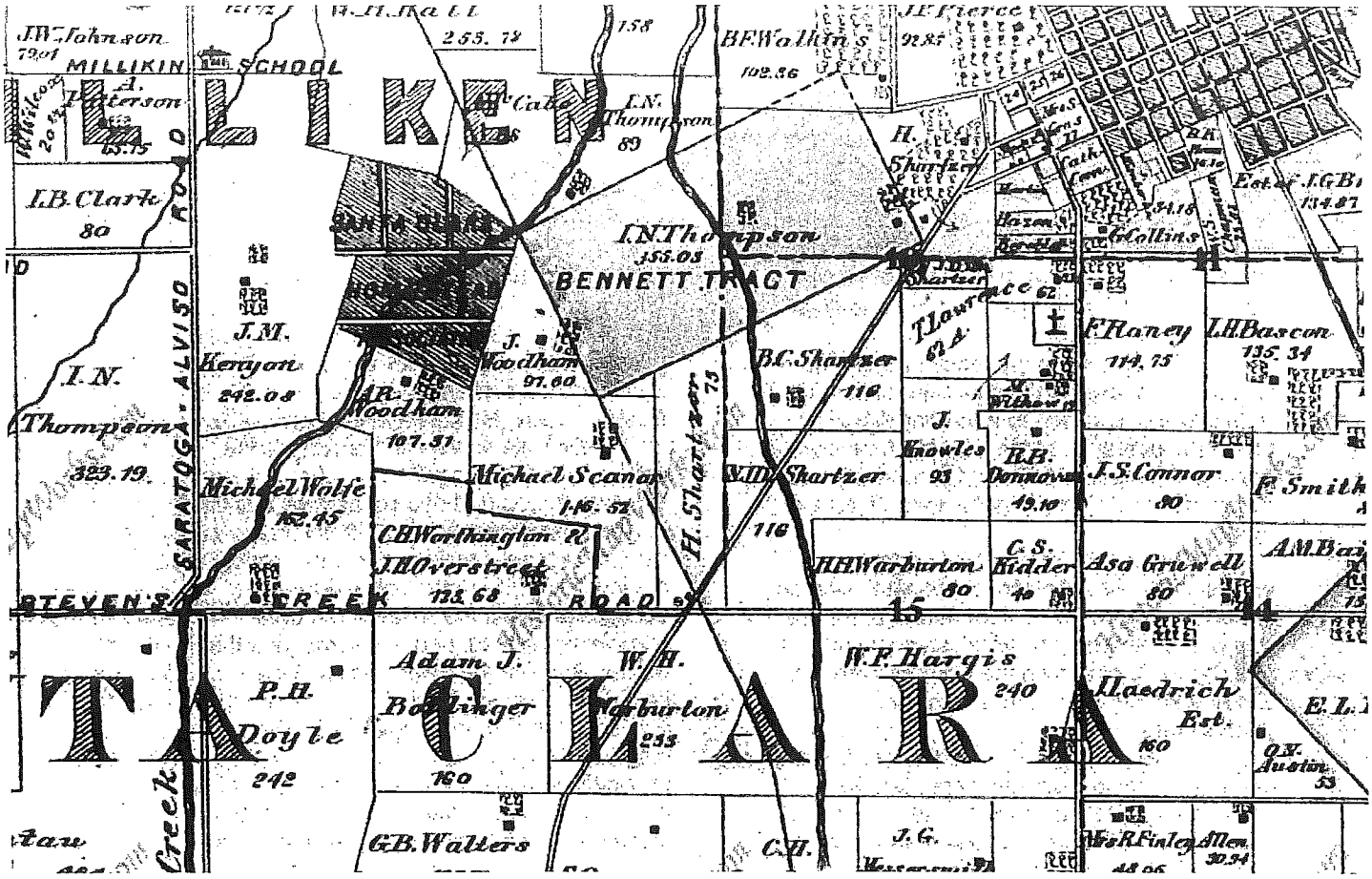
Regina "Jeannie" Mahan
Term Expires: June 30, 2014
(First Term)

Which brings us back here, to today. Today, we have the opportunity to speak with some people who want to not just reminisce about, but start to save, an historic piece of American history. An important historical landmark for the City of Santa Clara. It is exactly why this commission was created, and I hope it is what you will choose to do.



There are many upcoming projects in Santa Clara that are exciting. That more condos, and more people are coming, is not the problem. The reason I and others stand here now is to try and speak for a small piece of land, with a larger piece of history, in this very big Valley that still serves to fulfil it's promise to the world, of Heart's Delight. Though now we do it with iPhones, search engines, great ideas and Intel processors, we would like to keep some of the Prunes and Apples to show to our children. I look forward to hearing from tonight's speakers. Please don't let this historic plot of land be forgotten, and destroyed forever. Thank you.

The Last Prune Orchard in Santa Clara

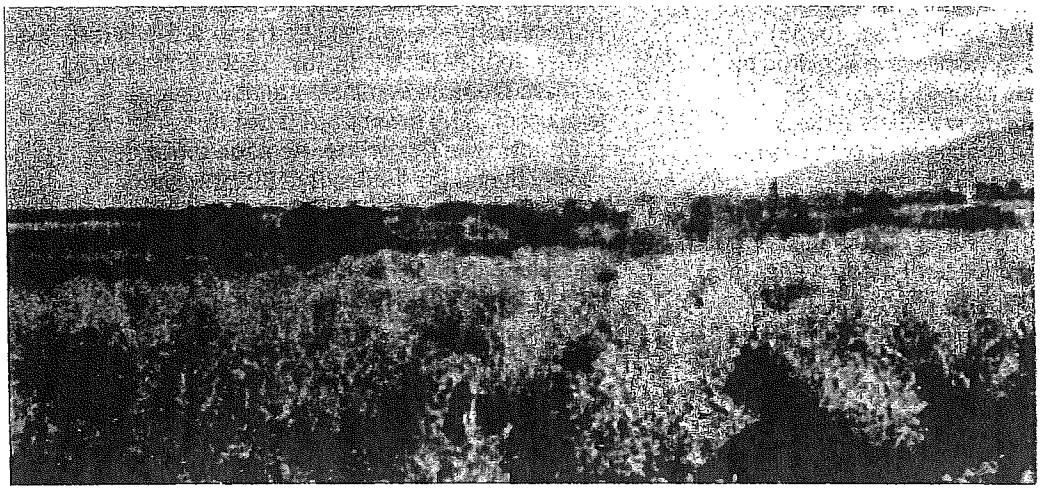


History

Rancho Quito

1876 map shows the division of the Rancho into farms at that time. Within a decade after this map, most of the larger farms were divided up into the smaller orchard farms that the Santa Clara Valley later became known for. The beginning of the change from wheat to orchards had already begun by the time this map was drawn. The Saratoga Ave. orchard (166 Saratoga Ave.) was owned by the Shartzer family.

(The Last of the Prune Pickers, Tim Stanley)



Prune orchard in spring along Saratoga Avenue, circa 1925
http://content.scu.edu/cdm/singleitem/collection/svhocdm/id/932/rec/1

COUNTY OF SANTA CLARA HISTORIC CONTEXT STATEMENT

Spanish Colonial Period: Post Years and Start of the Orchards

With the relaxation of immigration regulations by the Mexican government in 1828, more foreigners began to settle in California. Of the approximately 700 people who lived in the San José pueblo in 1835, forty were foreigners, mostly Americans and Englishmen. The first overland migration arrived in Alta California in 1841, and by 1845, the American immigrants had increased the population of the pueblo to 900.

The American presence in San José was rapidly changing the character of the pueblo from a Mexican village to a bustling American town. The presence of the growing American population prepared the way for relatively easy occupation of California by American forces in 1846.

By the time of America's military excursion into Alta California, the establishment of the Anglo-American's commercial presence was well underway. The Mexican population in Alta California observed the influx of European and American settlers with a sense of helplessness.

In May 1846, the United States declared war on Mexico; and shortly thereafter, the American flag was raised in Monterey and San José. The hostilities ended less than a year later with the Battle of Santa Clara in January 1847. In 1848, the United States acquired a portion of the Mexican province of Alta California in the Treaty of Guadalupe Hidalgo. On the heels of the acquisition of California by the United States was the discovery of gold in the Sierra foothills, which precipitated a sudden influx of population to the state from the continental United States; Europe, Mexico, South America, and Asia. This event accelerated California statehood, which was achieved in 1850. San José was selected as the first state capital within the newly established County of Santa Clara. (p. 35)

Many large ranchos were acquired by American immigrants prior to 1846. After hostilities ceased, the new settlers quickly acquired more of the rancho land in the valley. With fortunes acquired during the early gold rush, early settlers... purchased large parcels of land in Santa Clara County and throughout the state.

The staple agricultural product after the Gold Rush became wheat. The easy cultivation and high fertility of the soil of the Santa Clara Valley facilitated wheat production with little capital investment. By 1854, Santa Clara County was producing 30 percent of California's total wheat crop. In the summer of 1868, an observer noted that the Santa Clara Valley was almost an unbroken wheat field

The agricultural potential of Santa Clara Valley was recognized by the Franciscans. They established small orchards and vineyards, and cuttings from these trees and vines later provided the basis of the first orchards and vineyards in the American period. By 1852, the first pioneer nurserymen were importing and experimenting with various types of fruit trees. By the 1860s, orchards were being set out in East San José, Milpitas and the north valley.

With train service first arriving in the county from San Francisco in 1864 and the Western Pacific Railroad connecting San José to Niles and northward in 1869, the stage was set for the rapid development of the agricultural potential of Santa Clara Valley. The Niles connection linked the valley to the trans-continental railroad, and that same year the Santa Clara & Pajaro Railroad line was completed through South County bringing access to the railroad to the throughout the length of Santa Clara County. This event precipitated many changes in the region as a whole, as it spurred the development of towns along the railroad lines and catalyzed changes in land use due to the accessibility of new markets outside the region.

By 1870, nearly all acreage in the rural areas of Santa Clara County was devoted to wheat and barley production. In late 1879-80, however, the area experienced poor yields coupled with increased wheat production in the Central Valley. Farmers responded by initiating a diversified farming approach. Farmers increased numbers of cows for milk and butter, sheep for wool, poultry for eggs, swine for meat, hay, grapes, and fruit trees in an attempt to protect themselves during bad crop years in the 1870s and 1880s. By the late 1880s however, orchard products dominated agricultural production. The **most popular of the orchard products was** the **prune**. Acreage expanded rapidly during the 1890s. By 1890, orchards were spreading to the edges of the valley floor and South County, and completely dominated agriculture in Santa Clara County by the end of the decade (Broek 1932).

The Valley of Hearts Delight

From History of Santa Clara County on geneology.com:

Santa Clara County is the banner fruit-producing county of the state. In 1919 there were 98,152 acres planted in fruit trees and 2,850 acres in vines. It is the prune center of America. More prunes are grown in this valley than are produced in the whole United States outside. In 1919 the number of prune trees was 7,652,000. Apricots came next with 665,000, peaches third with 482,000, and cherries fourth with 380,000.

As Santa Clara County is the largest fruit district in California, it follows as a matter of course that it is the largest canning and packing district in the state. There are (1922) thirty packing houses owned and operated by the California Prune and Apricot Growers, Inc., nine affiliated with that organization and eighteen independent packers, most of them operating in San Jose. There are forty canning factories in the county.

One of these, the Co-operative plant, is the largest in the world. In 1921 it absorbed 30,000 tons of fruit and employed nearly 1,000 people. In the busy season of that year the combined county payroll reached over two million dollars. A number of new canneries and factories will be built this year, for the business is increasing by leaps and bounds. There are several dehydrating plants in the county to take care of grapes, strawberries, prunes and other fruits and berries.trees.

During the eighties the fruit industry increased by leaps and bounds, vineyards, pasture and grain lands were converted into fruit orchards until the county became one vast orchard--the largest fruit producing section in the world. In

1886 the consumers of fruit in the East became convinced that the prunes grown in Santa Clara County were superior in quality to those grown in France. This superiority is due to two causes: First, because the peculiar soil and climate of the county induces a thriftier growth, a more perfect ripening of the fruit and complete development of the sugar; second, because of the method of curing practiced here. In France the process through which the prunes are carried results in cooking the fruit to a greater or less extent. This renders it soft and pleasant to eat, but when made into sauce it loses much of its flavor. In the California process where the fruit is cured by exposure to the sun, no cooking results and the fruit retains its full flavor.

http://www.sfgenealogy.com/santaclara/history/scchist12.htm

The County of Santa Clara was emerging as a horticultural region connected to the national economy and the valley began to draw new immigrants to the area from around the world. The rapid agricultural development near the end of the nineteenth century and the ensuing population increase provided the impetus for the establishment of many of the government, economic, and cultural institutions that remain evident in Santa Clara County in the twenty-first century. *p. 43*:

The business of fruit production, the combination of growing, packing and canning, continued to be the focus of Santa Clara County agriculture in the early twentieth century. Fruit production peaked in the 1920s. With the increased ratio of crop value to land unit, large farms that had evolved in the nineteenth century out of the ranchos became unnecessary. The increased land prices, cultivation costs, and growing population of ready buyers led to the subdivision of large farmlands into highly specialized "fruit ranches" that were 3 to 50 acres in size.

Geographer Jan Broek (1932) identified three agricultural phases through which the Santa Clara Valley passed after 1850. The first phase (1850–1865) was characterized by cattle ranging, extensive wheat cultivation, and general crop experimentation. During the second phase (1865-1875) wheat farming surpassed cattle raising, and the foundations were laid for specialization in horticulture. In the third phase (1875 to the 1930s) horticulture superseded the declining wheat culture, and many other forms of intensive land utilization were developed with increasing developments in irrigation. *p. 59*:

Decreasing ranch size was closely correlated with these changing land uses. The Mexican ranchos consisted of several thousand unfenced acres for cattle to roam. Early American ranchers followed the Mexican practice of free ranging their cattle for some years; however, the spread of farm enclosures and environmental factors caused the large stock ranches to give way to more intensive land uses: smaller stock breeding ranches or dairy farms were confined to several hundred acres. Wheat farms during this period also ranged from 100 to 500 acres, averaging 213 acres in 1880.

With the increasing crop value per land unit, the large ranch could not compete with small intensive farms, and the correlated increase in land prices, cultivation costs, and growing population led to the general

Attachment 12

MORE LESTER PROPERTY IS SOLD

Nathan Lester and Will W. Lester, brothers, today sold the major part of their prune orchards to San Francisco parties. The Lesters received $2200 an acre on 182 acres. The 182 acres brought nearly $400,000.

Last week there was sold in court here the immense acreage of the C. C. Lester estate for $462,000. So both deals aggregate $862,000. It is doubtful if one family ever disposed of so much fruit land before at one time in California.

Before these sales were reported the Lesters were rated as the largest prune growers in the world.

Nathan and Will W. Lester today sold 51 acres, located in Santa Clara, to Lester G. Loupe. The balance, 131 acres, located between Santa Clara and Meridian corners and known as the Shartzer place, went to the John Brickell Co., also of San Francisco.

It is understood that the new owners will place the Lester orchards on the market right away. In part payment the Lester brothers received some San Francisco realty.

The Lester sales were recorded today with D. J. Flannery, co[illegible] corder.

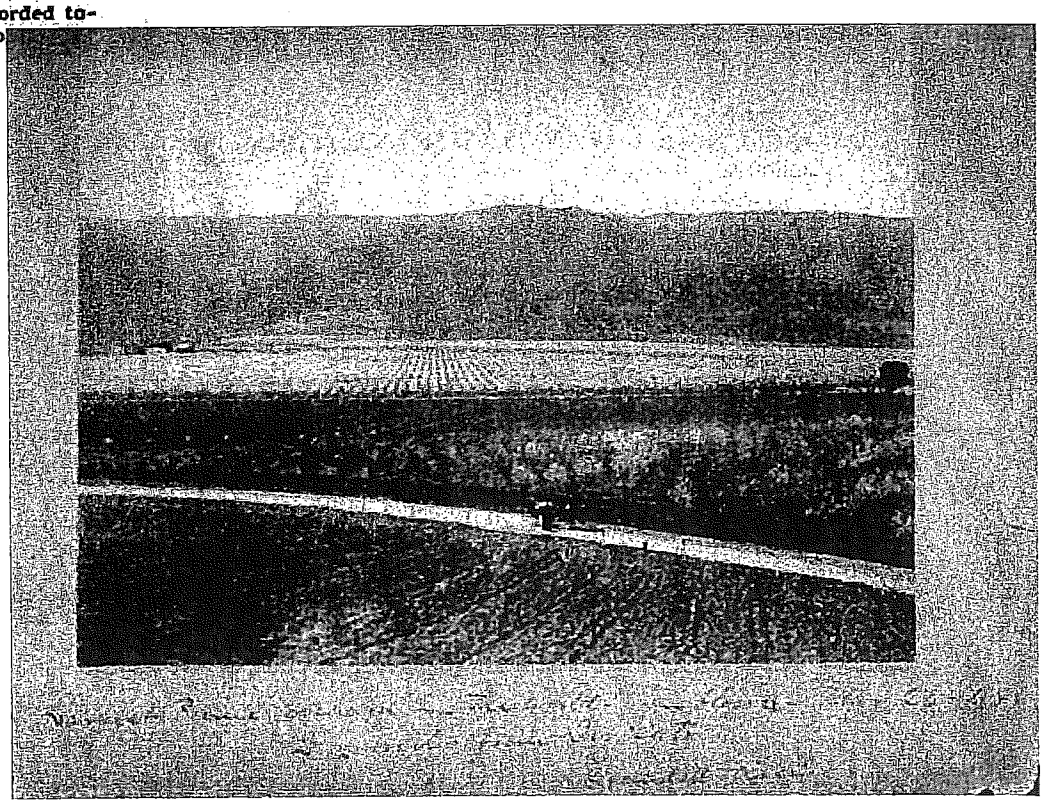
Santa Clara history:
http://www.santaclararesearch.net/SCBIOS/sclaratownshp.html:
of one hundred yards square, and that each head of a *family* should be entitled to a ..... **at the carpenter's trade, Miss Otterson, Hiram *Shartzer*** and G. W. Moody.
http://www.findagrave.com/cgi-bin/fg.cgi?page=gsr&GSln=Shartzer&GSiman=1&GScty=20207&

- - -

"Of the foreigners residing in Santa Clara in 1850, and now living, I remember *Mr. Forbes*, the historian of California, *Dr. Warburton* and Charley Parr, Charles Clayton, who kept the principal store at the place where Habich & Company keep now, A. Madan, Wm. Fosgate, Moses Davis, and 0. G. McLeran, who were working at the carpenter's trade, Miss Otterson, **Hiram Shartzer** and G. W. Moody. Martin Murphy, James Enright and *Judge Senter* were living in the vicinity on the farms they now occupy. Captain Ham was running a boat on the bay between San Francisco and Alviso. *These are the names of all I recall just now.* When I reflect on the number who have " joined the innumerable caravan," then it is brought home to my mind, more than any other time, that 1850 was not a few years ago." *SANTA CLARA TOWNSHIP HISTORY- CENSUS, EARLY SETTLERS, as written in 1881santaclararesearch.net*

- - -

"Meridian." This neat little wayside resort was first established in the year 1872, by a man named Shirley, who was succeeded by another named Sullivan. **In 1879, he sold it to B. C. Shartzer, who at present conducts it.** The wayfarer will find this neat place replete with every convenience for the accommodation of man and horse, while the pedestrian can take it in his daily walk, it being but two miles and a half from the town of Santa Clara. *Pages 539- 552 History of Santa Clara County, California: San Francisco: Alley, Bowen & Co., 1881*



Largest prune orchard in the world in bloom Mar 26, 1888, 2 1/2 miles from Los Gatos

subdivision of farm lands into highly specialized "fruit ranches" of 3 to 50 acres.

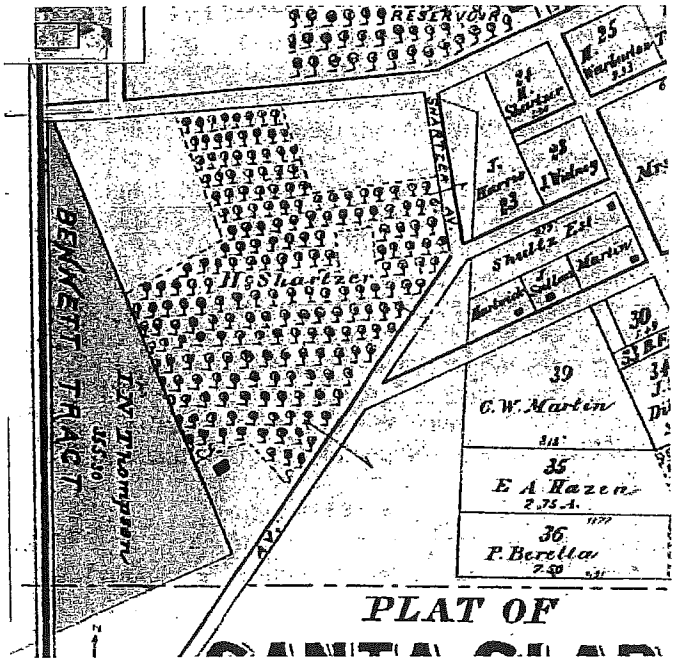
The local region was heavily marketed by local chambers of commerce as the "Valley of Heart's Delight" to publications in the east. Large landowners hoped to profit from this influx and were subdividing their holdings into smaller farms and rural residential areas associated with the new orchard-based economy. *p. 61*

In 1868, the first dried fruit was shipped to the East Coast where it yielded high prices. The completion of the transcontinental railroad in 1869 opened the large eastern U.S. market for local fruit. The first commercial canning operation succeeded in Santa Clara County in 1871. All the factors were in place for the horticultural industry to boom; indeed, orchards increased rapidly during the 1870s and 1880s throughout the County.

As experimentation in outlying areas proved that orchards could succeed with less water than originally thought, the ready market, high prices, and rapidly developing support industries made the switch to horticulture low risk and highly profitable. This change from grain cultivation to horticulture also saw changing land ownership patterns. As profits from wheat production began to decline due to the opening of new competing wheat regions, farmers realized their lands were better suited for more valuable crops and they could make greater profits by subdividing larger tracts and selling plots for small family orchards. A 20 acre orchard was able to produce enough fruit to support a family. *p. 110*

The Shartzer Family

The Thompson and West map from 1876 on p. 1 and this turn-of-the-century map as well show the Saratoga property owned by the Shartzer: H. (Hiram) Shartzer; W.H. Shartzer and B.C. Shartzer (to the east). In 1860 Benjamin C. Shartzer (son of Hiram) was 13 (according to the census below); by 1876 he would have been 29.



1860 Federal Census
Santa Clara County, California
Page 517, Santa Clara Township
10 August 1860

Dwelling #	Family #	Surname	Given Name	Age	Sex	Race	Occupation	Birth Place
2362	404	SHARTZER	Hiram	42	M		Farmer	Va.
		Shartzer	Martha J.	41	F			Ky.
		Shartzer	Historia C.	17	F			Mo.
		Shartzer	Newton	15	M			"
		Shartzer	Benj. C.	13	M			"
		Shartzer	Francis O.	10	M			Cal.
		Shartzer	Alice C.	8	F			"
		Shartzer	Douglass B.	3	M			"
		Shartzer	Hiram P.	1	M			"

http://www.sfgenealogy.com/santaclara/1860/sc60c517.htm

Attachment 12

SHARTZER 1880 census index

Muriel (View posts)
Posted: 9 Sep 2001 10:34AM GMT
Classification: Census
Surnames: SHARTZER, SIMPSON
Census Place: San Jose, Santa Clara, California
Source: FHL Film 1254081 National Archives Film T9-0081 Page 145D
Relation Sex Marr Race Age Birthplace
N. J. SHARTZER Self M M W 35 MO
Occ: Farmer Fa: MO Mo: MO
Mattie SHARTZER Wife F M W 33 OH
Occ: Keeping House Fa: PA Mo: PA
Clarence SHARTZER Son M S W 10 CA
Occ: At School Fa: MO Mo: OH
Henry SHARTZER Son M S W 8 CA
Fa: MO Mo: OH
Clara SHARTZER Dau F S W 4 CA
Fa: MO Mo: OH
Mary SHARTZER Dau F S W 3 CA
Fa: MO Mo: OH
Thomas SHARTZER Son M S W 10M CA
Fa: MO Mo: OH

Newton J Shartzer
Found 10 Records, 9 Photos and 9,121 Family Trees
Born in Missouri, USA on 1845 to Hiram Shartzer and Martha June Culbertson. Newton J married Mary A Neligh. Newton J married Mattie Gilmer and had 5 children.
Family Members
Parents:
Hiram Shartzer1818-1880
Martha June Culbertson1819-1880
Spouse(s):
Children:
Mary A Neligh1848-Unknown
Mattie Gilmer1847-Unknown
Mary Dunn Shartzer
Clarence Shartzer1870-Unknown
Henry W Shartzer1872-1948
Clara Gilmer Shartzer75-Unknown
Thomas F Shartzer1879-1963

http://boards.ancestry.com/localities.northam.usa.states.california.counties.santaclara/57.1.1/mb.ashx

- - - -

Benjamin Culbertson Shartzer
Born June 9, 1847 in Missouri
Died Sept. 9, 1920, Santa Clara
Marriage 1 Margaret A. Delzelle b: JAN 1853 in Missouri

- *Married:* 20 DEC 1869 in Santa Clara County, California
- *Divorced:* BET. 1900 - 1910
- *Divorced:*

Children

1. Nellie Shartzer b: 19 APR 1871 in Santa Clara County, California
2. Daughter Shartzer b: ABT. 1872
3. Daughter Shartzer b: 1873
4. Minnette D. Shartzer b: 16 JUL 1876 in California
5. Benjamin C. Shartzer b: 5 FEB 1879 in Santa Clara County, California

Note: Family graves are in Mission City Memorial Park, Santa Clara 420 N. Winchester Boulevard - including Benjamin Culvertson Shartzer

Clara Gilmer Shartzer 4 yrs 2

Clara Gilmer Shartzer Averill (1876 - 1931)
At age 4, taken in 1879.

The Boyto's (also, Bayto)

Farmed 10 acres of prunes (that included the VDL property before it was developed).

Jack P Boyto 1917 - 2006 was a member of the Boyto family. Jack was born on June 10, 1917; died on July 26, 2006 at 89 years old. Jack P Boyto's last known residence is at Santa Clara, Santa Clara County, California 95051. Known also as: Jack S Boyto, Jack P Bayto

Jack P Boyto 166 Saratoga, Santa Clara, CA 95050 (408) 296-4090
Jack Boyto 166 saratoga ave, Santa Clara, CA 95051

LUCY BOYTO (1883-1976) (also known as Lucy Bayto)

Nicholas Anton Bayto

1915-1991
Born: California
Died: San Jose, Santa Clara, California, United States of America

The house at 166 Saratoga built in 1910.

Today:

This orchard property appears to be the last of all the acres of (prune) orchard that was in Santa Clara 100 years ago.

The abundant fruit crop Santa Clara orchards produced was either shipped fresh, dried, or canned. Levi A. Gould, a Santa Clara orchardist, shipped the state's first carload of fresh fruit east in 1869, shortly after the transcontinental railroad was completed. Block Fruit Packing Company, established in 1878 on Gould's orchard land, became renown for the pears and cherries it packed and shipped to the east coast.

Pratt-Low Preserving Company, established in 1905, sent canned apricots, pears, peaches, cherries, and plums to all parts of the United States, England, and the Orient. During harvest season, 300 to 400 women and men were employed in the handling, sorting and canning process.

The California Cured Fruit Association was formed in 1900 to handle distribution of the dried fruit. In 1901, the Association built a large dried fruit warehouse near Santa Clara's railroad station. The Cured Fruit Association disbanded in 1903. In 1916, Rosenberg Brothers took over the warehouse for its dried prune and apricot operation.

"A new product, the semiconductor chip, was developed in the 1950's. The resulting electronics industry, based on the silicon chip, gobbled up the remaining orchard land and **changed the agricultural nature of Santa Clara and Santa Clara Valley forever.** By 1990, the city covered 19.3 square miles and had a population of more than 93,000.

Few remnants of Santa Clara's agricultural past remain as it today sits in the heart of what is known world-wide as Silicon Valley. By harvesting the fruits of high technology, the Mission City has become a prosperous and progressive city with much to offer residents, businesses, and visitors alike."
City of Santa Clara website: http://santaclaraca.gov/index.aspx?page=506

- - -

"The draft Historic Conservation District Ordinance (2003?), currently under review, is Santa Clara's most recent preservation initiative. In enacting this Article, the City recognizes the substantial aesthetic, environmental and economic importance of its historic and cultural resources. The purpose of this Article is to establish policies, regulations and standards to protect historic and cultural resources and to ensure that development in the Historic Conservation District is compatible and enhances the quality and character of Santa Clara. **With the conscious efforts of the City Council, Historical and Landmarks Commission, and the many other groups and individuals, Santa Clara hopes to save its visible reminders of our past for future generations.**" *National Register of Historic Places*
http://www.cr.nps.gov/nr/travel/santaclara/preservation.htm

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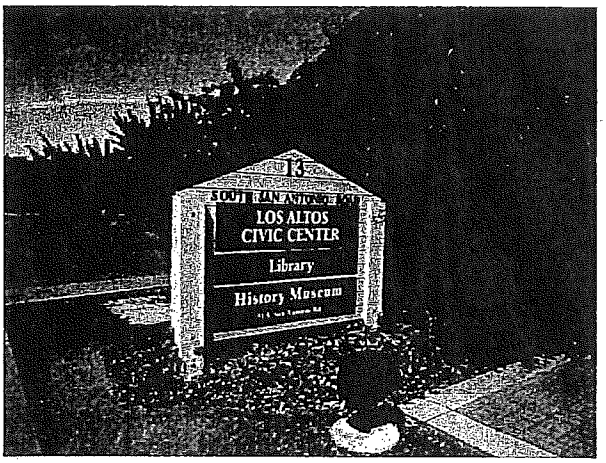
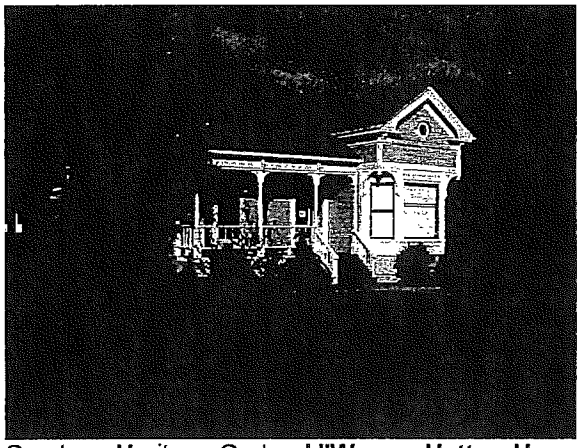
Local City Heritage Orchards

Sunnyvale Heritage Orchard Park



Los Altos Heritage Orchard & History Museum



Saratoga Heritage Orchard **"Warren Hutton House"**

"Soil.—Like any other portion of the Santa Clara valley, the soil in this township is composed, in portions, of gravelly, red clayey soil, with rich adobe, which ever yields a crop of marvelous profusion and excellence."

The Valley of Heart's Delight
The Santa Clara Valley is
To those who hold it dear
A veritable paradise
Each season of the year
One loves it best in April
When the fruit trees are in bloom
And a mass of snowy blossoms
Yields a subtle sweet perfume.
When orchard after orchard
Is spread before the eyes
With the whitest of white blossoms
'Neath the bluest of blue skies.
No brush can paint the picture
No pen describe the sight
that one can find in April
In the Valley of Heart's Delight.
—Clara Louise Lawrence

The City Council voted to designate The Clara Louise Lawrence Residence as a City Landmark in 2001. The structure at 1146 Randol Avenue was built c. 1921 in the Neo-classical Craftsman Bungalow style. It is significant for its architecture and its association with the writer and poet Clara Louise Lawrence who lived in the home from 1922 to 1942. Lawrence was a writer of children's stories, a poet of local significance and a member of the San Jose Poetry Club. She is known for her descriptions of the early Santa Clara Valley, including the poem "Valley of the Heart's Delight".

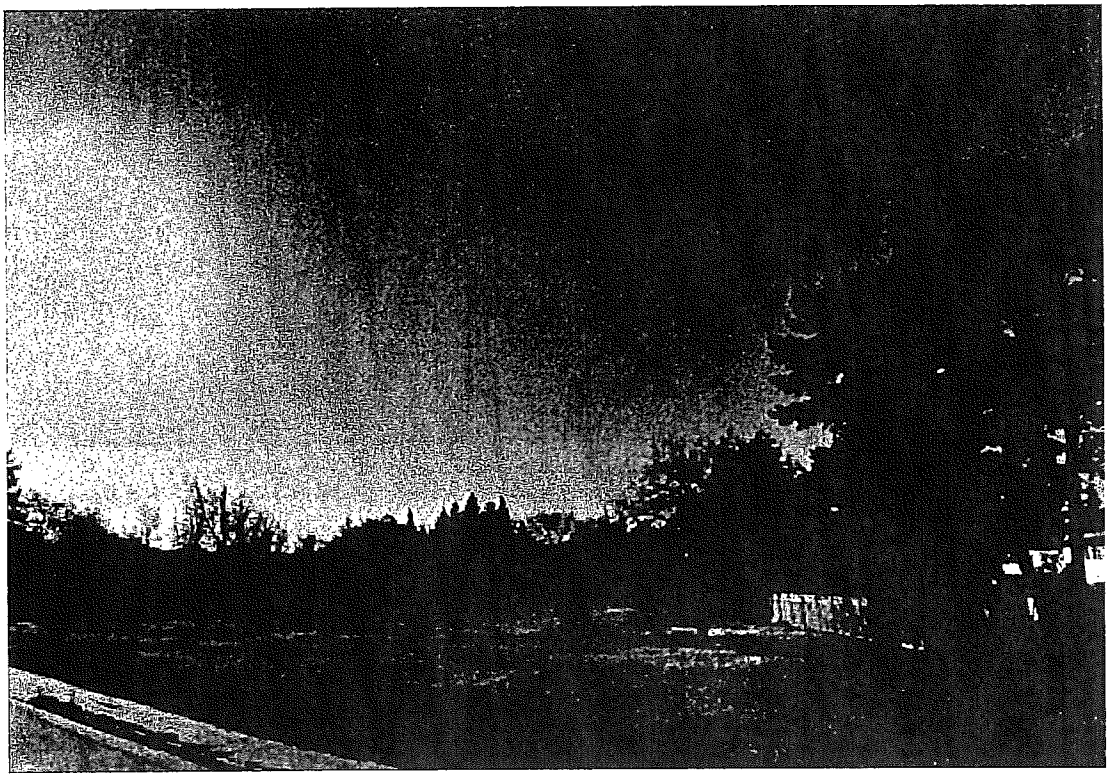
Family harvesting prunes, 1938. Moulin, Gabriel, 1872-1945 (photographer)
Prunes were harvested by shaking the tree and gathering the fallen fruit. Children often earned extra money by participating in the harvest.
http://digitalcollections.sjlibrary.org/cdm/singleitem/collection/arbuckle/id/717/rec/3

Resources include:
Images of America, Santa Clara written by Bea Lichtenstein.
The Last of the Prune Pickers, a Pre-Silicon Valley Story, by Tim Stanley
http://www.santaclararesearch.net/
http://www.sfgenealogy.com/santaclara/history/scchist12.htm
Hooked on Los Gatos History Project (for photos): http://historylosgatos.org/
City of Santa Clara website

Attachment 12

Frank Jenkins' (1873-1961) prune orchard. Born on the site of that is now Moffett Field. He was a fruit rancher on land where Pruneridge Ave., between Saratoga and Winchester, is today.

Save the Orchard!



http://savetheorchard.tumblr.com/

Shaun Lacey

From: Silvia Felix <saf142@sbcglobal.net>
Sent: Sunday, March 23, 2014 2:54 PM
To: Shaun Lacey
Subject: Fw: Bayto Property Project

Sent: Sunday, March 23, 2014 2:21 PM
Subject: Bayto Property Project

Dear Shaun,
We met at the March 10, 2014 meeting held at the main library regarding the proposed Bayto Property Project off of Saratoga Avenue behind Estella Drive in Santa Clara. My mother Elisabeth Felix and I own a home which borders directly on the property.

I assume the property in question will need to be re-zoned to allow for the proposed project to go forward. We are opposed to the proposed project.

At the meeting I voiced my opinion that the old farm house is a historical building. Additionally, I believe the farm land/orchard itself is a historical land mark given all of the Valley's orchards have been bull-dozed in the name of progress. All we have left are old black and white photographs of what Santa Clara Valley used to look like. The home and the land should be preserved as a park and a historical landmark for future generations to enjoy.

A portion of the property should be dedicated to a working orchard so that the public can see what this valley was like 30- 50 years ago. The orchards were the mainstay and heritage of this valley. People should be able to come, see, experience, and visit an orchard. All of the orchards in this valley have been destroyed in the name of progress. I remember when I was a child, on Sundays after church my father would take us for a drive to look at the orchards. We would see row after row, miles of trees blooming or bearing fruit, depending on the season, box after box of fruit laid out to dry. We'd drive by Marianni's and other farm orchards. I believe the old farm house should be preserved and the land should be preserved as a "working" orchard, in other words, the apricot trees should be preserved and additional new trees such as peaches, prune, and cherries added. A walk way could be built around the perimeter with a par-course, children's play area, and benches, and a portion could be dedicated to a soccer field. Maybe a small sandwich coffee shop could be put in the farm house. This proposal should be investigated to determine whether it is a better option for the City and for future generations to preserve our heritage. There are many tech companies in this valley and Santa Clara in particular that would financially support such a project if approached.

There are already numerous projects underway or pending off of Saratoga Avenue and the Stevens Creek area which when completed will severely impact the traffic and population density in the area. The Bayto Property Project will make things even worse by increasing the population density and vehicular traffic in the vicinity. We desperately need to provide a park and leisure area.

The current plan envisions 3 story single family residences which in reality back up directly against the property of the back yards of the homes on Estella Drive. The only "real setback" are the back yards of the homes on Estella drive.The builder graciously warned us he could have built 4-story structures, and proposed more than 32 homes, and disingenuously stated there were a limited number of windows facing the back yards of the homes on Estella. He is so "frugal" (my way of saying cheap) he intends to use existing 30 year old fences of the Estella property owners as the common fence. Let the current homeowners battle the HOA. We just had our house painted. Think of the dirt, dust , and noise, and damage.
He doesn't even have the courtesy to offer to build a 10 foot good-neighbor wall between his project and the Estella Drive properties which might provide some semblance of privacy to the current home owners. The builder also plans on using the road which is now used by Vista Del Lago to access Saratoga Avenue. Imagine the bottle neck and the amount of traffic on this road especially during commute hours. Take a close look at the proposed roads in the project. There is no way a firetruck or ambulance can get to every home. I can imagine a scenario where emergency fire personnel or medical personnel have to run down the street to get to a house on fire, or someone having a medical crisis and then wheel the person down the road back to the ambulance.

A better option would be to require the builder of Bayto to put only single story residences on the land which is contiguous to and backs up to the homes behind it on Estella Drive. This would be a total of approximately four single story homes. The single story homes would act as a buffer between the existing homes on Estella and the proposed three story homes in the Bayto Property Project. It should not cut into the builders profit margin because he should be able to charge a premium for a single story home. There should also be a requirement of no windows on the second and third stories that face Estella to the back. Finally 32 home is just too many homes. The number of homes should be limited to 20. Roads should be required to be wider so that emergency vehicles have access and can turn around or have a way out without having to back up. And of course a 12 foot high painted stone sound wall between the project and property on Estella Drive should be required.

Thank you for your time and your consideration of our recommendations.
Silvia Felix
Elisabeth H. Felix

Silvia Felix
Elisabeth H. Felix
2586 Estella Drive
Santa Clara, CA 95051

RECEIVED
APR 29 2014
PLANNING DIVISION

April 25, 2014

Shaun Lacey
City of Santa Clara
Planning Division
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Bayto Project, 166 Saratoga Avenue, Santa Clara, CA 95051

My mother and I own 2586 Estella Drive, Santa Clara, CA. This property is directly behind and adjacent to the Bayto Property, 166 Saratoga Avenue which is the proposed site for 33 homes to be built by New Home Company.

I previously wrote an email to you and the Historical Committee regarding our concerns about the proposed project. I am attaching a copy of that email to this email and to this letter for convenience.

Our concerns remain the same:
First and foremost it is our opinion the orchard should be preserved as one of the last remaining orchards in the City of Santa Clara, if not Santa Clara County. Bea Lichtenstein so aptly wrote in her book **Images of America, Santa Clara** (2004, Arcadia Publishing, San Francisco, CA):

The growing population affected many facets of life, including the need for housing and the need for more and better schools, which all required land. This, plus the change in business from farming to manufacturing, brought about the disappearance of the orchards and farms and the agrarian way of like in "The Valley of Heart's Delight." The 1950s saw the development of a new product, the semiconductor. The resulting electronics industry, based on the silicon chip, gobbled up remaining orchard land and forever changed the agricultural nature of Santa Clara and Santa Clara Valley.

We desperately need to preserve this land and the two historically significant homes on the property as an orchard for future generations to enjoy. I would suggest the City of Santa Clara approach some of the many software companies in Santa Clara such as INTEL and invite them to create an "orchard park" for future generations of children to visit and enjoy as an educational experience. The two homes could be used and show housed as typical homes from the time of the orchards. The companies could have a plaque dedicated with their company name inscribed in recognition of their invaluable contribution to our community and future generations.

Secondly, we are concerned the Bayto Project as it is currently proposed will adversely effect our right to privacy, security, and private enjoyment of our home. The current proposal has homes set back 10 feet from the fence line and roads ending 8 feet from our fence and property line. The builder is proposing building 3 story homes which will tower almost 40 feet over our Estella Drive properties and proposes to use our fence to separate the properties.

Attachment 12

Concern for our privacy and right to quiet enjoyment of our property demands the Bayto homes adjacent to the Estella Drive property line be no more than one story high. This would be a total of four single story homes that would act as a buffer between existing Estella Drive homes and the proposed Bayto project. Naturally the builder could charge a premium for single story homes. The builder should also be required to construct a 10 foot masonry wall along the property line rather than rely on the HOA to do "the right thing" sometime in the future.

The total number of proposed Bayto homes should be reduced to no more than 24 homes. The Bayto Project is currently being considered in a vacuum which ignores and fails to consider the current approved plans for the property between the Bayto Project that will border Saratoga Avenue, Stevens Creek Boulevard, and run up to Buckingham which will total approximately 200 units including commercial properties. The population and traffic density will be extreme and will necessarily rely on insufficient infrastructure such as water supply and roads not designed to accommodate such extreme numbers of population and traffic.

Roads within the Bayto Project MUST BE WIDER to accommodate fire and emergency vehicles. These vehicles need to be able to turn around. As the roads are currently configured emergency responders will need to back up. Additionally, there needs to be a fire lane between the Bayto Property and the Estella Drive properties so that in the event of a fire emergency, Fire responders can fight the fire and minimize the possibility of the fire jumping to our properties. We are also concerned about garbage pickup trucks that will be backing up on the narrow roads creating all kinds of noise as their beepers go off.

Finally there is insufficient parking for residents, visitors, and disability placards in the current plans given the number of home proposed.

Thank you in advance for your time and for your consideration of our recommendations.

Sincerely,

Silvia Felix

Silvia Felix

Elisabeth H. Felix

Elisabeth H. Felix

Sent by Email and USPS Certified mail

Attachment 12

Shaun Lacey

From: chan nguyen <charlychan@hotmail.com>
Sent: Wednesday, May 14, 2014 12:20 PM
To: Shaun Lacey
Cc: chan nguyen
Subject: Concern about the 3 stories buildings next to our fence.

Dear Mr Shaun lacey . AICP, Assistnant Planner II

My name is Chan Van Nguyen property's owner (APN : 294-37-051) next to the new project of the builder who will build 33 Townhomes next to our fence with many Buildings with 3 stories.
This will raise the concern for us, because It will overlooking our back yard directly, and blocking the view.
We suggest that the two stories permits will be granted by the City of Santa Clara rather than 3 stories as submitted by the Builder.

Sicerely yours.

Chan Van Nguyen
Phone 408 296-1971

Attachment 12

Shaun Lacey

From: Scott Sahlman <ssahlman@hotmail.com>
Sent: Monday, May 12, 2014 3:24 PM
To: Shaun Lacey
Subject: Bayto Property Residential Project: 166 Saratoga Ave.

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr. Lacey,

I am a homeowner at 150 Saratoga Ave. and I received notice about the proposed Bayto Property residential project from the New Home Company at 166 Saratoga Ave. I must say that I am concerned about this project as it seems like a very bad deal for those of us who already live here. First of all, the proposal is for 3 story town homes. Currently there are no buildings that large on this side of the street in the residential area. These proposed townhomes would tower over nearby buildings and would stand out like a sore thumb. Second, the proposal calls for 33 units. The space under consideration is not that big, that would be a lot of people in a small area. Another concern is for parking. The units will apparently have their own garages for the residents, but the reality is that they will have guests over and require additional parking. There is no mention of additional parking spaces being created. Where will their additional needed parking come from? Saratoga Ave.? There's not that much room on this main street. Other nearby streets such as Buckingham are already clogged with parked cars. Our own complex, Vista del Lago has some extra parking, but on a typical night most of those are filled. We shouldn't have to compete with this new project for our own limited extra parking.

I would urge you to oppose this project or at least require it to be significantly scaled back. I could imagine a few new homes in this space, but not 33, not 3 stories high, and not without adding some additional extra parking spaces. Perhaps a better use for this land would be as a park area that all residents nearby could enjoy.

Thank you,
Scott Sahlman
150 Saratoga Ave. Unit #358
Santa Clara, CA 95051

Shaun Lacey

From:	Mary Lindsay <mary@lindsaypr.com>
Sent:	Thursday, July 31, 2014 9:34 AM
To:	Shaun Lacey
Subject:	Comments on 166 Saratoga Ave. Development for Planning Commission Meeting on Aug. 6
Attachments:	neighborhoodPetition-166Saratoga.pdf; Santa Clara City Council Letter - Shaun Lacey 20140410.pdf

July 31, 2014

TO: Santa Clara City Planning Commission
1500 Warburton Avenue
Santa Clara, CA 95050

Re: PLN2013-10111/CEQ2014-01169, 166 Saratoga Avenue

Dear Commissioners:

The homeowners of the Vista del Lago Homeowners Assn. (254 condominium units in 26 buildings at 120 and 150 Saratoga Ave., and 121 and 151 Buckingham Dr., Santa Clara) object to the proposed development at 166 Saratoga Ave. Please see the attached petition with over 160 signatures from our neighborhood, including residents on Estella Dr., that will all be affected by the problems this development will create. The proximity and density of the proposed development will infringe on the privacy, security and private property rights of Vista del Lago and our owners.

1. We object to the destruction of the last surviving orchard in the City of Santa Clara;

2. We object to the high density housing planned for this property, which is not permitted currently and will only be made possible by conveniently changing the zoning; and

3. We object to the impact this development will have on us personally and the community in general if the high density zoning is allowed to proceed (explained below).

Vista del Lago's eastern property line is only app. 200' from the western boundary of the proposed development (our property is that close!), with a commercial property in between. We have two driveway easements out to Saratoga, one of which passes through the proposed development at 166 Saratoga Ave. Nearby across Buckingham Dr. are two smaller condominium complexes; as well as three large apartment complexes. As well, the City has approved a 222 townhome project at the corner of Buckingham Dr. and Stevens Creek, which has started construction. This new large residential project alone will create problems for parking and traffic on Stevens Creek, Saratoga Ave., Buckingham Dr. and surrounding city streets.

The problems the proposed high density development at 166 Saratoga will create for Vista del Lago owners in particular and the surrounding community in general include:

1. Trespassing and high traffic through our private property when these new residents realize they can use our driveways as a shortcut to Kiely and Stevens Creek. Traffic problems on these and other surrounding roads (including Saratoga Ave. and Buckingham is already bad but is going to increase with the new townhomes on Stevens Creek. Traffic jams up already at the intersection of Stevens Creek and Saratoga, and with the big townhome development there it is only going to get worse. Our private driveways are going to become a public thoroughfare, with traffic speeding by under our bedroom windows and creating a dangerous and invasive situation for our residents.

2. Traffic problems on neighboring streets for everyone;

2. Parking on our property, as the guest parking on the proposed development is insufficient;

3. Trespassing on our property to enjoy our park-like setting.

Solutions include:

1. Keep the 166 Saratoga property as a heritage orchard or park for the entire community. The Historical Commission found this property to be of historical significance. There is insufficient park and recreational facilities in this area.

2. Reduce the density on the 166 Saratoga project from the high density zoning that is currently sought. Build fewer homes on the property to mitigate the problems the high density development will cause. The design and density that is being proposed does not fit into this community.

3. If the project proceeds, then Vista del Lago wants to see the developer/City pay for and construct gates across our driveways along our Saratoga Ave. border and fencing to protect our property and our homeowners from the problems that your decision to proceed will create for us (as explained above), a project that our owners cannot afford to do and would not otherwise need to do except for the impact that your decision will have on all of us living here.

Please see the attached letter from the Board of the Vista del Lago Condominium Assn. that was sent to the Commission on April 10 that further addresses our objection.

Thank you.

Mary Lindsay
Secretary and Director, Vista del Lago HOA
- for the Board of Directors and the Homeowners of Vista del Lago
151 Buckingham Dr. #296
Santa Clara, CA 95051
408-984-7242

Attachment 12

Via US Mail, Certified Mail & Email
slacey@santaclaraca.gov

April 10, 2014

Shaun Lacey
City of Santa Clara
Planning Division
1500 Warburton Avenue
Santa Clara, CA 95050

RE: OPPOSITION TO PROPOSED DEVELOPMENT BY NEW HOME COMPANY AT 166 SARATOGA AVE.

The Board of Directors and residents of Vista del Lago (120 and 150 Saratoga Ave; 121 and 151 Buckingham Dr.) are concerned about the proposed development by New Home Company at 166 Saratoga Ave.

Vista del Lago is a 254 unit condominium property, the eastern property line of which is app. 200' from the western boundary of the proposed development, with a commercial property in between. We have two driveway easements that correspond to these addresses, one of which dissects the proposed development property and leads to the office building at #160 Saratoga and through to Vista del Lago, providing our property with legal easement access from Saratoga Ave. on the north side. The other is on the south side of the Northern Dental Building at 122 Saratoga, that also provides legal easement access from Saratoga to Vista del Lago on the south side. Development plans need to preserve Vista del Lago's legal easements in both locations.

The Vista del Lago Condominium Owner's Association is concerned about the impact of traffic, parking, trespass and security on our property from the proposed development, and its impact on the neighborhood as a whole:

1. Vista del Lago's driveways are private driveways providing our owners access to their parking spaces. They are not public thoroughfares. However, we fully anticipate that residents of the proposed development will quickly realize our driveways provide a shortcut from the proposed development on Saratoga out to Buckingham Dr. and beyond to Stevens Creek and Kiely. This would be trespassing and represent dangerous traffic issues and liabilities to our homeowners.

2. Vista del Lago's private property is landscaped with water features in a park-like setting, and our waterways support ducks, geese and other wildlife. We anticipate that residents of the proposed development will quickly realize that our private property is a nice place to visit, which would be trespassing and represent liabilities to our Association.

3. Vista del Lago has been required by the City to maintain adequate parking for our units. Our property does not have extra parking available for residents and guests of the proposed development who cannot find parking there because the number of spaces is insufficient for their needs.

In addition to these issues of trespassing and security is the character of our property, which provides privacy for our homeowners despite our close proximity to major thoroughfares. The proximity and density of this proposed development would infringe on the privacy, security and private property rights of Vista del Lago.

As well, we are concerned about destruction of the natural setting of the existing property, which is significant as one of the few if not the last orchard in Santa Clara and thereby has agriculturally historical significance. Therefore, we appeal to the Planning Commission and the City to preserve this property either in whole or in part in recognition of the City's farming heritage and turn it into a public park.

Thank you for your consideration.

The Vista del Lago Homeowner's Condominium Association

Barbara Burkett, President
John Ornelas, Vice President
Mary Lindsay, Secretary
Gina Wolf, Treasurer
Frank Giacomelli, Director

Shaun Lacey

From:	Ella P <elmirap12_95@yahoo.com>
Sent:	Thursday, July 31, 2014 1:38 AM
To:	Shaun Lacey
Subject:	166 Saratoga Ave Project (for Planning Commission Meeting)
Attachments:	Attachment A.pdf; Attachment F- BuckinghamMauricia.jpg; Attachment E- MauriciaAve.jpg; Attachment D- BuckinghamDr2.jpg; Attachment C- BuckinghamDr.jpg; Attachment B- KeystoneAve.jpg
Follow Up Flag:	Follow up
Flag Status:	Flagged

Santa Clara, CA 95051

Planning Commission
Planning Division
City Hall
1500 Warburton Avenue
Santa Clara, CA 95050

Re: PLN2013-10111/CEQ2014-01169, 166 Saratoga Avenue

Dear Planning Commission:

This letter is to formally protest the development of the proposed project listed above and request that the zoning NOT be changed to accommodate this project. This project would severely damage the serenity of the surrounding neighborhood and is totally not wanted or supported by the neighborhood. Not only is the proposed plan completely faulty by not providing adequate parking on the premises for family and visitor parking with a mere 6 parking spaces (2 of which are handicap parking) for 33 townhomes, but, as indicated above, NO ONE in the surrounding community supports such a project!

In fact, the community has already obtained over 160 signatures on a petition, with minimal effort, to stop this project from moving forward. (See Attachment A) Imagine what will occur if we take this movement to the newspapers and TV stations to rally additional support! Is that *really* a battle you want to undertake?

Instead, the community wants to preserve what remains of one of the last working orchards in the city of Santa Clara for the benefit of individuals of ALL ages. Even the Historical Committee has already leaned towards turning this property into something beneficial for individuals throughout our community and surrounding areas to preserve what little remains of this valley's history.

The Planning Division has already failed miserably by pushing through projects that went far beyond what was originally forecast in previous years. Look at the attached photos of current parking issues on Buckingham Drive, Keystone Avenue, and Mauricia Avenue (See Attachments B-F). The photos clearly illustrate that there is simply no place left for additional resident or guest parking. And what did the Planning Commission authorize in its great wisdom? You authorized the Buckingham Residential Project nearby at 45 Buckingham Drive and 66 North Saratoga Avenue, a mere one block away from the proposed project under discussion today. That 222 unit development project is guaranteed 100%

to create additional parking issues for the surrounding community! And now you seek to create even more parking issues to the area by adding yet another parking and traffic situation to the neighborhood at 166 Saratoga Avenue?

How can the Planning Commission possibly think that the Saratoga Avenue Residential Project with only 6 visitor parking spaces (4 regular plus 2 handicap) is even remotely enough parking to support 33 townhouses with families with multiple drivers and guests coming over? It is absolutely ridiculous to think that this is anywhere close to being adequate without parking on nearby private property that does not belong to the proposed project!

It is time for the Planning Commission to start acting responsibly and JUST SAY NO! The people of Santa Clara do not want to live amongst an asphalt jungle. We do not need 33 additional townhomes in our community. Take the proper action and deny this project. The community will rally behind you to preserve this orchard that benefits all. We will work closely with the City Council to see that this property is used properly and re-planned into something Santa Clara and its citizens can be proud of.

Sincerely,

David Pendleton
Former Vista Del Lago HOA President

Attachment 12

Neighborhood Petition

We, the undersigned individuals, seek to voice our total opposition to the City of Santa Clara's plans to destroy one of the last remaining small farms within city limits in order to allow the construction of a 3-story townhouse complex on the property. Our outrage is amplified by the fact that the city has already authorized the construction of over 200 new apartment units a mere one block away on Saratoga Avenue, which will greatly add to traffic congestion and parking issues.

This last parcel of land must be preserved for the benefit of young and old alike to experience a bit of Santa Clara history now and well into the future. We do not need additional medium to high density housing when there is already a more than adequate supply available. What we do need are more parks or historical areas, such as this property, where people can get away from the stressful life style within Silicon Valley and experience more tranquility and enjoyment within our lives. STOP THIS PROJECT and choose a solution that is beneficial to ALL citizens of this city. The actions taken will be remembered in upcoming elections.

Name	City Address
DANIEL YUE	2570 Estella DR, S.C. 95051
MATILDA YUE	" " " "
Mary Santos	2566 Estella Drive Santa Clara CA 95051
John Santos	" " " " " "
Ethan Winston	120 Saratoga Ave #83 Santa Clara CA 95051
Chan Nguyen	2556 Estella Dr S/C CA 95051
Trinh Nguyen	" " " " "
Sandra Felix	2580 Estella Dr, Santa Clara, CA 95051
Elizabeth Felix	2586 ESTELLA DR
Sigrid Wegener	2652 Estella Dr. Santa Clara, 95051
Naveen Swamy	150 Saratoga Ave, #344, Santa Clara, CA 95051
Luis Lau	150 Saratoga Ave Santa Clara CA 95051
PANKAJ KUMAR	150 Saratoga Ave. #397, Santa clara, CA, 95051
MIMI YUE	151 BUCKINGHAM DR. #21, SANTA clara, CA 95051
Gloria Yang	151 Buckingham Dr. #272 Santa Clara CA 95051
Edna Encarnacion	150 SARATOGA AVE #345 95051
Paul Rietz	120 Saratoga Ave # 114 95051 Santa Clara, CA

Attachment 12

Neighborhood Petition

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This last parcel of land must be preserved for the benefit of young and old alike to experience a bit of Santa Clara history now and well into the future. We do not need additional medium to high density housing when there is already a more than adequate supply available. What we do need are more parks or historical areas, such as this property, where people can get away from the stressful life style within Silicon Valley and experience more tranquility and enjoyment within our lives. STOP THIS PROJECT and choose a solution that is beneficial to ALL citizens of this city. The actions taken will be remembered in upcoming elections.

Name	City Address	
Frank Giacomelli	151 Buckingham #215	Santa Clara, CA 95051
Carolin Jones	121 Buckingham Dr #61	Santa Clara Ca 95051
Mary Jo Kramer	2606 Estella Dr.	Santa Clara Ca 95051
Suzanne Atkins	2605 Estella Dr	Santa Clara CA 95051
Barbara Burkett	151 Buckingham Dr #283	Santa Clara, CA 95051
Soumenda Chakraborty	150 Saratoga Ave. # 307	Santa Clara, CA 95051
Ivy Chu	150 Saratoga Ave, #353,	Santa Clara, CA 95051
Linda Williams	121 Buckingham Dr. #64	Santa Clara, CA 95051
Ella PENDLETON	150 SARATOGA AVE #351	SANTA CLARA, CA 95051
Phil Braverman	150 Saratoga AVE #350	Santa Clara CA 95051
DAVID PENDLETON	150 SARATOGA AVE #351	SANTA CLARA, CA 95051
CAROLYN CHIN	2602 ESTELLA DR	SANTA CLARA, CA 95051
Andy Cell	2596 Estella Dr	Santa Clara, CA 95051
Sooka Chae	2596 Estella DR	SANTA CLARA, CA 95051
Eric Leroy	120 Saratoga Ave #101	SANTA CLARA CA 95051
CHRIS SHEPHERD	150 Saratoga Ave. #363	Santa Clara, CA 95051
EMMA SAHADIA	150 Saratoga Ave 354	Santa Clara CA 95051
TIGRAN USHANIAN	150 Saratoga Ave 354	— " — " — " — "

Attachment 12

Name	City Address
John Weitman	150 Saratoga Avenue Unit 352 Santa Clara 95051
Rob Avina	150 Saratoga Ave #357 95051
Candace Avina	150 Saratoga Avenue #357, CA 95051
Olga A. Belmonte-Cardoso	150 Saratoga Ave #356, CA 95051
[illegible]	150 Saratoga Ave. #358, CA 95051
Sylvia [illegible]	150 Saratoga Ave #356, CA 95051
Saeed matadeh	150 Saratoga Ave #362 CA 95051
Mahbobeh Hasheni	150 Saratoga Ave #362 CA 95051
Mikhail Shapiro	150 Saratoga Ave, # 321, CA, 95051
Ettel Shapiro	150 Saratoga Ave, # 321, CA, 95051
Vandana Narula	150 Saratoga Ave, # 327 CA 95051
REBECA VARGAS	150 SARATOGA AVE. #330 CA 95051
Paul Reich	150 Saratoga Ave, #333, CA 95051
Francine Ruth	150 Saratoga Ave, # #338 CA 95051
[illegible] Ruth	150 Saratoga Ave #338 CA 95051
[illegible] Dewa	150 Saratoga Ave #339 CA 95051
Akhila Naveen	150 Saratoga Ave #344 CA 95051
Yucai Feng	150 Saratoga Ave #347 CA 95051
Shuying Sun	150 Saratoga Ave #347 CA 95051
CHANDAN BISHT	150 SARATOGA AVE #348 CA 95051
[illegible] Bisht	150 Saratoga Ave 348 CA 95051
[illegible] Mogla	151 Buckingham Drive #256 CA 95051
[illegible]	611 Woodbans Rd CA 95051
Shigenori Chin	611 Woodbans Rd. CA 95051
Melinda Zhang	150 Saratoga Ave #115 Santa Clara CA 95051
Bianca Hilles	120 Saratoga Ave #120 Santa Clara CA 95051
[illegible]	120 Saratoga Ave #120 Santa Clara CA 95051
[illegible]	120 Saratoga Ave #110 Santa Clara CA 95051
Soungmo Yoon	120 Saratoga ave #106 Santa Clara CA 95051
Airi Hayashi	120 Saratoga Ave #106 Santa Clara CA 95051
Kiran Kumar	121 Buckingham DR #54 ~~150 Saratoga Ave #349~~ SANTA CLARA CA 95051
C. Sahasrini	~~150 Saratoga Ave #349~~ 121 Buckingham DR #54 SANTA CLARA CA 95051

Attachment 12

Name	City Address
Igor Nazorenko	121 Buckingham Dr #51
Jesun Kim	120 saratoga ave # 76
Sung Choi	120 Saratoga ave # 76
HERTA SCHIAVO	120 SARATOGA AVE #70 SANTA CLARA
Peter Nagy	150 Saratoga Ave #341 Santa Clara
Kimiyo Shiraishi	120 Saratoga Ave. #81 Santa Clara CA
Nick Hadnoun	120 Saratoga Ave #85 / Santa Clara CA
Estelle Coardou	120 Saratoga Ave #85 Santa Clara CA
Gina Guerrieri	150 Saratoga Ave, #369 Santa Clara CA
Peter Guerrieri	150 Saratoga Ave, #369 Santa Clara CA
Soyoun In	150 Saratoga Ave #371. Santa Clara
Hoesup In	150 Saratoga AVE. #371 Santa CLARA
Alan Lauer	150 Saratoga Ave #372 Santa Clara
Arlella Lu	150 Saratoga Ave #372 Santa Clara
Gabe Wettlaufer	150 Saratoga Ave #303 Santa Clara
Esther Voice	150 Saratoga Ave #303 Santa Clara
Yuliia Sviriskaya	150 Saratoga Ave #304 Santa Clara
Zuchra Salahuddinova	150 Saratoga Ave #304 Santa Clara
Jenifer Sanchez	121 Saratoga Ave #56 Santa Clara
Lisa Moniz	121 Saratoga Ave, #55 Santa Clara
Janice Lieberman	121 Buckingham Dr. #57 Santa Clara
Alan Moniz	121 Buckingham Dr. #62
Sujith	121 Buckingham Dr #60
Sandeep	121 Buckingham Dr #60
John Stott	121 Buckingham Dr. 67 95051
Malachy J. Hague	121 Buckingham Dr #66 S.C. 95051
Gail Hague	121 Buckingham Dr #66, Santa Clara 95051
Olena Nazarenko	121 Buckingham Dr. #57 Santa Clara 95051
Roopa Venkatesha	121 Buckingham Dr #26 Santa Clara 95051
Gopinath Ranappa	121 Buckingham Dr #26 Santa Clara 95051
Kavoos Hedayati	121 Buckingham Dr #44, Santa Clara
Parivash Hedayati	121 Buckingham Dr #44, Santa Clara 95051
RAE M LAUCHLIN	121 BUCKINGHAM DR #46 N Clara 95051
Jared Taylor	121 Buckingham Dr 3T 95051

Attachment 12

Name	City Address
Sizzy McGuire	121 Buckingham #18 Santa Clara Ca 95051
Hon Truong	121 Buckingham #15 Santa Clara Ca 950
ARRIGO PESSANA	151 Buckingham # 247 Santa Clara Ca 95051
ELDA PAGANI	151 Buckingham # 247 Santa Clara Ca 9505
JACK ELTZRITH	151 BUCKINGHAM # 249 SANTA CLARA 95051
Susan Swenson	151 Buckingham # 259 S. Clara 95051
Vera Chen	151 " # 227 Santa Clara
Prakash Patni	151 " " # 231 " "
Abhishek Shah	" " " "
Beth Horn	151 Buckingham Dr # 235 Santa Clara 95051
H Marskua	151 Buckingham Dr 240 SC CA 95051
M. ELLITTI	150 SARATOGA AVE # 322 SC CA 95051
A. OLMOS	150 SARATOGA AVE # 323, SC, CA
Angela Olmos	150 Saratoga Ave # 323, SC CA
Mani Bhaskaran	150 Saratoga Ave, # 325, SC, CA 95051
Ramdas Menon	150 Saratoga Ave, # 325, SC, CA 95051
SOFIA BALTER	2625 Keystone Ave, # 202, SC CA 95051
Pasha Seinkirin	2625 Keystone Ave, # 202, SC CA 95051
Carolyn Kelly	151 Buckingham Dr # 285
NIGISH BASSOLI	288 Buckingham Dr # 288
R. Balasankar	~~287~~ 151 BUCKINGHAM DR # 287
S. DEEPA PRAMODINI	~~151~~ " " # 287
V. Colleges	151 Buckingham #284
T MUROYA	151 BUCKINGHAM # 284
Lynette Rugozel	151 Buckingham Dr # 279
Chua Teng	~~280~~ 151 Buckingham Dr. #280
Ramadevi Jayaraman	151 Buckingham Dr # 278
Sarah Baldo	151 Buckingham Dr. #276
Edward Kratzkmer	151 Buckingham Dr. # 267
Nana Prabhu	151 Buckingham Dr # 267
Jennifer Taylor	151 Buckingham Dr # 266
Dina Wall	151 Buckingham # 201
Marion Clemens	151 Buckingham Drive # 204

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Name	City Address
Anthony Lu	151 Buckingham Dr #205
Meihua Zhang	151 " " "
Duane Pak	151 Buckingham #208
Ed Vo	151 Buckingham #208
Saeed Ashabazi	#210
Lily AKHAVAN	#210
Margaret Luy	" #219
Bobby Singh	" #299
Sugarmd Qadro	151 Buckingham #286
Kevin Qadro	" "
Michelle Rangel	151 Buckingham Dr #274
M. Abarca	151 Buckingham Dr. #270
Aida Calle	151 Buckingham Dr #270
Saru Mte	121 Buckingham Dr. #34
Alma Peralta	121 Buckingham Dr #34
Misha Bajwawala	121 Buckingham #31
Carole Cohen	121 Buckingham #11
LINDSAY Whyte Smith	121 Buckingham #20
Manpreet Singh	121 Buckingham Dr #27
John Edwards	#61 Buckingham Dr #61

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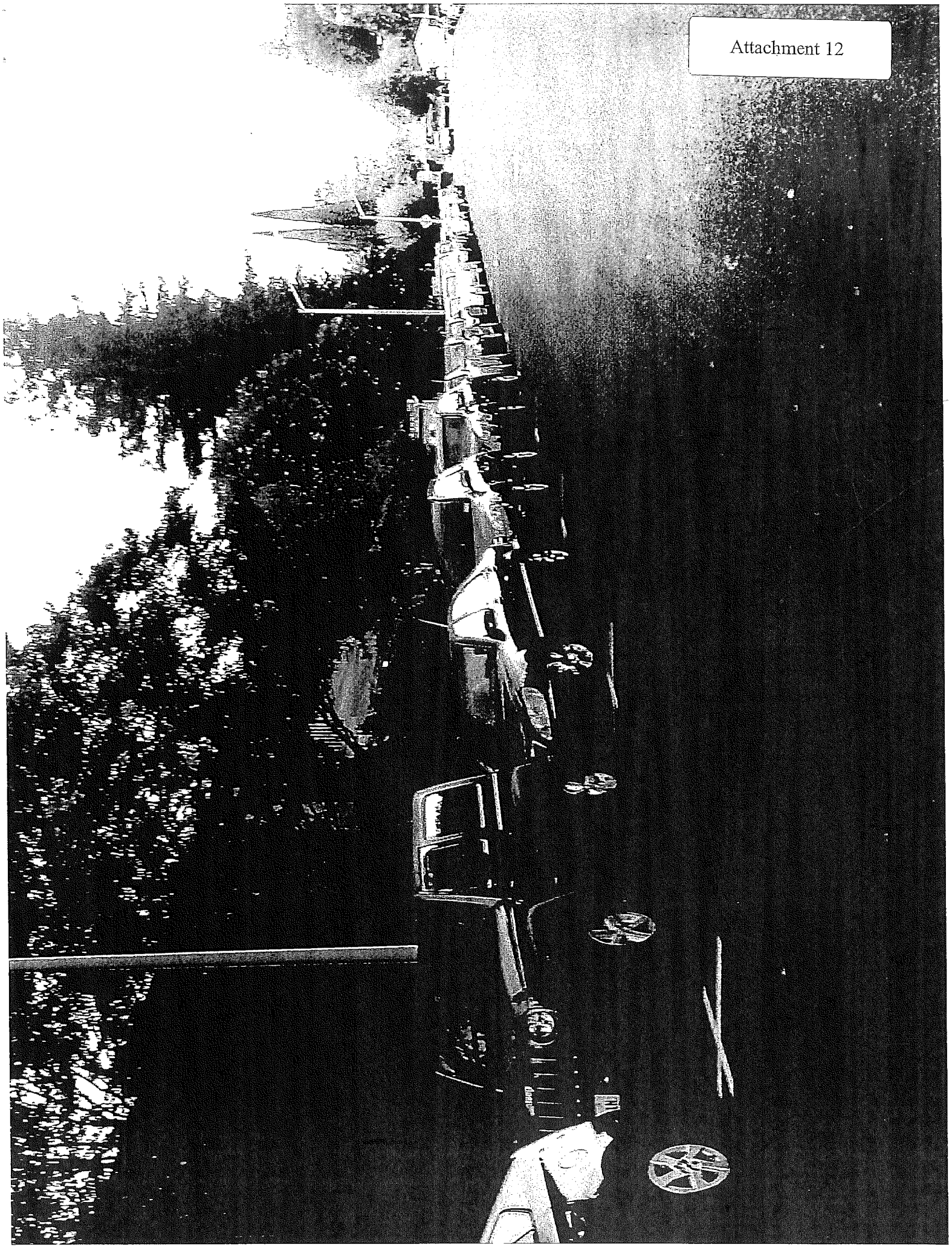
Name	City Address
Sahana Iyer	121 Buckingham Dr #45, santaclara, CA, 95051
Badri Rajan	121 Buckingham Dr #45, Santa clara, CA, 95051
Manasa Reddy	121 Buckingham Dr #23, Santa clara, CA, 95051
Anil Reddy	121 Buckingham Dr #23, Santa clara, CA, 95051
Shah Dipika	121 Buckingham Dr. # 41, Santa clara, CA 95
Shah Dilipkumar	121 Buckingham Dr. # 41, Santa Clara, CA 95

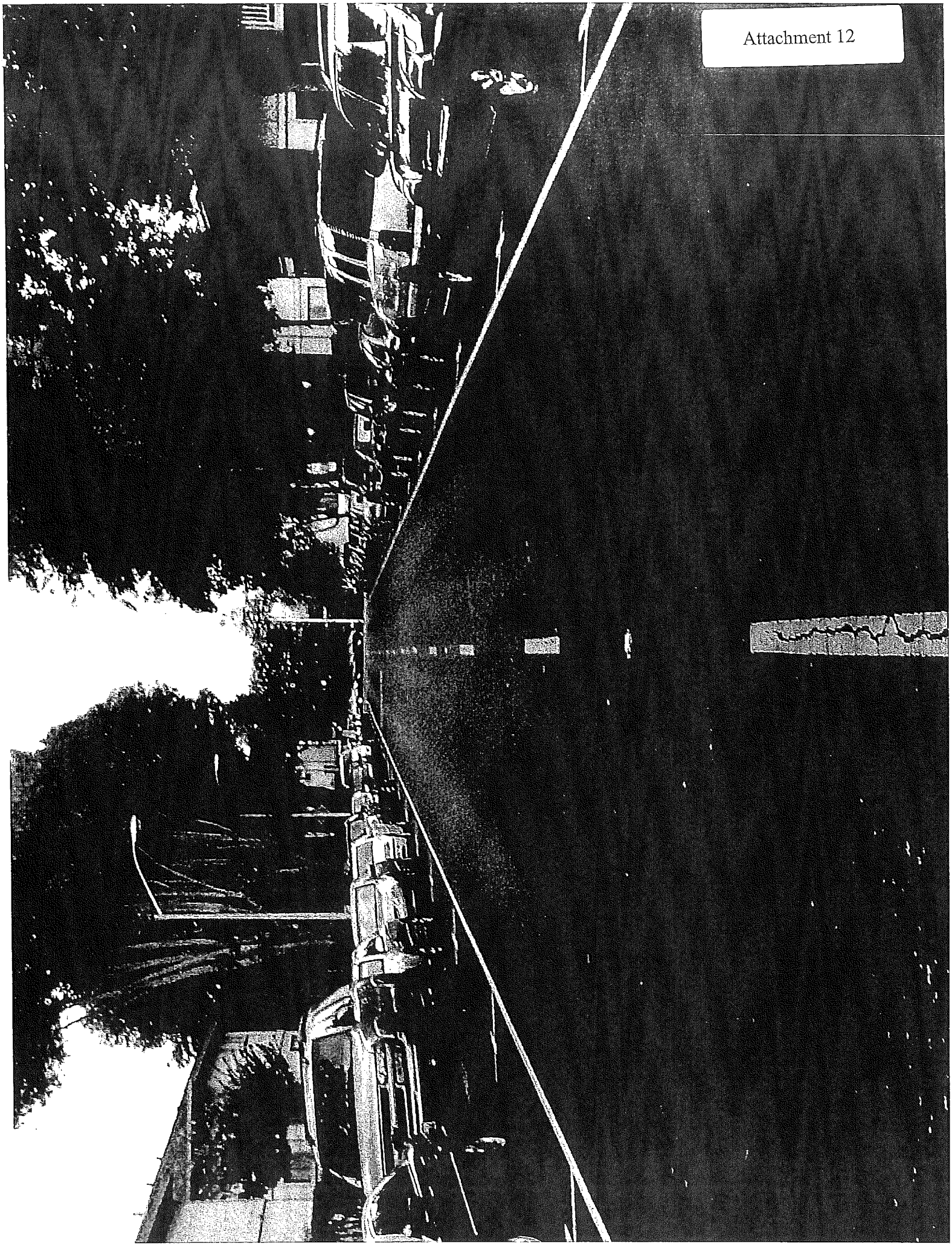
Attachment 12

Name	City Address	
Margaret Hohenohelt	2626 Estella Dr	95051
Kyongmi Ader	151 Buckingham Dr. #253	95051

Attachment 12



Attachment 12



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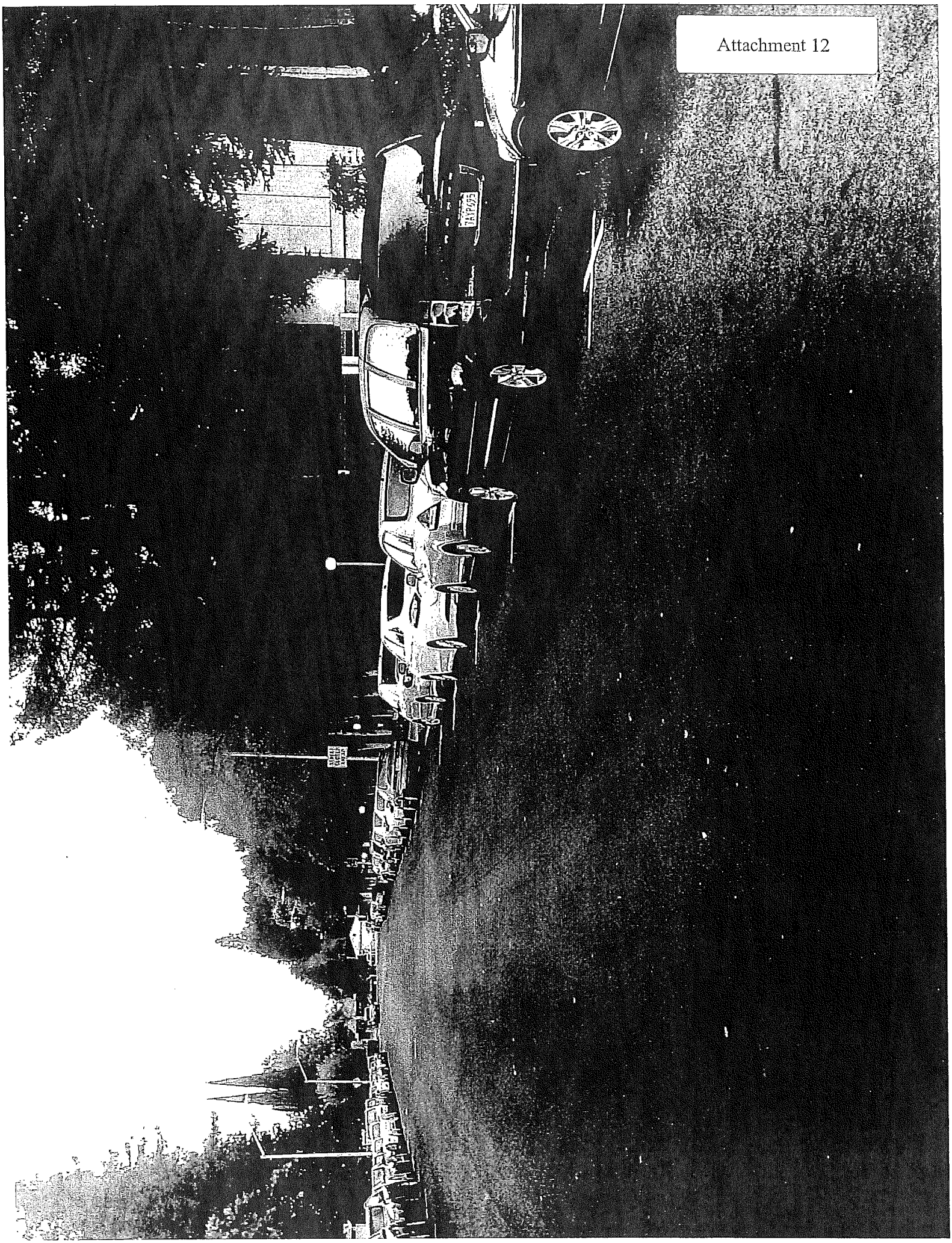

Attachment 12

Attachment 12

Shaun Lacey

From: HistoricalLandmarksCommission
Sent: Thursday, July 17, 2014 8:36 AM
To: Megan Valenzuela; Yen Chen; Shaun Lacey
Subject: FW: A note to the 9 Boards & Commissions of the city of Santa Clara

Please copy for PC and HLC packets.

From: Save Orchard [mailto:santaclaraorchard@gmail.com]
Sent: Thursday, July 17, 2014 12:19 AM
To: Library Board; Civil Service Commission; Cultural Commission; HistoricalLandmarksCommission; CommunityServices@santaclaraca.gov; Parks and Recreation Commission; PlanningCommission; Senior Advisory Commission; Youth Commission
Subject: A note to the 9 Boards & Commissions of the city of Santa Clara

Hello Council and Board Members,

Firstly, my name is Rob Avina, I am a near 40 year resident of the city of Santa Clara. I live at 150 Saratoga Avenue, and have for the past 15 or so years, and continue to with my wife Candace, and our soon to be born first daughter. I come to you collectively by email today, in order to unite your attention to a piece of Santa Clara's history, that if plans go as they are scheduled, we will lose as one of the most welcoming, telling, and friendly spaces, the last orchard, in Santa Clara, California.

To the Youth Commissioners particularly, this one is for you guys! You deserve a chance to learn and hear the truth about our city's past, and how we fit into the greater fabric of county, California, the US and World history. All other commissions too. Senior Commission, you are the voice of experience in our community, the source of our stories, past and present. The memory that is in danger of fading here, already missed by the generation that lived it, and by many of those that followed. Board of Library Trustees, you hold the keys, your archives, our lockbox of history, responsible for keeping it safe and sound. Allowing access in and out to all those that we remember, or whom seek facts, without prejudice. Historical & Landmarks Commissioners, I have spoken before you, a few times now. Hopefully more in the future. You know your place in this decision very well, and thank you for the vocal support of many of your members. Cultural Commission, your mission statement includes endeavors "pertaining to the enhancement of multi-cultural experiences and beautification of the City through art". I am not sure where or how, but the property in question will need your expertise if saved by the city, to ensure that all the many peoples of the time are adequately represented and fairly portrayed. Housing Rehabilitation Loan Committee, you must have some say in the question of if we need 33 more condominiums on Saratoga Avenue. Low income housing doesn't seem like a great priority on this side of the city, and squishing 33 more tiny buildings onto this 1.7 acres isn't going come close to solving the problem, even were they all for low income applicants. They are not. Parks and Recreation and Planning Commissioners, hello to you, Planning has been scheduled to hear about this condo project for quite some time now on and off, and Parks, I am hoping you will be taking over the property, should it be, so rightfully saved. Finally, Civil Service Commissioners, you may never be at a point of being consulted about this property one way or the other, but as the chair of hiring power in the city of Santa Clara, I felt that you have a right and duty to know what the people you have helped choose along the way, are doing with the resources they have been given.

All of that to welcome you all to savetheorchard.tumblr.com

On that website, you will first find a 2 minute introductory video, please take a look. It sh[illegible] the document that follows on the page, one I have assembled from the pages of history itself: Finding Hiram Shartzer. Ripping ancient newspapers, and books and old timey parchments apart isn't anything most of you would condone, but that is exactly what I did, digitally. The result a a collage and menagerie of the history of Santa Clara, from the viewpoint of possibly it's most fruitful citizens, Mr Hiram Shartzer.

Born in the very southern climate of the early 1800's east coast, Hiram eventually moved to San Francisco in 1849, an original 49er, then here in 1850 and squatted on almost 400 acres of land, the last remaining piece of which is the reason for my contacting you today. In 1854 he planted his 6000 tree orchard, the last vestiges of which can be seen at 166 and 170 Saratoga Avenue. I have 20 physical copies of this 20 page document, for anyone that prefers a hard copy to read. I can be reached at this email address (santaclaraorchard@gmail.com) or at 408-916-3674 our home number.

Thank you for taking the time, on this important issue. Please feel free to pass the site, document, video and message along to your friends and family, colleagues, fellow residents and anyone else you think might be interested. This orchard deserves to be preserved for future generations.

-Rob Avina

PS for easy access and future reference to this email here are the 4 relevant links:
website: savetheorchard.tumblr.com
Video: http://www.youtube.com/watch?v=v03ORzWeXLI
Web Version of "Finding Hiram Shartzer": http://www.gigapan.com/gigapans/158854
Downloadable Printable PDF Version of "Finding Hiram Shartzer": http://drive.google.com/file/d/0B_a5zH10y4b5R0JuOUdsODRLQ1U/edit?usp=sharing

May 1, 2014

To: The Historical and Landmarks Commission
From: Lorie Garcia, City Historian

Dear Commissioners,

I am sorry I am unable to attend tonight's meeting but I wanted to give you some information on Jack Boyto as part of your review on the project at 166 Saratoga Avenue (**PLN2013-10111 & CEQ2014-01169**).

While the historic survey done for the property addresses the structures located on it, I don't feel it adequately addresses Jack and his contributions to the preservation of Santa Clara history. Starting with the Headen-Inman house, Jack contributed many, many hours to its restoration. Then his base of knowledge became invaluable to the creation of Harris-Lass Historic Preserve, not only through working on the house itself, but most importantly, to the successful reconstruction of the Tank House.

I am not sure how many of you are aware of the fact that the Tank House is not original to that property. When the City acquired the Harris-Lass site, the Tank House was relocated to it from the Rumboldz farm as part of the mitigation for the development of that site. The Tank House was moved in sections and the windmill in pieces. Jack assisted in the reassembling of the Tank House structure so that it was put together correctly. That part was pretty simple. Then we were faced with the daunting task of reassembling the windmill and none of us "City" folks had a clue. Luckily for us we had Jack. With his farming knowledge this was a job he could accomplish. Not only did he get it reassembled but when it turned out that crucial parts were missing (something we would never had known) he handmade them himself, carving an incredible "swan's neck" for the attachment windmill itself to the windmill frame.

Besides the windmill, Jack shared his knowledge of the barn , and its various items of machinery, helping develop a plan to interpret them.

Over the months this restoration took place, I can't count how many times those of us who were on the Board made the drive out to Jack's house on the Saratoga Avenue property, rousting him out of his house or the orchard, to seek his help on one thing or another; help he gave over and over, always willingly, with his wonderful smile. Without Jack, the City would have an historic house but not the farm they have today.

With this proposed project, the structures and orchard associated with Jack and his family will be gone forever. It seems as though there should be a way to mark the site so that not just memories remain of Jack but also his name. One idea I had was this. Among their responsibilities, the Historical and Landmarks Commission is assigned the job of naming streets and I noticed that there is an entry drive into the project. I would like to suggest that the Commission require the developer to name that entry drive, Jack Boyto Drive or Jack Boyto Way in honor of his many contributions to the preservation of the historical sites we have today. Then the structures and orchard may be gone but Jack's name will remain, directly associated with the site he called home.

Lorie

July 18, 2014

Mr. Shaun Lacey, Planner
City of Santa Clara, Planning Division
1500 Warburton Ave
Santa Clara, CA 95050

Subject: Project PLN 2013-10111/166 Saratoga Avenue - Project Intent/Description
UPDTATED July 18, 2014

Dear Shaun,

At your request we have prepared the following updated "Project Intent/Description" for our proposed 33 unit "Market Rate and Affordable for Sale" Townhome project at 166 Saratoga Ave in the City of Santa Clara.

The 1.74 acre project site (APN 294-38-001), "The Orchards" is located near the southwest corner of Saratoga Avenue and San Tomas Expressway. The site is located in a primarily residential area (variety of types including single family, condos and apartments) of Santa Clara, with a few commercial buildings located adjacent to the southwest and west side of the site.

The project site is currently designated *Community Mixed Use* in the City's General Plan. The *Community Mixed Use* designation is a combination of the *Community Commercial* and *Medium Density Residential* designations that allows for a mix of residential and commercial uses along major roadways. Retail, commercial or neighborhood office uses, at a minimum floor area ratio (FAR) of 0.10 is required under this designation when residential development is proposed. Residential development is allowed between 19 and 36 units per acre.

The project site's existing zoning designation is *Single Family Residential* (R1-6L). The *Single Family Residential* zoning district (Chapter 18.12 of the City Code) is intended for low density residential buildings with no commercial uses. Permitted uses under this district include attached or detached residential housing units at a maximum density of 7 dwelling units/acre (du/acre).

To bring the project into conformance with the General Plan and Zoning designations, we are proposing a General Plan Amendment to *Medium Density Residential* and a rezoning to *Planned Development* (PD) to allow for the demolition of the two existing single family residential buildings and accessory features and construction of medium density residential buildings (for sale townhomes) with up to 33 units with flexible development standards for building height, setbacks, and on-site parking. The *Medium Density Residential* designation allows for residential development ranging from 19 to 36 du/acre. The proposed project would be developed at a density of 19.4 du/acre, with no proposed commercial use.

Since the time of the initial Project Clearance Committee meeting in July 2013, we have worked diligently with City staff to refine our proposal in response to input received from various City departments (Fire, Public Works, Utilities, Police, Attorney, Planning, etc), including the Historic Lands Commission, and comments from nearby residents. Below is a timeline with major milestones of the project to date:

1. Spring 2013 – Initial meetings with Staff, site due-diligence, property in contract
2. July 2013 – Initial Project Clearance Committee application submitted
3. August 27, 2013 - First Project Clearance Committee review with Staff – Comments received and incorporated into the project, Council Study Session discussed / staff to advise
4. November 12, 2013 – Formal PD,GPA, Rezone Package submitted to City of Santa Clara
5. December 3, 2013 – Second Project Clearance Committee Meeting with Staff – Comments received and incorporated into project, Council Study Session discussed / staff to advise
6. January 10, 2014 – PD Package re-submitted incorporating changes per PCC and Staff comments
7. January 21, 2014 – Third Project Clearance Committee Meeting with Staff – Comments received and incorporated into the project, Council Study Session discussed / staff to advise
8. February 25, 2014 – Fourth Project Clearance Committee Meeting with Staff - Project Application Deemed Complete
9. March 10, 2014 – First Community Outreach Meeting held at Homestead Library (300' radius Public Notices sent)
10. March, April, May and June, 2014 – Follow up meetings held with individual neighbors to address their concerns (primarily Estella Drive residents)
11. April 2, 2014 – First Historic Lands Commission Meeting
12. April 4, 2014 – Revised PD Exhibits submitted to Staff
13. May 1, 2014 – Second Historic Lands Commission Meeting
14. June 23, 2014 – Second Community Meeting held at Homestead Library (300' radius Public Notices sent)
15. July 18 – Revised PD Package re-submitted - Project modifications made per HLC, neighborhood and City Staff comments

Architecture

Proposed architecture for the project consists of 3-story Spanish style buildings in 3-plex, 4-plex, 6-plex and 8-plex configurations. Elevations are primarily stucco with wood accents. Traditional red S-tile roofing, as well as brick trim, Spanish tiles, and wrought iron detailing, enhance the architecture. Units range in square footage from 1,450 to 1,900 square feet and vary from three bedrooms to three bedrooms + den. All units have 2-car side-by-side garages that are oversized to allow for storage. In addition, each unit has its own generously sized private outdoor deck located on the second floor off the main living spaces.

Since the Project Application was deemed complete, we have continued to make refinements based on input form the HLC, neighborhood and City Staff. The following is a summary of architectural revisions incorporated into plan:

- Increased setback to northern property line shared with Estella Drive neighbors to average more than 20-feet (previous setback ranged from 10-feet to 15-feet, current setback ranges from 15-feet to 32-feet).
- On northern property line where setback is 15-feet, building height is held at 2-story with no windows facing north.
- On northern property line, minimum setback for 3-story building element is 23.5-feet (previously 10-feet).
- On northern property line, third story north facing windows have been minimized (privacy glass and high windows to allow light but no direct view).
- Privacy wall has been added to second story balconies adjacent to northern property line.
- Each plan adjacent to the northern property line was reviewed and windows were relocated, sized and/or placed to increase privacy for Estella Drive neighbors.

Landscape

The landscape treatment for the project will reflect the Santa Clara's agricultural history incorporating rows of fruit trees and two-rail fencing. Landscape will consist mainly of drought tolerant, Mediterranean-like plants watered by high efficiency automatic irrigation and a number of fruit trees arranged in rows to give a sense of living within an orchard. There will be three bio-retention basins and raised planters at the buildings that will filter roof water. The two bio-retention basins along Saratoga Avenue will be enhanced with low decorative concrete walls. The north and south edges of the property will be buffered with continuous masses of evergreen trees. Climbing vines are proposed to be planted at the vehicular alley ways to soften the hardscape and buildings. The current plans show

updates to the landscape layout that reflect input from the HLC, neighborhood and City Staff. The following is a summary of revisions incorporated into landscape plan:

- Along the northern property boundary and within the increased setback area initial trees will be 36" box and include species to optimize privacy, year round green/minimal leaf dropping, and speedy growth
- A new 8' high masonry/stucco wall has been added along the northern property line to provide increased privacy (6' wood fence originally proposed)
- Increased open space in northeast corner of the site to create a new fruit tree "orchard" reflective of the sites previous agriculture heritage
- Fruit trees are planted in rows along Saratoga Avenue to reinforce the agricultural theme and add color and interest throughout the year
- The use of wood split rail fencing to reflective of agricultural heritage
- Decorative boulder with historic marker/plaque included in landscape plan, program for historic identifiers throughout property to be developed and reviewed by HLC to memorialize the agricultural heritage of the property.
- Street names will be Boyto and Shartzer (previous property owners)
- The species of trees along the northern property line have been changed to minimize leaf and flower drop on the adjacent neighbors properties as well as allowing more filtered light through consistent with neighbor input.

Please let us know if you have any questions.

Best Regards,

Erin Epperson
Director of Forward Planning and Land Development
The New Home Company

Shaun Lacey

From: Mary Jo Kramer <maryjokramer@yahoo.com>
Sent: Thursday, August 07, 2014 3:54 PM
To: Shaun Lacey
Cc: Mary Jo Kramer
Subject: Re: Bayto Property --Residents' Concerns

August 7, 2014

Hello Shaun,

As you requested, here is the letter that was sent to you in April. Thank you for following up on it and making sure that it is
included in the report for the upcoming meeting on this project.

Mary Jo Kramer

On Apr 30, 2014, at 12:15 AM, Mary Jo Kramer <maryjokramer@yahoo.com> wrote:

April 28, 2014

City of Santa Clara
Department of Planning and Inspection
Attn: Mr. Shaun Lacey, AICP, Assistant Planner II
1500 Warburton Avenue
Santa Clara, CA 95050
slacey@santaclaraca.gov

Subject: 166 Saratoga Ave.
The Bayto Property Project and The New Home Company

My name is Mary Jo Kramer and I live at 2606 Estella Drive. My property is very near the proposed Bayto Property development in Santa Clara.

As you know, the Bayto Property is a proposed project by The New Home Company. The plan is to build thirty-three(33) three story (40+ feet in height) attached family homes, on a 1.7 acre parcel of land at 166 Saratoga Ave.

This proposed development is an invasion of privacy to the adjacent neighborhood of Laurel Park East due to the **height, density and distance from the fence.**

I ask that any re-zoning request that gives The New Home Company the right to build this development as currently planned be denied.

If the property at 166 Saratoga Avenue is to be developed please consider the following:

- **Restrict the plan to two(2) story homes, of no higher than 26 feet, along the fence line of the existing single family homes on Estella Drive.**
- **Require a minimum setback of 20 feet or more (of Bayto Property) from the fence line of the Estella Drive Homes.**

- **Require a masonry fence of 8 feet or higher between the new development and the homes on Estella Drive. The expense of this fence should be covered by The New Home Company.**

To support this request, cited below are four existing and ongoing projects that are near to the proposed development, also in Santa Clara, and are similar to this situation.

- The **Norwood Circle development,** located on the corner of Pruneridge Avenue and Lawrence Expressway: I spoke with a home owner who lives on Fulton Court—a home that backs up to the Norwood Circle development. Originally, the developer wanted to build all three story homes in a compact format, but the neighbors were against this. They asked that the adjacent homes be no higher than two stories and that they would be set back further from the fence line than originally planned. **Their request was granted.**

- The **Midtown Village development** located on Winchester Boulevard at the old agricultural site: I spoke with an on-site employee of Summerhill Homes, the developer of this project. He told me that after a two year negotiation, it was decided to build two story homes (approximately 26 feet high) along the perimeter of the property and put the three story homes in the center of the site in respect of the existing single family homes bordering the new development. I also measured the backyard depth of the model homes there. They have been built with a minimum setback of 15 feet. **So, again, the neighboring homeowners' requests were considered and granted.**

- The old **Kaiser Hospital Property** located on Kiely Boulevard across from Central Park: There are many buildings that are three or more stories being built at this site. Yet, the proposed single family homes that would border the existing single family homes on Marietta Drive will be two stories, in respect to the families living adjacent to that fence line. **Once again, the homeowners' privacy and opinions, who have made this city their home for many years, were considered in the planning.** (this information was found at galleryatcentrallpark.com)

- **3051 Homestead Road:** This is a site where nine new homes are slated to be constructed on a .69 acre parcel of land. The homes will be adjacent to apartments and existing single family homes on Peppertree Lane. **These homes will be two stories to blend in with the existing neighborhood.**

Throughout all of these developments, the neighbors' requests were honored by our Santa Clara leaders. This reflects the respect of existing residents' rights of privacy and their property values.

In regards to the request for a masonry fence of 8 feet or higher:

The planned configuration of the 166 Saratoga Avenue development puts driveways and walkways **DIRECTLY BEHIND** the backyard fences of the homes on Estella Drive. The noise, lack of privacy and security issues will be unacceptable if a more substantial fence is not put into place!

To reiterate, I ask that any re-zoning request that gives The New Home Company the right to build this development as currently planned be denied.

However, if they are to develop the property at 166 Saratoga Avenue, I ask that any new homes built on the northern border of the development, adjacent to the existing single family homes on Estella Drive, be as follows: no higher than two stories or 26 feet, have a minimum setback from the fence line of at least 20 feet or more (of Bayto Property) and be separated from the Estella Drive homes with a new 8 foot or higher masonry wall fence (provided by the developer) for security and for noise reduction.

I sincerely hope that our city counsel, planning commission and all other city leaders involved in making these decisions take all of this information into consideration.

If you have any questions or wish to discuss this matter further please feel free to contact me at (408) 249-1396 or maryjokramer@yahoo.com.

Thank You,

Mary Jo Kramer
2606 Estella Drive
Santa Clara, CA 95051

<Bayto Property - Resident Concerns.pages>

The City of Santa Clara
Shaun Lacey, AICP
Assistant Planner II
Planning Division

1500 Warburton Ave
Santa Clara, CA
95050

File No.(s): PLN2013-10111/CEQ2014-01169
Location: 166 Saratoga Avenue (APN:294-38-001)

Mr. Lacey,

I am one of the owners of Northern Dental at 122 Saratoga Avenue, adjacent to the propose project at 166 Saratoga Avenue. I want to thank you for meeting with me personally on Thursday after the Commisson meeting and suggesting I write our comments to you. I am writing this letter as you have instructed me in order for it to be included in the support documents to the City Council. We agree with the Planning Commission's recommendation to not change the zoning of the property at 166 Saratoga Avenue for this project and their recommendation to deny this project.

I received the notice of the hearing on Tuesday August 6th and saw a copy of the flyer on the 7th, the day of the meeting. The owners and managers of our business were never interviewed by the Charles McKeag/Jack Bayto Family Trust or their representatives and we had absolutely no input and never had any meetings with the owners of the property or their representatives. I attended the meeting on Wednesday. There were major concerns raised which touched on our concerns but they did not address all of our concerns.

Northern Dental has been located at 122 Saratoga Avenue since 1994. We employ almost 40 people including the dental professionals. As most businesses during the economic downturn, we have experienced a decline in our business. Although we have over 50,000 patients of record, any additional disruption to our flow of business will have a significant adverse effect on our business.

Primary Business Concerns:

Parking: If we lose available parking it will directly affect our revenue. Patients expect and deserve convenient parking and when they don't get it they make a choice to go somewhere else. Parking was raised by Las Logo residents as an issue since they share some of the parking with buildings 160 and 122. There is not enough parking included in the proposed complex with 33 units, 66 designated parking, and 7 overflow which includes handicap parking. There is no logical or practical way to determine if someone parking in our shared lot is a patient, a visitor to 160, or resident (or visitor) of the new homes.

Safety: I did not review the proposal for how fire trucks and other safety vehicles service the new homes
and that was not discussed. The site plan did not include a turnaround for fire trucks nor did it address the use of the easement on the south side of 122 Saratoga Avenue. It did not discuss the use of the dental parking lot and driveway in or out of the proposed homes. Increased parking and traffic in our lot

would again be detrimental to our business. Lack of parking or constricted parking has a negative effect on any business, especially on dentistry, a service business.

After making multiple "U" turns to get into the proposed project and our building ,when the driver misses the entrance they will recover by diving into our entrance, drive around the back and enter the new homes from the rear. Or they may just park in our lot and walk. With cars now parking on Saratoga it is already dangerous to enter and exit 122 Saratoga Avenue and it will be exacerbated by the proposed entrance and exit for 166 Saratoga. This would compound the problem and the congestion and traffic will increase on Saratoga at the San Tomas/Saratoga intersection.

Construction: Should the project be approved against the Commission's recommendation, the construction for at least a year will negatively impact our business and we may have to move out of the area, out of Santa Clara , or potentially go out of business. The tenant improvements for dentistry are very expensive and we will have to consider if a new location is viable. We definitely do not want these possibilities to become a reality. We have a responsibility to our patients, our business and the surrounding neighborhood. We believe that it creates a significant safety risk and after over 20 years in this location we would not want to be forced to abandon our patients or our neighbors.

We are not in favor of this proposed development as it currently stands. The negative elements of this proposed project are detrimental to our business, the immediate community and presents some serious safety issues as designed.

We are always available to discuss this or any future projects.

Thank you,

Dr. Leonard Feld
Mr. Timothy Parker
Mr. Marshal Castle
Northern Dental
122 Saratoga Ave.
Santa Clara, Ca
95051

Shaun Lacey

From: David Pendleton <davidp626@hotmail.com>
Sent: Friday, August 08, 2014 12:17 PM
To: Shaun Lacey
Subject: Planning Commission Info

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Shawn,

This is to advise you, since you had not taken the time to properly research this topic, that the easement driveway at 166 Saratoga Avenue is within the deeds of trusts for 150 Saratoga Avenue residents of Vista Del Lago HOA. I assume it is also on the deeds for 120 Saratoga Avenue which runs by the dental building back into VDL also, but never had a reason for verifying it for them too. Please ensure that the Planning Commission gets this information for their decision making.

Regards,

David Pendleton
Former President of VDL

OWNER/DEVELOPER

THE NEW HOME COMPANY
1990 N CALIFORNIA BLVD., SUITE 650
WALNUT CREEK, CA 94596
(925) 244-0700
CONTACT: BRIAN OLIN

CIVIL ENGINEER

CARLSON, BARBEE & GIBSON, INC.
2633 CAMINO RAMON, SUITE 350
SAN RAMON, CA 94583
(925) 866-0322
CONTACT: LEE ROSENBLATT

LANDSCAPE ARCHITECT

ENVIRONMENTAL FORESIGHT, INC.
1855 OLYMPIC BOULEVARD, SUITE 105
WALNUT CREEK, CA 94596
(925) 945-0300
CONTACT: KEVIN PROCTOR

ARCHITECT

DAHLIN GROUP
5865 OWENS DRIVE
PLEASANTON, CA 94588
(925) 251-7200
CONTACT: EMILY BONATO

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14. A0.05 STREETSCAPE PERSPECTIVE 4
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16. A0.07 NORTH SIDE ELEVATIONS

17. A1.01 UNIT 1 FLOOR PLANS
18. A2.01 UNIT 2 FLOOR PLANS
19. A3.01 UNIT 3 FLOOR PLANS
20. A4.01 UNIT 4 FLOOR PLANS
21. A5.01 UNIT 5A FLOOR PLANS
22. A5.02 UNIT 5B FLOOR PLANS

23. A6.01 BUILDING TYPE 1 FIRST FLOOR PLAN
24. A6.02 BUILDING TYPE 1 SECOND FLOOR PLAN
25. A6.03 BUILDING TYPE 1 THIRD FLOOR PLAN
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27. A6.05 BUILDING TYPE 1 ELEVATIONS

28. A6.06 BUILDING TYPE 2 FIRST FLOOR PLAN
29. A6.07 BUILDING TYPE 2 SECOND FLOOR PLAN
30. A6.08 BUILDING TYPE 2 THIRD FLOOR PLAN
31. A6.09 BUILDING TYPE 2 ROOF PLAN
32. A6.10 BUILDING TYPE 2 ELEVATIONS

33. A6.11 BUILDING TYPE 3 FIRST FLOOR PLAN
34. A6.12 BUILDING TYPE 3 SECOND FLOOR PLAN
35. A6.13 BUILDING TYPE 3 THIRD FLOOR PLAN
36. A6.14 BUILDING TYPE 3 ROOF PLAN
37. A6.15 BUILDING TYPE 3 ELEVATIONS

38. A6.16 BUILDING TYPE 4 FIRST FLOOR PLAN
39. A6.17 BUILDING TYPE 4 SECOND FLOOR PLAN
40. A6.18 BUILDING TYPE 4 THIRD FLOOR PLAN
41. A6.19 BUILDING TYPE 4 ROOF PLAN
42. A6.20 BUILDING TYPE 4 ELEVATIONS
43. A6.21 BUILDING TYPE 5 FIRST FLOOR PLAN
44. A6.22 BUILDING TYPE 5 SECOND FLOOR PLAN
45. A6.23 BUILDING TYPE 5 THIRD FLOOR PLAN
46. A6.24 BUILDING TYPE 5 ROOF PLAN
47. A6.25 BUILDING TYPE 5 ELEVATIONS

JULY 18, 2014

DAHLIN group

ENVIRONMENTAL FORESIGHT, INC.
Landscape Architecture

BAYTO PROPERTY

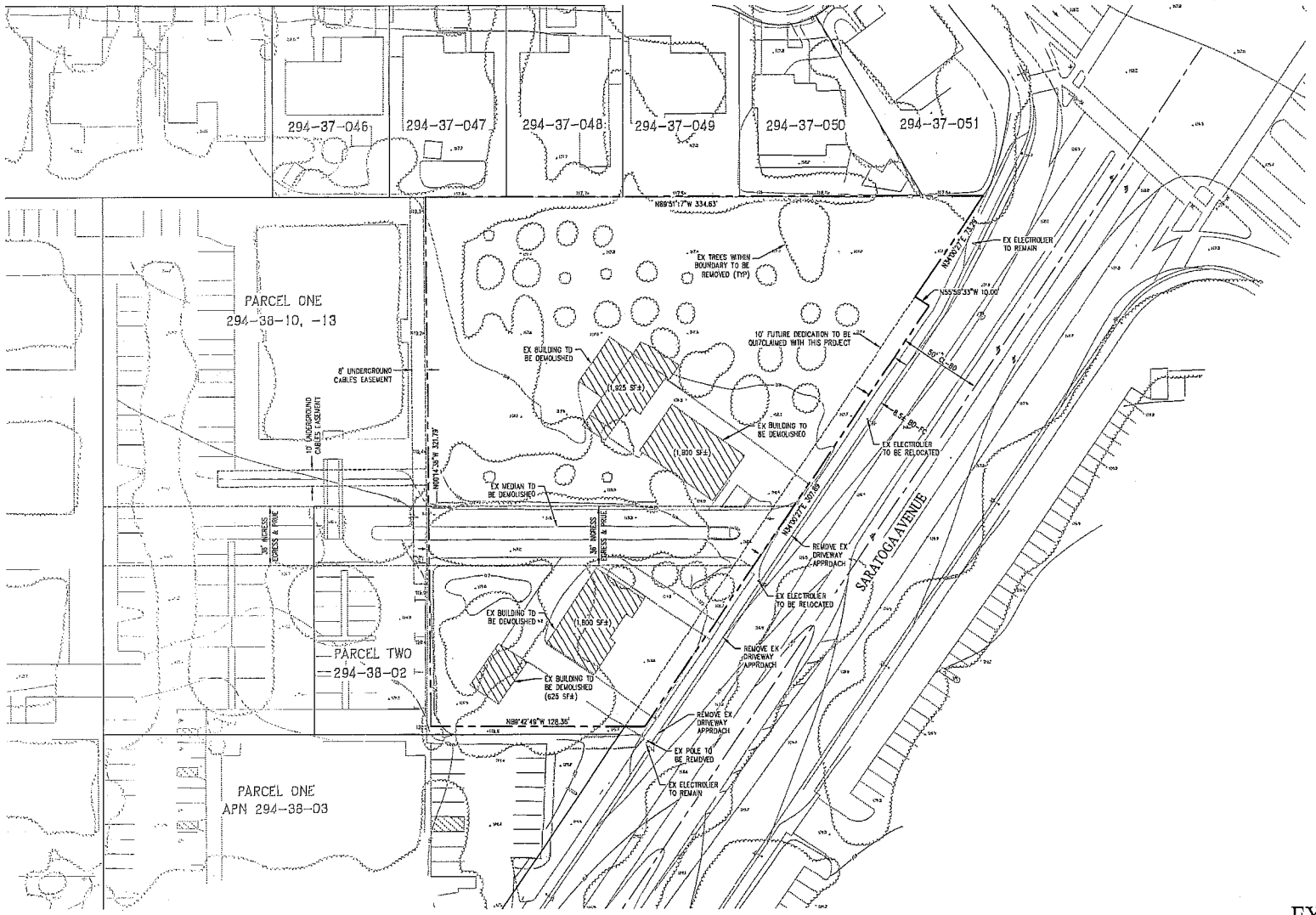
166 SARATOGA AVENUE

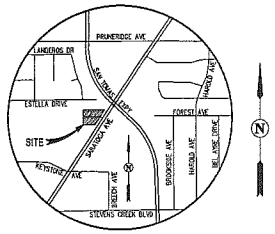
PLANNED DEVELOPMENT AND ZONING PACKAGE

SANTA CLARA, CALIFORNIA

Carlsen, Barbee & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS
2633 CAMINO RAMON, SUITE 350
SAN RAMON, CALIFORNIA 94583
(925) 866-0322

THE NEW HOME COMPANY





VICINITY MAP

NOT TO SCALE

CONTACTS

1. OWNER/SUBDIVIDER: THE NEW HOME COMPANY
1990 N. CALIFORNIA BLVD., SUITE 850
WALNUT CREEK, CA 94596
(925) 244-0700
BRIAN QUIN

2. ENGINEER: CARLSON, BARBEE & GIBSON, INC.
2633 CAMINO RAMON, SUITE 350
SAN RAMON, CA 94583
(925) 866-0322
LEE ROSENBLATT, RCE 65468

GENERAL NOTES

1. ASSESSORS PARCEL NO: 294-38-001
2. SITE ADDRESS: 166 SARATOGA AVENUE
SANTA CLARA, CA 95051
3. SITE AREA: 1.7± ACRES
4. EXISTING ZONING: SINGLE FAMILY RESIDENTIAL (R1-6L)
PROPOSED ZONING: PLANNED DEVELOPMENT (PD)
5. EXISTING LAND USE: RESIDENTIAL
PROPOSED LAND USE: MULTI-FAMILY RESIDENTIAL
6. PROPOSED UNITS: 7 RESIDENTIAL LOTS FOR 33 MULTI-FAMILY CONDOMINIUM UNITS (LOTS 1-7)
5 LOTS FOR PRIVATE ROADWAY CIRCULATION (PARCELS A, B, C, D, E)
6 LOTS FOR OPEN SPACE (PARCELS F, G, H, I, J, N)
7. BENCHMARK: SOUTHEAST CORNER OF THE SAN TOMAS EXPRESSWAY AND PRUNERIDGE AVENUE INTERSECTION, CHISELED CROSS ON THE NORTHEAST BOLT IN THE SIGNAL LIGHT POLE BASE WITHIN THE TRAFFIC ISLAND.
CITY OF SANTA CLARA BM H-3 EL: 112.91 FEET.
8. EXISTING STRUCTURES: EXISTING BUILDINGS, PAVEMENT, AND TREES WITHIN BOUNDARY TO BE REMOVED AS NOTED.
9. EXISTING UTILITIES: EXISTING UTILITIES WITHIN BOUNDARY TO BE REMOVED AS NOTED.
10. STREETS: ALL DRIVE AISLES WITHIN THE PROJECT WILL BE PRIVATE AND WILL BE PRIVATELY MAINTAINED. (MINIMUM LONGITUDINAL SLOPE=0.5%)
11. STREETS TREES: STREET TREES WITHIN THE PROJECT WILL BE INSTALLED PER THE CITY OF SANTA CLARA STANDARDS AND WILL BE PRIVATELY MAINTAINED.
12. STREET LIGHTS: STREET LIGHTS WILL BE INSTALLED PER THE CITY OF SANTA CLARA STANDARDS (OR APPROVED EQUAL) AND WILL BE PRIVATELY MAINTAINED.
13. WALLS: ALL WALLS WILL BE PRIVATE AND WILL BE PRIVATELY MAINTAINED.
14. PRIVATE UTILITIES: PROPOSED STORM DRAIN & SANITARY SEWER FACILITIES WITHIN PRIVATE ROADWAYS WILL BE PRIVATELY MAINTAINED, EXCEPT AS NOTED. PROPOSED WATER FACILITIES WITHIN THE SUBDIVISION WILL BE CONSTRUCTED PER THE CITY OF SANTA CLARA STANDARDS AND WILL BE PRIVATELY MAINTAINED.
15. PUBLIC UTILITIES: PROPOSED WATER FACILITIES WITHIN SARATOGA AVENUE WILL BE CONSTRUCTED PER THE CITY OF SANTA CLARA STANDARDS AND WILL BE DEDICATED TO THE CITY.
16. LANDSCAPING: ALL LANDSCAPING WITHIN PROJECT BOUNDARY WILL BE PRIVATELY OWNED AND MAINTAINED.
17. FLOOD ZONE: ZONE K
REFER TO:
FLOOD INSURANCE RATE MAP
PANEL 06085C 0022H (MAY 18, 2009)
18. WELLS ONSITE: NONE
19. GAS: PG&E
20. ELECTRIC: SILICON VALLEY POWER (SVP)
21. TELEPHONE: AT&T
22. CABLE TV: COMCAST
23. WATER: PRIVATE
24. SEWER: PRIVATE
25. STORM: PRIVATE

LEGEND

EXISTING	PROPOSED	DESCRIPTION
		PROJECT BOUNDARY
		PROPERTY LINE
		CENTERLINE
		CURB, GUTTER AND SIDEWALK
		EASEMENT
x 99.6	x 100.0	SPOT ELEVATIONS
		POWER POLES

ABBREVIATIONS

AC	ACRES	INV	INVERT	RW	RIGHT-OF-WAY
BD	BOUNDARY	IRR	IRRIGATION METER	S	SLOPE
BRC	BACK OF ROLLED CURB	LF	LINEAR FEET	SF	SQUARE FEET
CC	CURB CUT	LS	LANDSCAPE STRIP	SD	STORM DRAIN
CCC	CORNER CURB CUT	MAX	MAXIMUM	SS	SANITARY SEWER
CL	CENTERLINE	MIN	MINIMUM	SW	SIDEWALK
CSJ	CITY OF SAN JOSE	OB	OVERBUILD	TC	TOP OF CURB
DCDA	DOUBLE CHECK DETECTOR ASSEMBLY	P	PAD	TG	TOP OF GRATE
DU	DWELLING UNIT	PEE	PRIVATE INGRESS & EGRESS EASEMENT	TYP	TYPICAL
EL	ELEVATION	PL	PROPERTY LINE	W	WATER
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT	PRUE	PRIVATE UTILITY EASEMENT	WLE	WATER LINE EASEMENT
EX	EXISTING	PUE	PUBLIC UTILITY EASEMENT	WM	WATER METER
FC	FACE OF CURB	PVC	POLYVINYL CHLORIDE		
FF	FINISHED FLOOR	R	RADIUS		
FH	FIRE HYDRANT	RCP	REINFORCED CONCRETE PIPE		
FS	FIRE SERVICE	RP	REDUCED PRESSURE BACKFLOW PREVENTION DEVICE		
HP	HIGH POINT				

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C-5 FIRE TRUCK TURNING EXHIBIT

EXISTING PROPERTY
VESTING TENTATIVE MAP
FOR CONDOMINIUM PURPOSES
BAYTO PROPERTY

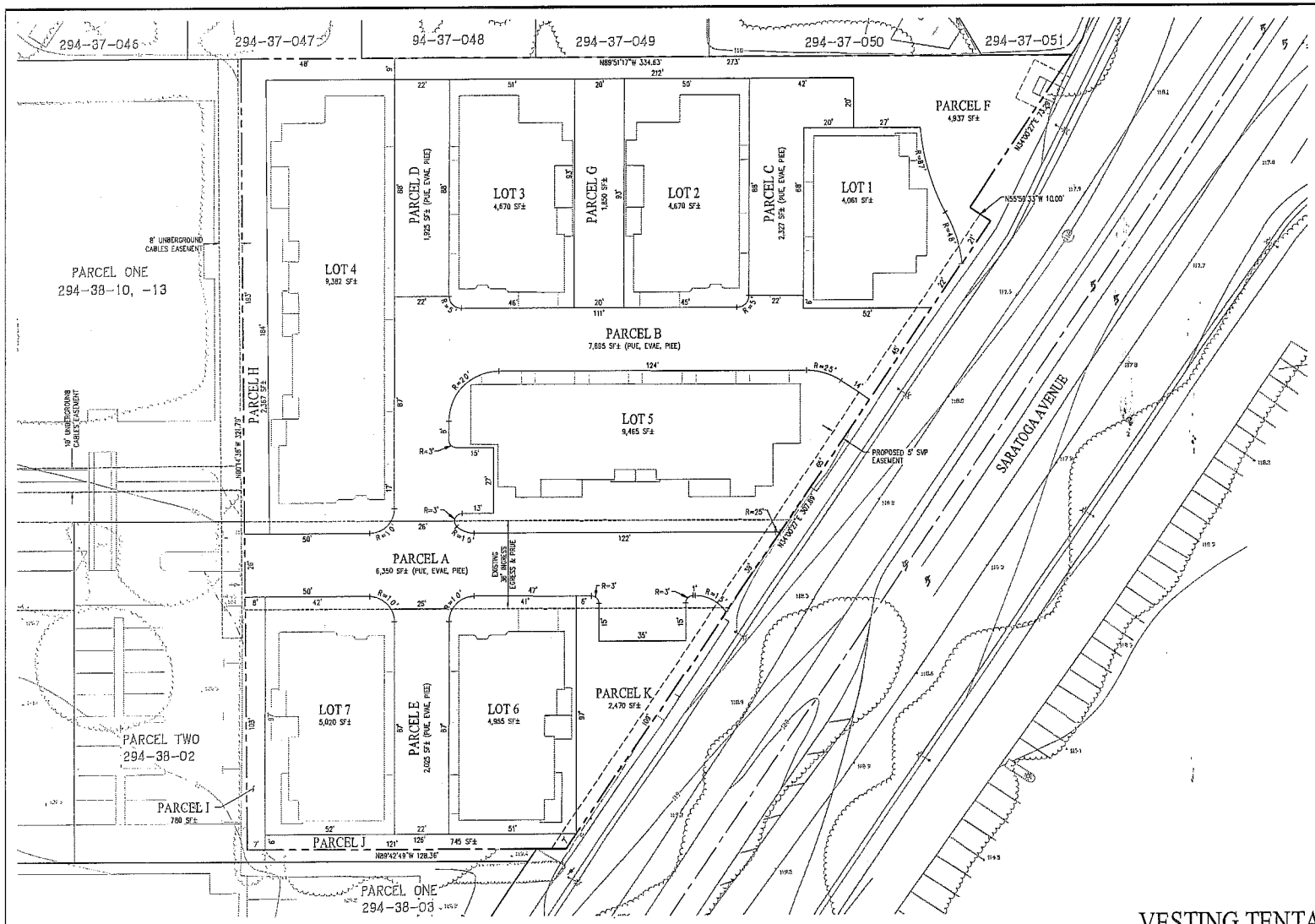
CITY OF SANTA CLARA SANTA CLARA COUNTY CALIFORNIA

0' 30' 90' 120'

SCALE: 1" = 30' DATE: JULY 18, 2014

Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS
2633 CAMINO RAMON, SUITE 350
SAN RAMON, CALIFORNIA 94583
TEL (925) 866-0322

SHEET NUMBER
C-1



LEGEND

EXISTING	PROPOSED	DESCRIPTION
		PROJECT BOUNDARY
		PROPERTY LINE
		CENTERLINE
		EASEMENT

VESTING TENTATIVE TRACT MAP - SHEET 1 OF 2
VESTING TENTATIVE MAP FOR CONDOMINIUM PURPOSES
BAYTO PROPERTY

CITY OF SANTA CLARA SANTA CLARA COUNTY CALIFORNIA

0' 20' 60' 80'

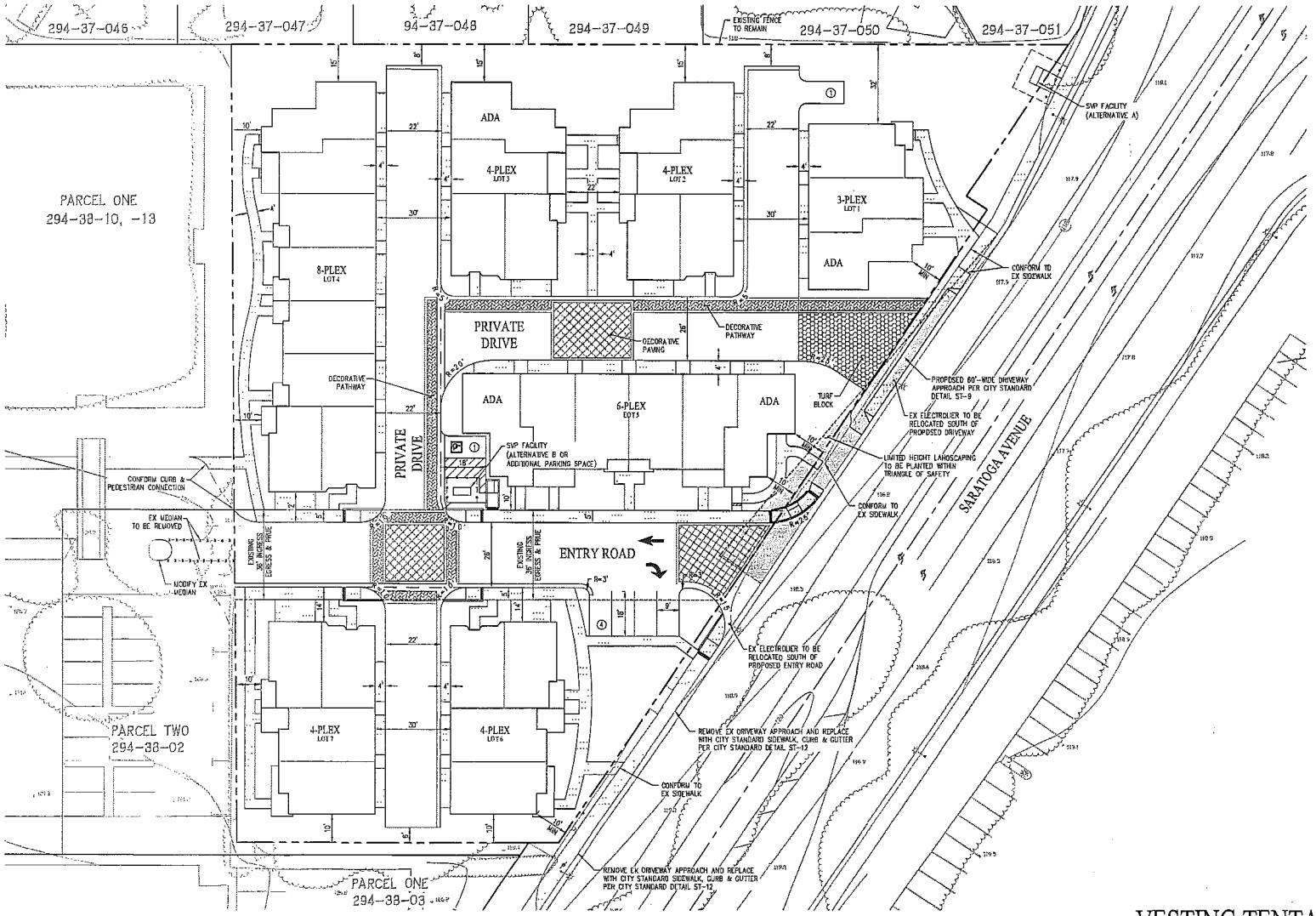
SCALE: 1" = 20'

DATE: JULY 18, 2014

Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS
2633 CAMINO RAMON, SUITE 350
SAN RAMON, CALIFORNIA 94583
TEL (925) 866-0322

SHEET NUMBER
C-2

G:\CBG\ACAD\TMM\C2.DWG



LEGEND

EXISTING	PROPOSED	DESCRIPTION
		PROJECT BOUNDARY
		PROPERTY LINE
		RIGHT-OF-WAY
		CENTERLINE
		CURB, GUTTER AND SIDEWALK
		EASEMENT
		ELECTROLIER
		POWER POLES
		TURF BLOCK
		DECORATIVE PAVING
		DECORATIVE PATHWAY
	ADA	ACCESSIBLE UNIT
	①	PROVIDED PARKING SPACES

SITE SUMMARY

UNIT TYPE	UNIT COUNT
3 BEDROOM	33
TOTAL	33

BUILDING HEIGHT

R-2 OCCUPANCY (TYPE V-B) WITH FULL NFPA 13 SPRINKLERS	
HEIGHT	±40 FT (ALLOWABLE: 60 FT)
STORIES	3 (ALLOWABLE: 3)

SETBACKS

SETBACK	DISTANCE
FRONT (SARATOGA AVENUE)	10'
SIDE (NORTH BOUNDARY LINE)	15'
SIDE (SOUTH BOUNDARY LINE)	10'
REAR (BOUNDARY LINE)	10'
GARAGE (ENTRY ROAD)	5'
GARAGE (DRIVE AISLE)	4'

* INTERNAL LOT LINES ARE FOR BRE PHASING & MAPPING PURPOSES ONLY.
* POPOUTS, PARCELS, DECKS, AND SECOND STORY PROJECTIONS MAY ENCROACH

LAND USE SUMMARY

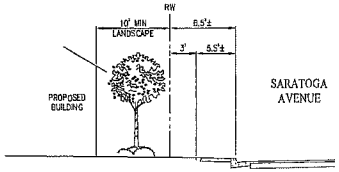
LAND USE	AREA	PERCENT
MULTI-FAMILY RESIDENTIAL	0.67 AC±	39%
ROADWAYS	0.44 AC±	25%
PATHWAYS/LANDSCAPING	0.63 AC±	36%
TOTAL	1.74 AC±	100%

DENSITY

UNITS	AREA	DENSITY
33	1.7 AC±	19.4 DU/AC

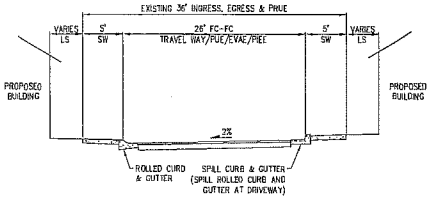
PARKING SUMMARY

PARKING TYPE	PARKING REQUIRED		PARKING PROVIDED	
	RATIO	NUMBER OF SPACES	RATIO	NUMBER OF SPACES
MULTI-FAMILY	2 SPACES/DU	66 SPACES	2 SPACES/DU	66 SPACES
GUEST	0.10 SPACE/DU	4 SPACES	0.18 SPACE/DU	6 SPACES
TOTAL	-	70 SPACES	-	72 SPACES

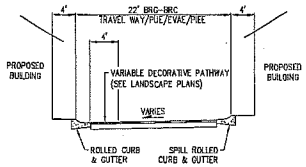


SARATOGA AVENUE
NOT TO SCALE

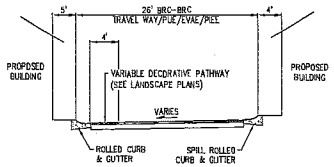
NOTE:
ALL DAMAGED SIDEWALK IS TO BE REPAIRED PER CITY STANDARD DETAIL ST-12 AND DOWELED INTO THE EXISTING CURB & GUTTER PER DETAIL ST-19.



ENTRY ROAD
NOT TO SCALE



TYPICAL 22' PRIVATE DRIVE
NOT TO SCALE



TYPICAL 26' PRIVATE DRIVE
NOT TO SCALE

VESTING TENTATIVE TRACT MAP - SHEET 2 OF 2
VESTING TENTATIVE MAP FOR CONDOMINIUM PURPOSES
BAYTO PROPERTY

CITY OF SANTA CLARA SANTA CLARA COUNTY CALIFORNIA

0' 20' 60' 80'
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SHEET NUMBER
C-3

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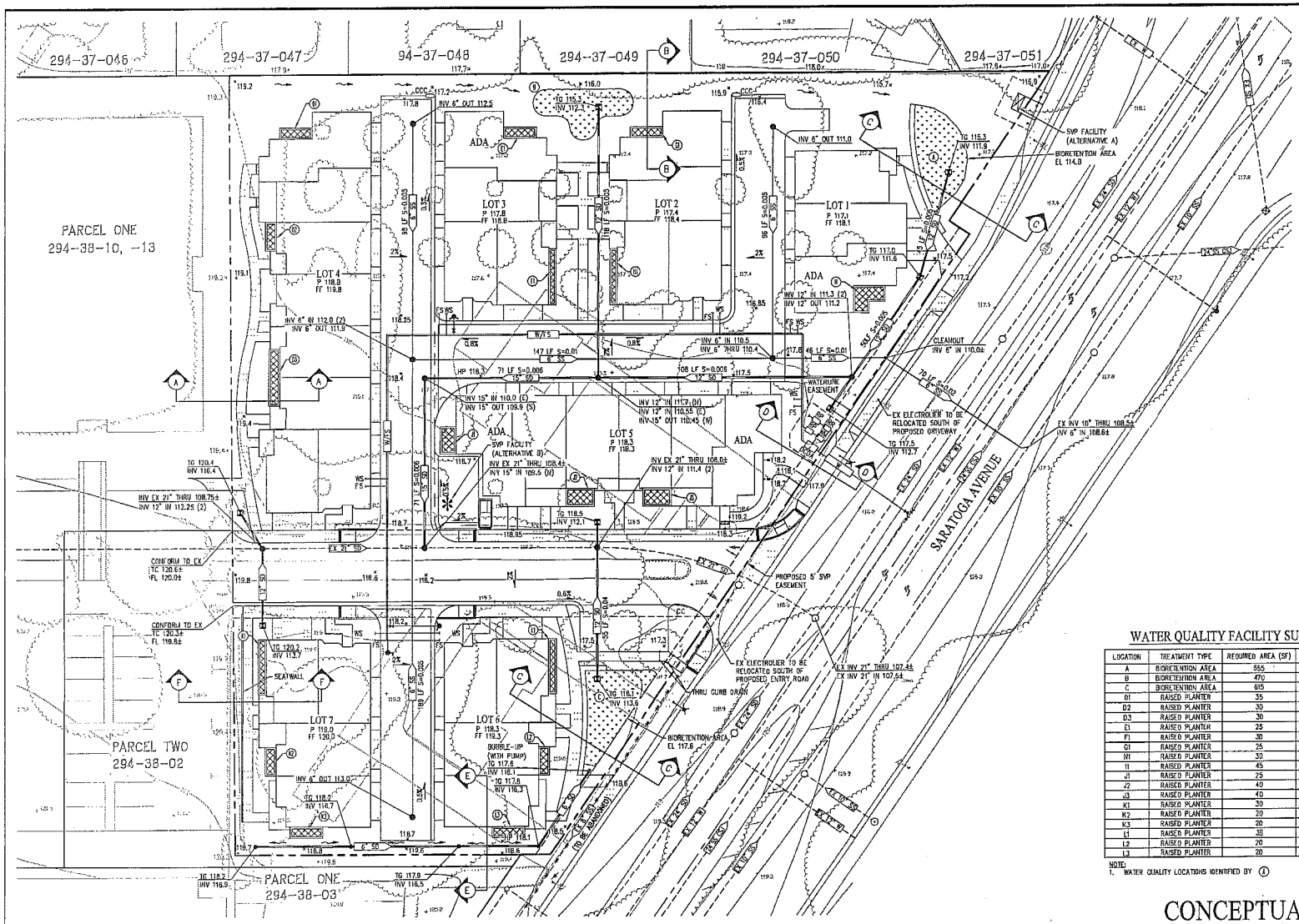
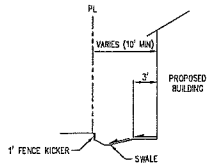
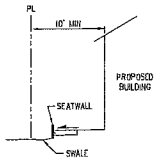


LEGEND

EXISTING	PROPOSED	DESCRIPTION
		SUBDIVISION BOUNDARY
		CURB, GUTTER AND SIDEWALK
		EASEMENT
x 120.0	x 100.0	SPOT ELEVATIONS
EX SD	SD	STORM DRAIN
EX SS	SS	SANITARY SEWER
EX W	W	WATER LINE
		THRU CURB DRAIN
		MANHOLE
		CLEANOUT
		CATCH BASIN
		FIELD INLET
		FLOW DIRECTION
		FIRE HYDRANT
		VALVE
	WM	WATER METER
	RP	REDUCED PRESSURE BACKFLOW PREVENTION DEVICE
	DCDA	DOUBLE CHECK DETECTOR ASSEMBLY
		ELECTROLIER
		POWER POLES
		BIORETENTION AREA
		RAISED PLANTER
		TURF BLOCK
	CC	CURB CUT
	CCC	CORNER CURB CUT
	(A)	WATER QUALITY FACILITY LOCATION ID (SEE WATER QUALITY FACILITY SUMMARY TABLE THIS SHEET FOR SIZING DETAILS)



SECTION E-E
NOT TO SCALE



SECTION F-F
NOT TO SCALE

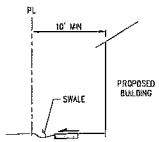
WATER QUALITY FACILITY SUMMARY

LOCATION	TREATMENT TYPE	REQUIRED AREA (SF)	PROPOSED AREA (SF)
A	BIORETENTION AREA	555	570
B	BIORETENTION AREA	470	480
C	BIORETENTION AREA	615	630
D1	RAISED PLANTER	35	40
D2	RAISED PLANTER	30	35
D3	RAISED PLANTER	30	35
E1	RAISED PLANTER	25	30
F1	RAISED PLANTER	30	35
G1	RAISED PLANTER	25	30
H1	RAISED PLANTER	30	35
I1	RAISED PLANTER	45	50
J1	RAISED PLANTER	25	30
J2	RAISED PLANTER	40	45
J3	RAISED PLANTER	40	45
K1	RAISED PLANTER	30	35
K2	RAISED PLANTER	20	25
K3	RAISED PLANTER	20	25
L1	RAISED PLANTER	30	35
L2	RAISED PLANTER	20	25
L3	RAISED PLANTER	20	25

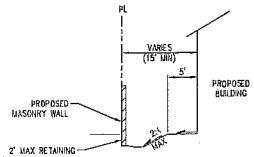
NOTE:
1. WATER QUALITY LOCATIONS IDENTIFIED BY (A)

UTILITY NOTES

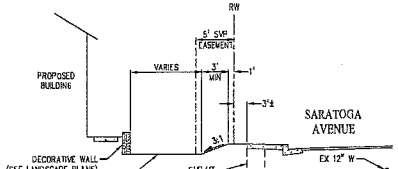
1. STORM DRAIN: PRIVATE
   MINIMUM SLOPE OF PROPOSED STORM DRAIN PIPE IS 0.005
   ALL STORM DRAIN PIPE TO BE RCP OR HDPE
2. WATER: PRIVATE (WITHIN TRACT)
   MAIN & HYDRANTS
   ALL WATER PIPE TO BE PVC
   PUBLIC (SARATOGA AVENUE)
   LATERAL, METERS, RP & DCDA
3. SEWER: PRIVATE (WITHIN TRACT)
   MINIMUM SLOPE OF PROPOSED 6" SANITARY SEWER PIPE IS 0.005
   ALL SANITARY SEWER PIPE TO BE PVC SDR-26
   MINIMUM COVER FOR SS PIPES TO BE 3'
   PUBLIC (WITHIN SARATOGA)
   MINIMUM SLOPE OF PROPOSED 6" SANITARY SEWER PIPE IS 0.010
   ALL SANITARY SEWER PIPE TO BE PVC SDR-26
   MINIMUM COVER FOR SS PIPES TO BE 5'
   EXISTING 8" SANITARY SEWER UNDER SIDEWALK TO BE ABANDONED OR REMOVED FOR JOIN? TRENCH INSTALLATION
4. SVP: FINAL LOCATION OF SVP FACILITY TO BE DETERMINED WITH FINAL ELECTRIC DESIGN



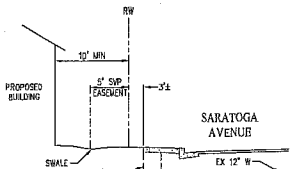
SECTION A-A
NOT TO SCALE



SECTION B-B
NOT TO SCALE



SECTION C-C
NOT TO SCALE



SECTION D-D
NOT TO SCALE

CONCEPTUAL GRADING & UTILITY PLAN
VESTING TENTATIVE MAP
FOR CONDOMINIUM PURPOSES
BAYTO PROPERTY

CITY OF SANTA CLARA SANTA CLARA COUNTY CALIFORNIA

0' 20' 60' 80'
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SAN RAMON, CALIFORNIA 94583
TEL (925) 866-0322

SHEET NUMBER
C-4

Q:\0863\CAD\TVTM01.DWG

294-37-046
294-37-047
94-37-048
294-37-049
294-37-050
294-37-051

PARCEL ONE
294-38-10, -13

4-PLEX
LOT 3

4-PLEX
LOT 2

3-PLEX
LOT 1

8-PLEX
LOT 4

6-PLEX
LOT 5

4-PLEX
LOT 7

4-PLEX
LOT 6

PROPOSED FH

EXISTING FH

EVAE

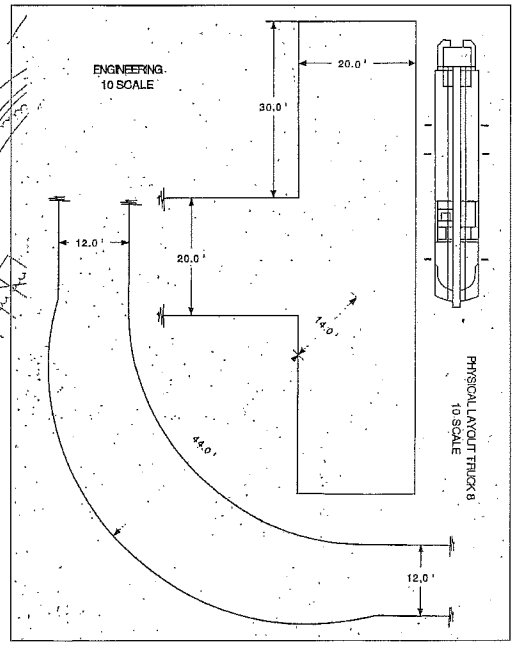
TURF BLOCK

SARATOGA AVENUE

ROADWAY CONTINUES TO ADJACENT PROPERTY

PARCEL TWO
294-38-02

PARCEL ONE
294-38-03



FIRE TRUCK TURNING TEMPLATE

FIRE TRUCK DETAILS PROVIDED BY THE CITY OF SANTA CLARA FIRE DEPARTMENT

LEGEND

- FIRE APPARATUS ACCESS ROADS
- PROPOSED FIRE HYDRANT
- EXISTING FIRE HYDRANT

FIRE TRUCK TURNING EXHIBIT
VESTING TENTATIVE MAP
FOR CONDOMINIUM PURPOSES
BAYTO PROPERTY

CITY OF SANTA CLARA SANTA CLARA COUNTY CALIFORNIA

0' 20' 60' 80'

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DATE: JULY 18, 2014

cbg
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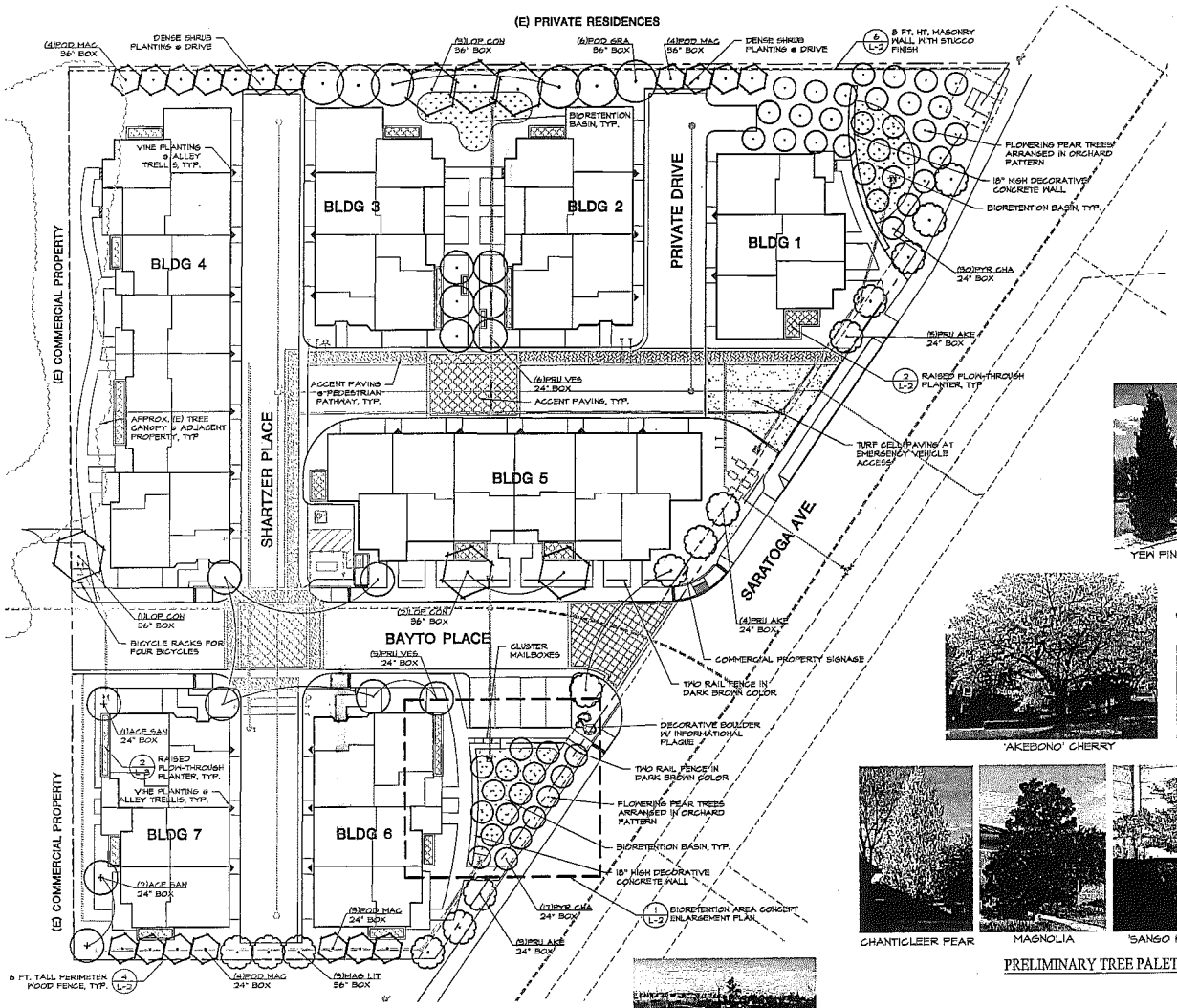
C-5



BRISBANE BOX

YEW PINE

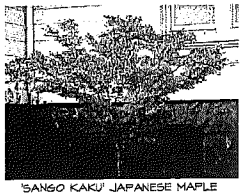
FERN PINE

'AKEBONO' CHERRY

FLOWERING PLUM

CHANTICLEER PEAR

MAGNOLIA


'SANGO KAKU' JAPANESE MAPLE

PRELIMINARY TREE PALETTE

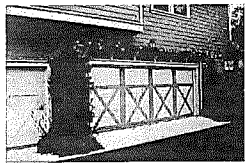
PRELIMINARY PLANT MATERIAL KEY

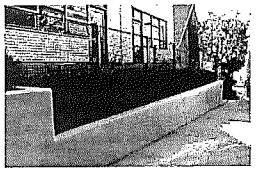
KEY	BOTANICAL NAME	COMMON NAME	SIZE	SPACING	WUCOLS*
	TREES				
ACE SAN	Acer palmatum 'Sango kaku'	Japanese Maple	24" BOX-STD.	SEE PLANS	M
LOP CON	Lophostemon confertus	Brisbane Box	36" BOX-STD.	SEE PLANS	M
MAG LIT	Magnolia grandiflora 'Little Gem'	Magnolia	24" BOX-STD.	SEE PLANS	M
POD GRA	Podocarpus gracilior	Fern Pine	36" BOX-STD.	SEE PLANS	M
POD MAG	Podocarpus macrophillus	Yew Pine	24" & 36" BOX-STD.	SEE PLANS	M
PRU AKE	Prunus x. yedoensis 'Akebono'	Cherry	24" BOX-STD.	SEE PLANS	M
PRU VES	Prunus c. 'Krauter Vesuvius'	Flowering Plum	24" BOX-STD.	SEE PLANS	L
PYR CHA	Pyrus c. 'Chanticleer'	Chanticleer Pear	24" BOX-STD.	SEE PLANS	M
	SHRUBS & PERENNIALS				
ARB OKT	Arbutus u. 'Oktoberfest'	Strawberry Tree	15 GAL	5'-0" O.C.	L
ASP ELA	Aspidistra elatior	Cast Iron Plant	5 GAL	24" O.C.	L
AZA ALA	Azalea x. 'Alaska'	White Azalea	5 GAL	48" O.C.	M
CHO TEC	Chondropetalum tectorum	Cape Rush	5 GAL	60" O.C.	H
CUP TIN	Cupressus s. 'Tiny Tonar'	Dwarf Italian Cypress	15 GAL	SEE PLANS	L
DIE VES	Dietes vegeta	Fortnight Lily	5 GAL	96" O.C.	L
DOD PUR	Dodonaea v. 'purpurea'	Purple Hop Bush	15 GAL	60" O.C.	L
EUO SIL	Euonymus j. 'Silver King'	Upright Euonymus	15 GAL	96" O.C.	L
FES GLA	Festuca glauca	Blue Fescue	1 GAL	12" O.C.	L
LOR CHI	Loropetalum chinense 'Plum Delight'	Fringe Flower	5 GAL	42" O.C.	L
NAN DOM	Nandina domestica	Heavenly Bamboo	5 GAL	96" O.C.	L
PIT VAR	Pittosporum t. 'Variegata'	Pittosporum	15 GAL	60" O.C.	L
PIT SIL	Pittosporum t. 'Silver Sheen'	Pittosporum	15 GAL	60" O.C.	L
PHO AMA	Phormium 'Amazing Red'	New Zealand Flax	5 GAL	SEE PLANS	L
PHO DAR	Phormium t. 'Dark Delight'	New Zealand Flax	5 GAL	96" O.C.	L
PHO PLA	Phormium 'Platt's Black'	New Zealand Flax	5 GAL	42" O.C.	L
POD MAK	Podocarpus m. 'Maki'	Shrubby Yew Pine	24" BOX	42" O.C.	M
POL FET	Polygala d. 'Petite Butterflies'	Dwarf Sweet-pea Shrub	5 GAL	90" O.C.	L
RHA BAL	Rhaphiolepis indica 'Ballerina'	India Hawthorn	5 GAL	90" O.C.	L
ROS HUN	Rosmarinus o. 'Huntington Carpet'	Trailing Rosemary	5 GAL	96" O.C.	L
ROS TUS	Rosmarinus o. 'Tuscan Blue'	Rosemary	5 GAL	36" O.C.	L
TAX HIC	Taxus x. media 'Hicksii'	Upright Yew	15 GAL	42" O.C.	M
THU EME	Thuja o. 'Emerald'	Arborvitae	25 GAL	90" O.C.	M
TIB URV	Tibouchina urvilleana	Princess Flower	15 GAL	6'-0" O.C.	H
	GROUNDCOVERS & VINES				
FIC PUM	Ficus pumila	Creeping Fig	1 GAL	10'-0" O.C.	M
GEL SEM	Gelsemium sempervirens	Carolina Jessamine	5 GAL	SEE PLANS	L
HAR HAP	Hardenbergia v. 'Happy Wanderer'	Happy Wanderer Vine	5 GAL	SEE PLANS	M
	BIORETENTION / RAISED FLOW-THROUGH PLANTER PLANTING				
	Carex tumulicola	Berkeley Sedge	1 GAL	18" O.C.	M
	Juncus patens 'Elk's Blue'	California Gray Rush	5 GAL	24" O.C.	M
	Juncus patens	California Rush	5 GAL	24" O.C.	M
	No-Mow Fescue (Sod) - Available: Pacific Sod (800) 342-7695				L
	LAWN				
	Lawn (Sod) - 'Medallion Plus' Fescue - Available: Pacific Sod (800) 342-7699				H

NOTES:
1. * - WUCOLS III RATING IS AN INDUSTRY STANDARD FOR IRRIGATION WATER NEEDS OF LANDSCAPE PLANTINGS IN SPECIFIC CALIFORNIA REGIONS. THE MAJORITY OF PLANTS FOR THIS REGION ARE VERY LOW (VL) TO Medium (M) WATER REQUIREMENTS AND PLANTED IN SPECIFIC HYDROZONES. ABBREVIATIONS FOR WUCOLS WATER NEEDS ARE: VL - VERY LOW, L - LOW, M - MEDIUM, H - HIGH

IRRIGATION SYSTEM

ALL PLANTING AREAS SHALL BE IRRIGATED WITH A PERMANENT AND AUTOMATIC HIGH EFFICIENCY IRRIGATION SYSTEM. IRRIGATION SYSTEM WILL COMPLY WITH REQUIREMENTS SET FORTH IN SECTION 24 (WATER CONSERVATION IN LANDSCAPING) OF THE CITY OF SANTA CLARA WATER SERVICE & USE RULES & REGULATIONS


VINE PLANTING @ ALLEY TRELLIS


RAISED FLOW-THROUGH PLANTERS

BIORETENTION BASIN W/ WALL

ENVIRONMENTAL FORESIGHT, INC.
Landscape Architecture
1855 Olympic Blvd., Suite 105
Walnut Creek, CA 94596
T (925) 945-0300 F (925) 945-6688
www.environmentalforesight.com

LICENSED LANDSCAPE ARCHITECT
STATE OF CALIFORNIA
JOB# 18026.02

NOT FOR CONSTRUCTION

OVERALL SITE PLAN
PLANNED DEVELOPMENT AND ZONING PACKAGE
BAYTO PROPERTY

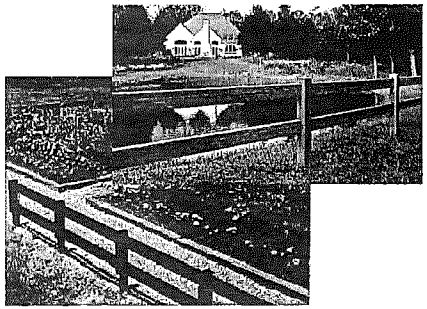
CITY OF SANTA CLARA SANTA CLARA COUNTY CALIFORNIA

0' 20' 60' 80'

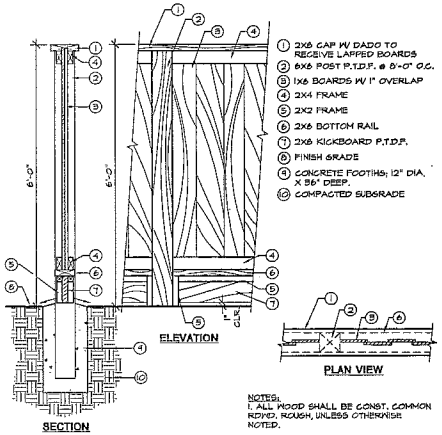
SCALE: 1" = 20'

DATE: FEBRUARY 12, 2014
UPDATED: JULY 18, 2014

SHEET NUMBER
L-1
1 OF 3

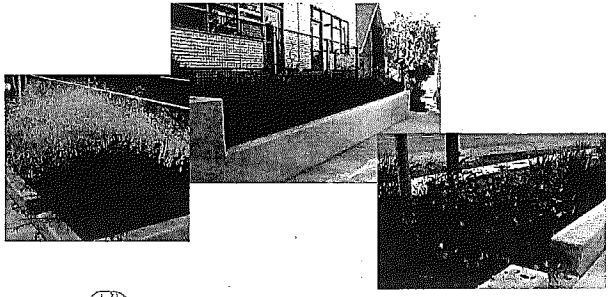


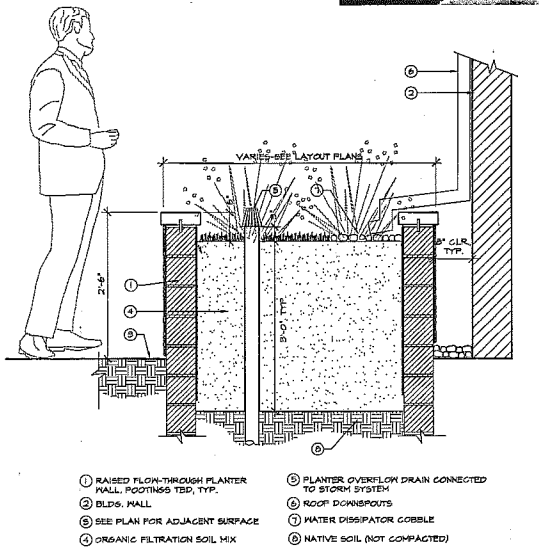
3 TWO-RAIL FENCE
(DARK BROWN COLOR)



4 PERIMETER HEAVY WOOD FENCE

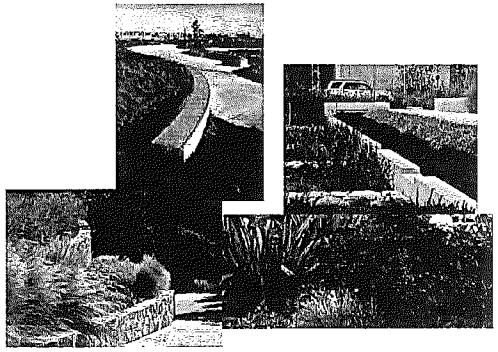
SCALE: 3/4" = 1'-0"
1/16 01-FenWood11.dwg

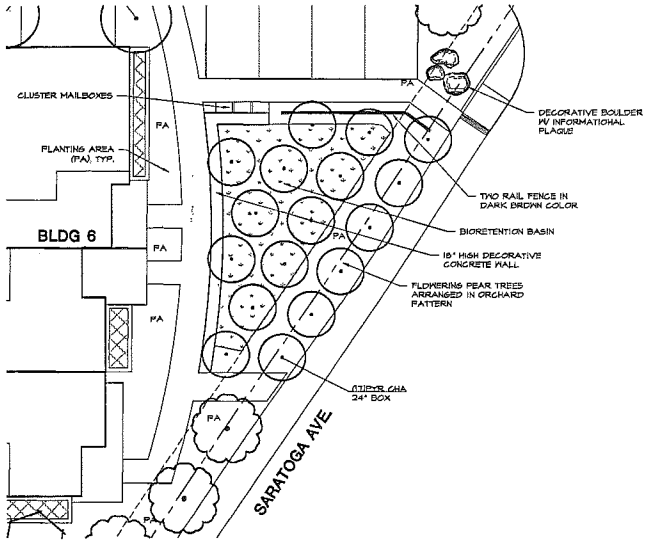




2 RAISED FLOW-THROUGH PLANTER CONCEPT

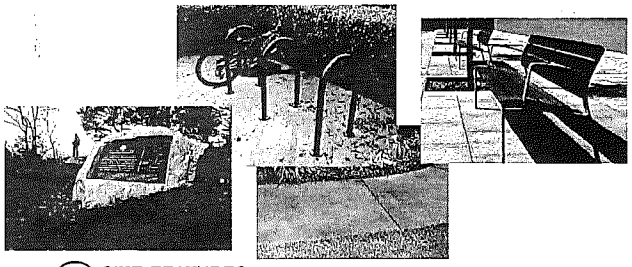
SCALE: 1" = 1'-0"
1/12 01-Wall35.dwg



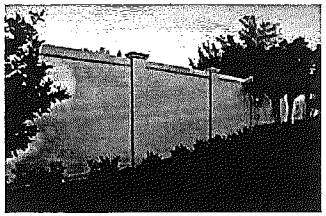


1 BIORETENTION AREA CONCEPT ENLARGEMENT PLAN

SCALE: 1" = 10'-0"



5 SITE FEATURES



6 8 FT. HT. MASONRY WALL W/ STUCCO FINISH

ENVIRONMENTAL FORESIGHT, INC.
Landscape Architecture
1855 Olympic Blvd., Suite 105
Walnut Creek, CA 94596
T (925) 945-0300 F (925) 945-6686
www.environmentalforesight.com

LICENSED LANDSCAPE ARCHITECT
KATE FEARTHERSTONE
08/07/2014
STATE OF CALIFORNIA

JOB# 13028.02

NOT FOR CONSTRUCTION

LANDSCAPE ENLARGEMENT PLANS & DETAILS
PLANNED DEVELOPMENT AND ZONING PACKAGE
BAYTO PROPERTY

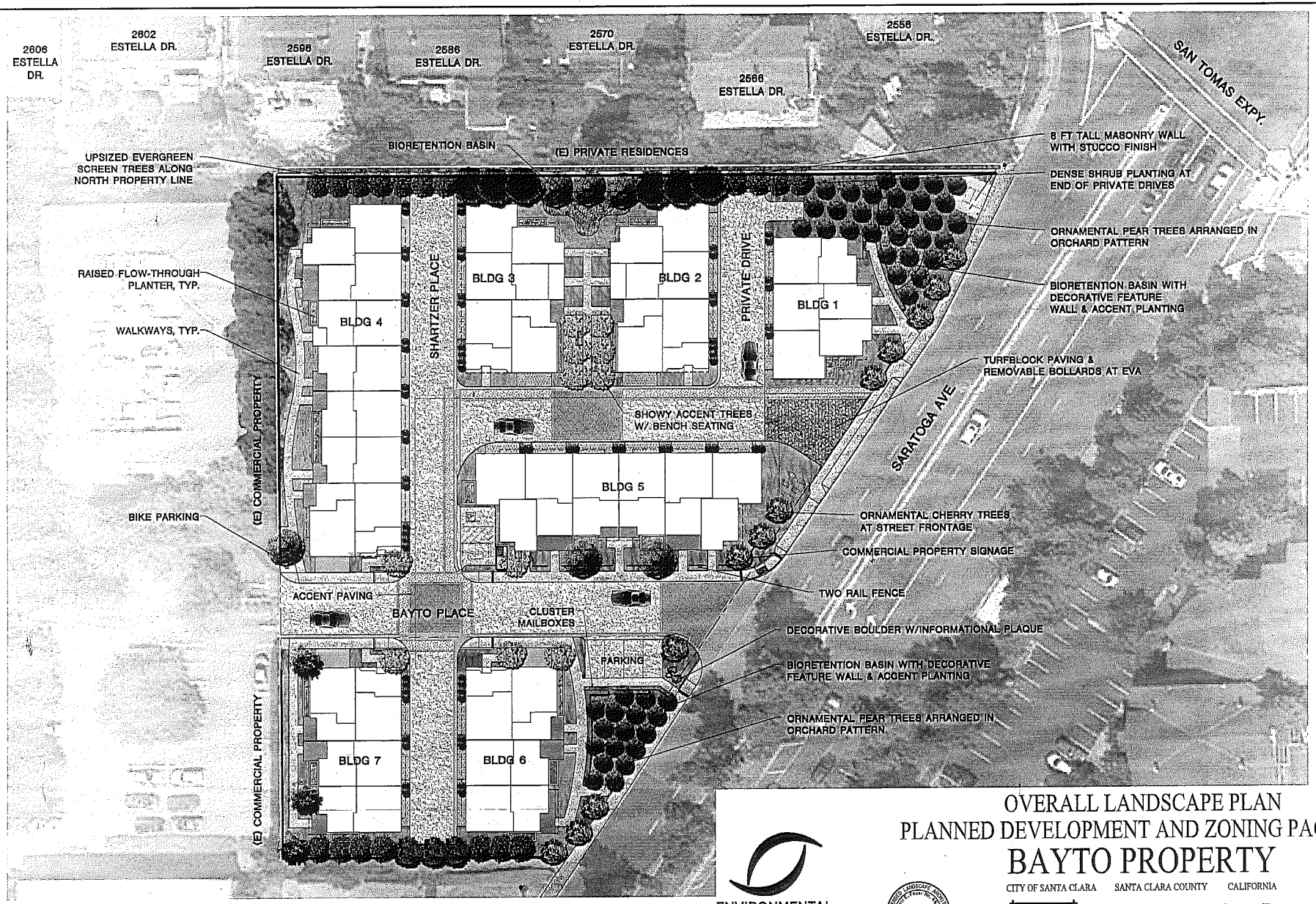
CITY OF SANTA CLARA SANTA CLARA COUNTY CALIFORNIA

0' 10' 30' 40'

SCALE: 1" = 10'

DATE: FEBRUARY 12, 2014
UPDATED: JULY 18, 2014

SHEET NUMBER
L-2
2 OF 3



OVERALL LANDSCAPE PLAN
PLANNED DEVELOPMENT AND ZONING PACKAGE
BAYTO PROPERTY

CITY OF SANTA CLARA SANTA CLARA COUNTY CALIFORNIA

ENVIRONMENTAL FORESIGHT, INC.
Landscape Architecture
1855 Olympic Blvd., Suite 105
Walnut Creek, CA 94596
T (925) 945-0300 F (925) 945-6688
www.environmentalforesight.com

LICENSED LANDSCAPE ARCHITECT — STATE OF CALIFORNIA

JOB# 13026.02

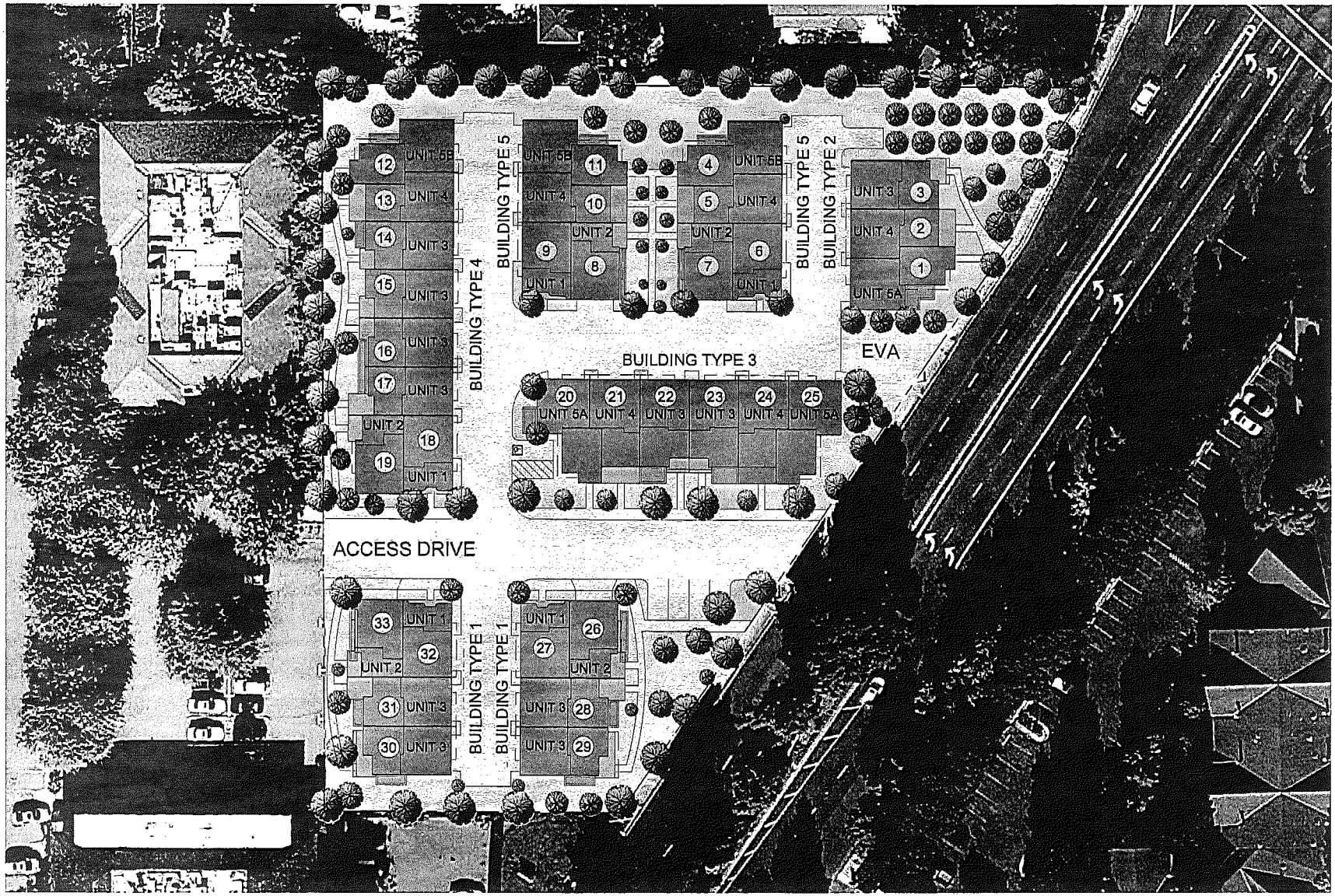
NOT FOR CONSTRUCTION

0' 20' 60' 80'

SCALE: 1" = 20'

DATE: MARCH 25, 2014
UPDATED: JULY 18, 2014

SHEET NUMBER
L-3
3 OF 3



SITE DATA:

UNITS:

UNIT 1:	5 UNITS
UNIT 2:	5 UNITS
UNIT 3:	11 UNITS
UNIT 4:	6 UNITS
UNIT 5A:	3 UNITS
UNIT 5B:	3 UNITS
TOTAL:	33 UNITS

N

ILLUSTRATIVE SITE PLAN

0 20 40 80

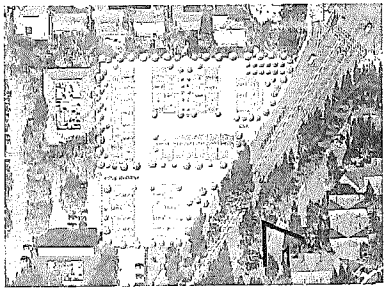
BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

DAHLIN group

JOB NO. 1083.005
DATE UPDATED: 07-18-14

5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

A0.01



KEY MAP

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

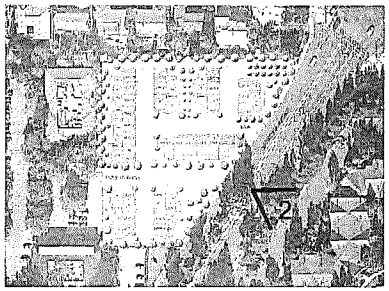
STREETSCAPE
PERSPECTIVE 1

NO SCALE

JOB NO. 1083.005
DATE UPDATED: 07-18-14

DAHLIN group
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

A0.02



KEY MAP

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

DAHLIN group

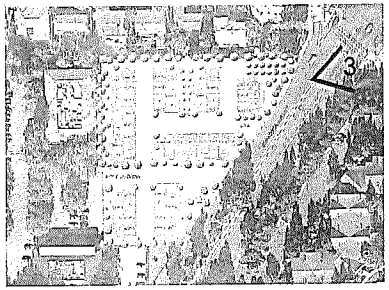
STREETSCAPE PERSPECTIVE 2

NO SCALE

JOB NO. 1083.005
DATE UPDATED: 07-18-14

5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

A0.03



KEY MAP

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

DAHLIN group

5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

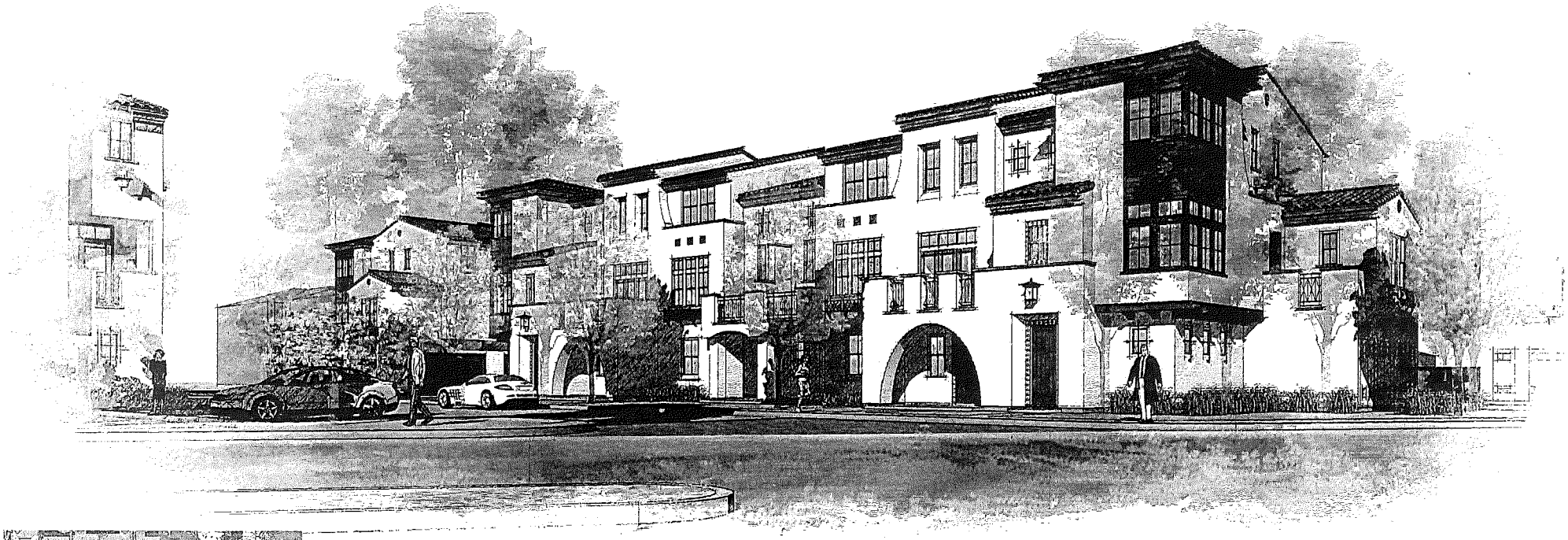
STREETSCAPE
PERSPECTIVE 3

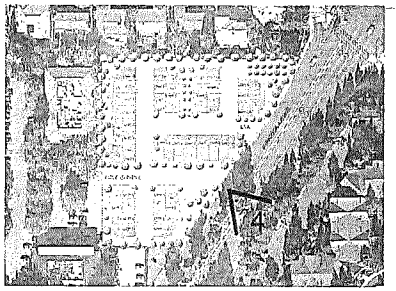
NO SCALE

JOB NO. 1083.005

DATE UPDATED: 07-18-14

A0.04





KEY MAP

STREETSCAPE PERSPECTIVE 4

NO SCALE

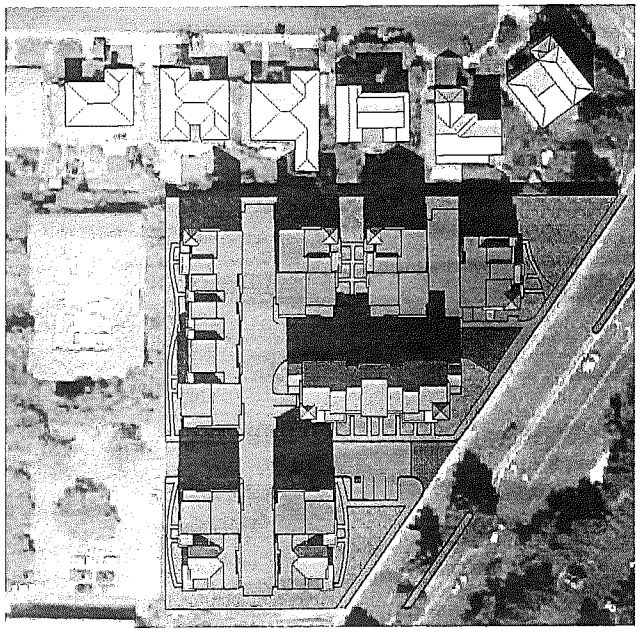
BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

DAHLIN group

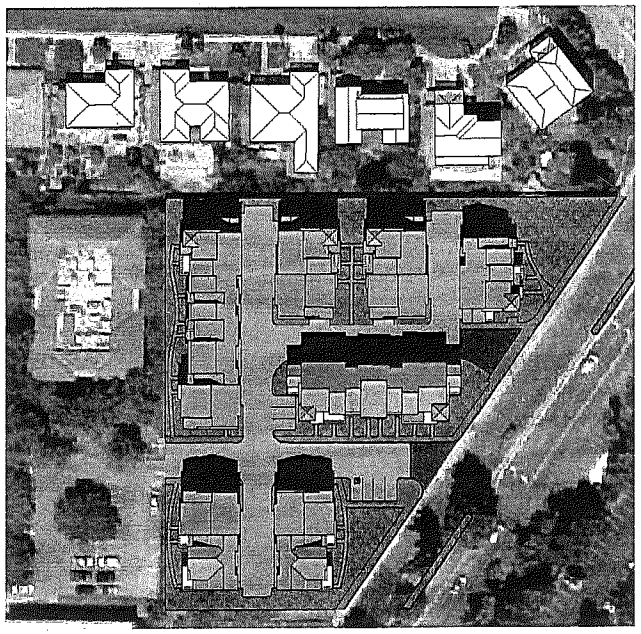
JOB NO. 1083.005
DATE UPDATED: 07-18-14

5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

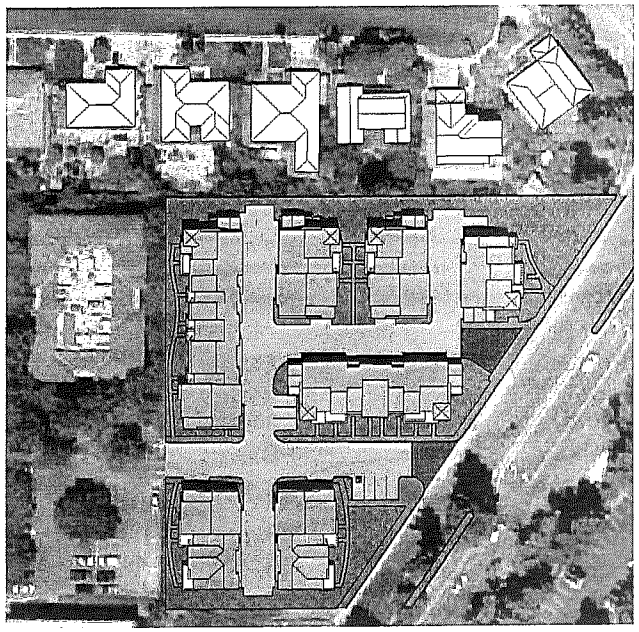
A0.05



DECEMBER 21ST AT 12:00 PM



MARCH / SEPTEMBER 21ST AT 12:00 PM



JUNE 21ST AT 12:00 PM

N

SHADOW STUDY

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

DAHLIN group

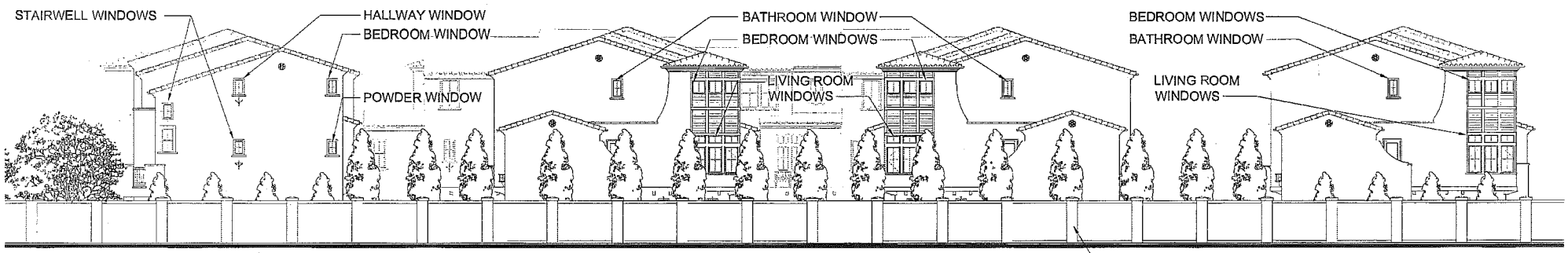
NO SCALE

JOB NO. 1083.005

DATE UPDATED: 07-18-14

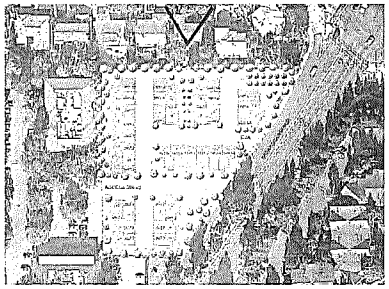
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

A0.06



VIEW WITH APPROXIMATELY 15 YEARS OF TREE GROWTH

VIEW WITH NEWLY PLANTED 36" BOX TREES (8' TO 10' TALL)



KEY MAP

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

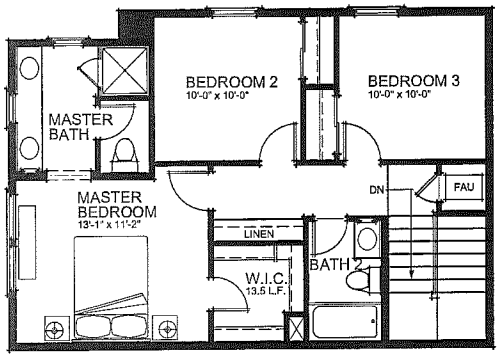
NORTH SIDE ELEVATIONS

NO SCALE

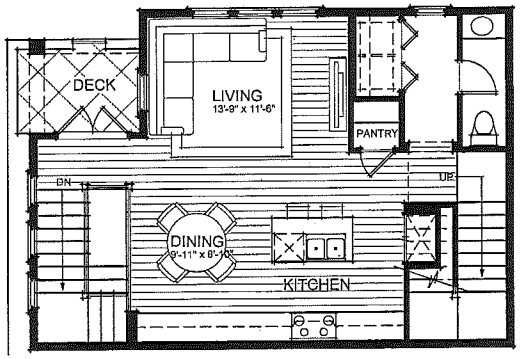
JOB NO. 1083.005
DATE UPDATED: 07-18-14

DAHLIN group
5885 Owens Drive
Pleasanton, CA 94588
925-251-7200

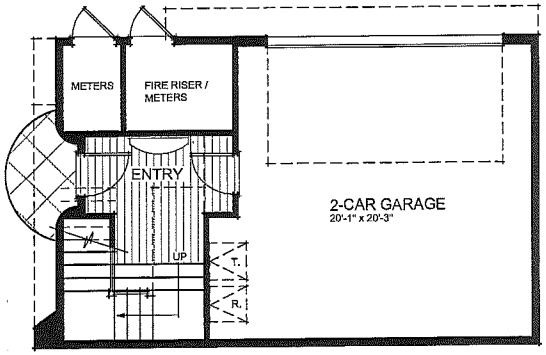
A0.07



THIRD FLOOR PLAN



SECOND FLOOR PLAN



FIRST FLOOR PLAN

FLOOR 1:	158 S.F.
FLOOR 2:	632 S.F.
FLOOR 3:	673 S.F.
TOTAL:	1463 S.F.
GARAGE:	456 S.F.

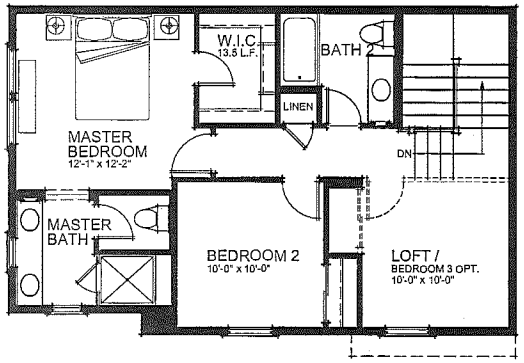
UNIT 1
FLOOR PLANS

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

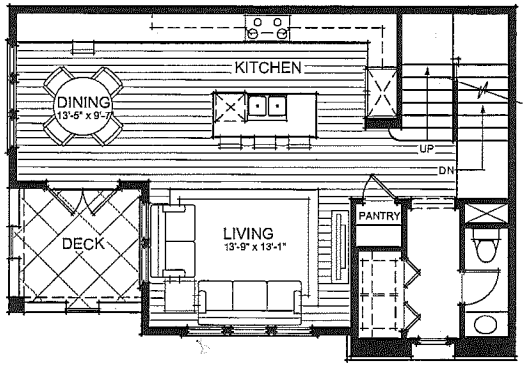
DAHLIN group
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

JOB NO. 1083.005
DATE UPDATED: 07-18-14

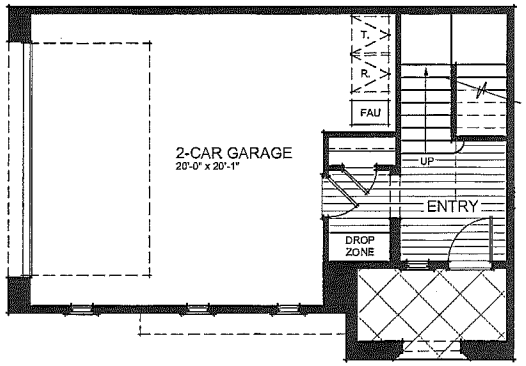
A1.01



THIRD FLOOR PLAN



SECOND FLOOR PLAN



FIRST FLOOR PLAN

FLOOR 1:	191 S.F.
FLOOR 2:	691 S.F.
FLOOR 3:	670 S.F.
TOTAL:	1552 S.F.
GARAGE:	472 S.F.

UNIT 2
FLOOR PLANS

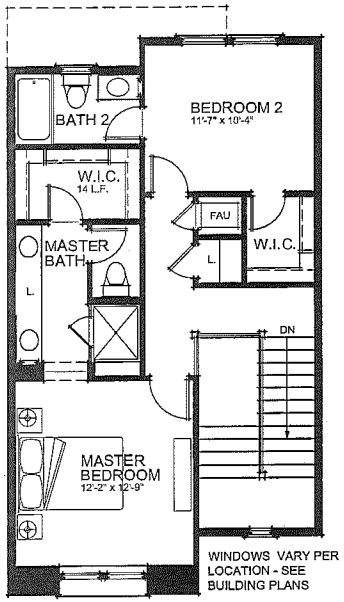
0 4 8 16

JOB NO. 1083.005
DATE UPDATED: 07-18-14

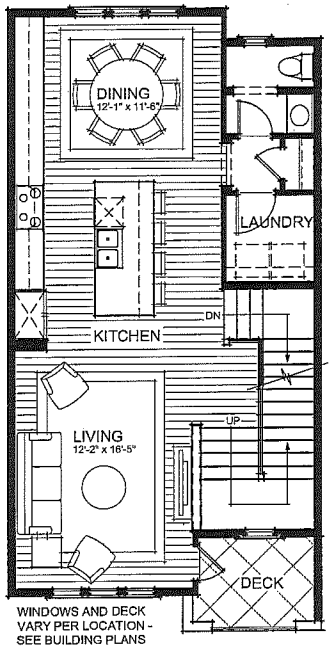
DAHLIN group
5665 Owens Drive
Pleasanton, CA 94588
925-251-7200

A2.01

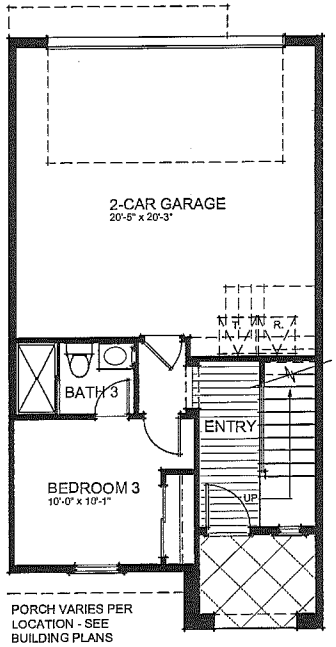
BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY



THIRD FLOOR PLAN



SECOND FLOOR PLAN



FIRST FLOOR PLAN

FLOOR 1:	311 S.F.
FLOOR 2:	817 S.F.
FLOOR 3:	636 S.F.
TOTAL:	1764 S.F.
GARAGE:	457 S.F.

UNIT 3
FLOOR PLANS

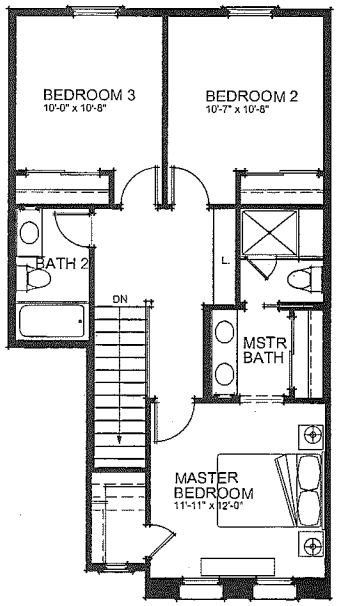
BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

DAHLIN group

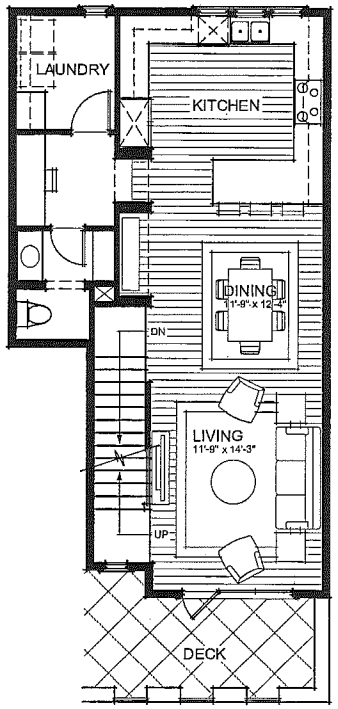
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

JOB NO. 1083.005
DATE UPDATED: 07-18-14

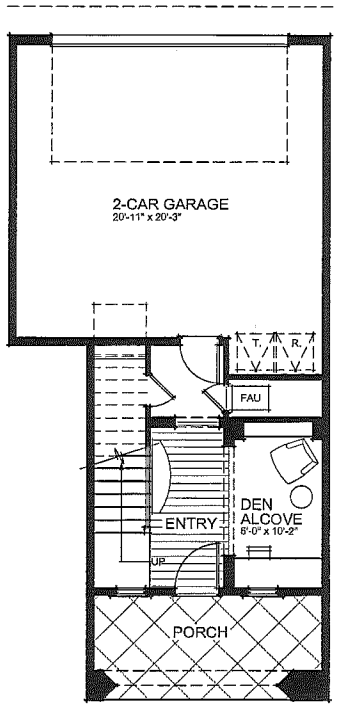
A3.01



THIRD FLOOR PLAN



SECOND FLOOR PLAN



FIRST FLOOR PLAN

FLOOR 1:	273 S.F.
FLOOR 2:	785 S.F.
FLOOR 3:	730 S.F.
TOTAL:	1788 S.F.
GARAGE:	476 S.F.

UNIT 4

FLOOR PLANS

0 4 8 16

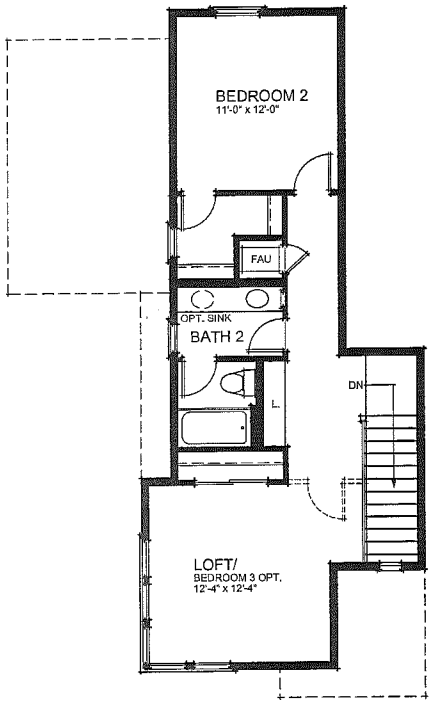
BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

DAHLIN group

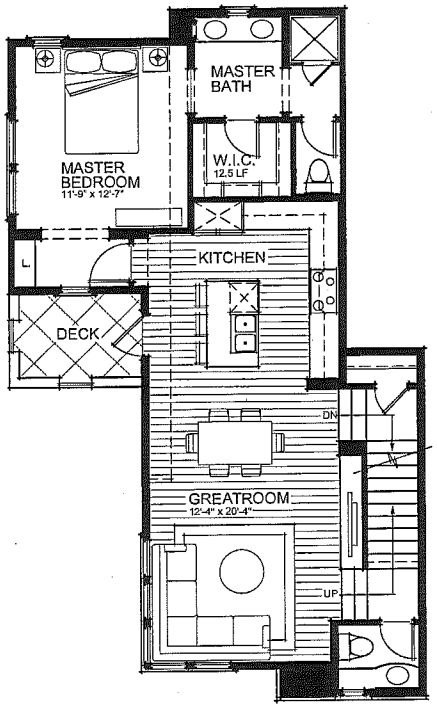
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

JOB NO. 1083.005
DATE UPDATED: 07-18-14

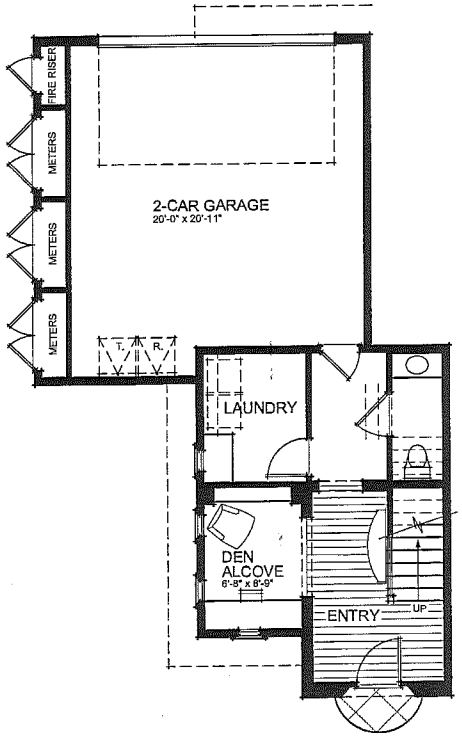
A4.01



THIRD FLOOR PLAN



SECOND FLOOR PLAN



FIRST FLOOR PLAN

FLOOR 1:	380 S.F.
FLOOR 2:	914 S.F.
FLOOR 3:	585 S.F.
TOTAL:	1879 S.F.
GARAGE:	468 S.F.

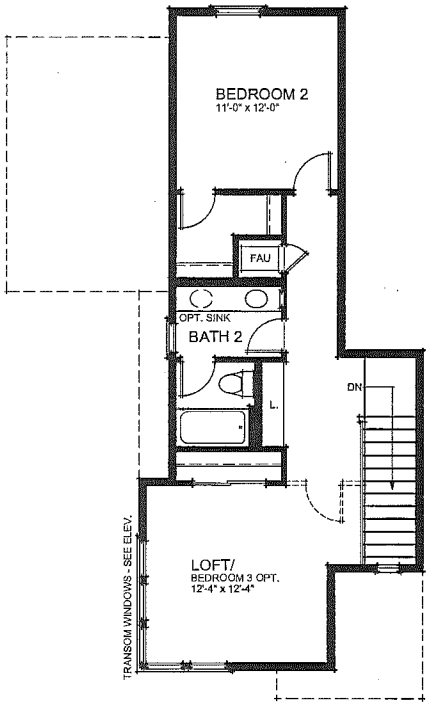
UNIT 5A
FLOOR PLANS

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

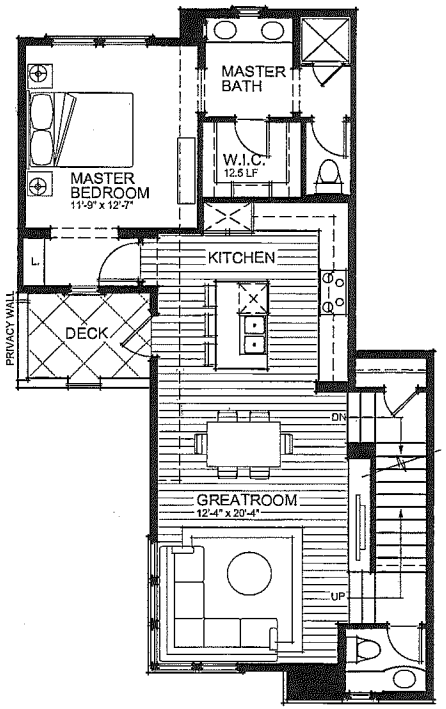
DAHLIN group
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

JOB NO. 1083.005
DATE UPDATED: 07-18-14

A5.01



THIRD FLOOR PLAN



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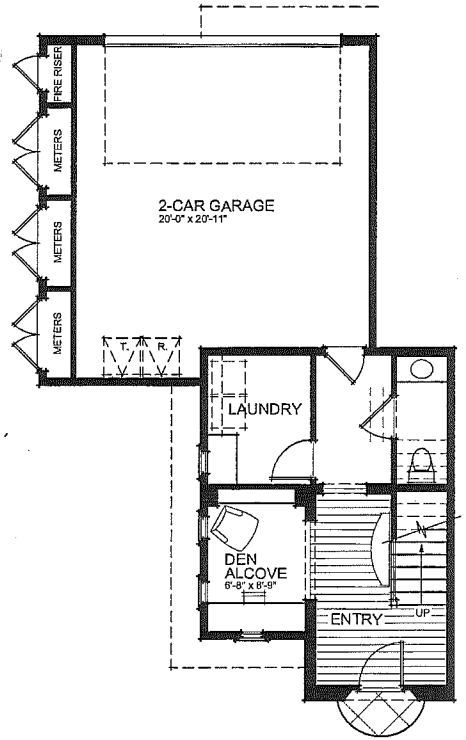


FIRST FLOOR PLAN

FLOOR 1:	380 S.F.
FLOOR 2:	914 S.F.
FLOOR 3:	585 S.F.
TOTAL:	1879 S.F.
GARAGE:	468 S.F.

UNIT 5B
FLOOR PLANS

0 4 8 16

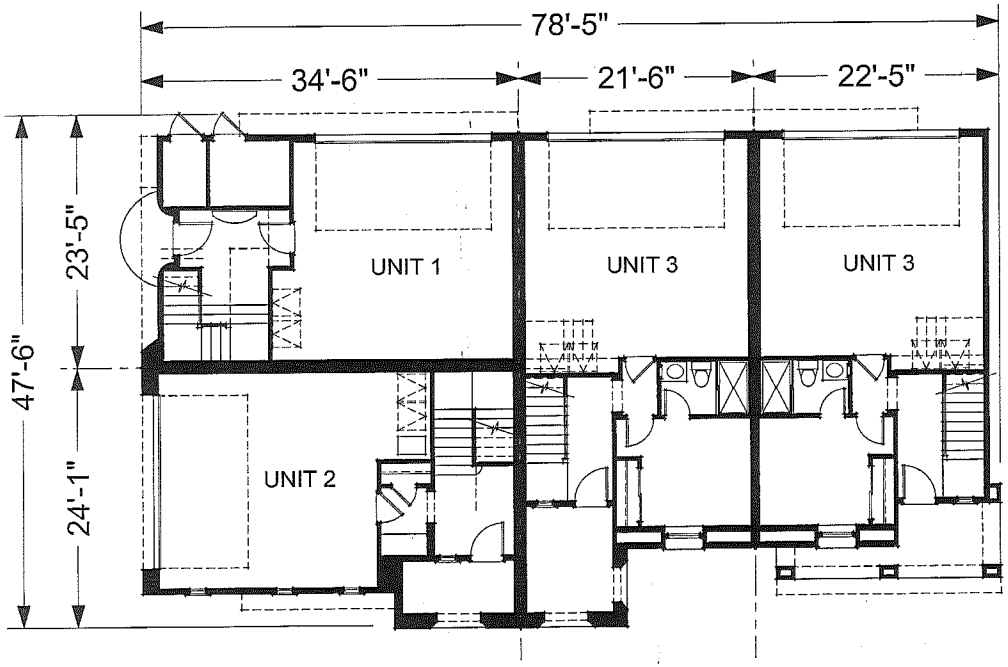
BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

DAHLIN group

JOB NO. 1083.005
DATE UPDATED: 07-18-14

5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

A5.02



FIRST FLOOR PLAN

BUILDING SQ. FT.:

R-2 OCCUPANCY (TYPE V-B):

FIRST FLOOR:	1,501 SF
SECOND FLOOR:	3,185 SF
THIRD FLOOR:	3,060 SF
(ALLOWABLE:	7,000/FLR)

U OCCUPANCY:

FIRST FLOOR:	1,956 SF
(ALLOWABLE:	3,000 SF)

BUILDING SF TOTAL:	9,702 SF
(ALLOWABLE:	14,000 SF)

BUILDING HEIGHT:

R-2 OCCUPANCY (TYPE V-B)
WITH FULL NFPA 13 SPRINKLERS:

HEIGHT:	+/- 40 FT.
(ALLOWABLE:	60 FT.)
STORIES:	3
(ALLOWABLE:	3)

BUILDING TYPE 1

FIRST FLOOR PLAN

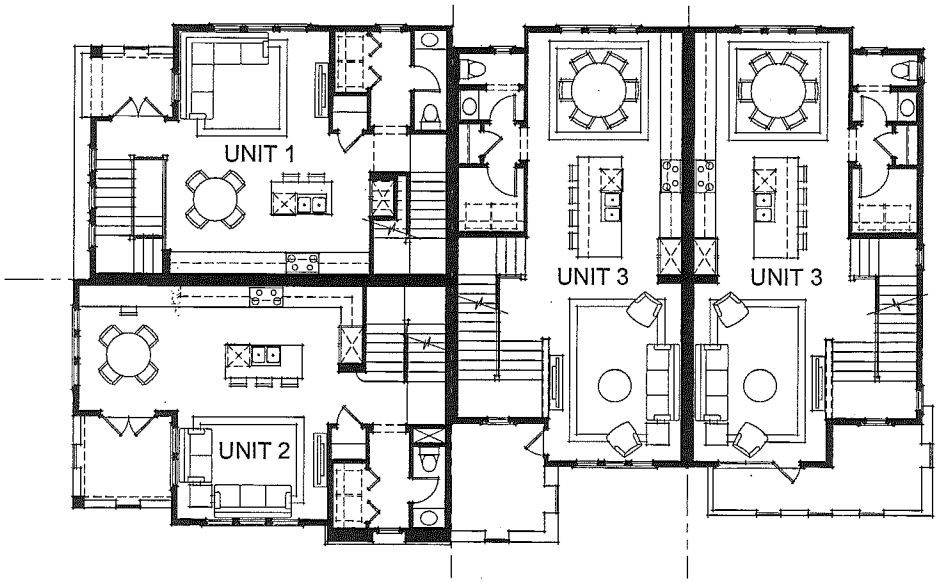
0 4 8 16

JOB NO. 1083.005
DATE UPDATED: 07-18-14

DAHLIN group
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

A6.01

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY



SECOND FLOOR PLAN

BUILDING SQ. FT.:

R-2 OCCUPANCY (TYPE V-B):

FIRST FLOOR:	1,501 SF
SECOND FLOOR:	3,185 SF
THIRD FLOOR:	3,060 SF
(ALLOWABLE:	7,000/FLR)

U OCCUPANCY:

FIRST FLOOR:	1,956 SF
(ALLOWABLE:	3,000 SF)

BUILDING SF TOTAL:	9,702 SF
(ALLOWABLE:	14,000 SF)

BUILDING HEIGHT:

R-2 OCCUPANCY (TYPE V-B)
WITH FULL NFPA 13 SPRINKLERS:

HEIGHT:	+/- 40 FT.
(ALLOWABLE:	60 FT.)
STORIES:	3
(ALLOWABLE:	3)

BUILDING TYPE 1

SECOND FLOOR PLAN

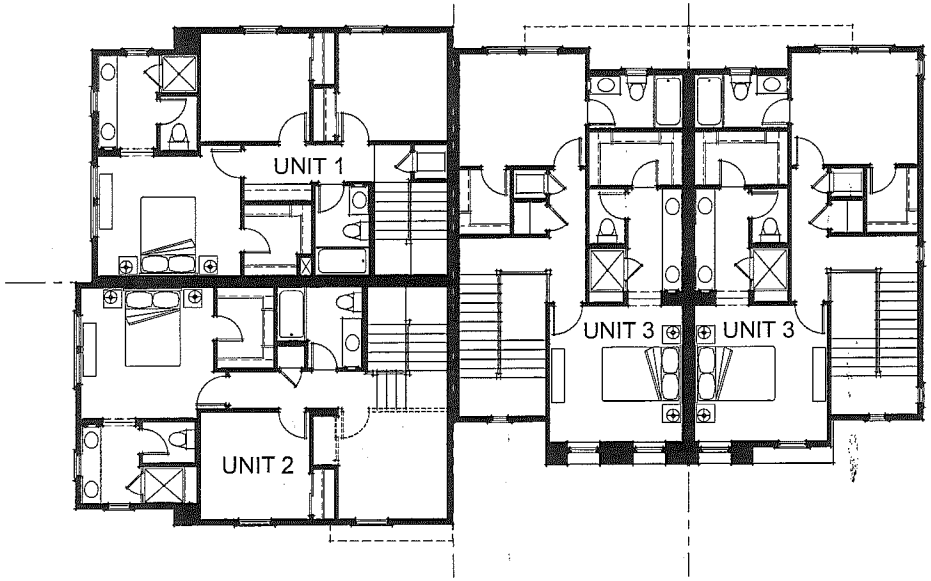
0 4 8 16

JOB NO. 1083.005
DATE UPDATED: 07-18-14

DAHLIN group
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

A6.02

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY



THIRD FLOOR PLAN

BUILDING SQ. FT.:

R-2 OCCUPANCY (TYPE V-B):

FIRST FLOOR:	1,501 SF
SECOND FLOOR:	3,185 SF
THIRD FLOOR:	3,060 SF
(ALLOWABLE:	7,000/FLR)

U OCCUPANCY:

FIRST FLOOR:	1,956 SF
(ALLOWABLE:	3,000 SF)

BUILDING SF TOTAL:	9,702 SF
(ALLOWABLE:	14,000 SF)

BUILDING HEIGHT:

R-2 OCCUPANCY (TYPE V-B)
WITH FULL NFPA 13 SPRINKLERS:

HEIGHT:	+/- 40 FT.
(ALLOWABLE:	60 FT.)
STORIES:	3
(ALLOWABLE:	3)

BUILDING TYPE 1

THIRD FLOOR PLAN

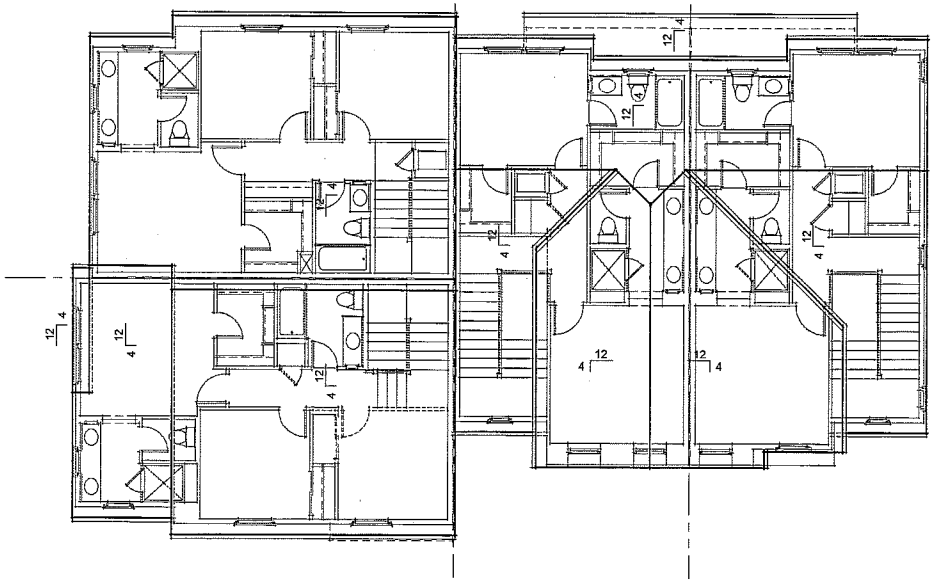
8 4 8 16

JOB NO. 1083.005
DATE UPDATED: 07-18-14

DAHLIN group
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

A6.03

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY



ROOF PLAN

BUILDING TYPE 1

ROOF PLAN

0 4 8 16

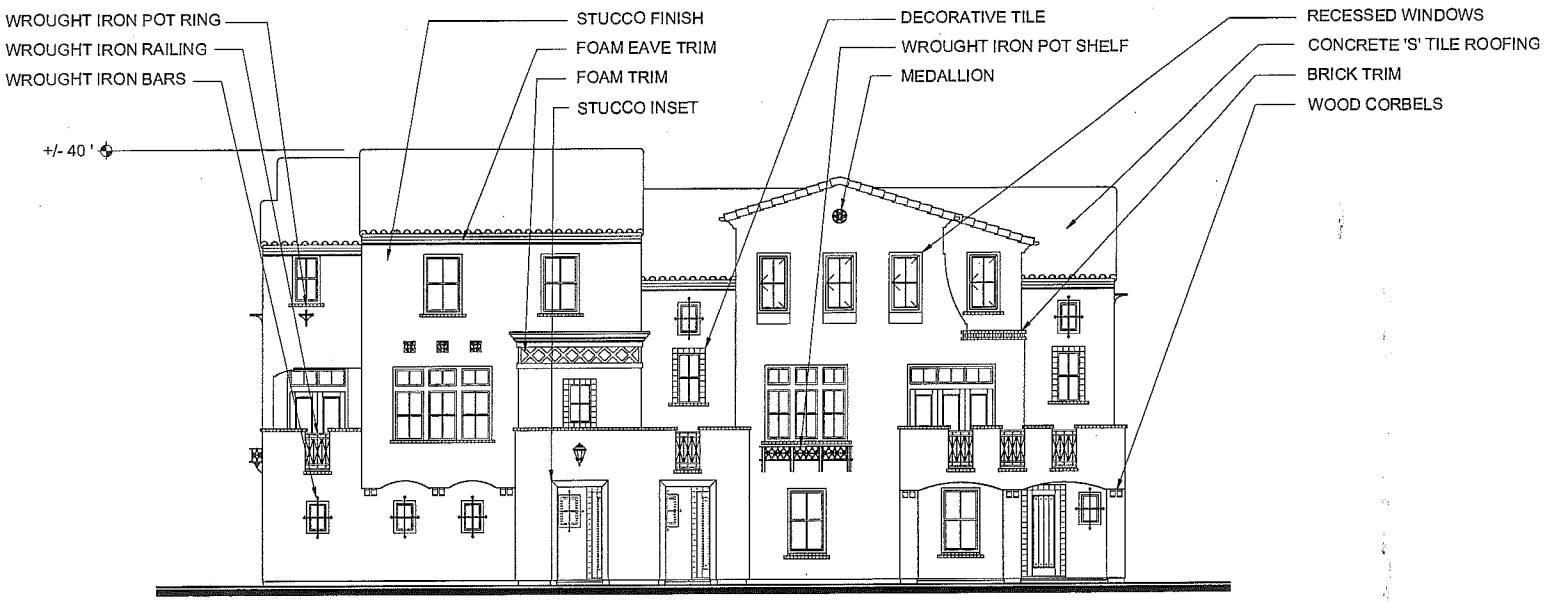
BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

DAHLIN group

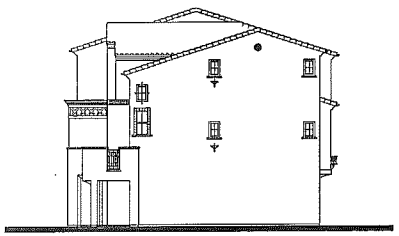
5855 Owens Drive
Pleasanton, CA 94588
925-251-7200

JOB NO. 1083.005
DATE UPDATED: 07-18-14

A6.04



FRONT ELEVATION



RIGHT SIDE ELEVATION

REAR ELEVATION

LEFT SIDE ELEVATION

BUILDING TYPE 1

ELEVATIONS

SCALE AS NOTED

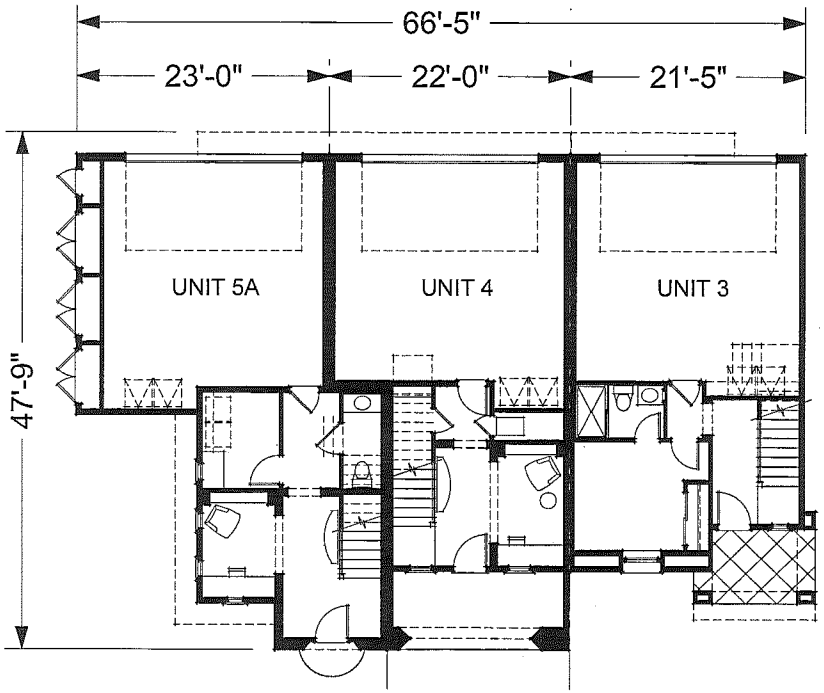
JOB NO. 1083.005

DATE UPDATED: 07-18-14

DAHLIN group
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

A6.05

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY



FIRST FLOOR PLAN

BUILDING SQ. FT.:

R-2 OCCUPANCY (TYPE V-B):

FIRST FLOOR:	1,361 SF
SECOND FLOOR:	2,542 SF
THIRD FLOOR:	2,194 SF
(ALLOWABLE:	7,000/FLR)

U OCCUPANCY:

FIRST FLOOR:	1,459 SF
(ALLOWABLE:	3,000 SF)

BUILDING SF TOTAL:	7,556 SF
(ALLOWABLE:	14,000 SF)

BUILDING HEIGHT:

R-2 OCCUPANCY (TYPE V-B)
WITH FULL NFPA 13 SPRINKLERS:

HEIGHT:	+/- 40 FT.
(ALLOWABLE:	60 FT.)
STORIES:	3
(ALLOWABLE:	3)

BUILDING TYPE 2

FIRST FLOOR PLAN

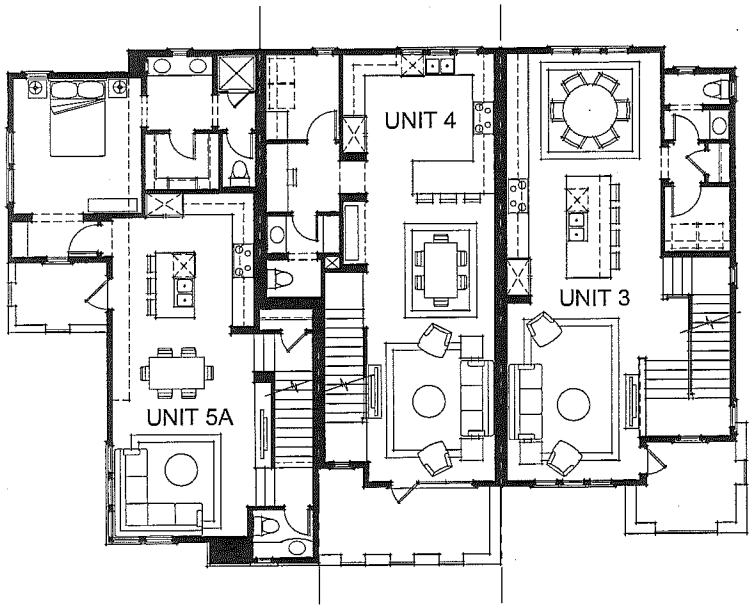
0 4 8 16

JOB NO. 1083.005
DATE UPDATED: 07-18-14

DAHLIN group
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

A6.06

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY



SECOND FLOOR PLAN

BUILDING SQ. FT.:

R-2 OCCUPANCY (TYPE V-B):

FIRST FLOOR:	1,361 SF
SECOND FLOOR:	2,542 SF
THIRD FLOOR:	2,194 SF
(ALLOWABLE:	7,000/FLR)

U OCCUPANCY:

FIRST FLOOR:	1,459 SF
(ALLOWABLE:	3,000 SF)

BUILDING SF TOTAL:	7,556 SF
(ALLOWABLE:	14,000 SF)

BUILDING HEIGHT:

R-2 OCCUPANCY (TYPE V-B)
WITH FULL NFPA 13 SPRINKLERS:

HEIGHT:	+/- 40 FT.
(ALLOWABLE:	60 FT.)
STORIES:	3
(ALLOWABLE:	3)

BUILDING TYPE 2

SECOND FLOOR PLAN

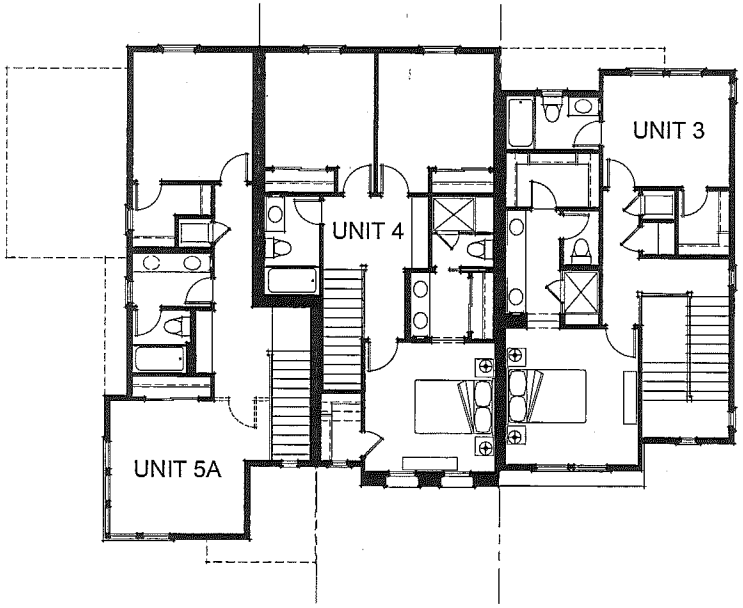
0 4 8 16

JOB NO. 1083.005
DATE UPDATED: 07-18-14

DAHLIN group
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

A6.07

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY



THIRD FLOOR PLAN

BUILDING SQ. FT.:

R-2 OCCUPANCY (TYPE V-B):

FIRST FLOOR:	1,361 SF
SECOND FLOOR:	2,542 SF
THIRD FLOOR:	2,194 SF
(ALLOWABLE:	7,000/FLR)

U OCCUPANCY:

FIRST FLOOR:	1,459 SF
(ALLOWABLE:	3,000 SF)

BUILDING SF TOTAL:	7,556 SF
(ALLOWABLE:	14,000 SF)

BUILDING HEIGHT:

R-2 OCCUPANCY (TYPE V-B)
WITH FULL NFPA 13 SPRINKLERS:

HEIGHT:	+/- 40 FT.
(ALLOWABLE:	60 FT.)
STORIES:	3
(ALLOWABLE:	3)

BUILDING TYPE 2

THIRD FLOOR PLAN

0 4 8 16

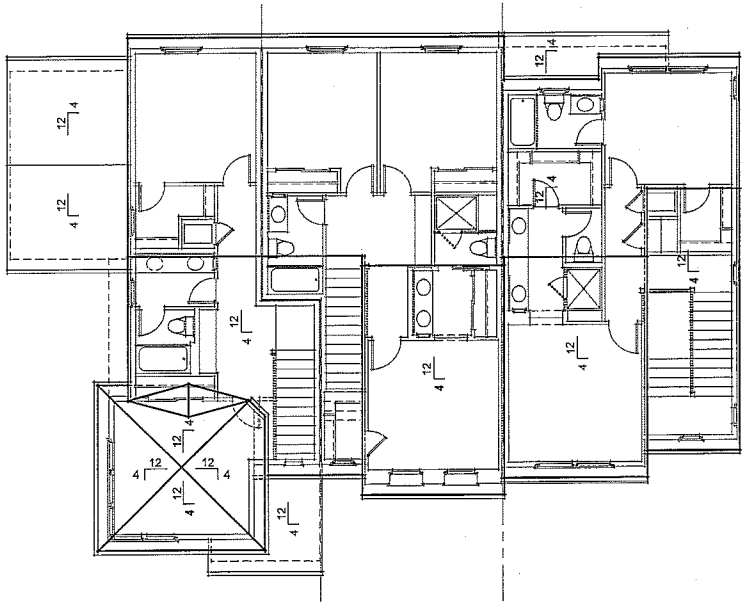
BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

DAHLIN group

5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

JOB NO. 1083.005
DATE UPDATED: 07-18-14

A6.08



ROOF PLAN

BUILDING TYPE 2

ROOF PLAN

0 4 8 16

JOB NO. 1083.005

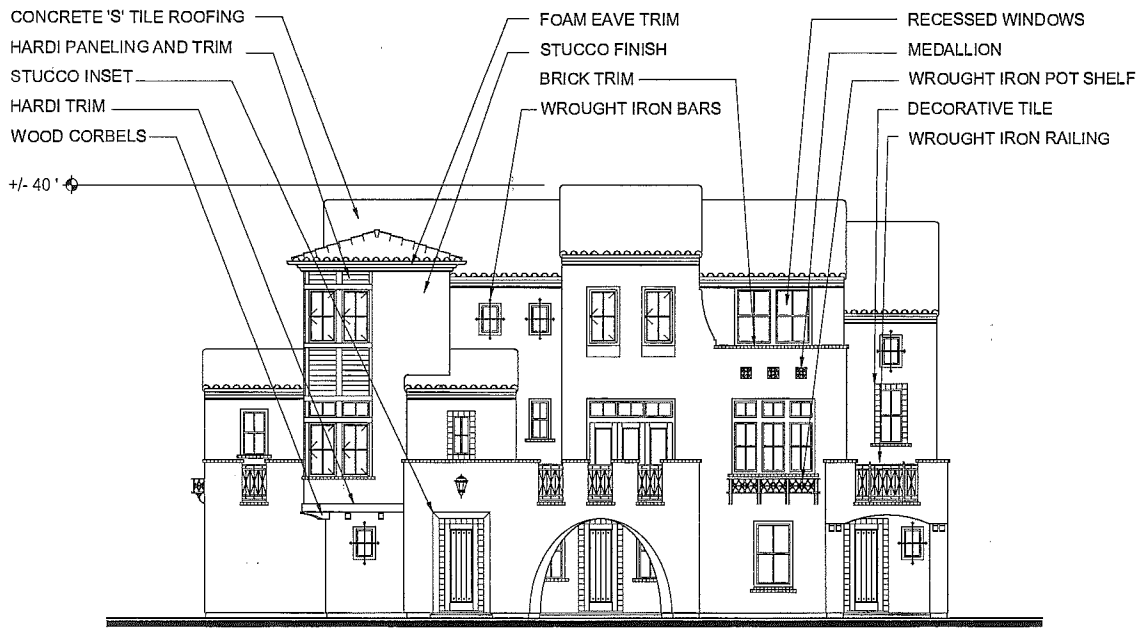
DATE UPDATED: 07-18-14

DAHLIN group
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

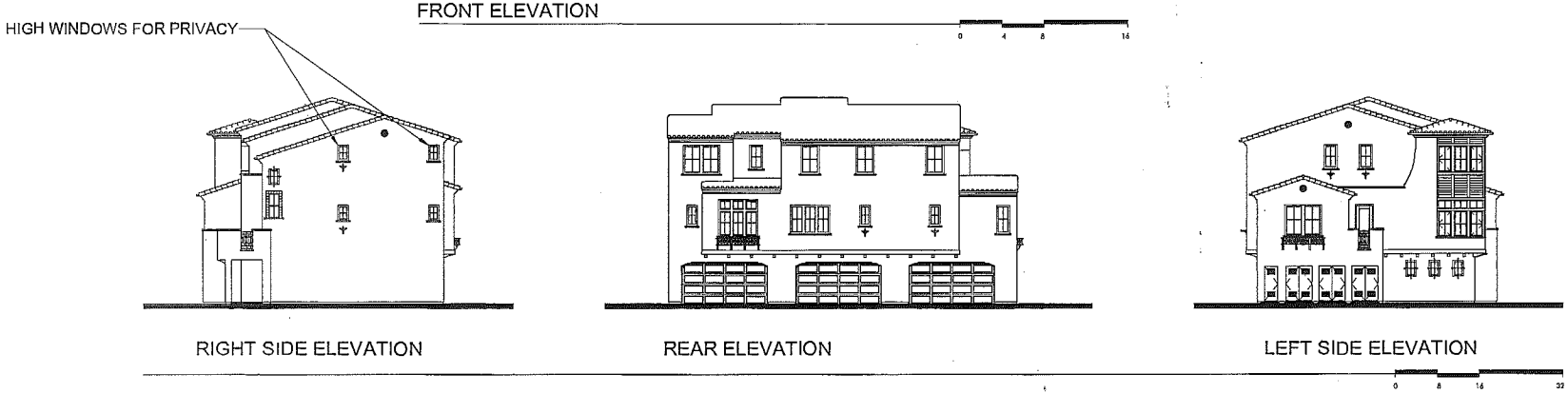
A6.09

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA

THE NEW HOME COMPANY



FRONT ELEVATION



BUILDING TYPE 2

ELEVATIONS

SCALE AS NOTED

JOB NO. 1083.005

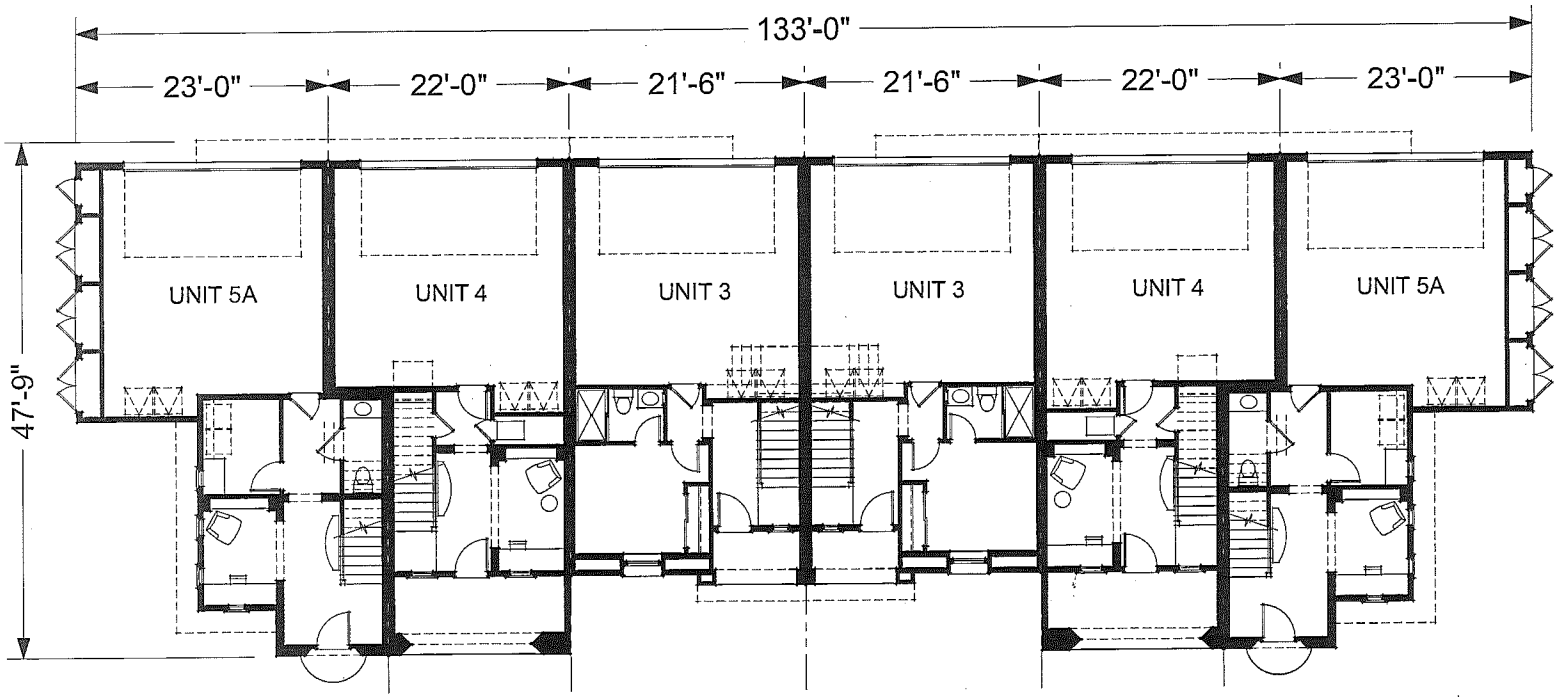
DATE UPDATED: 07-18-14

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

DAHLIN group

5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

A6.10



FIRST FLOOR PLAN

BUILDING SQ. FT.:

R-2 OCCUPANCY (TYPE V-B):

FIRST FLOOR:	2,664 SF
SECOND FLOOR:	5,089 SF
THIRD FLOOR:	4,393 SF
(ALLOWABLE:	11,550/FLR)

U OCCUPANCY:

FIRST FLOOR:	2,921 SF
(ALLOWABLE:	3,000 SF)

BUILDING SF TOTAL:	15,067 SF
(ALLOWABLE:	23,100 SF)*

* FRONTAGE INCREASE OF 4500 SF/FLR USED PER CBC SECTION 506.1 (BASED ON 26' MIN. WIDTH OF PUBLIC WAY OR OPEN SPACE ON ALL 4 SIDES OF BUILDING)

BUILDING HEIGHT:

R-2 OCCUPANCY (TYPE V-B) WITH FULL NFPA 13 SPRINKLERS:

HEIGHT:	+/- 40 FT.
(ALLOWABLE:	60 FT.)
STORIES:	3
(ALLOWABLE:	3)

BUILDING TYPE 3

FIRST FLOOR PLAN

0 4 8 16

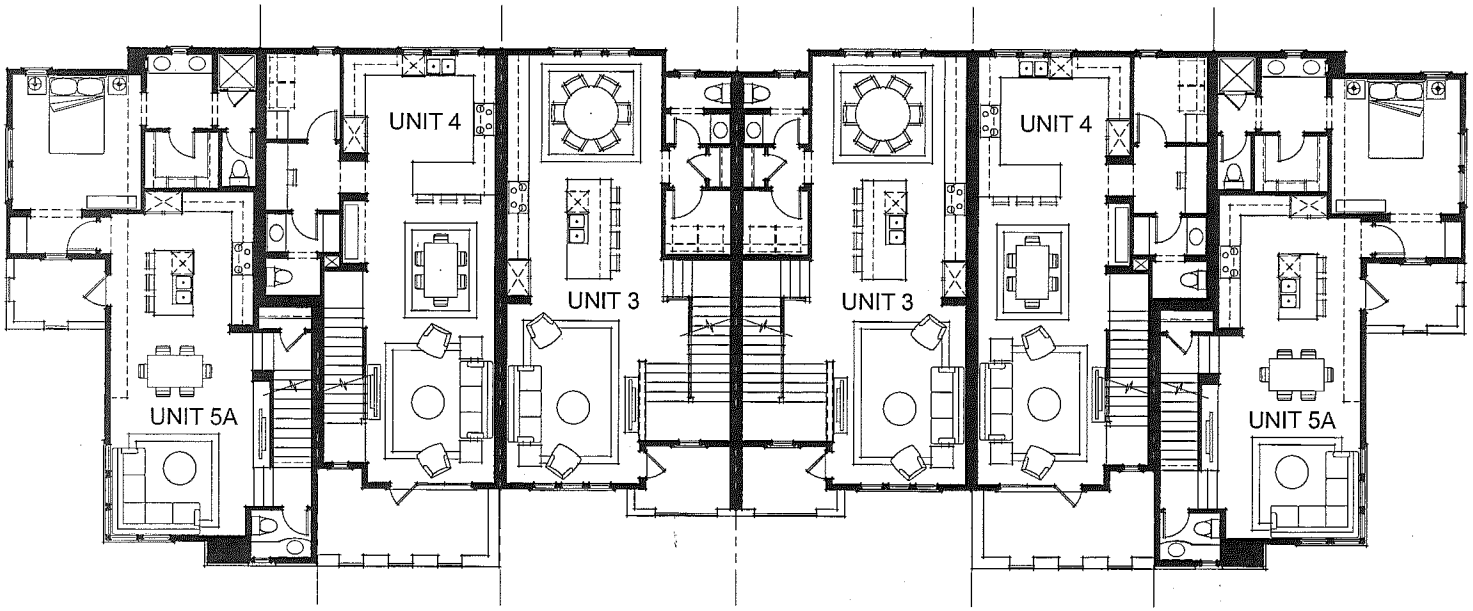
JOB NO. 1083.005

DATE UPDATED: 07-18-14

DAHLIN group
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

A6.11

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY



SECOND FLOOR PLAN

BUILDING SQ. FT.:

R-2 OCCUPANCY (TYPE V-B):

FIRST FLOOR:	2,664 SF
SECOND FLOOR:	5,089 SF
THIRD FLOOR:	4,393 SF
(ALLOWABLE:	11,550/FLR)'

U OCCUPANCY:

FIRST FLOOR:	2,921 SF
(ALLOWABLE:	3,000 SF)

BUILDING SF TOTAL:	15,067 SF
(ALLOWABLE:	23,100 SF)*

* FRONTAGE INCREASE OF 4500 SF/FLR USED PER CBC SECTION 506.1 (BASED ON 26' MIN. WIDTH OF PUBLIC WAY OR OPEN SPACE ON ALL 4 SIDES OF BUILDING)

BUILDING HEIGHT:

R-2 OCCUPANCY (TYPE V-B)
WITH FULL NFPA 13 SPRINKLERS:

HEIGHT:	+/- 40 FT.
(ALLOWABLE:	60 FT.)
STORIES:	3
(ALLOWABLE:	3)

BUILDING TYPE 3

SECOND FLOOR PLAN

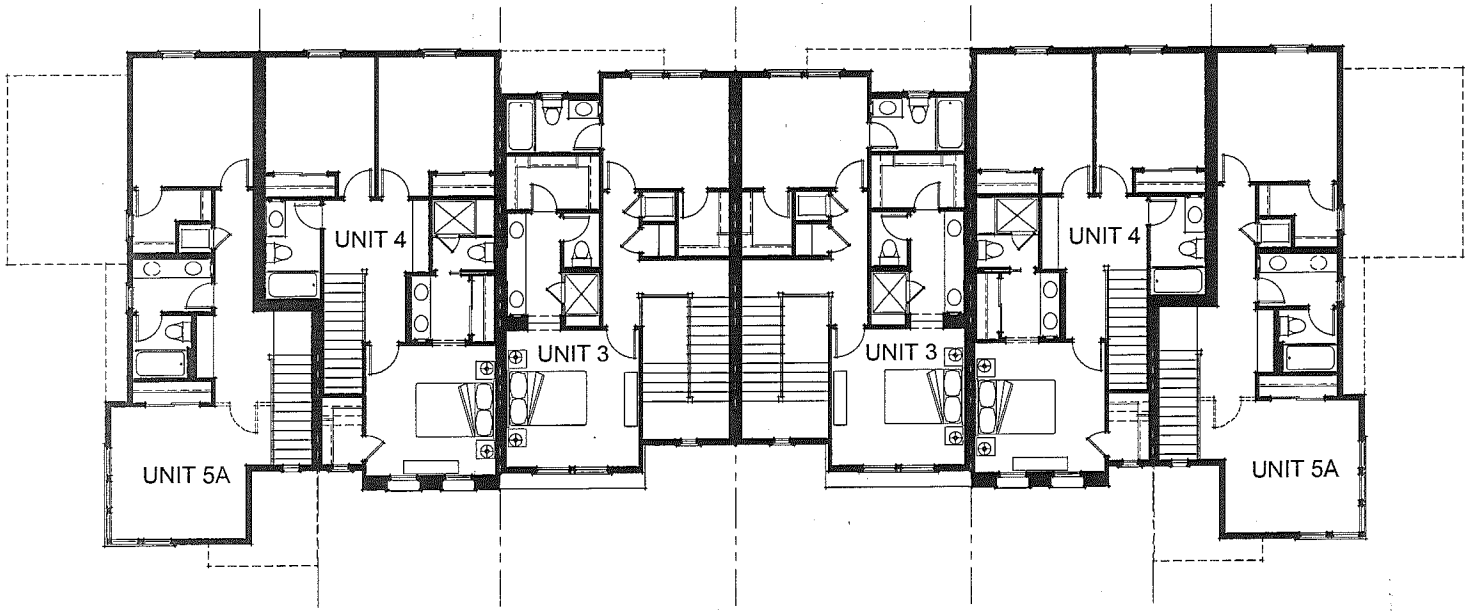
BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

DAHLIN group

5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

JOB NO. 1083.005
DATE UPDATED: 07-18-14

A6.12



THIRD FLOOR PLAN

BUILDING SQ. FT.:

R-2 OCCUPANCY (TYPE V-B):

FIRST FLOOR:	2,664 SF
SECOND FLOOR:	5,089 SF
THIRD FLOOR:	4,393 SF
(ALLOWABLE:	11,550/FLR)'

U OCCUPANCY:

FIRST FLOOR:	2,921 SF
(ALLOWABLE:	3,000 SF)

BUILDING SF TOTAL:	15,067 SF
(ALLOWABLE:	23,100 SF)*

* FRONTAGE INCREASE OF 4500 SF/FLR USED PER CBC SECTION 506.1 (BASED ON 26' MIN. WIDTH OF PUBLIC WAY OR OPEN SPACE ON ALL 4 SIDES OF BUILDING)

BUILDING HEIGHT:

R-2 OCCUPANCY (TYPE V-B) WITH FULL NFPA 13 SPRINKLERS:

HEIGHT:	+/- 40 FT.
(ALLOWABLE:	60 FT.)
STORIES:	3
(ALLOWABLE:	3)

BUILDING TYPE 3

THIRD FLOOR PLAN

0 4 8 16

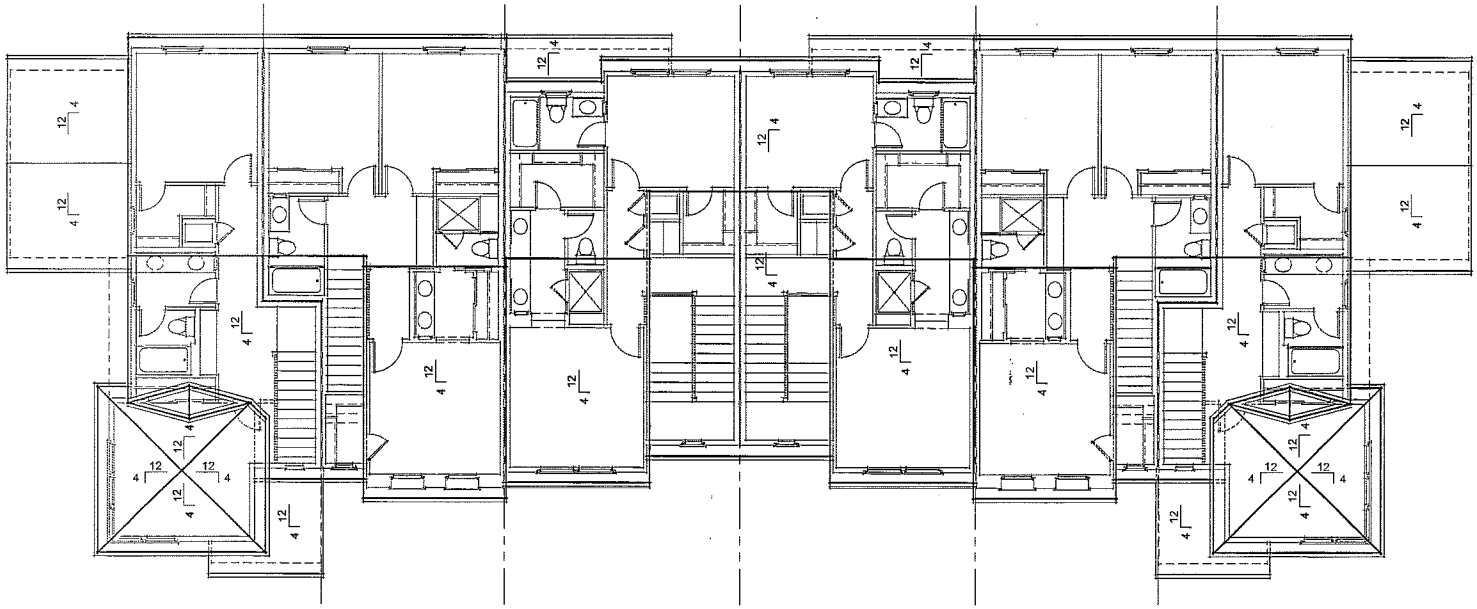
JOB NO. 1083.005

DATE UPDATED: 07-18-14

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

DAHLIN group
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

A6.13



ROOF PLAN

BUILDING TYPE 3

ROOF PLAN

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

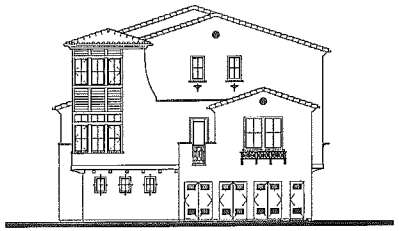
DAHLIN group

5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

JOB NO. 1083.005
DATE UPDATED: 07-18-14

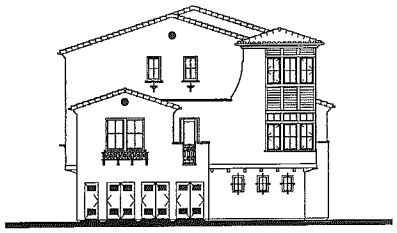
A6.14

FRONT ELEVATION



RIGHT SIDE ELEVATION

REAR ELEVATION



LEFT SIDE ELEVATION

BUILDING TYPE 3
ELEVATIONS

SCALE AS NOTED

JOB NO. 1083.005

DATE UPDATED: 07-18-14

DAHLIN group
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

A6.15

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

BUILDING SQ. FT.:

BUILDING 'A':

R-2 OCCUPANCY (TYPE V-B):

FIRST FLOOR:	1,766 SF
SECOND FLOOR:	3,379 SF
THIRD FLOOR:	2,950 SF
(ALLOWABLE:	7,000/FLR)

U OCCUPANCY:

FIRST FLOOR:	1,919 SF
(ALLOWABLE:	3,000 SF)

BUILDING SF TOTAL:	10,014 SF
(ALLOWABLE:	14,000 SF)

BUILDING 'B':

R-2 OCCUPANCY (TYPE V-B):

FIRST FLOOR:	1,421 SF
SECOND FLOOR:	3,185 SF
THIRD FLOOR:	3,051 SF
(ALLOWABLE:	7,000/FLR)

U OCCUPANCY:

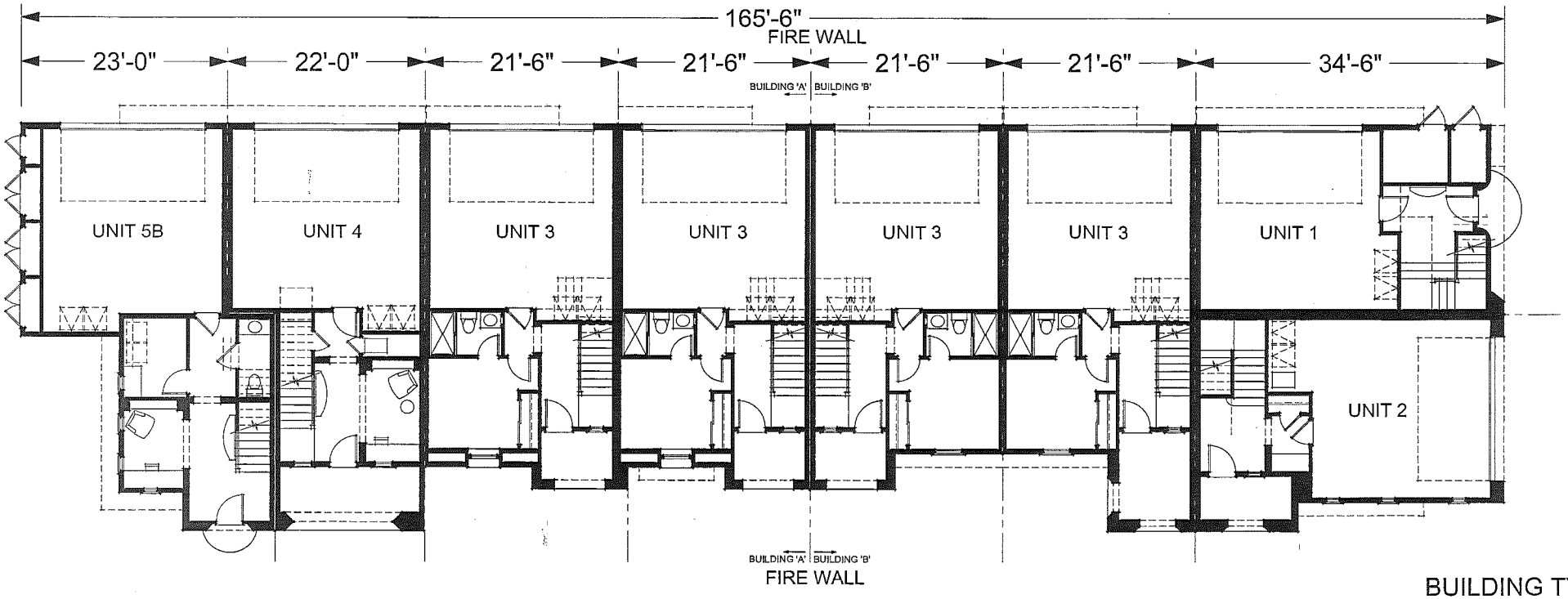
FIRST FLOOR:	1,961 SF
(ALLOWABLE:	3,000 SF)

BUILDING SF TOTAL:	9,618 SF
(ALLOWABLE:	14,000 SF)

BUILDING HEIGHT:

R-2 OCCUPANCY (TYPE V-B)
WITH FULL NFPA 13 SPRINKLERS:

HEIGHT:	+/- 40 FT.
(ALLOWABLE:	60 FT.)
STORIES:	3
(ALLOWABLE:	3)



FIRST FLOOR PLAN

BUILDING TYPE 4

FIRST FLOOR PLAN

0 4 8 16

JOB NO. 1083.005
DATE UPDATED: 07-18-14

DAHLIN group
5885 Owens Drive
Pleasanton, CA 94588
925-251-7200

A6.16

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

BUILDING SQ. FT.:

BUILDING 'A':

R-2 OCCUPANCY (TYPE V-B):

FIRST FLOOR:	1,766 SF
SECOND FLOOR:	3,379 SF
THIRD FLOOR:	2,950 SF
(ALLOWABLE:	7,000/FLR)

U OCCUPANCY:

FIRST FLOOR:	1,919 SF
(ALLOWABLE:	3,000 SF)

BUILDING SF TOTAL:	10,014 SF
(ALLOWABLE:	14,000 SF)

BUILDING 'B':

R-2 OCCUPANCY (TYPE V-B):

FIRST FLOOR:	1,421 SF
SECOND FLOOR:	3,185 SF
THIRD FLOOR:	3,051 SF
(ALLOWABLE:	7,000/FLR)

U OCCUPANCY:

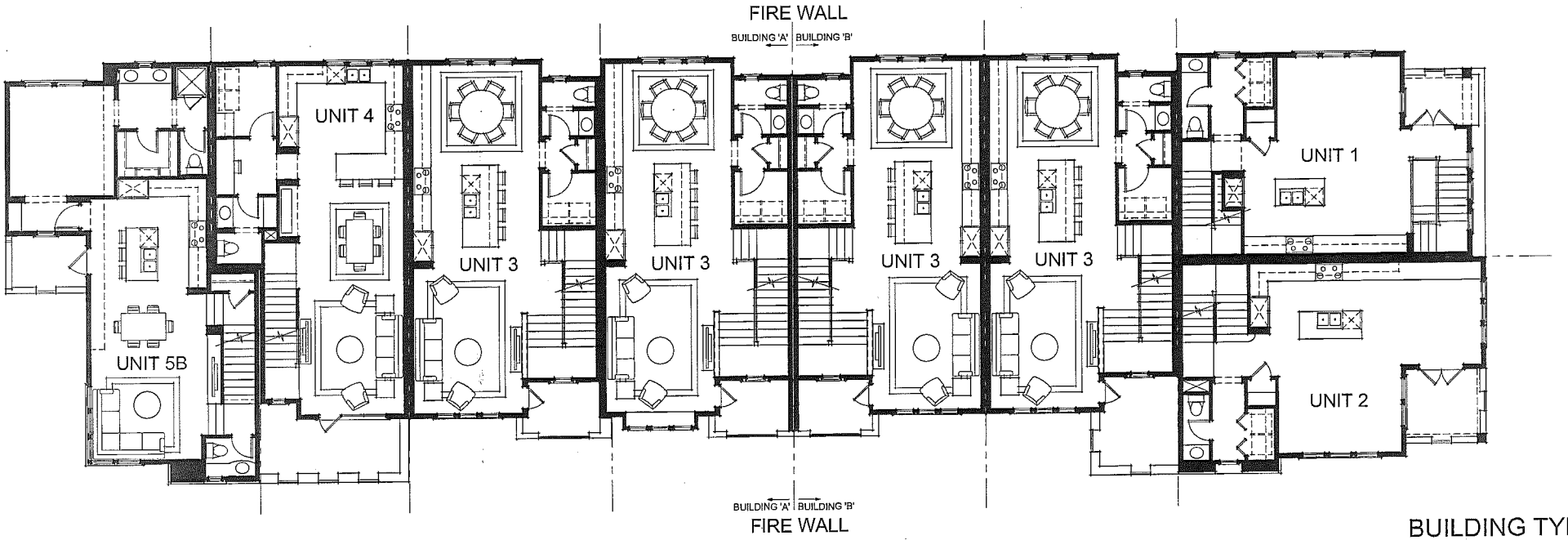
FIRST FLOOR:	1,961 SF
(ALLOWABLE:	3,000 SF)

BUILDING SF TOTAL:	9,618 SF
(ALLOWABLE:	14,000 SF)

BUILDING HEIGHT:

R-2 OCCUPANCY (TYPE V-B)
WITH FULL NFPA 13 SPRINKLERS:

HEIGHT:	+/- 40 FT.
(ALLOWABLE:	60 FT.)
STORIES:	3
(ALLOWABLE:	3)



SECOND FLOOR PLAN

BUILDING TYPE 4

SECOND FLOOR PLAN

0 4 8 16

JOB NO. 1083.005

DATE UPDATED: 07-18-14

DAHLIN group
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

A6.17

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

BUILDING SQ. FT.:

BUILDING 'A':

R-2 OCCUPANCY (TYPE V-B):

FIRST FLOOR:	1,766 SF
SECOND FLOOR:	3,379 SF
THIRD FLOOR:	2,950 SF
(ALLOWABLE:	7,000/FLR)

U OCCUPANCY:

FIRST FLOOR:	1,919 SF
(ALLOWABLE:	3,000 SF)

BUILDING SF TOTAL:	10,014 SF
(ALLOWABLE:	14,000 SF)

BUILDING 'B':

R-2 OCCUPANCY (TYPE V-B):

FIRST FLOOR:	1,421 SF
SECOND FLOOR:	3,185 SF
THIRD FLOOR:	3,051 SF
(ALLOWABLE:	7,000/FLR)

U OCCUPANCY:

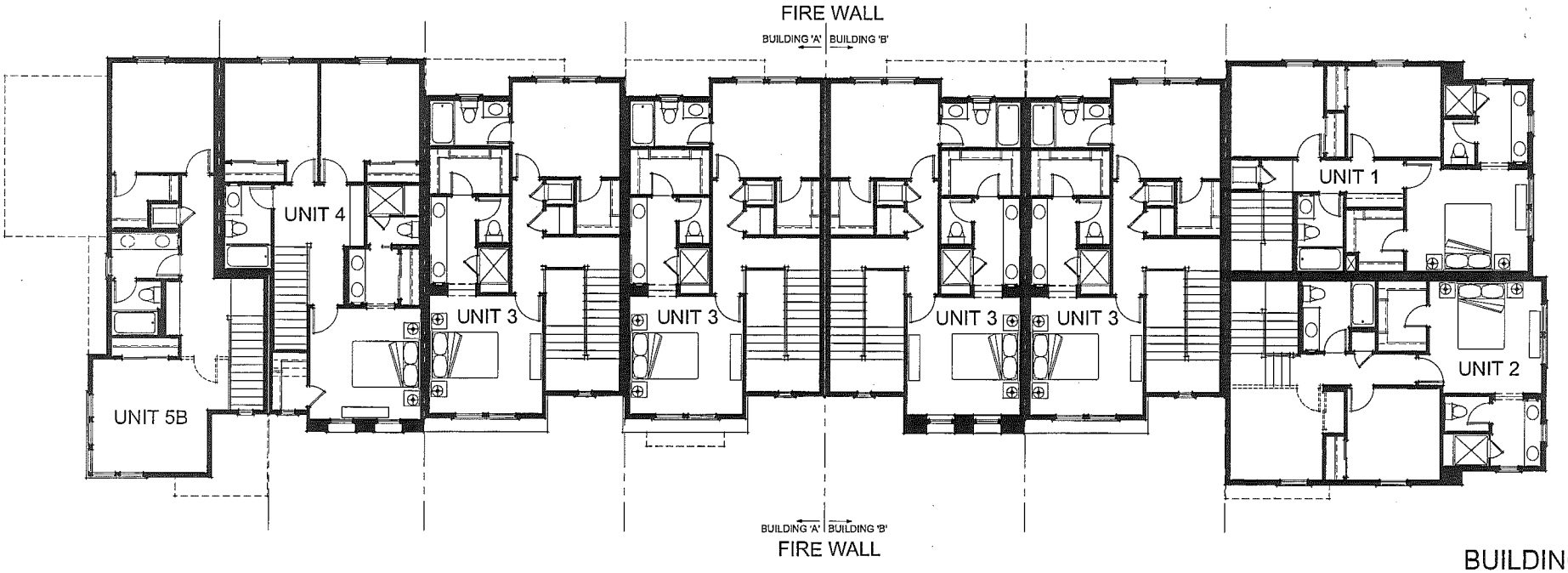
FIRST FLOOR:	1,961 SF
(ALLOWABLE:	3,000 SF)

BUILDING SF TOTAL:	9,618 SF
(ALLOWABLE:	14,000 SF)

BUILDING HEIGHT:

R-2 OCCUPANCY (TYPE V-B)
WITH FULL NFPA 13 SPRINKLERS:

HEIGHT:	+/- 40 FT.
(ALLOWABLE:	60 FT.)
STORIES:	3
(ALLOWABLE:	3)



THIRD FLOOR PLAN

BUILDING TYPE 4

THIRD FLOOR PLAN

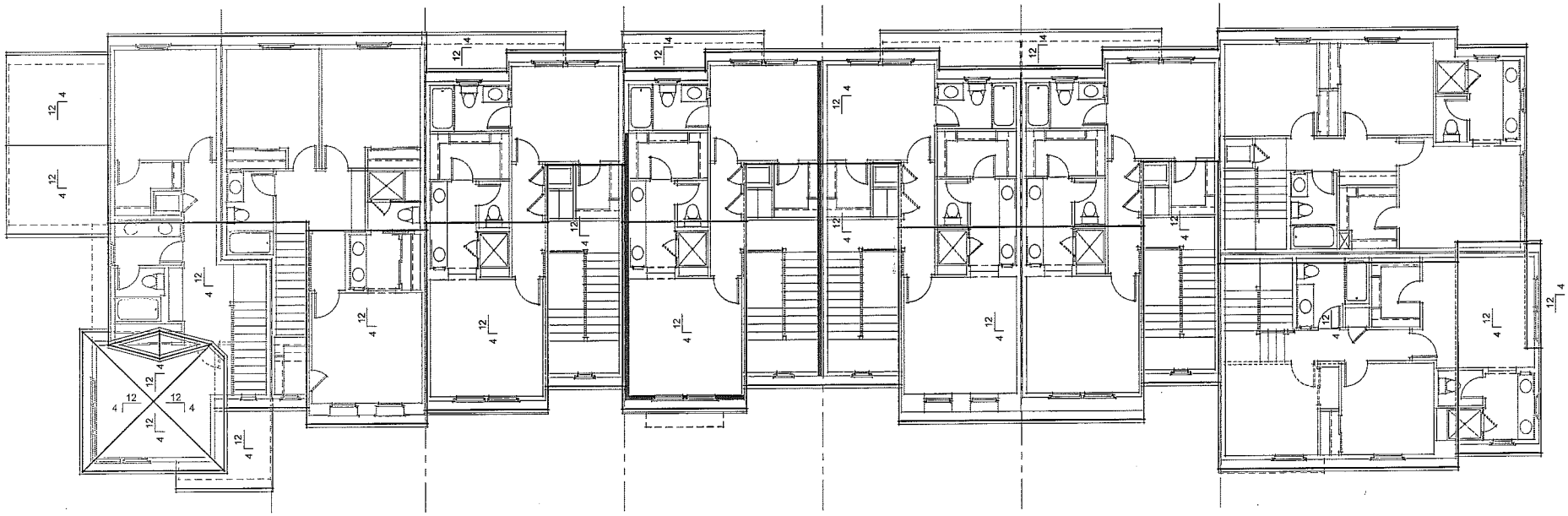
0 4 8 16

JOB NO. 1083.005
DATE UPDATED: 07-18-14

5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

A6.18

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY



ROOF PLAN

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

BUILDING TYPE 4

ROOF PLAN

0 4 8 16

JOB NO. 1083.005
DATE UPDATED: 07-18-14

DAHLIN group

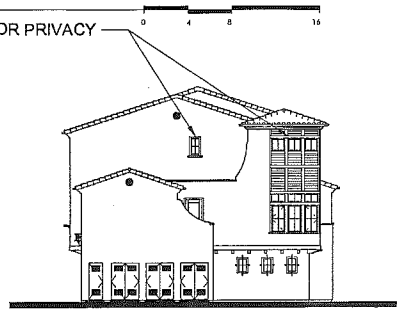
5865 Owens Drive
Pleasanton, CA 94566
925-251-7200

A6.19

FRONT ELEVATION

RIGHT SIDE ELEVATION

REAR ELEVATION



LEFT SIDE ELEVATION

BUILDING TYPE 4
ELEVATIONS

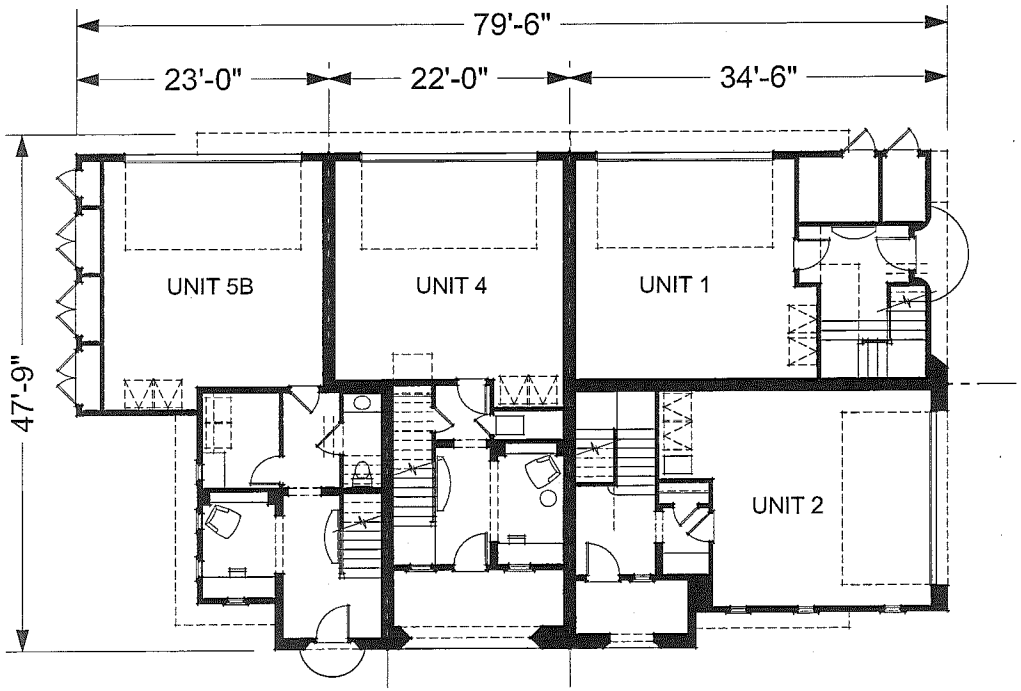
SCALE AS NOTED

JOB NO. 1083.005
DATE UPDATED: 07-18-14

DAHLIN group
5665 Owens Drive
Pleasanton, CA 94588
925-251-7200

A6.20

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY



FIRST FLOOR PLAN

BUILDING SQ. FT.:

R-2 OCCUPANCY (TYPE V-B):

FIRST FLOOR:	1,449 SF
SECOND FLOOR:	3,259 SF
THIRD FLOOR:	2,964 SF
(ALLOWABLE:	7,000/FLR)

U OCCUPANCY:

FIRST FLOOR:	2,035 SF
(ALLOWABLE:	3,000 SF)

BUILDING SF TOTAL:	9,707 SF
(ALLOWABLE:	14,000 SF)

BUILDING HEIGHT:

R-2 OCCUPANCY (TYPE V-B)
WITH FULL NFPA 13 SPRINKLERS:

HEIGHT:	+/- 40 FT.
(ALLOWABLE:	60 FT.)
STORIES:	3
(ALLOWABLE:	3)

BUILDING TYPE 5

FIRST FLOOR PLAN

0 4 8 16

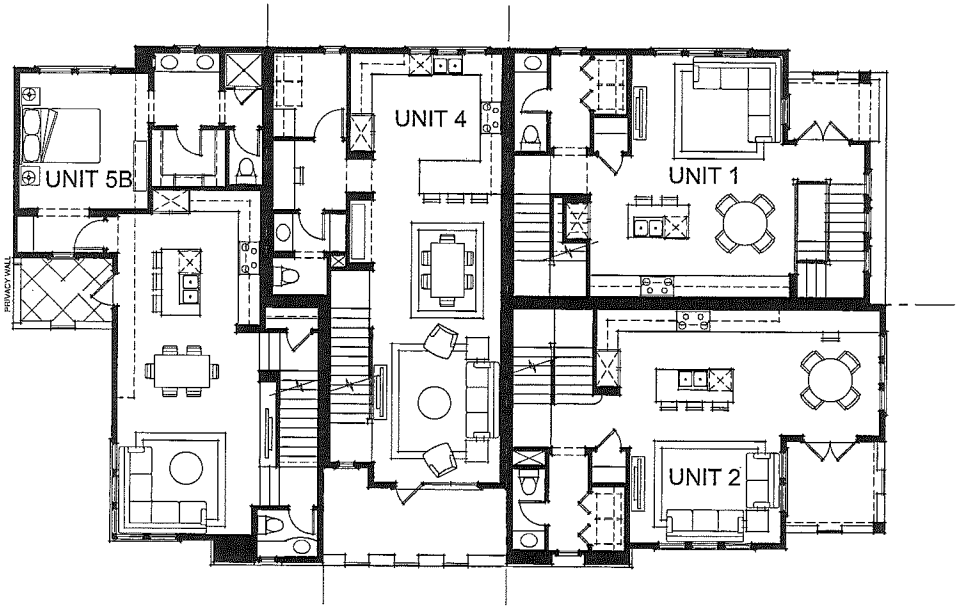
JOB NO. 1083.005
DATE UPDATED: 07-18-14

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

DAHLIN group

5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

A6.21



SECOND FLOOR PLAN

BUILDING SQ. FT.:

R-2 OCCUPANCY (TYPE V-B):

FIRST FLOOR:	1,449 SF
SECOND FLOOR:	3,259 SF
THIRD FLOOR:	2,964 SF
(ALLOWABLE:	7,000/FLR)

U OCCUPANCY:

FIRST FLOOR:	2,035 SF
(ALLOWABLE:	3,000 SF)

BUILDING SF TOTAL:	9,707 SF
(ALLOWABLE:	14,000 SF)

BUILDING HEIGHT:

R-2 OCCUPANCY (TYPE V-B)
WITH FULL NFPA 13 SPRINKLERS:

HEIGHT:	+/- 40 FT.
(ALLOWABLE:	60 FT.)
STORIES:	3
(ALLOWABLE:	3)

BUILDING TYPE 5

SECOND FLOOR PLAN

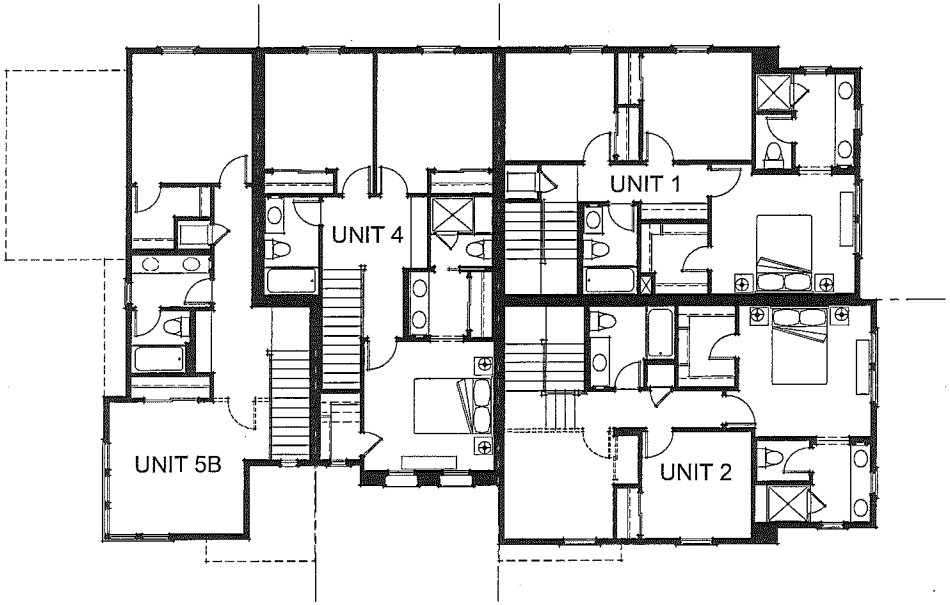
0 4 8 16

JOB NO. 1083.005
DATE UPDATED: 07-18-14

DAHLIN group
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

A6.22

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY



THIRD FLOOR PLAN

BUILDING SQ. FT.:

R-2 OCCUPANCY (TYPE V-B):

FIRST FLOOR:	1,449 SF
SECOND FLOOR:	3,259 SF
THIRD FLOOR:	2,964 SF
(ALLOWABLE:	7,000/FLR)

U OCCUPANCY:

FIRST FLOOR:	2,035 SF
(ALLOWABLE:	3,000 SF)

BUILDING SF TOTAL:	9,707 SF
(ALLOWABLE:	14,000 SF)

BUILDING HEIGHT:

R-2 OCCUPANCY (TYPE V-B)
WITH FULL NFPA 13 SPRINKLERS:

HEIGHT:	+/- 40 FT.
(ALLOWABLE:	60 FT.)
STORIES:	3
(ALLOWABLE:	3)

BUILDING TYPE 5

THIRD FLOOR PLAN

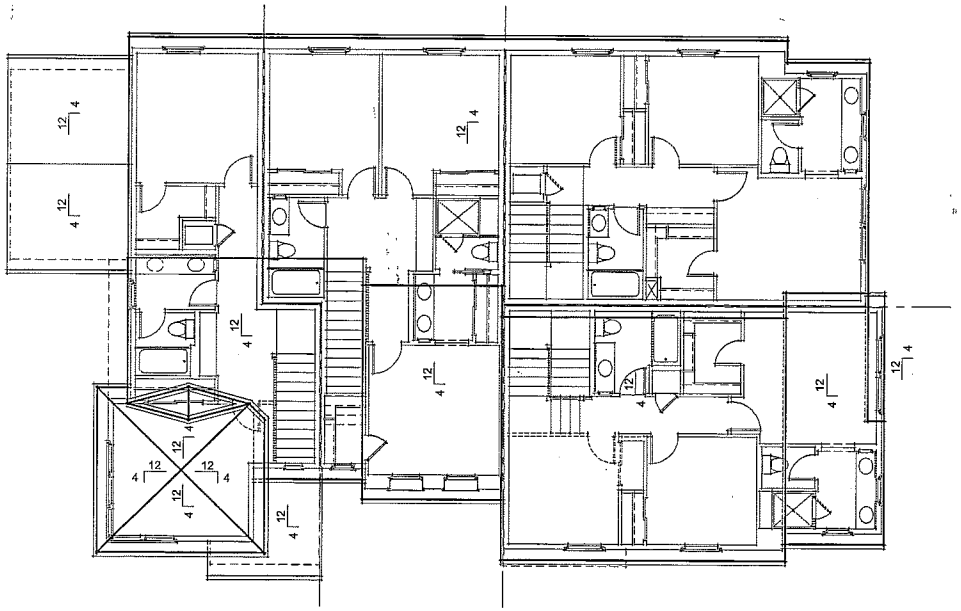
0 4 8 16

JOB NO. 1083.005
DATE UPDATED: 07-18-14

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

DAHLIN group
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

A6.23



ROOF PLAN

BUILDING TYPE 5

ROOF PLAN

0 4 8 16

BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

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JOB NO. 1083.005
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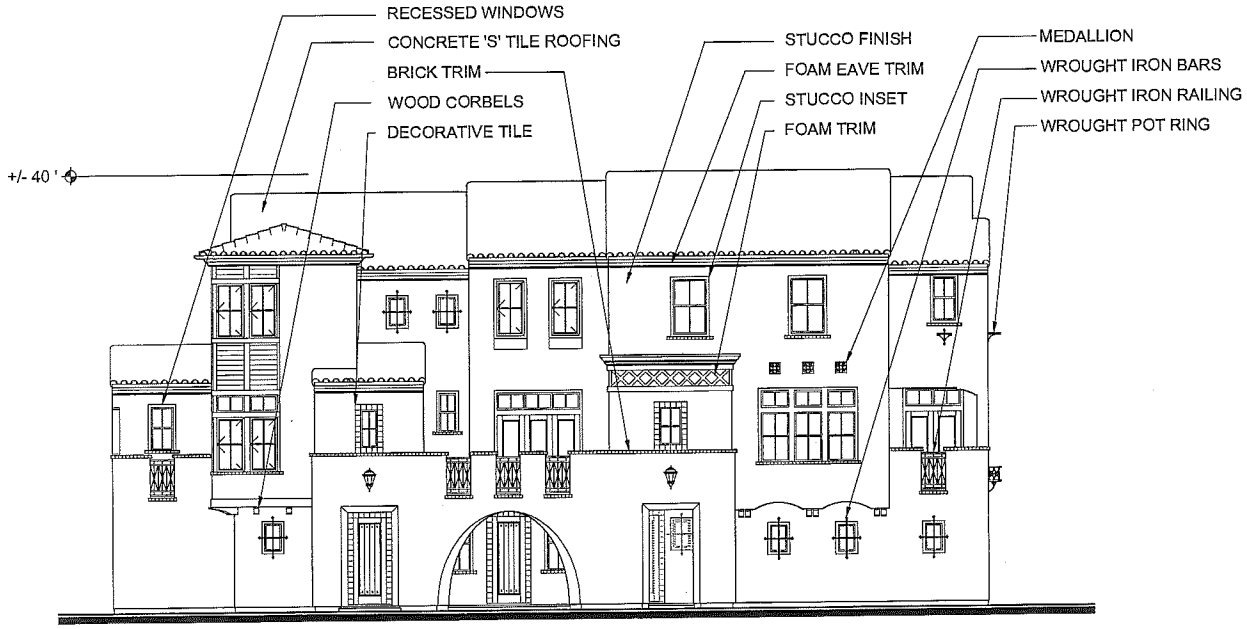
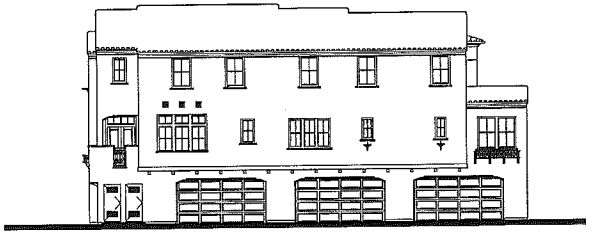


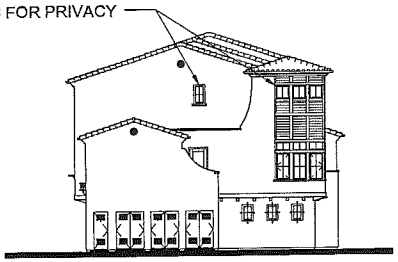
FRONT ELEVATION

RIGHT SIDE ELEVATION



REAR ELEVATION

HIGH WINDOWS FOR PRIVACY



LEFT SIDE ELEVATION

BUILDING TYPE 5

ELEVATIONS

SCALE AS NOTED

JOB NO. 1083.005

DATE UPDATED: 07-18-14

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BAYTO PROPERTY - SANTA CLARA, CALIFORNIA
THE NEW HOME COMPANY

PROOF OF PUBLICATION

Santa Clara Weekly

P.O. Box 580, Santa Clara, California 95052

IN THE
City of Santa Clara,
State of California,
County of Santa Clara

CITY OF SANTA CLARA NOTICE OF CITY COUNCIL HEARING
BAYTO PROPERTY PROJECT
166 SARATOGA AVENUE

State of California,
County of Santa Clara } SS.

The undersigned, being first duly sworn, deposes and says: That at all times hereinafter mentioned affiant was and still is a citizen of the United States, over the age of eighteen years, and not a party to nor interested in the above entitled proceeding; and was at and during all said times and still is publisher of the Santa Clara Weekly, a newspaper of general circulation printed and published weekly in the County of Santa Clara, State of California, and said Santa Clara Weekly is and was at all times hereinmentioned a newspaper of general circulation as that term is defined by sections 6000 and following, of the government code of the State of California, and, as provided by said sections, is published for the dissemination of local or telegraphic news and intelligence of a general character, having a bonafide subscription list of paying subscribers, and is not devoted to the interest or published for the entertainment or instruction of a particular class, profession, trade, calling, race or denomination, or for the entertainment and instruction of any number of such classes, professions, trades, callings, races or denominations; that at all times said newspaper has been established, printed and published in the said County of Santa Clara and State of California at regular intervals for more than one year proceeding the first publication of the notice herein mentioned; that said notice was set in type not smaller than non-parell, describing and expessing in general terms the purport and character of the notice intended to be given; that the clipping of which the annexed is a true printed copy, was published and printed in said newspaper on the following dates to wit:

Pub: 11/5/2014

Dated at Santa Clara, California

This 5TH day of NOVEMBER, 2014

I declared under penalty of perjury that the foregoing is true and correct.

Signed: _____
(Assoc.) Publisher of the Santa Clara Weekly

The Santa Clara Weekly was adjudicated a newspaper of general circulation in and for the County of Santa Clara on September 3, 1974 (Case No. 314617). The Santa Clara Weekly was adjudicated a newspaper of general circulation within the City of Santa Clara on April 2, 1976 (Case No. 347776).

CITY OF SANTA CLARA NOTICE OF
CITY COUNCIL HEARING
Tuesday, November 18, 2014

Project Name: Bayto Property Project. You are hereby notified that on **Tuesday, November 18, 2014** at the hour of 7:00 p.m. in the City Council Chambers of City Hall, 1500 Warburton Avenue, Santa Clara, CA, the **City Council** will consider the matter described below. **File Numbers: PLN2013-10111** General Plan Amendment, Rezone and Vesting Tentative Map; and **CEQ2014-01169** Mitigated Negative Declaration. **Project Location: 166 Saratoga Avenue**, a 1.7 acre project site near the intersection of San Tomas Expressway and Saratoga Avenue (APN 294-38-001). Applicant/Owner: Charles McKeag / Boyto Family Trust. Project Description: The project proposes a general plan amendment, rezone, vesting tentative map, and the adoption of a Mitigated Negative Declaration to allow the construction of 33, three-story townhomes on the property. The project would remove two existing single-family structures currently occupying the site.

At these meetings you may be heard on this matter if you so desire. If you challenge this land use decision in court, you may be limited to raising only those issues you or someone else raised at these public hearings or in written correspondence delivered to the City at or prior to the close of the public hearings. The City's Project Clearance Committee and Subdivision Clearance Committee have evaluated the potential environmental impacts of these projects. The results of this evaluation are a part of the minutes of the Committee's and are available in the project file in the Planning Division office. Should you have any questions, please call the Planning Division office at (408) 615-2450. Written comments on this item are encouraged to be submitted to the Planning Division, City Hall, 1500 Warburton Avenue, Santa Clara 95050, by Wednesday morning of the week prior to the meeting so they can be included in the City Council Members' packets.

AMERICANS WITH DISABILITIES ACT (ADA) In accordance with the Americans with Disabilities Act of 1990, the City of Santa Clara will ensure that all existing facilities will be made accessible to the maximum extent feasible. Reasonable modifications in policies, procedures and/or practices will be made as necessary to ensure full and equal access and enjoyment of all programs and activities for all individuals with a disability. Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should contact the City's ADA office (408) 615-3000, to discuss meeting accessibility. In order to allow participation by such individuals, please do not wear scented products to meetings at City facilities.
Pub.: 11/5/2014

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 8C

Date: November 11, 2014

To: City Manager for Council Action

From: Director of Planning and Inspection

Subject: Public Hearing to Review and Adopt a Resolution to Adopt the Single-Family and Duplex Residential Design Guidelines [PLN2013-09855]

EXECUTIVE SUMMARY:

The Single-Family and Duplex Residential Design Guidelines were presented at a 5:00 Study Session prior to the regularly scheduled Public Hearing. Should the Council wish to proceed with the Public Hearing, all related information is enclosed with this Agenda Report. However, if more time is needed to study the revised guidelines, Council may wish to continue this item to a subsequent meeting.

The City of Santa Clara staff has been in the process of updating the Design Guidelines for two years. The current design guidelines were adopted in 1988. This amendment would replace Section A of the 1988 Guidelines, which is the Development Category for Single Family and Duplex Residential. The amendment to the design guidelines would help to ensure consistency with the General Plan update.

The guidelines are performance standards intended to allow flexibility in design while meeting the objectives of Sections 5.5 (Neighborhood Compatibility) and 5.5.2 (Transition Goals and Policies) of the 2010-2035 City of Santa Clara General Plan. It is the objective of these guidelines to:

- Preserve the neighborhood character by encouraging new developments that are compatible in scale and character with existing housing,
- Promote a sense of community,
- Promote increased property values through improved architectural design and other neighborhood building upgrades,
- Maintain a reasonable level of privacy for neighbors by encouraging thoughtful planning and design; and
- Streamline the architectural review process by clearly communicating community expectations to property owners and their design professionals.

These guidelines apply to single family and duplex residential projects. This includes applications for new structures, as well as first and second-story additions. The guidelines have been developed through the input of the community, local architects, and the Architectural Committee. Staff conducted two study sessions on March 24, 2014 and June 25, 2014. At the June 25, 2014 meeting, after reviewing the guidelines document, the Architectural Committee recommended approval of the document to the Planning Commission and City Council. The guidelines were reviewed by the Planning Commission at the October 8, 2014 public meeting, where the Planning Commission unanimously recommended approval of the document to City Council. On November 7, the City Council held a Study Session that included a brief overview of the updated guidelines.

Notice of this public hearing was posted on the City's website, City Clerk's Office at City Hall, and at the Central Library. Staff also sent out notice of hearing to the people of our interested parties list for this project.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Adoption of the revised Single Family and Duplex Residential Design Guidelines would allow the implementation of the Goals and Policies of Sections 5.5 (Neighborhood Compatibility) and 5.5.2 (Transition Goals and Policies) of the 2010-2035 City of Santa Clara General Plan. The guidelines would allow streamlining the architectural review process by clearly communicating community expectations to property owners and their design professionals. The adoption of these guidelines would encourage orderly and harmonious appearance of structures and properties; provide fair and equitable treatment to all applicants; maintain property values throughout the City, and encourage the physical development of the City as anticipated by the General Plan.

ECONOMIC/FISCAL IMPACT:

There is no cost to the City other than administrative time and expenses.

RECOMMENDATION:

That the City Council adopt a Resolution to approve the Single Family and Duplex Residential Design Guidelines.

Gloria Sciarra for

Kevin L. Riley
Director of Planning and Inspection

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report:

1) ***Resolution Approving the Single Family and Duplex Residential Design Guidelines***
2) ***Draft Single Family and Duplex Design Guidelines***
3) ***City of Santa Clara Architectural Review Process Outline***

I:\PLANNING\Advanced Planning\Design Guidelines\PLN2013-09855 Single Family Design Guidelines 2013\CC\Single Family and Duplex Design Guidelines CC Agenda Report Option 2.doc

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA APPROVING THE SINGLE FAMILY AND DUPLEX RESIDENTIAL DESIGN GUIDELINES

PLN2013-09855 (Single Family and Duplex Residential Design Guidelines)

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, Section 18.76.020(c)(5) of the Code of the City of Santa Clara, California provides that the City Council shall adopt detailed policies and criteria for architectural review, and update those policies and criteria on a periodic basis;

WHEREAS, pursuant to this authority, on October 18, 1988, the City adopted the "Architectural Committee Policies, Community Design Guidelines" for the City, and on May 23, 1995, made minor amendments to those Guidelines;

WHEREAS, on November 16, 2010, pursuant to Resolution No. 10-7797, the City certified the Environmental Impact Report (EIR) for the 2010-2035 General Plan of the City of Santa Clara, and pursuant to Resolution No. 10-7800, adopt the 2010-2035 General Plan;

WHEREAS, as a result of the adoption of the General Plan, the existing Guidelines would benefit from an update to ensure consistency with the new General Plan policies;

WHEREAS, if adopted, the Draft Single Family and Duplex Design Guidelines would replace the Section A of the Community Design Guidelines, which is the Development Category for Single Family and Duplex Residential;

WHEREAS, the Single Family and Duplex Guidelines are performance standards intended to allow flexibility in design while meeting the objectives of Sections 5.5 (Neighborhood Compatibility) and 5.5.2 (Transition Goals and Policies) of the 2010-2035 City of Santa Clara General Plan;

WHEREAS, adoption of the Single Family and Duplex Design Guidelines is intended to streamline the architectural review process by clearly communicating community expectations to property owners and their design professionals;

WHEREAS, on March 24, 2014 and June 25, 2014 staff held round table discussions with members of the public on the Single Family and Duplex Guidelines;

WHEREAS, at the June 25, 2014 public meeting, the Architectural Committee recommended approval of the Single Family and Duplex Design Guidelines to the Planning Commission and City Council;

WHEREAS, at the October 8, 2014 public hearing, the Planning Commission reviewed the Single Family and Duplex Design Guidelines and recommended approval of the Guidelines to City Council;

WHEREAS, notices of a public hearing to consider the Single Family and Duplex Residential Guidelines were mailed to the interested parties ten days prior to the scheduled meeting date, and published on the City's website; and

WHEREAS, the City Council has reviewed the Draft Single Family and Duplex Design Residential Guidelines, and conducted a public hearing on November 18, 2014.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the City Council hereby finds that the above Recitals are true and correct and by this Reference makes them a part hereof.

2. That the City Council hereby finds that the FEIR completed for the 2010-2035 City of Santa Clara General Plan was completed in compliance with CEQA, that the Single Family and Duplex Guidelines are consistent with the General Plan and that approval of guidelines consistent with the General Plan was analyzed as part of the General Plan FEIR. The Single Family and Duplex

Residential Design Guidelines will not have significant negative impacts on the area's environmental resources, cumulative or otherwise, as the impact as mitigated would fall within the environmental thresholds identified by CEQA.

3. That the City Council hereby finds the Single Family and Duplex Residential Design Guidelines to be consistent with the objectives of Section 5.5 (Neighborhood Compatibility) and 5.5.2 (Transition Goals and Policies) of the 2010-2035 City of Santa Clara General Plan.

4. That the City Council hereby amends the Architectural Committee Policies, Community Design Guidelines, by deleting existing Section A ("Single Family and Duplex Residential"), consisting of pages 1-A through 3-A, and by adopting the Single Family and Duplex Residential Design Guidelines to replace the previous Section A.

5. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

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6. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, AT A REGULAR MEETING THEREOF HELD ON THE ___ DAY OF _____, 2014, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:
1. Draft Single Family and Duplex Residential Design Guidelines

I:\PLANNING\Advanced Planning\Design Guidelines\PLN2013-09855 Single Family Design Guidelines 2013\CC\Single Family and Duplex Design Guidelines CC Reso.doc

CITY OF SANTA CLARA

DRAFT SINGLE-FAMILY AND DUPLEX RESIDENTIAL

DESIGN GUIDELINES

September 24, 2014

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City of Santa Clara
1500 Warburton Ave.
Santa Clara, CA 95050

408-615-2450

santaclaraca.gov

Chapter 1 Purpose

Introduction

The residential design guidelines contained in this document are intended to address issues such as:

- Neighborhood Compatibility;
- Two-story Home Design;
- Privacy Protection;
- Architectural Design; and
- Sustainability.

The Guidelines provide a basis for preserving the existing neighborhoods and to ensure that new homes and additions are compatible with the context of the neighborhood.

The intent of these Guidelines is to provide guidance for homeowners, architects, and designers when considering a new home, remodel, or addition to an existing residence. The Guidelines are intended to encourage the orderly and harmonious appearance of structures and properties; provide fair and equitable treatment to all applicants; maintain property values throughout the City; and encourage the physical development of the City as anticipated by the General Plan.

Goals and Objectives

The Guidelines are performance standards intended to allow flexibility in design while meeting the objectives of 5.5 Neighborhood Compatibility and 5.5.2 Transition Goals and Policies sections of the City's General Plan. It is the objective of these Guidelines to provide a guiding set of design policies that:

- Preserve the neighborhood character by encouraging new developments that are compatible in scale and character with existing housing;
- Promote a sense of community and place;
- Promote increased property values through improved architectural design, which also encourages other neighborhood building upgrades;
- Protect the harmony and appearance of existing neighborhoods by discouraging inappropriate and out of scale designs;
- Maintain a reasonable level of privacy for neighbors by encouraging thoughtful planning and design that respects the existing built environment, and;
- Streamline the architectural review process by clearly communicating community expectations to property owners and their design professionals.

Design Guidelines: Basic Principles

These Guidelines are formulated on five basic architectural and design principles. The Guidelines cannot anticipate all design situations or physical limitations and opportunities so basic principles can be used in addressing conditions not covered by the design guidelines.

1. Design structures to be compatible with adjacent homes and the neighborhood.
2. Architectural styles should be true to basic architectural form; not a blend of styles and features.
3. Architecture should improve the neighborhood (including streetscape and property values), not detract from its appeal.
4. All materials should be of a high quality and serve to enhance architectural styles.
5. Projects should serve to enhance the built and natural environments.

Applicable Projects

These Guidelines apply to single family and duplex residential projects. This includes applications for new structures, first and second-story additions.

Public Improvements

Projects that require improvements in the public right-of-way will be reviewed for compliance with City policies and objectives. The Architectural Committee and Planning Division staff will work with City Water and Sewer, Electric, Engineering, Public Works, and other City departments to achieve the most appropriate results. These improvements include, but are not limited to, sidewalks, curbs and gutters, driveways, street trees and landscape improvements, and maintenance in the public right-of-way adjacent to the subject property. Placement and visual treatment of utility vaults, boxes and meters will be reviewed for aesthetic impacts upon the property.

Historically Significant Properties

As required by the Santa Clara Certified Local Government program, the City has established a list of Architecturally or Historically Significant Properties which is included in Appendix 8.9 of the General Plan.

Architecturally or Historically Significant Properties refer to prehistoric and historic features, structures, sites, or properties that represent important aspects of the City's heritage. Historic Preservation policies outlined in the 2010-2035 General Plan strengthen the City's Historic Preservation Goals. A 100-foot radius, defined as the Area of Historic Sensitivity, is approximately equal to all properties abutting, across the street, and adjacent to abutting properties of a historic resource. Applications for projects involving remodel and additions of these eligible properties should adhere to the Secretary of Interior's Standards for Rehabilitation. Applications for properties within 100 feet of an eligible structure should adhere to Historic Preservation Policies outlined in the General Plan.

Chapter 2 Neighborhood Compatibility

2a. Development in Existing Neighborhoods

Goal: To create compatible design with the neighborhood.

The concept of neighborhood does not necessarily follow tract boundaries. There can sometimes be little to no discerning characteristics between residential tracts in the City. Tract boundaries also divide some of the City's blocks, sometimes resulting in homes of different architectural styles on the same block. The potential impacts of neighborhood design may therefore not always follow tract boundaries, especially with proposals for second-story additions that may border patio homes to the side or rear of a different tract.

Defining Your Neighborhood

When designing an addition that may be visible from the street or new home, the focus should generally be on the design characteristics of neighboring homes on both sides of the street of that block. For homes in tracts containing patio homes, or in tracts that border patio homes to the side or rear in different tracts, one's "neighborhood" should be extended to include those patio homes, in the interest of privacy protection.

Features that typically define a neighborhood include the following:

- Architectural styles, features, materials, and decorative elements;
- Garage location, size, and treatment;
- Roof forms, materials, orientation, slope, eave heights, and overhangs;
- Second-floor mass and appearance as viewed from the street;
- Treatment and scale of entryway or focal point of front facade;
- Articulation of exterior wall;
- Window types, size, placement, and proportions;
- Front, side and rear yard setbacks, and;
- Landscaping and fencing.

Meeting the goal for compatibility does not mean that the design of a new or remodeled home must copy every architectural detail of the neighboring homes. However, proposed designs should maintain, reinforce, incorporate, and be consistent with the common architectural features, patterns, and forms found on homes in the neighborhood.

Important Considerations

Typical characteristics of a single family home in Santa Clara include:

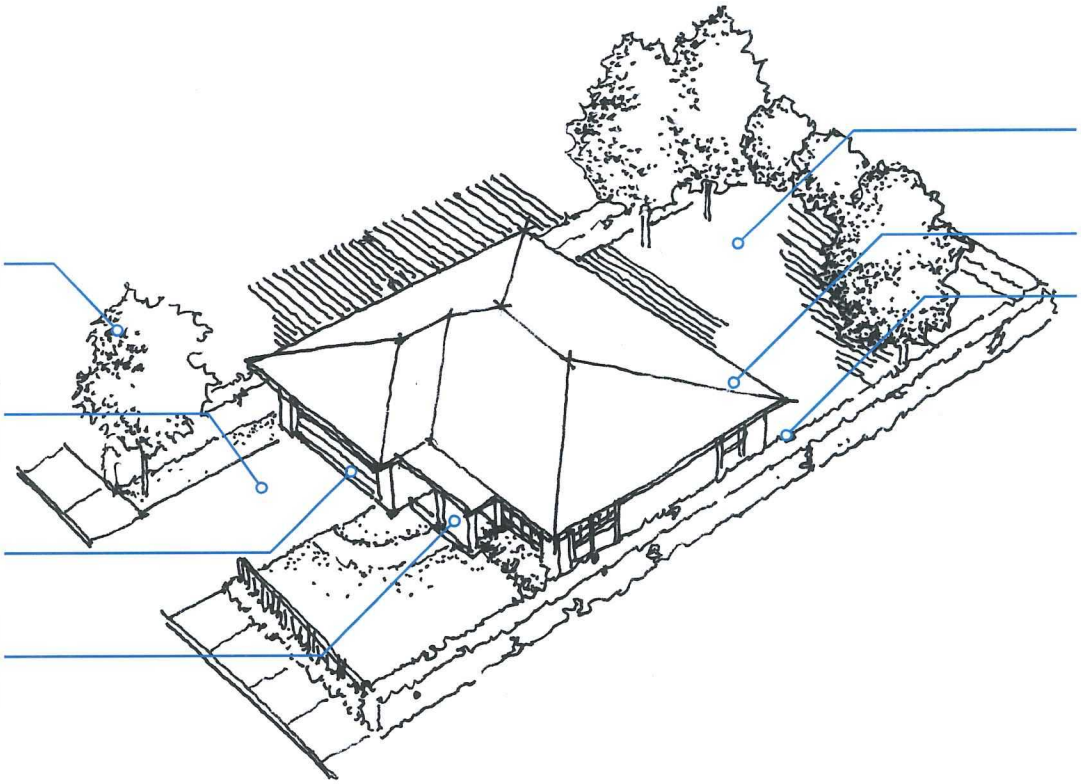


Figure 2.1 - Typical home in the City of Santa Clara

2b. Sensitive Design Solutions

Goal: To create homes compatible with the neighborhood and maintain privacy.

The following are specific guidelines for second-story additions. Special attention is devoted to second-story additions, as these project types have been the most challenging for the City and neighboring residents.

Designing a Second-Story

While permitted by the Santa Clara City Code, second-story additions or new two-story homes, built in a predominantly single-story neighborhood, can be one of the most neighborhood sensitive and challenging situations. The design must pay special attention to neighborhood compatibility and privacy issues. Unless designed correctly, second-story additions can substantially change the scale and character of the neighborhood.

An application for a new two-story home next to a one-story home must be designed so it does not overshadow or dominate the one-story home by way of scale, proportion or massing, or unreasonably interfere or conflict with the privacy of neighbors.

Construction at or above the second-story should be carefully designed to minimize building massing, the placement of windows, balconies, and location of common living areas, in order to minimize potential impacts on adjacent properties. A proposed two-story design must demonstrate that it protects the privacy of neighbors.

Important Considerations

1. Second-Floor Massing

1. The area of the second-floor should not exceed the common pattern of the neighborhood. For new second-stories in predominantly one-story neighborhoods, the second-floor area should not exceed approximately 66% of the first floor area (including the garage area). (Figure 2.2)

2. Unless two-story high walls are common in the neighborhood, maintain a roof segment between the first and second-floor walls for at least 50% of the building perimeter. Generally, these roof forms should be carried around building corners to provide visual continuity between adjacent house facades. In predominantly one-story neighborhoods, avoid two-story walls without intervening roof eaves on front elevations.

3. Second-floor ceiling heights should be minimized. If interior ceilings heights in excess of nine feet are desired, they should be achieved through the use of vaulted ceilings rather than increased wall height. (Figure 2.3)

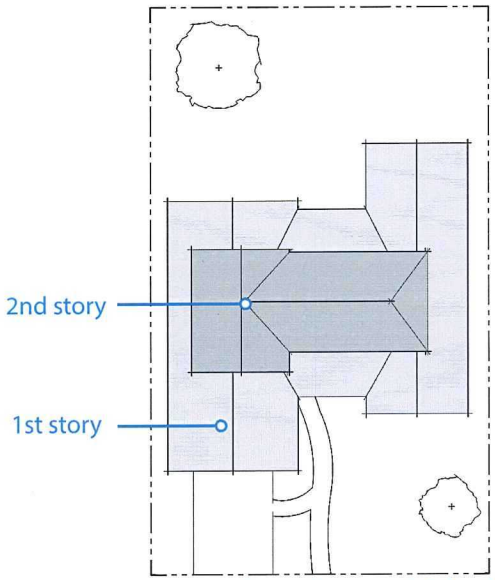


Figure 2.2 - Second-story addition is less than 66% of the first floor area.

Figure 2.3 - Vaulted Ceiling.

2. Walls

1. The front and side walls of the second-floor should be set back from the first floor to minimize mass and bulk. Second-floor areas should be set back at least five feet from the front wall of the first floor, and three to five feet from the side and rear walls of the first floor. (Figure 2.4)

2. For second-floors with an area greater than 35% of the ground floor area, setbacks of the second-floor should be greater than these minimums.

3. Avoid a bulky appearance when adding a second-story to the front facade. (Figure 2.5)

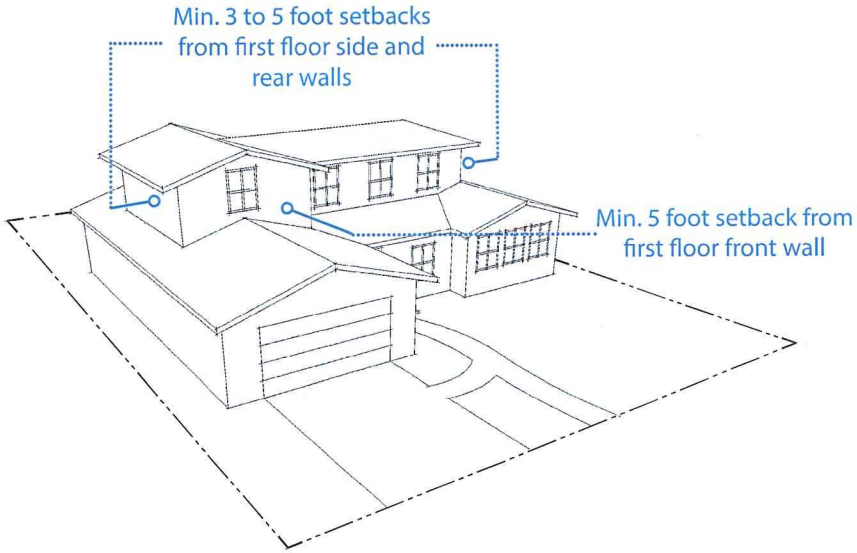


Figure 2.4 - Second-story addition setbacks are measured from first floor walls planes.

Figure 2.5a - Second story addition is adequately set back from the first floor and does not have a bulky appearance.

Figure 2.5b - Bulky second-story addition.

4. Provide horizontal insets and offsets of two feet deep by six feet wide minimum, for any second-floor walls of 25 feet in length or greater. These insets or offsets shall fall within setback requirements. (Figure 2.6)

3. Windows

1. Where proposals include second-floor side-facing windows located within 15 feet of a side property line, applicants are encouraged to raise the window sill level of these windows to a minimum of five feet above the finished floor. Other common design techniques include the use of clerestory or frosted windows. (Figure 2.7)

2. Larger second-floor windows should orient towards the front and rear. Second-floor windows on the sides of a home should be kept to the minimum building code size for light, ventilation, and emergency egress. Placement, design, and orientation of all windows and glass doors on the sides of the home should pay strong consideration towards privacy impacts. (Figure 2.8)

3. Avoid aligning side yard second-floor windows directly with windows on neighboring properties.

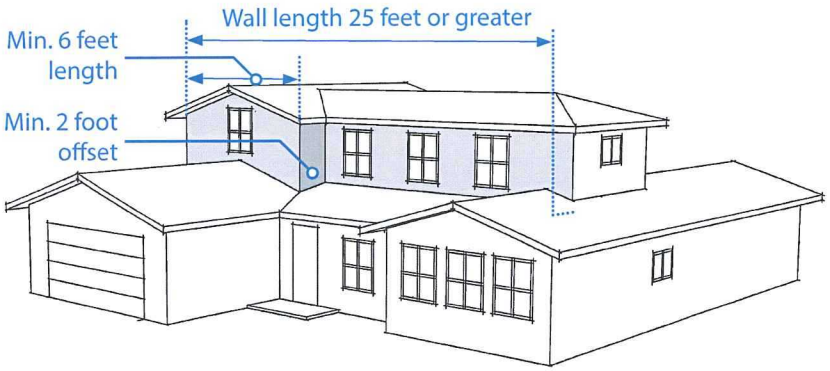


Figure 2.6 - Appropriate offset second-story walls.

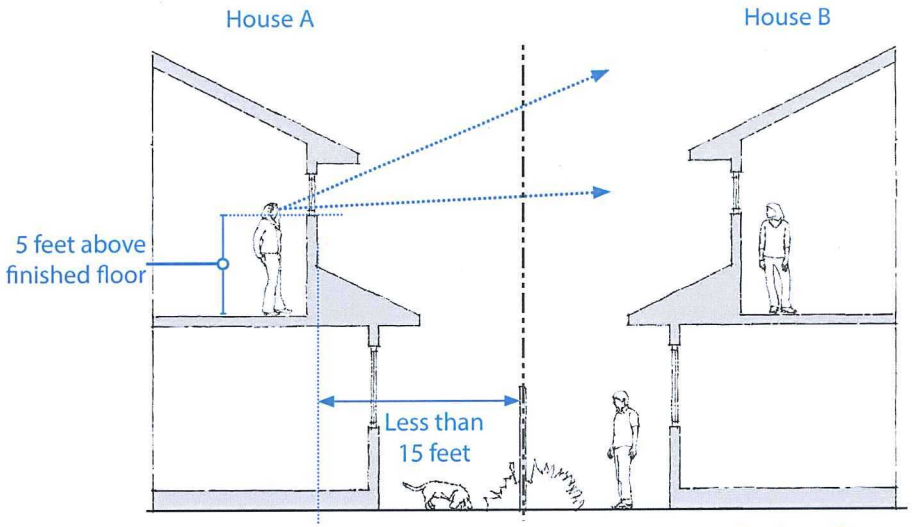


Figure 2.7 - Second-story windows on ***House A*** are raised at least five feet above the finished floor, reducing privacy impacts.

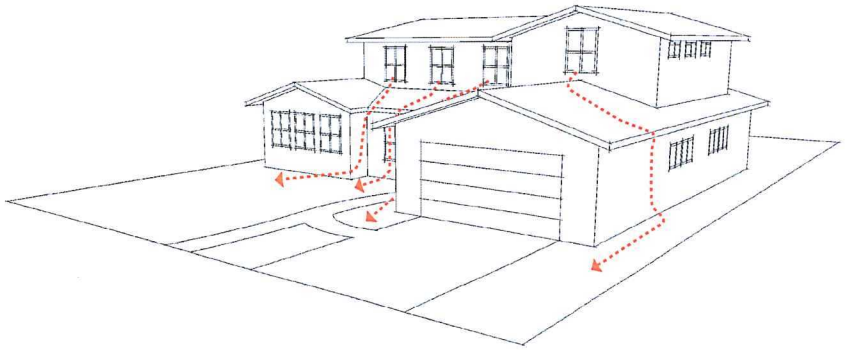


Figure 2.8 - Larger second-floor windows at the front provide emergency egress. Smaller second-floor windows on the sides provide privacy.

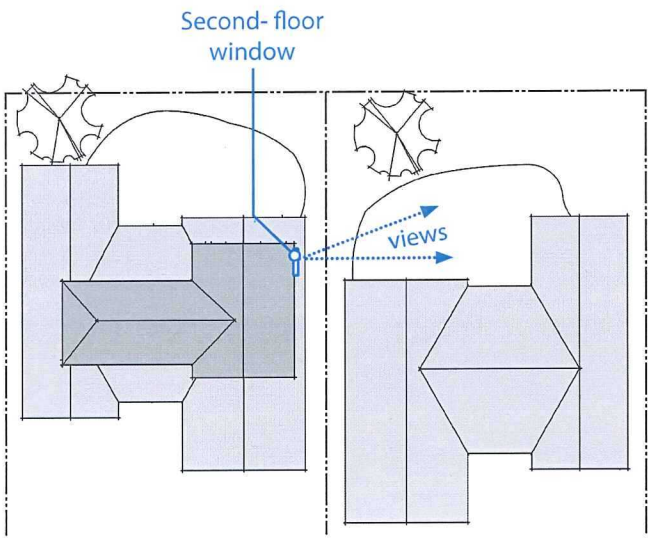


Figure 2.9 - Inappropriate second-story window with direct views into the neighboring yard.

Figure 2.10 - Trees and landscaping can block the line of sight into neighboring private spaces.

4. Whenever feasible and compatible with the architectural style, avoid window placement in locations that look directly into adjacent neighbor's space or active private yard spaces. (Figure 2.9)

5. On second-floor bathroom windows, use obscure glass where possible and/or substitute a skylight.

6. Install landscaping that may grow to block the line of sight into neighboring side and rear yard whenever feasible. This includes planting trees, and adding landscaping on trellises or arbors that meet Zoning requirements. (Figure 2.10)

4. Roof Forms

1. Unless existing roof forms consist of gable roofs, hipped roofs over the second-floor are preferred as they minimize the visual mass of the building. (Figure 2.11)

2. Gable or shed roofs with a shallow pitch should be used in Mackay or Eichler style homes. (See Figure 2.14 on page 11)

Figure 2.11 - Second-story addition with hipped roof.

2c. Patio Homes

Goal: To create homes compatible with the neighborhood and maintain privacy.

Some homes in the City were constructed in the Eichler or mid-century modern patio home style. The Mackay and Fairmede tracts in the City contain notable examples of entire neighborhoods of homes built in this style.

Unlike most other ranch style tract homes in the City, these patio homes were originally designed with large expanses of walls with minimum ornamentation, interior atria, low-sloped roofs with large overhangs, exposed roof beam ends, and simple wall planes (glass or vertical groove wood siding). Typically these walls were oriented toward enclosed front, side, and rear yard spaces. Since the living areas in these homes are more exposed to the outdoor yards, privacy impacts from alterations to homes on neighboring properties are more likely to occur than in other residential areas of the City.

Designing a new or remodel project in neighborhoods of patio homes requires additional considerations for the privacy of nearby residents. Particular attention to privacy impacts must be considered for a new two-story home or addition. New project designs for homes that border these patio homes should incorporate a similar modern design style.

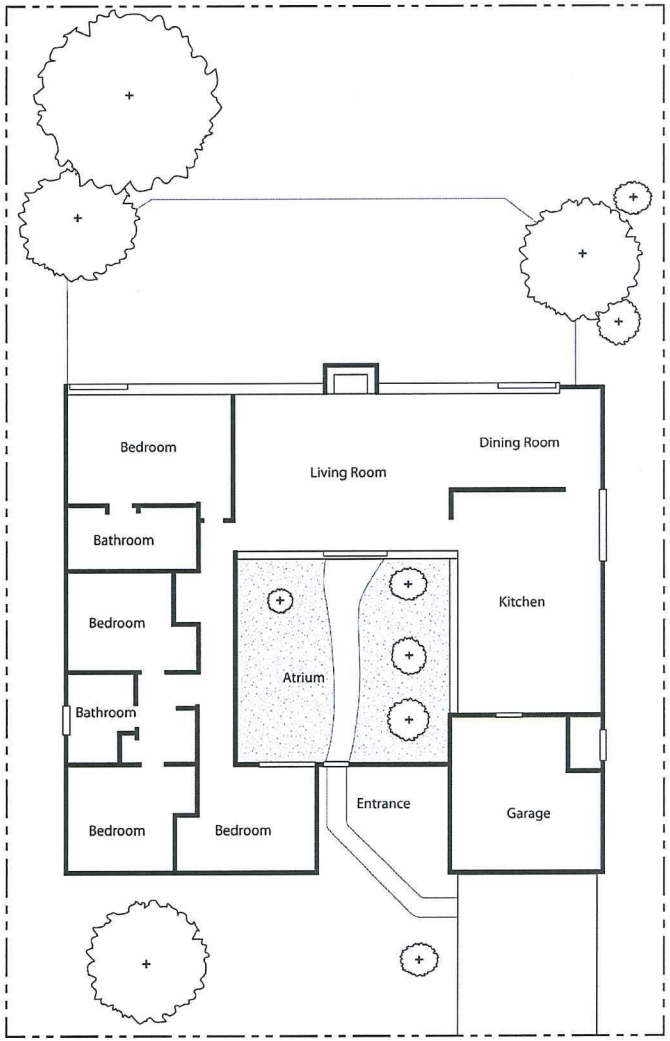


Figure 2.12 - A typical patio style floorplan having a central atrium.

Important Considerations

1. Incorporate architectural features, materials, finishes, and forms that derive from the existing patio homes to help integrate the home into the neighborhood.

2. Use low slope gable or shed roofs with a maximum pitch of 3:12. Flat roof styles are also acceptable.

3. Use siding, exposed beams, and heavy fascia boards found in the original home designs.

4. Avoid the use and mixture of material from homes of different architectural styles such as divided light windows, fan-light windows, or raised panel doors.

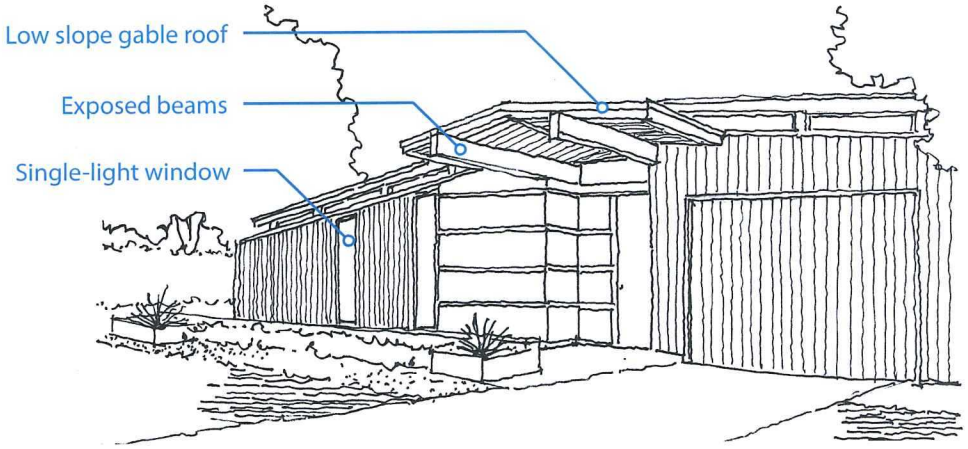


Figure 2.13 - Typical patio home features.

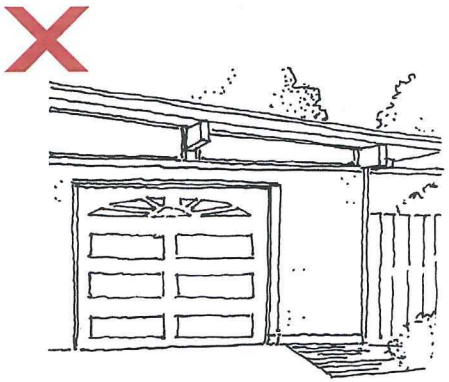


Figure 2.14a - Inappropriate garage design.

Figure 2.14b - Inappropriate roof shape.

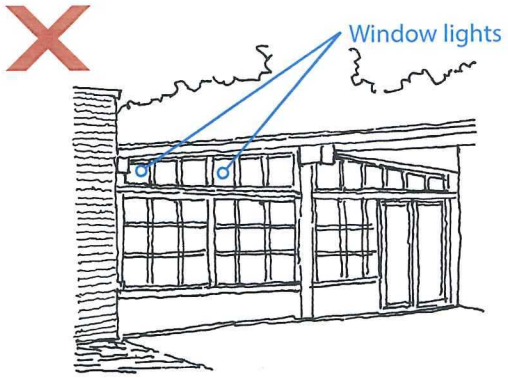


Figure 2.14c - Inappropriate amount of window lights.

Important Considerations

1. Second-Story Additions

1. Patio homes located within well-preserved tracts are encouraged to be maintained as single-story homes to preserve their historical and contextual integrity. The addition of a second story within Patio/Eichler tracts is highly discouraged.

2. An increase in lot coverage should be considered as a way to encourage ground-floor and single-story additions.

3. For second-floor walls, minimize the number and size of windows facing the side and rear yards of a neighboring patio home.

4. Avoid the use of second-floor decks and balconies in neighborhoods of patio homes.

5. Use landscape-screening materials to block the line of sight into neighboring side and rear yards whenever feasible.

6. New second-floor or additions to Eichler type homes or other low roof pitch homes should use roof styles, slopes, overhang depths of approximately two feet, and other detailing that is compatible with the home's existing style.

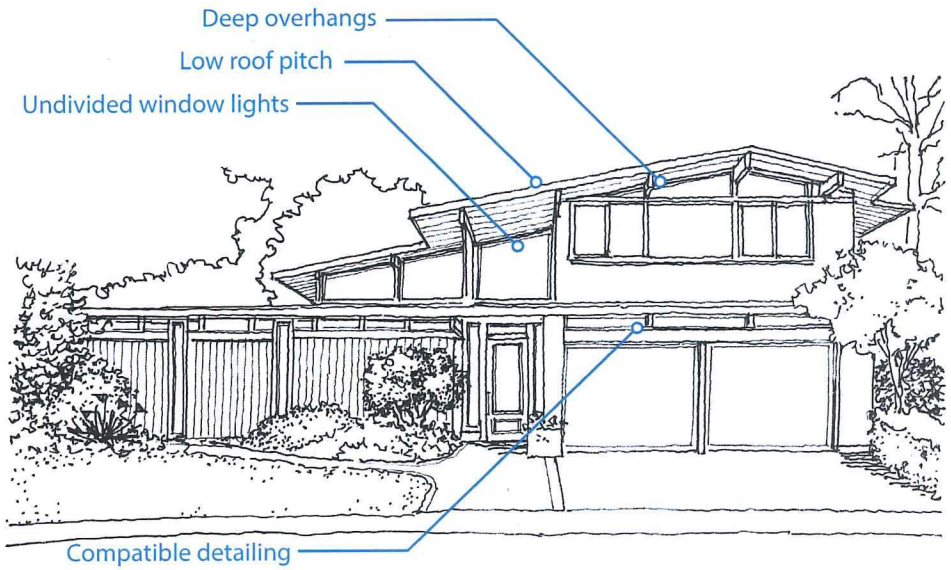


Figure 2.15 - Compatible second-story addition to patio home. Such additions are discouraged in well-preserved Eichler/patio home tracts.

Chapter 3 Architectural Details

Use of architectural styles found in the neighborhood is encouraged to promote compatibility between existing and new or remodeled homes in the neighborhood. New construction should be compatible with the style or design of existing structures on the site and with surrounding properties and neighborhood character. The design should address the functional characteristics of the site and the relationship of the proposal with the surrounding properties and street.

3a. New Homes, Remodels and Additions

Goal: Harmonize with the existing neighborhood.

Important Considerations

1. Massing and Scale

1. Building height and bulk should be appropriate relative to one and two-story homes within the neighborhood. (Figure 3.1)
2. Offset the front and side walls of the second-story to avoid a massive, boxy, or bulky design.
3. Second-floor areas should be set back at least five feet from the front wall of the first floor, and three to five feet from the side and rear walls of the first floor.
4. Simple second-story pop-ups are discouraged.

Figure 3.1 - Homes with compatible scale massing.

Figure 3.2a - Original Home, representative of the neighborhood architectural style.

Figure 3.2b - Second-story addition designed from the original architectural form and appropriate for the neighborhood.

2. Architectural Style

1. While specific architectural styles are not regulated, the architectural features of the proposed design should be true to the architectural form and appropriate for the neighborhood. (Figure 3.2)

2. Architectural features should be adequate and appropriate for the size of the building and should not be overstated.

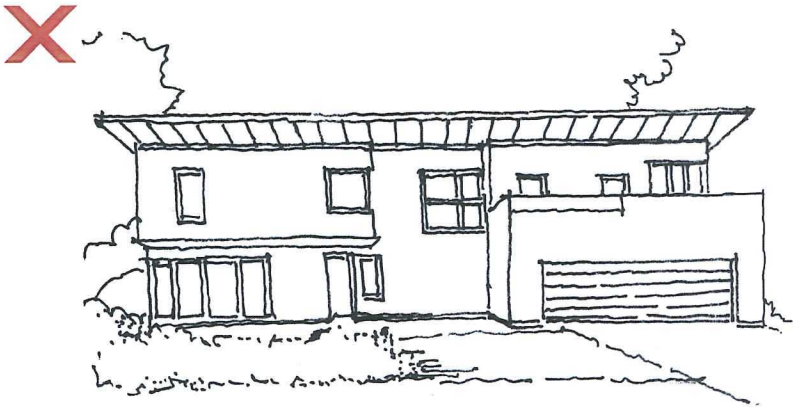


Figure 3.2c - Second-story addition that strays from existing architectural form and not appropriate for the neighborhood.

3. Materials and Finishes

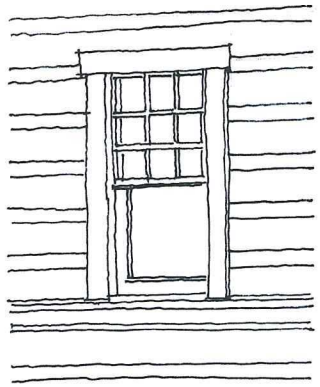
1. Building materials and finishes will be reviewed for quality and appearance with respect to existing development. Materials include wall, siding, roofing, windows and doors, fencing, supports and other structural or cosmetic features part of the visual appearance of the structure or property. Siding and shingles should be made of wood or a high-quality alternative. (Figure 3.3)

2. The use of high quality construction materials is important for long-term durability, maintenance, and appearance. Substitution of lower quality products or construction methods is highly discouraged.

3. Incorporate materials, finishes, and architectural details commonly found in the neighborhood to integrate, harmonize, and blend the home into the neighborhood.

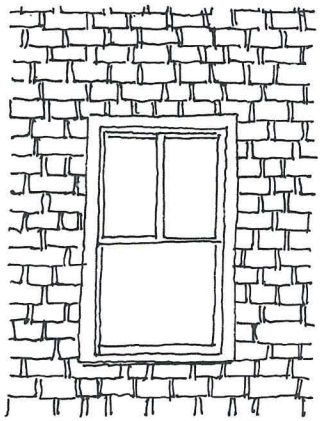
4. Roof materials, building materials, and finishes should work in conjunction with one another and should be consistent with the architectural style of the building.

5. Building materials and finishes should harmonize and blend in with those found in the neighborhood to increase compatibility.

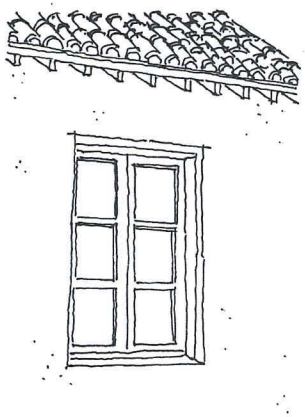


Wood Siding

Wood, Stone and Stucco



Wood Shingles



Stucco with Clay Tile Roof

Figure 3.3 - Building materials appropriate for homes in Santa Clara.

3b. Roof Forms

Goal: Roofs that blend in with the neighborhood

The roof forms of many of the City's residential tracts are simple in design. New proposals are encouraged to match the distinct character or simplicity found in the neighborhood. Designs should avoid using excessive roof ridgelines, heights, hips, and valleys.

Figure 3.4a - Simple roof forms.

Important Considerations

1. Roof Forms

1. Roof design should avoid excessive roof ridgelines, heights, hips, and valleys. (Figure 3.4)

2. Roof design should be appropriate for the architectural style of the building.

3. Use roof forms that derive from those found in the existing home or neighborhood to increase the compatibility of the remodel and additions with the existing home and neighborhood. (Figure 3.5)

Figure 3.4b - A roof form with excessive hips, valleys, and ridgelines.

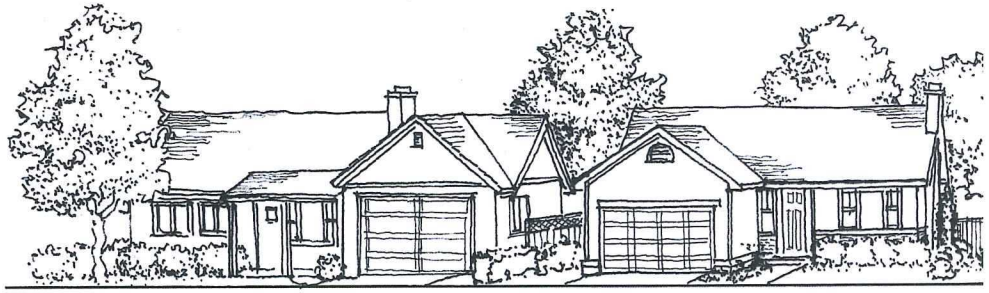


Figure 3.5 - Homes with room forms that conform with the neighborhood.

4. New roof additions should conform to existing ridgelines. (Figure 3.6)

5. Consider integrating new second-floor space into the roof form for new second-story additions in predominantly single-story neighborhoods. (Figure 3.7)

6. Second-story roof elements should be in proportion with the rest of the building and not overwhelm ground floor elements, to avoid a bulky appearance. (Figure 3.8)

Figure 3.7 - A second-story integrated into the roof form and utilizing dormers.

Figure 3.6a - Roof addition that conforms to existing ridgelines.

Figure 3.8a - Second-story roof elements in proportion with the rest of the building.

Figure 3.6b - Roof addition that clashes with existing rooflines and style.

Figure 3.8b - Bulky second-story roof elements disproportionate to the first floor and neighboring homes.

3c. Architectural Features

Goal: Visually pleasing homes.

The use of architectural features is necessary for good architectural design. Architectural features include elements such as porches, railings, brackets, corbels, moldings and trim, cornices, shutters, bay windows, wainscots, and dormers.

Important Considerations

1. Use of architectural features are encouraged to help mitigate design problems such as large expanses of blank walls and large roof planes.

2. Features such as porches, cornices, railings, shutters, window flower boxes, and fan-lights, can provide significant building relief and visual interest, avoiding plain, blocky or boxy looking homes. Features should derive from elements that are present in the neighborhood and/or the existing home. (Figure 3.9)

3. While porches are encouraged as architectural features, they should be of adequate size to provide functionality. Porches designed for the sole purpose of aesthetics while not providing functionality are discouraged.

4. The use of stone, brick, or other wainscoting as a building base is encouraged. This base should wrap around the sides of the home from the front facade. (Figure 3.10)

Figure 3.9 - Home with visually interesting architectural elements.

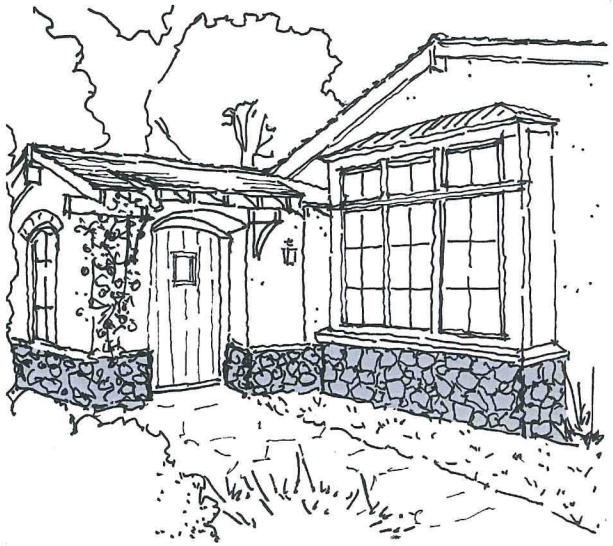


Figure 3.10 - Home with stone wainscoting.

5. Long, blank walls in excess of 25 feet in length should have off sets or architectural details that break up the expanse. (Figure 3.11)

6. Special architectural details such as wood shutters, trellises, columns and bay windows should not be used as a means of hiding the basic architecture. (Figure 3.12)

3.11a - Offset walls to break up a long blank façades.

3.11b - The lack of articulation leads to the appearance of long blank walls.

7. Exception: Patio homes should not have fanlights, divided light windows, raised panel doors, etc. that do not match existing architectural characteristics.

3.12a - Shutters can add visual interest while maintaining the home's basic architecture.

3.12b - Columns, bay windows, and shutters that overwhelm the home's basic architecture.

3d. Design and Location of Doors and Windows

Goal: Visually Pleasing Homes

Fenestration is the design and placement of windows and doors in a building. It is an important design element and should be appropriate for the style of the building. Fenestration is considered a part of the architecture and overall texture of the building.

Important Considerations

1. Align the centerlines of windows, doors, and other openings to create a harmonious, pleasing elevation. (Figure 3.13)

2. Window style and proportion should be similar to the existing architectural style of the building or neighborhood.

3. New window, doors, and trim on additions should match the existing windows and doors in material, style, orientation, and placement.

4. If a home does not currently have a clear architectural style, consider incorporating predominant window and window trim patterns found in the neighborhood in your proposed design.

5. Avoid mixing different window and door styles or materials in a building. (Figure 3.14)

6. Avoid windows and doors of extreme proportions such as horizontal or vertical slit windows.

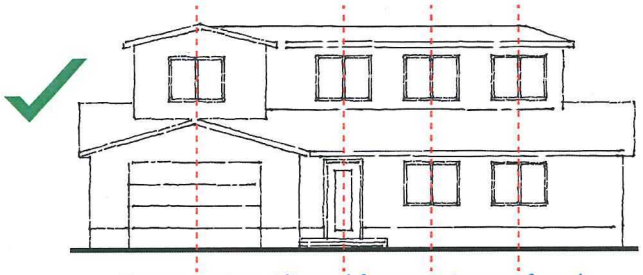


Figure 3.13a - Aligned fenestration on facade.

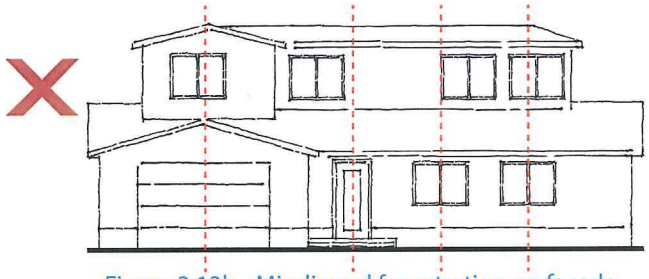


Figure 3.13b - Misaligned fenestration on facade.

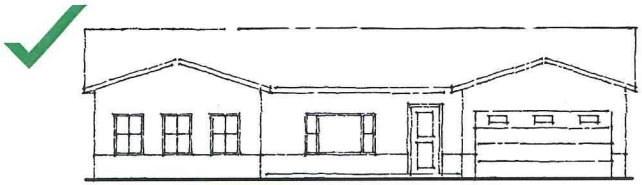


Figure 3.14a - Harmonious window style arrangement

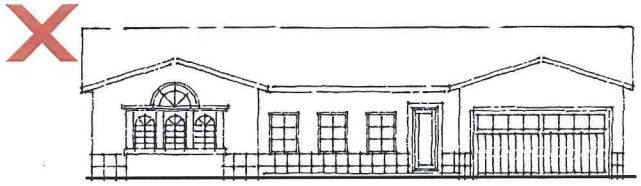


Figure 3.14b - Inappropriate mix of different styles.

7. The use of bay windows is appropriate but should be modest in size.

8. Sliding glass aluminum frame doors should be oriented away from street views.

3e. Outdoor Open Spaces

Goal: Minimize Privacy Invasion

Decks, balconies, roof gardens, and roof terraces can add visual interest to a home. However, these features can also intrude, or create perceived intrusion upon the privacy of neighboring residents.

Important Considerations

1. Minimize the use and size of second-floor outdoor spaces such as balconies and decks.

2. Locate second-floor outdoor spaces, if any, on rear elevations away from side property lines.

3. Second-floor outdoor spaces should be oriented away from adjoining side properties when located within fifteen feet of the respective side property lines.

4. Outdoor activity spaces should be adequately screened using lattice screens or solid panels to avoid direct line of sight views into the windows of adjoining residences. (Figure 3.15)

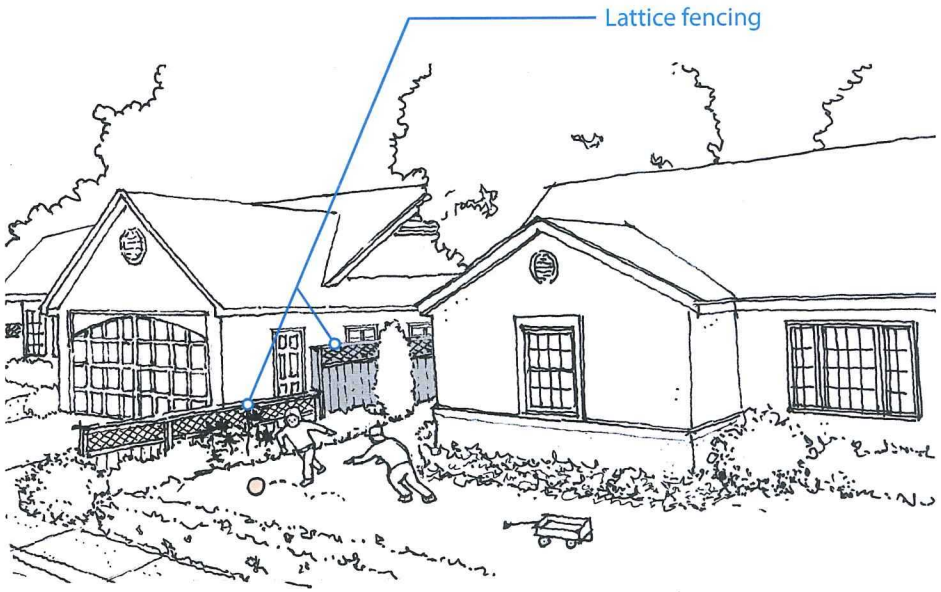


Figure 3.15 - Lattice fence screening windows from neighboring outdoor activity spaces.

5. Whenever feasible, use landscaping to screen the line of sight to and from neighbors' living space or private yards.

6. Minimize the size of the second-floor outdoor space to avoid use by a large group. Outdoor areas and decks encroaching into the rear yard which are elevated and accessible by second-story rooms should be limited to a maximum depth of four feet. (Figure 3.16)

7. The use of solid walls to frame one or more sides of the balcony are encouraged as a method of limiting the field of view from the balcony using existing articulations of the facade.

8. The placement, orientation, and design of the balcony should pay special consideration towards privacy impacts on neighbors and the subject home's own inhabitants. Measures for preserving privacy can include plantings on the balcony as well as obscure glazing.

9. Juliet-style balconies, or balconets, are encouraged, as they provide access to light and ventilation while disallowing outdoor activities.

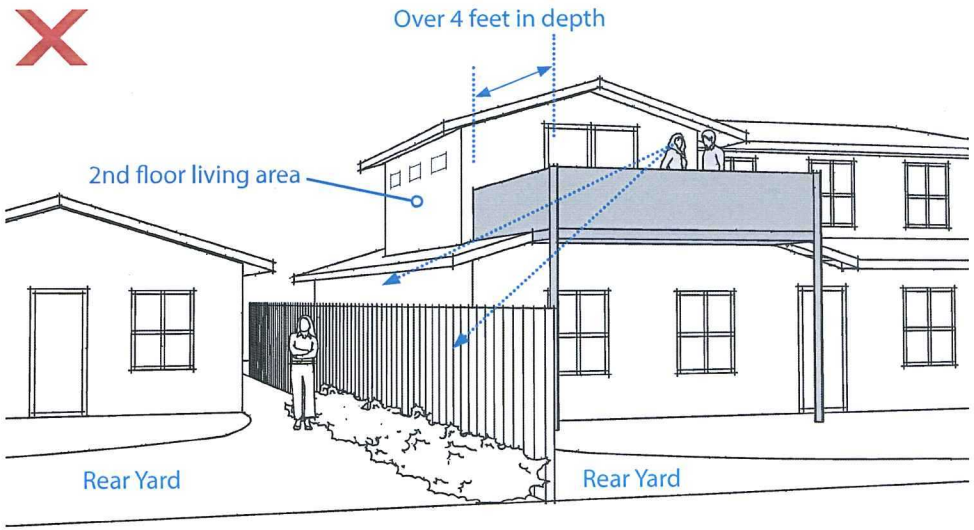


Figure 3.16 - Second-story outdoor space that is larger than recommended and views directly into the neighboring yard.

Chapter 4 Site Planning and Streetscape Issues

4a. Site Planning

Goal: Improve project design, minimize impacts on neighbors and promote neighborhood compatibility

Good site planning for a new home or addition makes a significant difference in how the design fits the neighborhood and minimizes potential impacts on the neighbors. Sensitivity to the neighborhood patterns and orientation plays an important role in promoting neighborhood compatibility.

Important Considerations

1. The location and orientation of a new home on a lot should be consistent with the prevailing patterns found in the neighborhood. (Figure 4.1)

2. Front and street side yard setbacks should match or not extend beyond, that which is typical for the block and appropriate for the scale of the proposed building.

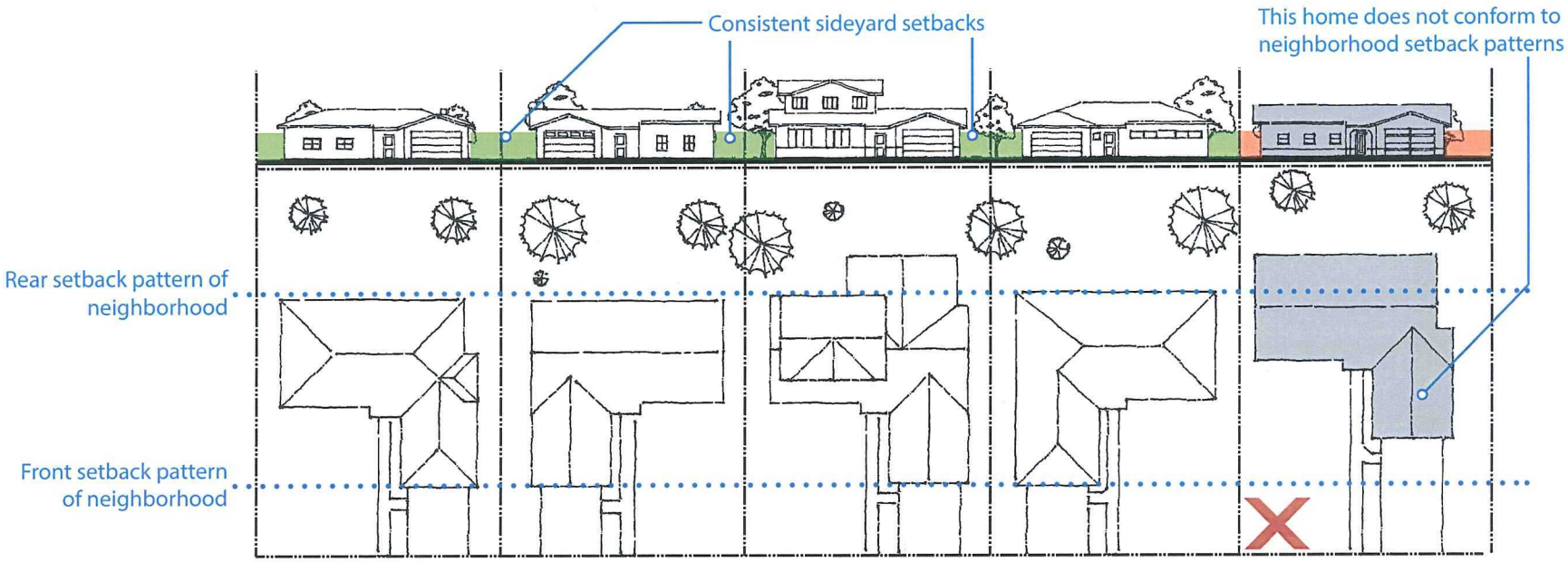


Figure 4.1 - Block of homes demonstrating setback patterns.

3. Proposed designs should minimize, to the extent possible, shading of adjacent homes and private yards. Impacts of scale, shadow, views, air, and light and other consequences of development upon nearby properties may require use of greater setbacks to provide less shading. (Figure 4.2)

4. Building massing and orientation will subject to special consideration to weigh potential shadow impacts on neighboring properties.

5. Where appropriate, proposed setbacks should be adjusted to complement adjacent development or to accommodate special needs of the development as determined through the architectural review process.

6. Second-story additions should be set back from the front yard or street side yard walls of the first floor to reduce the appearance of bulk.

7. Second-story additions should be located away from the side and rear yards of neighboring residential properties as much as feasible.

8. Requirements for on-site grading and drainage should be considered at the preliminary stages of design development. The finished grade above the top of the nearest street curb should be used as benchmark.

9. Building pad heights should be determined early in the interests of flood hazard mitigation, stormwater runoff, design treatment of building elevations, and to consider appropriate measures to protect privacy on surrounding properties.

10. Locate buildings to avoid removing mature trees and landscaping to the extent possible. (Figure 4.3)

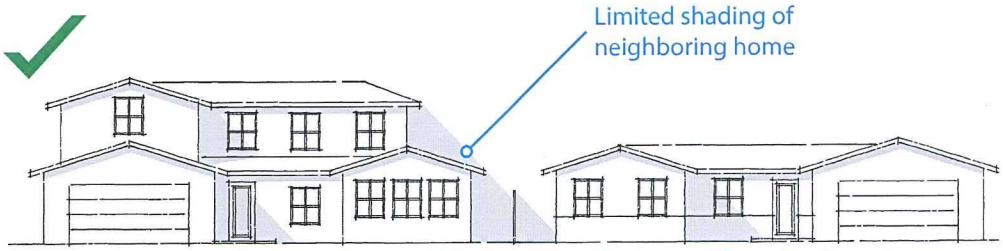


Figure 4.2a - Second-story addition with larger side setbacks to reduce shading of neighboring properties.

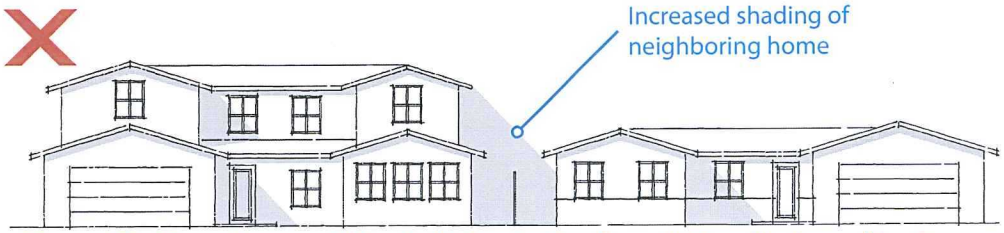


Figure 4.2b - Second-story addition built close to the allowed side setback, resulting in increased shading of neighboring properties.

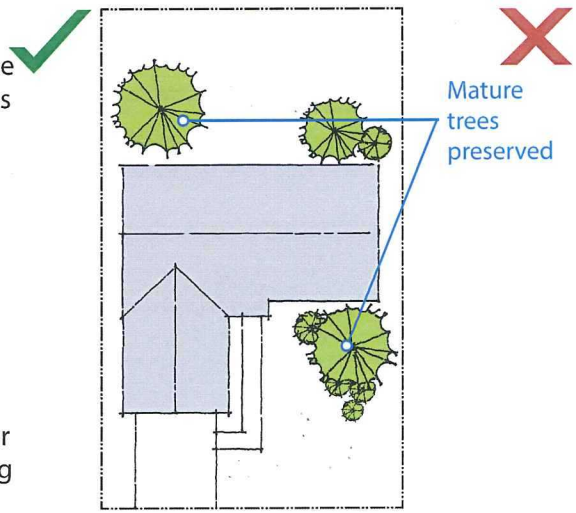


Figure 4.3a - Site planning that preserves mature trees.

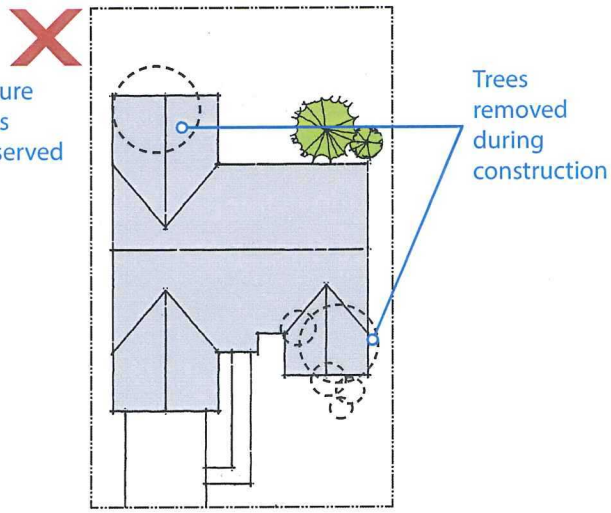


Figure 4.3b - Site planning that removes mature trees.

4b. Streetscape

Goal: Improve overall design of street and neighborhood

Streetscape forms an integral part of neighborhood design by giving it an identity. Each property along a street or block has an opportunity to play an important role in this overall design. Architectural features and landscape design details are the two most important factors that contribute to creating a desirable streetscape.

Important Considerations

1. The front of the house should be oriented toward the primary street frontage. Emphasis on the front porch or entry element toward the street by architectural design and landscaping treatment is encouraged. (Figure 4.4)

Figure 4.4a - Entry element emphasized with a porch, stairs and railings.

Figure 4.4b - Entry element emphasized by a landscaped arbor.

Figure 4.4c - Entrance element emphasized by stone pathway and landscaping.

2. In cases where the design concept requires locating the entrance at a different orientation, care should be taken to avoid turning entirely away from the street. (Figure 4.5)

3. Plant and maintain trees and landscaping in the front yard to provide shade, soften buildings, and improve the streetscape.

4. Maximize landscaped areas in the front yard.

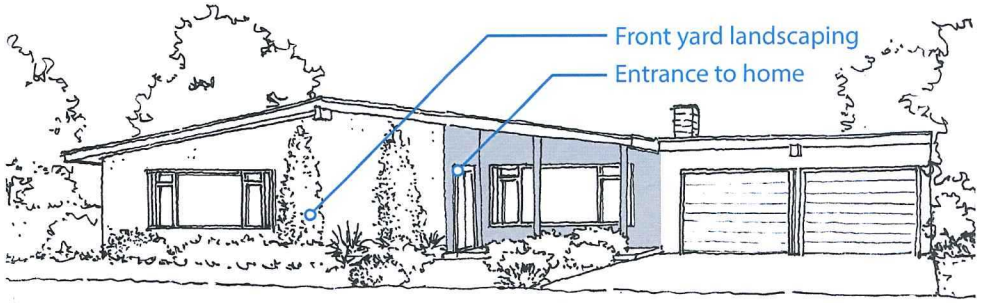


Figure 4.5 - Entrance door oriented towards the side, but having an entry porch oriented towards the front. This home also demonstrates a well-landscaped front yard area to soften the building at the foundation.

4c. Driveways, Paving, Carports & Garages

Goal: Improve overall design of home and street

Driveways, paving, carports, and garages can have a significant impact on the appearance of the property and the streetscape. Properties with excessive paving in the front yard have a stark, plain, and unfriendly appearance due to an inadequate mix of natural features.

Important Considerations

1. Excessive paving is discouraged on all properties so that the stormwater runoff and heat reflection/absorption is minimized. Natural landscaping enhances the visual attractiveness of properties and the overall neighborhood.

2. Use of interlocking pavers, stamped and colored concrete, brick or stone instead of a plain concrete driveway is encouraged.

3. The use of permeable paving materials such as turf-block or interlocking pavers is encouraged as a driveway material.

4. An efficient and convenient layout of parking and pedestrian circulation is encouraged to minimize paving coverage. Circular driveways are discouraged to avoid over-paving the front yard and multiple curb cuts.

5. Multiple driveways on a single family lot are discouraged. A minimum of 25 feet should be maintained between driveways to retain on-street parking spaces.

6. Driveways should not terminate in front of living area. Where no other option exists, there should be a planter area with a five-foot minimum width between the residence and the driveway.

7. Provide and maintain a two feet planter strip between a driveway and an adjoining property whenever feasible.

8. Fences and hedges within the street setbacks and affecting views from or to driveways should be no taller than three feet.

9. If garage doors face away from the street, then special attention needs to be given to the design of the front elevation of the garage. The elevation should not be a blank wall but should be designed as part of the front façade of the house. (Figure 4.6)

10. Garage doors should be recessed in from the face of walls as much as possible.

11. Do not locate the face of garages forward of other portions of the house unless that is the predominant pattern in the neighborhood.

12. Garages should be oriented to the main structure in a manner compatible with nearby properties.

13. Carports are discouraged because they typically do not hide the visual clutter and have a dated appearance. Carports are typically not a common feature of a neighborhood and can create an inconsistent style.

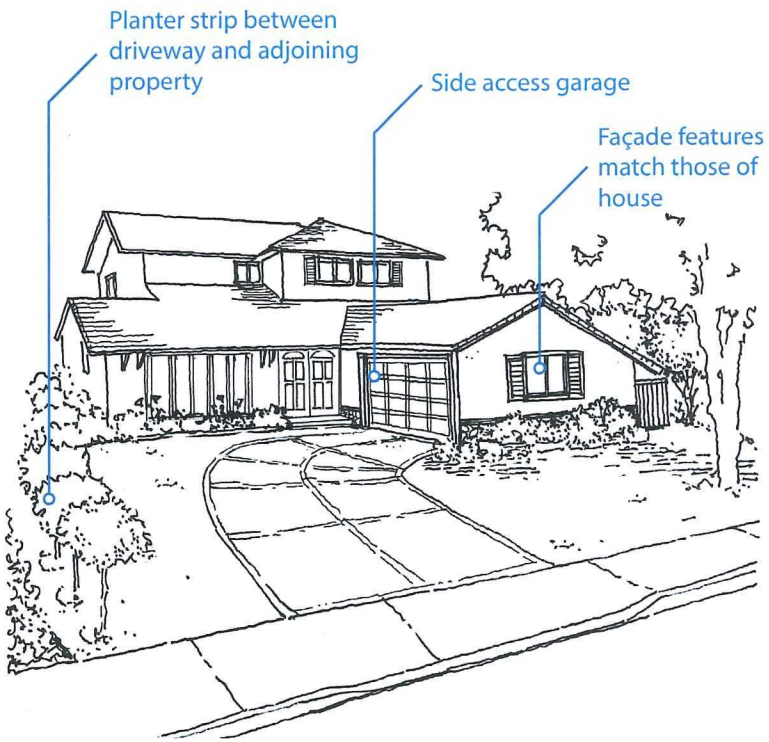


Figure 4.6 - Home with garage oriented away from the street. Façade features windows and shutters matching the home's front elevation.

4d. Mass & Bulk / Scale & Height

Goal: Reduce mass and bulk of homes

Development proposals should be reviewed for their overall size and intensity relative to adjacent homes and the prevailing neighborhood pattern. Designs should reduce the appearance of mass and bulk wherever possible. This is especially critical with two-story homes.

Important Considerations

1. Articulation and Massing

1. Large blank walls, lack of architectural relief or building articulation, excessive building heights, inadequate setbacks and other design features should be eliminated so that proposals are not out of scale with the neighborhood.

2. Reduce the perception of mass and bulk of two-story homes, by offsetting the second-floor walls from the first floor walls on the front and side elevations. (Figure 4.8)

3. Provide horizontal offsets for long walls of two feet deep by six feet wide minimum along any second-floor walls of twenty-five feet in length or greater. These insets or offsets should fall within Zoning setback requirements.

Figure 4.7 - Two-story home having second-story walls set back from first floor walls.

2. Basements

1. Basement additions that result in the raising of the home to more than three feet above the adjacent grade height are strongly discouraged. Such additions may lead to excessive bulk and conflict with the scale of the neighborhood.

2. Concrete foundations exposed as a result of the addition of a basement should feature a material treatment consistent with that of the subject home if more than 12 inches of the foundation, measured from the adjacent grade, is exposed. Material treatment of the concrete foundation should extend from the finished grade to the maximum recommended raised height of three feet. This treatment of the exposed foundation should be carefully designed along faces visible from the public right-of -way and private streets.

3. Landscaping should be provided to soften the appearance of the basement addition along areas visible from public view.

4. Areas of emergency egress should be treated with high-quality materials and/or adequately screened with sufficient landscaping permissive to the functionality of the egress.

5. Basements should be exempt from lot coverage and floor area ratio (FAR) calculations.

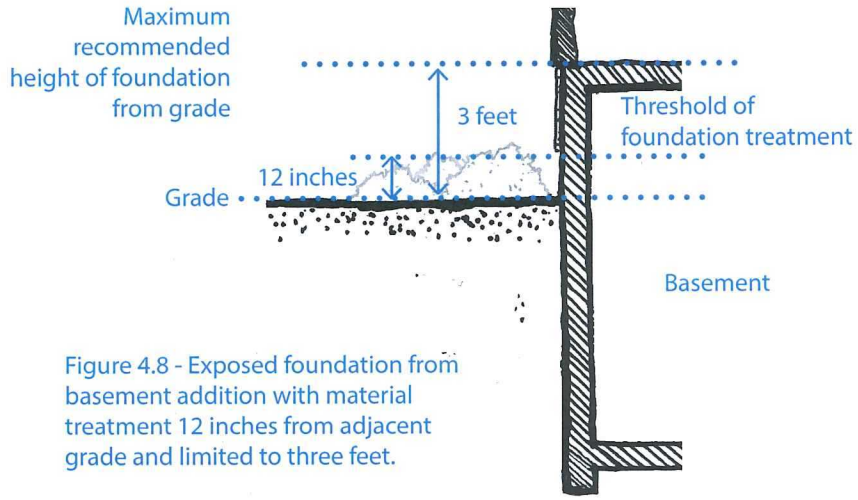


Figure 4.8 - Exposed foundation from basement addition with material treatment 12 inches from adjacent grade and limited to three feet.

4e. Entry Features

Goal: Entry Features in scale with home and neighborhood

Entry features shall be reviewed for appropriate size and scale relative to the home and neighboring properties. Designs should be in scale, proportion, and character to architectural style of the home.

Important Considerations

1. A prominent front porch or entry should be provided.

2. Two-story entryways and other overstated entry features are inappropriate and should be avoided. They create visual discord with the base architectural style and streetscape of most neighborhoods.

3. To reduce an inappropriate visual mass, the eave line of the entryway feature should match or be within two feet or the first story eave line. In no case should a front entry be substantially higher than the first floor eaves. (Figure 4.9)

4. The design and details of the entry feature should derive from the architectural style of the home.

5. Entrance features should be of human scale with height designed to be proportionate to the porch. (Figure 4.10)

6. Entry feature designs should avoid double-gable roof forms.

Figure 4.9a - Entryway that does not greatly exceed eavelines.

Figure 4.9b - Entryway that exceeds eavelines producing a massive appearance.

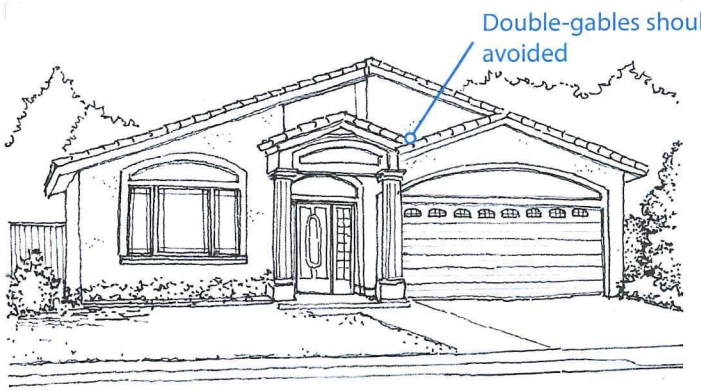


Figure 4.10 - Massive columns create an overstated entryway disproportionate to the porch area and home.

4f. High Volume Living Areas

Goal: High volume living areas that are designed in a manner not apparent from outside

Interior areas with high ceilings that are one-story on the inside, may appear on the outside as if they are two-story spaces. This can add significantly to the perception of mass and bulk of the home; if not designed properly.

Important Considerations

1. High volume and/or attic storage areas that appear two stories tall from the outside are discouraged. (Figure 4.11)

2. When high volume living areas in excess of nine feet high are necessary, they should be achieved through the use of vaulted ceilings rather than increased exterior wall height.

3. Double-volume spaces within two-story homes are discouraged. (Figure 4.12)

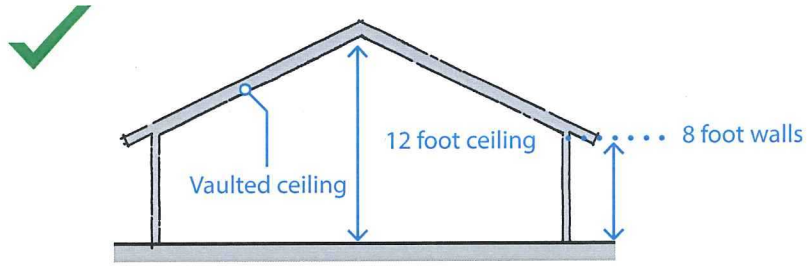
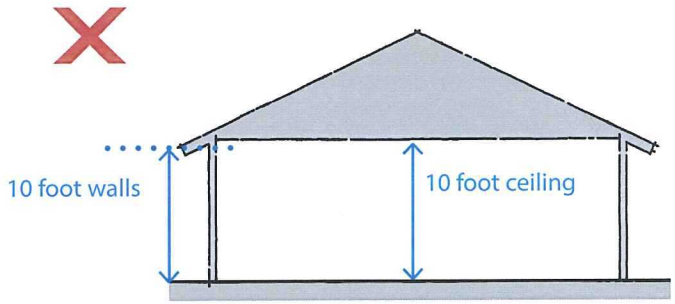


Figure 4.11 - High volume living areas: Positive example utilizes vaulted ceilings to achieve a higher ceiling rather than increasing wall and building heights.



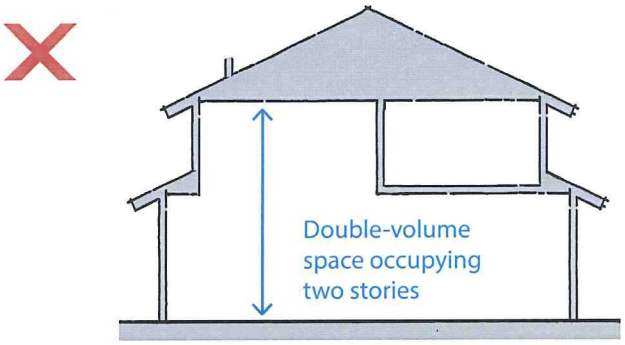


Figure 4.12 - Double-volume living areas taking up two or more stories are discouraged.

4g. Accessory Buildings

Goal: Accessory buildings that harmonize and blend with the primary home and neighborhood.

Accessory buildings not properly designed, can add significantly to the perception of mass and bulk of the home and visually dominate the home.

Important Considerations

1. Accessory buildings should be subordinate structures relative to the main residence.

2. Multiple accessory buildings are inappropriate on single family and duplex lots.

3. Accessory buildings should be constructed of materials and finishes that are the same or complement the main structure. Doors and windows should also be the same as the main structure.

4. Roof pitches and overhangs of accessory buildings should match the main structure.

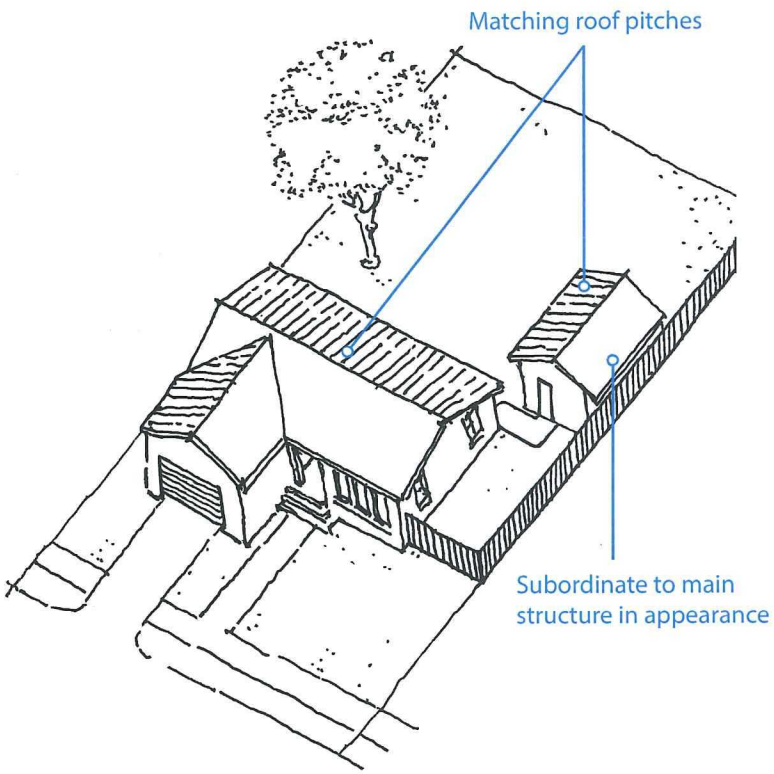


Figure 4.13 - Home with accessory building.

4h. Equipment Location

Goal: Equipment with minimum visual presence.

Important Considerations

1. Locate residential equipment, such as air conditioning units and pool equipment within enclosed yards to minimize any visual or noise impacts to neighboring properties.

2. Equipment should be located at least five feet from property lines and acoustically shielded to avoid noise impacts on neighboring properties.

3. Ground mounted equipment should not obstruct passageways through side yards.

4. Roof mounted air conditioners and ductworks from ground mounted units are discouraged but may be necessary on some homes with no other feasible alternative. In these cases, the unit and ductwork should be screened.

5. All equipment must comply with the noise standards outlined in the 2010-2035 City of Santa Clara General Plan.

4i. Yards & Landscaping

Goal: Yards and landscaping that enhance and beautify home and neighborhood.

Landscaping enhances the overall appearance and value of residential properties. Good landscaping positively affects the aesthetic quality of life and the environment of the community. It establishes a relationship between the building and its site. Landscape buffers can be used to maintain privacy of homeowners from neighboring properties.

Landscaped areas are those that drain directly to the subsoil and may include hardscape as defined below:

- Front and street side yards, including park strips, should be landscaped and properly maintained; lawn or groundcovers are appropriate in most cases.

- Hardscape and driveways shall not occupy more than one-third of each front or street side yard. (Figure 4.14)

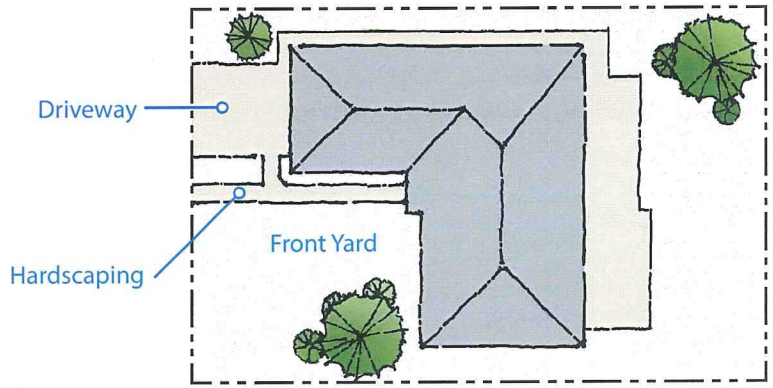


Figure 4.14 - Property having less than a third of the front yard area hardscaped.

- Open and usable rear yard recreational areas should be approximately 20 by 36 feet on single family lots. Open and usable rear yard recreational areas should be approximately 15 feet by 30 feet for each unit on duplex lots. Recreational areas in the rear yard should be immediately accessible to the living space of the residence.

- Plants such as native or drought tolerant types with low water requirements and automatic irrigation systems are encouraged.

- Mature trees should not be removed without reasons of health, safety, or undue hardship related to appropriate property development. Mature trees provide privacy between adjoining properties and are a significant benefit to the environment.

- Potted plants of all sizes may be utilized but are not recognized as a part of the minimum required landscaped area.

Ground Cover

Ground covers other than lawn may be used in the interest of water conservation in lawn areas or to act as a substitute for lawn. Ivy as ground cover is generally discouraged, as it has too often been improperly utilized and typically is not a native species. The use of artificial turf as a substitute for natural ground cover is also discouraged. Using a variety of plants not only softens the visual appearance of the development, but also adds to the character of the house and variety to the streetscape.

Hardscape Areas

In most cases, hardscape, or hard-surface landscape areas such as driveways and walkways, should be a lesser part of the overall landscaped area in order to minimize stormwater runoff, heat absorption and large expanses of empty open space. Walkways, patios and courtyards are encouraged but generally should be accented with planting area that have a pleasing visual impact. Paving materials such as brick, pavers, stone, decomposed granite, or turf block can be used to minimize the extensive use of concrete.

Irrigation

On single family residential properties, automatic systems and water-conserving irrigation systems are strongly encouraged but are not required, except as a specific condition of approval. For duplex-zoned properties, an automatic irrigation system should be installed and maintained in functional condition in each separate planter area.

Important Considerations

1. **Foundation Plantings:** Plantings at the foundation of a structure (including a wall or fence) soften the transition from the surrounding ground paved areas to the vertical plan of the structure. Generally shrubs and trees are utilized to create the desired effect. The size and quality of foundation planting needed varies with the nature and architectural design of the development. (Figure 4.15)

2. **Street Yard Landscaping:** The front yard and any street yard landscaping design for the majority of the residential areas of the City calls for lawn, ground cover and tree plantings. Landscape elements can be effectively used to differentiate private outdoor yard space from the public street while visually blending with adjacent properties.

   Additional accent plantings to complement this design or other innovative landscape treatments are encouraged. Front yard landscaping includes any landscaped areas within the public right-of-way that adjoins the property. These areas are to be considered a part of the landscaped area of that particular parcel and are to be maintained by the adjoining property. However, these areas are not to be counted towards the minimum required front yard landscaped area.

   Check with the City Engineering Department about the underground utilities and on-street parking needs that may be affected by plantings in the public right-of-way.

Figure 4.15 - Landscaping at the base of a home softens the transition between building and ground.

3. **Water Conservation:** The City encourages the use of water conversation techniques. Water conservation practices include selection of trees and shrubs that are suitable for the climate in Santa Clara County, the use of recycle water, and rainwater harvesting. The use of native species and drought tolerant plans is strongly encouraged. (Figure 4.16)

   Development proposals should be reviewed for conformity with the following:

   1. Meet the minimum standards of the Santa Clara City Code;

   2. Appropriate landscaping improvements that are in keeping with the nature and scale of the proposal;

   3. Necessary upgrades to plantings, materials and maintenance; and,

   4. Consistency with the water conservation ordinance.

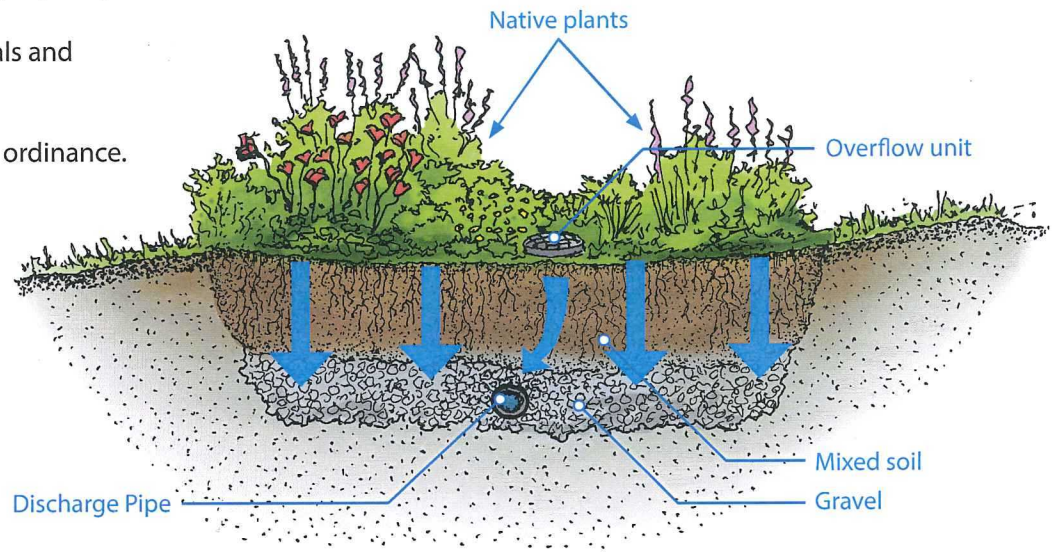


Figure 4.16 - A raingarden utilizes native plantings and permeable materials to filter pollutants. It can be used in conjunction with rainwater harvesting systems.

4j. Fences and Walls

Goal: Fences that enhance and beautify home and neighborhood.

Fencing should be compatible with the type of use and zoning upon the property and should comply with the required height and setback regulations. A variety of prefabricated and textured masonry fences may be appropriate in some cases. Where fencing is required by the Santa Clara City Code or as a condition of approval, both sides of the fence should be suitably textured and finished.

Fences intended for the purpose of mitigating views, noise or other impacts, should be of an appropriate height (as allowed by the City Code) from finished grade to accomplish the task for which they are intended.

Important Considerations

1. Fences and hedges in the front yard setback area should be no taller than three feet.

2. Fencing should not be used to visually isolate a property from the street. Solid fence materials such as stucco walls and masonry walls often block the views of the property from the street and create a fortress-like appearance from the street. An open fence with use of natural non-reflective materials and natural materials or colors should be used whenever possible. An exception is when Patio homes have been designed with fencing that blocks views of an intended private yard from the street.

3. Fences should be treated with landscaping elements to soften the appearance of the fence material from the public right-of-way. Fence gates that are compatible with the style of the house can be used improve the appearance of the neighborhood. (Figure 4.17)

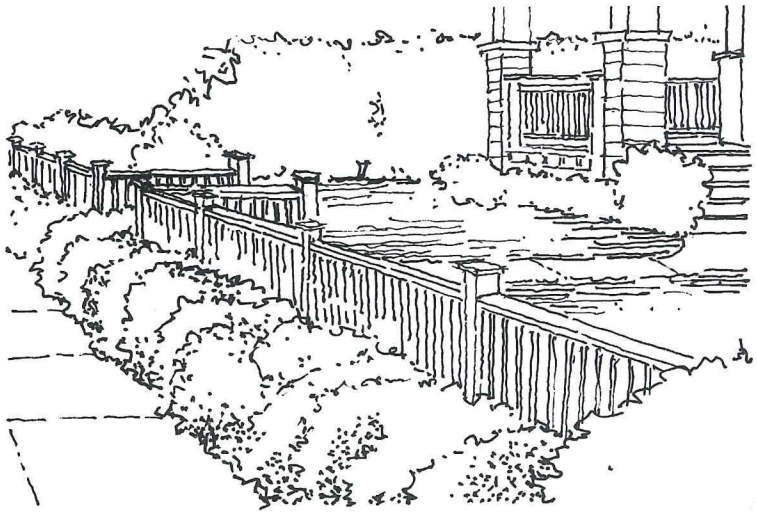


Figure 4.17 - An appropriate height and material front-yard fence with landscaping.

4. Dilapidated fencing should be replaced, repaired, or refinished at the time of construction of any approved improvements on the property.

5. While designing fences along street side yards of corner lots, care should be taken to keep the adequate visibility and sight distance for drivers.

6. Chain link, barbed wire, and razor wire are not appropriate in residential areas and are strongly discouraged. Such fences are not permitted when visible from the public right-of-way. An exception to this may be warranted under extraordinary conditions, if approved by the Architectural Committee.

7. Fences along the property's frontage should be of open-face design as to not fully obstruct views into front yard areas. Solid fences along property frontages are highly discouraged.

8. A two foot minimum setback is encouraged between the front property line and front-yard fence. Setbacks should be adequately landscaped to soften the fence's appearance. (Figure 4.18)

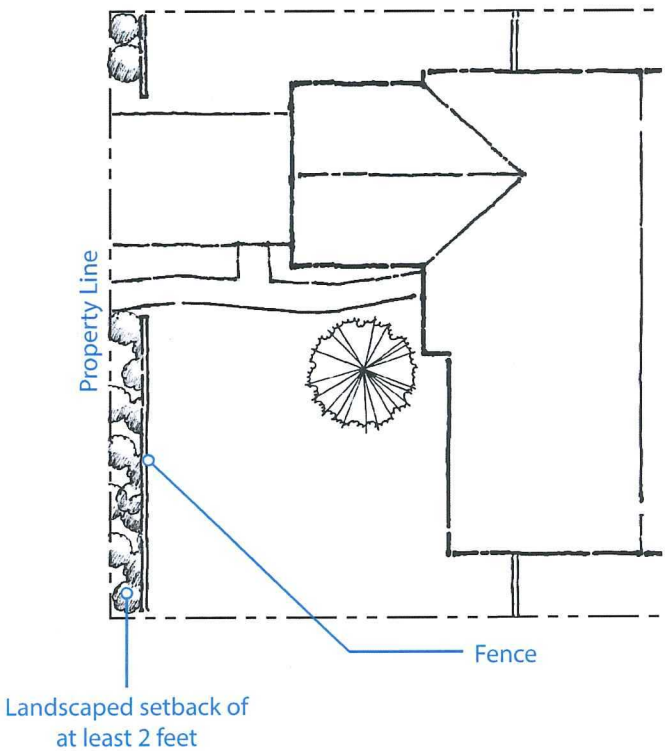


Figure 4.18 - Appropriate fence setback and placement with landscaping in plan view perspective.

4k. Exterior Lighting

Goal: Exterior lighting that enhances and beautifies the home and neighborhood.

Exterior lighting, if possible, should reflect away from adjoining residential properties and public streets.

Important Considerations

1. Use shielded light fixtures where necessary to direct light to the ground and protect adjacent properties from excessive glare. (Figure 4.19)

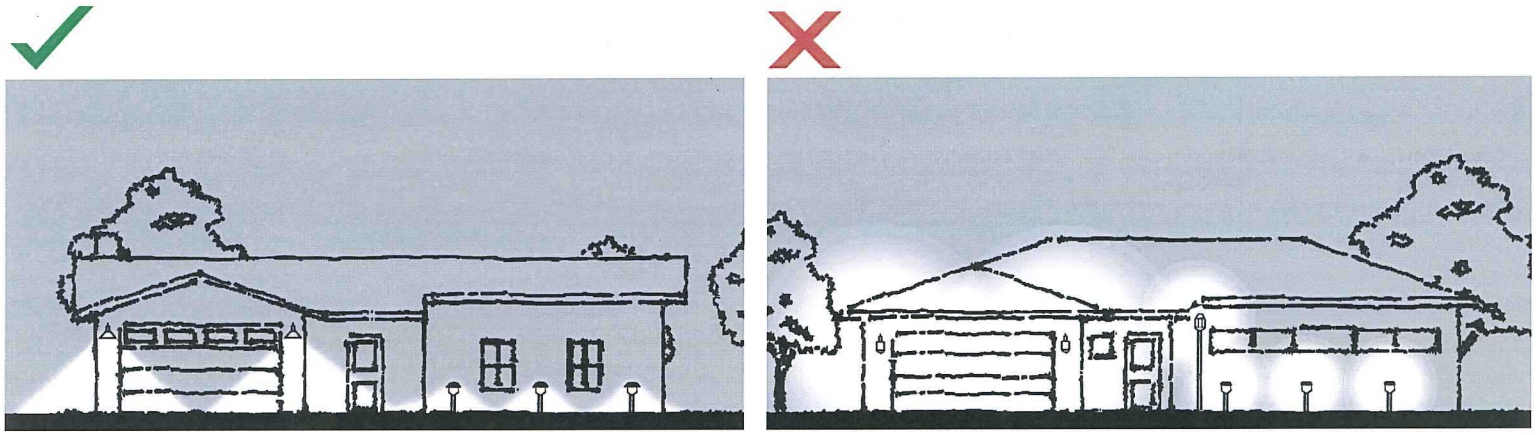


Figure 4.19 - Homes utilizing shielded vs. unshielded light fixtures. Fixtures without proper shielding can disturb neighbors and contribute to light pollution.

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Chapter 5 Energy Efficiency

5a. Solar Access and Panels

Goal: Solar systems with minimum visual presence that blend with home and neighborhood.

Applicants are encouraged to incorporate solar energy systems into their projects. Homeowners can minimize non-renewable heating and cooling methods and maximize solar heat gain by using solar panels and innovative building design features such as the use of overhangs, having south-facing windows and planting trees that provide shade.

Building placement and adjacencies should be considered such that they do not unreasonably affect the solar access on neighboring properties. Solar panels and other roof-mounted equipment can detract from the appearance of a home and appear obtrusive if not integrated into the design.

Important Considerations

1. Orient the massing of the home and roof forms away from the side yards of neighbors as much as possible to minimize blocking their solar access.

2. Locate roof mounted solar energy equipment and panel below ridgelines and on sides of roof away from street view wherever possible. Non-glare and non-reflective type panels should be utilized.

3. The design and placement of roof-mounted solar panels should account for the heights of existing trees and future growth. This applies to both trees on-site and on neighboring properties, including City Heritage Trees and street trees.

5b. Integrate Sustainable Design

Goal: Integration of sustainable design features and elements into the building early in the design process.

Important Considerations

1. Specify recycled, sustainably harvested, or sourced building materials such as siding, paving, decking, and insulation.

2. Preservation and/or adaptive reuse of structures is preferred over demolition. Recycle and reuse materials on-site from dismantling and/or demolition of a building or site improvements as much as possible.

3. Consider heat reflecting roof systems to reduce roof heat gain. Balance the benefits of light colored roofs with aesthetics.

4. Incorporate alternative energy generation into the design of building forms and roofs. Establish effective location for solar panels on either the main or accessory building.

5. Consider utilizing gray water systems and rainwater collection systems for on-site irrigation and water conservation.

5c. Utilize Passive Heating and Cooling

Goal: Building placement and massing should consider the potential for passive heating and cooling techniques.

Important Considerations

1. Design building volumes to minimize large areas of south or west facing windows to reduce summer sun exposure

2. Use appropriate sized overhangs, porches, trellises, or vegetation, such as deciduous trees, on south facing building sides to reduce heat gain on exposed walls and windows.

3. Use the thermal mass of floors and walls to maximize thermal storage and moderate daily temperature swings.

4. Providing cross-ventilation by locating operable windows and skylights to catch prevailing breezes.

Chapter 6 Appendix

6a. Glossary

Basement
A floor level of a building that is below the first story, partially or completely below adjacent grade.

Bi-level House
A house with two levels.

Bulk
The actual or perceived large visual size, volume or mass of a building or portion thereof.

Clerestory window
A high window above eye level. The purpose is to bring in outside light, fresh air, or both into the inner space.

Compatible
Capable of existing together without conflict or ill effects.

Dormer
A dormer is a structural element of a building that protrudes from the plane of a sloping roof surface. Dormers are used, either in original construction or as later additions, to create usable space in the roof of a building by adding headroom and usually also by enabling addition of windows.

Fanlight window
A fanlight is a window, semicircular or semi-elliptical in shape, with glazing bars or tracery sets radiating out line an open fan. It is typically placed over another window or doorway.

Footprint; Building Footprint
The outline of a building at all of those points where it meets the ground.

Gable roof/Gable wall
A gable is the generally triangular portion of a wall between the edges of a sloping roof. The shape of the gable and how it is detailed depends on the structural system used and aesthetic concerns. Thus the type of roof enclosing the volume dictates the shape of the gable. A gable wall or gable end more commonly refers to the entire wall, including the gable and the wall below it. A gable roof is a pitched roof having a gable at each end.

Gambrel roof
Gambrel is a shortened name for a gambrel roof shape, a usually symmetrical two-sided roof with two slopes on each side. The upper slope is positioned at a shallow angle, while the lower slope is steep. This design provides the advantages of a sloped roof while maximizing headroom inside the building's upper levels and shortening what would otherwise be a tall roof.

Guidelines
General statements of policy direction around which specific details may be later established.

Hip roof
A hip roof or hipped roof is a type of roof where all sides slope downwards to the walls, usually with a fairly gentle slope. A house with a hip roof has no gables, or other vertical sides to the roof.

Hipped gable roof
A hipped gable roof, also known as a gablet roof or Dutch gable, is a roof with a small gable at the top of a hip roof.

Impervious Surface
Surface through which water cannot penetrate, such as roof, sidewalk, and paved parking lot. The amount of impervious surface increases with development and establishes the need for drainage facilities to carry the increased runoff.

Juliet-style balcony, or balconet
A balcony that only slightly protrudes from the plane of the building face. The narrow width of a balconet provides little if any standing room while allowing access to ventilation and light.

Mackay or Eichler-Style
A house that is part of a tract developed by John Mackay or Joe Eichler.

Mass
The actual or perceived visual size and expanse of a building or portion thereof.

Mitigate
To ameliorate, alleviate, or avoid to the extent reasonably feasible.

Ordinance
A law or regulation set forth and adopted by a government authority, usually a City or county.

Overlay
A land use designation on the Land Use Map, or a zoning designation on a zoning map, that modifies that basic underlying designation in some specific manner.

Patio Home
A detached single-family unit, typically situated on a reduced-sized lot, that orients outdoor activity within enclosed front, rear or side yard patio areas for better utilization of the site for outdoor living space.

Pop-up
A second-story addition with one or more walls not set back from those of the existing ground floor.

Porch
A covered structure open on at least one side attached to a structure.

Preserve, v.
To keep safe from destruction or decay; to maintain or keep intact. (See "Maintain")

Reconstruct
Build or form (something) again after it has been damaged or destroyed.

Rehabilitation
To repair, preservation, and/or improvement of substandard housing.

Restore
To renew, rebuild, or reconstruct to a former state

Scale
A graduated range of values forming a standard system for measuring or grading something.

Setback
The distance between a property line and the closet outside building wall or structural support of a first or second-floor.

Split-level House
A house with multiple levels, with a level that is between the upper and lower floors.

Tract House
A house that is part of a subdivision, typically one of several designs used in a tract.

Mullion
A mullion is a vertical element that forms a division between units of a window, door, or screen or is used decoratively.

Muntin
A muntin is a strip of wood or metal separating and holding panes of glass in a window.

Neighborhood
An area within one or two blocks, but not more than 500 feet away from the subject property.

Sash window
A sash window or hung window sash window is made of one or more movable panels of glass, which are often separated from other panes by narrow muntins.

Window light
An individual pane of glass.

Windowsill
A ledge or sill forming the bottom part of a window.

Wainscoting
Wooden paneling that lines the lower part of the walls of a room.

Guidelines and text prepared in collaboration by the City of Santa Clara and M-Group. Illustrations, graphic design and layout prepared by M-Group.

The City of Santa Clara

Architectural Review Process Outline

INTENT AND PURPOSE

The Architecture Review Process aims to encourage a harmonious appearance among structures and properties within the City of Santa Clara. The process seeks to maintain public health, safety and welfare, and property values and encourage physical development that is consistent with the City's General Plan.

REQUIREMENTS FOR SUBMITTING FOR ARCHITECTURAL REVIEW INCLUDES

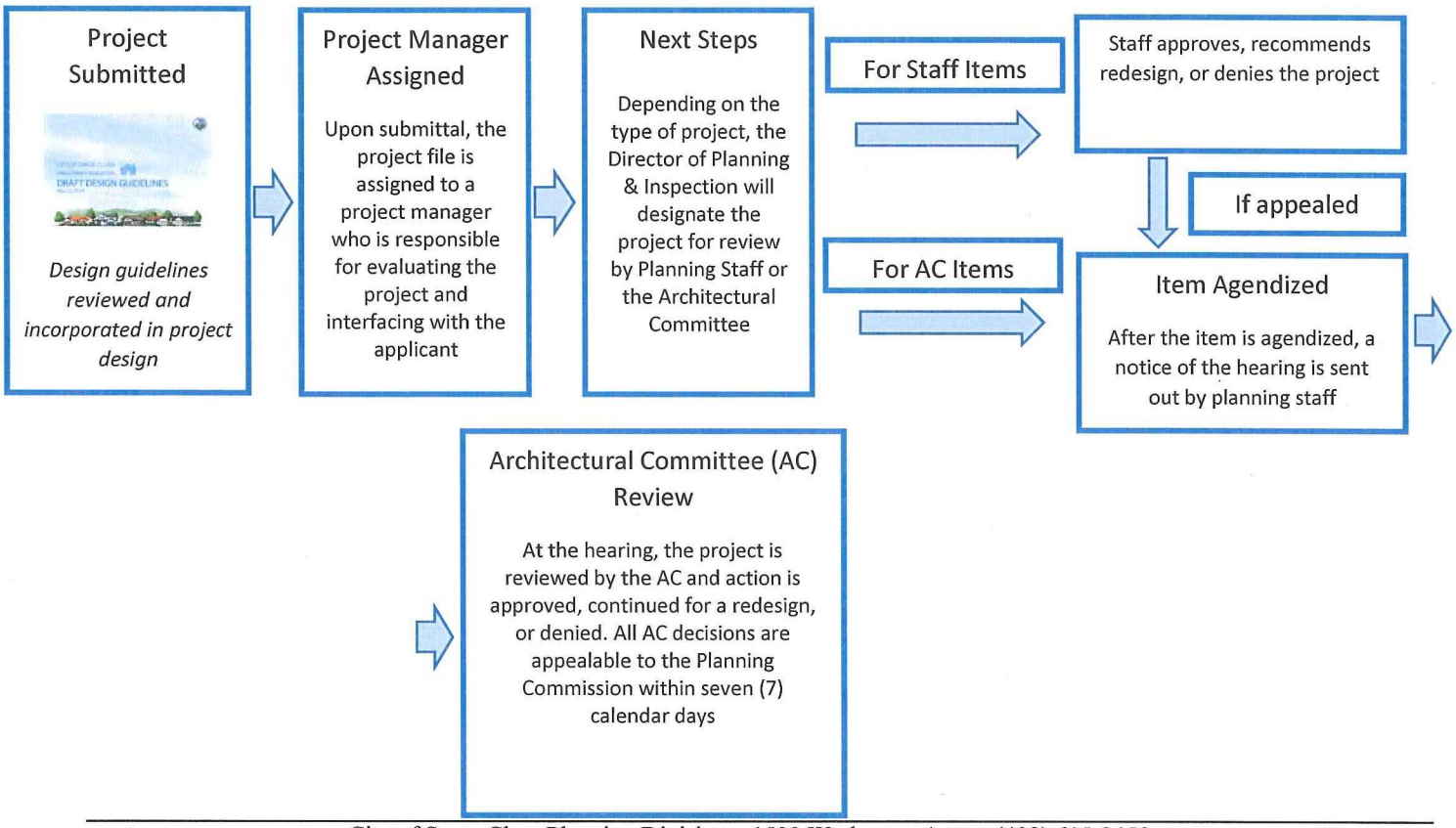
The following items are required when applying for review under the Architectural Review Process:

- Property owner signed and completed planning application
- All required fees paid
- Four (4) sets of plans including but not limited to site plans, floor plans, and elevations
- Other additional information if requested

For additional information or materials, please contact the Planning Division at (408) 615-2450.

REVIEW PROCESS

The process for Architectural Review is below:



HOW ARE SINGLE-FAMILY DESIGN GUIDELINES HELPFUL TO THE DESIGN PROCESS?

The Single-Family Residential Design Guidelines:

- Offer design techniques with the intent of improving aesthetics and design quality within the City's residential neighborhoods
- Represent policies of the General Plan and are written for use by property owners, residents, architects and building professionals, and City Staff
- Define a range of appropriate responses to design challenges and apply to projects such as alterations to existing structures, additions, new construction, and site work

HOW TO USE THE DESIGN GUIDELINES

The design Guidelines are best utilized when reviewed prior to the start of the design phase of a project as the guidelines offer best practices which clearly indicate positive and negative examples. Encouraged design practices are highlighted throughout the document which applicants are encouraged to use when designing their project. Applicants should avoid designs that are clearly indicated as negative and are discouraged by the City and the AC.

The design guidelines are organized by chapters focusing on:

- Neighborhood Compatibility
- Architectural Details
- Site Planning and Architectural Design
- Energy Efficiency

Depending on the scope of the project, applicants will refer to specific chapters and sections to find guidelines most applicable to their intended project. However, it is recommended that applicants review the design guidelines in its entirety in order to gain a complete understanding of good design practices.

Questions? We are here to help!

Contact a Planner at the City of Santa Clara Planning Division:

408-615-2450

Via e-mail:
planning@santaclaraca.gov

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 9A

Date: November 14, 2014

To: City Manager for Council Information

From: Assistant City Manager

Subject: Written Petition by John Marinshaw

The City Clerk's Office received a written petition from Mr. John Marinshaw to appear before Council. Mr. Marinshaw, a Santa Clara resident, has expressed concern on three items: 1) Supplemental Parking for Pomeroy School Open House and Other Events; 2) Street Department (Public Works) communication regarding the City's Annual Clean-up Campaign, and 3) the City Manager's accessibility. City staff has met with Mr. Marinshaw several times in the past few months in regards to these issues. The following is a summary of staff findings and conversations with Mr. Marinshaw.

In regard to Pomeroy School, the petitioner has voiced concern regarding the congested parking at the school during pickup/drop-off times and after school events. He recommends that the City provide additional parking for Pomeroy School by potentially extending the pavement into the school's grass area just easterly of the baseball infield and utilize the City groundwater well site on Pomeroy Ave. The City Manager's office directed the Police and Water Departments to review what could be done to address his concerns.

The Police Department has noted numerous parking violations at this location. In particular, parking control has witnessed violations regarding the loading/unloading zone rules, as well as double parking offenses. Our traffic sergeant has outreached to the school officials to ask for their assistance in advising the community about existing parking regulations.

Additionally the Water Department has performed its analysis and determined that the property where the City's groundwater well is located cannot be used for public parking. Water Utility well sites are required to be fenced and secured to protect the critical infrastructure from contamination and to ensure access for Water Utility personnel and equipment necessary to maintain the well site. In addition, the well has a motor control center that has high voltage circuitry and as such there are mandated clearances that must be maintained from that equipment.

The City Manager's Office has relayed Mr. Marinshaw's request to the Santa Clara Unified School District (SCUSD) administrative staff and most recently discussed his concern at the October 1st SCUSD/City Liaison Committee meeting. It was noted that onsite parking has been reduced due to the addition of seven portable classroom trailers on the school's existing paved lot. As such, the City will reach out to the nearby church at 1290 Pomeroy, which has over 90 parking spaces, to determine if these parking spaces could be used to alleviate Pomeroy School's parking issues.

Mr. Marinshaw had made a suggestion to improve the outreach and promotional material to the City's Clean-Up Campaign. The Public Works Department has met with Mr. Marinshaw and informed him that the City

will be implementing his suggestion on highlighting guidelines to make the information more clear and concise.

It should also be noted that City staff in multiple departments have met directly with Mr. Marinshaw in several meetings to discuss the matters that he has brought to our attention including a meeting with the City Manager on June 13, 2014. Additionally, at the August 19, 2014 Council Meeting, Mr. Marinshaw made comments during the public comment period where both the Police Chief and Director of Water & Sewer Utilities were able to address Mr. Marinshaw's suggestions.

Alan Kurotori
Assistant City Manager

APPROVED:

for Julio J. Fuentes
City Manager

Documents Related to this Report:
1) Written Petition from John Marinshaw

\City Manager\AGENDA REPORTS\2014\2014 11 14 Marinshaw.doc

CITY COUNCIL

CITY OF SANTA CLARA
WRITTEN PETITION

Please provide the information requested below. When complete, please submit to the City Clerk's Office, 1500 Warburton Avenue, Santa Clara, CA 95050.

Date: 18 August 2014

I, John Marinshaw, am hereby requesting to be placed on the Santa Clara City Council Agenda for the following purpose:

See attached letter

I understand that it is important that I attend the meeting in the event there are any questions the Council wishes to ask me.

Signed:

NAME: John Marinshaw

ADDRESS: 1004 Wood Duck Ave
Street

Santa Clara, CA 95051
City Zip Code

TELEPHONE:* 408-248-7897
Optional

DATE: 18 August 2014

*NOTE: This is a public document. If your telephone number is unlisted or if you do not want it to be public, please provide an alternate number where you can be reached.

John A. Marinshaw
1004 Wood Duck Ave.
Santa Clara, CA. 95051
(408) 248-7897
17 August, 2014

City Council of Santa Clara
1500 Warburton Ave
Santa Clara, CA 95050

Dear Council Members:

I have not been able to get the city to act or respond to problems presented to the city manager, Julio Fuentes, over two months ago. I am asking the city council to help me. The problems are listed below:

- Supplemental Parking for Pomeroy School Open house and other Events
- Street Department communication on City Annual Clean-Up
- City Manager accessibility

I am requesting the opportunity to present these matters to the City Council.

Thank you for your help and cooperation.

Sincerely,

John A. Marinshaw

11/18/14

10A

FACILITIES & HONORARY RECOGNITION AD HOC COMMITTEE MINUTES
July 10, 2014

COMMITTEE MEMBERS PRESENT: Chair Jerry Marsalli
Debi Davis
Lisa Gillmor

COMMISSIONERS PRESENT: Mike O'Halloran, Parks & Recreation Commission.
Kevan Michael Walke, Parks & Recreation Commission

STAFF: Julio Fuentes, City Manager
James Teixeira, Parks & Recreation Director

MATTER(S) FOR COUNCIL ACTION— On a motion by Council member Davis and second by Council member Gillmor, the Ad Hoc Facilities and Honorary Recognition Committee recommends that Council name the new park site located at Worthington Circle in the Mid Town Village development "Thomas Barrett Park."

I. CALL TO ORDER/ ROLL CALL

The meeting was called to order at 5:30 p.m. All Ad Hoc Committee members were present.

II. INTRODUCTION/PURPOSE OF COMMITTEE

Staff provided a review of the Council action taken on March 25, 2014 (Item 9.A.1.) referring the naming of the new park site located at Worthington Circle in the Midtown Village development to the Council Ad Hoc Facilities and Honorary Recognition Committee.

III. SELECTION OF AD HOC COMMITTEE CHAIR

The Committee members nominated and selected Councilmember Marsalli as Chair of the Facilities and Honorary Recognition Ad Hoc Committee.

IV. COUNCIL AD HOC COMMITTEE REVIEW & DISCUSSION

A. The Committee reviewed the Council "Policy & Procedure #035—Naming of Facilities" that states Council can name municipal facilities in recognition of individuals, living or deceased, who have made outstanding contributions to the City of Santa Clara or the Santa Clara community. Under the current practice, the Parks & Recreation Commission makes recommendations pertaining to parks and recreation facilities.

B. The Director of Parks & Recreation gave a summary to the Committee of the Parks & Recreation Commission Minutes of January 21, 2014, that recommended Council consider a list of potential park names for the new park site located at Worthington Circle in the Mid Town Village development that was formally dedicated/opened to the City on May 17, 2014. Chair Marsalli asked the Committee for their input and to discuss the Parks & Recreation Commission recommended list of names, including: Gary Gillmor (former Mayor); Patricia Mahan (former Mayor); Frank Soares (contributor to Santa Clara youth sports), Thomas Barrett (founder of the Santa Clara Art & Wine Festival), and the Wilson Family (a generous and well known Santa Clara family). After discussion, the Committee removed sitting and former Council members from consideration. The Committee discussed the history of the park parcel and its former agricultural and research uses. The Committee discussed considering additional individuals, such as Aldyth Parle among others. The

Committee recommended that the Parks & Recreation Commission and Senior Advisory Commission consider various programs or rooms that could be named in honor of the other Santa Clarans whom have made significant contributions. The Committee recalled various contributions of the individuals on the list, with particular attention to Tom Barrett's move to Santa Clara in 1969, his coaching PAL-Gal softball beginning 1971, service on the Parks & Recreation Commission from 1978 to1990, and early contributions to the growth of the Santa Clara Art & Wine Festival from 1980 to 1992.

V. PUBLIC PRESENTATIONS

A. Commissioners Walke and O'Halloran noted the Parks & Recreation Commission discussions and reasons for naming the new park facility. Given that the Santa Clara Art & Wine Festival is in its thirty fourth year and provides many non-profit organizations a significant opportunity to raise charitable funds for programs that serve virtually every non-profit and service program in Santa Clara, a recognition to those who worked to establish this central Santa Clara special event is an appropriate honor. The legacy of those who initiated and developed the Festival includes: its location in Central Park, the unique Santa Clara community-wide spirit it fosters, its place as the special inter-cultural and inter-generational gathering for all Santa Clarans, as well as its basic premise, to give back to the community.

VI. AD HOC COMMITTEE RECOMMENDATION TO COUNCIL

On a motion by Council member Davis and second by Council member Gillmor, the Ad Hoc Facilities and Honorary Recognition Committee recommended that Council name the new park site located at Worthington Circle in the Mid Town Village development "Thomas Barrett Park." Passed unanimously.

The Committee directed staff to reach out to the Barrett Family members and to place its recommendation on an upcoming Council Agenda, and notify all interested parties of the Agenda date.

VII. NEXT MEETING DATE—None.

VIII. ADJOURMENT—There being no further business, the Committee adjourned at 6:30 p.m.

Prepared by: James Teixeira
Parks & Recreation Director

Approved by: Julio J. Fuentes
City Manager

Attachments:

1. Resolution Naming the New Park Site Located at Worthington Circle in the Mid Town Village Development "Thomas Barrett Park."

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 10A-1

Santa Clara All-America City 2001

Date: November 4, 2014

To: City Manager for Council Action

From: Director of Parks & Recreation

Subject: Adopt a Resolution Declaring the New Park Site Located at Worthington Circle in the Mid Town Village Development "Thomas Barrett Park."

EXECUTIVE SUMMARY:

On January 21, 2014 the Parks & Recreation Commission recommended Council consider potential park names for the new park site located at Worthington Circle in the Mid Town Village, including Thomas Barrett. On March 25, 2014, Council referred the matter of naming the park site to the Council Facility Naming and Honorary Recognition Ad Hoc Committee. On July 10, 2014 the Ad Hoc Committee formally recommended that the new park name be "Thomas Barrett Park" in honor of his service to the City of Santa Clara as noted in the attached Resolution. Approval by Council will officially name the park as recommended.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Recognizing the significant public service of Thomas Barrett to Santa Clara parks and recreation and the ongoing nature of the community wide benefits from the Santa Clara Art & Wine Festival initiated and grown by Thomas Barrett help to inspire residents and encourage new models of every day public service. There are no known disadvantages.

ECONOMIC/FISCAL IMPACT:

There is no additional cost to the City other than administrative staff time, and if named, a nominal cost for purchase and installation of a park sign.

RECOMMENDATION:

That the Council adopt a resolution declaring the new park site located at Worthington Circle in the Mid Town Village development "Thomas Barrett Park."

James Teixeira

James Teixeira
Director of Parks & Recreation

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report:

1) ***Resolution Declaring the New Park Site Located at Worthington Circle in the Mid Town Village Development "Thomas Barrett Park."***

I:\Parks\Agendas\Resolution\Agenda Report - Thomas Barrett Park Resolution 2014.doc

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA NAMING THE NEW PARK SITE LOCATED AT WORTHINGTON CIRCLE IN THE MID TOWN VILLAGE DEVELOPMENT "THOMAS BARRETT PARK."

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, the City Council names municipal facilities in recognition of individuals, living or deceased, who have made outstanding contributions to the City of Santa Clara or the Santa Clara community, and the Parks & Recreation Commission makes recommendations pertaining to parks and recreation facilities; and,

WHEREAS, on January 21, 2014 the Parks & Recreation Commission recommended Council consider potential park names for the new park site located at Worthington Circle in the Mid Town Village, including Thomas Barrett; and,

WHEREAS, on March 25, 2014, Council referred the matter of naming the park site to the Council Facility Naming and Honorary Recognition Ad Hoc Committee, and

WHEREAS, on May 17, 2014 the new park site was formally opened to the City and its residents; and,

WHEREAS, Thomas Barrett was born in Oak Park Illinois on December 17, 1937; came to California at age nine; married Iris Barrett in 1960; was proud father of Lynne and Laura Barrett; moved to Santa Clara in 1969; coached Santa Clara Police Activities League (PAL-Gal) softball beginning in 1971; served multiple consecutive terms on the Santa Clara Parks & Recreation Commission from 1978 to 1990; initiated and contributed to the growth of the Santa Clara Art & Wine Festival from 1980 to 1992; and died on May 25, 2001; and,

WHEREAS, on July 10, 2014 the Ad Hoc Committee formally recommended that the new park name be "Thomas Barrett Park" in honor of his service to the City of Santa Clara,

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. The new park site located at Worthington Circle in the Mid Town Village Development is hereby named "Thomas Barrett Park."

2. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

3. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, AT A REGULAR MEETING THEREOF HELD ON THE ___ DAY OF _____, 2014, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None.

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 13A

Date: November 4, 2014

To: City Manager for Council Action

From: Director of Electric Utility

Subject: Adoption of a Resolution Amending Rate Schedules for Electric Service for All Classes of Customers Effective January 1, 2015

EXECUTIVE SUMMARY:

The City of Santa Clara's Electric Utility, Silicon Valley Power (SVP) is requesting a rate increase of 5% for all classes of customers, effective January 1, 2015. Electric Utility staff has discussed the proposed increases, including the reasons for the proposed increases, with the Energy Task Force, Chamber of Commerce representatives, numerous individual customers and media representatives. Formal notice required by Section 54999 et seq. of the California Government Code has been given to school districts and state agencies operating in Santa Clara.

The primary reasons for the proposed increase are:

1. Increased power costs due to the continued impact of the drought.
2. Continued increases in transmission costs charged by the California Independent System Operator (CAISO).
3. Slower revenue increase due to slower than expected load growth.
4. Need to replenish SVP's Rate Stabilization Fund.

In a normal year, hydroelectric resources provide 17% of SVP's power mix. Because of the drought, during this last year, hydro provided only 9% of SVP's power mix. Hydro deliveries were only 51% of what was expected. In order to make up this shortfall in hydroelectric power, SVP purchased additional power from the market. Because hydro power has a very low marginal cost, these market purchases increased SVP's power costs by almost $9 million.

Transmission costs in California continue to rise. During this last year, the increase in transmission costs added another $2 million to SVP's costs.

Revenues from electricity sales were higher than the previous year, but overall electricity sales were 96.4% of expected sales. The increase in electricity load, with the associated contribution that electricity sales makes to SVP's fixed costs, was $13 million lower than expected.

Due to the increase in costs, SVP transferred $10 million from its reserve funds to cover these higher operating expenses. In 2012, SVP's bond rating was raised to A+ with a stable outlook by both Fitch Ratings and Standard & Poors. This increase in ratings was in part based on SVP maintaining sufficient operating cash flow to cover debt service, replenishing the Rate Stabilization Fund (RSF) to $120 million by FY 14, and the willingness of City Council to adjust rates as necessary. The RSF balance was at $87 million at the end of FY 14. This rate increase will increase the RSF to $120 million by the end of FY 18. SVP is implementing additional cost reduction efforts to accelerate this outcome.

Staff proposes that rates and charges for all classes of customers be increased on a uniform percentage basis, because the underlying cost increases triggering this rate increase proposal are incurred on behalf of all customers.

ADVANTAGES AND DISADVANTAGES OF ISSUE:
The proposed rate increase will produce the needed revenue to offset cost increases from rising power and transmission costs, and start to replenish SVP's reserve fund. This increase meets the overarching City objective that its enterprise funds remain fiscally sound. Santa Clara will continue to have the lowest municipal utility and system average electric rates in California. Additionally, the combined water, sewer, and electric rates remain the lowest in the nine Bay Area counties. If customers make no other changes, they will see an increase in their electric utility bills of five percent.

ECONOMIC/FISCAL IMPACT:
The rate increase is anticipated to generate, on an annualized basis, an additional $6.7 million in fiscal year 2015 and an additional $20 million in fiscal year 2016 and thereafter.

RECOMMENDATION:
That the Council adopt a Resolution Amending Rate Schedules for utility service applicable to all classes of customers, to increase electric rates and charges in each rate schedule by five percent (5%) beginning January 1, 2015 (Bill Cycle 632).

APPROVED:

John C. Roukema
Director of Electric Utility

Julio J. Fuentes
City Manager

Documents Related to this Report:
1) ***Resolution Adopting Rate Schedules for Utility Service***
2) ***Rate Schedules to be effective January 1, 2015***

RESOLUTION NO. ____

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING CITY RATE SCHEDULES FOR ELECTRIC UTILITY SERVICE TO INCREASE ELECTRIC RATES AND CHARGES IN EACH RATE SCHEDULE BY FIVE PERCENT (5.0%) BEGINNING JANUARY 1, 2015 (BILL CYCLE 632)

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, all electric energy and power furnished to customers of the Electric Department of the City of Santa Clara, California, doing business as Silicon Valley Power, shall be supplied and charged to such customers, and paid for by such customers in accordance with certain electric rate schedules, tariffs and rules and regulations adopted and amended from time to time by the City Council; and

WHEREAS, Chapter 13.05 of the Santa Clara City Code ("Code") pertains to Operation of an Electric Utility, and Section 13.05.040 of the Code provides that the City Council may, by resolution, from time to time as it deems necessary for the administration or implementation of the intent of this chapter, review, revise, adopt and/or promulgate new or amended rate schedules and regulations concerning the operation or administration of the Electric Utility; and

WHEREAS, a City Council Agenda Report ("Staff Report"), which included a proposal to amend the City of Santa Clara Electric Rate Schedules ("Rate Schedules"), was heard by the City Council at its regularly scheduled meeting on November 18, 2014; and

WHEREAS, the City Council reviewed and approved the recommendations contained in the Staff Report, which included the recommendation that the City Council amend the Rate Schedules for utility service to increase electric rates and charges in such Rate Schedules by five percent (5.0%) beginning January 1, 2015.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the Rate Schedules, which are attached to this Resolution and incorporated by reference, are amended to include and memorialize the changes as presented by City Staff to the City Council during its regularly scheduled meeting on November 18, 2014, to increase electric rates and charges in each Rate Schedule by five percent (5.0%) beginning January 1, 2015 (Bill Cycle 632);

2. That the amended Rate Schedules attached to this Resolution are hereby approved and adopted by the City Council and said Rate Schedules designated to become effective and operative January 1, 2015 shall become effective and operative January 1, 2015;

3. That the increases in the electrical rates as indicated in the amended Rate Schedules adopted by the City Council in this Resolution are necessary to enable the Electric Department to offset increased costs due primarily to increased power costs due to the drought, continued increases in transmission expenses; and replenishment of the Rate Stabilization Fund.

4. That a true and correct copy of the Resolution, including amended Rate Schedules, shall be kept on file in the Office of the City Clerk and in the Billing Division of the City Finance Department at all times while the rates are effective and, until further amended or replaced, shall be open to public investigation and inspection during the regular business hours of such offices;

5. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof,

irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

6. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 18th DAY OF NOVEMBER, 2014, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:_____

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:
1. Rate Schedules to be Effective January 1, 2015

CITY OF SANTA CLARA
SILICON VALLEY POWER
RATE SCHEDULES
TO BE EFFECTIVE JANUARY 2015

RATE SCHEDULE D-1
DOMESTIC SERVICE

RATE SCHEDULE C-1
GENERAL SERVICE

RATE SCHEDULE CB-1
GENERAL SERVICE DEMAND METERED

RATE SCHEDULE CB-3
LARGE GENERAL SERVICE DEMAND METERED

RATE SCHEDULE SB-1
LARGE STANDBY GENERAL SERVICE
DEMAND METERED

RATE SCHEDULE P-1
GENERAL POWER-CONNECTED LOAD BASE

RATE SCHEDULE SL-1
STREET AND HIGHWAY LIGHTING

RATE SCHEDULE SL-2
PRIVATE OUTDOOR AREA LIGHTING SERVICE

RATE SCHEDULE TC
TRAFFIC CONTROL SERVICE

RATE SCHEDULE IC
IRRIGATION CONTROLLER SERVICE

RATE SCHEDULE TS-1
NON-METERED TRANSIT SHELTER
ADVERTISEMENT LIGHTING

RATE SCHEDULE A
MUNICIPAL WATER DEPARTMENT

NOTE: RATE SCHEDULE GMC ELIMINATED EFFECTIVE JANUARY 2006

CITY OF SANTA CLARA
SILICON VALLEY POWER

RATE SCHEDULE D-1 DOMESTIC SERVICE	Sheet 1 of 2

DESCRIPTION OF SERVICE

This schedule is applicable to single phase residential service for single-family dwellings, condominium house meters, townhouse house meters, cooperative apartment house meters, flats and apartments separately metered by Silicon Valley Power. The Time Of Use (TOU) Option is available to all customers. Customers who utilize the TOU option will be responsible for the installed cost of a TOU meter, as set forth in Note (B) below.

This schedule is not applicable for services to common areas of apartment houses.

RATES:

	Non-Time of Use	Time of Use Option
METER CHARGE, per meter per month	$3.20	$3.20

ENERGY CHARGE (to be added to the Customer Charge)

	Non-Time of Use	Time of Use Option	
		Peak	Off-Peak
First 300 kWh, per kW	$0.09787	$0.11259	$0.08581
Excess Over 300 kWh, per kWh	$0.11251	$0.12724	$0.10045

SURCHARGES

Public Benefits Charge and State Surcharge, as set forth in Note A, will be added to the above charges.

NOTES:

(A) SURCHARGES:

PUBLIC BENEFITS CHARGE: The Public Benefits Charge is a nonbypassable surcharge imposed on all sales of electricity and electrical services. It is used to fund public goods research, development, and demonstration, as well as, energy efficiency activities, renewable energy and low income assistance programs. The surcharge is equal to the sum of the Meter Charge and the Energy Charge times 0.0285.

STATE SURCHARGE: The state surcharge is required by California state law, and supports funding for the California Energy Commission. The surcharge is equal to kWh billed times $0.00029 per kWh.

(B) TIME OF USE (TOU) OPTION:

Customers who select the time of use option will pay a one-time TOU Meter Installation Charge, which is the cost of a TOU meter, plus its installation cost. This Charge is set forth in the City of Santa Clara Municipal Fee Schedule. The manufacturer and model of such meter shall be at the sole discretion of

RATE SCHEDULE D-1 DOMESTIC SERVICE	Sheet 2 of 2

Silicon Valley Power. Time of use periods are as set forth below:

Peak Period: Monday through Saturday, except holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day), beginning at 6:00 AM and ending at 10:00 PM.

Off-Peak Period: All other hours.

The TOU meter is used to measure kWhr usage in the peak and off-peak periods. The ratio of peak kWhr to total kWhr will be used to determine the portion of the First 300 kWhr that falls in the peak period. This ratio will also be used to determine the portion of kWhr usage above 300 kWhr that falls in the peak period.

CITY OF SANTA CLARA
SILICON VALLEY POWER

RATE SCHEDULE C-1 GENERAL SERVICE	Sheet 1 of 2

DESCRIPTION OF SERVICE:
This schedule is applicable to alternating current service through one meter, for power and heating alone or combined with lighting. This schedule is applicable to customers who do not qualify for Schedule CB-1, CB-3 or D-1. The Time Of Use (TOU) Option is available to all customers. Customers who utilize the TOU option will be responsible for the installed cost of a TOU meter, as set forth in Note (B) below.

RATES:

SINGLE-PHASE SERVICE:

	Non-Time of Use	Time of Use Option	
CUSTOMER CHARGE, per meter per month:	$ 3.47	$ 3.47	
ENERGY CHARGE: (In addition to the Customer Charge)			
		Peak	Off-Peak
First 800 kWh, per kWh	$0.16688	$0.18162	$0.15483
Excess Over 800 kWh, per kWhr	$0.15150	$0.16624	$0.13944

MINIMUM CHARGE: $3.47 per meter per month but not less than $2.14 per month per kVA of connected welder load, rectifier load, x-ray and x-ray type equipment load, fusing machine load, and other types of welding equipment load.

THREE-PHASE SERVICE: The single-phase rate plus $2.72 per meter per month.

MINIMUM CHARGE: $6.18 per month, but not less than $2.14 per month per kVA of connected welder load and per horsepower of polyphase connected load, rectifier load, x-ray and x-ray type equipment load, fusing machine load, and other types of welding load.

SURCHARGES:

Public Benefits Charge and State Surcharge, as set forth in Note A, will be added to the above charges.

NOTES:

(A) SURCHARGES:

PUBLIC BENEFITS CHARGE:
The Public Benefits Charge is a nonbypassable surcharge imposed on all sales of electricity and electrical services. It is used to fund public goods research, development, and demonstration, as well as, energy efficiency activities, and low income assistance programs. The surcharge is equal to the sum of the Customer Charge and the Energy Charge times 0.0285.

STATE SURCHARGE: The state surcharge is required by California state law, and supports funding for

the California Energy Commission. The surcharge is equal to kWh billed times $0.00029 per kWh.

(B) TIME OF USE (TOU) OPTION:
Customers who select the time of use option will pay a one-time TOU Meter Installation Charge, which is the cost of a TOU meter, plus its installation cost. This Charge is set forth in the City of Santa Clara Municipal Fee Schedule. The manufacturer and model of such meter shall be at the sole discretion of Silicon Valley Power. Time of use periods are as set forth below:

Peak Period: Monday through Saturday, except holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day), beginning at 6:00 AM and ending at 10:00 PM.

Off-Peak Period: All other hours.

The TOU meter is used to measure kWhr usage in the peak and off-peak periods. The ratio of peak kWhr to total kWhr will be used to determine the portion of the First 800 kWhr that falls in the peak period. This ratio will also be used to determine the portion of kWhr usage above 800 kWhr that falls in the peak period.

CITY OF SANTA CLARA
SILICON VALLEY POWER

RATE SCHEDULE CB-1 GENERAL SERVICE DEMAND METERED	Sheet 1 of 3

DESCRIPTION OF SERVICES:
This schedule is applicable to commercial or industrial services whose monthly use of energy has exceeded 8,000 kWh for three (3) consecutive months, or where the initial connected load indicates use above 8,000 kWh per billing period. When either of these qualifications has been met, this schedule as well as a Maximum Demand meter will be installed as promptly as is practicable. Both the Schedule CB-1 and the Maximum Demand meter will be continued in service until the monthly use of energy has fallen below 6,000 kWh for 12 consecutive months. At that time, and at the option of Silicon Valley Power, Schedule C-1 will be applicable and the Maximum Demand meter may be removed. Also, this schedule is applicable to those customers that were served under Schedule CB-2 for a period of (15) years or more. The Time of Use Option is available to all customers. Customers who utilize the TOU option will be responsible for the installed cost of a TOU meter, if necessary, as set forth in Note (E) below.

RATES:

	Non-Time of Use	Time of Use	
CUSTOMER CHARGE, per meter per month	$62.98	$62.98	
DEMAND CHARGE:			
		Time of Use	
		Peak	Off-Peak
All kW of Billing Demand, per kW	$7.62	$7.62	$0.00
ENERGY CHARGE:	Non-Time of Use	Time of Use	
		Peak	Off-Peak
All kWh, per kWh	$0.10117	$0.11591	$0.08912

MINIMUM CHARGE:
The Demand Charge constitutes the Minimum Charge.

SURCHARGES:
Public Benefits Charge and State Surcharge, as set forth in Note D, will be added to the above charges.

NOTES:

(A) MAXIMUM DEMAND:
The Maximum Demand in any month will be the average kW delivery of the 15-minutes interval in which such delivery is greater than in any other 15-minute interval in the month, provided, however, that in case the load is intermittent or subject of violent fluctuations, Silicon Valley Power may use a 5-minute interval instead of a 15-minute interval.

(B) BILLING DEMAND:
The Billing Demand to be used in computing charges under this schedule will be the mean of the Maximum Demand for the current month and the highest such demand occurring in the year ending with current month.

(C) VOLTAGE:
Single-phase or three-phase service on this schedule will be supplied at the secondary voltage available, or at the option of the customer, at the primary voltage available, subject to the rules and regulations for electric service.

(D) SURCHARGES:

PUBLIC BENEFITS CHARGE: The Public Benefits Charge is a nonbypassable surcharge imposed on all sales of electricity and electrical services. It is used to fund public goods research, development, and demonstration, as well as, energy efficiency activities, and low income assistance programs. The surcharge is equal to the sum of the Customer Charge, Demand Charge and Energy Charge, including adjustment for Primary Voltage and Power Factor, times 0.0285.

STATE SURCHARGE: The state surcharge is required by California state law, and supports funding for the California Energy Commission. The surcharge is equal to kWh billed times $0.00029 per kWh.

(E) TIME OF USE OPTION:
Customers who select the time of use option will pay a one-time TOU Meter Installation Charge, which reflects the cost difference (including installation) between a non-time of use meter and a time of use meter. This Charge is set forth in the City of Santa Clara Municipal Fee Schedule. The manufacturer and model of such meter shall be at the sole discretion of Silicon Valley Power. Time of use periods are as set forth below:

Peak Period: Monday through Saturday, except holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day), beginning at 6:00 AM and ending at 10:00 PM.

Off-Peak Period: All other hours.

The TOU meter is used to measure kWhr and kW in the peak and off-peak periods.

(F) PRIMARY VOLTAGE DISCOUNT:
When delivery is made at the same voltage as that of the distribution line from which the service is supplied, a discount of $0.95 per kW of Billing Demand for 12kV line voltages will be allowed, provided, however, Silicon Valley Power is not required to supply service at a particular line voltage where it has

(or will install) ample facilities for supplying at another voltage equally or better suited to the customer's electrical requirements. Silicon Valley Power retains the right to change its line voltage at any time, after reasonable advance notice to any customer receiving a discount hereunder and affected by such change, and such customer then has the option to change their system so as to receive service at the new line voltage or to accept service (without voltage discount) through transformers to be supplied by Silicon Valley Power.

(G) POWER FACTOR:
When the Billing Demand has exceeded 300 kW for three consecutive months and thereafter until it has fallen below 200 kW for twelve consecutive months, bills will be adjusted for weighted monthly average Power Factor as follows:

The total charge (except when Minimum Charge only) for any month as computed on the above rates will be decreased or increased, respectively, by 0.1% for each 1% that the average Power Factor of customer's load in that month, was greater or less than 85%, such average Power Factor to be computed (to the nearest whole percent) from the ratio of lagging kilovolt-ampere-hours to kilowatt-hours consumed in the month.

(H) OFF-PEAK DEMAND – NON TIME OF USE:
Any customer may, upon request, have their Maximum Demand measured by a recording type meter, and all demands occurring between 10:00 PM and 6:00 AM of the following day and on Sundays and legal holidays will not be counted in determining the Billing Demand.

CITY OF SANTA CLARA
SILICON VALLEY POWER

RATE SCHEDULE CB-3 LARGE GENERAL SERVICE DEMAND METERED	Sheet 1 of 3

DESCRIPTION OF SERVICE

This schedule is applicable to industrial and commercial services whose monthly billing demands have exceeded 4,000 kilowatts for three consecutive months, or where the initial connected load indicates a demand above 4,000 kilowatts. Customers served under this Schedule CB-3 will be continued in service until the monthly billing demand has fallen below 4,000 kilowatts for 12 consecutive billing periods. The Time of Use Option is available to all customers. Customers who utilize the TOU option will be responsible for the installed cost of a TOU meter, if necessary, as set forth in Note (E) below.

RATES:	Non-time of use	Time of Use	
CUSTOMER CHARGE – per meter per month	$62.98	$62.98	
DEMAND CHARGE:	Non-time of use	Time of Use	
		Peak	Off-Peak
All kW of Billing Demand, per KW	$10.15	$10.15	$0.00
ENERGY CHARGE:	Non-time of use	Time of Use	
		Peak	Off-Peak
All kWh, per kWhr	$0.09318	$0.10789	$0.08111

MINIMUM CHARGE:
The Demand Charge constitutes the Minimum Charge.

SURCHARGES:
Public Benefits Charge and State Surcharge, as set forth in Note D, will be added to the above charges.

NOTES:

(A) MAXIMUM DEMAND:
The Maximum Demand in any month will be the average kW delivery of the 15-minute interval in which such delivery greater than in any other 15-minute interval in the month, provided, however, that in case the load is intermittent or subject to violent fluctuations, Silicon Valley Power may use a 5-minute instead of a 15-minute interval.

(B) BILLING DEMAND:
The Billing Demand to be used in computing charges under this schedule will be the mean of the actual Maximum Demand for the current month and the highest such demand occurring in the year ending with the current month.

(C) VOLTAGE:
Service on this schedule will be supplied at the primary voltage available or, at the option of Silicon Valley Power, at the secondary voltage available, subject to the rules and regulations for electric service.

(D) SURCHARGES:

PUBLIC BENEFITS CHARGE:
The Public Benefits Charge is a non-bypassable surcharge imposed on all sales of electricity and electrical services. It is used to fund public goods research, development, and demonstration, as well as, energy efficiency activities, and low income assistance programs. The surcharge is equal to the sum of the Customer Charge, Demand Charge, and Energy Charge, including adjustment for primary Factor and Primary Voltage, times 0.0285.

STATE SURCHARGE: The state surcharge is required by California state law, and supports funding for the California Energy Commission. The surcharge is equal to kWh billed times $0.00029 per kWh.

(E) TIME OF USE OPTION:
Customers who select the time of use option will pay a one-time TOU Meter Installation Charge, which reflects the cost difference (including installation) between a non-time of use meter and a time of use meter. This Charge is set forth in the City of Santa Clara Municipal Fee Schedule. The manufacturer and model of such meter shall be at the sole discretion of Silicon Valley Power. Time of use periods are as set forth below:

Peak Period: Monday through Saturday, except holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day), beginning at 6:00 AM and ending at 10:00 PM.

Off-Peak Period: All other hours.

The TOU meter is used to measure kWhr and kW in the peak and off-peak periods.

(F) PRIMARY VOLTAGE DISCOUNT:
When delivery is made at the same voltage as that of the distribution line from which the service is supplied, a discount of $0.95 per kW of Billing Demand for 12kV or higher available line voltages will be allowed, provided, however, Silicon Valley Power is not required to supply service at a particular line voltage where it has (or will install) ample facilities for supplying at another voltage equally or better suited to the customer's electrical requirements. Silicon Valley Power retains the right to change its line voltage at any time, after reasonable advance notice to any customer receiving a discount hereunder and affected by such change, and such customer then has the option to change their system so as to receive service at the new line voltage or to accept service (without voltage discount) through transformers to be supplied by Silicon Valley Power.

RATE SCHEDULE CB-3 LARGE GENERAL SERVICE DEMAND METERED	Sheet 3 of 3

(G) POWER FACTOR:
The total charge (except when Minimum Charge only) for any month as computed on the above rates will be decreased or increased, respectively, by 0.1% for each 1% that the average Power Factor of customer's load in that month is greater or less than 85%. Such average Power Factor to be computed (to the nearest whole percent) from the ratio of lagging kilovolt-ampere-hours to kilowatt-hours consumed in the month, provided, however, that no Power Factor correction will be made for any month when customer's Maximum Demand is less than 10% of the highest demand in the preceding eleven months.

(H) OFF-PEAK DEMAND:
Any customer served under this Rate Schedule may, upon request, have their Maximum Demand measured by a recording type meter, and all demands occurring between 10:00 P.M. and 6:00 A.M. of the following day and on Sundays and legal holidays will be discounted in determining the Billing Demand.

CITY OF SANTA CLARA
SILICON VALLEY POWER

RATE SCHEDULE SB-1 LARGE STANDBY GENERAL SERVICE DEMAND METERED	Sheet 1 of 2

DESCRIPTION OF SERVICE

This schedule is applicable to standby service for industrial and commercial services whose monthly billing demands have exceeded 4000 kilowatts for three consecutive months, or where the initial connected load indicates a demand above 4000 kilowatts.

RATES:	Per Meter Per Month
METER CHARGE:	$62.98
DEMAND CHARGE:	
All kW of Billing Demand	$10.15 per kW
ENERGY CHARGE:	
All kWh	$0.09318 per kWh

In no event shall the average rate per kWh be less than the average rate per kWh as computed on the applicable Industrial Rate if the customer were taking firm service.

SURCHARGES:

Public Benefits Charge and State Surcharge, as set forth in Note F, will be added to the above charges.

NOTES:

(A) MAXIMUM DEMAND:

The Maximum Demand in any month will be the average kW delivery of the 15-minute interval in which such delivery greater than in any other 15-minute interval in the month, provided, however, that in case the load is intermittent or subject to violent fluctuations, Silicon Valley Power may use a 5-minute instead of a 15-minute interval.

(B) BILLING DEMAND:

The Billing Demand to be used in computing charges under this schedule will be the greater of the actual Maximum Demand for the current month or 85% of the previous peak load. For new customers, the Billing Demand shall be 85% of the connected load until the actual demand exceeds this amount. If the actual demand does not exceed 85% of the connected load, the customer may request a reevaluation of the Billing Demand. This request will be considered not more often than once every twelve months.

(C) RESTORATION OF SERVICE FOLLOWING INTERRUPTION:

When customer requests Standby Service to begin, or when customer generation is restored, customer must notify the System Dispatcher before receiving Standby Service or restoring its own

generation over 2,000 kW.

(D) SYSTEM DISPATCHER DISCRETION:
The System Dispatcher has full discretion as to the scheduling and priority of restoration of service to the customer.

(E) VOLTAGE:
Service on this schedule will be supplied at the primary voltage available or, at the option of Silicon Valley Power, at the secondary voltage available, subject to the rules and regulations for electric service.

(F) SURCHARGES:

PUBLIC BENEFITS CHARGE:
The Public Benefits Charge is a nonbypassable surcharge imposed on all sales of electricity and electrical services. It is used to fund public goods research, development, and demonstration, as well as, energy efficiency activities, renewable energy, and low income assistance programs. The surcharge is equal to the sum of the Meter Charge, Demand Charge and Energy Charge, including adjustment for Primary Factor and Primary Voltage, times 0.0285.

STATE SURCHARGE: The state surcharge is required by California state law, and supports funding for the California Energy Commission. The surcharge is equal to kWh billed times $0.00029 per kWh.

(G) POWER FACTOR:
The total charge (except when Minimum Charge only) for any month as computed on the above rates will be decreased or increased, respectively, by 0.1% for each 1% that the average Power Factor of customer's load in that month is greater or less than 85%. Such average Power Factor to be computed (to the nearest whole percent) from the ratio of lagging kilovolt-ampere-hours to kilowatt-hours consumed in the month, provided, however, that no Power Factor correction will be made for any month when customer's Maximum Demand is less than 10% of the highest demand in the preceding eleven months.

CITY OF SANTA CLARA
SILICON VALLEY POWER

RATE SCHEDULE P-1 GENERAL POWER-CONNECTED LOAD BASIS	Sheet 1 of 2

DESCRIPTION OF SERVICE:
This schedule is applicable to alternating current used in motors, heating and cooking devices, and rectifiers for battery charging; but is not applicable to current used for lighting, either directly or through transforming or converting equipment.

RATES:

ENERGY CHARGE

HP of Connected Load	First 50 kWh per HP	Next 50 kWh per HP	Next 150 kWh per HP	all over 250 kWh per HP
2 - 9.9 HP	$0.22996	$0.16391	$0.13202	$0.12351
10 - 24.9 HP	$0.21469	$0.16189	$0.12754	$0.12351
25 HP and over	$0.19360	$0.15540	$0.12570	$0.12129

MINIMUM CHARGE:

$3.47 per HP per month for the first 50 HP plus $2.30 per HP per month for any excess, provided, however, that in no case will the minimum charge be less than $6.86 per month for single phase service and $10.29 per month for three phase service.

SURCHARGES:

Public Benefits Charge and State Surcharge, as set forth in Note A, will be added to the above charges.

NOTES:

(A) SURCHARGES:

PUBLIC BENEFITS CHARGE:
The Public Benefits Charge is a nonbypassable surcharge imposed on all sales of electricity and electrical services. It is used to fund public goods research, development, and demonstration, as well as, energy efficiency activities, renewable energy, and low income assistance programs. The surcharge is equal to the Energy Charge times 0.0285.

STATE SURCHARGE: The state surcharge is required by California state law, and supports funding for the California Energy Commission. The surcharge is equal to kWh billed times $0.00029 per kWh.

(B) VOLTAGE:
Single-phase or three-phase service on this schedule will be supplied at the voltage available, subject to Silicon Valley Power's rules and regulations for electric service.

RATE SCHEDULE P-1 GENERAL POWER-CONNECTED LOAD BASIS	Sheet 2 of 2

(C) CONNECTED LOAD:
For purposes of this schedule, this is the sum of the rated capacities of all of the customer's equipment that may be connected to the Silicon Valley Power's lines at the same time, computed to the nearest one-tenth of a horsepower. Motors will be counted at their name plate ratings in horsepower and other devices at their name plate ratings converted to horsepower at 1kVA per HP. Where such equipment includes a transformer used to supply other devices, the rating of such transformer will be used in lieu of the devices supplied by it. Where the original nameplate of any motor device has been removed or altered, the manufacturer's catalog rating will be used, or the capacity may be determined by test.

(D) GUARANTEED LOAD:
Any customer may obtain rates and conditions of service for connected load larger than his actual connected load by guaranteeing the charges (including the minimum charge) applicable to such larger connected load. Such a guaranteed load may not be changed more than once per year.

CITY OF SANTA CLARA
SILICON VALLEY POWER

RATE SCHEDULE SL-1 STREET AND HIGHWAY LIGHTING	Sheet 1 of 4

APPLICATION:
This schedule is applicable for service to street and highway lighting systems which illuminate publicly-dedicated streets and highways by means of incandescent filament, mercury vapor, or high pressure sodium vapor lamps. This schedule is applicable only to those instances where the customer owns the lighting fixtures, street light supporting structure and interconnecting circuits.

CLASSES OF SERVICES OFFERED:

Class A. Silicon Valley Power provides energy and switching* only.

Class B. Silicon Valley Power provides energy, switching* and maintenance service for lamps and glass.

Class C. Silicon Valley Power provides energy, switching* and maintenance service for complete lighting system.

BURNING SCHEDULE: All night (unless otherwise specified).

RATES (Per Lamp)

Incandescent Lamps		kWh\lamp	Class A	Class B	Class C	Half-hour Adjustment (All Classes)
4,000 lumens		94	$18.43	$20.13	$21.14	$0.442
6,000 lumens		130	26.01	27.65	28.86	0.611
Mercury Vapor Lamps						
Watts	Initial lumens					
175	7,500	61	$13.99	$ 14.86	$16.23	$ 0.314
250	11,000	88	19.31	20.40	21.83	0.426
400	21,500	140	29.41	30.40	31.78	0.655
700	37,000	245	48.86	50.90	52.35	1.143
1,000	57,000	350	69.14	70.93	72.30	1.597

* Switching Service is closed to new installations.

Date Effective: January 2015 **Bill Cycle 632, Series 100**	**Resolution No. ____**
Supersedes Rate Effective: January 2014 **Bill Cycle 620, Series 100**	**Resolution No. 13-8086**

RATE SCHEDULE SL-1 STREET AND HIGHWAY LIGHTING	Sheet 2 of 4

High Pressure Sodium Vapor Lamps

Watts	Initial lumens	kWh\lamp	Class A	Class B	Class C	Half-hour Adjustment (All Classes)
100	8,500	35	$7.35	$ 9.14	$10.48	$ 0.200
150	16,000	53	13.74	15.83	16.88	0.306
250	30,000	88	21.32	25.88	27.24	0.471
400	50,000	140	30.81	33.92	35.33	0.702

SURCHARGES:
The above rates include an adjustment for a Public Benefits Charge and State Surcharge as defined in Note A.

NOTES:

(A) SURCHARGES:

PUBLIC BENEFITS CHARGE:
The Public Benefits Charge is a nonbypassable surcharge imposed on all sales of electricity and electrical services. It is used to fund public goods research, development, and demonstration, as well as, energy efficiency activities, renewable energy, and low income assistance programs. The surcharge is equal to 2.85% of the otherwise applicable rate.

STATE SURCHARGE: The state surcharge is required by California state law, and supports funding for the California Energy Commission. The surcharge is equal to $0.00029 per kWh.

(C) TYPE OF SERVICE:
This rate schedule is applicable to multiple street lighting systems. Multiple current will be supplied at nominal voltage level of 120/240 volts or 120/208 volts at the discretion of Silicon Valley Power, three-wire, single phase.

(D) ANNUAL OPERATING SCHEDULES:
The above rates for All-Night service assume 11 hours operation per night and apply to lamps which will be turned on and off once each night in accordance with a regular operating schedule agreeable to the customer but not exceeding 4,100 hours per year.

(E) OPERATING SCHEDULES OTHER THAN ALL-NIGHT:
Rates for regular operating schedules other than full all-night will be the All-Night rate plus or minus, respectively, the half-hour adjustment for each half-hour more or less than an average of

11 hours per night. This adjustment will apply only to lamps on regular operating schedules of not less than 1,095 hours per year, or 3 hours per night, nor more than 4,500 hours per year.

(F) OVERHEAD DELIVERY POINT:
Delivery will be made from Silicon Valley Power's existing overhead lines without extension to the customer's system or at a point mutually agreed upon, not to exceed 150 feet except in special situations at Silicon Valley Power's convenience. Silicon Valley Power will provide at its expense an overhead service drop to a customer-owned inter-connected group of lamps having a connected load of not less than 2 kW. For a customer-owned inter-connected group of lamps having a connected load of less than 2 kW or individual customer electroliers with a self-contained photo cell switch, Silicon Valley Power will connect the customer's overhead service wire to Silicon Valley Power's overhead lines at the customer's expense.

(G) UNDERGROUND SERVICE:
Silicon Valley Power will provide underground service connection to a mutually agreed upon point from its overhead or underground system to one electrolier of each group of interconnected electroliers provided that the lighting system has been arranged for the least number of practical service points, there is at least 3 kW of connected load, and there are at least ten electroliers in the group. This service connection shall not exceed 25 feet from the base of the Silicon Valley Power pole in an overhead line or 40 feet of an underground line. In the event distances exceed 25 feet from a pole in an overhead system or 40 feet in an underground system, customer shall pay to Silicon Valley Power the actual expense of extending the underground feeder circuitry to the point of connection to Silicon Valley Power's overhead or underground system. In the event the customer requests service to a system of less than 10 electroliers, or less than 3 kW of connected load, customer shall install and own the extension from his system to Silicon Valley Power's distribution system and shall pay Silicon Valley Power the actual costs of connection to the system.

(H) MAINTENANCE:
Class B and C rates include all labor and material necessary for the cleaning or replacement of lamps and glassware, but is limited to glassware such as is commonly used and manufactured in reasonably large quantities. Charges will be made for lamps or glassware requiring replacement more than two (2) times in one year. Under Class C rates Silicon Valley Power will also isolate any trouble in customer's system which has resulted in outages or diminished light output. Silicon Valley Power will make necessary repairs without replacement on accessible wiring between poles and on equipment and wiring in and on poles to keep the system in operating condition. Silicon Valley Power will provide labor for the replacement of material such as ballast's, photo-electric controls, relays, fixtures, individual poles, individual cable runs between poles where such runs are in conduit, and other individual parts of the system. The

customer shall compensate Silicon Valley Power for any materials furnished. The Class C rate does not provide for any major excavation or any major replacement at Silicon Valley Power's expense of circuits, conduits, poles or fixtures owned by the customer.

This schedule does not provide for maintenance to low pressure sodium vapor or metal halide lamps; however, at the request of the customer, Silicon Valley Power will perform any of the routine maintenance described above on a time and material cost basis provided Silicon Valley Power's regular standard maintenance equipment and procedures can be used.

(l) LAMPS OTHER THAN STANDARDS:
Lamps other than the standard types and wattages referred to above may be used in Class A service only and will be billed at an average rate per watt per month of $ 0.087.

CITY OF SANTA CLARA
SILICON VALLEY POWER

RATE SCHEDULE SL-2 PRIVATE OUTDOOR AREA LIGHTING SERVICE	Sheet 1 of 3

APPLICATION

This schedule is applicable to private all night outdoor area lighting service which illuminates privately-owned lands and property supplied from an overhead source. This schedule is applicable only to those instances where Silicon Valley Power installs, owns and maintains all facilities required to service in accordance with the Municipal Code of the City of Santa Clara and the Rules and Regulations for Electric Service. Service to lamps hereunder shall be continuous and temporary disconnection shall not be made.

BURNING SCHEDULE:

Each lamp shall be turned on and off once each night from dusk to dawn in accordance with a regular burning schedule, not to exceed forty-one hundred (4,100) hours per year.

RATES:

	Rate per Lamp Per Month
250 Watt mercury-vapor floodlight or 150 Watt high pressure sodium vapor floodlight	$29.72

This rate schedule is applicable to alternating current service at a frequency of approximately 60 cycles, 120 or 240 volts, single phase. The 250 Watt mercury-vapor floodlamp type luminaire shall be mounted from a bracket attached or supported to Silicon Valley Power-owned wood poles and actuated by a photo-electric cell.

SURCHARGES:

Public Benefits Charge and State Surcharge, as defined below in Note A, is included in the above charge.

Public Benefits Charge	$0.83 per Lamp
State Surcharge	$0.02
Total	$0.85

NOTES:

(A) SURCHARGES:

PUBLIC BENEFITS CHARGE:

The Public Benefits Charge is a nonbypassable surcharge imposed on all sales of electricity and electrical services. It is used to fund public goods research, development, and demonstration, as well as, energy efficiency activities, renewable energy, and low income assistance programs. The surcharge is equal to 2.85% of the otherwise applicable rate.

STATE SURCHARGE:

The state surcharge is required by California state law, and supports funding for the California Energy Commission. The amount included is equal to estimated kWh per lamp times $0.00029 per kWh.

(B) BILLING:
Presentation of billing shall coincide with that of the customer's primary premise account, where such account exists at the same location and no bill will be rendered for the first partial month of service. If the customer does not have a primary premise account, a monthly bill shall be prepared and presented in accordance with the rate and terms of this schedule.

No credit will be given for non-burning lamp time resulting from a fixture failure of any cause which is repaired by Silicon Valley Power in a reasonable period of time. No billing shall be apportioned among two or more customers or tenants. At the customer's option, charges may be paid in advance.

(C) CONTRACTS:
When service is requested by a tenant under this schedule, Silicon Valley Power may require the property owner(s) to enter into a contract with Silicon Valley Power concerning placement of special lighting facilities before service is established.

(D) NOTIFICATION AND REMOVAL:
The latest effective Schedule SL-2 is applicable until canceled on thirty (30) days prior written notice by the customer, or by Silicon Valley Power, at which time the light will be removed.

(E) INSTALLATION - MATERIALS AND MAINTENANCE:
Silicon Valley Power will not install floodlight luminaries for private use at the rate established in this schedule on anything but Silicon Valley Power's wood poles, supporting lines and guys existing on easement for Silicon Valley Power facilities.

Silicon Valley Power will not install any material for private use other than the floodlight, mastarm or bracket, and necessary wire, moulding and other materials necessary to connect energy to the floodlight from the secondary line. Said installation shall not exceed an extension of ten (10) feet, including the mastarm or bracket from the pole measured at right angles to the secondary line.

Upon receipt of notice from a customer of the failure of a lamp to operate as scheduled, Silicon Valley Power will, within a reasonable period of time, make the necessary repairs during normal working hours. It shall be the responsibility of the customer to notify Silicon Valley Power of any malfunctions.

(F) EXTENDING SECONDARY:
Silicon Valley Power shall extend its secondary lines one span to supply energy not to exceed 150 feet to the mercury-vapor floodlight at the basic rate in this schedule at no extra cost to the customer.

Additional extensions of secondary facilities shall be limited to three spans, but not to exceed six hundred (600) feet total. The cost of the material, labor and equipment for such extension shall be computed and added to the billing for the first month.

RATE SCHEDULE SL-2 PRIVATE OUTDOOR AREA LIGHTING SERVICE	Sheet 3 of 3

(G) RELOCATION:
Silicon Valley Power shall, upon customer's written request, relocate its lighting facilities, provided that the customer reimburses Silicon Valley Power for all costs incurred by Silicon Valley Power to complete such relocation.

CITY OF SANTA CLARA
SILICON VALLEY POWER

RATE SCHEDULE TC TRAFFIC CONTROL SERVICE	Sheet 1 of 2

APPLICATION:
This schedule is applicable to non-metered service for traffic directional sign or signal lighting systems owned by governmental agencies and located on outdoor publicly owned street, highways and places.

RATES:

SERVICE CHARGE:

For each Standard Service Connection:	$19.49 per 2 or 3-signal head per month $19.49 per pedestrian signal unit per month
Minimum Charge:	$19.49 per month
For each Red LED Service Connection:	$14.24 per 2 or 3-signal head per month $14.24 per pedestrian signal unit per month
Minimum Charge:	$14.24 per month
For each Red and Green LED Service Connection:	$10.33 per 2 or 3-signal head per month $10.33 per pedestrian signal unit per month
Minimum Charge:	$10.33 per month

SURCHARGES:

Public Benefits Charge and State Surcharge, as defined below in Note A, are included in the above charges.

	Standard	Red LED	Red+Green LED
Public Benefits Charge	$0.53	$0.34	$0.29
State Surcharge	$0.01	$0.01	$0.00
Total	$0.54	$0.35	$0.29

NOTES:

(A) SURCHARGES:

PUBLIC BENEFITS CHARGE:
The Public Benefits Charge is a nonbypassable surcharge imposed on all sales of electricity and electrical services. It is used to fund public goods research, development, and demonstration, as well as, energy efficiency activities, and low income assistance programs. The surcharge is equal to 2.85% of the otherwise applicable rate.

STATE SURCHARGE: The state surcharge is required by California state law, and supports funding for the California Energy Commission. The amount included is equal to estimated kWh per signal head times $0.00029 per kWh.

Date Effective: January 2015 **Bill Cycle 632, Series 100**	**Resolution No. ____**
Supersedes Rate Effective: January 2014 **Bill Cycle 620, Series 100**	**Resolution No. 13-8086**

(B) TYPE OF SERVICE:
Energy will be supplied at 120/240 volt single phase service (120/208 volts star in certain localities) unless the customer pays the additional initial cost of a 277/480 volt supply. However, service at 277/480 volts from underground systems will be made available only for new services at the option of Silicon Valley Power when this type of service is practical from Silicon Valley Power's engineering standpoint.

(C) POINT OF DELIVERY:
Delivery will be made from Silicon Valley Power's existing electric lines at a point mutually agreed upon, without extension thereof to customer's system.

(D) SERVICE CONNECTION:
Silicon Valley Power will provide, at its expense, an overhead service drop to the customer-owned system; however, where the customer requests and underground service the customer will install and own the extension from his system to the Silicon Valley Power's nearest junction box or to the base of the pole where service is readily available and will pay the amount, if any, by which the cost of connecting to the Silicon Valley Power's distribution system exceeds the cost of an overhead service drop.

(E) METERING:
Each point of delivery will be billed separately.

(F) SWITCHING AND MAINTENANCE:
Switching and maintenance will be performed by the customer.

CITY OF SANTA CLARA
SILICON VALLEY POWER

RATE SCHEDULE IC IRRIGATION CONTROLLER SERVICE	Sheet 1 of 2

APPLICATION:
This schedule is applicable to non-metered service to irrigation controller or sprinkler controllers located either in public streets, highways, and places, or private areas.

RATES:

SERVICE CHARGE:

For each sprinkler or irrigation controller	$6.49 per unit per month
MINIMUM CHARGE:	$6.49 per month

SURCHARGES:

Public Benefits Charge and State Surcharge, as set forth in Note A, are included in the above charge.

NOTES:

(A) SURCHARGES:

PUBLIC BENEFITS CHARGE:
The Public Benefits Charge is a nonbypassable surcharge imposed on all sales of electricity and electrical services. It is used to fund public goods research, development, and demonstration, as well as, energy efficiency activities, renewable energy, and low income assistance programs. The surcharge is equal to 2.85% of the otherwise applicable rate.

STATE SURCHARGE: The state surcharge is required by California state law, and supports funding for the California Energy Commission. The surcharge is equal to estimated kWh per controller times $0.00029 per kWh.

(B) TYPE OF SERVICE:
Energy will be supplied at 120 volts, single phase, two wire service. Where only other voltages are available, applicant shall pay, in advance, Silicon Valley Power's cost to convert from the available voltage to 120 volts.

(C) POINT OF DELIVERY:
Delivery will be made from Silicon Valley Power's existing electric lines at a point mutually agreed upon, without extension thereof to customer's system.

(D) SERVICE CONNECTION:
Silicon Valley Power will provide overhead or underground service in accordance with the current Rules

and Regulations for Electric Service. However, applicant shall pay to Silicon Valley Power, in advance, the amount, if any, by which Silicon Valley Power's costs to provide underground service exceeds its cost to provide an overhead service.

(E) MAINTENANCE:
Maintenance will be performed by the customer.

CITY OF SANTA CLARA
SILICON VALLEY POWER

RATE SCHEDULE TS-1 NON-METERED TRANSIT SHELTER ADVERTISEMENT LIGHTING	Sheet 1 of 1

DESCRIPTION OF SERVICE:
This rate schedule is applicable to non-metered service provided for transit shelter advertisement lighting on public streets, highways, other public places, and private areas. Under this schedule, each transit shelter with a lighted advertisement feature shall contain no more than a single six-foot, four-lamp high-output fluorescent lighting fixture, or equivalent fixture with a wattage rating of not more than 385 watts, and shall be photosensor controlled so as to provide illumination from dusk to dawn.

RATES:

For each Transit Shelter Advertisement Lighting Fixture	$30.66 per fixture per month

SURCHARGES:
Public Benefits Charge and State Surcharge, as set forth below in Note A, is included in the above charge.

Public Benefits Charge	$0.85
State Surcharge	$0.02
Total	$0.87

NOTES:

(A) SURCHARGES:

PUBLIC BENEFITS CHARGE:
The Public Benefits Charge is a nonbypassable surcharge imposed on all sales of electricity and electrical services. It is used to fund public goods research, development, and demonstration, as well as, energy efficiency activities, renewable energy, and low income assistance programs. The amount included is equal to 2.85% of the otherwise applicable rate.

STATE SURCHARGE: The state surcharge is required by California state law, and supports funding for the California Energy Commission. The surcharge is equal to estimated kWh per shelter times $0.00029 per kWh.

(B) POINT OF DELIVERY:
Delivery will be made from Silicon Valley Power's existing electric lines at a point mutually agreed upon, without extension thereof to customer's system.

(C) MAINTENANCE:
Maintenance will be performed by the customer.

Date Effective: January 2015 **Bill Cycle 632, Series 100**	**Resolution No. ____**
Supersedes Rate Effective January 2014 **Bill Cycle 620, Series 100**	**Resolution No. 13-8086**

CITY OF SANTA CLARA
SILICON VALLEY POWER

RATE SCHEDULE A MUNICIPAL WATER DEPARTMENT	Sheet 1 of 1

DESCRIPTION OF SERVICE:
The schedule is applicable to electricity used by the Municipal Water Department for water and sewer pumping service.

RATES:

All kWh, per kWh	$ 0.09473

SURCHARGE:
Public Benefits Charge and State Surcharge, as set forth in Note A, will be added to the above charge.

NOTES:

(A) SURCHARGES:

PUBLIC BENEFITS CHARGE:
The Public Benefits Charge is a nonbypassable surcharge imposed on all sales of electricity and electrical services. It is used to fund public goods research, development, and demonstration, as well as, energy efficiency activities, renewable energy and low income assistance programs. The surcharge is equal to kWh billed times 2.85%.

STATE SURCHARGE: The state surcharge is required by California state law, and supports funding for the California Energy Commission. The surcharge is equal to kWh billed times $0.00029 per kWh.

Date Effective: January 2015 **Bill Cycle 632, Series 100**	**Resolution No. ____**
Supersedes Rate Effective: January 2014 **Bill Cycle 620, Series 100**	**Resolution No. 13-8086**

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 13B

Santa Clara All-America City 2001

Date: October 28, 2014

To: City Manager for Council Action

From: Director of Parks & Recreation

Subject: Request to Approve, Accept and Appropriate a Donation of $2,500 from Park Eun Joo, Ph.D for the purchase of a new (replacement) park bench and commemorative plaque to be placed in Bowers Park

EXECUTIVE SUMMARY:

Park Eun Joo, Ph.D has offered to donate $2,500 for the purchase of a new (replacement) park bench and commemorative plaque to be placed in Bowers Park. At the October 21, 2014 Parks & Recreation Commission meeting the Commission passed a motion to recommend Council approval of the donation. Approval of the recommendation will authorize the City Manager to accept the donation and authorize the transmittal of a letter of appreciation.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Approval of this donation and allocation of the funds will provide at no cost to the City, funds to purchase a new (replacement) park bench and commemorative plaque to be placed in Bowers Park.

ECONOMIC/FISCAL IMPACT:

There is no cost to accept the donation the City other than administrative staff time and expense.

RECOMMENDATION:

That the Council:

1. Approve and accept a donation of $2,500 from Park Eun Joo, Ph.D for the purchase of a new (replacement) park bench and commemorative plaque to be placed in Bowers Park (532-1132-59650-3001);
2. Approve appropriation of $2,500 for the purchase of a new (replacement park bench and commemorative plaque (532-1132-80300-3001) and,
3. Authorize the transmittal of a letter of appreciation signed by the Mayor and City Manager.

James Teixeira
Director of Parks & Recreation

Certified as to Budget Form: OK. JCH.

Gary Ameling
Director of Finance

APPROVED:

Julio J. Fuentes
City Manager

FIVE COUNCIL VOTES

Documents Related to this Report: None

I:\Parks\Agendas\Donation\2014\Park Bench & Plaque Park Eun Joo 2014a.doc

Meeting Date: 11/18/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 13C

Santa Clara All-America City 2001

Date: November 4, 2014

To: City Manager for Council Action

From: Director of Public Works/City Engineer

Subject: Approval of Transportation Fund for Clean Air 40% Program Manager Grant Agreement with the Santa Clara Valley Transportation Authority and Appropriations and Estimated Revenue for Transportation Fund for Clean Air FY 2014/2015 Funds in the New CIP Project - Saratoga Signal Timing and Interconnect Project

EXECUTIVE SUMMARY:

In January 2014, staff applied for a project under the Transportation Fund for Clean Air (TFCA) 40% Program Manager Fund. The Saratoga Signal Timing and Interconnect Project will install communications infrastructure and upgrade traffic signal control equipment for 4 traffic signals on Saratoga Avenue from Scott Boulevard to Stevens Creek Boulevard.

The City of Santa Clara has received notification of its award of $498,000 from TFCA 40% Program Manager Grant Funds through the Santa Clara Valley Transportation Authority (VTA). The FY 2014/2015 TFCA Funds are to be expended prior to June 30, 2016. Processing the grant agreement (Agreement) to formalize acceptance of the grant funds is necessary before funds are allocated to the City. Capital improvement project (CIP) accounts are needed to receive the grant revenue and to allow the expenditures.

A copy of the agreement can be viewed on the City's website or is available in the City Clerk's Office for review during normal business hours.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Improvement of Saratoga Avenue traffic signals will reduce delays, improve travel times for vehicles and transit, and reduce vehicle emissions.

ECONOMIC/FISCAL IMPACT:

Staff is requesting appropriations totaling $498,000 for this project in the Streets & Highways Fund (533-4433-80300-1375-[G]TFC15), funded by TFCA grants. There will be no additional operation and maintenance cost impacts to the General Fund.

RECOMMENDATION:

That the Council:

1. Approve and authorize the City Manager to execute the Agreement between Santa Clara Valley Transportation Authority and the City of Santa Clara for Transportation Fund for Clean Air grants relating to the design and construction of the Saratoga Signal Timing and Interconnect Project.
2. Approve appropriations in the Saratoga Signal Timing and Interconnect Project (533-4433-80300-1375-[G]TFC15) and estimated revenue from Transportation Fund for Clean Air Funds (533-4433-55580-1375-[G]TFC15) in the amount of $498,000.

Rajeev Batra
Director of Public Works/City Engineer

Certified as to Budget Form: NK

Gary Ameling
Director of Finance/Assistant City Manager

APPROVED:

FIVE COUNCIL VOTES

for Julio J. Fuentes
City Manager

Documents related to this report:
1) Agreement

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
CONGESTION MANAGEMENT PROGRAM
TRANSPORTATION FUND FOR CLEAN AIR
AGREEMENT
FY 2014/15

This agreement ("**Agreement**") by and between the Santa Clara Valley Transportation Authority ("**VTA**") and the City of Santa Clara ("**Sponsor**") shall be effective on the date that this Agreement is fully executed by the parties hereto ("**Effective Date**").

RECITALS

This Agreement is made with reference to the following facts:

A. VTA has been designated by resolutions of the County of Santa Clara as well as a majority of the cities within Santa Clara County as the Program Manager for Santa Clara County Transportation Fund for Clean Air ("**TFCA**") County Program Manager funds under the State of California Health and Safety code §44241.

B. Pursuant to that designation, VTA is responsible for allocating and administering the County of Santa Clara's TFCA County Program Manager Fund ("**County Fund**") to eligible project sponsors in accordance with its agreement with the Bay Area Air Quality Management District ("**BAAQMD**").

C. This Agreement specifies the conditions under which VTA will allocate and administer a grant from the TFCA Program Manager Fund to Sponsor for fiscal year 2014/15.

Now, therefore the parties agree as follows:

AGREEMENT

Section 1. Grant of TFCA Funds; Description of Project

A. Subject to appropriation and receipt of TFCA funds (as further set forth in **Section 9**, below), VTA hereby agrees to allocate to Sponsor a TFCA grant in an amount not to exceed $498,000 (the "**Grant Funds.**") in consideration of Sponsor's agreement to implement and complete the Saratoga Signal Timing & Interconnect project ("**Project**") (further described in the project summary in **Attachment A)**, in accordance with the terms and conditions set forth in this Agreement.

B. In consideration of VTA's providing Sponsor with the Grant Funds, Sponsor hereby agrees to implement and complete the Project in conformance with the terms of this Agreement. In implementing the Project, Sponsor shall comply with the Project schedule and monitoring requirements described in **Attachment A**.

Section 2. Proper Expenditure; Return of Funds

A. Sponsor shall assure that all funds received under this Agreement are expended only in accordance with all applicable provisions of federal, state and local law, and require any other sub-recipients of Grant funds for the Project to do the same.

B. Sponsor shall comply with all TFCA program and project requirements set forth in the BAAQMD's "County Program Manager Fund Expenditure Plan Guidance Fiscal Year Ending 2013," the Funding Agreement between VTA and BAAQMD for FY 2014/15; and the TFCA County Program Manager Fund Policies for FY 2014/15. These documents, including appendices, are incorporated herein and made a part hereof by this reference as if fully set forth herein.

C. Sponsor shall expend no more than 5% of funds received hereunder on administrative costs, per Health and Safety Code, Section 44233.

D. Sponsor shall return to VTA all funds that are not expended in accordance with applicable provisions of law.

E. In addition, Sponsor shall return the TFCA funds to VTA if a project is not maintained and/or operated throughout and until the conclusion of the Project Years of Effectiveness. The Project Years of Effectiveness is the default value stated in Appendix G of BAAQMD's "County Program Manager Fund Expenditure Plan Guidance Fiscal Year Ending 2013" for the applicable project type, unless a different value was approved and shown to yield a Project meeting the cost-effectiveness requirement in the Policies by the Program Manager. The amount of funds returned to the Program Manager shall be calculated on a prorated basis.

Section 3. Term

The term of this Agreement shall be deemed to have commenced retroactively as of June 30, 2014 and continue until either the Project is completed or terminated, or until December 31, 2018. Any requests for additional time to complete Project beyond June 30, 2016 must be submitted in writing to VTA no later than 60 days prior to June 30, 2016.

Section 4. Work Product

Sponsor shall place in the public domain any software, written document, or other product developed with funds received through this Agreement, to the extent not otherwise prohibited by law, and to the extent required by the California Public Records Act (California Government Code section 6250 et seq.).

Section 5. Acknowledgement of Funding Sources

A. Sponsor shall acknowledge VTA and the BAAQMD as project's funding sources during the implementation of a project and to use the VTA and the BAAQMD approved logos as specified below:

(1) The logos shall be used on signs posted at the site of any Project construction.

(2) The logos shall be displayed on any vehicles operated with or obtained as part of the Project.

(3) The logos shall be used on any material intended for public consumption associated with the Project, such as websites and printed materials, including project related transit schedules, brochures, handbooks, maps created for public distribution, and promotional material.

(4) Sponsor will demonstrate to VTA through evidence, such as photographs of vehicles, construction signs and copies of press releases, that the logos are used and displayed as required.

B. VTA shall provide a copy of BAAQMD and VTA logos to Sponsor solely for use in fulfilling the obligations under this Section.

C. Sponsor shall Credit VTA and BAAQMD as a funding source in any related articles, news releases or other publicity materials for the Project that are produced or caused to be produced by Sponsor.

Section 6. Insurance Coverage

Sponsor shall obtain and maintain, throughout the Term of this Agreement, the insurance coverage specified in "Insurance Requirements," Attachment B, and comply with all insurance requirements set forth therein, including the provision of documentation of said insurance coverage. Failure to obtain and maintain the insurance coverage and to comply with all insurance requirements shall be deemed a breach of this Agreement. The sponsor shall forward a copy of the insurance documentation to VTA.

Section 7. Invoicing

Sponsor shall submit invoices at quarterly intervals to VTA for reimbursement of costs incurred to implement the Project. Sponsor shall send requests for reimbursement to VTA Accounts Payable at 3331 North 1st Street, Building A, San José, CA 95134-1927. Sponsor shall include auditable back-up documentation (time sheets, bills, etc.) with each invoice.

Section 8. Reimbursement

A. All funds allocated by VTA to Sponsor shall be on a cost reimbursement basis only. VTA shall pay no funds in advance.

B. Upon review and approval of invoices and documentation, VTA shall, within thirty (30) days of receipt of an invoice that conforms to the requirements set forth in this Agreement, reimburse Sponsor for all eligible expenditures up to the maximum amount described in **Section 1** of this Agreement. Only those project costs incurred by Sponsor on or after July 1, 2014 shall be considered reimbursable expenditures.

C. Funds for the Project described in this Agreement, which are not claimed for reimbursement by invoices submitted prior to June 30, 2016, shall not be available to reimburse Project costs unless a Project schedule, which extends the Project completion date beyond June 30, 2016, had been approved by VTA and BAAQMD as further set forth in Section 3, above.

Section 9. Funds Subject to Appropriation/ Allocation of Funds Contingent on Appropriation

VTA's obligations under the terms of this Agreement are contingent upon and subject to the allocation of TFCA funds to VTA by BAAQMD under VTA's agreement with BAAQMD for approved projects during Fiscal Year 2014/15.

Section 10. Audit by State Auditor

This Agreement shall be subject to the examination and audit of the California State Auditor pursuant to Government Code Section 8546.7 for a period of five years after final payment.

Section 11. Sponsor's Record Keeping

Sponsor shall:

A. Allow VTA staff, BAAQMD staff, their authorized representatives, and their independent auditors, during the term of this Agreement and for five (5) years following completion of each Project, to conduct performance and financial audits of the Project and to inspect the Project. During audits, the Sponsor will make available to the auditor in a timely manner all records relating to Sponsor's implementation of the Project. During inspections, Sponsor will provide, at the request of VTA or BAAQMD, access to inspect the Project and related records.

B. Maintain employee time sheets documenting those hourly labor costs incurred in the implementation of the Project, including both administrative and Project implementation costs, or to establish an alternative method to document staff costs charged to the funded Project.

C. Keep all financial and Project implementation records necessary to demonstrate compliance with this Agreement and the Program. Such records shall include documentation that demonstrates significant progress made for those Program Projects seeking extensions to the completion date. Sponsor shall keep such documents in a central location for a period of five (5) years following completion of the Project.

D. Submit a mid-year progress report to VTA one month after the end of the second quarter of each fiscal year ("**fiscal year**" means the period starting July 1, and ending June 30.) The report shall itemize (a) the expenditure of the funds and (b) progress to date in the implementation of each funded project.

E. Submit a year-end report within one month of the end of each fiscal year until each project is completed and all monitoring requirements have been fulfilled. The report shall itemize (a) the expenditure of the funds, (b) progress to date in the implementation of each funded project and (c) the results of the monitoring of the performance of the Project as specified in Attachment A.

Section 12. Indemnity

Neither VTA nor BAAQMD nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by Sponsor under or in connection with Sponsor's performance of the Project. It is understood and agreed that Sponsor shall fully defend, indemnify, and save harmless VTA and BAAQMD from all liability, loss, expense (including reasonable attorneys' fees), claims for injury or damages, or suits or actions of every name, kind and description brought on, for, or on account of injury to persons, damages to real or personal property or other monetary damages to the extent caused by anything done or omitted to be done by Sponsor under or in connection with the performance of the Project with funds allocated by this Agreement.

Section 13. Review

A. VTA shall review Sponsor's progress in implementing the Project at the end of the sixth (6th) quarter following execution of this Agreement. If progress at the sixth (6th) quarter review is insufficient to implement the Project or to expend the funds within the period described in **Section 2**, VTA shall develop an action plan with the Sponsor to ensure that these funds are not required to be repaid to the County Funds, which may include reprogramming funds to other projects within Santa Clara County to ensure their expenditure prior to the fund expiration date described in **Section 2**.

C. VTA shall provide Sponsor with all BAAQMD-approved Program Manager reporting forms required pursuant to this Agreement.

Section 14. Non-Performance

A. If Sponsor causes all or part of these funds to be subject to repayment to the County Funds as a result of failure to complete a project according to the work scope described in Attachment A, Sponsor's next grant allocation of any kind shall be reduced by the amount lost.

B. Sponsor shall be ineligible for future funding under this program if Sponsor has five or more projects greater than two years old on BAAQMD's annual "Less than 100% complete" list.

Section 15. General Terms and Conditions

A. **Notices.** Any notice required to be given by either party, or which either party may wish to give, shall be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

To VTA: Santa Clara Valley Transportation Authority
Manager, Programming & Grants
3331 North 1st Street
San José, CA 95134-1906

To SPONSOR: City of Santa Clara
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050

B. **Program Liaison.** Within 30 days from the Effective Date of this Agreement, Sponsor shall notify VTA of Sponsor's "**Program Liaison**" and of the Program Liaison's address, telephone number and email address. The Program Liaison shall be the liaison to VTA pertaining to implementation of this Agreement and shall be the contact for information about the Project(s). Sponsor shall notify VTA of the change of Program Liaison or of the Program Liaison's contact information in writing no later than thirty (30) days from the date of any change.

C. **Termination.**

i. **Voluntary.** Either party may terminate this Agreement by giving written notice to the other party. The notice of termination shall specify the effective date of termination, which shall be no less than thirty (30) calendar days from the date of receipt of such notice.

Unless the Parties have agreed to an alternative formula, the VTA will calculate the amount of funds to which the Sponsor is eligible or to which the Sponsor is required to return to VTA, pursuant to the formula set forth in **Section 2D** above. If the VTA has paid the Sponsor more than the amount of such eligible funds, the Sponsor shall pay the funds owed to the VTA within thirty (30) days of the effective date of termination.

If the VTA terminates this Agreement pursuant to this provision, the Sponsor shall cease all work under this Agreement and cease further expenditures of TFCA funds received under this Agreement immediately upon receipt of the notice of termination, except any work permitted to continue, if any,

that is specified in the notice of termination. The VTA will reimburse Sponsor for eligible costs on the Project expended up to the effective date of the termination.

ii. **After Breach.** The VTA may terminate this Agreement for breach. The VTA will deliver a written notice of breach that specifies the date of termination, which will be no less than ten (10) business days from delivery of such notice, and will provide the Sponsor the opportunity to contest such breach within that period of time. The notice of termination will specify the amount of the Total TFCA Funds Awarded that the VTA has paid. The Sponsor shall reimburse any funds owed the VTA within thirty (30) days of the effective date of termination.

Unless this Agreement provides for an alternative reimbursement formula set forth in the Special Project Conditions, the VTA will calculate the amount of funds owed pursuant to the formula set forth in **Section 2D** above..

D. **Survival.** Any provision that by its nature extends beyond the term or termination of this Agreement shall survive the expiration or termination of this Agreement.

E. **Non-Waiver.** The failure of either party to insist upon the strict performance of any of the terms, covenant and conditions of this Agreement shall not be deemed a waiver of any right or remedy that either party may have, and shall not be deemed a waiver of their right to require strict performance of all of the terms, covenants, and conditions thereafter.

F. **Assignment:** Sponsor shall not assign, sell, license or otherwise transfer any rights or obligations under this Agreement without the prior written consent of VTA.

G. **Integration.** This Agreement, including all attachments and references, constitutes the entire Agreement between the parties pertaining to the subject matter contained therein and supersedes all prior or contemporaneous agreements, representations and understandings of the parties relative thereto.

H. **Amendments**. Future amendments and modifications to this Agreement shall be made in writing, and signed by both parties.

I. **Attachments**. Each attachment hereto is incorporated into this Agreement as if fully set forth herein.

J. **Severability**. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions and provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

K. **Warranty of Authority to Execute Agreement.** Each Party to this Agreement represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this Agreement on behalf of the entity that is a party to this Agreement.

Signatures of parties on following page.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date shown below.

City of Santa Clara
(Sponsor)

Dated: _____

_____
Signatory
(title)

Dated: _____

_____

Second signatory if requested

Approved As To Form:

_____
Counsel

Santa Clara Valley Transportation Authority
(VTA)

Dated: _____

_____
Nuria I. Fernandez, General Manager

Approved As To Form:

_____
Victor Pappalardo
Senior Assistant Counsel

ATTACHMENT A

PROJECT INFORMATION

A. Project Number: 15SC07

B. Project Title: Saratoga Signal Timing & Interconnect Project

C. TFCA Program Manager Funds Allocated: $498,000

D. TFCA Regional Funds Awarded (if applicable):$0

E. Total TFCA Funds Allocated (sum of C and D): $498,000

F. Total Project Cost: $498,000

G. Project Description:

Sponsor will use TFCA funds to install communications infrastructure for traffic signals and server to server communications, allowing for interconnection, coordination, management, proactive and reactive adjustment of traffic signal timing. In addition, the city will replace existing Traconex 390 and Naztec 980 traffic controllers and equipment that are beyond the end of their useful life, no longer supported or manufactured, and install new state of the art traffic signal controllers that will communicate with the City's Naztec ATMS system at City Hall.

H. Final Report Content: Final Report Form for arterial management projects and final Cost Effectiveness Worksheet.

I. Attach a completed Cost-effectiveness Worksheet and any other information used to evaluate the proposed project.

Comments (if any): None.

INSURANCE REQUIREMENTS

VERIFICATION OF COVERAGE

Sponsor shall obtain and maintain certificates and/or other evidence of the insurance coverage required below. VTA and the BAAQMD reserve the right to require Sponsor to provide complete, certified copies of any insurance offered in compliance with these specifications. Certificates, policies and other evidence provided shall specify that the VTA and the BAAQMD shall receive 30 days advanced notice of cancellation from the insurers.

MINIMUM SCOPE OF INSURANCE

Throughout the Term as defined in **Section 3** of this Agreement, the Sponsor shall obtain and maintain in full force and effect the Liability Insurance as set forth below:

1. **Liability Insurance** with a limit of not less than $1,000,000 per occurrence. Such insurance shall be of the type usual and customary to the business of the Sponsor and any Sub-awardee, and to the operation of the vehicles, vessels, engines or equipment operated by the Sponsor or any Sub-awardee.

2. **Property Insurance** in an amount of not less than the insurable value of Sponsor's vehicles, vessels, engines or equipment funded under the Agreement, and covering all risks of loss, damage or destruction of such vehicles, vessels, engines or equipment.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII. The BAAQMD may, at its sole discretion, waive or alter this requirement or accept self-insurance in lieu of any required policy of insurance.

Santa Clara
All-America City
2001

Richard E. Nosky, Jr.
City Attorney

STATEMENT OF INSURANCE\SELF-INSURANCE
by the
CITY OF SANTA CLARA, CALIFORNIA

(As of August 1, 2014)

1. COMMERCIAL GENERAL LIABILITY INSURANCE.

A. NAMED INSURED

City of Santa Clara

Electric Department of the City of Santa Clara, DBA: Silicon Valley Power with respect to the Grizzly Hydroelectric Plant and Pacific Gas and Electric Company

The Sports and Open Space Authority of the City of Santa Clara

The Redevelopment Agency of the City of Santa Clara

Successor Agency to the Former Santa Clara Redevelopment Agency

City of Santa Clara Housing Authority

Santa Clara Stadium Authority

B. GENERAL LIABILITY

The City of Santa Clara is self-insured for general liability claims up to $5,000,000, under the authority granted in California Government Code §§ 990(a) and 990.4(a). The City has established a Special Liability Insurance Claim Fund to provide resources for general liability contingencies.

C. AUTOMOBILE LIABILITY

The City of Santa Clara is self-insured for automobile liability claims up to $5,000,000, under the authority granted in California Government Code §§ 990(a) and 990.4(a). The City has established a Special Liability Insurance Claim Fund to provide resources for automobile liability contingencies.

D. EXCESS LIABILITY

The City of Santa Clara is insured for liability claims in excess of a $5,000,000 Self-Insured Retention up to $10,000,000 through Alliant National Municipal Liability (ANML) Program, $15,000,000 Excess of $10,000,000 through Arch Specialty Insurance Company and $20,000,000 Excess of $25,000,000 through Allied World National Assurance Company.

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
(408) 615-2230
FAX (408) 249-7846
www.santaclaraca.gov

2. "ALL-RISK" PROPERTY INSURANCE

A. NAMED INSURED

City of Santa Clara

Electric Department of the City of Santa Clara, DBA: Silicon Valley Power with respect to the Grizzly Hydroelectric Plant and Pacific Gas and Electric Company

The Redevelopment Agency of the City of Santa Clara; Santa Clara

Successor Agency to the Former Santa Clara Redevelopment Agency

Convention Center Complex Maintenance District No. 183

The Sports and Open Space Authority of the City of Santa Clara

City of Santa Clara Housing Authority

Santa Clara Stadium Authority

B. PROPERTY POLICY

The City of Santa Clara maintains a Property insurance policy and participates in the layered Public Entity Property Insurance Program (PEPIP), administered through the following insurance broker:

Alliant Insurance Services, Inc
1301 Dove Street, Suite 200
Newport Beach, CA 92660
Telephone: (949) 756-0271
Facsimile: (949) 756-2713

The policy number, effective dates and carrier are as follows:

Carrier:	Lexington London and Others
Policy No.:	017471589(Dec03)
Effective Dates:	07/01/2014 - 07/01/2015

Property Insured:

The property covered by this insurance program includes all real and business personal property, including EDP equipment and media, contractors' equipment, owned and leased vehicles, all risk and collision upset and overturn on declared vehicles, communication equipment, plate glass, cameras, surveyors' equipment, vehicles while parked, business interruption, loss of rents, extra expense, valuable papers and records, cyber coverage, service interruption, fine arts and accounts receivable.

Perils Insured:

The perils covered by this insurance program include all risks of direct physical loss or damage to property, including flood and terrorism, but excluding earthquake.

C. BOILER & MACHINERY INSURANCE

The City of Santa Clara maintains a Boiler and Machinery Policy placed through the following insurance broker:

Alliant Insurance Services, Inc
1301 Dove Street, Suite 200
Newport Beach, CA 92660
Telephone: (949) 756-0271
Facsimile: (949) 756-2713

The policy number, effective dates and carrier are as follows:

Carrier:	Lexington Insurance Co./Hartford Steam Boiler/Foreign Excess Ins. Companies
Policy No:	017471589(Dec03)
Effective Dates:	07/01/2014-07/01/2015

3. WORKERS' COMPENSATION INSURANCE

A. The City of Santa Clara is self-insured for workers' compensation liability claims up to $500,000, under the authority granted in California Government Code §§ 990(a) and 990.4(a).

B. The City of Santa Clara maintains an Employers' Liability Insurance policy up to $5,000,000 and Excess Workers' Compensation Insurance policy up to statutory limits placed through Alliant Insurance Services, Inc.

The policy number, effective dates and carrier are as follows:

Carrier:	CSAC Excess Insurance Authority
Policy No.:	EIA-PE 14 EWC-84
Effective Dates:	07/01/2014 - 07/01/2015

4. GROUP PERSONAL ACCIDENT INSURANCE –
60 Days Short Term Disability for Double Badge Officers

A. The City of Santa Clara is self-insured for Short Term Disability for Double Badge Officers up to 25% of salary for Temporary Total Disability and 60% of salary for Temporary Partial Disability.

B. The City of Santa Clara maintains a Group Personal Accident Insurance Policy through Lloyd's of London with limits of $25,000 for any one insured person, subject to 75% of salary for Temporary Total Disability and 40% for Temporary Partial Disability.

11/18/14

17B

CLOSED SESSION REQUEST

City of Santa Clara, California

It is requested the **CITY COUNCIL OF THE CITY OF SANTA CLARA** meet in closed session on **Tuesday, November 25, 2014,** at **6:00 p.m.**, or as soon thereafter as the matter can be discussed, in the Council Conference Room located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to it/them:

☒ **CONFERENCE WITH LABOR NEGOTIATORS**
Pursuant to Gov. Code § 54957.6
City designated representatives: Julio J. Fuentes, City Manager (or designee)
Employee Organization(s):
Unit #1 – Santa Clara Firefighters Association, IAFF, Local 1171
Unit #2 - Santa Clara Police Officer's Association
Unit #3 – IBEW Local 1245 (International Brotherhood of Electrical Workers)
Unit #4 - City of Santa Clara Professional Engineers
Units #5, 7 & 8 - City of Santa Clara Employees Association
Unit #6 - AFSCME Local 101 (American Federation of State, County and Municipal Employees)
Unit #9 – Miscellaneous Unclassified Management Employees
Unit #9A - Unclassified Police Management Employees
Unit #9B - Unclassified Fire Management Employees
Unit #10 – PSNSEA (Public Safety Non-Sworn Employees Association)

☒ **CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION**
Pursuant to Gov. Code § 54956.9(a)
Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al., Sacramento County Superior Court Case No. 34-2013-80001396

Date: November 14, 2014

RICHARD E. NOSKY, JR.
City Attorney

I:\COUNCIL\CLOSED SESSION AND SPECIAL MEETINGS\2014\11-25-14 Request City Labor & Exist Lit.doc