



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager or Designee to Execute a Commercial Lease Agreement with Nibbi Brothers General Contractor's for Property Located at 1700 Sango Court and 1831-1841 Tarob Court
Category:	Consent Calendar-Community Development
Meeting Date:	2/15/2022
Staff Contacts:	Alex Andrade, Director of Economic Development, 408-586-3046 Daniel Degu Sr., Economic Development Coordinator, 408-586-3054
<u>Recommendation:</u>	Approve and authorize the City Manager or Designee to execute a Commercial Lease Agreement by and between Nibbi Brothers General Contractor's ("Tenant") and the City of Milpitas ("Landlord") for a term of 15 months plus three extension periods of (1) month each, for a not-to-exceed contract of 18 months.

Background:

On October 1, 2019, the City of Milpitas purchased property located at 1700 Sango Court for \$5.35M. On November 5, 2020, the City of Milpitas acquired the 1831-1841 Tarob Court property for \$11.1M. The two properties were acquired to extend and connect Sango Court and Tarob Court, and park enhancement as envisioned in the Milpitas Transit Area Specific Plan (TASP) and the Transit Area Development Impact Fee Program (TADIF). The street extension and connection will provide this residential TASP (now Milpitas Metro Specific Plan) neighborhood with direct pedestrian, bicycle, and vehicular access to the Milpitas Transit Center. There was no impact to the City's General Fund for these land transactions as TADIF funds were used.

While these two properties are valuable City assets, they have been sitting idle and awaiting the demolition of the Sango and Tarob Court buildings to proceed with the extension and connection between the two streets as well as enhancing Augustus Rathbone Park. During the pandemic, these properties have become locations for criminal activity including building break-ins, and broken windows and locks.

Meanwhile, Resources for Community Development (RCD) just commenced the construction of an affordable housing project (up to 102 units) at 355 Sango Court on February 7, 2022. The 355 Sango Court property is located to the east of the 1700 Sango Court property and north of the 1831-1841 Tarob Court property. Proximity to the Sango and Tarob Court properties make these City-owned assets desirable for construction staging and storage. Nibbi Brothers General Contractor (Nibbi) desires to lease the two City-owned properties for construction staging and storage, and employee parking for up to 120 construction trade workers. Anticipated business terms for a 15-month lease period plus extension(s) are outlined below.

Analysis:

In December 2021, City staff and Nibbi representatives began participating in good faith conversations regarding Nibbi's request to lease the Sango and Tarob Court properties for construction staging, storage, employee parking and office space. On January 24, 2022, Nibbi issued a Letter of Intent (LOI) to lease the two City-owned properties and 1,500 square feet of office space. On February 1, 2022, the City Council discussed Nibbi's LOI under "Price and Terms of Payment" at a Closed Session. On February 8, 2022, Nibbi elected to forgo leasing 1,500 square feet of office space in favor of using a construction office trailer due to the amount of tenant improvements needed to bring the City-owned buildings up to Building Code occupancy standards. Key business terms from the proposed Commercial Lease Agreement include, but are not limited to, the following:

Property and Proposed Use

Nibbi is requesting to utilize 25,000 square feet of the surface parking lot located at 1700 Sango Court and 29,000 square of surface parking lot on the 1831-1841 Tarob Court parcel. The surface parking lots will be used for construction laydown, storage and staging. Specifically, the Tarob Court surface parking lot will be used for construction trade worker parking. Nibbi also plans to locate a construction office trailer on the surface parking lot located at 1700 Sango Court. The construction office trailer will support four office staff members during the 15-month construction period.

Lease Term and Rent

If the City Council approves the proposed Commercial Lease Agreement, the lease term would be for 15 months plus three extension periods of one month each. Nibbi agrees to pay the City of Milpitas \$7,000 per month, for 15 months and if the extension is exercised, rent shall increase according to the Bay Area Consumer Price Index (CPI) starting in month 16. If the lease term concludes in the 15th month, the City of Milpitas will receive \$105,000 in net new revenues from the impending commercial lease agreement.

The City, as the landlord, will deliver the premises in an “As-Is Condition” without representation or warranty and free of the obligation to construct any improvements or requirement to make repairs prior to or during the lease term.

Insurance and Expenses

If the City Council approves the proposed Commercial Lease Agreement, Nibbi shall be responsible for providing and maintaining the City’s required Certificate of Liability Insurance naming the Landlord as an Additional Insured. Nibbi shall also obtain and furnish proof of coverage for property insurance, liability insurance, automobile liability insurance, and worker’s compensation.

Nibbi will pay all property maintenance expenses resulting in “improvements in first class condition, insurance, utilities and any other expenses of the property” while the lease term is in effect.

Benefits to Executing a Commercial Lease Agreement

There are various benefits to proceeding with a commercial lease agreement:

- **Net New Revenues:** The City of Milpitas will realize approximately \$105,000 in rent for use of these properties for 15 months. If Nibbi exercises the lease extensions, up to three months, the Bay Area CPI will be triggered and therefore increase the monthly rent. The CPI percentage is determined by the U.S. Bureau of Labor Statistics for all Urban Consumers for the San Francisco/Oakland/San Jose Metropolitan Area over the previous year. In no event shall the \$7,000 per month base rent ever decrease below the agreed upon rent, even if the CPI is negative in the future.
- **Planning and Building Safety and Housing Departments:** The temporary use of the surface parking lots, and construction office trailer requires a regulatory process that will result in approved permits. The Planning Department has determined that a Minor Conditional Use Permit is required for; 1) outdoor storage of construction materials; 2) construction office trailers; and 3) construction trade worker parking. A Minor Conditional Use Permit will be processed at staff-level by the Planning Department. For Nibbi to utilize a construction office trailer at 1700 Sango Court, a Building Permit for office use and compliance with associated code requirements is also required through the Building Safety and Housing Department.
- **Property Activation Deters Criminal Activity:** Sango and Tarob Court properties will be activated with construction staging, storage, and employee parking as well as a construction office trailer, which will deter the criminal activity associated with vacant buildings and properties. In addition, the Police

Department is currently going through due diligence to determine whether they may have an opportunity to utilize interior space at the Tarob Court building for the storage of small equipment and evidence vehicles, and the potential for training space. Access concerns will need to be addressed, if this plan materializes.

- **Construction Site Security Plan:** Nibbi plans to deploy a variety of security solutions to counter criminal activity associated with vacant buildings and properties. Security solutions include the installation of a monitored security system for the construction office trailer at 1700 Sango Court; installation of an 8 foot high perimeter security fencing with green screen to secure the Sango and Tarob Court properties; and the installation of a perimeter security camera system installed with 24/7 off-site monitoring between the months of August 2022 and May 2023 due to valuable modules and tools onsite during this time. The 8 foot high perimeter security fencing with green screen will also be locked during non-construction work hours (between 5pm and 7am). The fencing location and details shall be included as part of the Building Permit of the construction office trailer submittal package.
- **Affordable Housing Project:** The proposed Commercial Lease Agreement supports development of needed affordable housing units (up to 102, 100% affordable housing units) in the Milpitas Metro Specific Plan area through efficient construction staging and development of required modules for the 355 Sango Court RCD project. It also allows approximately 120 construction employees to park on both surface parking lots and eliminates public street parking disruption along Sango and Tarob Court for business and residential areas. This City is a partner in this project and wants to ensure it moves forward to provide much needed critical affordable housing.
- **Capital Improvement Program – Demolition:** The City’s Capital Improvement Program includes the demolition of the 1700 Sango Court and 1831-1841 Tarob Court buildings to commence sometime in calendar year 2024. The proposed lease business terms, therefore, will not affect the demolition of 1700 Sango Court and 1831-1841 Tarob Court buildings, street extensions of Sango Court and Tarob Court, and enhancement of Augustus Rathbone Park.

The proposed Commercial Lease Agreement by and between Nibbi Brothers General Contractor’s and the City of Milpitas will not result in a gift of public funds for the use of public resources as this action is tied to providing affordable housing as a fundamental and allowed purpose of local government. The proposed temporary uses will support construction of the City’s first 100% affordable housing project at 355 Sango Court.

Furthermore, Nibbi or Nibbi’s agents shall not cause or permit any hazardous materials, including soil stockpiling, to be brought upon, kept, used, discharged, deposited or leaked in or about the premises or the property. If environmental remediation becomes necessary or is required because of Nibbi or Nibbi’s agents, the tenant (Nibbi) is responsible to remediate and to indemnify the City of Milpitas for any costs. Nibbi does not plan to stockpile soil on either City-owned property during the 15-month construction period as all soil stockpiling will be on the 355 Sango Court project limits.

For more information about the proposed Commercial Lease Agreement, business terms, landlord and tenant responsibilities, etc., see Attachment 1.

Surplus Land Act Compliance

The Land Is Necessary for the Agency’s Use

The Surplus Land Act (AB 1486 / Gov’t C. § 54220 et seq.) (“SLA”) defines “surplus land” as “land owned in fee simple by any local agency for which the local agency’s governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency’s use.” Gov’t C. § 54221(b)(1). “Agency’s use,” meanwhile is “land that is being used, [or] is planned to be used pursuant to a written plan adopted by the local agency’s governing board for ... agency work or operations.” Gov’t C. § 54221(c)(1). Here, the portion of the land to be leased will be used for “construction laydown, storage and staging” and “construction trade worker parking” – all to support the development of an affordable housing

project on adjacent land. The City finds this land is necessary for agency use for two reasons. First, the land is necessary for the city's goal of creating affordable housing for its citizens – i.e., an agency use. Second, the City has a long term planned use for the properties as set forth in the Transit Area Specific Plan for road extension and other public uses.

The Lease Is Not “Disposition of Surplus Land” for Purposes of the SLA

In the SLA Guidelines promulgated by the State Department of Housing & Community Development (HCD), “disposition of surplus land” is defined as “the sale or lease of local agency-owned land formally declared surplus.” Guidelines § 102(h). For purposes of that subsection, however, “ ‘lease’ shall not include a lease of land on which no development or demolition will occur or which has a term that is less than five (5) years (including any extensions, amendments or options).” Guidelines § 102(h)(1). Here, the lease states that the term will be 15 months + three 1-month extension options. The lease is less than 5 years (including extensions), and therefore the SLA does not apply.

Policy Alternatives:

Alternative 1: Do not proceed with the proposed Commercial Lease Agreement.

Pros: Not proceeding with the proposed Commercial Lease Agreement would allow the two properties to continue to sit idle and await the demolition of the Sango and Tarob Court buildings.

Cons: Not approving the proposed Commercial Lease Agreement would create difficulties in reaching an agreement with Nibbi as they have already commenced construction at 355 Sango Court and may negatively affect the affordable housing development schedule. In addition, the City of Milpitas will not realize the \$105,000 of net new revenues. Furthermore, construction trade worker parking may disrupt both Sango Court and Tango Court street parking as up to 120 construction trade workers will need access to parking Monday through Friday during the 15-month construction period.

Reason not recommended: Denial of the recommendation would result in no new or increased revenues to the City's General Fund and no property activation of the 1700 Sango Court and 1831-1841 Tarob Court properties, which may result in the continuation of criminal activity at these properties.

Fiscal Impact:

If the proposed Commercial Lease Agreement is approved by City Council, the lease is expected to commence upon execution of the agreement. An approved Commercial Lease Agreement would net the City of Milpitas approximately \$105,000 in rent for the use of 1700 Sango Court and 1831-1841 Tarob Court properties under a 15-month lease agreement. Additional rent in the amount of \$7,000 per month plus the annual Bay Area CPI would be realized by the City of Milpitas should Nibbi need to exercise any of the extension periods. A negative CPI in the future will not affect the \$7,000 per month base rent during the extension periods.

California Environmental Quality Act:

This proposed Commercial Lease Agreement is exempt under CEQA Guideline 15301 (Existing Facilities). Section 15301 of the State CEQA Guidelines provides an exemption for “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.” Given that this is a Commercial Lease Agreement between the City of Milpitas and Nibbi Brothers General Contractor's for lease of City-owned property located at 1700 Sango Court and 1831-1841 Tarob Court, the Commercial Lease Agreement and proposed use of the premises are categorically exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines.

Recommendation:

Approve and authorize the City Manager or Designee to execute a Commercial Lease Agreement by and between Nibbi Brothers General Contractor's (“Tenant”) and the City of Milpitas (“Landlord”) for a term of 15 months plus three extension periods of (1) month each, for a not-to-exceed contract of 18 months.

Attachments:

1. Draft Commercial Lease Agreement
2. Aerial Site Maps