

**CITY MANAGER REPORT
FEBRUARY 12, 2018 CITY COUNCIL REGULAR MEETING**

ITEM: APPROVE DFIA 18-01 FOR 865 E. ROTH ROAD

RECOMMENDATION: Adopt a Resolution Approving Deferred Frontage Improvement Agreement (DFIA) 18-01 with Sukhchain Gill to Defer Frontage Improvements on Roth Road

SUMMARY:

Sukhchain Gill, the developer of the Sunrise Trucking Parking Lot Development (Sunrise Trucking), is required to construct street frontage improvements along 865 E. Roth Road as a condition of a Settlement Agreement between the City of Lathrop and Sukhchain Gill dated November 12, 2014. The Settlement Agreement specifies the frontage improvements shall be deferred with a Deferred Frontage Improvement Agreement (DFIA). The determination of when street frontage improvements will be required of the developer is at the discretion of the City Engineer.

Staff recommends adopting a Resolution approving DFIA 18-01 with Sukhchain Gill for 865 E. Roth Rd.

BACKGROUND:

On May 29, 2014 the San Joaquin County Planning Commission approved Use Permit No. PA-1300007 for the Sunrise Trucking Parking Lot Development project with certain Conditions of Approval that required Sukhchain Gill to construct street frontage improvements along 865 E. Roth Road. The City and Sukhchain Gill entered into a Settlement Agreement, see attachment B, on November 12, 2014 to ensure the project provides for full mitigation of traffic and other impacts to the City including frontage improvements. The Settlement Agreement states the frontage improvements shall be deferred with a DFIA. The improvements are deferred until they coincide with future improvements on adjacent properties along Harlan Road. The mitigation fees and property for Roth Road have been paid and the property has been dedicated.

The DFIA which encompasses the street frontage improvements required by Use Permit No. PA-1300007 and the subsequent Settlement Agreement. Sukhchain Gill provide the City with a Performance Bond has agreed to the terms of the DFIA.

REASON FOR RECOMMENDATION:

Street frontage improvements are required to be constructed along 865 E. Roth Road as a condition of Use Permit No. PA-1300007 and a subsequent Settlement Agreement. Approving DFIA 18-01 will ensure the street improvements are built when determined by the City Engineer to be needed.

**CITY MANAGER REPORT
FEBRUARY 12, 2018 CITY COUNCIL REGULAR MEETING
ADOPT A RESOLUTION APPROVING DEFERRED FRONTAGE IMPROVEMENT
AGREEMENT (DFIA) 18-01 WITH SUKHCHAIN GILL**

COUNCIL GOALS ADVANCED BY THIS AGENDA ITEM:

This agenda item promotes Economic Development and Public Safety by ensuring the construction of street frontage improvements on Roth Road.

FISCAL IMPACT:


Currently there fiscal impact when the frontage improvements are complete on Roth Road there will be future maintenance fees.

ATTACHMENTS:

- A. Resolution Approving DFIA 18-01
- B. DFIA 18-01

**CITY MANAGER REPORT
FEBRUARY 12, 2018 CITY COUNCIL REGULAR MEETING
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AGREEMENT (DFIA) 18-01 WITH SUKHCHAIN GILL**

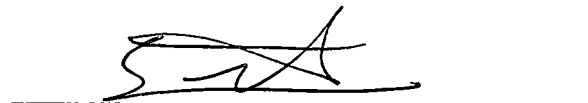
APPROVALS:


Jay M. Davidson
Principal Engineer

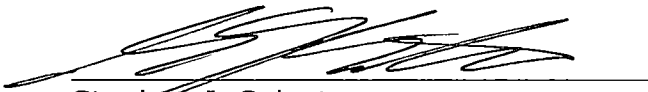
2/7/18
Date

RSchmidt for
Glenn Gebhardt
City Engineer

2/7/18
Date


Salvador Navarrete
City Attorney

2-8-18
Date


Stephen J. Salvatore
City Manager

2.7.18
Date

RESOLUTION NO. 18 - _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LATHROP
APPROVING DEFERRED FRONTAGE IMPROVEMENT AGREEMENT
(DFIA) 18-01 WITH SUKHCHAIN GILL**

WHEREAS, Sukhchain Gill sought Use Permit No. PA-1300007 from San Joaquin County to develop the project known as Sunrise Trucking Parking Lot Development ("Sunrise Trucking") including truck and trailer parking to be built in two phases; and

WHEREAS, the application for Use Permit No. PA-1300007 was approved by the San Joaquin Planning Commission on May 29, 2014 for Sukhchain Gill with certain Conditions of Approval that required Sukhchain Gill to construct street frontage improvements along 865 E. Roth Road; and

WHEREAS, the City and Sukhchain Gill entered into a Settlement Agreement on November 12, 2014 to ensure the project provide for full mitigation of traffic and other impacts to the City including frontage improvements; and

WHEREAS, the Settlement Agreement states the frontage improvements shall be deferred with a DFIA. The improvements are deferred until they coincide with future improvements on adjacent properties along Harlan Road; and

WHEREAS, Sukhchain Gill has agreed to the terms of DFIA 18-01 which includes the street frontage improvements required by Use Permit PA-1300007; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Lathrop hereby approves Deferred Frontage Improvement Agreement 18-01 with Sukhchain Gill.

The foregoing resolution was passed and adopted this 12th day of February 2018, by the following vote of the City Council, to wit:

AYES:

NOES:

ABSTAIN:

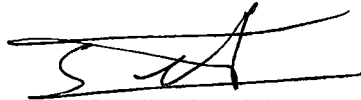
ABSENT:

Sonny Dhaliwal, Mayor

ATTEST:

Teresa Vargas, City Clerk

APPROVED AS TO FORM:



Salvador Navarrete, City Attorney

After recording, return to
City of Lathrop
City Clerk
390 Towne Centre Drive
Lathrop, CA 95330

~~DFIA 17-01~~
18-01

**DEFERRED FRONTAGE IMPROVEMENT AGREEMENT FOR STREET
IMPROVEMENTS 865 E. ROTH RD (APN 193-320-16)**

THIS AGREEMENT, dated this ~~6th~~ ^{12th} day of ~~March, 2017~~ ^{FEBRUARY, 2018}, by and between the CITY OF LATHROP, a political subdivision of the State of California, hereinafter referred to as "CITY," and Sukhchain Gill, hereinafter referred to as "OWNER".

WITNESSETH

WHEREAS, OWNER sought Use Permit No. PA-1300007 from San Joaquin County to develop the project known as Sunrise Trucking-Parking Lot Development ("Sunrise Trucking") including truck and trailer parking to be built in two phases;

WHEREAS, the application for Use Permit No. PA-1300007 was approved by the San Joaquin Planning Commission on May 29, 2014 for OWNER, with certain Conditions of Approval that required OWNER to construct street frontage improvements along 865 E. Roth Road; and

WHEREAS, CITY and OWNER entered into a Settlement Agreement on November 12, 2014 to ensure the project provide for full mitigation of traffic and other impacts to the City including frontage improvements, and

WHEREAS, CITY and OWNER hereto mutually desire to defer the construction of the frontage improvements to a later date as determined by the CITY.

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. OWNER represents and warrants that he/she is the fee title owner of the real property described in Exhibit "A" attached hereto and herein incorporated by this reference. OWNER acknowledges that the development of the real property is subject to the Settlement Agreement between CITY and OWNER attached hereto in Exhibit "B" and incorporated by this reference. The parties hereto agree that the actual construction of the frontage improvements identified in provisions No. 3 and No. 5 of the Settlement Agreement may be delayed as provided herein. Failure to provide for the construction of the aforementioned frontage improvements shall constitute not only a breach of the Settlement Agreement, but also a breach of this Agreement for which additional legal remedies may be pursued.

2. OWNER agrees to provide the design and construction of certain frontage improvements along the frontage on said real property at the sole cost and expense of OWNER and at the time detailed in Section 3 below. Said frontage improvements shall be consistent with the standards set forth by the City of Lathrop Standards and Specifications for a thirty-two (32) foot wide street section along 865 E. Roth Road. Said frontage improvements shall include but not be limited to those listed in Exhibit "C" (Engineer's Estimate for Improvements), attached hereto and herein incorporated by this reference.

3. Determination of when the required improvements are to be constructed shall be within the sole discretion of the City Engineer for the CITY (hereinafter "City Engineer"), subject to the terms of this Agreement. Upon written notification by the CITY to proceed, OWNER shall engage a Civil Engineer, licensed in the State of California, to design and prepare construction drawings for the required improvements. The design of said improvements shall be in accordance with the latest City of Lathrop Design and Construction Standards in effect at the time of approval of the improvement plans. The improvement plans shall be submitted to the City Engineer for approval within ninety (90) days of written notification from CITY and construction shall commence within ninety (90) days after approval of the construction drawings.

4. The City Engineer may choose to have the CITY or other interested parties perform the design engineering and construction of these improvements as an alternate to paragraph 3 above.

If the CITY or other interested parties perform the design and construction work, OWNER will reimburse the CITY within 30 days of written notification of the CITY's request for reimbursement for all costs of the design and construction of these improvements. The cost of these improvements shall be the actual design and construction costs. The construction costs are estimated in Exhibit "C" (Engineer's Estimate for Improvements). The construction costs shall be adjusted by the Engineering Construction Cost Index, as published by the *Engineering News Record*.

5. In any event, if there is a default of Paragraph 3 or 4 above by OWNER, the CITY may proceed to cause said construction to be performed and charge the entire cost and expense to the OWNER, including interest thereon at the maximum legal rate from the date of written notice of said cost and expense, until paid.

6. This agreement is intended to run with the land described in Exhibit "A" and is binding on the heirs, successors and assignees of OWNER and the benefit is to run to the successors and assignees of CITY. Any costs incurred by CITY in its performance under Paragraphs 3, 4 or 5 of this agreement shall constitute a lien upon the property described in Exhibit "A".

7. OWNER shall include in any sales agreement or transfer of any interest in any part or the whole of the property which is covered by this Deferred Improvement Agreement, the requirement that the Buyer/Transferee assume the responsibilities set forth in this Agreement, as to the property and agrees to be subject to the terms and conditions herein, as an heir, successor or assignee of OWNER. OWNER shall require the Buyer/Transferee to sign an acknowledged and notarized statement substantially in the following form:

8. "Buyer/Transferee hereby acknowledges and assumes all responsibility for the construction of frontage improvements related to the property for which Buyer/Transferee is acquiring an interest, in accordance with the terms and conditions of Agreement DFIA 17-01 between the City of Lathrop and Sukhchain Gill recorded as part of the Official Records of San Joaquin County.

9. Miscellaneous Provisions:

- a. Consent. Whenever in this Agreement the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.

- b. Controlling Law. The parties agree that this Agreement shall be governed and construed by and in accordance with the Laws of the State of California.
- c. Definitions. The definitions and terms are as defined in this Agreement.
- d. Force Majeure. Neither party shall be deemed to be in default on account of any delay or failure to perform its obligations under this Agreement that directly results from an Act of God or an act of a superior governmental authority.
- e. Headings. The paragraph headings are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.
- f. Incorporation of Documents. All documents constituting the Agreement documents as described herein and all documents which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in the Agreement and shall be deemed to be part of this Agreement.
- g. Integration. This Agreement and any amendments hereto between the parties constitute the entire agreement between the parties concerning the deferral of the frontage improvements. There are no other prior oral or written agreements between the parties that are not incorporated in this Agreement regarding the timing of such frontage improvements.
- h. Modification of Agreement. This Agreement shall not be modified or be binding upon the parties unless such modification is agreed to in writing and signed by the parties.
- i. Provision. Any agreement, covenant, condition, clause, qualification, restriction, reservation, term or other stipulation in the Agreement shall define or otherwise control, establish or limit the performance required or permitted or to be required of or permitted by either party. All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.
- j. Time is of the Essence. Time is of the essence of this Agreement and each of its provisions, in the calculation of time hereunder, the time in which an act is to be performed shall be computed by excluding the first Day and including the last. If the time in which an act is to be performed falls on a Saturday, Sunday or any Day observed as a legal holiday by CITY, the time for performance shall be extended

to the following Business Day.

- k. Venue. In the event that suit is brought by either party hereunder, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of San Joaquin or in the United States District Court for the Eastern District of California.

10. In the event that there are any changes to the law that make any part of this Agreement invalid, that portion of the Agreement shall be severed from the Agreement and the remaining portions of the Agreement shall remain in full force and effect.

11. In the event of any controversy, claim or dispute relating to this instrument or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on
the date first written above.

ATTEST: Teresa Vargas
City Clerk of and for the City
of Lathrop, State of California

CITY OF LATHROP, a
political subdivision of
the State of California

Teresa Vargas, City Clerk

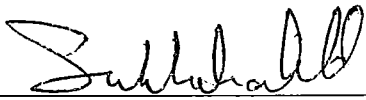
Sonny Dhaliwal, Mayor

APPROVED AS TO FORM:

Salvador Navarrete, City Attorney

PROPERTY OWNER

Sukhchain Gill,

By: 
Sukhchain Gill



ACKNOWLEDGMENT

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

State of California
County of San Joaquin

On February 09, 2017 before me, Richard M. Kinsall, Notary Public
(insert name and title of the officer)

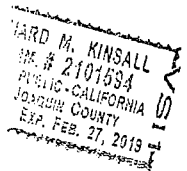
personally appeared Sukhchain Gill
who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Richard M. Kinsall (Seal)



DFIA ~~17-01~~ 18-01
865 E. Roth Road
APN 193-320-16

EXHIBIT "A"
LEGAL DESCRIPTION

(See Attached)

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA OF THE, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel B as shown on that Parcel Map filed for record February 17, 1983 in Book 11 of Parcel Maps, at Page 167, San Joaquin County Records.

APN: 193-320-16

PARCEL MAP


LOT 7, ROTH TRACT, LYING WITHIN SECTION P, C.M. WEBER GRANT, SAN JOAQUIN COUNTY, CALIFORNIA
SCALE: 1" = 150' DECEMBER 1982

PREPARED IN THE OFFICE OF
D. I. DENTONI & ASSOCIATES
CONSULTING CIVIL ENGINEERS

BASIS OF BEARINGS

The south line of Section P, C.M. Weber Grant as shown on the map of the Roth Tract, filed for record in Book of Maps and Plats, Volume 2, Page 33, San Joaquin County Records, which bears EAST.

MONUMENTS SET

Iron pipes 3/4" in diameter, 30" long with brass tap attached stamped 20949, shown thus: 

OWNER'S CERTIFICATE

We, the undersigned, do hereby certify that we are the Owners of, or have some right, title, or interest of record in the land shown on this parcel map, and that we do hereby consent to the preparation and recording of the same. Dated this 22nd day of December, 1982.

HITCHELL BROS. TERMINAL COMPANY, a Oregon Corporation
B. D. Mitchell

ACKNOWLEDGEMENT

STATE OF Oregon, COUNTY of Jackson
On this 22nd day of December, 1982, before me, *Stephen Booth*, a Notary Public, in and for said State and County, personally appeared *B. D. Mitchell*, known to me to be the Secretary of Mitchell Bros. Terminal Company, a Oregon Corporation, the corporation that executed the within instrument, and also the person who executed it on behalf of the corporation named above, and he acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and seal the day and year first above written.
Stephen Booth
STEPHEN BOOTH
NOTARY PUBLIC - OREGON
EXPIRES FEBRUARY 1, 1985

ENGINEER'S CERTIFICATE

This map was prepared by me or under my direction and is based upon a field survey in conformance with the requirements of the Subdivision Map Act and the request of D. H. Mitchell, in June, 1982. I hereby certify that it conforms with the approved Tentative Map PH 83-12, and conditions of approval thereof.

Kenneth L. Kjeldsen
Kenneth L. Kjeldsen, P.C.E. #20948

COUNTY SURVEYOR'S CERTIFICATE

This map conforms with the requirements of the Subdivision Map Act and Local Ordinance.

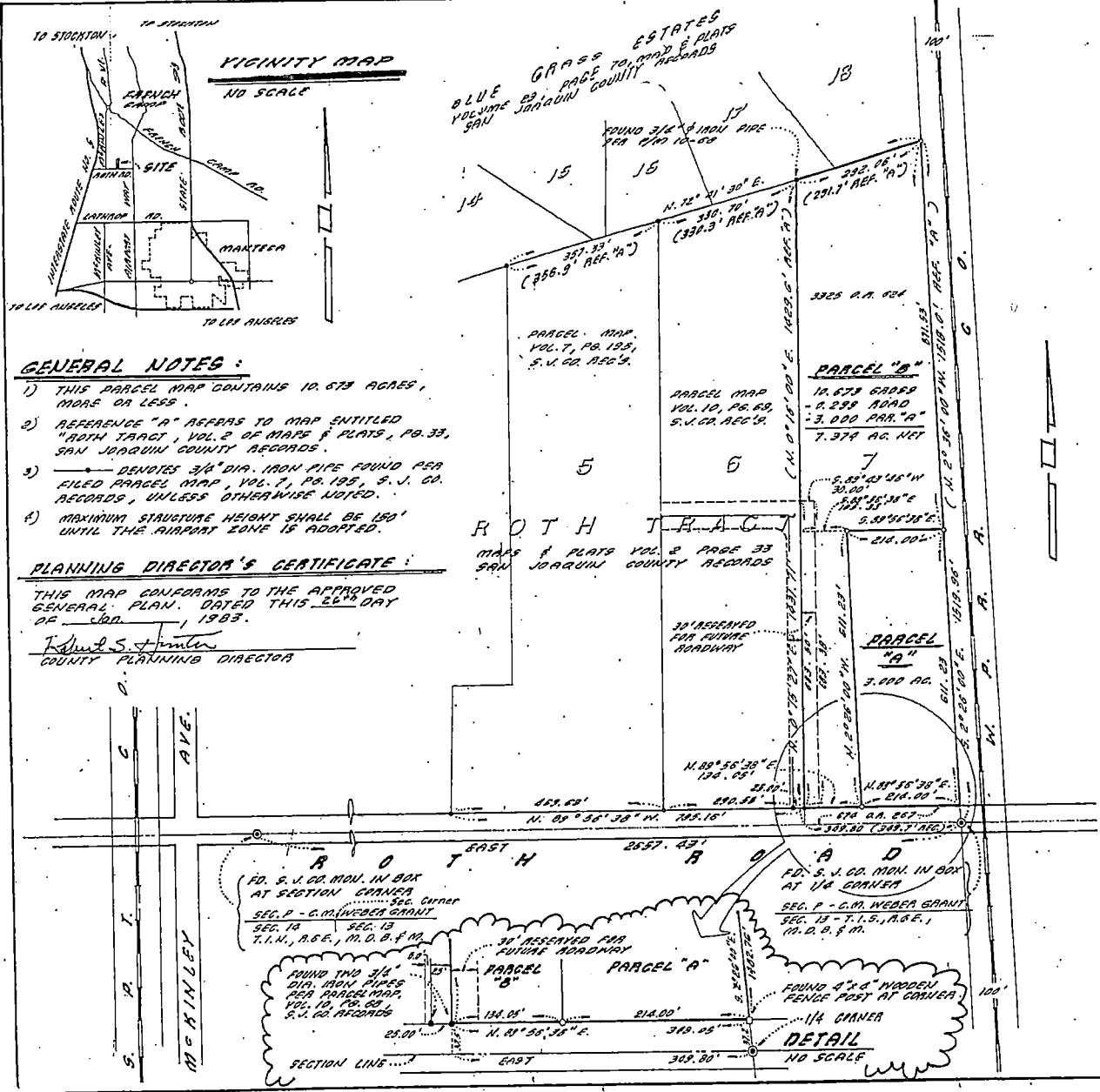
Henry H. Herick 1-22-83
County Surveyor Date

COUNTY RECORDER'S CERTIFICATE

Filed this 19th day of February, 1983, at 4:30 P.M., in Book 11 of Parcel Maps, at Page 107, San Joaquin County Records, at the request of Kenneth L. Kjeldsen.

James W. Johnston
County Recorder

James W. Johnston
James W. Johnston
Fee \$50.10



DFIA ~~17-01~~ 18-01
865 E. Roth Road
APN 193-320-16

EXHIBIT "B"
SETTLEMENT AGREEMENT

(See Attached)

**SETTLEMENT AGREEMENT BETWEEN THE CITY OF LATHROP AND
SUKHCHAIN GILL REGARDING SUNRISE TRUCKING**

This Settlement Agreement is between the City of Lathrop ("City") and Real Party in Interest Sukhchain Gill ("Gill"), City and Gill are sometimes referenced hereinafter collectively as "Parties." The effective date of this Agreement shall be the date when the last party executes this Agreement ("Effective Date").

In the interest of promoting harmonious relations between the Parties and to avoid the uncertainty, inconvenience, and expensive litigation, the City and Gill, in settlement of the City's appeal of San Joaquin Planning Commission of Use Permit No. PA-1300007 approved May 29, 2014 ("Use Permit"), agree as follows:

RECITALS

A. Whereas, Gill sought and was granted a Use Permit to develop the project known as Sunrise Trucking-Parking Lot Development ("Sunrise Trucking") including truck and trailer parking to be built in two phases;

B. Whereas, pursuant to said Use Permit, Phase 1 includes parking for 32 tractor-trailers and 11 trailers, the construction of a 49 square-foot restroom building and a 60 square-foot guard shack. Phase 2, with building permits to be issued within three years, to include the additional parking of 51 tractor-trailer and 21 trailers; located on the north side of Roth Road approximately one-half mile west of Airport Way, north of and adjacent to the City of Lathrop ("Project"); and

C. Whereas, the project site is located at 865 E. Roth Road, San Joaquin County Assessor's Parcel Number 193-320-16, French Camp, CA ("Subject Property"); and

D. Whereas, Gill would like to acquire an encroachment permit from the City of Lathrop to build improvements required by the County of San Joaquin as a condition of approval ("Encroachment Permit"); and

E. Whereas, the City requires that the project provide full mitigation for traffic and other impacts to the City;

Now, therefore, Parties further agree as follows:

1. **Gill to Pay I-5 Roth Road Mitigation Fee to City.** Gill shall pay an I-5/Roth Road Mitigation Fee of \$47,450. Said fee is present value escalated at 3% per year until paid. I-5/Roth Road Interchange fee shall be due and must be paid prior to the issuance of the Encroachment Permit from the City of Lathrop.

2. **Gill to Dedicate Land to City.** In addition to those road improvements required by San Joaquin County for its approval of the Use Permit, Gill shall be required to dedicate land

for a 32 foot wide right of way and an additional 10 foot wide utility easement along the entire frontage of the Subject Property along East Roth Road ("Dedication"). Such Dedication must be made prior to City's issuance of Encroachment Permit.

3. **Gill Shall Build Commercial Driveway.** Project shall be connected to Roth Road through a commercial driveway built in accordance with City's standards.

4. **Gill Will Reconstruct Existing Pavement Adding Turning Radius Improvements.** Gill will reconstruct existing pavement along the frontage of the Subject Property from the centerline to the Subject Property, and construct extended pavement truck turning radius required for incoming and outgoing trucks.

5. **Gill Will Sign Deferred Frontage Improvement Agreement (DFIA).** Gill will sign a DFIA and guarantee full street improvements (curb, gutter, sidewalk, widening of pavement to gutter lip, street lights and storm drainage) along the Roth Road frontage of Subject Property prior to the issuance of Encroachment Permit by the City.

6. **Project Will Retain Storm Drain Water On-Site.** Project will retain storm drain water on-site at all times during and after construction of Project improvements.

7. **Project Will Not Receive Municipal Potable Water Nor Municipal Sanitary Sewer Utility Service Prior to Annexation to City.** Project will not receive potable water nor sanitary sewer utility service from the City of Lathrop until such time as the site annexes into the City, installs any necessary infrastructure improvements and pays appropriate connection fees.

8. **City Dismissal of Appeal.** The City agrees to file a written dismissal of its Appeal dated June 09, 2014, filed with San Joaquin County Community Development Department, within 5 business days of the Effective Date of this Agreement. Parties agree, however, that the City has the right to an injunctive order and other appropriate court order(s) necessary to stop all development of Sunrise Trucking and other activities under the Use Permit if Gill or a successor in interest attempt to develop Project without fulfilling the requirement herein.

9. **Gill agrees to obtain an Encroachment Permit.** Gill agrees to file and pursue an application for an Encroachment Permit with the City of Lathrop prior to engaging in any work within the City's right of way.

10. **Remedies Cumulative.** No remedy or election of remedies provided for in the agreement shall be deemed exclusive, but shall be cumulative with all other remedies at law in equity. Each remedy shall be construed to give the fullest effect allowed by law.

11. **Applicable Law.** This agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California.

12. **Signator's Warranty.** Each party warrants to each other he or she is individually authorized and competent to enter into this agreement in the capacity indicated by his or her signature and agrees to be bound by this agreement as of the day and year first mentioned above upon the execution of this agreement by each other party.

13. **Release.** Each Party acknowledges that he, she, or it understands that the releases contained in this Agreement are essential and material requirements hereof and that the other Parties would not have entered into the Agreement absent the releases contained herein. Each Party represents and warrants that no releasing Party has purported to convey, transfer or assign any right, title or interest in any released matter to any other person or entity and that the foregoing constitutes a full and complete release of the released matters. Excepting the obligations imposed by this Agreement each Party also understands that this release shall apply to all unknown or unanticipated results of the transactions and occurrences described above with respect to the obligations and matters included within the claims released herein, as well as those that are known and anticipated. Each Party has been afforded the opportunity to consult with, and did consult with, legal counsel prior to signing this release and each Party executes such release voluntarily, with the intention of fully and finally extinguishing all released matters.

14. **Notice.** All written notices or demands of any kind that any Party hereto may be required or may desire to deliver to any other Party hereto in connection with this Agreement shall be served (as an alternative to personal service) by (1) email, with receipt of such email confirmed by the recipient, or (2) by overnight mail service, with postage thereon fully prepaid as follows:

To City: City Attorney
City of Lathrop
390 Towne Centre Drive
Lathrop, CA 95330

To Gill: Sukhchain Gill
865 East Roth Road
French Camp, CA 95231

15. **Attorneys' Fees and Costs.** Should City be required to initiate legal proceedings to enforce any term under this agreement, City shall have a right to recover its attorney's fees and cost from Gill.

16. **Warranty and Indemnity.** Each Party hereto warrants that he, she or it has not, prior to the execution of this Agreement, assigned to any other person or entity any of the claims being settled, released, and/or waived by the terms of this Agreement. If any person or entity not

a Party to this Agreement hereafter makes any claim against a Party hereto, and such claim arises as a result of any assignment of the rights of any Party hereto prior to the execution of this Agreement, then such Party through whom that third Party's claim is made agrees to hold harmless and indemnify the other Parties to this Agreement against any and all losses, costs, expenses, attorneys' fees, obligations or other liability arising out of or relating to any such claims asserted by any such third party as a result of such assignment prior to the execution of this Agreement.

17. **Construction.** This Agreement shall not be construed more strictly against one Party than against the other by virtue of the fact that the Agreement may have been drafted or prepared by counsel for one of the Parties, it being recognized that all Parties to this Agreement have contributed substantially and materially to the preparation of this Agreement.

18. **Assignment, Transfer and Notice.** Gill may transfer all or any portion of its Rights and Obligations under the Agreement as to such portion of the Project Property (the "Transferred Property") to any person, entity or organization acquiring an interest or estate in such Transferred Property, including, without limitation, purchasers or ground lessees of lots, parcel or facilities on such portion of the Project Site (a "Transferee"). Provided, however, Gill shall not be relieved of any obligations herein unless expressly relieved by City Council in writing.

19. **Independent Advice.** The Parties each acknowledge that they have consulted with their counsel as they deemed necessary in connection with the negotiation, execution and delivery of this Agreement.

20. **Binding Effect.** This Agreement shall be binding upon the Parties' legal representatives, agents, past, present and future employees, shareholders, affiliates, parent corporations, subsidiaries, directors, officers, assigns and successors.

21. **Enforcement of Agreement.** Should it become necessary for any Party to this Agreement to commence a legal proceeding for the purpose of enforcing the terms of this Agreement, the prevailing Party shall be entitled to recover its attorneys' fees and costs in connection with that action, and the Parties stipulate that the Superior Court of San Joaquin County shall retain jurisdiction to enforce the terms of this Agreement.

22. **Execution in Counterparts.** This Agreement may be executed and delivered in two or more counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts together shall constitute but one and the same instrument and Agreement. It is further agreed that scanned and emailed and/or facsimile copies of executed signature pages may be assembled and that each and every one of the same shall be given the force and effect of an original signature.

23. **Recordation and Further Assurances.** Parties hereto agree to and will cooperate fully with each other in the performance of this Agreement, and will execute such additional agreements, documents or instruments as may reasonably be required to carry out the intent of the Parties and to Record a copy of this Settlement Agreement on the chain of title of the Subject Property through the San Joaquin County Recorder's Office.

24. **Severability of Provisions.** In the event that any provision of this Agreement should be held to be void, voidable, or unenforceable, the remaining portions shall remain in full force and effect.

25. **Time is of the Essence.** Time is of the essence in the performance of the obligations required by this Agreement.

26. **No Waiver.** No waiver of any obligations under this Agreement will be enforceable or admissible unless set forth in a writing signed by the Party against which enforcement or admission is sought. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted shall apply solely to the specific instance expressly stated.

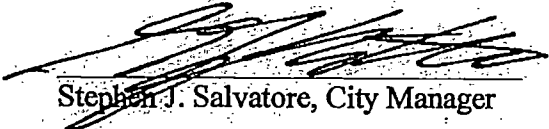
27. **Entire Agreement; Terms Read and Understood.** The undersigned have read all of the foregoing Agreement. This Agreement constitutes the entire agreement of the Parties, and it supersedes all other verbal or written agreements, representations and promises, including Memo dated January 14, 2014, written to San Joaquin County Community development department. The Parties fully understand all of the terms hereof, and represent that they enter into this Agreement of their own will and not due to any representation, commitment, promise, pressure, or duress from any other Party.

The Parties have duly authorized and caused this Agreement to be executed as follows:

The undersigned parties represent that they have read and understand the terms of this settlement and that they are authorized to execute this Settlement Agreement on behalf of their principals.

For City of Lathrop:

For Real Party in Interest:


Stephen J. Salvatore, City Manager


Sukhchain Gill

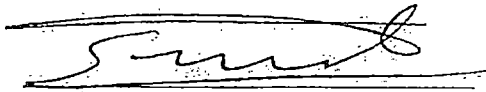
Date

11-12-14

Date

11/7/14

APPROVED AS TO FORM



Salvador V. Navarrete
Attorney for City of Lathrop

11-12-14
Date

EXHIBIT "C"
ENGINEER'S ESTIMATE FOR IMPROVEMENTS

(See Attached)

SUNRISE TRUCKING, 865 E. ROTH ROAD, LATHROP CA

ENGINEER'S ESTIMATE FOR STREET AND UTILITY IMPROVEMENTS

Bid Item	Description	Quantities	Units	Unit Price	Total Price
1	Curb & Gutter per City standard detail R-7A	135	LF	\$13.50	\$1,822.50
2	Sidewalk per City standard detail R-7A (5'x135')	675	SF	\$4.50	\$3,037.50
3	Commercial driveway per City standard detail R-13 (attached)	1	EA	\$2,500.00	\$2,500.00
4	34.5-feet of Asphalt Concrete paving (6-inches AC over 10" AB) across the entire frontage (42-feet of new paving north of existing edge of pavement minus 7.5-feet to make room for the curb, gutter and sidewalk)	4,625	SF	\$4.50	\$20,812.50
5	18-inch RCP Storm Drain Pipe along entire frontage	135	LF	\$44.00	\$5,940.00
6	Storm Drain Manhole	1	EA	\$3,000.00	\$3,000.00
7	Storm Drain Catch Basin	1	EA	\$2,100.00	\$2,100.00
8	Fire Hydrant	1	EA	\$3,500.00	\$3,500.00
9	8-inch Sanitary Sewer Pipe along the entire frontage	135	LF	\$26.00	\$3,510.00
10	Sanitary Sewer Manhole	1	EA	\$2,500.00	\$2,500.00
11	Streetlight Electrolier	1	LF	\$5,000.00	\$5,000.00
12	Joint Trench	135	LF	\$125.00	\$16,875.00
13	Street Striping	135	LF	\$5.00	\$675.00
14	Mobilization	1	LS	\$7,000	\$7,000.00
	<u>Subtotal</u>				\$78,272.50
	Contract Administration 5%				\$3,913.63
	Design @ 10%				\$7,827.25
	Inspection @ 5%				\$3,913.63
	<u>Subtotal</u>				\$93,927.00
	25% Contingency				\$23,481.75
	Total Project Cost				\$117,408.75
	Use				\$117,500.00

Note: The above quantities are, per the precise plan line, for a full frontage 69.5' half-street ROW section.

By: Tony Singh, Sr. Project Manager

Date: 09/29/2015

Street Frontage: 135 L.F.