

**AGREEMENT
BETWEEN
THE CITY OF MILPITAS
AND
D.R. HORTON BAY, INC.**

This Agreement is made and entered into this May 6, 2014, by and between the CITY OF MILPITAS, a municipal corporation of the State of California (hereinafter “City”) and D.R. HORTON, a Delaware corporation (hereinafter “Contractor”).

RECITALS

- A. WHEREAS, Contractor is the owner of that certain real property in the Milpitas 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 Property; and
- B. WHEREAS, City and Contractor entered into an agreement on April 23, 2013 in the amount of Five Hundred Ninety-Three Thousand Five Hundred Dollars (\$593,500.00) for the demolition of City buildings located at 1650-1690 and 1740-1830 McCandless Drive (APN 086-41-016 and APN 086-41-017) (“City Properties”), a copy of the Original Agreement is attached to this Agreement as **Exhibit A** and incorporated fully herein (“Original Agreement”); and
- C. WHEREAS, Contractor has completed the demolition work pursuant to the Original Agreement (“Completed Work”) in the total amount of Five Hundred Fifty-One Thousand Five Hundred Nineteen Dollars (\$551,519.00) and the Original Agreement expired on October 31, 2013; and
- D. WHEREAS, Contractor has also completed additional demolition related work on City Properties that were not a part of the Original Agreement, in the total amount of One Hundred Three Thousand Nine Hundred Eighty-Two Dollars and Twenty-Nine Cents (\$103,982.29) as further described below (“Additional Work”); and
- E. WHEREAS, the parties desire to have additional demolition related work to be completed by Contractor on City Properties in the total amount of Fifty-Two Thousand Two Hundred and Forty Dollars (\$52,240.00) as further described below (“Future Work”); and
- F. WHEREAS, the parties desire to enter into this Agreement to set forth the terms, conditions, and obligations relating to completion of the Future Work and payment from City to Contractor for completion of the Original Work, Additional Work, and Future Work;

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, City and Contracto agree as follows:

SECTION 1. SCOPE OF SERVICES.

- A. Contractor has completed the Completed Work on City Properties as set forth in the Original Agreement in the total amount of Five Hundred Fifty-One Thousand Five Hundred Nineteen Dollars (\$551,519.00).
- B. Contractor has completed the Additional Work on City Properties in the total amount of One Hundred Three Thousand Nine Hundred Eighty-Two Dollars and Twenty-Nine Cents (\$103,982.29). The Additional Work included the following:

a. Erosion Control	\$15,000
b. Install Silt Fence	\$5,220
c. Spray Hydroseed for Stabilization and Cover	\$37,840.50
d. Repair "12: Water Line	\$4,231.79
e. Storm Water Pollution Prevention Plan (SWPPP)	\$10,750
f. Prepare Public IP Plan for City Site Frontage	\$18,100
g. Additional Revisions to City Sidewalk	\$6,840
h. Rental of Fence by City	<u>\$6,000</u>
	\$103,982.29

- C. On or before July 1, 2014, Contractor shall complete the following work on City Properties:
 - a. Abandon three (3) fire services \$25,260
 - b. Abandon six (6) water services \$19,200
 - c. Remove and replace ARV and BO to new location
to accommodate 8.5 feet sidewalk \$7,780

\$52,240.00

SECTION 2. COMPENSATION.

- A. The total compensation to be paid to Contractor shall not exceed Seven Hundred Seven Thousand Seven Hundred Forty-One Dollars and Twenty-Nine Cents (\$707,741.29) under this Agreement. There shall be no reimbursable expenses under this Agreement.

SECTION 3. METHOD OF PAYMENT.

- A. Upon completion of all the required work set forth in Section 1 of this Agreement to the sole satisfaction of the City and in full compliance with this Agreement and the Original Agreement set forth in **Exhibit A**, Contractor may submit an invoice with all City required supporting documentation of all authorized cost and expense related to the reimbursement request. City will

have thirty (30) days to review the invoice and all supporting documentation and to reimburse Contractor for all approved work.

SECTION 4. OTHER PROVISIONS.

- A. All terms, conditions, and obligations of the Original Agreement shall be incorporated into this Agreement, provided any conflicts between the Original Agreement and this Agreement, the provision(s) of this Agreement shall prevail.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

APPROVED AS TO FORM:

CITY OF MILPITAS, a municipal corporation

MICHAEL J. OGAZ
City Attorney

By _____
THOMAS C. WILLIAMS
City Manager

D.R. HORTON BAY, INC., a Delaware corporation

By _____
Name:
Title:

APPROVED AGREEMENT COSTS

<u>Internal coding</u>	<u>VENDOR/SUB</u>	<u>DESCRIPTION</u>	<u>COMMITMENTS</u>
20040	R&B Equipment Inc.	Demo	\$510,000.00
12010	Carlson, Barbee, Gibson, Inc.	Civil Eng.	\$17,000.00
20080	CF ARCHIBALD	Rough Grade site	\$24,519.00
TOTAL			\$551,519.00

ADDITIONAL WORK REQUIRED TO SECURE SITE

20140	AL FRESCO	Erosion Control / Swppp	\$15,000.00
	AL FRESCO	Install Silt fence on back side of sidewalk	\$5,220.00
	Marina / East Bay	Spray Hydroseed for stabilization and cover grinding stock pile	\$37,840.50
23000	Sanco	Repair 12" water main damaged by others	\$4,231.79
12220	Kaz & Associates	Swppp	\$10,750.00
12010	Carlson, Barbee & Gibson	Prepare public IP plans for city site frontage	\$18,100.00
	Carlson, Barbee & Gibson	Additional Revisions for City Sidewalk	\$6,840.00
TOTAL			\$97,982.29

ADDITIONAL ITEMS - SUBJECT TO CITY APPROVAL

21000	Sanco	Abandon 3 fire services (25,260), Abandon 6 Water services (19,200), Remove and replace ARV and BO to new location to accommodate 8.5' sidewalk (7,780)	\$52,240.00
TOTAL			\$52,240.00

TOTAL			\$701,741.29
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		Rental fence to be purchased by City	\$6,000.00
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GRAND TOTAL			\$707,741.29
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EXHIBIT A

A-09 CONTRACT

THIS AGREEMENT, dated for convenience this 23rd 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.

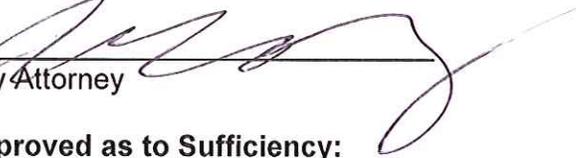
In accordance with the provisions of California Labor Code Sections 1860 and 3700, the Contractor shall secure the payment of compensation to his employees.

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 ($\pm 52,000$ sf)
3. Demolish South Buildings ($\pm 40,000$ sf)
4. Demolish loading docks
5. Demolish pavers feeding existing buildings ($\pm 6,000$ sf)
6. Demolish trees within project boundary (± 120 ea)
7. Demolish AC within project boundary ($\pm 100,000$ sf)
8. Crush all AC and concrete generated on site to Class material ($\pm 8,000$ 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 FIFTEEN 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

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one: <input checked="" type="checkbox"/> Budget Appropriation <input type="checkbox"/> Budget Transfer	350-2940	\$ 707,741	350-910-4811	\$ 707,741

Explain the reason for the budget change:

Background: On April 2, 2013, the City Council and Milpitas Housing Authority adopted a joint resolution approving a loan from the Milpitas Housing Authority to City of Milpitas for the demolition of City Buildings at 1650-1690 and 1740-1830 McCandless Drive to address the blighted conditions at the subject property. The amount of the loan was \$621,500. The City Council also approved a Demolition Agreement with D.R. Horton in the amount of \$593,500 requiring all demolition to be completed on or before October 31, 2013. Since the City Council approval of the agreement several actions have taken place regarding the site:

- Pacific, Gas and Electric (PG&E) Company requiring approximately 4+ months for the City and D.R. Horton to obtain required inspections and permits to authorize the removal of utilities from the site. The utilities were required to be removed prior to demolition of the buildings for health and safety reasons. Therefore, demolition was not completed until March 2014.
- Additional costs not associated with the demolition agreement incurred for: 1) erosion control, 2) installation of fence, 3) spray hydro-seeding, 4) repair water line, 5) storm water pollution prevention plan, and other required work. This work was required to leave the site in the proper state as required by Storm Water Pollution Regional Control Board and standard demolition practices.
- Because of the amount of time required to obtain inspections and permits required by other agencies, demolition of the site was just completed in March 2014. The original agreement has expired and staff has prepared a new agreement incorporating the costs for additional work required on the site for City Council approval.
- The cost for the construction demolition including rough grading of the site was \$551,519 which leaves a saving balance of \$41,981 (\$593,500 - \$551,519).
- The additional work that has been completed to date and costs not in the original demolition agreement includes the following:

• Erosion Control	\$15,000
• Install Silt Fence (D.R. Horton)	\$5,220
• Spray Hydro-seed for Stabilization and Cover	\$37,840.50
• Repair "12 Water Line	\$4,231.79
• Storm Water Pollution Prevention Plan (SWPPP)	\$10,750
• Prepare Public IP Plan for City Site Frontage	\$18,100
• Additional Revisions to City Sidewalk	\$6,840
• Rental of Fence by City	\$6,000
	<hr/>
	\$103,982.29

The total construction demolition and additional costs to date is \$655,501.29. This represents a \$62,001.29 increase from the original City contract approval. Also, D. R. Horton has recommended City consider the abandonment of 3 fire and 6 water lines services, remove and replace ARV (Air Release Valve) and Blow-off to new location to accommodate new sidewalk (\$52,240.00). The City's Public Works staff has reviewed the proposed work and recommends the work be done to secure the site. Therefore, staff is requesting Council approve a new agreement with D.R. Horton in the amount of \$707,741.29 (\$655,501.29 for completed work to date and \$52,240.00 for future work)

Since the original contract agreement approval, there are sufficient development impact fees in Transit Area Specific Plan to pay for the full proposed contract agreement amount of \$707,741.29. Staff is requesting an appropriation from the Transit Area Specific Plan Development Impact Fee Fund to pay D.R Horton as opposed to using the money loaned from the City Housing Authority.

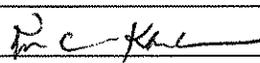
Fiscal Impact: A budget appropriation in the amount of \$707,741 from the Transit Area Specific Plan Development Impact Fee Fund is required for the demolition and related work.

Recommendations:

1. Approve an agreement with D.R. Horton for the demolition and other related work of City Buildings at 1650-1690 and 1740-1830 McCandless Drive in an amount not to exceed \$707,741.29.
2. Appropriate \$707,741.29 from the Transit Area Specific Plan Development Impact Fee Fund to pay D.R Horton Bay, Inc. for the demolition and related work at the McCandless Drive site.

Check if City Council Approval required.

Meeting Date: May 6, 2014

Requested by:	Felix Reliford, Principal Planner	Date: April 24, 2014
Reviewed by:	Finance Director: 	Date:
Approved by:	City Manager:	Date:
Date approved by City Council, if required:		Confirmed by: