

## EASEMENT AGREEMENT

This Easement Agreement (“**Agreement**”) is entered into effective this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between Lavorini Two, LLC, a California limited liability company (“**Grantor**”), and the Milpitas Unified School District, a California public school district (“**District**”). Grantor and District may also be referred to in this Agreement singularly as a “Party” or collectively as the “Parties.”

### RECITALS

A. Grantor is the owner of that certain real property identified as Assessor’s Parcel Number 086-41-015, located in the County of Santa Clara, State of California, and having the street address of 1890 McCandless Drive, Milpitas, CA 95035 (“**Grantor's Property**”).

B. The City of Milpitas (“**City**”) approved on July 25, 2017, Encroachment Permit No. E-EN17-0108 (the “**Encroachment Permit**”) for the construction of public improvements by the District within the City right-of-way associated with the District’s Mabel Mattos Elementary School Phase 1 Project (“**Phase 1 Project**”).

C. The Encroachment Permit included a condition for the District to correct the roadway alignment of northbound McCandless Drive at the Grantor’s Property by removing a narrow lane condition created by the Phase 1 Project.

D. To correct the roadway alignment of McCandless Drive, the District must acquire, and subsequently dedicate to the City, easements in certain portions of Grantor’s Property consisting of: (i) a Roadway Easement (“**Roadway Easement**”); and (ii) a Public Service Utility Easement (“**PSUE**,” and collectively with the Roadway Easement, the “**Easements**”), which Easements are more particularly described in Exhibits A and B attached hereto, respectively.

E. Pursuant to a separate Agreement between the City and District for Construction of Phase Two Mabel Mattos Elementary School Project and Completion of McCandless Drive Street Widening Improvements (“**City Agreement**”) attached hereto as Exhibit C, the District has agreed to construct, at its sole cost and expense and at no expense to Grantor, various roadway improvements and relocate various electric utility facilities on the Roadway Easement and PSUE areas, respectively, and the City has agreed to accept from the District the Easements and improvements, subject to the terms of the City Agreement.

F. District desires to purchase from Grantor, and Grantor desires to sell to District the Easements, subject to the terms and conditions of this Agreement.

### TERMS

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS AND THE MUTUAL COVENANTS CONTAINED HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Grant of Easements. Grantor hereby agrees to Sell to District, and District agrees to purchase from Grantor the following Easements:
  - a. The Roadway Easement, consisting of a perpetual, non-exclusive easement, consisting of approximately 251 square feet, for roadway, right of way, ingress, egress, access, and for vehicular and pedestrian traffic within, upon, across, and over the easement area described and depicted in greater detail in Exhibit A hereto.
  - b. The PSUE, consisting of a perpetual, non-exclusive easement, consisting of approximately 182 square feet, to construct, reconstruct, install, remove, replace, inspect, maintain, repair, improve, relocate, and otherwise use various electric utility facilities, including electric utility vaults and related appurtenances in, on, over, under, and across the easement area, as described and depicted in greater detail in Exhibit B hereto.
2. Authority to Convey Easement. Grantor represents that Grantor has obtained all consents necessary to convey the Easements, including without limitation any consents necessary from the owners of any other easement on Grantor's Property and any spousal interests in or to Grantor's Property, to the extent any such consents are necessary. Grantor warrants and represents that it is authorized as the owner of Grantor's Property to convey the Easements to District. Notwithstanding the foregoing, Grantor and District acknowledge that Grantor has not obtained, and need not obtain, consent from the holder of any existing PSUEs on the Subject Property.
3. Payment. In exchange for Grantor conveying the Easements to District, District agrees to pay Grantor Fifty Thousand dollars (\$50,000), which shall be paid by District to Grantor within fifteen (15) days after recordation of the Easements with the Santa Clara County Recorder but not later than thirty (30) days after the effective date of this Agreement.
4. Terms of Easement. The respective terms and conditions of the Easements shall be as set forth in Exhibits A, B, and C. Promptly after execution of this Agreement, the District and Grantor shall enter into, and District shall record the Easement Deeds attached hereto as Exhibits A and B. However, failure to record shall not affect the enforceability of this Agreement or the rights granted to District or Grantor as described herein.
5. Indemnification.
  - (a) Each Party shall indemnify, defend and hold the other Party, its officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts or omissions, or willful misconduct of the indemnifying party, its officials, officers, employees, agents, consultants or contractors in the performance of the indemnifying party's obligations under this Agreement including the payment of all reasonable attorneys' fees.

(b) Notwithstanding the indemnification obligations of subparagraph 5(a) of this Agreement, to the fullest extent permitted by law, District shall defend, indemnify and hold Grantor, its officials, employees, agents, consultants or contractors, tenants and franchisors of tenants, and invitees, free and harmless from any and all claims, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any errors or omissions, or willful misconduct of District, its officials, officers, employees, contractors, subcontractors, consultants or agents in connection with the Easements or construction by District contemplated under this Agreement and maintenance of any improvements by District, including without limitation the payment of all expert witness fees, attorneys' fees and other related costs and expenses, except such Claims caused by the sole or active negligence or willful misconduct of Grantor.

6. Entire Agreement. This Agreement and all Exhibits attached hereto contain the entire agreement between the Parties hereto concerning the subject matter contained herein. This Agreement shall not be modified in any manner except by an instrument in writing executed by the Parties or their respective successors in interest.
7. Successors. This Agreement and the terms and conditions of the Easements shall be binding on and inure to the benefit of the respective heirs, successors and assigns of the respective Parties hereto.
8. Notices. Any notice, demand, request, consent, approval, claim, or communication that any Party desires or is required to give to any other Party shall be in writing and may be served in anyone of the following ways: personally, overnight delivery (such as Federal Express), or via facsimile transmission to:

**If to Grantor:**

Lavorini Two, LLC  
Attn: Gene Lavorini  
P. O. Box 394  
Pacific Grove, CA 93950

**If to District:**

Milpitas Unified School District  
Attn: Wendy Zhang  
1331 E. Calaveras Blvd.  
Milpitas, CA 95035

9. Notice to Tenant(s) and Franchisor(s). Prior to execution of this Agreement, Grantor shall notify Grantor's tenant(s) and/or franchisor(s) of the Subject Property of the material terms of this Agreement, and the District's intentions to construct roadway improvements and relocate electric utilities on the Subject Property.
10. Waivers. The failure by any of the Parties to enforce any term or provision of this Agreement shall not constitute a waiver of that term or provision, or any other term or provision. No waiver by any of the Parties of any term or provision of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, nor shall any waiver constitute a continuing waiver unless otherwise expressly provided in writing.
11. Severability. In the event any clause, sentence, term, or provision of this Agreement shall be held by any court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason, the remaining portions of this Agreement shall nonetheless remain in full force and effect; provided, however, that if the invalidity or unenforceability of any provision of this Agreement results in a material failure of consideration, then the Party adversely affected thereby shall have the right in its sole discretion to terminate this Agreement upon providing written notice of such termination to the other Parties.
12. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought in the applicable court located in the County of Santa Clara.
13. Counterparts. This Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute the same instrument. A copy, original or facsimile with all signatures appended together shall be deemed a fully executed Agreement.
14. Construction. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if all Parties have prepared it. The Parties to this Agreement have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.
15. Warranty of Authority. Each person below warrants and guarantees that s/he is legally authorized to execute this Agreement on behalf of the designated entity and that such execution shall bind the designated entity to the terms of this Agreement.

[SIGNATURE PAGE TO FOLLOW]



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

**LAVORINI TWO, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**MILPITAS UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_  
Name: Cheryl Jordan  
Its: Superintendent

**Exhibit A**

**Roadway Easement Grant Deed**

[Attached]

When Recorded Please Return to:

Milpitas Unified School District  
Wendy Zhang, Assistant Superintendent  
1331 E Calaveras Blvd.  
Milpitas, CA 95035

Exempt from Recording Fees – Government Code § 27383 (SPACE ABOVE FOR RECORDER’S USE ONLY)

**GRANT OF EASEMENT  
ROADWAY EASEMENT  
(1890 MCCANDLESS DRIVE)**

THIS GRANT OF ROADWAY EASEMENT (“**Grant of Roadway Easement**”) is made and entered into as of \_\_\_\_\_, 2020, by and between Lavorini Two, LLC, a California limited liability company (“**Grantor**”), in favor of the Milpitas Unified School District, a California public school district (“**Grantee**”).

**RECITALS**

A. Grantor is the owner of that certain real property identified as Assessor’s Parcel Number 086-41-015, located in the County of Santa Clara, State of California, and having the street address of 1890 McCandless Drive, Milpitas, CA 95035 (the “**Subject Property**”).

B. Grantee desires to construct various roadway improvements on, over, under, and across a portion of the Subject Property, which portion is more particularly described on **Exhibit 1** and depicted on **Exhibit 2** attached hereto and incorporated by reference herein (the “**Roadway Easement Area**”), and Grantor is willing to grant an easement for said purposes on the terms and conditions set forth herein.

**COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee covenant and agree as follows:

1. **Grant of Roadway Easement.** Grantor hereby grants to Grantee a perpetual, non-exclusive easement, consisting of approximately 251 square feet, for roadway, right of way, ingress, egress, access, and for vehicular and pedestrian traffic within, upon, across, and over the Roadway Easement Area (the “**Roadway Easement**”). Subject to the terms and conditions of this Grant of Roadway Easement, Grantee, including Grantee’s officers, agents, employees, contractors, consultants, and persons under control with it, shall have the rights to, whenever and wherever: (1) access the Roadway Easement Area, including across, over, under, through and above the Subject Property as reasonably required, with personnel and equipment to construct, alter, reconstruct, remove, replace, repair, maintain, inspect, and operate the roadway, sidewalks, curbs, gutters, and appurtenances thereto; (2) remove all trees, vegetation, and structures thereon

that interfere with the purpose for which the Roadway Easement herein is granted; and (3) level and grade portions of the Roadway Easement Area, to the extent reasonably necessary to carry out the purposes set forth herein. The Roadway Easement is a permanent easement appurtenant to the Subject Property, shall attach to and run with the Subject Property, and shall benefit and burden any future owner or owners of the Subject Property.

2. **Prohibited Activities.** Any activity on or use of the Roadway Easement Area inconsistent with the purposes of this Grant of Roadway Easement is prohibited. Grantor shall not erect, construct, maintain, or permit any structures, buildings, walls, fences, or barriers of any sort or kind which obstruct or impede vehicular traffic or pedestrian traffic upon or across the roadways, entrances, exits, and sidewalks located from time to time on or within the Roadway Easement Area. Except as otherwise provided herein, this Grant of Roadway Easement shall not restrict or diminish in any way the future development of the Subject Property by Grantor or Grantor's successors in interest.

3. **Interference with Grantor's or Grantor's Tenants' Businesses.** In exercising its rights under this Roadway Easement, including its rights to construct improvements upon the Roadway Easement Area, Grantee shall not unreasonably interfere in any manner with the business or operations of Grantor or the tenants of Grantor at the Subject Property, shall exercise reasonable care in its entry on and use of the Roadway Easement Area, and shall be liable for, and shall pay to repair or replace, any damage or destruction of the Subject Property or Roadway Easement Area caused by its use of same. For purposes of this Grant of Roadway Easement, "reasonable" shall include limiting activity to hours outside of the business hours of Grantor's tenant, if such activity in any way will obstruct or reduce access to said tenant's business by the general public. Grantee shall notify Grantor of any construction activities planned by Grantee or Grantee's agents on the Roadway Easement Area at least five (5) business days before commencement of the construction activities. After completing construction activities, Grantee shall ensure that the Roadway Easement Area and Subject Property are restored as close as reasonably possible to its preconstruction condition.

4. **Maintenance of Facilities and Easement Area.** Subject to the requirements of this Roadway Easement, Grantee shall, at its sole cost and expense, maintain and keep the Roadway Easement Area and any improvements or facilities permitted hereunder in good order and condition.

5. **Indemnification.**

(a) Each party shall indemnify, defend and hold the other party, its officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts or omissions or willful misconduct of the indemnifying party, its officials, officers, employees, agents, consultants or contractors in the performance of the indemnifying party's obligations under this Grant of Roadway Easement including the payment of all reasonable attorneys' fees.

(b) Notwithstanding the indemnification obligations of subparagraph 5(a) of this Grant of Roadway Easement, to the fullest extent permitted by law, Grantee shall defend, indemnify and hold Grantor, its officials, employees, agents, consultants or contractors, tenants and franchisors of tenants, and invitees free and harmless from any and all claims, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any errors or omissions, or willful misconduct of Grantee, its officials, officers, employees, contractors, subcontractors, consultants or agents in connection with the Roadway Easement or construction contemplated by Grantee under this Grant of Roadway Easement and maintenance of any improvements, including without limitation the payment of all expert witness fees, attorneys' fees and other related costs and expenses, except such Claims caused by the sole or active negligence or willful misconduct of Grantor.

6. **Insurance.** Grantee shall require any contractor awarded a contract to construct any improvements on the Roadway Easement Area to secure and maintain in full force and effect at all times during the term of any such contract, commercial general liability, automobile liability, worker's compensation/employers' liability, public liability, and property damage insurance in forms and limits of liability reasonably acceptable to both the Grantee and Grantor. The contractor's commercial general liability and automobile liability shall: (1) name the Grantor, Grantee, and all tenants of the Grantor at the Subject Property, as additional insured with respect to all Liability arising out of or in any way connected with the contractor's acts or omissions with respect to construction of improvements on the Roadway Easement Area; (2) contain a provision or be endorsed to contain a provision that the insurance afforded thereby to the Grantor and Grantee, including their respective officers, employees, and agents, is primary insurance to the full limits of liability of the policy, and that if the Grantor or Grantee, or their officers, employees, or agents, have other insurance against a loss covered by such policy, that other insurance shall be excess insurance only and shall not be called upon to contribute to the policy in any way. The contractor's commercial general liability, automobile liability, and worker's compensation/employer's liability policies shall be endorsed to provide a waiver of subrogation in favor of the Grantor and Grantee, and their respective officers, employees, and agents.

7. **Assignment.** Grantee may freely assign or dedicate this Roadway Easement to any public or governmental entity, including all rights and obligations associated therewith, without the authorization or consent of Grantor, provided such entity assumes all obligations of Grantee hereunder, including maintenance and indemnification, notwithstanding any release of Grantee therefrom. Upon assignment or dedication of this Roadway Easement to any such entity, Grantee shall no longer have any rights or obligations under this Grant of Roadway Easement, including any obligations to construct or maintain any roadway improvements located within the Roadway Easement Area, and including any obligations to indemnify Grantor for any Liability caused by the construction or maintenance of roadway improvements within the Roadway Easement Area pursuant to this Grant of Roadway Easement. Grantee or the assignee shall promptly notify Grantor of any assignment or dedication hereunder.

8. **Recordation.** Upon full execution, Grantee shall record this Grant of Roadway Easement in the Official Records of Santa Clara County, State of California.

9. **Governing Law.** This Grant of Roadway Easement shall be construed and governed in accordance with the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Grant of Roadway Easement shall be brought in the applicable court located in the County of Santa Clara.

10. **Counterparts.** This Grant of Roadway Easement may be executed on one of more counterpart versions, which, when taken together shall constitute one original version of the Grant of Roadway Easement. Photocopies of this Grant of Roadway Easement or of execution signatures on this Grant of Roadway Easement, or copies made by comparable means (including copies made by facsimile), shall be equivalent to originals.

11. **Amendment.** No amendment, supplement or modification of this Grant of Roadway Easement shall be binding unless executed in writing by the parties and recorded in the Official Records of Santa Clara County.

12. **Warrant of Authority.** Each person warrants and guarantees that s/he is legally authorized to execute this Grant of Roadway Easement on behalf of the designated entity and that such execution shall bind the designated entity to the terms of this Grant of Roadway Easement.

**IN WITNESS WHEREOF,** Grantor and Grantee have executed this Roadway Easement as of the date first above written.

**GRANTOR:**

Lavorini Two, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GRANTEE:**

Milpitas Unified School District,  
a California public school district

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT 1**

**LEGAL DESCRIPTION OF ROADWAY EASEMENT AREA**

**[Attached]**

**EXHIBIT 1**  
**LEGAL DESCRIPTION FOR**  
**RIGHT-OF-WAY DEDICATION**  
**MILPITAS, CALIFORNIA**  
**A.P.N. 086-41-015**

All that certain real property situate in the County of Santa Clara, State of California, being a portion of Parcel 1 as shown on that certain Parcel Map filed December 5, 1984, in Book 536 of Maps at Pages 41 through 43, in the Office of the Recorder of said County; being more particularly described as follows:

**Beginning** at the northwesterly corner of said Parcel 1;

Thence along the northerly line of said Parcel 1 South  $89^{\circ}51'34''$  East, 10.72 feet to the southwesterly corner of Parcel "B" as shown on that certain Parcel Map filed September 21, 2016, in Book 897 of Maps at Pages 3 through 6;

Thence South  $40^{\circ}42'04''$  East, 78.19 feet to a point on the existing northeasterly right-of-way line of McCandless Drive shown on said Parcel Map filed in Book 536 of maps at Pages 41 through 43, said point being a point of cusp and the beginning of a non-tangent curve to the left, concave to the southwest having a radius of 300.00 feet and to which a radial line bears North  $49^{\circ}17'56''$  East;

Thence along said curve through a central angle of  $6^{\circ}53'42''$  a distance of 36.10 feet;

Thence North  $47^{\circ}35'46''$  West, 47.63 feet to the beginning of a tangent curve to the right having a radius of 400.00 feet;

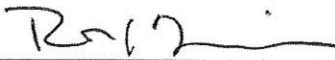
Thence along said curve through a central angle of  $0^{\circ}16'29''$  a distance of 1.92 feet to the **Point of Beginning**.

Containing 251 sq. ft. more or less.

The **BASIS OF BEARINGS** of this description is the northerly line of said Parcel 1, taken as South  $89^{\circ}51'34''$  East as shown on that certain Parcel Map filed for record in Book 536 of Maps at Pages 41-43, Santa Clara County Records.

As shown on Exhibit "B", attached hereto and made a part hereof.

Description prepared by Dains Land Surveying

  
Robert Dains L.S. 8227

August 20, 2019  
Date



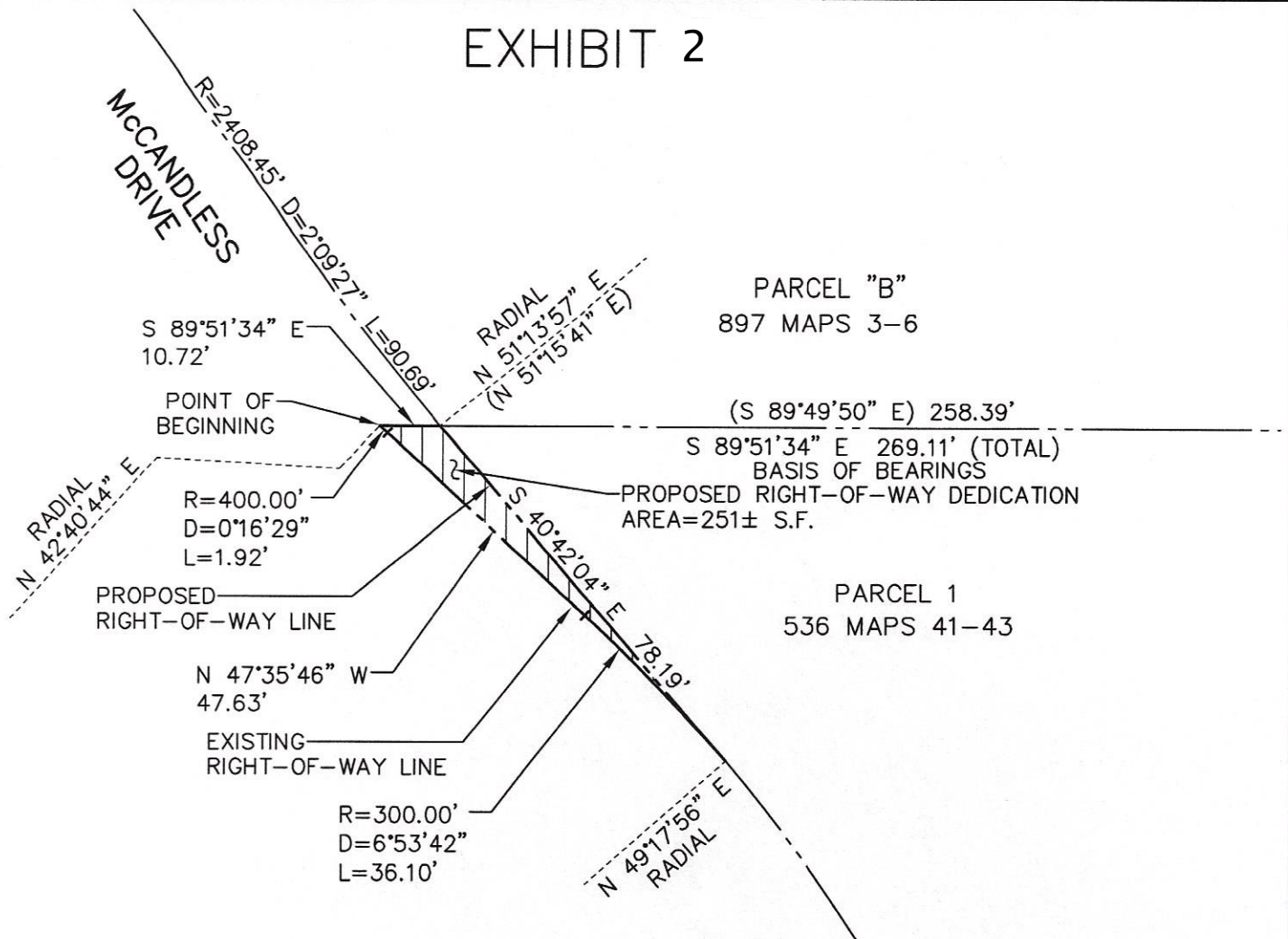


**EXHIBIT 2**

**DEPICTION OF ROADWAY EASEMENT AREA**

**[Attached]**

# EXHIBIT 2

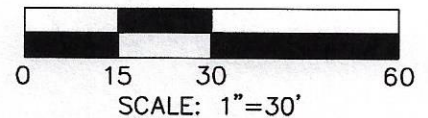


## BASIS OF BEARINGS

THE BEARING OF  $N89^{\circ}51'34''W$  ALONG THE NORTHERLY LINE OF PARCEL 1 AS SHOWN ON THE PARCEL MAP FILED IN BOOK 536 MAPS AT PAGES 41-43, SANTA CLARA COUNTY RECORDS.

## LEGEND

- EXISTING RIGHT-OF-WAY LINE TO REMAIN
  - EXISTING RIGHT-OF-WAY LINE TO BE REMOVED
  - PROPOSED RIGHT-OF-WAY LINE
  - SUBJECT AREA
- ( ) RECORD DATA PER 897 MAPS 3-6



## PLAT TO ACCOMPANY LEGAL DESCRIPTION RIGHT-OF-WAY DEDICATION PURPOSES

MILPITAS

SANTA CLARA COUNTY

CALIFORNIA

PLAT:  
RJD

SCALE:  
1"= 30'

DATE:  
07/22/19

JOB #:  
16-648

# DAINS LAND SURVEYING

rdains@dainslandsurveying.net

(650) 743-0831

Proposed Right-of-Way Dedication

North: 4575.1228' East: 7055.7315'

Segment #1 : Line

Course: S89° 51' 34"E Length: 10.72'  
North: 4575.0965' East: 7066.4515'

Segment #2 : Line

Course: S40° 42' 04"E Length: 78.19'  
North: 4515.8189' East: 7117.4402'

Segment #3 : Curve

Length: 36.10' Radius: 300.00'  
Delta: 6°53'42" Tangent: 18.07'  
Chord: 36.08' Course: N44° 08' 55"W  
Course In: S49° 17' 56"W Course Out: N42° 24' 14"E  
RP North: 4320.1850' East: 6890.0037'  
End North: 4541.7076' East: 7092.3097'

Segment #4 : Line

Course: N47° 35' 46"W Length: 47.63'  
North: 4573.8270' East: 7057.1392'

Segment #5 : Curve

Length: 1.92' Radius: 400.00'  
Delta: 0°16'29" Tangent: 0.96'  
Chord: 1.92' Course: N47° 27' 33"W  
Course In: N42° 24' 14"E Course Out: S42° 40' 44"W  
RP North: 4869.1921' East: 7326.8788'  
End North: 4575.1252' East: 7055.7246'

Perimeter: 174.57' Area: 250.58 Sq. Ft.  
Error Closure: 0.0073 Course: N70° 49' 23"W  
Error North: 0.00240 East: -0.00691

Precision 1: 23909.59



**CERTIFICATE OF ACCEPTANCE  
GOVERNMENT CODE SECTION 27281**

This is to certify acceptance of the interests conveyed by the foregoing Easement Grant Deed from Lavorini Two, LLC, a California limited liability company, to MILPITAS UNIFIED SCHOOL DISTRICT, a California public school district duly organized and existing under the laws of the State of California ("District"), dated \_\_\_\_\_, 2020, and consent by District to recordation of this Easement Grant Deed by its duly authorized officer pursuant to the authority conferred on the District by the California Constitution and California Education Code section 1240, *et seq.*

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020, at \_\_\_\_\_, California.

**MILPITAS UNIFIED SCHOOL DISTRICT,**  
a California public school district

By: \_\_\_\_\_  
Name: Cheryl Jordan  
Title: Superintendent

## ACKNOWLEDGMENT

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

State of California  
County of Santa Clara

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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)

## ACKNOWLEDGMENT

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

State of California  
County of Santa Clara

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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)

**Exhibit B**

**Public Service Utility Easement Grant Deed**

[Attached]

When Recorded Please Return to:

Milpitas Unified School District  
Wendy Zhang, Assistant Superintendent  
1331 E Calaveras Blvd.  
Milpitas, CA 95035

Exempt from Recording Fees – Government Code § 27383 (SPACE ABOVE FOR RECORDER’S USE ONLY)

**GRANT OF EASEMENT  
PUBLIC SERVICE AND UTILITY EASEMENT  
(1890 MCCANDLESS DRIVE)**

THIS GRANT OF PUBLIC SERVICE AND UTILITY EASEMENT (“**Grant of Public Service and Utility Easement**”) is made and entered into as of \_\_\_\_\_, 2020, by and between Lavorini Two, LLC, a California limited liability company (“**Grantor**”), in favor of the Milpitas Unified School District, a California public school district (“**Grantee**”).

**RECITALS**

A. Grantor is the owner of that certain real property identified as Assessor’s Parcel Number 086-41-015, located in the County of Santa Clara, State of California, and having the street address of 1890 McCandless Drive, Milpitas, CA 95035 (the “**Subject Property**”).

B. Grantee desires to relocate various electric utility facilities to, on, over, under, and across a portion of the Subject Property, which portion is more particularly described on **Exhibit 1** and depicted on **Exhibit 2** attached hereto and incorporated by reference herein (the “**PSUE Area**”), and Grantor is willing to grant an easement for said purposes on the terms and conditions set forth herein.

**COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee covenant and agree as follows:

1. **Grant of Easement.** Grantor hereby grants to Grantee a perpetual, non-exclusive easement, consisting of approximately 182 square feet, to construct, reconstruct, install, remove, replace, inspect, maintain, repair, improve, relocate, and otherwise use various electric utility facilities, including electric utility vaults and related appurtenances (collectively, “**Facilities**”) in, on, over, under, and across the PSUE Area (the “**PSUE**”). Subject to the terms and conditions of this Grant of Public Service and Utility Easement, Grantee, including Grantee’s officers, agents, employees, contractors, consultants, and persons under control with it, shall have the rights to, whenever and wherever: (1) access the PSUE Area, including across, over, under, through and above the Subject Property as reasonably required, with personnel and equipment to construct, alter, reconstruct, remove, replace, repair, maintain, inspect, and operate the Facilities, and



appurtenances thereto; (2) to remove all trees, vegetation, and structures thereon that interfere with the purpose for which the Public Service and Utility Easement herein is granted; and (3) to level and grade portions of the PSUE Area, to the extent reasonably necessary to carry out the purposes set forth herein; provided that, to the maximum extent possible, all Facilities constructed on the PSUE Area will be constructed at or below grade. The Public Service and Utility Easement is a permanent easement appurtenant to the Subject Property, shall attach to and run with the Subject Property, and shall benefit and burden any future owner or owners of the Subject Property.

2. **Prohibited Activities.** Any activity on or use of the PSUE Area inconsistent with the purposes of this Grant of Public Service and Utility Easement is prohibited. Grantor shall not erect, construct, maintain, or permit any structures, buildings, walls, fences, or barriers of any sort or kind which obstruct or impede access to or use of the PSUE area and/or any Facilities located within the PSUE Area.

3. **Interference with Grantor's or Grantor's Tenants' Businesses.** In exercising its rights under this Public Service and Utility Easement, including its rights to construct, reconstruct, install, remove, replace, inspect, maintain, repair, improve, relocate, and otherwise use various electric utility facilities upon the PSUE Area, Grantee shall not unreasonably interfere in any manner with the business or operations of Grantor or the tenants of Grantor at the Subject Property, shall exercise reasonable care in its entry on and use of the PSUE Area, and shall be liable for, and shall pay to repair or replace, any damage or destruction of the Subject Property or PSUE Area caused by its use of same. For purposes of this Grant of Easement, "reasonable" shall include limiting activity to hours outside of the business hours of Grantor's tenant, if such activity in any way will obstruct or reduce access to said tenant's business by the general public. Grantee shall notify Grantor of any construction activities planned by Grantee or Grantee's agents on the PSUE Area at least five (5) business days before commencement of the construction activities. After completing the above activities, Grantee shall ensure that the PSUE Area and Subject Property are restored as close as reasonably possible to its preconstruction condition.

4. **Maintenance of Facilities and Easement Area.** Subject to the requirements of this Public Service and Utility Easement, Grantee shall, at its sole cost and expense, maintain and keep the PSUE Area and any improvements or facilities permitted hereunder in good order and condition.

5. **Indemnification.**

(a) Each party shall indemnify, defend and hold the other party, its officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts or omissions or willful misconduct of the indemnifying party, its officials, officers, employees, agents, consultants or contractors in the performance of the indemnifying party's obligations under this Grant of Public Service and Utility Easement including the payment of all reasonable attorneys' fees.

(b) Notwithstanding the indemnification obligations of subparagraph 5(a) of this Grant of Public Service and Utility Easement, to the fullest extent permitted by law, Grantee shall defend, indemnify and hold Grantor, its officials, employees, agents, consultants or contractors, tenants and franchisors of tenants, and invitees free and harmless from any and all claims, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any errors or omissions, or willful misconduct of Grantee, its officials, officers, employees, contractors, subcontractors, consultants or agents in connection with the PSUE or construction contemplated by Grantee under this Grant of Public Service and Utility Easement and maintenance of any improvements, including without limitation the payment of all expert witness fees, attorneys' fees and other related costs and expenses, except such Claims caused by the sole or active negligence or willful misconduct of Grantor.

6. **Insurance.** Grantee shall require any contractor awarded a contract to construct, install, remove, or replace any improvements or electric utility facilities on the PSUE Area to secure and maintain in full force and effect at all times during the term of any such contract, commercial general liability, automobile liability, worker's compensation/employers' liability, public liability, and property damage insurance in forms and limits of liability reasonably acceptable to both the Grantee and Grantor. The contractor's commercial general liability and automobile liability shall: (1) name the Grantor, Grantee, and all tenants of the Grantor at the Subject Property, as additional insured with respect to all Liability arising out of or in any way connected with the contractor's acts or omissions with respect to the construction, installation, removal, or replacement of improvements on the Roadway Easement Area; (2) contain a provision or be endorsed to contain a provision that the insurance afforded thereby to the Grantor and Grantee, including their respective officers, employees, and agents, is primary insurance to the full limits of liability of the policy, and that if the Grantor or Grantee, or their officers, employees, or agents, have other insurance against a loss covered by such policy, that other insurance shall be excess insurance only and shall not be called upon to contribute to the policy in any way. The contractor's commercial general liability, automobile liability, and worker's compensation/employer's liability policies shall be endorsed to provide a waiver of subrogation in favor of the Grantor and Grantee, and their respective officers, employees, and agents.

7. **Assignment.** Grantee may freely assign or dedicate this PSUE to any public or governmental entity, including all rights and obligations associated therewith, without the authorization or consent of Grantor, provided such entity assumes all obligations of Grantee hereunder, including maintenance and indemnification, notwithstanding any release of Grantee therefrom. Upon assignment or dedication of this PSUE to any such entity, Grantee shall have no more rights or obligations under this Grant of Public Service and Utility Easement, including any obligations to relocate, install, or maintain any Facilities located within the PSUE Area, and including any obligations to indemnify Grantor for any Liability caused by the relocation, installation, or maintenance of utility improvements within the PSUE Area pursuant to this Grant of Public Service and Utility Easement. Grantee or the assignee shall promptly notify Grantor of any assignment or dedication hereunder.

8. **Recordation.** Upon full execution, Grantee shall record this Grant of Public Service and Utility Easement in the Official Records of Santa Clara County, State of California.

9. **Governing Law.** This Grant of Public Service and Utility Easement shall be construed and governed in accordance with the laws of the State of California, without regard to principles of conflicts of law. Any action or proceeding seeking any relief under or with respect to this Grant of Public Service and Utility Easement shall be brought in the applicable court located in the County of Santa Clara.

10. **Counterparts.** This Grant of Public Service and Utility Easement may be executed on one or more counterpart versions, which, when taken together shall constitute one original version of the Grant of Public Service and Utility Easement. Photocopies of this Grant of Public Service and Utility Easement or of execution signatures on this Grant of Public Service and Utility Easement, or copies made by comparable means (including copies made by facsimile), shall be equivalent to originals.

11. **Amendment.** No amendment, supplement or modification of this Grant of Public Service and Utility Easement shall be binding unless executed in writing by the parties and recorded in the Official Records of Santa Clara County.

12. **Warrant of Authority.** Each person warrants and guarantees that s/he is legally authorized to execute this Grant of Public Service and Utility Easement on behalf of the designated entity and that such execution shall bind the designated entity to the terms of this Grant of Public Service and Utility Easement.

**IN WITNESS WHEREOF,** Grantor and Grantee have executed this Public Service and Utility Easement as of the date first above written.

**GRANTOR:**

Lavorini Two, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GRANTEE:**

Milpitas Unified School District,  
a California public school district

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT 1**  
**LEGAL DESCRIPTION OF PSUE AREA**

[Attached]

**EXHIBIT 1**  
**LEGAL DESCRIPTION FOR**  
**PUBLIC SERVICE UTILITY EASEMENT**  
**MILPITAS, CALIFORNIA**  
**A.P.N. 086-41-015**

All that certain real property situate in the County of Santa Clara, State of California, being a portion of Parcel 1 as shown on that certain Parcel Map filed December 5, 1984, in Book 536 of Maps at Pages 41 through 43, in the Office of the Recorder of said County; being more particularly described as follows:

**Beginning** at a point on the northerly line of said Parcel 1, said point being distant South 89°51'34" East, 14.86 feet from the northwesterly corner of said Parcel 1;

Thence along said northerly line South 89°51'34" East, 9.08 feet;

Thence leaving said northerly line South 40°24'04" East, 69.55 feet to a point on the existing northeasterly line of the Public Service Utility Easement shown on said Parcel Map, said point being a point of cusp and the beginning of a non-tangent curve to the left, concave to the southwest having a radius of 310.00 feet and to which a radial line bears North 49°17'56" East;

Thence along said curve through a central angle of 6°53'42" a distance of 37.31 feet;

Thence North 47°35'46" West, 38.55 feet to the **Point of Beginning**.

Containing 182 sq. ft. more or less.

The **BASIS OF BEARINGS** of this description is the northerly line of said Parcel 1, taken as South 89°51'34" East as shown on that certain Parcel Map filed for record in Book 536 of Maps at Pages 41-43, Santa Clara County Records.

As shown on Exhibit "B", attached hereto and made a part hereof.

Description prepared by Dains Land Surveying

Robert Dains                      L.S. 8227

August 20, 2019  
Date

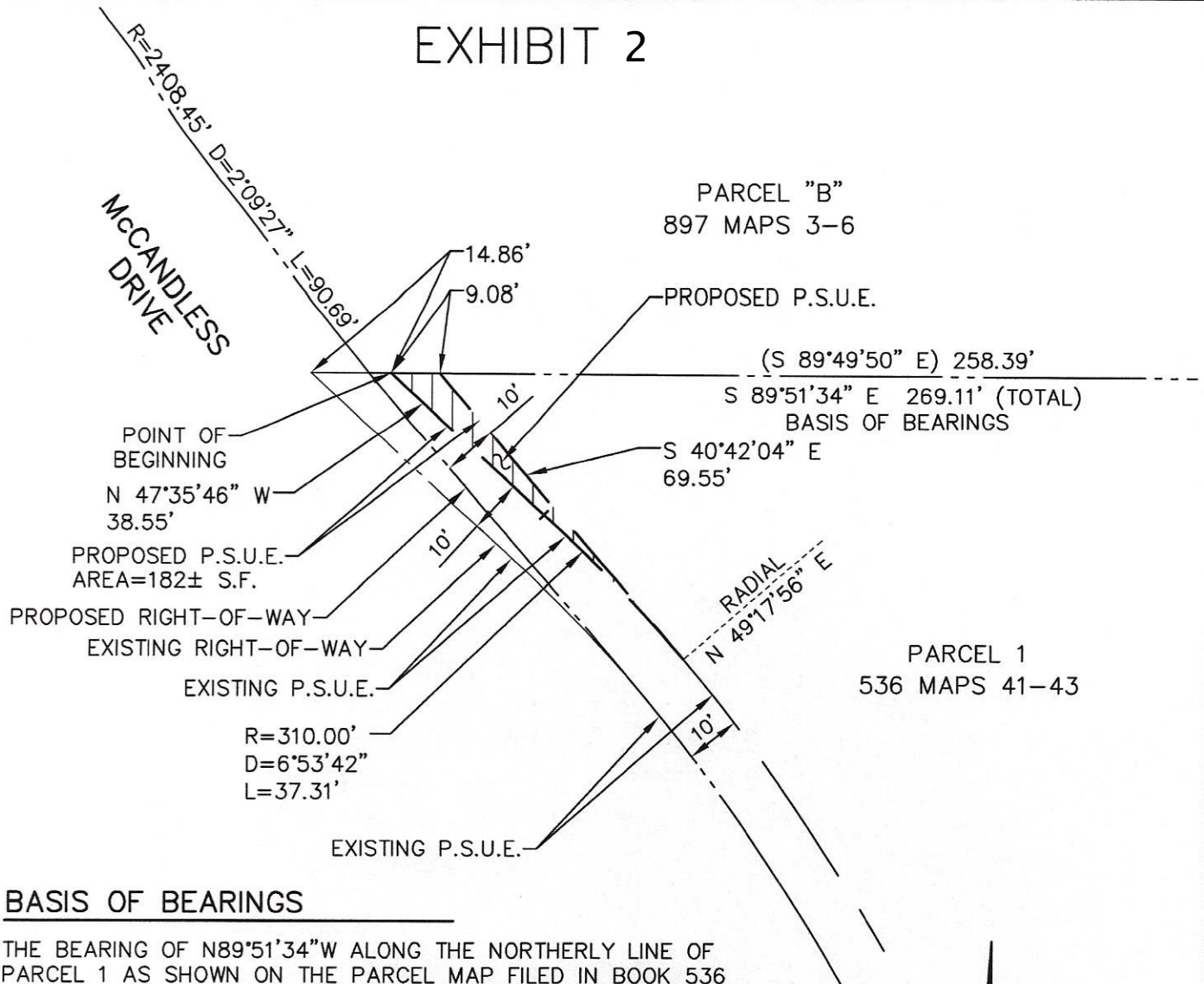


**EXHIBIT 2**

**DEPICTION OF PSUE AREA**

**[Attached]**

# EXHIBIT 2



## BASIS OF BEARINGS

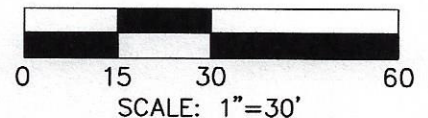
THE BEARING OF  $N89^{\circ}51'34''W$  ALONG THE NORTHERLY LINE OF PARCEL 1 AS SHOWN ON THE PARCEL MAP FILED IN BOOK 536 MAPS AT PAGES 41-43, SANTA CLARA COUNTY RECORDS.

## LEGEND

---	EXISTING RIGHT-OF-WAY LINE TO REMAIN
---	EXISTING RIGHT-OF-WAY LINE TO BE REMOVED
---	PROPOSED RIGHT-OF-WAY LINE
---	EXISTING P.S.U.E. LINE
---	PROPOSED P.S.U.E. LINE
	SUBJECT AREA

( )

RECORD DATA PER 897 MAPS 3-6



## PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR PROPOSED P.S.U.E. PURPOSES

MILPITAS

SANTA CLARA COUNTY

CALIFORNIA

PLAT:  
RJD

SCALE:  
1"= 30'

DATE:  
07/22/19

JOB #:  
16-648

# DAINS LAND SURVEYING

rdains@dainslandsurveying.net

(650) 743-0831

Proposed P.S.U.E Dedication

North: 4569.1060' East: 5701.8635'

Segment #1 : Line

Course: S89° 51' 34"E Length: 9.08'  
North: 4569.0837' East: 5710.9435'

Segment #2 : Line

Course: S40° 42' 04"E Length: 69.55'  
North: 4516.3563' East: 5756.2980'

Segment #3 : Curve

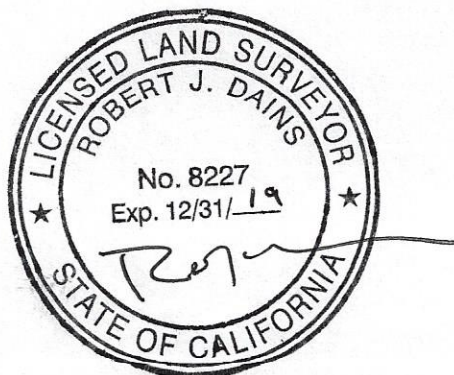
Length: 37.31' Radius: 310.00'  
Delta: 6°53'42" Tangent: 18.68'  
Chord: 37.28' Course: N44° 08' 55"W  
Course In: S49° 17' 56"W Course Out: N42° 24' 14"E  
RP North: 4314.2013' East: 5521.2802'  
End North: 4543.1060' East: 5730.3316'

Segment #4 : Line

Course: N47° 35' 46"W Length: 38.55'  
North: 4569.1023' East: 5701.8659'

Perimeter: 154.48' Area: 181.73 Sq. Ft.  
Error Closure: 0.0044 Course: S33° 42' 59"E  
Error North: -0.00362 East: 0.00242

Precision 1: 35104.55





**CERTIFICATE OF ACCEPTANCE  
GOVERNMENT CODE SECTION 27281**

This is to certify acceptance of the interests conveyed by the foregoing Easement Grant Deed from Lavorini Two, LLC, a California limited liability company, to MILPITAS UNIFIED SCHOOL DISTRICT, a California public school district duly organized and existing under the laws of the State of California ("District"), dated \_\_\_\_\_, 2020, and consent by District to recordation of this Easement Grant Deed by its duly authorized officer pursuant to the authority conferred on the District by the California Constitution and California Education Code section 1240, *et seq.*

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020, at \_\_\_\_\_, California.

**MILPITAS UNIFIED SCHOOL DISTRICT,**  
a California public school district

By: \_\_\_\_\_  
Name: Cheryl Jordan  
Title: Superintendent

## ACKNOWLEDGMENT

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

State of California  
County of Santa Clara

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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)

## ACKNOWLEDGMENT

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

State of California  
County of Santa Clara

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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)

**Exhibit C**

**Agreement between the City and District for Construction of Phase Two Mabel Mattos  
Elementary School Project and Completion of McCandless Drive Street Widening  
Improvements**

[Attached]

**AGREEMENT BETWEEN CITY OF MILPITAS AND MILPITAS UNIFIED SCHOOL  
DISTRICT FOR CONSTRUCTION OF PHASE TWO MABEL MATTOS  
ELEMENTARY SCHOOL PROJECT AND COMPLETION OF MCCANDLESS DRIVE  
STREET WIDENING IMPROVEMENTS**

THIS AGREEMENT made and entered on December 17, 2019 by and between the City of Milpitas, a municipal corporation of the State of California (hereinafter referred to as "City"), and the Milpitas Unified School District, a public agency in the State of California (hereinafter referred to as "District"), collectively referred to herein as the "PARTIES".

**RECITALS**

WHEREAS, the City approved on July 25, 2017 Encroachment Permit Number E-EN17-0108 (the "Encroachment Permit") for the construction of public improvements within the City right of way by the District associated with construction of District's Mabel Mattos Elementary School Phase 1 Project (the "Phase 1 Project"); and

WHEREAS, the Encroachment Permit included a condition for the District to correct the roadway alignment of northbound McCandless Drive, near Carl's Jr. at 1890 McCandless Dr, Milpitas, CA 95035, by removing a narrow lane condition created by the Phase 1 Project; and

WHEREAS, the City and District agreed to defer correction of the McCandless Drive roadway until the District's future Mabel Mattos Elementary School Phase 2 Project (the "Phase 2 Project"); and

WHEREAS, the District has now started the design and project coordination of the Phase 2 Project, and will submit the Phase 2 Project construction plans to the City for approval; and

WHEREAS, to correct the roadway alignment of McCandless Drive, the District will acquire Roadway and Public Service Utility easements from the Carl's Jr property owner, will dedicate these easements to the City and will complete construction of the required McCandless Drive widening (the "McCandless Improvements") prior to the completion and occupancy of the Phase 2 Project, estimated to be August 2021; and

WHEREAS, the District and City desire to enter into this AGREEMENT requiring the District to complete acquisition and dedication of the easements and improvements to McCandless Drive. City will approve, if found acceptable, the Phase 2 Project plans by January 10, 2020; and

WHEREAS, the District will complete the McCandless Improvements as specified in Exhibit "A" attached hereto and incorporated herein by this reference.

NOW, THEREFORE, for and in consideration of their mutual promises and agreements, and subject to the terms, conditions, and provisions hereinafter set forth, the PARTIES hereto agree as follows:

#### AGREEMENT

- A. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into this AGREEMENT as though fully set forth herein.
- B. District Scope of Work: To remove the narrow lane condition, Northbound McCandless Drive, near the Carl's Jr restaurant establishment (1890 McCandless Dr, Milpitas, CA 95035), shall be widened as shown in Exhibit "A". The District's proposed work to complete the McCandless Improvements is as specified in (Exhibit "A") and shall include, but is not limited to, acquisition of the required Roadway and Public Service Utility easements, estimated to be 433 square feet as specified in (Exhibit "B1"); relocation and/or adjustment of private dry utilities to match sidewalk grade; construction of new curb, gutter, and sidewalk; paving; signage; pavement legends and striping; tree removal; and minor landscape and irrigation. The McCandless Improvements shall be at the District's sole cost and expense.
- C. Easement Acquisition: The correction to the roadway alignment at McCandless Drive requires the District to complete the acquisition of easements for roadway widening and public service utility purposes. The easement acquisition documents shall be prepared by a California licensed land surveyor at the District's sole cost and expense. The easement acquisition shall be completed prior to District's construction of the McCandless Improvements.
- D. Easement Dedication to City: Upon completion of the easement acquisitions, the District shall dedicate the easements to the City.
- E. City Review and Approval of McCandless Drive Plans, Easements, and Encroachment Permit: The District shall submit to the City engineered plans for the McCandless Improvements, prepared in compliance with the City's current Standard Plans and Specifications, for review, approval and permitting. The District shall submit to the City plats and legal descriptions for the acquired easements. The City will review the McCandless Improvement plans and easement acquisition documents, and if found to meet the City's standards, the City will issue the District an encroachment permit for the McCandless Improvements.
- F. Schedule for Easement Acquisition/Dedication & Completion of McCandless Drive Improvements: The District shall complete the easement acquisition and dedication to the City after completing the McCandless Improvements by August 2021.

- G. Fee for District's Phase 2 Project Plans and McCandless Improvements: The District will open a private job account for the Phase 2 Project and McCandless Improvements to reimburse the City for plan review and inspection costs. City staff time for plan check of the McCandless Improvements and City inspection time as required to perform required construction inspections for the McCandless Improvements will be charged against the private job account.
- H. City Approval of Districts Phase 2 Project Plans: The District will submit the Phase 2 Project construction drawings and related documents to the City for review and approval and District requests City approval of documents on or before January 10, 2020. The City will review and approve the Phase 2 Project construction plans, subject to conformance with City Fire Department requirements and City flood plain management requirements.
- I. Insurance and Indemnification:
1. Each party shall indemnify, defend and hold the other party, its officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts or omissions or willful misconduct of the indemnifying party, its officials, officers, employees, agents, consultants or contractors in the performance of the indemnifying party's obligations under this AGREEMENT, including the payment of all reasonable attorneys' fees.
  2. Notwithstanding the indemnification obligations of Section I(1) of this AGREEMENT, to the fullest extent permitted by law, District shall defend, indemnify and hold the City, its officials, employees, agents and volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of District, its officials, officers, employees, contractors, subcontractors, consultants or agents in connection with the narrow lane condition on McCandless Drive, including without limitation the payment of all expert witness fees, attorneys' fees and other related costs and expenses, except such Claims caused by the sole or active negligence or willful misconduct of the City.

3. The District shall require any contractor awarded a contract to construct any of the McCandless Improvements specified in Exhibit "A" to secure and maintain in full force and effect at all times during the term of any such contract, commercial general liability, automobile liability, workers' compensation/employers' liability, public liability and property damage insurance in forms and limits of liability acceptable to both the City and the District. The contractor's commercial general liability and automobile liability policies shall: (1) name the City and the District and their respective officers, employees and agents as additional insured with respect to all damages and claims, loss, liability, costs or expenses arising out of or in any way connected with the contractor's acts or omissions with respect to construction of the McCandless Improvements; (2) contain a provision or be endorsed to contain a provision that the insurance afforded thereby to the City and the District and their respective officers and employees is primary insurance to the full limits of liability of the policy, and that if the District or the City, or their officers and employees, have other insurance against a loss covered by such policy, that other insurance shall be excess insurance only and shall not be called upon to contribute to the policy in any way. The contractor's commercial general liability, automobile liability, and worker's compensation/employer's liability policies shall be endorsed to provide a waiver of subrogation in favor of the District and the City and their respective officers, employees and agents.
  4. The District shall require any contractor awarded a contract to construct the McCandless Improvements specified in Exhibit "A" to add the City as a dual obligee on the contractor's payment and performance bonds.
  5. The District shall require any contractor, and its subcontractors, awarded a contract to construct the McCandless Improvements specified in Exhibit "A" to indemnify, defend and hold harmless the City to the same extent that the District is indemnified, defended and held harmless.
- J. Additional Provisions:
1. The PARTIES' waiver of any term, condition or covenant, or breach of any term, condition or covenant shall not be construed as a waiver of any other term, condition or covenant or breach of any other term, condition or covenant.
  2. This AGREEMENT contains the entire agreement between the City and the District relating to the construction of the McCandless Improvements set forth in Exhibit "A" and acquisition of easements. Any prior agreements, promises, negotiations, or representations not expressly set forth in this AGREEMENT are of no force or effect.



3. If any term, condition or covenant of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this AGREEMENT shall be valid and binding on the District and the City to the extent reasonably feasible.
4. This AGREEMENT shall be governed and construed in accordance with the laws of the State of California. Venue shall be in Santa Clara County, California.
5. This AGREEMENT may be executed in counterparts.
6. The term of this AGREEMENT shall commence upon execution of the AGREEMENT by both PARTIES and shall remain in effect until terminated upon completion of the obligations of the PARTIES specified herein. However, if a party materially breaches the AGREEMENT, the other party may provide written notice of the breach and a reasonable time under the circumstances to cure the breach, but in no event less than fifteen (15) days. If the breaching party fails to cure the breach within the specified time period, the non-breaching party may terminate the AGREEMENT upon five (5) days written notice to the other party.
7. Each party warrants that it shall make its best efforts to perform all obligations assigned to it related to the AGREEMENT in such a manner as to allow the obligations of the PARTIES required under this AGREEMENT to progress as scheduled.
8. Unless otherwise specified herein, the PARTIES shall submit any unresolved dispute to the District's Superintendent and City's City Manager for negotiation. The PARTIES agree to undertake good faith attempts to resolve said dispute, claim, or controversy within ten (10) calendar days after the receipt of written notice from the party alleging that a dispute, claim or controversy exists. The PARTIES additionally agree to cooperate with the other party in scheduling negotiation sessions. However, if said matter is not resolved within thirty (30) calendar days after conducting the first negotiating session, either party may, but is not required to, request that the matter be submitted to further dispute resolution procedures, as may be agreed upon by the PARTIES. If a matter is not resolved within thirty (30) calendar days after the first negotiating session between the PARTIES, unless otherwise agreed upon in writing by the PARTIES, either party may proceed with any other remedy available in law or in equity.

9. All changes or extensions to this AGREEMENT must be in writing in the form of an amendment executed by both PARTIES.
- K. Notices – Notices given under this AGREEMENT may be delivered by first class mail addressed to the appropriate party at the following addresses:

To City: 455 E. Calaveras Boulevard  
Milpitas, CA 95035  
Attn.: Steven Erickson,  
Engineering Director/City Engineer

To District: 1331 E. Calaveras Boulevard  
Milpitas, CA 95035  
Attn.: Cheryl Jordan  
Superintendent

IN WITNESS WHEREOF, the PARTIES have entered into this AGREEMENT as of the date first above written.

City of Milpitas

Milpitas Unified School District

A municipal corporation

By:   
Steve McHarris  
Interim City Manager

By:   
Cheryl Jordan  
Superintendent

APPROVED AS TO FORM

By:  12/23/19  
Walter Rossmann  
Finance Director

APPROVED AS TO FORM

By:   
Christopher J. Diaz  
City Attorney

Exhibit A  
Proposed McCandless Drive Improvements Plan  
See attached



# DEMOLITION LEGEND

TREE TO BE REMOVED: SEE LANDSCAPE PLAN.  
 EXISTING CURB AND GUTTER TO BE REMOVED.  
 EXISTING VARIETIES AND CONDUIT TO REMAIN AND BE PROTECTED. SEE GRADING PLAN FOR VARIETIES TO BE REMOVED.

EXISTING CURB AND GUTTER TO BE REMOVED.  
 EXISTING VARIETIES AND CONDUIT TO REMAIN AND BE PROTECTED. SEE GRADING PLAN FOR VARIETIES TO BE REMOVED.

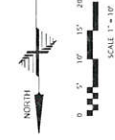
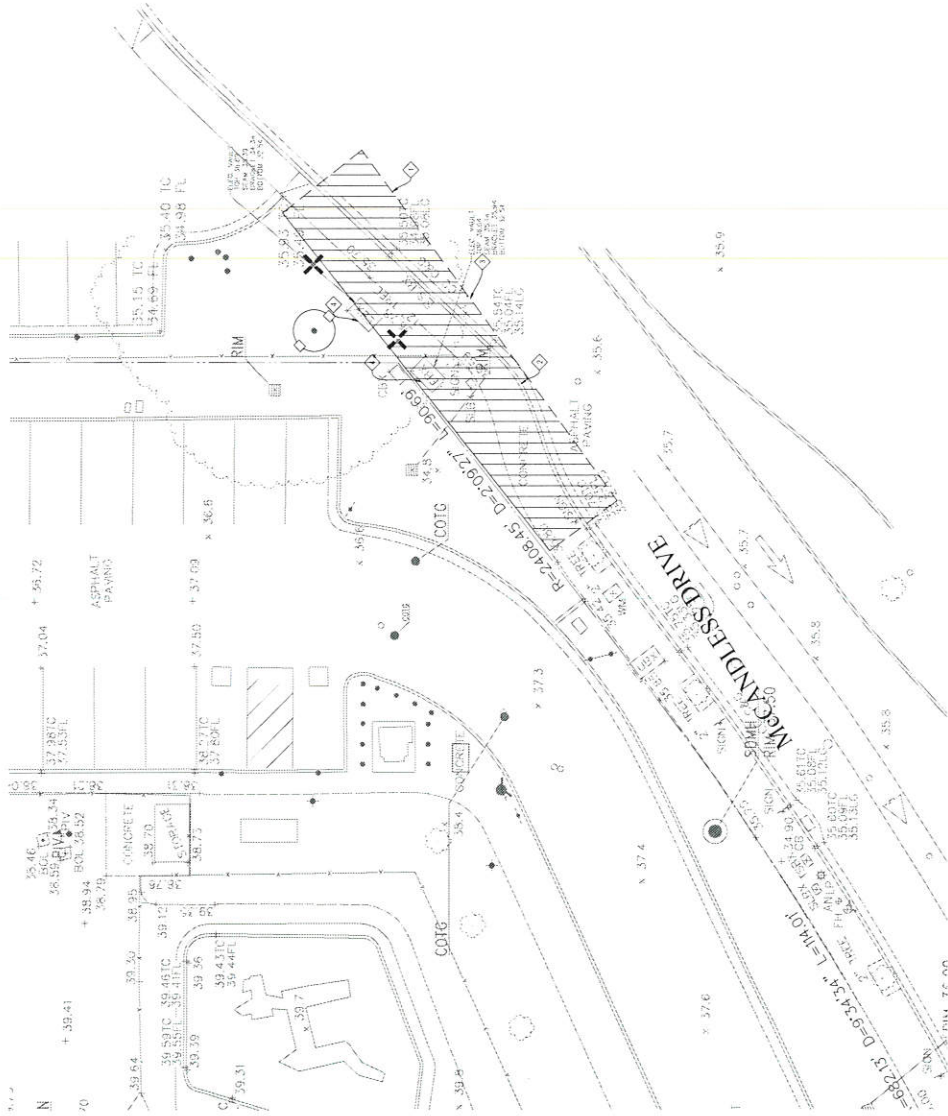
EXISTING CURB AND GUTTER TO BE REMOVED.  
 EXISTING VARIETIES AND CONDUIT TO REMAIN AND BE PROTECTED. SEE GRADING PLAN FOR VARIETIES TO BE REMOVED.

## DEMOLITION KEYNOTES

1. SEE ELECTRICAL PLAN FOR REMOVAL OF ALL ELECTRICAL CONDUITS, BOXES, ETC.
2. SEE UTILITY PLAN FOR ALL NEW UTILITIES LOCATIONS AND ANY EXISTING UTILITIES TO BE REMOVED OR RELOCATED. ALL EXISTING UTILITIES NOT MARKED USED ARE TO BE REMOVED.
3. ALL EXISTING SERVICES AND UTILITIES THAT ARE TO REMAIN OR RELOCATED SHALL BE PROTECTED DURING DEMOLITION. SHALL BE RELOCATED AS NECESSARY.
4. ALL TREES THAT ARE TO REMAIN SHALL BE PROTECTED DURING DEMOLITION. SHALL BE RELOCATED AS NECESSARY.
5. CONTRACTOR SHALL VERIFY PROTECTION OF NECESSARY AREAS, MATERIAL, LOCATIONS AND SETBACKS OF ALL SYSTEMS THAT ARE TO REMAIN OR RELOCATED. SHALL BE PROTECTED DURING DEMOLITION. SHALL BE RELOCATED AS NECESSARY.
6. CONTRACTOR SHALL VERIFY PROTECTION OF NECESSARY AREAS, MATERIAL, LOCATIONS AND SETBACKS OF ALL SYSTEMS THAT ARE TO REMAIN OR RELOCATED. SHALL BE PROTECTED DURING DEMOLITION. SHALL BE RELOCATED AS NECESSARY.

## DEMOLITION NOTES

1. SEE ELECTRICAL PLAN FOR REMOVAL OF ALL ELECTRICAL CONDUITS, BOXES, ETC.
2. SEE UTILITY PLAN FOR ALL NEW UTILITIES LOCATIONS AND ANY EXISTING UTILITIES TO BE REMOVED OR RELOCATED. ALL EXISTING UTILITIES NOT MARKED USED ARE TO BE REMOVED.
3. ALL EXISTING SERVICES AND UTILITIES THAT ARE TO REMAIN OR RELOCATED SHALL BE PROTECTED DURING DEMOLITION. SHALL BE RELOCATED AS NECESSARY.
4. ALL TREES THAT ARE TO REMAIN SHALL BE PROTECTED DURING DEMOLITION. SHALL BE RELOCATED AS NECESSARY.
5. CONTRACTOR SHALL VERIFY PROTECTION OF NECESSARY AREAS, MATERIAL, LOCATIONS AND SETBACKS OF ALL SYSTEMS THAT ARE TO REMAIN OR RELOCATED. SHALL BE PROTECTED DURING DEMOLITION. SHALL BE RELOCATED AS NECESSARY.
6. CONTRACTOR SHALL VERIFY PROTECTION OF NECESSARY AREAS, MATERIAL, LOCATIONS AND SETBACKS OF ALL SYSTEMS THAT ARE TO REMAIN OR RELOCATED. SHALL BE PROTECTED DURING DEMOLITION. SHALL BE RELOCATED AS NECESSARY.



## DEMOLITION PLAN



1-800-721-7600  
 1-800-721-7600

<b>CIVIL ENGINEER:</b> I hereby certify that I am the registered professional engineer responsible for the design and construction of the project shown on this drawing. I am duly licensed by the State of California, and I am duly licensed in the State of California. I am duly licensed in the State of California. I am duly licensed in the State of California.		<b>RECORD DRAWINGS</b> To be completed by the engineer or architect for the city.		<b>REVISIONS</b> No. Date Description	
<b>ENGINEER:</b> I hereby certify that I am the registered professional engineer responsible for the design and construction of the project shown on this drawing. I am duly licensed by the State of California, and I am duly licensed in the State of California. I am duly licensed in the State of California. I am duly licensed in the State of California.		<b>ENGINEER:</b> I hereby certify that I am the registered professional engineer responsible for the design and construction of the project shown on this drawing. I am duly licensed by the State of California, and I am duly licensed in the State of California. I am duly licensed in the State of California. I am duly licensed in the State of California.		<b>ENGINEER:</b> I hereby certify that I am the registered professional engineer responsible for the design and construction of the project shown on this drawing. I am duly licensed by the State of California, and I am duly licensed in the State of California. I am duly licensed in the State of California. I am duly licensed in the State of California.	
<b>ENGINEER:</b> I hereby certify that I am the registered professional engineer responsible for the design and construction of the project shown on this drawing. I am duly licensed by the State of California, and I am duly licensed in the State of California. I am duly licensed in the State of California. I am duly licensed in the State of California.		<b>ENGINEER:</b> I hereby certify that I am the registered professional engineer responsible for the design and construction of the project shown on this drawing. I am duly licensed by the State of California, and I am duly licensed in the State of California. I am duly licensed in the State of California. I am duly licensed in the State of California.		<b>ENGINEER:</b> I hereby certify that I am the registered professional engineer responsible for the design and construction of the project shown on this drawing. I am duly licensed by the State of California, and I am duly licensed in the State of California. I am duly licensed in the State of California. I am duly licensed in the State of California.	

## CITY OF MILPITAS

## ENGINEERING DIVISION

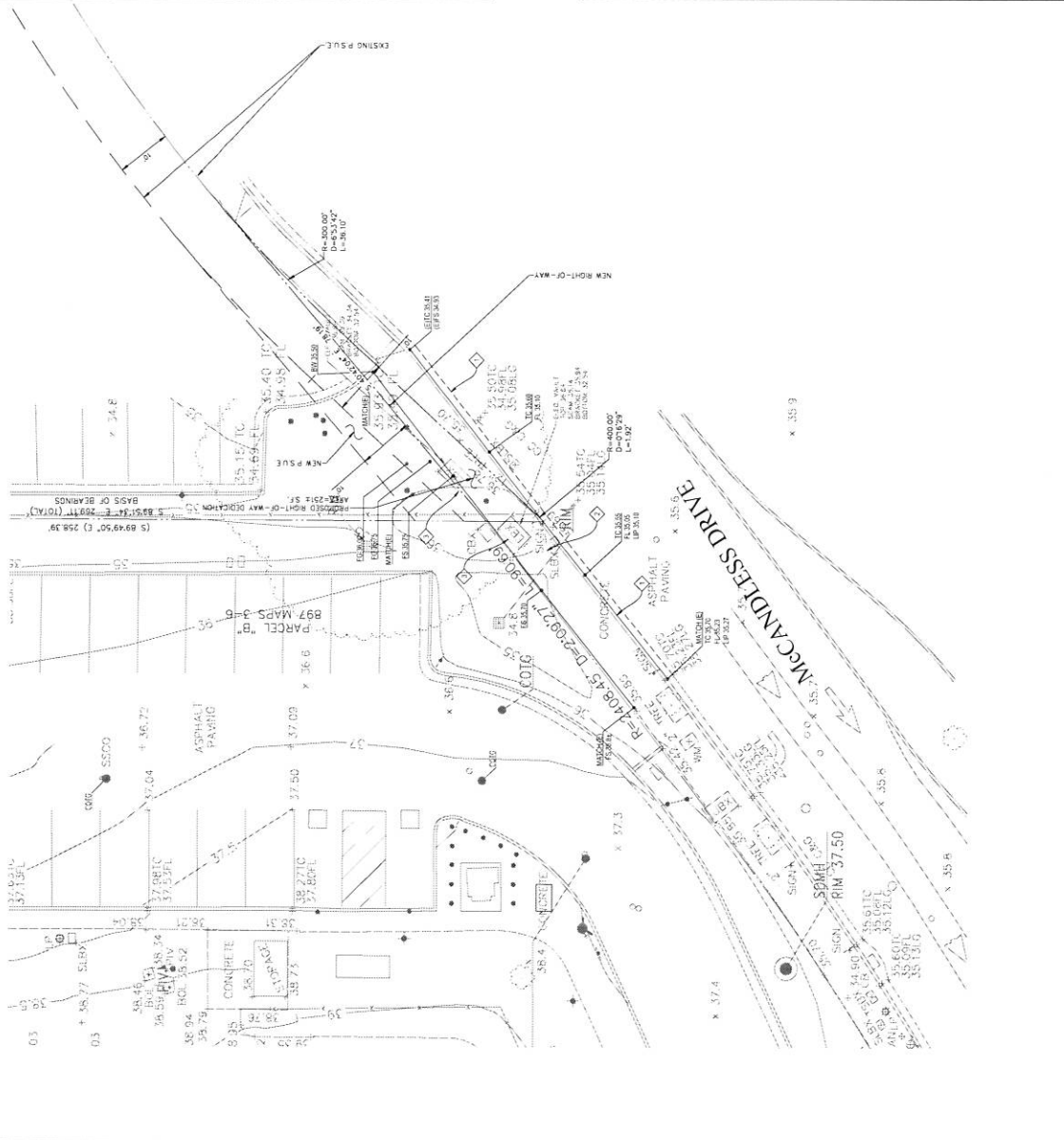
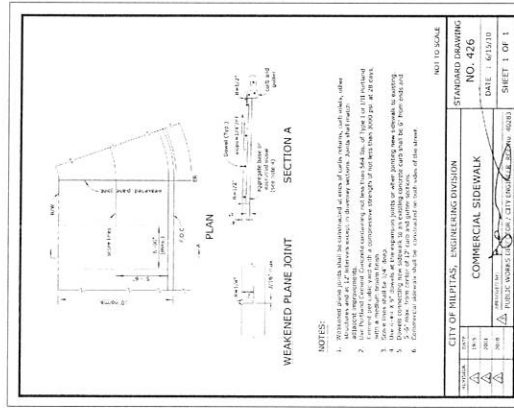
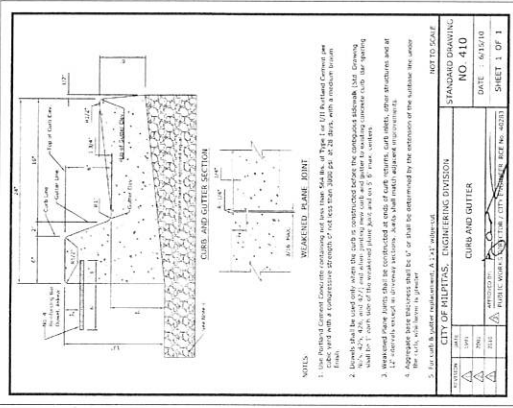
Project No. \_\_\_\_\_  
 Date \_\_\_\_\_  
 File No. \_\_\_\_\_  
 E.P. No. \_\_\_\_\_  
 Sheet 023 of 3

# GRADING LEGEND

GRADE ELEVATION  
 SLOPE AND DIRECTION

## GRADING KEYNOTES

1. SEE CUBS & GUTTER PER CITY OF MILPITAS STANDARD
2. SEE CUBS & GUTTER PER CITY OF MILPITAS STANDARD
3. SEE CUBS & GUTTER PER CITY OF MILPITAS STANDARD
4. SEE CUBS & GUTTER PER CITY OF MILPITAS STANDARD



CITY OF MILPITAS	
ENGINEERING DIVISION	
Project No.	File No.
Design No.	Draw No.
Check No.	Rev. No.
Drawn By	Checked By
Design Date	Check Date
Design Scale	Check Scale

RECORDS	
Date	By

RECORDS	
Date	By

RECORDS	
Date	By

RECORDS	
Date	By

RECORDS	
Date	By







Exhibit B1  
McCandless Drive Roadway and PSUE  
Plat & Legal Description

See attached

EXHIBIT "B1"  
LEGAL DESCRIPTION FOR  
PUBLIC SERVICE UTILITY EASEMENT  
MILPITAS, CALIFORNIA  
A.P.N. 086-41-015

All that certain real property situate in the County of Santa Clara, State of California, being a portion of Parcel 1 as shown on that certain Parcel Map filed December 5, 1984, in Book 536 of Maps at Pages 41 through 43, in the Office of the Recorder of said County; being more particularly described as follows:

**Beginning** at a point on the northerly line of said Parcel 1, said point being distant South 89°51'34" East, 14.86 feet from the northwesterly corner of said Parcel 1;

Thence along said northerly line South 89°51'34" East, 9.08 feet;

Thence leaving said northerly line South 40°24'04" East, 69.55 feet to a point on the existing northeasterly line of the Public Service Utility Easement shown on said Parcel Map, said point being a point of cusp and the beginning of a non-tangent curve to the left, concave to the southwest having a radius of 310.00 feet and to which a radial line bears North 49°17'56" East;

Thence along said curve through a central angle of 6°53'42" a distance of 37.31 feet;

Thence North 47°35'46" West, 38.55 feet to the **Point of Beginning**.

Containing 182 sq. ft. more or less.

The **BASIS OF BEARINGS** of this description is the northerly line of said Parcel 1, taken as South 89°51'34" East as shown on that certain Parcel Map filed for record in Book 536 of Maps at Pages 41-43, Santa Clara County Records.

As shown on Exhibit "B", attached hereto and made a part hereof.

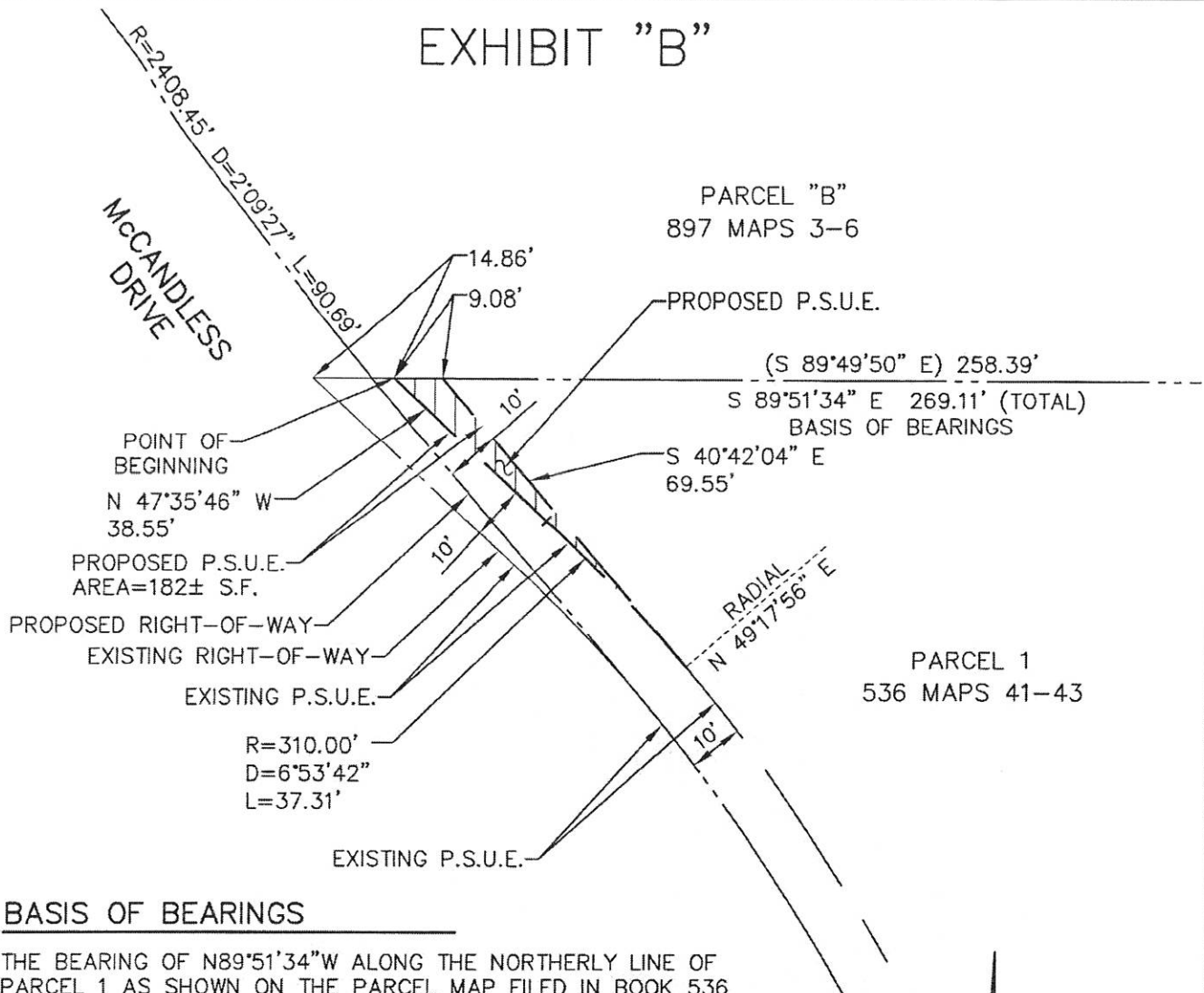
Description prepared by Dains Land Surveying

Robert Dains L.S. 8227

August 20, 2019  
Date



# EXHIBIT "B"

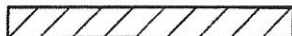


## BASIS OF BEARINGS

THE BEARING OF N89°51'34"W ALONG THE NORTHERLY LINE OF PARCEL 1 AS SHOWN ON THE PARCEL MAP FILED IN BOOK 536 MAPS AT PAGES 41-43, SANTA CLARA COUNTY RECORDS.

## LEGEND

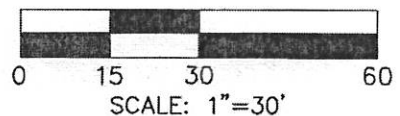
- EXISTING RIGHT-OF-WAY LINE TO REMAIN
- EXISTING RIGHT-OF-WAY LINE TO BE REMOVED
- PROPOSED RIGHT-OF-WAY LINE
- EXISTING P.S.U.E. LINE
- PROPOSED P.S.U.E. LINE



SUBJECT AREA

( )

RECORD DATA PER 897 MAPS 3-6



## PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR PROPOSED P.S.U.E. PURPOSES

MILPITAS

SANTA CLARA COUNTY

CALIFORNIA

PLAT:  
RJD

SCALE:  
1"= 30'

DATE:  
07/22/19

JOB #:  
16-648

# DAINS LAND SURVEYING

rdains@dainslandsurveying.net

(650) 743-0831

Proposed P.S.U.E Dedication

North: 4569.1060' East: 5701.8635'

Segment #1 : Line

Course: S89° 51' 34"E Length: 9.08'  
North: 4569.0837' East: 5710.9435'

Segment #2 : Line

Course: S40° 42' 04"E Length: 69.55'  
North: 4516.3563' East: 5756.2980'

Segment #3 : Curve

Length: 37.31' Radius: 310.00'  
Delta: 6°53'42" Tangent: 18.68'  
Chord: 37.28' Course: N44° 08' 55"W  
Course In: S49° 17' 56"W Course Out: N42° 24' 14"E  
RP North: 4314.2013' East: 5521.2802'  
End North: 4543.1060' East: 5730.3316'

Segment #4 : Line

Course: N47° 35' 46"W Length: 38.55'  
North: 4569.1023' East: 5701.8659'

Perimeter: 154.48' Area: 181.73 Sq. Ft.  
Error Closure: 0.0044 Course: S33° 42' 59"E  
Error North: -0.00362 East: 0.00242

Precision 1: 35104.55



**EXHIBIT "B1"**  
**LEGAL DESCRIPTION FOR**  
**RIGHT-OF-WAY DEDICATION**  
**MILPITAS, CALIFORNIA**  
**A.P.N. 086-41-015**

All that certain real property situate in the County of Santa Clara, State of California, being a portion of Parcel 1 as shown on that certain Parcel Map filed December 5, 1984, in Book 536 of Maps at Pages 41 through 43, in the Office of the Recorder of said County; being more particularly described as follows:

**Beginning** at the northwesterly corner of said Parcel 1;

Thence along the northerly line of said Parcel 1 South  $89^{\circ}51'34''$  East, 10.72 feet to the southwesterly corner of Parcel "B" as shown on that certain Parcel Map filed September 21, 2016, in Book 897 of Maps at Pages 3 through 6;

Thence South  $40^{\circ}42'04''$  East, 78.19 feet to a point on the existing northeasterly right-of-way line of McCandless Drive shown on said Parcel Map filed in Book 536 of maps at Pages 41 through 43, said point being a point of cusp and the beginning of a non-tangent curve to the left, concave to the southwest having a radius of 300.00 feet and to which a radial line bears North  $49^{\circ}17'56''$  East;

Thence along said curve through a central angle of  $6^{\circ}53'42''$  a distance of 36.10 feet;

Thence North  $47^{\circ}35'46''$  West, 47.63 feet to the beginning of a tangent curve to the right having a radius of 400.00 feet;

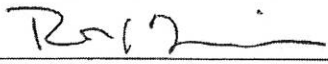
Thence along said curve through a central angle of  $0^{\circ}16'29''$  a distance of 1.92 feet to the **Point of Beginning**.

Containing 251 sq. ft. more or less.

The **BASIS OF BEARINGS** of this description is the northerly line of said Parcel 1, taken as South  $89^{\circ}51'34''$  East as shown on that certain Parcel Map filed for record in Book 536 of Maps at Pages 41-43, Santa Clara County Records.

As shown on Exhibit "B", attached hereto and made a part hereof.

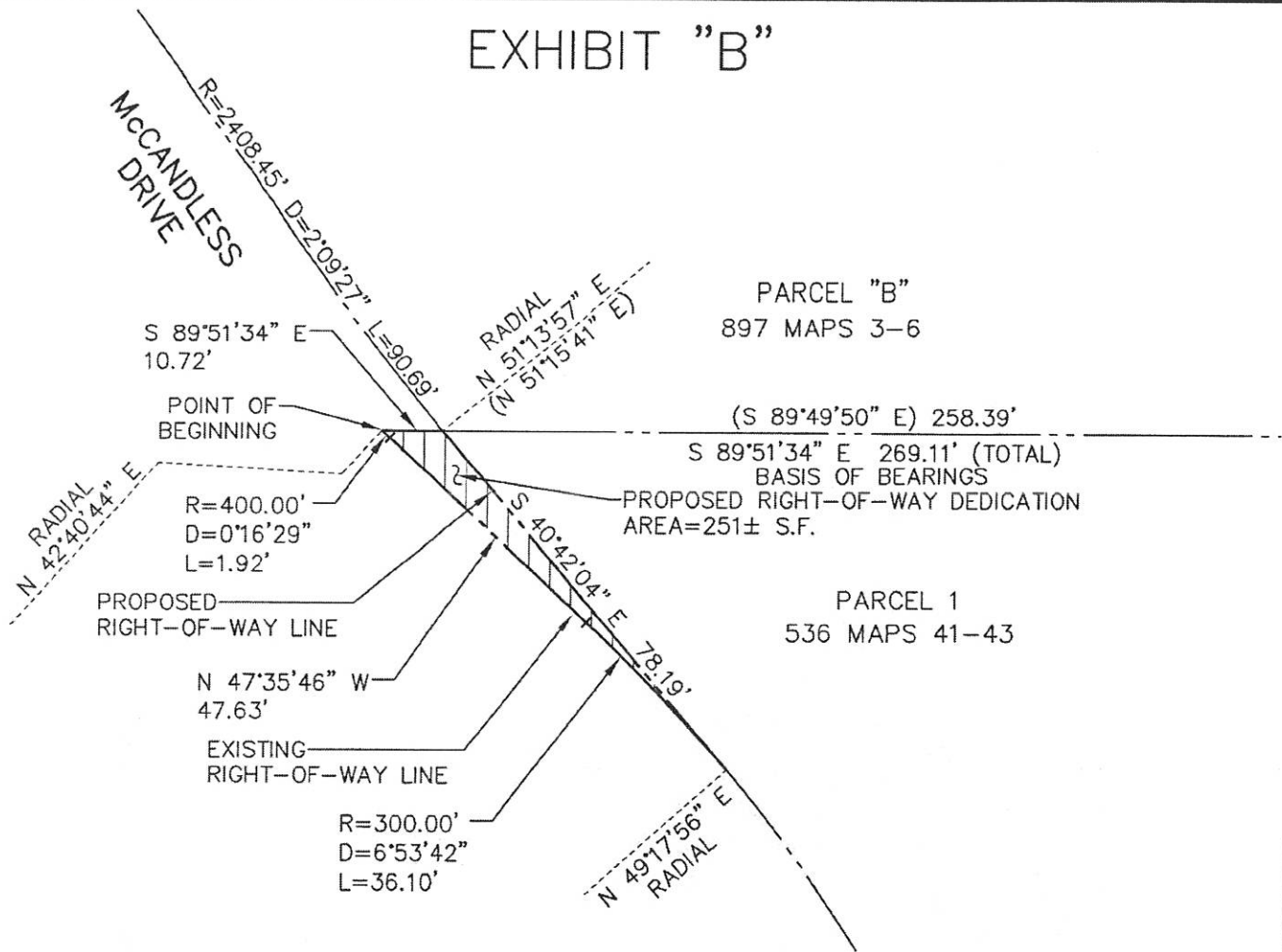
Description prepared by Dains Land Surveying

  
Robert Dains L.S. 8227

August 20, 2019  
Date




# EXHIBIT "B"

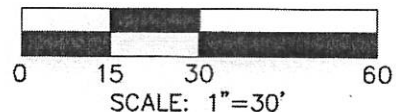


## BASIS OF BEARINGS

THE BEARING OF  $N 89^{\circ}51'34'' W$  ALONG THE NORTHERLY LINE OF PARCEL 1 AS SHOWN ON THE PARCEL MAP FILED IN BOOK 536 MAPS AT PAGES 41-43, SANTA CLARA COUNTY RECORDS.

## LEGEND

- EXISTING RIGHT-OF-WAY LINE TO REMAIN
- EXISTING RIGHT-OF-WAY LINE TO BE REMOVED
- PROPOSED RIGHT-OF-WAY LINE
-  SUBJECT AREA
- ( ) RECORD DATA PER 897 MAPS 3-6



## PLAT TO ACCOMPANY LEGAL DESCRIPTION RIGHT-OF-WAY DEDICATION PURPOSES

MILPITAS

SANTA CLARA COUNTY

CALIFORNIA

PLAT:  
RJD

SCALE:  
1"= 30'

DATE:  
07/22/19

JOB #:  
16-648

# DAINS LAND SURVEYING

rdains@dainslandsurveying.net

(650) 743-0831

Proposed Right-of-Way Dedication

North: 4575.1228' East: 7055.7315'

Segment #1 : Line

Course: S89° 51' 34"E Length: 10.72'  
North: 4575.0965' East: 7066.4515'

Segment #2 : Line

Course: S40° 42' 04"E Length: 78.19'  
North: 4515.8189' East: 7117.4402'

Segment #3 : Curve

Length: 36.10' Radius: 300.00'  
Delta: 6°53'42" Tangent: 18.07'  
Chord: 36.08' Course: N44° 08' 55"W  
Course In: S49° 17' 56"W Course Out: N42° 24' 14"E  
RP North: 4320.1850' East: 6890.0037'  
End North: 4541.7076' East: 7092.3097'

Segment #4 : Line

Course: N47° 35' 46"W Length: 47.63'  
North: 4573.8270' East: 7057.1392'

Segment #5 : Curve

Length: 1.92' Radius: 400.00'  
Delta: 0°16'29" Tangent: 0.96'  
Chord: 1.92' Course: N47° 27' 33"W  
Course In: N42° 24' 14"E Course Out: S42° 40' 44"W  
RP North: 4869.1921' East: 7326.8788'  
End North: 4575.1252' East: 7055.7246'

Perimeter: 174.57' Area: 250.58 Sq. Ft.  
Error Closure: 0.0073 Course: N70° 49' 23"W  
Error North: 0.00240 East: -0.00691

Precision 1: 23909.59

