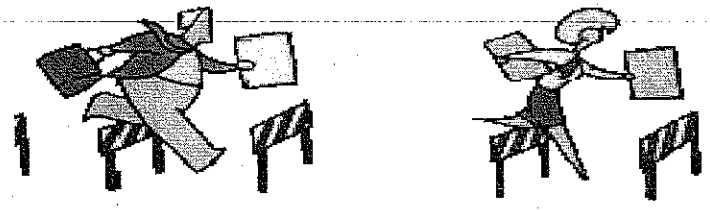
CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

City Council Meeting
04/02/2013



Attachments Related to Agenda

Item #1

After Agenda Packet Distribution

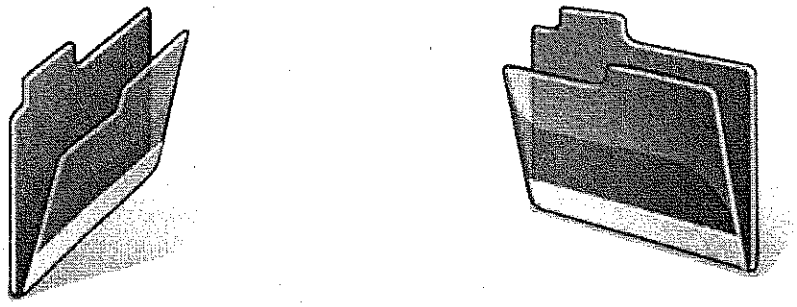


EXHIBIT A

CONDITIONS OF APPROVAL
Site Development Permit No. SD12-0007
A request for off-site advertising displays
1301 California Circle (APN: 022-038-002) and 1541 California Circle (APN: 022-37-049)

General Conditions

1. The owner or designee shall develop the approved project in conformance with the approved plans approved by the City Council, in accordance with these Conditions of Approval. Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for, review and obtain approval of the City Council, in accordance with the Zoning Ordinance. **(P)**

   SD12-0007 shall become null and void if the project is not commenced within two (2) years from the date of approval. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas:

   a. Completes a foundation associated with the project; or
   b. Dedicates any land or easement as required from the zoning action; or
   c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

2. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of SD12-0007 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**

3. Prior to the issuance of building permits, the owner or designee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**

4. Prior to issuance of a building permit, the owner or designee shall provide a landscape plan showing native and drought tolerant plants such as, but not limited to rosemary, California Poppy species to be planted at the base of the sign. **(P)**

5. Prior to issuance of building permit final, the owner or designee shall demonstrate that the plantings pursuant to the landscape plan are in place. **(P)**

6. Prior to issuance of a building permit, the owner or designee shall demonstrate final project design specifications to include a combination of display angle, display light source shielding, LED display brightness control; illumination aim, focus and shielding; etc., sufficient to shield nearby residential vantage point direct views of the displays and to prevent excessive glare, and stray (overcast) illumination. In addition, require the Project Development Agreement to include a process for modifying these various displays and lighting specifications, if deemed necessary over time by the City, based upon directives received from Caltrans, or the California Highway Patrol, complaints received, or the City's own periodic visual inspection and consideration of billboard operational characteristics. **(MM)**

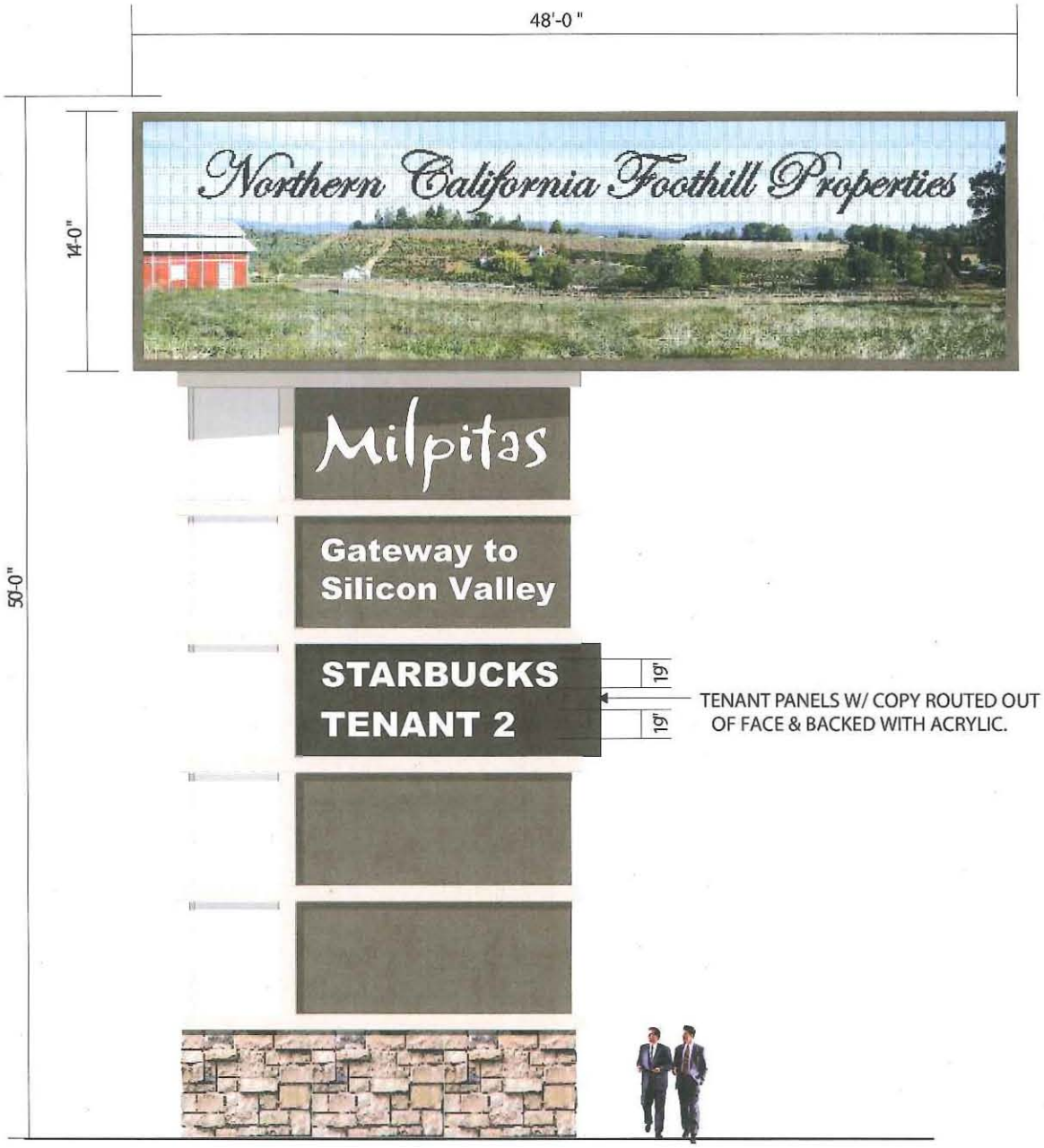
7. The Project Development Agreement shall include a process for modifying display and lighting specifications, if deemed necessary over time by the City. Modifications could include adjustments to digital display brilliance, content, motion, recess, aim, focus, shielding, etc. **(MM)**

8. If the sign remains non-operational for a period of six months or more, it shall be the responsibility of the sign operator or possessor if not the operator to obtain the appropriate permits, and permission to remove the sign at their own expense. (CC)

9. The final design of the sign shall replace the "City of Milpitas" sign text with "Milpitas: Gateway to Silicon Valley" sign text. The proportions of the sign text shall remain legible from a distance and shall be substantially in conformance with the elevation attached to these conditions as Exhibit One (1). The final design of the sign shall be reviewed by the Planning Director or designee. (CC)

(P) = Planning
(B) = Building
(E) = Engineering
(F) = Fire Prevention
(MM) = Mitigation Measure

1451 CALIFORNIA CIRCLE

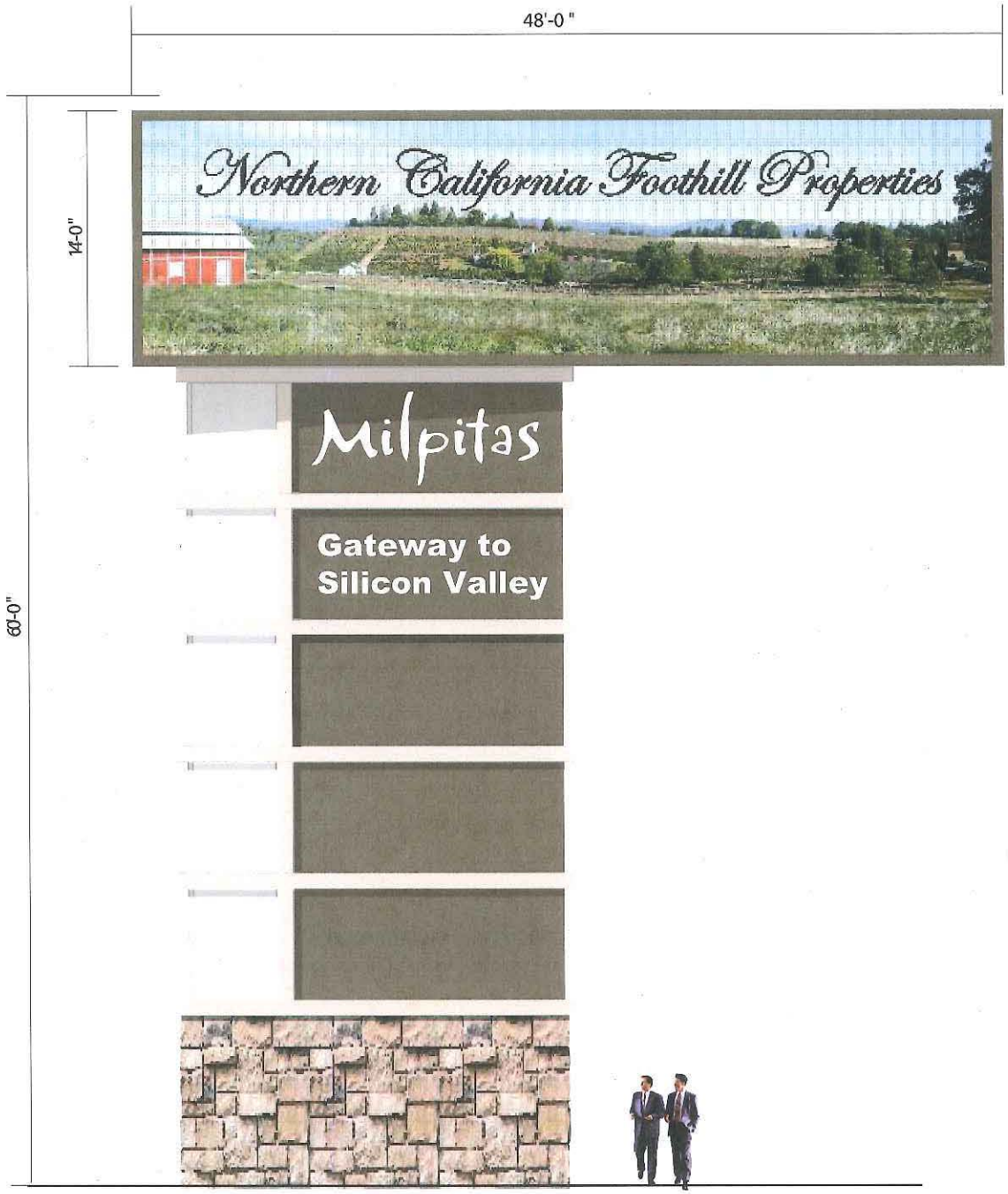


ClearChannel® OUTDOOR

clearchannelOUTDOOR.com

EXHIBIT 1

1301 CALIFORNIA CIRCLE



ClearChannel OUTDOOR

clearchannelOUTDOOR.com

EXHIBIT B

MITIGATION FINDINGS AND FINDINGS CONCERNING ALTERNATIVES FOR THE I-880 BILLBOARD PROJECT LOCATED AT 1301 CALIFORNIA CIRCLE AND 1545 CALIFORNIA CIRCLE

SECTION 1: MITIGATION FINDINGS PURSUANT TO CEQA GUIDELINES SECTION 15091

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Sections 15091 and 15163(e), the City Council hereby makes the following findings with respect to the potential for significant environmental impacts from the project located at 1301 California Circle and 1545 California Circle ("Project") and means for mitigating those impacts. The impacts and mitigations included in the following findings are summarized rather than set forth in full. The Draft and Final EIR documents are incorporated herein by reference and should be consulted for a complete description of the impacts and mitigations.

Less than Significant Impact with Mitigation

Aesthetics Impact 4-2: Project Spill Light and Sky Glow Impacts. A number of federal, state, and city laws and regulations have been adopted to regulate the brilliance of billboard lighting so as to not impair the vision of drivers. Digital billboards are also equipped with sensors that modify the brightness of the LED display in response to ambient lighting conditions, so that the brightness of the display at night does not present a traffic safety hazard. These brightness regulations and controls are not intended, and may not be sufficient, to effectively control the potential for billboard sign spill light and sky glow impacts. Mitigation features to be included in the project to shield nearby residences from spill light and to limit sky glow have not yet been specified—e.g., display brilliance (light intensity), static display light source shielding, electronic display dimming controls, and other specifications (display orientation, aim focus and shielding) sufficient to prevent excessive glare or overcast illumination).

Depending upon such specifications, the project could cause excessive spill light and sky glow (especially during nighttime foggy conditions) that may create a nuisance for adjacent sensitive residential uses on Heath Street, Redwood Avenue, Glenmoor Circle, N. Abbott Avenue, and east of the Penitencia Creek channel. As a result, sky glow caused by the project could substantially degrade the quality of nighttime views and night sky access from these nearby vantage points. These possible light, glare and sky glow effects represent a potentially significant impact.

Mitigation MeasureAES-4.2: As a condition of approval, require final project design specifications to include a combination of display angle, display light source shielding, LED display brightness control; illumination aim, focus and shielding; etc., sufficient to shield nearby residential vantage point direct views of the displays and to prevent excessive glare, and stray (overcast) illumination. In addition, require the Project Development Agreement to include a process for modifying these various displays and lighting specifications, if deemed necessary over time by the City, based upon directives received from Caltrans, or the California Highway Patrol, complaints received, or the City's own periodic visual inspection and consideration of billboard operational characteristics.

Finding: Implementation of these measures to the satisfaction of the City's Planning and Neighborhood Services Director would reduce the potential light, glare and sky glow impacts of the project to a less than significant level.

SECTION 2: FINDINGS CONCERNING ALTERNATIVES

CEQA requires that an EIR identify alternatives to a project as proposed. CEQA Guidelines §15126.6(a) specifies that the EIR identify alternatives which "would feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen many of the significant environmental effects of the project."

Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors. In addition, consistent with CEQA § 21002, a project should not be approved if feasible alternatives would substantially lessen the Project's significant effects. CEQA requires that an EIR identify alternatives to the project as proposed. The CEQA Guidelines [Section 15126.6(a)] specify that an EIR identify alternatives which "would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project." **Chapter 7 Alternatives** of this EIR analyzes several alternatives to the proposed project. A brief summary of these alternatives and their impacts is provided below.

Alternative 1: No Project Alternative

Under the No Project alternative, the project sites would remain as is with no new impacts. The No Project alternative would avoid all the environmental impacts of the proposed project. The No Project alternative would not meet any of the project objectives, but it would avoid all of the impacts of the proposed project. For this reason, the No Project Alternative is an environmentally superior alternative to the proposed project.

Alternative 2: Lower Height

Alternative 2, Lower Height, would involve installing three billboard structures along the east side of I-880 south of Dixon Landing Road, similar to the Project. However, Alternative 2 would reduce the height of billboards to 50 feet, down from 70 feet with the Project. All other location, design and operational characteristics of Alternative 2 would remain similar to the Project.

Impacts and Mitigations

a. Aesthetics. Alternative 2 would reduce significant impacts of the project on I-880 gateway visual character and spill light, glare and sky glow impacts. Impacts on I-880 gateway visual character would be reduced, but the reduction would not be substantial—i.e., this identified impact would remain significant and unavoidable. At a height of 50 feet, the billboards would not be blocked from view by roadside vegetation and would still be visible to approaching freeway drivers for considerable distance, but would likely not be visible from adjacent residential uses on Glenmoor Circle, North Abbott Avenue, and east of the Penitencia Creek channel. The sky glow impacts and mitigation needs of Alternative 2 would be similar to the project.

b. Transportation. Alternative 2 would not be visible from as great of a distance or as long a time from the freeway view as the Project, but would still result in traffic safety effects similar to but less than the Project.

c. Other Impacts. Alternative 2 would have similar less-than-significant impacts with respect to all other environmental topics included in CEQA Guidelines Appendix G and evaluated in Section 6.4, Effects Found Not to be Significant, of the EIR.

Attainment of Project Alternatives

Alternative 2 would reduce or avoid Project visual and noise impacts on nearby residential and hotel uses, and would be substantially as effective in meeting the basic Project objective of erecting new freeway billboards with high visibility, as well as providing advertising revenue to the applicant and the City.

Alternative 3: Fewer Billboards

Figure 7.1 of the EIR shows seven possible locations, Site Options 1 through 7, where the proposed three digital billboard structures may be located. Under the proposed Project, all three billboard structures would be located on the east side of I-880, at three of the four east side Site Options 1 through 4.

Under **Alternative 3**, Fewer Billboards, two billboard structures rather than three would be installed along the east side of I-880 south of Dixon Landing Road. The proposed east side billboard at Site Option 4 would be eliminated in order to reduce the potential for traffic safety hazards associated with driver distraction near driver decision and action points and official traffic control signs associated with the northbound off-ramp of the Dixon Landing Road interchange. The two billboards retained would be located on Project Site Options 1, 2 or 3. All other design and operational characteristics of Alternative 3 would also be similar to the Project.

Impacts and Mitigations

a. Aesthetics. Alternative 3 would allow for optimal placement of the billboards to reduce or avoid visual impacts on nearby homes. With only two billboards instead of three there would be a proportional decrease in impacts on light, glare and sky glow. Alternative 3 would also reduce or avoid Project visual impacts on sensitive residential uses east of the Penitencia Creek channel near Dixon Landing Road. Impacts on I-880 gateway visual character would be reduced but would nevertheless remain significant and unavoidable. There would be less interference with future City implementation of gateway landscaping and signage treatments recommended in the General Plan and Streetscape Master Plan. Nevertheless, impact and mitigation findings 4-1 through 4-3 for the proposed Project would continue to apply.

b. Transportation. With only two billboards instead of three, there would be some decrease in potential Project effects on driver attention.

c. Other Impacts. Alternative 3 would have similar less-than-significant impacts with respect to all other environmental topics included in CEQA Guidelines Appendix G and evaluated in Section 6.4, Effects Found Not to be Significant, of this EIR.

Attainment of Project Objectives

Alternative 3 would achieve the basic Project objectives of erecting new freeway digital billboards, as well as providing benefits to the applicant and City in terms of local business promotion and generation of associated advertising revenue. However, with only two billboards instead of three, there would be a proportional decrease in benefits accruing to the billboard owner and operator, as well as to the City.

Alternative 4: All Non-Led Billboards

Under **Alternative 4**, All Non-LED Billboards, three billboard structures would be installed on three of the same four site options along the east side of I-880 as under the proposed Project, but without "digital" LED displays. Instead, all three would include externally illuminated facings, two per structure. The locations, height and size of the three "non-digital" billboards would be similar to the Project.

Impacts and Mitigations

a. Aesthetics. Alternative 4 would be less visually conspicuous because non-LED billboards would not have changing messages. In addition, the light sources used for sign illumination could be more effectively shielded. Therefore, Alternative 4 could be designed to reduce spill light, glare and sky glow impacts. Alternative 4 would still cause a significant and unavoidable impact on gateway visual character. In summary, impact and mitigation findings 4-1 through 4-3 for the proposed Project would continue to apply under Alternative 4.

b. Transportation. Alternative 4 would reduce the traffic safety effects of the project. Non-LED billboards would be less distracting to drivers because they would be less bright and would not have changing messages, which are more noticeable and distracting.

c. Other Impacts. Alternative 4 would have similar less-than-significant impacts with respect to all other environmental topics included in CEQA Guidelines Appendix G and evaluated in Section 6.4, Effects Found Not to be Significant, of this EIR.

Attainment of Project Objectives

Alternative 4 would partially achieve the basic Project objectives of erecting new freeway billboards, though not digital billboards, and would provide similar but reduced benefits to the applicant and City in terms of advertising revenue and promotion of local businesses.

Alternative 5: Alternative Location--Two Billboards On East Side And One Billboard On West Side Of I-880

Under **Alternative 5**, two of the three proposed billboard structures would be located on the east side of I-880 at two of the four east side Site Options 1 through 4, and one of the three would be located on the west side of I-880 at one of the three west side Site Options 6 through 7. All other design and operational characteristics would be similar to the Project.

Impacts and Mitigations

a. Aesthetics. Similar to Alternative 3, Alternative 5 would reduce the number of billboards on the east side of the freeway where potential impacts on nearby homes could occur. Alternative 5 would allow for optimal placement of the two billboards on the east side to avoid or reduce visual impacts on nearby homes. With only two billboards instead of three on the east side of I- 880, there would be a proportional decrease in impacts on light, glare and sky glow. Alternative 5 would also reduce or avoid Project visual impacts on sensitive residential uses east of the Penitencia Creek channel near Dixon Landing Road. There would be less interference with future City implementation of gateway landscaping and signage treatments recommended in the General Plan and Streetscape Master Plan. Impacts on I-880 gateway visual character would be reduced but would nevertheless remain significant and unavoidable. Impact and mitigation findings 4-1 through 4-3 for the proposed Project would continue to apply.

b. Transportation. With only two billboards instead of three on the east side of I-880, there would be some decrease in potential Project effects on driver attention.

c. Other Impacts. Alternative 5 would have similar less-than-significant impacts with respect to all other environmental topics included in CEQA Guidelines Appendix G and evaluated in Section 6.4, Effects Found Not to be Significant, of this EIR.

Attainment of Project Objectives

Alternative 5 would achieve most of the basic Project objectives by erecting three new freeway digital billboards, as well as providing benefits to the applicant and City in terms of local business promotion and generation of associated advertising revenue.

Alternative 6: Alternative Location--One Billboard On East Side And Two Billboards On West Side Of Interstate 880

Under **Alternative 6**, one of the three proposed billboard structures would be located on the east side of I-880 at one of the four east side site options, and the other two billboards would be located on the west side of I-880 at two of the three west side site options. All other design and operational characteristics would be similar to the Project.

Impacts and Mitigations

a. Aesthetics. Alternative 6 would allow for optimal placement of the one billboard on the east side of I-880 to reduce or avoid visual impacts on nearby homes. With only one billboard on the east side instead of three there would be a proportional decrease in impacts on light, glare and sky glow. Alternative 6 would also reduce or avoid Project visual impacts on sensitive residential uses east of the Penitencia Creek channel near Dixon Landing Road.

   The two billboards located on the west side of I-880 would result in similar significant and unavoidable impacts on the Dixon Landing Road interchange gateway to Milpitas. Due to the interchange overpass and southbound on-ramp embankment, the two billboards on the west side of the freeway would be visible to drivers entering Milpitas for a shorter distance.

b. Transportation. With only one billboard instead of three on the east side of I-880, there would be a substantial decrease in potential Project effects on driver attention.

c. Other Impacts. Alternative 6 would have similar less-than-significant impacts with respect to all other environmental topics included in CEQA Guidelines Appendix G and evaluated in Section 6.4, Effects Found Not to be Significant, of this EIR.

Attainment of Project Objectives

Alternative 6 would achieve most of the basic Project objectives by erecting three new freeway digital billboards, as well as providing benefits to the applicant and City in terms of local business promotion and generation of associated advertising revenue.

Alternative 7: Alternative Location--All Three Billboards On West Side Of Interstate 880

Under **Alternative 7**, All Three Billboards on West Side of Interstate 880, all three billboard structures would be installed along the west side of I-880 rather than along the east side of the freeway, either on: the three west side Site Options 5 through 7 shown on Figure 7.1, or on undeveloped land west of N. McCarthy Boulevard, or on some combination of these various options. All other design and operational characteristics would be similar to the Project.

Impacts and Mitigations

a. Aesthetics. Billboards located on the west side of I-880 south of Dixon Landing Road would result in similar significant and unavoidable impacts on the Dixon Landing Road interchange gateway to Milpitas. Due to the interchange overpass and southbound on-ramp embankment, billboards at these west side locations would be visible to drivers entering Milpitas for a shorter distance.

   Billboards located on the west side of N. McCarthy Boulevard within the McCarthy Center office, industrial and commercial park areas and/or the adjacent WalMart site would be farther away from the Dixon Landing Road interchange gateway to Milpitas, and thus would have a less substantial impact on this important gateway view. However, this reduction in impact would be offset by increased visibility from the SR 237 gateway to Milpitas. Therefore, the impact on gateway visual character would still be significant and unavoidable. As a result, impact and mitigation findings 4-1 ad 4-3 would continue to apply.

b. Transportation. In general, digital billboards located on the west side of I-880 would have traffic safety effects similar to the proposed Project. Billboards located on lands east or west of N. McCarthy Boulevard would be less distracting to drivers because they would be farther away from the freeway and, due to the interchange overpass and southbound on-ramp embankment, would be visible to approaching drivers for a shorter distance.

EXHIBIT C

STATEMENT OF OVERRIDING CONSIDERATIONS

General

Prior to approving a project for which an Environmental Impact Report (EIR) is certified and for which findings are made that one or more significant impacts would result because mitigation measures or alternatives identified in the EIR are infeasible, the California Environmental Quality Act (CEQA) mandates that the lead agency state in writing the specific overriding economic, legal, social, technological, or other benefits of the project that outweigh the significant effects on the environment. This must be a written finding stating the agency's specific reasons supporting its action based on the Final EIR and/or other information in the record. The requirements for a Statement of Overriding Considerations are established in Section 15093 of the CEQA Guidelines and in the CEQA provisions set forth in Public Resource Code Section 21081 et seq.

Accordingly, the City Council of the City of Milpitas makes this Statement of Overriding Considerations for those impacts identified in the Project as significant and unavoidable.

The City Council has carefully considered each impact in reaching its decision to approve the "Project" whose primary focus is providing advertising near a major freeway. Although the City Council believes that the unavoidable environmental effects identified in the EIR will be substantially lessened by mitigation measures and regulations incorporated into the Project, the Council recognizes that implementation of the Project carries with it unavoidable adverse environmental effects.

The City Council specifically finds that to the extent that the identified adverse or potentially adverse impacts of the Project have not been mitigated to acceptable levels, there are specific economic, legal, social, technological, environmental, land use, and other considerations that support approval of the Project.

Unavoidable Significant Adverse Impacts

The following unavoidable significant environmental impacts are associated with the proposed Project as identified in the EIR. The impacts cannot be mitigated to less than significant by changes or alterations to the Project.

Impact 4-1: Project Impacts on I-880 Gateway Visual Character. The three project billboard structures may be perceived by many as substantially degrading the visual character and quality of the General Plan identified southbound I-880 "gateway" to Milpitas.

A mitigation is proposed that would require modifications and adjustments to the displays to reduce the impact, however, implementation of these measures cannot assure the impact is reduced to a less than significant level.

Impact 4-3: Cumulative Impact on Community Aesthetic Character. The previous EIR that evaluated five new freeway billboards in Milpitas concluded that there would be significant and unavoidable impacts related to community aesthetic character. Based on those findings, the current project along with the previous project would still result in a significant and unavoidable impact. No mitigations can assure that the impacts of the project would be reduced to a level of less than significant.

The City Council has balanced the benefits of the Project to the City of Milpitas against the significant and potentially significant adverse impacts identified in the EIR that have not been eliminated or mitigated to a level of insignificance. To the extent that the Project would result in unavoidable significant impacts described in the EIR, the City Council hereby determines that such unavoidable impacts are outweighed by the benefits of the Project as further set forth below. The City Council, acting pursuant to CEQA Guidelines Section 15093, hereby determines that unavoidable impacts of the Project are outweighed by the need to provide a media for

advertising commercial and non-commercial messages along I-880. The City Council has considered the public record of proceedings on the proposed Project and has determined that approval of the Project would result in the increase revenue to the City and provide a means to communicate community events and services.

Upon consideration of the public record of proceedings on the Project, the City Council hereby determines that substantial evidence is included in the record demonstrating the economic, awareness and other benefits that the City will derive from implementation of the Project. The City Council further determines that approval and implementation of the Project will result in the following substantial public benefits.

MITIGATION MONITORING CHECKLIST--INTERSTATE 880 BILLBOARDS PROJECT

The environmental mitigation measures listed in column two below have been incorporated into the conditions of approval for the Interstate 880 Billboards Project in order to mitigate identified environmental impacts. A completed and signed chart will indicate that each mitigation requirement has been complied with, and that City and state monitoring requirements have been fulfilled with respect to Public Resources Code section 21081.6.

		MONITORING			VERIFICATION	
IDENTIFIED IMPACT	**RELATED MITIGATION MEASURE (Performance Criteria)**	**Implementation Entity**	**Monitoring and Verification Entity**	**Timing Requirements**	**Signature**	**Date**
AESTHETICS						
Impact 4-1: Project Impacts on I-880 Gateway Visual Character. The General Plan identifies the southbound I-880 freeway segment at the northern city limits at Dixon Landing Road as a major visual "gateway" into the city. The City's Streetscape Master Plan includes landscaping and signage recommendations for the seven General Plan-identified major "gateways," including the I-880 "gateway" segment. The three Project billboard structures may be perceived by many as substantially degrading the visual character and quality of the General Plan-identified southbound I-880 "gateway" to Milpitas, which would represent a ***potentially significant impact.***	**Mitigation 4-1.** Require the Project Development Agreement to include a process for modifying display and lighting specifications, if deemed necessary over time by the City. Modifications could include adjustments to digital display brilliance, content, motion, recess, aim, focus, shielding, etc.	Planning Division	Planning Division	Before approving development agreement		
Impact 4-2: Project Spill Light and Sky Glow Impacts. A number of federal, State and City laws and regulations have been adopted to regulate the brilliance of billboard lighting so as to not impair the vision of drivers. Digital billboards are also equipped with sensors that modify the brightness of the LED display in response to ambient lighting conditions, so that the brightness of the display at night does not present a traffic safety hazard. These brightness regulations and controls are not intended, and may not be sufficient, to effectively control the potential for billboard sign spill light	**Mitigation 4-2.** Require the final Project design specifications to include a combination of display shielding, display angle, display light source shielding, LED display brightness control; illumination aim, focus and shielding; etc., sufficient to shield nearby residential vantage point direct views of the displays and to prevent excessive glare, and stray (overcast) illumination. In addition, require the Project Development Agreement to include a process for modifying these various display and lighting specifications, if deemed necessary over time by the City, based upon	Applicant	Planning Division	Before issuing building permit		

EXHIBIT D

		MONITORING			VERIFICATION	
IDENTIFIED IMPACT	**RELATED MITIGATION MEASURE (Performance Criteria)**	**Implementation Entity**	**Monitoring and Verification Entity**	**Timing Requirements**	**Signature**	**Date**
and sky glow impacts. The Project could cause excessive spill light and sky glow (especially during nighttime foggy conditions) that may create a nuisance for adjacent sensitive residential uses on Heath Street, Redwood Avenue, Glenmoor Circle, N. Abbott Avenue, and east of the Penitencia Creek channel. Sky glow caused by the Project could substantially degrade the quality of nighttime views and night sky access from these nearby vantage points. These possible light, glare and sky glow effects represent a ***potentially significant impact***.	directives received from Caltrans or the California Highway Patrol, complaints received, or the City's own periodic visual inspection and consideration of billboard operational characteristics.					
Impact 4-3: Cumulative Impact on Community Aesthetic Character. An EIR certified by the City in 2006 which evaluated the impacts of five new freeway billboards, including two digital billboards, along I-880 and I-680, concluded that the billboards would result in unavoidable significant impacts related to community character and visual intrusion on nearby residential and hotel uses. The current Project together with the other five anticipated billboards evaluated in the 2006 EIR, would result in significant cumulative impacts rated to community character, nearby residential area visual character, and light, glare and sky glow. The Project could result in a considerable contribution to this ***significant cumulative impact.***	**Mitigation 4-3:** Mitigations 4-1 and 4-2 in Chapter 4, Aesthetics, would reduce the Project contribution to this previously identified significant cumulative impact on community aesthetic character, but not assuredly to a less than considerable level. The potential Project contribution to this cumulative impact would therefore represent a ***significant and unavoidable impact.***	Planning Division and applicant	Planning Division	Before approving development agreement/before issuing building permit		

EXHIBIT D

Mary Lavelle

From: Lawrence Hannigan [larry.hannigan@gmail.com]
Sent: Monday, April 01, 2013 10:46 PM
To: Mary Lavelle
Subject: Milpitas City Council will review electronic signs

City Clerk's Office
APR - 2 2013
RECEIVED

Dear Ms. Lavelle,

I have read the environmental impact report on the proposed two-sided electronic billboards and the city's proposed development agreement with Milpitas Sign Company LLC and I am vehemently against them. The installation of two 672 square foot signs that may reach 70 feet high is unnecessary visual clutter. The light spill is more than a mere nuisance. It is a reminder of how invasive corporate advertising is. It is another in a multitude of digital nodes; it's tentacles encasing us in beeps and blinking LED lights where ever we turn. These billboards will substantially impact our view of the night sky and is a reminder to everyone who passes though our community that the city of Milpitas can be bought for a low five figures and a bright shiny object. Please leave the gaudy nightclub lighting for some other community that hosts card clubs and gaming casinos. I often spend time with my children looking up at the night sky in Milpitas and point out elements and celestial bodies to them. I like to inform them that this time of year the Little Dipper juts to the right of Polaris. The brighter Big Dipper curls above it pouring water into it. We probably all have childhood memories about looking up at the stars at night and remember how much brighter the stars seemed. Is it just selective enhanced memories from childhood? No, the sad truth is the stars are dimmer because of all the artificial light man now uses significantly degrades our view of the night skies.

Thank you,

Lawrence Hannigan

Mary Lavelle

From: Kelly [kelly2310@yahoo.com]
Sent: Monday, April 01, 2013 9:15 AM
To: Mary Lavelle
Subject: OPPOSITION to I-880 Billboard Project

City Clerk's Office
APR - 1 2013
RECEIVED

To the City Council,

RE: OPPOSITION to I-880 Billboard Project

I spoke at the planning meeting in opposition to this project and regret I cannot speak to you directly on Tuesday, April 2nd. I would like to point to the electronic billboard currently in place at 1st street on 237 as an example of how blinding these signs actually are, especially in the rain, and it is absolutely a safety hazard to traffic. The developer countered the glare problem saying that they were within government guidelines for brightness, but as I pointed out in the planning meeting, the government also said asbestos was OK too. Just because someone says it seems OK now doesn't mean it's really OK! I drive this freeway corridor every single day to commute to and from work from my home off Dixon Landing Road and I do not want these signs contributing to glare and distractions along my already busy commute. Having two signs within just over 2000 feet of each other is simply unnecessary on this busy stretch of 880.

The developer also argued at the planning meeting that these were the "optimal" two placements for these signs. I respectfully disagree. First, as I said before there is no reason for two billboards in such a short distance and there is no reason to have a billboard of this size anywhere near housing when there are other freeways and commercial areas to put them in. For example, a single billboard could have been easily placed in the commercial shopping area of McCarthy Ranch near both 237 and 880 where there is already signage of this magnitude, but the developer rejected this site because it was not "optimal" and would be seen for 2 seconds less than the chosen sites.

Finally, the materials submitted to the council promote the idea that local businesses will be advertised to the "traveling public." The owners of the Chevron gas station next to Starbucks were at the planning commission meeting and they said they were priced out by the developer/owner of the current signage allotted to their property. You'll note the only advertising on the sign put up about 3 years ago is Starbucks. So exactly how will local businesses afford to advertise on these signs? The developer admits the most likely advertisers are national ones - coca cola was put forth. The city council needs to understand Milpitas is not a "destination" for the "traveling public", it is a community and we would like to keep it that way.

Please do not approve this proposal for two electronic billboards in my neighborhood.
Mr. Kelly Alexander
464 Cascadita Terrace
Milpitas

City Clerk's Office
APR - 1 2013
RECEIVED

Mary Lavelle

From: Kelvin Ng [kelvinkcng@gmail.com]
Sent: Friday, March 29, 2013 1:11 AM
To: Mary Lavelle
Subject: Milpitas Resident Opinion on Freeway Signs Near Dixon Landing

I am a Milpitas resident and homeowner of a property located near the proposed digital billboards along highway 880. I oppose to the proposal for many reasons, and as the EIR pointed out, there is no mitigation available to reduce the impact on nearby residents to any acceptable level. Given that context, the economic benefit of $10000K per quarter each sign provides no justification for the proposal's approval. With moderate density housing being proposed near the signs, there could be potentially 1000 homes affected in lowered property value. A conservative estimate would put the combined property value at $500M, and with 1% minimum property tax rate, annual property tax revenue is at least $5M. Billboards like that could easily cause a loss of property tax revenue above $1 M, more than **ten** times the amount of that revenue generated by **two** very large signs. I urge council members to vote against the proposal.

Kelvin Ng

Mary Lavelle

City Clerk's Office
APR - 1 2013
RECEIVED

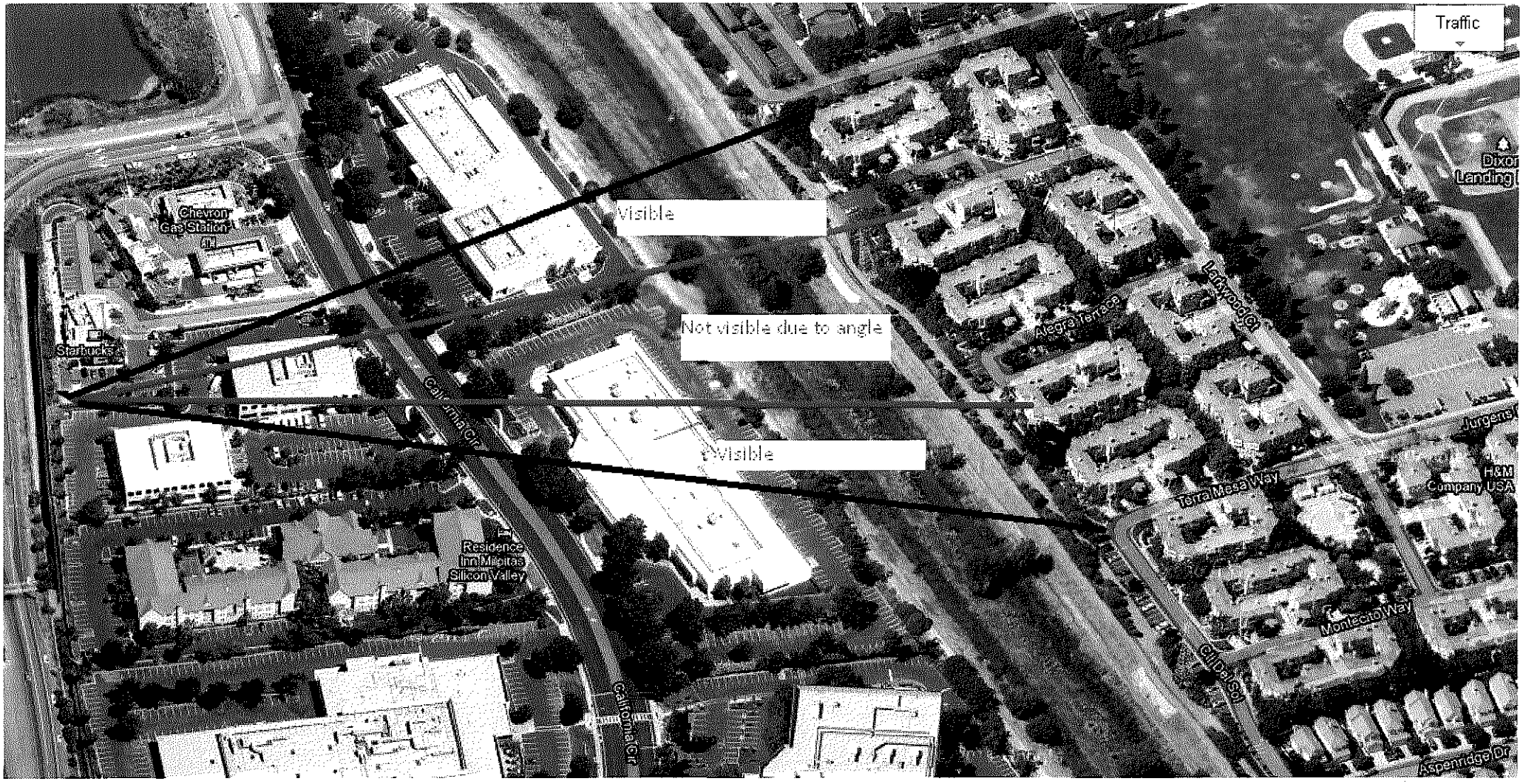
From: R. Smith [rodney.smith@gmail.com]
Sent: Monday, April 01, 2013 1:53 PM
To: Mary Lavelle
Subject: Document for April 2nd, 2013 Meeting on Proposed LED Signage
Attachments: LED-Sign-visibility.jpg

Hi Mary,
One of the homeowners in my area recommended I supply a document I created depciting the visibility of the signage being proposed Tuesday. If possible can you provide print-outs for the board members that will be reviewing the proposal?

I also plan to be there in person to speak 3 minutes to the diagram.

Thank you in advance!

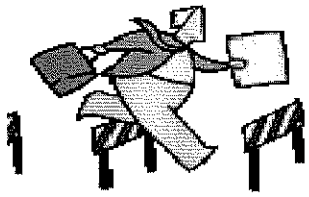
Regards,
Rodney

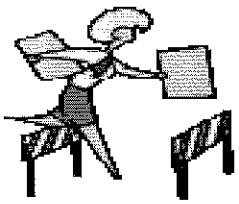

Traffic
Visible
Not visible due to angle
Visible
Chevron Gas Station
Starbucks
California Cir
Residence Inn Milpitas Silicon Valley
California Cir
Alegre Terrace
Larkwood Ct
Terra Mesa Way
Montecito Way
Gil Del Sol
Aspenridge Dr
H&M Company USA

CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

City Council Meeting
04/02/2013



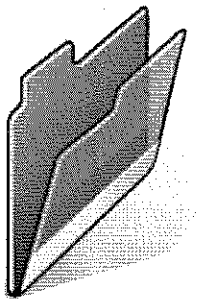


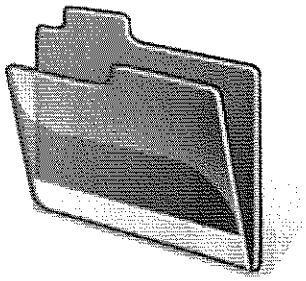
Attachments Related to Agenda

Item #HA1

1) Budget Change Form
2) Contract

After Agenda Packet Distribution





City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:				
☒ Budget Appropriation	295-2938	$ 621,500	295-3954	$ 621,500
☐ Budget Transfer	350-3858	621,500	350-910-4237	621,500

Explain the reason for the budget change:

Background: On February 19, 2013, the City Council adopted Resolution No. 8227 delegating the Public Works Director the authority to take emergency action and allow emergency contracts to be executed without giving notice soliciting competitive bids. Since that time, the site has been fenced for security, demolition contractors have been conducting site inspections to bid the job (including asbestos removal) and staff has had ongoing discussions with DR Horton (Harmony Project is adjacent to the City buildings) regarding demolition of the buildings. Based on economy of scale, potential costs saving to the City and to expedite the demolition, the City Council is recommended to authorize the City Manager to execute an agreement with DR Horton for demolition of City buildings on McCandless Drive.

DR Horton solicited three bids from its contractors. Three contractor bids are included in the agenda packet. Staff recommends the selection of Gilroy Construction, Inc., the lowest bidder in the amount of $621,500

Staff further recommends the Housing Authority authorize a loan to the City in the amount of $621,500 to pay for the demolition of the buildings on site. Once the City starts collecting Park-In-Lieu fees from developers in the Transit Area, the loan will be paid back to the Housing Authority within one year. The City's intra-fund for loans requires a 5% interest rate.

Fiscal Impact: None. There are sufficient funds in the Housing Authority to provide the loan to the City.

Recommendation: Adopt a resolution approving a loan from the Housing Authority to the City of Milpitas, and authorize the City Manager to execute an agreement with DR Horton for the selection of Gilroy Construction, Inc. for the demolition of City buildings at 1650-1690 and 1740-1830 McCandless Drive, at a total cost not-to-exceed $621,500.

☒ **Check if City Council Approval required.** **Meeting Date:** April 2, 2013

Requested by:	**Felix Reliford**	**Date: March 27, 2013**
Reviewed by:	**Finance Director:**	**Date:** 3/27/13
Approved by:	**City Manager:**	**Date:**

Date approved by City Council, if required: **Confirmed by:**

A-09 CONTRACT

THIS AGREEMENT, dated for convenience this _____day of April, 2013, between the CITY OF MILPITAS, a municipal corporation in the County of Santa Clara, State of California (hereinafter called "CITY") and D.R. Horton Bay, Inc., a Delaware corporation (hereinafter called "CONTRACTOR"):

RECITALS:

A. Horton is the owner of that certain real property in the Transit Area Specific Plan area, in the CITY of Milpitas, State of California, as more commonly referred to as the Harmony Project, located at 1615 McCandless Street in Milpitas, California ("**Project**").

B. CITY and CONTRACTOR now desire to enter into this Agreement for CONTRACTOR to perform certain demolition work at City McCandless Property, as described in **Exhibit A**

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

ARTICLE I: WORK TO BE DONE AND DOCUMENTS FORMING THE CONTRACT

That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the said CITY, and under the conditions expressed herein, the said CONTRACTOR agrees with the said CITY, at his/her own proper cost and expense, to do all the work and furnish all the materials and equipment necessary to perform and complete in a good, workmanlike and substantial manner, all the management, assistance, work and improvements described, for the work more fully described as follows:

1.1 **Retention of CONTRACTOR for Demolition at the City McCandless Property**. By and through this Agreement, CITY agrees to retain CONTRACTOR to assist the CITY in its efforts of completing the demolition of existing structures and in removing/off-hauling of all resulting debris at the City McCandless Property ("**Demolition Work**"). The scope of the Demolition Work and the location and description of the to-be demolished structures are more particularly described herein in **Exhibit B**.

1.2 **Demolition Work Plan**. Subject to the terms of this Agreement, CONTRACTOR shall manage and control the completion of the Demolition Work. The management will include preliminary meetings with the CITY to address CONTRACTOR's creation of a demolition plan, an estimated demolition budget, and a proposed work schedule (collectively, "**Demolition Work Plan**") for the Demolition Work. As part of the preliminary meetings, the parties have agreed on the demolition budget attached hereto as **Exhibit C**. CONTRACTOR shall submit the Demolition Work Plan to the CITY for review, comment, and internal approval by the CITY prior to CONTRACTOR seeking any related and necessary plan approvals and permitting with the City's Building and Safety Department or other applicable departments and/or agencies. Upon CONTRACTOR's delivery of its Demolition Work Plan to the CITY

pursuant to the notice provisions provided herein, the CITY will provide any and all written comments to CONTRACTOR within fifteen (15) business days. Said process will continue for any subsequent revisions to the Demolition Work Plan until the CITY grants its approval, which shall not be unreasonably withheld.

1.3 Processing Associated Plans and Permitting for Demolition Work. The Parties acknowledge that the Demolition Work to be performed on the City McCandless Property is subject to plan review and approvals and the issuance of permits by the City's Building and Safety Department and/or other applicable agencies or departments. CONTRACTOR shall prepare, submit, and process all such applications for plan approvals and permitting for the Demolition Work using commercially reasonable efforts. CITY will process said plan approvals and permits according to its express plan check service or any other available expedited procedures. In the event that the CITY does not issue any necessary approvals or permits necessary to authorize the Demolition Work, CONTRACTOR shall have no further obligations related to the Demolition Work under the terms of this Agreement. In such event, City shall reimburse CONTRACTOR for all costs and expenses previously incurred by CONTRACTOR pursuant to Section 2.1 below.

1.4 Other Documents Relating to Permitting for the Demolition Work. The Parties acknowledge that the Demolition Work to be performed on the City McCandless Property may require and be subject to a permit from the Bay Area Air Quality Management District ("**BAAQMD**") verifying the complete abatement of asbestos and other potential hazardous materials from the structures to be demolished. CONTRACTOR will prepare, submit, and process said application with the BAAQMD. In conjunction with processing the BAAQMD permitting, CONTRACTOR will prepare a hazardous materials report as required by industry standards. In the event that BAAQMD does not issue any necessary approvals or permits necessary to authorize the Demolition Work, CONTRACTOR shall have no further obligations related to the Demolition Work under the terms of this Agreement in such event, City shall reimburse CONTRACTOR for all costs and expenses previously incurred by CONTRACTOR pursuant to Section 2.1 below.

1.5 Storm Water Pollution Prevention Plan. Prior to beginning the Demolition Work, CONTRACTOR will cause to be created for the City McCandless Property a current Storm Water Pollution Prevention Plan (the "**SWPPP**") to address all work being performed under this Agreement and will provide copies of the same to CITY for CITY approval. If the area of disturbed soil is one acre or more, CONTRACTOR shall seek all requisite approvals and permitting related to the SWPPP with the governing Regional Water Quality Control Board (RWQCB). CONTRACTOR agrees to comply with any and all permits and approvals issued by the governing RWQCB related to the SWPPP and to oversee the implementation of the SWPPP through completion of the Demolition Work and the 11A/11B Storage Use (hereinafter defined). The CITY shall reimburse CONTRACTOR for all costs incurred in obtaining the RWQCB permit within thirty (30) days of receipt of written notice for payment.

1.6 Bids and Contracts. CONTRACTOR has prepared the requests for bid packages, including bid specifications and contract requirements and advertised for bids in accordance with applicable City requirements to perform the Demolition Work under the approved Demolition Plan. CITY has reviewed the bids and selected Gilroy Construction, Inc. as the contractor for the Demolition Work. CONTRACTOR shall pay

prevailing wage for the Work to the extent required by and in accordance with applicable requirements of CITY.

1.7 Demolition Contractor. CONTRACTOR will contract with Gilroy Construction Inc. ("**Demolition Contractor**"). Pursuant to CONTRACTOR's contract with the Demolition Contractor, the Demolition Work shall be conducted (a) in a good and workmanlike manner and (b) in accordance with applicable laws, regulations and codes. Subject to the CITY's payment obligations, CONTRACTOR shall keep the project free from any mechanic's or material men's liens which may arise in connection with the Demolition Work.

1.8 Demolition Work Schedule. CONTRACTOR will cause the Demolition Contractor to perform the Demolition Work according to the schedule in the approved Demolition Plan. In the event of any necessary change in the approved schedule, the CITY and CONTRACTOR shall meet and confer to provide a revised approved schedule to the Demolition Contractor. Notwithstanding the foregoing, the Demolition Work by the Demolition Contractor will not begin until the issuance all required permits and approvals for the Demolition Work as provided in section 1.3-1.5. Once construction of the Demolition Work commences, CONTRACTOR shall cause the Demolition Contractor to diligently prosecute such work to completion.

1.9 Rejection Of Work. During the progress of the Demolition Work, CONTRACTOR shall notify CITY in writing if CONTRACTOR determines that the Demolition Work, or any portion thereof, is defective or not in compliance with the construction contract with the Demolition Contractor. CONTRACTOR shall cause the Demolition Contractor to perform the Demolition Work in accordance with the terms and conditions of this Agreement and the construction contract with such Demolition Contractor.

1.10 Inspection. CITY shall at all times have access to the City's McCandless Property during the Demolition Work and CONTRACTOR shall furnish CITY with all reasonable information necessary for ascertaining full knowledge with respect to the progress, workmanship and character of materials and equipment used and employed in the work.

1.11 Minor Change Orders. CONTRACTOR shall have the authority, without CITY's consent, to order minor changes to the work not affecting the quality of the work provided that such minor change orders do not cause the actual cost of the Demolition Work to exceed the estimated budget contingency provided for in the approved Demolition Plan. The total amount of minor changes permitted shall not exceed $15,000 without the CITY's prior written approval. The costs of any such change orders shall be included in costs associated with the Demolition Work.

1.12 Major Change Orders. CONTRACTOR shall notify CITY immediately after CONTRACTOR discovers that it will need to incur additional costs as a result of unforeseen or unanticipated conditions encountered during construction or any other event outside of CONTRACTOR's direct control, which will cause the actual cost of the Demolition Work to exceed the estimated budget contingency provided for in the approved Demolition Plan. CONTRACTOR shall also include with such written notice, if possible, the revised estimated construction costs, which shall include an estimate of the additional costs resulting from such event. Within three (3) business days of receiving

said written notice, CITY shall either (1) direct CONTRACTOR to continue with the Demolition Work or, if possible, (2) to modify the approved Demolition Plan in order to bring the costs back within the budget. In such event, CONTRACTOR and the CITY shall meet and confer in an attempt to agree upon the requisite modifications.

1.13 The CITY Will Have Authorized Funds to Pay for Demolition Work. The CITY hereby represents and warrants that upon the approval of the Demolition Work Plan that it will have authorized all funding necessary to pay for the Demolition Work and shall have the funding necessary to pay for the same.

ARTICLE II: CONTRACTOR'S ACCEPTANCE

The CONTRACTOR agrees to receive and accept the consideration described below, as full compensation for furnishing all materials and equipment and for doing all the work contemplated and embraced in this Agreement; also for all loss or damage arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the CITY, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of the work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the contract documents, and the requirements of the City Engineer.

2.1 Reimbursement for Permitting Costs to CONTRACTOR. The CITY shall reimburse CONTRACTOR for all costs and expenses incurred by CONTRACTOR for the, permitting and approval of the Demolition Work, including without limitation consultant costs for the preparation of the Demolition Work Plan, all application and permit fees for the Demolition Work, BAAQMD approval, obtaining and complying with SWPPP, preparation of the hazardous materials report, and plan check and inspection costs (collectively "**Permitting Costs**"). The CITY shall reimburse all Permitting Costs incurred by CONTRACTOR within thirty (30) days of receipt of written notice for payment and documentation reasonably substantiating such Permitting Costs. In the event necessary permits or approvals for all or any portion of the Demolition Work is not obtained, CITY shall provide reimbursement for all Permitting Costs previously incurred by CONTRACTOR within such thirty (30) day period.

2.2 Reimbursement for Construction Costs to CONTRACTOR. Upon fifty percent (50%) completion and at any time from and after the filing of the notice of completion for the Demolition Work, CONTRACTOR shall submit to CITY reimbursement requests ("**Application for Reimbursement**") for all construction costs and expenses for the Demolition Work including all change orders incurred under this Agreement and all related soft costs including bond and insurance premiums and all punch list work (collectively "**Work**"). CONTRACTOR shall provide CITY with reasonable supporting documentation for the Work included within such Application for Reimbursement, including the percentage of work completed, copies of executed contracts and copies of invoices from the, subcontractors, consultants and/or suppliers, together with evidence of payment showing that payment has been made in connection with such reimbursement request and partial lien releases for work completed. CITY shall reimburse all amounts due to CONTRACTOR within thirty (30) days of receipt of any Application for Reimbursement.

2.3 Management Fee. In exchange for CONTRACTOR's management and administration of the Demolition Work, CONTRACTOR shall receive a general management fee of five percent (5%) of the total costs and expenses incurred and paid under this Agreement (the "**Management Fee**"). The Management Fee shall be included in each reimbursement request submitted by CONTRACTOR.

2.4 **Additional Consideration/Fill from Construction of 11A/11B Sewer Improvements.** As further consideration for CONTRACTOR's management of the Demolition Work, the CITY agrees that approximately seven thousand cubic yards of soil from the construction of certain sewer trunk lines identified as Segments 11A and a portion of Segment 11B may be temporarily stored during construction of the same on the parcel or parcels commonly known as the White Parcel, more particularly identified herein in Exhibit D and/or may be permanently placed on the City McCandless Property as permanent fill should CONTRACTOR choose that option. CONTRACTOR shall test the soil before temporary or permanent placement, and shall not place on City property if it contains contaminants that would cause such placement to violate federal or state regulations and the soil shall meet conditions for placement for residential purposes.

ARTICLE III: ACCEPTANCE BY CITY

The said CITY hereby promises and agrees with said CONTRACTOR to employ, and does hereby employ the said CONTRACTOR to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the prices aforesaid, and hereby contracts to pay the same at the time, in the manner and upon the conditions above set forth; and the said parties for themselves their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

ARTICLE IV: COMPLETION OF AGREEMENT

Inasmuch as the work called for under this contract concerns a needed public improvement, the time of performance and completion of this work is of the essence of this contract. It is expressly understood and agreed by the parties hereto that all the work called for under this contract, in all its parts and requirements, shall be completed on or before October 31, 2013.

ARTICLE V: HOURS OF LABOR

In accordance with Section 1810 of the California Labor Code, Eight hours labor constitutes a legal day's work in all cases where the same is performed under the authority of any law of this State, or under the direction, or control, or by the authority of any officer of this State acting in his official capacity, or under the direction, or control or by the authority of any municipal corporation, or of any officer thereof.

In accordance with Section 1813 of the California Labor Code, The Contractor or subcontractor shall, as a penalty to the City, forfeit twenty-five dollars ($25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week

in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect.

ARTICLE VI: APPRENTICES

[Intentionally omitted as inapplicable.]

ARTICLE VII: TRAVEL AND SUBSISTENCE PAY

Each worker needed to execute the work set forth in this Agreement shall be paid travel and subsistence pay by the CONTRACTOR as required in Section 1773.8 of the Labor Code.

ARTICLE VIII: DISCRIMINATION PROHIBITED

The CONTRACTOR shall not refuse to accept otherwise qualified employees for employment for any work set forth in this Agreement solely on the grounds of race, religion, creed, color, national origin, ancestry, physical handicap, marital status, sexual preference, political affiliation, or age of such employee.

ARTICLE IX: INSURANCE

A. Definition:

For purposes of this contract, the following definition applies: City of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the City of Milpitas, individually or collectively.

B. Insurance Required:

No work shall be done under this Contract unless there is in effect insurance required by the Contract and under this section, and such insurance has been approved by the CITY, nor shall the CONTRACTOR allow Demolition Contractor or any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been so obtained and approved. The CONTRACTOR shall cause to be maintained adequate workers' compensation insurance as required under the laws of the State of California, for all labor employed by him or by Demolition Contractor or any subcontractor who may come within the protection of such worker's compensation laws of the State of California and shall cause to be provided employer's general liability insurance for the benefit of his employees and the employees of Demolition Contractor or any subcontractor not protected by such compensation laws.

The CONTRACTOR shall furnish satisfactory proof, by certificate or otherwise as may be required, that it has caused Demolition Contractor to take out public liability and property damage insurance with insurance carriers satisfactory to the CITY, and in such form as shall be satisfactory to the CITY to protect said CONTRACTOR and said CITY as an additional insured against loss from liability imposed by law from damages on account of bodily injury, including death resulting there from, suffered or alleged to have been suffered by any person or persons other than employees, resulting directly or indirectly from the performance or execution of this contract, the Demolition Contract, or

any subcontract hereunder, and also to protect said CONTRACTOR and said CITY as an additional insured against loss from liability imposed by law for damage to any property caused directly or indirectly by the performance or execution of this contract or any subcontract hereunder, which insurance shall also cover accidents arising out of the use and operation of automobiles and trucks. Said policy shall include, but not be limited to coverage for the omissions and supervisory acts of the CITY, its officers and employees.

Said policy shall also provide that the coverage afforded thereby to CITY, its officers, engineer and consultants, and employees, is primary coverage to the full limit of liability stated in the Declaration, and if the City, its officers or employees have other insurance against loss covered by said policy, said other insurance shall be excess insurance only, and that CITY, its officers and employees are not precluded from claims there under against other insured parties.

C. Comprehensive General and Automobile Liability:

The CONTRACTOR agrees to obtain and maintain in full force and effect during the term of this Agreement comprehensive general and automobile liability insurance protecting Contractor in the amounts of coverage of not less than the limits shown below. Such insurance shall name the City of Milpitas as defined above, and as additional insured. Coverage shall be in accordance with the limits specified above and the provisions indicated herein. Claims-made policies are not acceptable. When umbrella or excess coverage is in effect, it must follow the form of the underlying coverage. Such insurance shall not be canceled or materially altered to reduce coverage without giving CITY at least thirty (30) days advance written notice of such cancellation or change, and it shall be the responsibility of CONTRACTOR to notify CITY of such change or cancellation.

General & Automobile Liability----------	$1,000,000 per person $1,000,000 for each occurrence
Property Damage----------	$1,000,000 for each occurrence $1,000,000 aggregate

Where the work includes a structure or structures subject to loss or damage by fire, the CONTRACTOR shall maintain or cause to be maintained fire insurance sufficient to protect against such loss or damage in full until the work is accepted by the CITY. Nothing herein contained shall be construed as limiting in any way the extent to which the CONTRACTOR may be held responsible for the payment of damages to persons or property resulting from his or her operations or operations of any subcontractor under him or her.

Proof of all such insurance shall be given by filing certificates of such insurance with the City Engineer prior to execution of the contract by the CITY.

D. Certificates of Insurance with Endorsements:

The CONTRACTOR shall file the required original Certificate of Insurance with endorsements prior to the commencement of the work or event; it shall be subject to CITY's approval and shall clearly state:

1. Policy number; name of insurance company; name, address and telephone number of agent or authorized representative; name, address and telephone number of insured; Project name and number; policy expiration date; and specific coverage amounts;

2. The Demolition Contractor's insurance is primary.

The Certificate with endorsements and notices shall be mailed to: City of Milpitas, Attention City Engineer, 455 East Calaveras Boulevard, Milpitas California, 95035.

E. Workers Compensation Insurance:

The CONTRACTOR agrees to obtain and maintain statutory workers compensation and employers liability in an amount not less than One Million Dollars ($1,000,000) and furnish City with a certificate showing proof of such coverage.

F. Deductibles, Self-Insured Retentions, and Proof of Insurance:

Prior to commencing any work under this Agreement, deductibles and self-insured retentions acceptable to CITY must be stated on Certificates of Insurance, and the Certificate of Insurance must be approved by CITY.

G. Required Notice of Change, Reduction or Cancellation of Coverage:

The CONTRACTOR agrees to provide at least thirty (30) days written notice to CITY of any proposed change, reduction or cancellation of insurance coverage required under this Agreement.

H. Absence of Insurance:

By signing this Agreement, CONTRACTOR acknowledges that maintenance of required insurance coverage is a material provision of this contract. If the CONTRACTOR allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this Agreement, the Engineer may direct the purchase of replacement coverage in conformity with coverage requirements. No further work may be performed in the Project and any delays or expenses caused due to stopping of work and change of insurance shall be considered CONTRACTOR's delay and shall not be considered to increase cost to the CITY or increase time in which the Project shall be completed or give rise to any other liability whatsoever against the CITY.

I. Insurance Companies:

Insurance provided pursuant to this Contract must be from insurance companies admitted in California and rated at least A in Best's Insurance Guide; or such other insurance companies as are acceptable to CITY in its sole and unfettered decision.

ARTICLE X: HOLD HARMLESS

The CONTRACTOR hereby agrees to and shall defend, indemnify, and hold CITY, its elective and appointive boards, commissions, officers, agents, registered volunteers, and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage and any other claims of any sort whatsoever, including, but not limited to, any liabilities, claims, losses, or expenses in any manner to the extent caused by, arising out of, or in connection with, either directly or indirectly, the negligent (i) performance, construction or installation of the work, (ii) guarding of the work, (iii) use of improper materials in performance or construction of the work, or (iv) willful, or intentional acts or omissions by CONTRACTOR or CONTRACTOR's subcontractors, agents, or employee operations under this Agreement, whether such operations by CONTRACTOR or by any of CONTRACTOR's subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for CONTRACTOR or any of CONTRACTOR's subcontractors during the progress of the work or at any time before its completion and final acceptance, except to the extent such liability for damages or claims for damage, suits or actions are brought by the CONTRACTOR for default of this Agreement or are caused by, arise from or in connection with the active negligence or willful misconduct of the CITY, and except to the extent such do not arise out of the scope of CONTRACTOR'S work pursuant to this Agreement.

ARTICLE XI: BONDING REQUIREMENT

If required by the CITY and paid for by the CITY as an additional cost of the Work, CONTRACTOR agrees to post a Faithful Performance Bond and payment bond for Labor and Materials, in the required amounts upon bond forms provided by the CITY, guarantying the performance of the terms of this Agreement. Any faithful performance security required hereunder shall be released upon the date of final Completion of the Work.

ARTICLE XII: WARRANTY BOND

[Intentionally omitted as inapplicable.]

ARTICLE XIII: MAINTENANCE AND GUARANTY

[Intentionally omitted as inapplicable.]

ARTICLE XIV: SHORING FOR TRENCHES

[Intentionally omitted as inapplicable.]

ARTICLE XV: INTERPRETATION OF CONTRACT

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid or proposal of said CONTRACTOR, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

ARTICLE XVI: AMENDMENTS

This Contract may be amended from time to time as necessary by formal and written amendment executed by the City Manager or his designee and principal acting on behalf of the CONTRACTOR.

ARTICLE XVII: CHANGES OR EXTRA WORK

[Refer to Article 1, above.]

ARTICLE XVIII MEDIATION

All claims for $375,000 and less shall be arbitrated pursuant to the provisions of Public Contract Code Section 20104 et seq.

ARTICLE XIX CERTIFIED PAYROLL

The CONTRACTOR shall comply with all requirements of California Labor Code Section 1776, refer to the Project Specifications General Conditions for more information. Each Contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty
of perjury, stating both of the following:

1) The information contained in the payroll record is true and correct.

2) The Contractor (employer) has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

In accordance with Section 1773.2 of the Labor Code of the State of California, copies of the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft, classification, as determined by the Director of the Department of Industrial Relations are on file in the Office of the City Engineer, and these will be made available upon request. It shall be mandatory upon the CONTRACTOR, and upon all subcontractors under the CONTRACTOR, to pay not less than the highest of the applicable rates set forth in either the federal or municipal schedules of prevailing wage rates. The CONTRACTOR shall post the most current schedules of prevailing wages upon the job site.

In accordance with the provisions of California Labor Code Sections 1860 and 3700, the Contractor shall secure the payment of compensation to his employees.

ARTICLE XX CONTRACT DOCUMENTS

The Contract documents consist of this Agreement and all directly referenced and attached documents, including the appendices, and all addendums and change orders issued.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date first written above.

Approved as to Form:

By:_____
City Attorney

By:_____
City Manager

Approved as to Sufficiency:

By:_____
City Engineer

By:_____
Contractor

Approved:

By:_____
Finance Director/Risk Manager

Exhibit A

LEGAL DESCRIPTION OF CITY MCCANDLESS PROPERTY

APN 086-41-016 and 086-41-017

Exhibit B

GENERAL SCOPE OF DEMOLITION WORK

SCHEDULE A - DEMOLITION

Demolish Superstructures -

1. Mobilization
2. Demolish North Buildings (±52,000 sf)
3. Demolish South Buildings (±40,000 sf)
4. Demolish loading docks
5. Demolish pavers feeding existing buildings (± 6,000 sf)
6. Demolish trees within project boundary (± 120 ea)
7. Demolish AC within project boundary (± 100,000 sf)
8. Crush all AC and concrete generated on site to Class material (± 8,000 ton)
9. Recycle of all materials to appropriate landfill(s)
10. Traffic control/traffic plan as required for our portion of work
11. Dust control including water
12. Protection of decorative pavers where required
13. Rough Grade -
    a. Upon completion of demolition, rough grade, high track and back drag site smooth
    b. Existing depressions to be smoothed over with fill on site, bid assumes no import
    c. Traffic control as required for our portion of work
    d. Dust control including water

SCHEDULE B - EXCLUSIONS

We are excluding the following for all above described work items:

1. Testing of hazardous, contaminated and/or asbestos containing materials, PCB ballasts, mercury light tubes, oils and/or Freon
2. Winterization, pumping, mud work or temporary roads
3. Dewatering
4. Storm Water Run-Off Plan

SCHEDULE C - PRICE

Gilroy Construction, Inc. proposes to perform the above-described work for the price of FOUR HUNDRED FIFETEEN THOUSAND DOLLARS & 00/100 ($415,000.00).

SCHEDULE D – ALTERNATE PRICING

A. Removal of underground utilities; includes capping and backfill.
    I. Total Cost: SEVENTY FIVE THOUSAND DOLLARS & 00/100 ($75,000.00).
B. Removal of asbestos related material.
    I. Total Cost: SEVENTY FIVE THOUSAND DOLLARS & 00/100 ($75,000.00).

Exhibit C

DEMOLITION BUDGET

Demolition Site-$415,000

Utility Allowance-$75,000

Asbestos Removal-$75,000

General Contractor Fee (5%)-$28,500

Total: $593,500

Exhibit D
[Description of White Parcel]

APN 086-41-017