

**COST REIMBURSEMENT AGREEMENT  
BETWEEN THE CITY OF SUNNYVALE  
AND CHRISTENSEN HOLDINGS LLC  
FOR THE CONSTRUCTION OF IMPROVEMENTS**

**THIS COST REIMBURSEMENT AGREEMENT** ("Reimbursement Agreement" or "Agreement") is entered into as of \_\_\_\_\_, 2016, by and between CHRISTENSEN HOLDINGS LLC, ("DEVELOPER") and the City of Sunnyvale, a California Charter city ("CITY"). CITY and DEVELOPER are referred to herein individually as a "Party" or collectively as the "Parties."

**RECITALS**

- A. DEVELOPER is developing two new office buildings at 433 N. Mathilda Ave. and 410 N. Pastoria in the City of Sunnyvale, County of Santa Clara (hereinafter referred to as "the Project") pursuant to Planning Application 2013-7448.
- B. The Conditions of Approval ("COAs") and Standard Development Requirements for the Project was approved by the City Council on November 19, 2013, and EP-30 required DEVELOPER to design and construct modifications to the left turn pocket on northbound Mathilda Avenue to westbound Maude Avenue (the "Improvements", as more fully described in Exhibit "A").
- C. The COAs stipulated that the DEVELOPER would be reimbursed for the cost of the Improvements by crediting the DEVELOPER's Traffic Impact Fee ("TIF") contribution; however if the cost of the Improvements exceeded the TIF contribution, then a reimbursement agreement could be developed for Council consideration.
- D. DEVELOPER remitted a total of \$294,209.31 to the CITY for its TIF contribution.
- E. During the course of constructing the Improvements, CITY and DEVELOPER were required to change the original scope of the Improvements due to unforeseen field conditions and additional coordination with other CITY projects. These improvements included the relocation of existing traffic conduit, re-pulling of conductor, and the upgrading and installation of 144-strand fiber optic cable to the traffic system.
- F. The Parties now desire to enter into this Agreement for additional TIF funds to reimburse DEVELOPER since the total cost of the Improvements has exceeded the DEVELOPER's TIF contribution.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the Parties agree as follows:

**A G R E E M E N T**

1. **INCORPORATION OF RECITALS**

The PARTIES agree that the foregoing Recitals are true and correct and incorporated into this Agreement.

2. IMPROVEMENTS

CITY required as a Condition of Approval, and DEVELOPER agreed, to the design, permitting, construction, and completion of the Improvements.

3. COST

DEVELOPER and CITY have agreed the total cost of the Improvements to be \$343,765.16, which includes the following: (1) direct construction costs, (2) related general contractor's general conditions, overhead and general contractor's other indirect costs thereof (with respect to which DEVELOPER shall provide City with adequate supporting documentation for City's confirmation), (3) the general contractor's fee, (4) design, permitting, testing, inspecting, engineering and other indirect costs at DEVELOPER's actual costs incurred (i.e., no DEVELOPER markup), (5) any other third party costs directly related to the Improvements reasonably incurred by DEVELOPER. This cost breakdown is included as Exhibit "B", attached.

4. DEVELOPER RESPONSIBILITIES

4.1 Design and Construction. DEVELOPER prepared the design plans and specifications of the Improvements and CITY approved the plans and specifications with necessary modifications, thereafter referred to as the "Approved Plans."

4.2 Permits. DEVELOPER obtained all necessary permits required for the Improvements.

4.3 Compliance with Law and Indemnification for Prevailing Wages. DEVELOPER used its own contract forms to award the contract for the construction of the Improvements, and complied with all laws, ordinances and regulations applicable to the work (including but not limited to, all applicable requirements of the California Labor Code). The DEVELOPER shall indemnify, defend and hold harmless the CITY, its employees, officers and agents, from any and all liability, damages, claims or causes of action brought for the payment of prevailing wages on all work associated with the Improvements.

4.4 Warranty. DEVELOPER hereby warrants to CITY for a period of one (1) year following the date of Final Acceptance of the Work, the quality and adequacy of all of the Work performed as herein described including, without limitation, all work performed and materials supplied by DEVELOPER and/or its Contractor.

Neither final payment nor use of the Work performed by the DEVELOPER or its Contractor shall constitute an acceptance of any work not done in accordance with this warranty or relieve DEVELOPER of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. DEVELOPER shall remedy any defects in the Work and pay for any damage resulting therefrom

which shall appear within one (1) year of Final Acceptance of the Work.

5. CITY RESPONSIBILITIES

- 5.1 Review and Approval of Improvement Plans. CITY worked with DEVELOPER to promptly review and approve the design plans and specifications, including all necessary modifications, for the Improvements prepared by the DEVELOPER.
- 5.2 Acceptance of Improvements. CITY agrees that it shall, after CITY's inspector confirms that the Improvements have been completed in accordance with the Approved Plans, promptly accept such completed Improvements.
- 5.3 Payment. Upon City acceptance of the Improvements, CITY shall pay DEVELOPER for the total costs of the Improvements in an amount not to exceed \$343,765.16 upon DEVELOPER submission of complete invoices showing actual costs for the Improvements.

6. DISPUTES AND REMEDIES

In the event any dispute arises regarding the construction or completion of the Improvements that cannot be resolved informally between the Parties, the Parties agree to engage in mediation before the filing of any formal lawsuit.

7. MISCELLANEOUS PROVISIONS

- 7.1 Notice. Any notice required to be given by either Party, or which either Party may wish to give, shall be in writing and sent or delivered by one of the following methods: (a) personal delivery, (b) reputable overnight courier, such as Federal Express, or (c) certified or registered mail, postage prepaid, addressed as follows:

To DEVELOPER:

Address:

Contact Name:

E-mail

With copy to:

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To CITY:

Address:

Contact Name:

E-mail

Notice shall be deemed effective (i) on the date of delivery, if personally delivered or sent by reputable overnight courier, or (ii) three (3) days after deposit

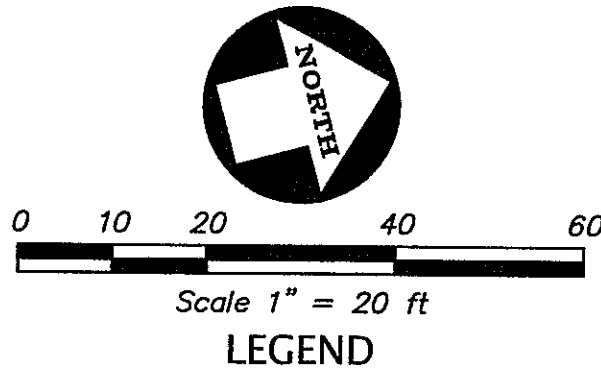
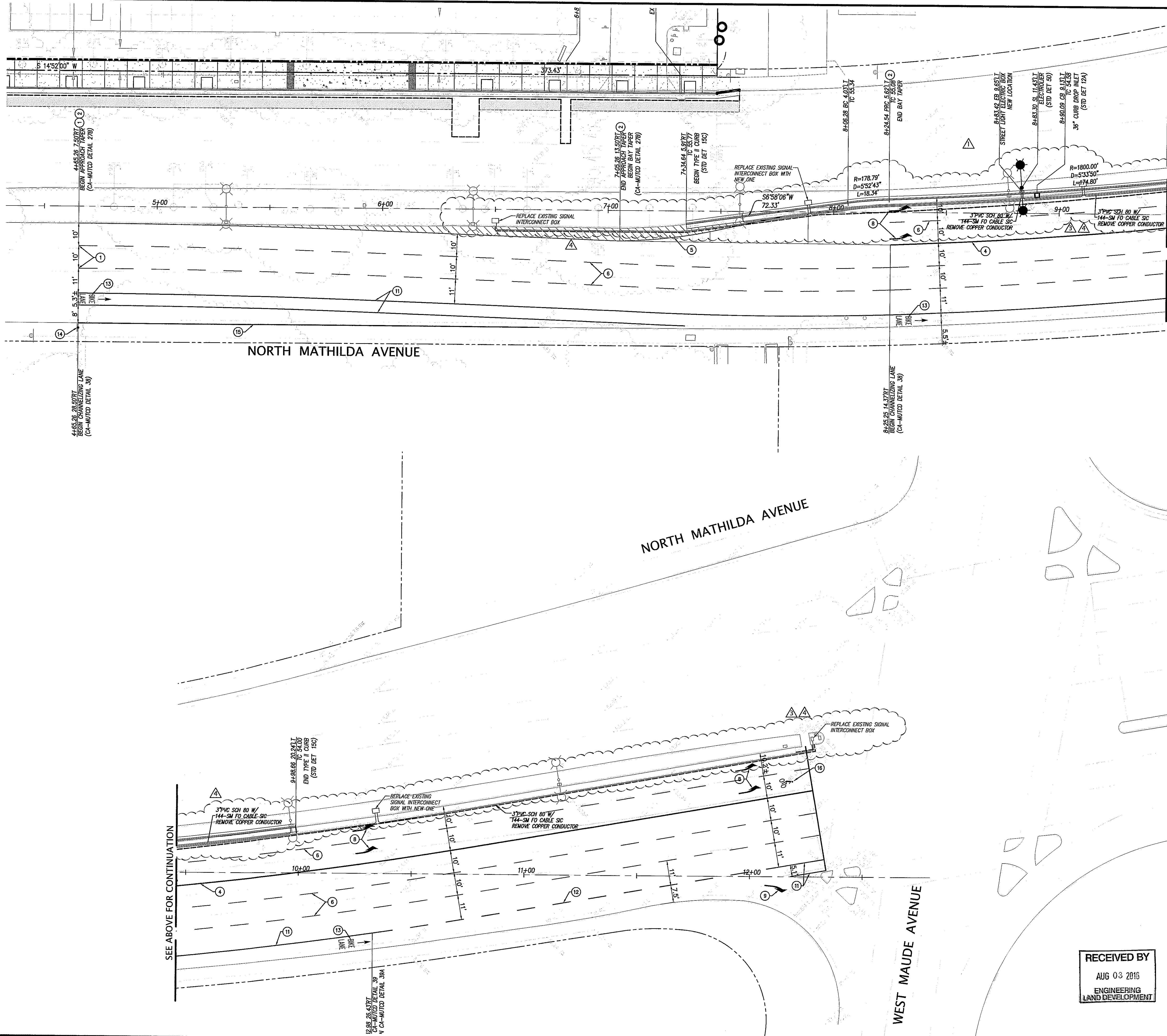
in the United States mail, if sent by certified or registered mail.

- 7.2 Amendments. Amendments to this Reimbursement Agreement may only be made by mutual written agreement of the Parties.
- 7.3 Warranty of Authority to Execute Agreement. Each Party to this Reimbursement 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.
- 7.4 Severability. If any term, covenant, condition or provision of this Reimbursement 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.
- 7.5 Successors and Assigns. This Reimbursement Agreement and the rights and obligations of the Parties contained herein shall inure to the benefit and be binding upon the successors and assigns of each of the Parties.
- 7.6 Interpretation. The language of this Reimbursement Agreement shall, in all cases, be construed as a whole, according to its fair meaning and not strictly for or against either Party.
- 7.7 Governing Law. This Reimbursement Agreement shall be governed by the laws of the State of California and venue shall be in the appropriate Superior Court in Santa Clara County, California, or where appropriate, in the United States District court, Northern District of California, San Jose, California.
- 7.8 Execution in Counterparts. This Reimbursement Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement
- 7.9 Entire Agreement. This Reimbursement Agreement and all Exhibits attached hereto constitute the entire Agreement between the Parties pertaining to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations and understandings of the Parties relative thereto.

**WITNESS THE EXECUTION HEREOF** as of the Effective Date set forth above.

<p>APPROVED AS TO FORM:</p> <p>_____</p> <p>City Attorney</p> <p>Date: _____</p>	<p><b>“CITY”</b></p> <p>CITY OF SUNNYVALE, a municipal corporation</p> <p>By _____</p> <p>DEANNA J. SANTANA City Manager</p> <p>Date: _____</p>
<p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Counsel for DEVELOPER</p> <p>Date: _____</p>	<p><b>"DEVELOPER"</b></p> <p>CHRISTENSEN HOLDINGS LLC</p> <p>By _____</p> <p>NAME Title</p> <p>By _____</p> <p>NAME Title</p> <p>Date: _____</p>

**EXHIBIT A**



PROPOSED	EXISTING	
---	---	CONCRETE CURB
---	---	MONUMENT/MONUMENT LINE
---	---	PROPERTY LINE
---	---	DETAIL 22
---	---	DETAIL 38
---	---	DETAIL 27B
---	---	DETAIL 12
---	---	SIGN
---	---	BIKE LANE LOGO
---	---	SIC SIGNAL INTERCONNECT

STRIPING KEYNOTES

- CONFORM TO EXISTING STRIPE.
- STANDARD LEFT-TURN CHANNELIZATION PER HCM FIGURE 405.2A WITH APPROACH TAPER AND BAY TAPER PER TABLE 405.2A AND 405.2B.
- DOUBLE 4 INCH YELLOW LINE WITH TWO WAY YELLOW RETROREFLECTIVE MARKERS PER CA-MUTCD DETAIL 22.
- SINGLE 8 INCH WIDE WHITE LINE WITH ONE WAY CLEAR RETROREFLECTIVE MARKERS PER CA-MUTCD DETAIL 38.
- SINGLE 4 INCH WHITE LINE PER CA-MUTCD DETAIL 27B.
- SINGLE 4 INCH DASHED WHITE LINE WITH ONE WAY CLEAR RETROREFLECTIVE MARKERS PER CA-MUTCD DETAIL 12.
- TYPE I ARROW PER CA-MUTCD FIGURE 3B-24 (CA)
- TYPE III (L) ARROW PER CA-MUTCD FIGURE 3B-24 (CA)
- TYPE III (R) ARROW PER CA-MUTCD FIGURE 3B-24 (CA)
- TYPE II (R) ARROW PER CA-MUTCD FIGURE 3B-24 (CA)
- SINGLE 6 INCH WHITE LINE PER CA-MUTCD DETAIL 39.
- SINGLE 6 INCH DASHED WHITE LINE PER CA-MUTCD DETAIL 39A.
- CALTRANS "BIKE LANE" LEGEND (CALTRANS DET A24D) AND BIKE LANE ARROW (CALTRANS DETAIL A24A)
- R26/R81 SIGN (STD DET 4E-2)
- RED CURB "NO PARKING"
- BICYCLE DETECTOR PAVEMENT MARKING PER 2010 CALTRANS SHEET A24C.

STRIPING NOTES

- ALL STRIPING TO BE THERMOPLASTIC PAINT PER CITY OF SUNNYVALE STANDARDS.
- UPON COMPLETION OF REMOVAL OF STRIPING, SLURRY SEAL PRIOR TO NEW STRIPING.
- CAT TRACKING SHALL BE APPROVED BY THE CITY OF SUNNYVALE TRANSPORTATION ENGINEER PRIOR TO STRIPING.
- CONTRACTOR SHALL REPLACE ALL INDUCTIVE LOOPS IF DAMAGE BY PROJECT WORK.
- CONTRACTOR TO SLURRY SEAL MATHILDA NORTH BOUND PRIOR TO INSTALLING NEW STRIPING.

SIGNAL INTERCONNECT NOTES

- EXISTING PULL BOXES FOR SIC TO BE REPLACED WITH NEW ONES PER CITY SPECIFICATIONS.
- SIC CABLE TO BE TESTED BY CONTRACTOR PER CITY SPECIFICATIONS. CONTRACTOR TO SUBMIT TEST FORM ONCE COMPLETED.
- PROVIDE AND INSTALL 144-STRAND FIBER OPTIC SIC CABLE PER CITY SPECIFICATIONS.
- FIBER OPTIC CABLE TO BE INSTALLED FROM NORTHWEST CORNER OF MATHILDA AVENUE AND MAUDE AVENUE TO MATHILDA AVENUE AND INDIO AVENUE TRAFFIC SIGNAL CONTROLLER CABINETS, USING EXISTING AND NEW CONDUIT.
- EXISTING 25 PAIR SIC COPPER CABLE TO BE REMOVED PRIOR TO INSTALLATION OF FIBER OPTICS.
- CONTRACTOR TO PROVIDE ETHERNET SWITCHES ACTELIS ML 688 (COPPER AND FO PORTS).
- CONTRACTOR TO NOTIFY CITY TRANSPORTATION ENGINEER OF WORK 72 HOURS IN ADVANCE.

OFF-SITE IMPROVEMENTS  
**APPROVED**  
CITY OF SUNNYVALE  
DEPT. OF PUBLIC WORKS  
BY Wilson  
DATE 8/4/2016  
PERMIT NO. 2014-9219

REVISED PLAN

RECEIVED BY  
AUG 03 2016  
ENGINEERING  
LAND DEVELOPMENT

NO.	REVISION	BY	NO.	REVISION	BY
1	REVISED ELECTRODE LOCATION 11-03-2015	SMC	1	REVISED ELECTRODE LOCATION 11-03-2015	SMC
2	REVISED SIDEWALK WIDTH 2-23-2016	SMC	2	REVISED SIDEWALK WIDTH 2-23-2016	SMC
3	STREET LIGHT AND SIC CONDUIT 6-01-2016	SMC	3	STREET LIGHT AND SIC CONDUIT 6-01-2016	SMC
4	CITY COMMENTS 6-29-2016	SMC	4	CITY COMMENTS 6-29-2016	SMC

**KIER & WRIGHT**  
CIVIL ENGINEERS & SURVEYORS, INC.  
2850 Collier Canyon Road  
Livermore, California 94551  
Phone (925) 245-8788  
Fax (925) 245-8796

**OFF-SITE IMPROVEMENT PLANS**  
**NORTH MATHILDA AVENUE STRIPING PLAN**  
SUNNYVALE  
CALIFORNIA

DATE	FEBRUARY, 2015
SCALE	
DESIGNER	SMC
JOB NO.	A07148-4
SHEET	<b>C3.3</b>
OF	20 SHEETS

**EXHIBIT B**



## Mathilda Left Turn Lane Reimbursement

Original Work:				Additional Work			<u>Total Cost</u>
SouthBay Construction :	C.O. #2	C.O. #21 Slurry adj.	Total #2	C.O. #16 + Fiber	CO # 34 Existing Conditions		
0110 General Conditions	15,877		15,877	0		0	
0170 Clean up	3,840		3,840	0			
0176 Traffic Control				14,250			
0178 Design Fees	1,750		1,750	0			
0194 Safety	301		301	1,728			
0197 Insurance	845		845	1,209			
0201 Survey and Layout	2,755		2,755				
0207 Offsite Work - relocate light pole, signal interconnect using fiber etc				130,108			
0207 Offsite Work					Pick up pole	1,085	
0207 Offsite Work					Fiber Switches	7,000	
0207 Offsite Work					Potholing	52,694	
0214 Erosion Control	425		425				
0252 Curb Demo / Grading	16,619		16,619				
0272 New catch basin	5,290		5,290				
0251 AC patch/Overlay/Slurry	19,250	(12,075)	7,175	12,705			
0252 Site Concrete	29,632		29,632			27,007	
0272							
0284 Striping	21,488	(21,488)	0				
0290 Landscape					Repair 76 Station	2,805	
1600 Utility box relocate	3,475		3,475				
0196 Contractor Contingency	6,077		6,077	15,706	Credit CO 16	(13,652)	
0199 Contractor Fee	3,829		3,829	5,183	+Ins. and safety	3,616	
			<u>97,890</u>	<u>180,889</u>		<u>80,555</u>	<u>359,334</u>

Credit for costs that are developer responsibility (15,569)

Total Reimbursement Due 343,765

Note: Breakdown shown are actual costs incurred that differ from the engineer's estimate