



**JOINT MEETING OF THE  
MILPITAS CITY COUNCIL AND  
MILPITAS HOUSING AUTHORITY AGENDA  
TUESDAY, APRIL 2, 2013**

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*455 EAST CALAVERAS BLVD, MILPITAS, CA  
6:00 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)*

**SUMMARY OF CONTENTS**

- I. CALL TO ORDER/ROLL CALL by the Mayor (6:00 p.m.)**
- II. ADJOURN TO CLOSED SESSION**
  - 1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**  
Pursuant to California Government Code §54956.9(b), (c)  
City of Milpitas as Plaintiff or Defendant
  - 2. CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**  
Pursuant to California Government Code §54957.6, City Negotiator: Carmen Valdez  
Employee Groups: Milpitas Employees Association (MEA), Milpitas Police Officers Association (MPOA), International Association of Fire Fighters (IAFF)  
Under Negotiation: Wages, Hours, Benefits, and Working Conditions
- III. CLOSED SESSION ANNOUNCEMENTS:** Report on action taken in Closed Session, if required, pursuant to Government Code Section 54957.1, including the vote or abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Councilmember Montano)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – March 19, 2013**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDAR – April 2013**
- VIII. PUBLIC FORUM**

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Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

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- IX. ANNOUNCEMENTS**
- X. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XI. APPROVAL OF AGENDA**
- XII. CONSENT CALENDAR (Items with asterisks\*)**

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Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a member of the City Council, member of the audience, or staff requests the Council to remove an item from or be added to the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar. If removed, this item will be discussed in the order in which it appears on the agenda.

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**XIII. PUBLIC HEARINGS**

- 1. Hold a Public Hearing, Introduce Ordinance No. 38.807 Approving a Development Agreement and Adopt a Resolution Approving a Site Development Permit and Certifying the Final Environmental Impact Report for the I-880 Billboard Project (Staff Contact: Sheldon Ah Sing, 408-586-3278)**
- 2. Hold a Public Hearing and Adopt a Resolution Approving Recreation Services' Registration Software Upgrade and Transaction Fee to be Applied to All Recreation Programs and Services (Staff Contact: Jaime Chew, 408-586-3234)**

**XIV. JOINT MILPITAS HOUSING AUTHORITY AND CITY COUNCIL MEETING**

- \*HA1. Adopt a Resolution Approving a Loan from the Housing Authority to the City of Milpitas for Demolition of City Buildings at 1650-1690 and 1740-1830 McCandless Drive and Authorize the City Manager to Execute an Agreement with DR Horton (Staff Contact: Felix Reliford, 408-586-3071)**

**XV. UNFINISHED BUSINESS**

- \* 3. Receive the March 2013 Odor Control Report (Staff Contact: Kathleen Phalen, 408-586-3345)**

**XVI. REPORT OF MAYOR**

- \* 4. Consider Mayor's Recommendations for Appointments to Four Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**

**XVII. NEW BUSINESS**

- 5. Receive Report on Updated Milpitas Emergency Operations Plan and Approve the Plan (Staff Contact: Sean Simonson, 408-586-2810)**

**XVIII. RESOLUTION**

- \* 6. Authorize the Purchase of 25 CopVu Wearable Cameras from Watch Guard for Police Utilizing the 2012 Citizens Option for Public Safety (COPS) Grant and Adopt a Resolution Designating Watch Guard as a Sole Source Vendor and Standardize CopVu Cameras (Staff Contact: Chris Schroeder, 408-586-3161)**

**XIX. BID AND CONTRACTS**

- \* 7. Award Construction Contract to DRT Grading & Paving Inc. for Park Renovation 2011 Project No. 5091, Approve Budget Appropriation, and Authorize Staff to Execute Contract Change Orders (Staff Contact: Steve Erickson, 408-586-3301)**
- \* 8. Authorize the City Manager to Execute Amendment No. 3 to the Agreement with CalRecovery, Inc. for Solid Waste Consulting Services (Staff Contact: Kathleen Phalen, 408-586-3345)**
- \* 9. Authorize the City Manager to Execute Amendment No. 1 to the Agreement with Santa Clara County for the Countywide Household Hazardous Waste Collection Program (Staff Contact: Kathleen Phalen, 408-586-3345)**

- \* 10. **Authorize the City Manager to Execute an Agreement with Pyro Spectaculars for the Not-to-Exceed Amount of \$21,600 for the Annual 4<sup>th</sup> of July Fireworks Display (Staff Contact: Chris Schroeder, 408-586-3161)**

**XX. DEMAND**

- \* 11. **Receive Report of Emergency Repair and Equipment Replacement for the Police/Public Works Building Emergency Generator Fuel Lines and Authorize Staff to Pay Invoices (Staff Contact: Kathleen Phalen, 408-586-3345)**

**XXI. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, APRIL 16, 2013 AT 7:00 P.M.**

**KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review.

For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035  
e-mail: [mogaz@ci.milpitas.ca.gov](mailto:mogaz@ci.milpitas.ca.gov) / Fax: 408-586-3056 / Phone: 408-586-3040

*The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) by selecting the Milpitas Municipal Code link.*

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3<sup>rd</sup> floor 455 E. Calaveras Blvd., Milpitas and on the City website.

All City Council agendas and related materials can be viewed online here:  
[www.ci.milpitas.ca.gov/government/council/agenda\\_minutes.asp](http://www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp) (select meeting date)

**APPLY TO BECOME A CITY COMMISSIONER!**

Current vacancies exist on the:

*Public Art Committee (Alliance for the Arts member)  
Community Advisory Commission (alternate)*

Commission application forms are available online at [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) or at Milpitas City Hall. Contact the City Clerk's office (408-586-3003) for more information.

*If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, call the City Clerk at (408) 586-3001 or send an e-mail to [mlavelle@ci.milpitas.ca.gov](mailto:mlavelle@ci.milpitas.ca.gov) prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the Council Chambers for all meetings.*

## AGENDA REPORTS

### **XIII. PUBLIC HEARINGS**

- 1. Hold a Public Hearing, Introduce Ordinance No. 38.807 Approving a Development Agreement and Adopt a Resolution Approving a Site Development Permit and Certifying the Final Environmental Impact Report for the I-880 Billboard Project (Staff Contact: Sheldon Ah Sing, 408-586-3278)**

**Background:** The City expressed interest in a revenue generating citywide signage program and issued requests for proposals in July of 2008. Milpitas Sign Company (a partnership between McCarthy Land Development and Clear Channel Outdoor) was awarded the ability to construct a portion of the sign program on May 5, 2009. This application represents two of the three signs awarded to Milpitas Sign Company.

#### **Design Review and Development Agreement**

The proposed signs are consistent with the City's Sign Ordinance provisions for off-site advertising displays including height, size and operations. The Planning Commission reviewed the architectural design of the sign and recommended the City Council approve the project. Detailed information regarding the project, including the design, size and location, is included in the Planning Commission staff report and the exhibits to the project plan.

The development agreement identifies the timeframe for responsibilities, obligations and shared benefits of erecting and managing the off-site advertising displays. Milpitas Sign Company, LLC, will operate the sign and will be responsible for selling advertising displays. The City will receive ten percent of the annual adjusted gross revenue.

#### **Environmental Review**

The scope of the Environmental Impact Report includes installation of three separate billboards containing a total of six advertising facings, two per structure, along the east side of I-880, south of Dixon Landing Road. While the EIR includes four possible locations where three of the billboards could be located, signs will only be located at two of the locations based on leasing negotiations with property owners and distance limitations imposed by state law. The Notice of Preparation for the EIR was circulated for public review between July 25, 2010 and August 25, 2010. The Draft EIR was completed on May 18, 2011 and circulated for public review for 45 days. Impacts identified in the EIR affect aesthetics at the project and cumulative levels. Mitigation measures are suggested, however, some impacts cannot be reduced to a level of less than significant and therefore, adoption of statements of overriding considerations is necessary regarding aesthetics. The Planning Commission staff report, the project's EIR, and the project resolution provide additional detailed information (material included in the agenda packet).

**Fiscal Impact:** None.

#### **Attachments:**

1. Resolution
2. Ordinance No. 38.807
3. Project Plans
4. Final Environmental Impact Report
5. Planning Commission staff report and meeting minutes from 1/23/2013
6. Public Comment

#### **Recommendations:**

1. Hold a public hearing to receive comments, then move to close the public hearing.
2. Move to waive the first reading beyond the title of Ordinance No. 38.807.
3. Introduce Ordinance No. 38.807 to approve a Development Agreement between Milpitas Sign Company, LLC and City of Milpitas.

4. Adopt a resolution approving a Site Development Permit and certifying the Final EIR for the McCarthy Billboards project.

**2. Hold a Public Hearing and Adopt a Resolution Approving Recreation Services' Registration Software Upgrade and Transaction Fee to be Applied to All Recreation Programs and Services (Staff Contact: Jaime Chew, 408-586-3234)**

**Background:** Starting in October of 2013, Recreation Services' registration software, RecWare Safari, will no longer receive tech support. This lack of support will also affect Recreation's online registration abilities as well. After much research and deliberation, Recreation staff needs to upgrade the registration software to ActiveNet by Active Network. The ActiveNet software would not only provide additional features to enhance service and financial reporting, but it would also allow for complete data transfer from the previous registration software. This will significantly reduce the amount of staff time needed for the software upgrade.

The new registration software, ActiveNet, is a hosted technology which provides cloud computing. Essentially, Active Network would be providing the software via the internet which eliminates the need for in-house servers or system maintenance. With ActiveNet software, there will be no annual maintenance cost because it is a hosted technology. However, because it is a hosted technology, Active Network will be assessing a 1.5% transaction fee on every transaction. This includes not only online transactions but in-person transactions which occur at all three Recreation sites—the Community Center, Barbara Lee Senior Center and the Sports Center.

To compensate for this, staff proposes implementing a new Transaction Fee on all Recreation programs and services. The fee would be on all transactions – a Transaction Fee of 1.5%.

Example: A customer registers his/her child for an art class that is \$50. He would be assessed a 1.5% Transaction Fee which would be \$0.75 and would bring the registration total to \$50.75. Or, a customer registers his/her child for a music class that is \$140. He would be assessed a 1.5% Transaction Fee which would be \$2.10 and would bring the registration total to \$142.10.

If approved, the new software would “go live” and the new Transaction Fee would be effective starting January 2014.

**Fiscal Impact:** The software upgrade from RecWare Safari to ActiveNet would cost \$15,000. However, if Recreation Services is able to commit to the software upgrade by April 30, 2013, Active Network will discount the upgrade by \$10,000 which would bring the total software upgrade to \$5,000.

Although there is no annual maintenance cost for the ActiveNet registration software, Active Network will be assessing a 1.5% transaction fee on all transactions. In Fiscal Year 2011–12, Recreation Services brought in a total of \$2,156,065.48 in revenue. From this, it is predicted the transaction fee assessed by Active Network would result in payment of \$32,340.98 to the vendor for the year. The incurred cost of Active Network's transaction fee would be passed through to the customer via Recreation Services' 1.5% Transaction fee. As such, the Recreation Services' Transaction Fee would not exceed the reasonable cost to provide this service with the new registration software.

**Attachments:**

1. Resolution
2. Recreation Master Fee Schedule Exhibit A

**Recommendations:**

1. Open the public hearing for comments, then move to close the public hearing.
2. Approve Recreation Services' software upgrade to ActiveNet by Active Network.

3. Adopt a resolution for the new Transaction Fee to be added to the Recreation Master Fee schedule, and apply it to all Recreation programs and services.

#### XIV. JOINT MILPITAS HOUSING AUTHORITY AND CITY COUNCIL MEETING

- \*HA1. Adopt a Resolution Approving a Loan from the Housing Authority to the City of Milpitas for Demolition of City Buildings at 1650-1690 and 1740-1830 McCandless Drive and Authorize the City Manager to Execute an Agreement with DR Horton (Staff Contact: Felix Reliford, 408-586-3071)**

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

DR Horton solicited three bids from its contractors. Three contractor bids are included in the agenda packet. Staff recommends the selection of Gilroy Construction, Inc., the lowest bidder. In general, the demolition work will include:

Demolition of Site - \$415,000
Utility Allowance - \$75,000
<u>Asbestos Removal Allowance - \$75,000</u>
Subtotal: \$565,000

General Contractor Fee (5% x \$565,000) - \$28,250
<u>Housing Authority Interest Rate (5% x \$565,000) - \$28,250</u>
<b>Grand Total: \$621,500</b>

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

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

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

#### XV. UNFINISHED BUSINESS

- \* 3. Receive the March 2013 Odor Control Report (Staff Contact: Kathleen Phalen, 408-586-3345)**

**Background:** From February 19 through March 18, 2013, the Bay Area Air Quality Management District (BAAQMD) received thirty-eight odor complaints originating in Milpitas. Twenty-four complaints identified a garbage-related odor, two identified a sewage-related odor and thirteen did not identify an odor source. As of the last Council update, the City's odor reporting website has received forty-eight reported complaints.

**Fiscal Impact:** None.

**Recommendation:** Receive the March odor report.

## XVI. REPORT OF MAYOR

- \* 4. **Consider Mayor's Recommendations for Appointments to Four Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**

**Background:** Mayor Esteves recommends the following new appointments:

**Arts Commission/Public Art Committee**

Newly appoint Marsha Tran as Alternate No. 2 to a term that will expire in October 2013.

**Community Advisory Commission**

Move Ray Maglalang from Alternate No. 2 to a regular voting member with a term to expire in January 2015.

Move Van Lan Truong from Alternate No. 3 to Alternate No. 1 to a term that will expire in January 2015.

Move Jacqueline Holland from Alternate No. 4 to Alternate No. 2 to a term that will expire in January 2015.

Newly appoint Willy Wong as Alternate No. 3 to a term that will expire in January 2014.

**Economic Development Commission**

Newly appoint Mark Wong as Alternate No. 2 to a term that will expire in April 2014.

**Senior Advisory Commission**

Newly appoint Patrick Yung to Alternate No. 2 to a term that will expire in December 2014.

Copies of all applications on file (for new appointments) are included in Council agenda packets.

**Recommendation:** Approve the appointment of seven people to four City of Milpitas Commissions.

## XVII. NEW BUSINESS

5. **Receive Report on Updated Milpitas Emergency Operations Plan and Approve the Plan (Staff Contact: Sean Simonson, 408-586-2810)**

**Background:** Staff from the Milpitas Office of Emergency Services will provide a brief presentation on the updated City of Milpitas Emergency Operations Plan at the City Council meeting. A copy of the Plan is included in the Council's agenda packet.

**Fiscal Impact:** None.

**Recommendation:** Accept the report on the Milpitas Emergency Operations Plan as presented by Milpitas Office of Emergency Services and approve the Milpitas Emergency Operations Plan.

## XVIII. RESOLUTION

- \* 6. **Authorize the Purchase of 25 CopVu Wearable Cameras from Watch Guard for Police Utilizing the 2012 Citizens Option for Public Safety (COPS) Grant and Adopt a Resolution Designating Watch Guard as a Sole Source Vendor and Standardize CopVu Cameras (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** In December of 2011, the Milpitas Police Department solicited three quotes and purchased 17 wearable cameras from Watch Guard through the Association of Bay Area Governments (ABAG) PLAN grant. The cameras use proprietary software that was further adjusted to the specific requirements of the Milpitas Police Department.

On January 17, 2012, the Council accepted the 2012 Citizens Option for Public Safety grant for Milpitas Police. The Police Department received funds to purchase assorted equipment including wearable cameras. The Police Department seeks to purchase 25 more wearable CopVu cameras from Watch Guard. Funds for the purchase will come from the remaining balance of the COPS grant of \$21,298.64. The difference between the purchase price of the cameras \$21,874.90 and the balance of the COPS Grant, \$576.26 will come from the Police Department supplies budget.

The Police Department also seeks approval for standardization of the CopVu cameras, pursuant to Municipal Code Section I-2-3.13, "Standardization" and the designation of "Sole Source" for Watch Guard as the sole distributor per Municipal Code I-2-3.09 "Sole Source Procurement."

**Fiscal Impact:** None. This is a programmed purchase approved in the 2012 COPS Grant and remaining funds are budgeted in the Police Department's supplies budget.

**Recommendations:**

1. Authorize the purchase of 25 CopVu wearable cameras from Watch Guard utilizing the COPS 2012 grant (approved by Council on January 17, 2012) and the Police Department supplies budget, in an amount not to exceed \$22,000.
2. Adopt a resolution designating Watch Guard as a "Sole Source" vendor and the standardization of the CopVu cameras for Milpitas Police Department.

**XIX. BID AND CONTRACTS**

- \* 7. **Award Construction Contract to DRT Grading & Paving Inc. for Park Renovation 2011 Project No. 5091, Approve Budget Appropriation, and Authorize Staff to Execute Contract Change Orders (Staff Contact: Steve Erickson, 408-586-3301)**

**Background:** On May 1, 2012, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for the "Pathways" Park Renovation 2011. The project provides for repairs to pathways at Pinewood Park and Albert J. Augustine Jr. Memorial Park. The installation of new Americans with Disabilities Act (ADA) compliant curb ramps connecting the pathways to City sidewalks is also included. The Engineer's Estimate for the base bid project work is \$165,000.

On April 17, 2012, the City Council approved grant funding for this project in the amount of \$77,777.78 through the Community Development Block Grant (CDBG) program. These funds now need to be appropriated into Project No. 5091.

The project was advertised and five sealed bids were received on March 20, 2013. Bid proposals ranged from \$109,510.20 to \$205,279.20, with the lowest responsible base bid submitted by DRT Grading & Paving Inc. in the amount of \$ 109,510.20.

As was approved for the successful completion of the Senior Center, Public Library, Parking Garage, and other recent projects with tight completion and grant funding schedules, staff is requesting the use of the same change order policy to allow for the timely completion of this project. This policy authorizes staff to execute change orders in order to respond swiftly to construction conditions in order to limit potential claims or risk to the City. The construction contingency established for this project is \$30,000, and the change order authority would not exceed this amount and would not require additional appropriation.

**Fiscal Impact:** A budget appropriation to add the CDBG funding obtained in the amount of \$77,777.78 is required in order to award this project. The remainder of the funds is available in the project budget.

**Recommendations:**

1. Award a construction contract to DRT Grading & Paving Inc. for the Park Renovation 2011, Project No. 5091, in the amount of \$109,510.20.
2. Approve a budget appropriation of \$77,777.78 from the Community Development Block Grant (CDBG) into the Park Renovation 2011, Project No. 5091.
3. Authorize staff to execute change orders up to \$30,000 for the Park Renovation 2011, Project No. 5091.

- \* **8. Authorize the City Manager to Execute Amendment No. 3 to the Agreement with CalRecovery, Inc. for Solid Waste Consulting Services (Staff Contact: Kathleen Phalen, 408-586-3345)**

**Background:** The City has an on-call agreement with CalRecovery to provide expert consulting services for odor issues and other solid waste related matters. CalRecovery is currently working on odor issues related to the Newby Island landfill expansion. To continue CalRecovery's support, staff recommends increasing the contract amount by \$20,000 for a total contract value not to exceed \$49,000 and exercising the second 12-month option to extend the term to June 30, 2014.

**Fiscal Impact:** None. There are sufficient funds available in the Engineering operating budget.

**Recommendation:** Authorize the City Manager to execute Amendment No. 3 to the agreement with CalRecovery Inc. for solid waste consulting services for an amount not to exceed \$20,000.

- \* **9. Authorize the City Manager to Execute Amendment No. 1 to the Agreement with Santa Clara County for the Countywide Household Hazardous Waste Collection Program (Staff Contact: Kathleen Phalen, 408-586-3345)**

**Background:** The Santa Clara County Department of Environmental Health has administered a countywide household hazardous waste collection program since October 1991. An agreement dated May 22, 2012 between the County and each participating jurisdiction, including the City of Milpitas, allows the program to continue for a three-year period and it must be renewed each year with an amendment. The landfill disposal facilities collect a tipping fee surcharge to fund this County-administered program.

**Fiscal Impact:** None.

**Recommendation:** Authorize the City Manager to execute Amendment No. 1 to the agreement with Santa Clara County for the FY 2013-14 Countywide Household Hazardous Waste Collection Program.

- \* **10. Authorize the City Manager to Execute an Agreement with Pyro Spectaculars for the Not-to-Exceed Amount of \$21,600 for the Annual 4<sup>th</sup> of July Fireworks Display (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** The 4<sup>th</sup> of July is traditionally marked by a display of fireworks. There are only two fireworks vendors in the Bay Area. With offices in Oakland, Pyro Spectaculars is the only full service provider of "Pyromusical<sup>TM</sup>" fireworks displays in the Bay Area. The company is also the premier provider of pyrotechnic devices and aerial fireworks displays in the world. Based on its track record of excellence, safety, custom designed set pieces and bright work, Pyro Spectaculars has been the vendor of choice for the Milpitas Fire Department and the City of Milpitas for the past fifteen years. For the above mentioned reasons, this purchase was

designated as a “sole source,” as sanctioned in Section I-2-3.09 of the Milpitas Municipal Code, by the City Council on April 5, 2011. The designation is good for four more years.

**Fiscal Impact:** \$21,600. Funds for this purchase are yet to be determined but will come from one of two sources: either from a combination of donations and fundraising activities similar to last year or the City of Milpitas will fund the event from the Contingency Reserve.

**Recommendation:** Authorize the City Manager to execute an agreement with Pyro Spectaculars for the not-to-exceed amount of \$21,600 for the annual 4<sup>th</sup> of July 2013 fireworks display in the City of Milpitas.

## **XX. DEMAND**

- \* **11. Receive Report of Emergency Repair and Equipment Replacement for the Police/Public Works Building Emergency Generator Fuel Lines and Authorize Staff to Pay Invoices (Staff Contact: Kathleen Phalen, 408-586-3345)**

**Background:** Pursuant to state public contracting law and Council Resolution No. 7779, the Director of Public Works may authorize emergency work, but must provide the City Council a report of all such work. As required by Senate Bill 989, staff had Balch Petroleum test and inspect the Police/Public Works building emergency generator diesel fuel line secondary containment system. This generator stands by to power the Police and Public Works Building in the event of a PG&E power outage. It is fueled from the underground diesel tank at the Corporation Yard vehicle fuel island via 80-foot fuel line pipes. These fuel lines are underground for most of their run, but surface into a trench alongside the aboveground generator. The piping secondary containment is a larger pipe sleeve that surrounds the fuel lines to capture and contain any fuel that might leak if the fuel line should break. Testing the secondary containment consists of pressurizing the annular space between the fuel line and its secondary containment pipe with an inert gas and using a detector to locate any leaks of this gas.

Balch’s initial testing identified two locations of the secondary containment requiring repair. In November, the Director approved and reported to Council Balch’s estimated cost of \$6,950 to complete these emergency repairs. Balch completed the identified repairs and, upon retesting, found additional leaks in the secondary containment that it repaired at an additional cost of \$15,257. Balch has now identified further needed work, including replacing the aboveground sections of secondary pipe, and replacing the leak monitor and leak sensors at an estimated cost of \$24,300.

**Fiscal Impact:** None.

**Recommendations:**

1. Receive this report of the Police/Public Works of emergency repairs and equipment replacement for the Police/Public Works building emergency generator fuel lines.
2. Authorize staff to pay invoices for the repair work on the fuel lines.

## **XXI. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, APRIL 16, 2013 AT 7:00 P.M.**

*Draft* **MEETING MINUTES**  
**CITY OF MILPITAS**

**Minutes of:** **Regular Meeting of Milpitas City Council**  
**Date:** **Tuesday, March 19, 2013**  
**Time:** **6:00 PM**  
**Location:** **Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas**

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**ROLL CALL**

Mayor Esteves called the meeting to order at 6:00 PM. The City Clerk noted the roll.

**PRESENT:** Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano and Montano

**ABSENT:** Councilmember Gomez was absent at roll call and arrived in Closed Session at 6:15 PM

**CLOSED SESSION**

City Council convened in Closed Session to discuss labor negotiations and one litigation matter.

City Council then convened in Open Session at 7:20 PM.

**ANNOUNCEMENT**

No announcement out of Closed Session.

**PLEDGE**

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

**INVOCATION**

Councilmember Montano offered a prayer to start the meeting.

**MINUTES**

Motion: to approve meeting minutes of March 5, 2013 City Council meeting, as amended

One correction was requested by the City Clerk, on page 4, recording the vote on the resolution as zero "No" votes (not one, as typewritten on the draft minutes).

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**SCHEDULE OF MEETINGS**

Motion: to approve Council Calendars/Schedule of Meetings for March and April 2013, as amended

City Manager Tom Williams stated the San Jose/Santa Clara Treatment Plant Advisory Committee (TPAC) meeting was scheduled on Monday, March 25 at 1:30 p.m. The City's Economic Development Commission meeting met the previous evening on March 18 at 6:00 PM.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**PRESENTATION**

Mayor Esteves presented a Certificate of Recognition to the Art of Living Foundation. Several representatives from the non-profit organization gave a presentation to inform the community about its current stress free, violence free community campaign.

Councilmember Gomez left the dais at this time for several minutes and returned later.

**PUBLIC FORUM**

Rob Means, 1421 Yellowstone, Milpitas resident, noted the comment "infeasible" stated at a previous meeting in reference to railroad crossing at Yosemite. He researched it further.

Robert Marini, Milpitas resident, discussed the way that sewer costs were calculated.

Gary Roope, Mentelinda Loop, Milpitas resident, asked the City to do something on the parking situation, kitty corner to the newest auto dealerships on Thompson. Too many auto dealer employees were parking next to the City's new parks in that neighborhood.

Frank DeSmidt of the Milpitas Rotary Club announced a free e-waste event at Huntford Printing on Saturday, March 30. Also, the 39<sup>th</sup> annual celebration for the Milpitas Citizen of the Year was planned for April 13 at Pavalkis Hall, sponsored by the Knights of Columbus.

**ANNOUNCEMENTS**

Chief Building Keyvan Irannejad introduced the City's newly hired Principal Civil Engineer Mr. Ebby Sohradi, in land use engineering.

Vice Mayor Polanski thanked City staff, the Milpitas Historical Society and others who coordinated the fine opening of the beautiful new Alviso Adobe Park last Saturday morning.

Mayor Esteves congratulated the India Community Center upon ten years in the City of Milpitas. He announced two current art exhibits, one at City Hall and one at the Milpitas Library.

**ANNOUNCEMENT OF CONFLICT OF INTEREST**

None.

**APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**CONSENT CALENDAR**

Motion: to approve the Consent Calendar (items noted with \*asterisk), as amended

Councilmember Montano requested to remove agenda item No. 5 on the Public Art Master Plan from consent for discussion.

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

- \* 4. Commission Appointments Newly appointed Melanie Holthaus to Economic Development Commission as Alternate No. 1 to a term that will expire in April 2015, and newly appointed Nonie McDonald to the Library Commission as Alternate No. 2 to a term that will expire in June 2013.
- \* 7. Resolution Adopted Resolution No. 8238 granting initial acceptance of VTA's Water, Storm, and Sewer Utility Relocation at Piper Dr. VTA Project No. C610, subject to 1 year warranty.
- \* 8. Resolution Adopted Resolution No. 8239 granting initial acceptance of Abel Street Transit Connection Project, Project No. 4260, Federal Project No. CML-5314 (003), subject to a one year warranty and reduction of the faithful performance bond to \$103,440.04.
- \* 9. Resolution Adopted Resolution No. 8240 approving the Donation Policy and Procedures for the City of Milpitas Parks and Recreation Programs.
- \*10. Resolution and other actions for Trumark project Adopted Resolution No. 8241 annexing properties known as "Pace Project" into Community Facility District 2008-1.
- \*11. Resolution Adopted Resolution No. 8242 authorizing the City Manager to execute a separate contract with Iteris, Inc., selected by the originating agency, the City of San Jose and incorporating



(2) Motion: to adopt Resolution No. 8237 establishing the South Milpitas Boulevard Plan Line from Montague Expressway to Capitol Avenue in the City of Milpitas

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

## UNFINISHED BUSINESS

### 2. BART Project Update

City Manager Tom Williams commended Ms. Carolyn Gonot - Santa Clara Valley Transportation Authority (VTA) BART project manager - and her staff, who were doing a fantastic job working with the City on the progress of BART coming to Milpitas.

Acting City Engineer Kathleen Phalen introduced Ms. Gonot from VTA to provide an update on the BART construction status in Milpitas. Additionally, from VTA staff, Mr. Mark Massman, VTA Silicon Valley BART Extension (SVBX) Project Director and Ms. Bernice Alaniz, VTA SVBX Communications Director, addressed the Council.

Ms. Alaniz described current project activity, with over eleven major utilities moved for grade separation. She discussed the stakeholder outreach performed in a three tier approach. Ms. Gonot provided more details on the project in the near future. The project includes a Residential Noise Insulation Program underway, with 246 homes near the new BART station eligible for sound improvements, including 97 in Milpitas.

Mr. Massman next spoke on the plan for MOTA, Maintenance of Traffic and Access for the BART construction project.

Councilmember Montano inquired about the Kato Rd./Dixon Landing area, and Mr. Massman responded with some accomplishments there, and work remaining.

For contact and communications, there were three BART project offices, with the main office in Milpitas on California Circle. Mayor Esteves thanked all three VTA speakers for their presentations.

The Mayor next invited speakers from audience.

Carol Kassab, CEO of Milpitas Chamber of Commerce, addressed Ms. Montano, explaining that the Chamber had put Milpitas Materials (a local supplier) in touch with the VTA at the start of the project.

Councilmember Giordano asked when would the next report be provided to City Council and Ms. Gonot responded, in about four months. VTA staff reported that on April 5, VTA would celebrate the re-opening of Kato Road and the milestone one-year anniversary of the start of BART construction.

Motion: to receive the report given at the Council meeting by Valley Transportation Authority's staff on construction of the Bay Area Rapid Transit extension

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

### 3. Fire Department Update

City Manager Tom Williams reviewed for the City Councilmembers why this matter was presented this date, arriving one month after a vote of the Council to work toward solution on the issue of significant overtime expenses in the Fire Department, well over what was budgeted in FY 2012-13.

Fire Chief Brian Sturdivant gave a progress report on addressing the minimum staffing flexibility and control on overtime costs. IAFF Local #1699 employees did not vote to affirm the plan that the Council authorized on February 19. He identified the containment measures in that previous vote: four firefighter layoffs effective on Wednesday, March 20, one fire apparatus taken out of service, and six firefighter personnel demoted (per City's employment regulations upon reduction in force).

Councilmember Giordano thought this issue was done. The Council did not change anything as presented last month when the agreement was presented, so she was shocked at this outcome.

Councilmember Gomez asked about overtime costs over the last two months. Chief Sturdivant responded it was about \$75,000 per month, slightly down from last fall. Mr. Gomez also sought additional explanation on the federal SAFER grant.

Vice Mayor Polanski asked if the federal sequester being implemented had any impact on the SAFER grant award. Chief Sturdivant replied, none right now, while he would need to determine that after October 1, when the new federal fiscal year started.

Councilmember Montano wanted to know if the City had mutual aid with the City of Fremont. The Fire Chief confirmed Milpitas did have an agreement with both larger cities to the north and south of Milpitas, and he had recently received a letter of support from the Fremont Fire Chief.

Mayor Esteves stated he was looking more for long term stability of the City's Fire Department and related costs for the service. His priority was cost containment.

Next, the Mayor invited comments from the audience.

Robert Marini, Milpitas resident, said one thing Council could do was not increase the number of housing units.

Firefighter Geoff Maloon sought more than three minutes to speak, which the Mayor did not grant, so he left the dais making no comments.

Steve King, President of IAFF, wanted to tell one side of story. He discussed some of the overtime issues, and reminded the Council that Battalion Chiefs had no overtime. They had worked hard to bring down overtime expenses and wanted the Council to accept the SAFER grant. The Fire Department could "upstaff" with those funds. He wondered why they should lower minimum staffing while accepting grant funds to hire six more.

Councilmember Giordano responded to Mr. King, stating she held up her end of the bargain, and supported the agreement last month, but now the union said no.

Vice Mayor Polanski spoke on behalf of Council's Task Force, made up of her and Mr. Gomez, and the work they had done to come up with a fair plan. She was very disappointed in the position the Council was put it in, at this meeting, since the vote of the firefighters did not support the plan.

Councilmember Gomez questioned the Fire Chief to fully understand the SAFER grant. He asked if the Chief would continue to pursue the grant even after layoffs were implemented. Chief Sturdivant noted the grant was awarded, and there was a 30 day window to work out issues to be able to implement the terms. Mr. Gomez did not want to see the money go away.

City Manager Williams addressed flexibility on staffing in the Fire Department, stating there was none under the current Memorandum of Understanding. With a number of 59 firefighters total - once the grant was accepted and implemented - for the 24 months performance period. That could not change at all, if the funds were accepted.

City Attorney Mike Ogaz remarked on the wording of the motion recommended by staff on the agenda, and it could be broken into two parts, if desired.

Motion: to direct the Milpitas Fire Chief to implement the plan to brown out one fire apparatus and implement layoffs of four Milpitas firefighters effective March 20, 2013, and to reject the SAFER grant

Motion/Second: Councilmember Giordano/Mayor Esteves

Vice Mayor Polanski asked staff about the SAFER grant, and its specific timelines necessary in the details of the grant. Chief Sturdivant confirmed the \$2.1 million amount to hire six firefighters by an April deadline, with the Federal Emergency Management Agency (FEMA) willing to entertain adjustments to the final amount.

Motion carried by a vote of: AYES: 5  
NOES: 0

## REPORTS

### 5. Public Art Committee

Councilmember Montano had removed this item from consent, and she had read the goals of the Public Art program and Master Plan. She highlighted one type of funding, from the City of Brea, which had an ordinance to require developers pay into a fund over time for these projects. She wanted to consider such ordinance in Milpitas. She also inquired about the “Cartwheel Kids” sculpture at City Hall and how to move forward to getting it over to the Library (it was not on the list of projects for approval).

Recreation staff Renee Lorentzen responded on costs to move the sculpture, with \$15,000 as the estimated maximum provided by the artist some time ago. Councilmember Montano wanted to see the art moved but hoped actual cost would be lower.

Vice Mayor Polanski agreed with moving the “Kids” even if the recommendation from the Committee was to hold off. She preferred the Minute Man statue to be installed in place of the Kids statue at City Hall. She referred to the 60<sup>th</sup> anniversary of City next January and hoped to see the Minute Man in place by then.

Councilmember Gomez felt art was wonderful, but he opposed spending up to \$166,000 City funds on an art project, however. He would vote against such expenditure.

Mayor Esteves asked if the cost (of moving Cartwheel Kids) had gone out for bid. Ms. Lorentzen replied that staff only had an estimate to date, and certainly could solicit bids.

(1) Motion: to move the Cartwheel Kids sculpture from City Hall to the front of the Milpitas Library

Motion/Second: Councilmember Montano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 4  
NOES: 1 (Gomez)

The next action then would be to install the Minute Man as art in front of City Hall, and the Mayor wanted to put that issue on the Council’s agenda.

Councilmember Montano wanted the issue of seeking funds from developers for Public Art into a special fund on the agenda and to study an ordinance. The City Manager responded that nearby cities, such as Fremont, had a similar ordinance.

(2) Motion: to review ordinances in other cities related to public art and its funding; and, to approve the Public Art Committee Master Plan

Motion/Second: Councilmember Montano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 4  
NOES: 1 (Gomez)

## **ORDINANCE**

### 6. Ordinance No. 284

City Attorney Ogaz reviewed the genesis of this new ordinance, along with edits he'd made to the earlier draft version as directed at the last City Council meeting.

Mayor Esteves wanted to add a request for announcement of any donations from employee unions to the ordinance. Mr. Ogaz responded that the Mayor's goal was already reached, by the language included on "contracts" since employee groups' Memorandums of Understanding were, in fact, contracts that came before the Council for a vote.

Ordinance No. 284 was "An Ordinance of the City Council of the City of Milpitas Adding Milpitas Municipal Code Section I-210-5.20 Requiring Disclosure of Developer Contributions to City Council."

(1) Motion: to waive the second reading of Ordinance No. 284

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

(2) Motion: to adopt Ordinance No. 284

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

## **RESOLUTIONS**

Five Resolutions were approved on consent calendar.

## **BIDS & CONTRACTS**

Five items were approved on consent calendar.

## **ADJOURNMENT**

Mayor Esteves adjourned the meeting at 9:37 PM.

*Meeting minutes respectfully submitted by  
Mary Lavelle, City Clerk*

March 2013						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

May 2013						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

# Council Calendar

## April 2013

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	<b>1</b> <b>7:00 PM</b> -Parks, Recreation & Cultural Resources Commission (AP)	<b>2</b> <b>6:00 PM</b> -Closed Session <b>7:00 PM</b> -City Council	<b>3</b> <b>7:30 AM</b> -VTA Northeast Group (JE) <b>5:30 PM</b> -Veterans Commission (DG) <b>7:00 PM</b> -Community Advisory Commission (AG)	<b>4</b> <b>5:30 PM</b> -VTA Board of Directors (JE)	<b>5</b>	<b>6</b>
<b>7</b>	<b>8</b> <b>6:00 PM</b> -Economic Development Commission (CM)	<b>9</b>	<b>10</b> <b>12:00 PM</b> -Santa Clara Valley Water Commission (AG) <b>7:00 PM</b> -Planning Commission	<b>11</b> <b>4:00 PM</b> -VTA Policy Advisory Committee (AG) <b>4:30 PM</b> -Treatment Plant Advisory Committee (JE) (San Jose) <b>6:00 PM</b> -Cities Assn of SCC (JE) <b>7:00 PM</b> -Youth Advisory Commission (DG)	<b>12</b>	<b>13</b> <b>12:00 PM</b> Commissioners Luncheon at Milpitas Community Center
<b>14</b>	<b>15</b> <b>7:00 PM</b> -Telecommunications Commission (AP)	<b>16</b> <b>6:00 PM</b> -Closed Session <b>7:00 PM</b> -City Council	<b>17</b>	<b>18</b> <b>12:30 PM</b> -VTA Admin & Finance Committee (JE) <b>7:00 PM</b> -Bay Area Water Supply Conserv. Agency (AG) (Foster City)	<b>19</b> <b>9:00 AM</b> -VTA Board Workshop Meeting (JE)	<b>20</b>
<b>21</b>	<b>22</b>	<b>23</b> <b>1:30 PM</b> -Senior Advisory Commission (JE) <b>6:00 PM</b> -Recycling & Source Reduction Adv. Comm. (CM)	<b>24</b> <b>7:00 PM</b> -Planning Commission	<b>25</b> <b>7:00 AM</b> -Milpitas Chamber of Commerce Board (DG) <b>12:00 PM</b> -Terrace Gardens Board of Directors (DG) <b>1:30 PM</b> -SCC Library JPA Board (CM) <b>7:00 PM</b> -Sister Cities Commission (CM)	<b>26</b>	<b>27</b>
<b>28</b>	<b>29</b>	<b>30</b>				

## RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING SITE DEVELOPMENT PERMIT NO. SD12-0007, A DEVELOPMENT AGREEMENT AND CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE I-880 MILPITAS BILLBOARDS PROJECT AND ADOPTING RELATED MITIGATION FINDINGS, FINDINGS REGARDING ALTERNATIVES, AND A STATEMENT OF OVERRIDING CONSIDERATIONS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**WHEREAS**, on September 28, 2012, an application was submitted by Milpitas Sign Company, LLC for site development approval for the erection and operation of a freestanding off-site advertising display including an agreement between the City and the applicant. The project is located at 1301 California Circle (APN: 022-37-002) and 1545 California Circle (APN: 022-37-049); and

**WHEREAS**, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and determined that an Environmental Impact Report (EIR) would be required for the project and circulated a Notice of Preparation dated July 25, 2010 to public agencies and interested parties for consultation on the scope of the EIR; and

**WHEREAS**, based on the responses to the Notice of Preparation, the City prepared a Draft Environmental Impact Report (“Draft EIR”) dated May 2011 (SCH No. 201062083) which reflected the independent judgment of the City as to the potential environmental effects of the Project. The Draft EIR was circulated for a 45 day public review and comment period, from May 18, 2011; and

**WHEREAS**, the Project was the subject of public meetings and the Project and Final EIR were the subject of a public meeting held on January 23, 2013; and

**WHEREAS**, City staff reviewed all comments received on the Draft EIR during the public review period and prepared written responses providing the City’s good faith, reasoned analysis on the environmental issues raised by the comments. Revisions to the Draft EIR were identified as appropriate. City staff reviewed all written responses to comments and all revisions to the Draft EIR and determined that none of the responses and/or revisions included significant new information requiring recirculation of the Draft EIR pursuant to CEQA Guidelines § 15088.5. The comment letters, written responses to comments and revisions to the Draft EIR are contained in a separately bound Final EIR dated March 2012. The May 2011 Draft EIR and the March 2012 Final EIR, both of which are included in the Council packet and available for public review at the Office of the City Clerk, together constitute the final Environmental Impact Report for the Project pursuant to CEQA Guidelines §§ 15089 and 15132, and reflect the City’s independent judgment and analysis on the potential environmental impacts of the Project; and

**WHEREAS**, on January 23, 2013 the Planning Commission held a noticed public hearing on the Project at which time the Commission considered a written staff report as to the proposed application and its conformity with the requirements of Milpitas Municipal Code § XI-10-24.05.G (Off-Site Advertising Displays Adjacent to Interstate Highways and State Routes), the Draft EIR, written and oral comments on the Draft EIR, the Final EIR, and all other oral and written comments presented to them. Based on this evidence, the Planning Commission recommended that the City Council certify the EIR and approve the Site Development Permit No. SD12-0007 (Resolution No. 13-004); and

**WHEREAS**, the EIR identifies the potential for significant effects on the environment from development of the Project, not all of which can be substantially reduced through implementation of mitigation measures; therefore, approval of the Project must include findings regarding mitigation measures and alternatives as set forth in Exhibit B; and

**WHEREAS**, some of the significant effects identified in the EIR cannot be lessened to a level of less than significant; therefore, approval of the Project must include a Statement of Overriding Considerations as set forth in Exhibit C; and

**WHEREAS**, the City has prepared a Mitigation, Monitoring and Reporting Program to ensure monitoring and implementation of the mitigation measures set forth in Exhibit D; and

**WHEREAS**, on April 2, 2013, the City Council held a noticed public hearing to consider certification of the EIR, and approval of the Project.

**NOW, THEREFORE, BE IT RESOLVED** that the foregoing recitals are true and correct and made a part of this Resolution.

**BE IT FURTHER RESOLVED** that the Milpitas City Council determines, finds and certifies as follows:

1. Regarding the Site Development Permit:

- a. The proposed display will not create a hazard to vehicular or pedestrian traffic, and measures have been taken to reduce potential impacts upon the existing visual character of the site and surrounding in that the displays are angled away from neighboring properties and will include automatic dimming devices to ensure the appropriate glare level.
- b. All advertising on the off-site advertising display will conform with the Outdoor Advertising Act in the California Business and Professions Code and other applicable State and federal rules and regulations.
- c. The development of the off-site advertising display will result in a public benefit to the City outweighing any adverse impacts that might be caused by the advertising display. The proposed display will present a positive image of the City of Milpitas and increase its visibility and presence to the traveling public, thereby informing travelers of amenities and products available in the project area. The proposed display will also provide opportunities for advertising or information regarding community events and programs.
- d. The development of the off-site advertising display will promote economic development within the City in that the signs provide for additional commercial corridor communication, thereby advertising the availability of goods and services.
- e. The design, including lighting, scale, size and materials, of the off-site advertising display is consistent with the intent of the design criteria of the off-site advertising display provisions in that the sign is consistent with the height, size, and lighting and is compatible in design and appearance to the commercial, office and retail structures in the surrounding area.
- f. The development and location of the proposed off-site advertising display is consistent with the goals of the Milpitas General Plan in that the sign:
  - i. provides a partnership with local business entities and provides an opportunity to promote economic activity within the City.
  - ii. allows the City to position itself for appropriate identification for businesses and projects a positive quality image for Milpitas.
  - iii. promotes and balances economic development by creating a medium for local businesses to advertise and ensures quality identification.

2. Regarding the EIR:

- a. That the final EIR for the Project has been completed in compliance with CEQA and the CEQA Guidelines.
- b. That the EIR was presented to the City Council who reviewed and considered the information contained therein prior to approving the Project.
- c. That the Final EIR reflects the City's independent judgment and analysis on the potential for environmental effects of the Project.
- d. That the custodian of the documents and other materials which constitute the record of proceedings for the Project is the City of Milpitas Planning Division located at City Hall, 455 East Calaveras Boulevard, Milpitas, California 95035.

**BE IT FURTHER RESOLVED** that the Milpitas City Council adopts the Conditions of Approval set forth in Exhibit A, the Findings for the EIR set forth in Exhibit B, the Statement of Overriding Considerations set forth in Exhibit C, and the Mitigation, Monitoring and Reporting Program set forth in Exhibit D.

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:      APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

## EXHIBIT A

### CONDITIONS OF APPROVAL

#### Site Development Permit No. SD12-0007

A request for off-site advertising displays

1301 California Circle (APN: 022-038-002) and 1541 California Circle (APN: 022-37-049)

#### General Conditions

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

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

- a. Completes a foundation associated with the project; or
  - b. Dedicates any land or easement as required from the zoning action; or
  - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
2. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of SD12-0007 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**
  3. Prior to the issuance of building permits, the owner or designee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**
  4. Prior to issuance of a building permit, the owner or designee shall provide a landscape plan showing native and drought tolerant plants such as, but not limited to rosemary, California Poppy species to be planted at the base of the sign. **(P)**
  5. Prior to issuance of building permit final, the owner or designee shall demonstrate that the plantings pursuant to the landscape plan are in place. **(P)**
  6. Prior to issuance of a building permit, the owner or designee shall demonstrate final project design specifications to include a combination of display angle, display light source shielding, LED display brightness control; illumination aim, focus and shielding; etc., sufficient to shield nearby residential vantage point direct views of the displays and to prevent excessive glare, and stray (overcast) illumination. In addition, require the Project Development Agreement to include a process for modifying these various displays and lighting specifications, if deemed necessary over time by the City, based upon directives received from Caltrans, or the California Highway Patrol, complaints received, or the City's own periodic visual inspection and consideration of billboard operational characteristics. **(MM)**
  7. The Project Development Agreement shall include a process for modifying display and lighting specifications, if deemed necessary over time by the City. Modifications could include adjustments to digital display brilliance, content, motion, recess, aim, focus, shielding, etc. **(MM)**

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

## EXHIBIT B

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

#### SECTION 1: MITIGATION FINDINGS PURSUANT TO CEQA GUIDELINES SECTION 15091

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

#### **Less than Significant Impact with Mitigation**

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

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

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

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

#### SECTION 2: FINDINGS CONCERNING ALTERNATIVES

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

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

### ***Alternative 1: No Project Alternative***

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

### ***Alternative 2: Lower Height***

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

### **Impacts and Mitigations**

- a. Aesthetics. Alternative 2 would reduce significant impacts of the project on I-880 gateway visual character and spill light, glare and sky glow impacts. Impacts on I-880 gateway visual character would be reduced, but the reduction would not be substantial—i.e., this identified impact would remain significant and unavoidable. At a height of 50 feet, the billboards would not be blocked from view by roadside vegetation and would still be visible to approaching freeway drivers for considerable distance, but would likely not be visible from adjacent residential uses on Glenmoor Circle, North Abbott Avenue, and east of the Penitencia Creek channel. The sky glow impacts and mitigation needs of Alternative 2 would be similar to the project.
- b. Transportation. Alternative 2 would not be visible from as great of a distance or as long a time from the freeway view as the Project, but would still result in traffic safety effects similar to but less than the Project.
- c. Other Impacts. Alternative 2 would have similar less-than-significant impacts with respect to all other environmental topics included in CEQA Guidelines Appendix G and evaluated in Section 6.4, Effects Found Not to be Significant, of the EIR.

### **Attainment of Project Alternatives**

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

### ***Alternative 3: Fewer Billboards***

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

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

#### Impacts and Mitigations

- a. Aesthetics. Alternative 3 would allow for optimal placement of the billboards to reduce or avoid visual impacts on nearby homes. With only two billboards instead of three there would be a proportional decrease in impacts on light, glare and sky glow. Alternative 3 would also reduce or avoid Project visual impacts on sensitive residential uses east of the Penitencia Creek channel near Dixon Landing Road. Impacts on I-880 gateway visual character would be reduced but would nevertheless remain significant and unavoidable. There would be less interference with future City implementation of gateway landscaping and signage treatments recommended in the General Plan and Streetscape Master Plan. Nevertheless, impact and mitigation findings 4-1 through 4-3 for the proposed Project would continue to apply.
- b. Transportation. With only two billboards instead of three, there would be some decrease in potential Project effects on driver attention.
- c. Other Impacts. Alternative 3 would have similar less-than-significant impacts with respect to all other environmental topics included in CEQA Guidelines Appendix G and evaluated in Section 6.4, Effects Found Not to be Significant, of this EIR.

#### Attainment of Project Objectives

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

#### ***Alternative 4: All Non-Led Billboards***

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

#### Impacts and Mitigations

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

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

#### Attainment of Project Objectives

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

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

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

#### Impacts and Mitigations

- a. Aesthetics. Similar to Alternative 3, Alternative 5 would reduce the number of billboards on the east side of the freeway where potential impacts on nearby homes could occur. Alternative 5 would allow for optimal placement of the two billboards on the east side to avoid or reduce visual impacts on nearby homes. With only two billboards instead of three on the east side of I-880, there would be a proportional decrease in impacts on light, glare and sky glow. Alternative 5 would also reduce or avoid Project visual impacts on sensitive residential uses east of the Penitencia Creek channel near Dixon Landing Road. There would be less interference with future City implementation of gateway landscaping and signage treatments recommended in the General Plan and Streetscape Master Plan. Impacts on I-880 gateway visual character would be reduced but would nevertheless remain significant and unavoidable. Impact and mitigation findings 4-1 through 4-3 for the proposed Project would continue to apply.
- b. Transportation. With only two billboards instead of three on the east side of I-880, there would be some decrease in potential Project effects on driver attention.
- c. Other Impacts. Alternative 5 would have similar less-than-significant impacts with respect to all other environmental topics included in CEQA Guidelines Appendix G and evaluated in Section 6.4, Effects Found Not to be Significant, of this EIR.

#### Attainment of Project Objectives

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

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

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

## **Impacts and Mitigations**

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

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

- b. Transportation. With only one billboard instead of three on the east side of I-880, there would be a substantial decrease in potential Project effects on driver attention.
- c. Other Impacts. Alternative 6 would have similar less-than-significant impacts with respect to all other environmental topics included in CEQA Guidelines Appendix G and evaluated in Section 6.4, Effects Found Not to be Significant, of this EIR.

## **Attainment of Project Objectives**

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

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

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

## **Impacts and Mitigations**

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

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

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

## EXHIBIT C

### STATEMENT OF OVERRIDING CONSIDERATIONS

#### General

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

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

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

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

#### Unavoidable Significant Adverse Impacts

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

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

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

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

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

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

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

**EXHIBIT D**  
**MITIGATION, REPORTING AND MONITORING PROGRAM**  
**(SCH2010062083)**

# MITIGATION MONITORING CHECKLIST--INTERSTATE 880 BILLBOARDS PROJECT

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

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

EXHIBIT D

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

**REGULAR**

**NUMBER: 38.807**

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MILPITAS AND MILPITAS SIGN COMPANY, LLC**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of , upon motion by \_\_\_\_\_ and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**RECITALS AND FINDINGS:**

**WHEREAS**, on January 7, 2011, an application was submitted by Milpitas Sign Company, LLC., 555 12<sup>th</sup> Street, #950, Oakland, CA 94607, for the construction and operation of two freestanding off-site advertising displays (“Project”) to be located at 1545 California Circle (APN: 22-37-049) and 1301 California Circle (APN: 22-38-002). The properties are located within the Industrial Park Zoning District; and

**WHEREAS**, the City and the applicant wish to memorialize the rights to design, construct, install, operate, maintain, manage and market advertising opportunities on said advertising display in the document entitled “Development Agreement By and Between the City of Milpitas and Milpitas Sign Company, LLC,” (hereinafter referred to herein as the “Development Agreement”), a draft of which is attached hereto as Exhibit A; and

**WHEREAS**, the environmental effects of the Project were considered in the Final Environmental Impact Report, State Clearinghouse No. 201062083 (“EIR”) prepared pursuant to the California Environmental Quality Act (“CEQA”) and certified by the Milpitas City Council on April 2, 2013. The terms and conditions of this Development Agreement are consistent with and within the scope of the EIR. Accordingly, no further environmental analysis is necessary or required under CEQA to enter into the Development Agreement and undertake its terms and conditions; and

**WHEREAS**, on January 23, 2013, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties, and unanimously recommended to the City Council to approve the accompanying sign proposal and the environmental assessment performed by City staff; and

**WHEREAS**, on April 2, 2013, the City Council held a duly noticed public hearing and considered the proposed Development Agreement for compliance with City of Milpitas Resolution No. 6642 and Government Code Section 65864 *et seq.*

**NOW, THEREFORE**, the City Council of the City of Milpitas does ordain as follows:

**SECTION 1. RECORD AND BASIS FOR ACTION**

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**SECTION 2. FINDINGS**

- A. The City Council finds that the proposed Development Agreement is consistent with the City's General Plan and other applicable plans, policies and regulations of the City currently in effect, is not detrimental to the health, safety and general welfare of the citizens of the City, is entered into and constitutes an appropriate exercise of the City's police power, and is entered into in compliance with applicable State law and City Resolution No. 6642, as amended.
- B. The City Council finds that the proposed Development Agreement complies with all the applicable procedural and eligibility requirements for the approval and execution of development agreements set forth in City of Milpitas Resolution No. 6642 and Government Code Section 65864 *et seq.* A valid application was submitted to the Planning & Neighborhood Services Director by an applicant with

proper legal standing. The proposed Development Agreement would eliminate uncertainty in land use planning and help ensure the orderly development of an advertising display in an appropriate zoning district and location. The proposed Development Agreement would also result in a project which would be significantly superior in terms of its overall effect on the environment and the community than would otherwise result without such a development agreement. The proposed Development Agreement would also be beneficial to the health, safety, and general welfare of the community.

- C. The Development Agreement is consistent with the General Plan in that the advertising display would promote business development, appropriately identify local commercial activity and project a positive image of the City and the community.

### **SECTION 3. APPROVAL AND AUTHORIZATION**

The City Council hereby approves and authorizes the City Manager or his or her designee to execute the Development Agreement between the City of Milpitas and Milpitas Auto Properties, LLC, attached hereto as Exhibit A. Within ten (10) days of the effective date of this Ordinance, the City Clerk shall have the Development Agreement recorded with the Santa Clara County Recorder.

### **SECTION 4. SEVERABILITY**

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

### **SECTION 5. EFFECTIVE DATE AND POSTING**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

This document is recorded for the benefit of the City of Milpitas and is entitled to be recorded free of charge in accordance with Section 6103 of the Government Code.

After recordation, mail to:

OFFICE OF THE CITY ATTORNEY  
City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA95035

**EXHIBIT A**

**DEVELOPMENT AGREEMENT**

**by and between**

**THE CITY OF MILPITAS,  
a municipal corporation,**

**and**

**MILPITAS SIGN COMPANY, LLC,  
a Delaware limited liability company**

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into this \_\_\_ day of \_\_\_\_\_, 2013 (the "Effective Date"), by and between Milpitas Sign Company, LLC, a Delaware limited liability company ("Developer"), and the City of Milpitas, a municipal corporation ("City") pursuant to the authority of Sections 65864 through 65869.5 of the Government Code of the State of California and Ordinance No. \_\_\_\_\_ of the City of Milpitas.

### RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California enacted Government Code Section 65864 - 65869.5, authorizing municipalities to enter into property development agreements with persons having a legal or equitable interest in real property.

B. The purpose of Government Code Sections 65864 & 65869.5 is to authorize municipalities, in their discretion, to establish certain development rights in real property for a period of years regardless of intervening changes in land use regulations.

C. Developer is a Delaware limited liability company having its principal place of business and authorized to do business in California and engaged in the business of outdoor advertising.

D. Developer has entered into leases or license agreements with the owners of the real property described on Exhibit A (collectively, the "Properties"), for the sole purpose of erecting, maintaining, operating, improving, supplementing, posting, painting, illuminating, repairing, repositioning and/or removing a maximum of three (3) outdoor advertising structures on such Properties, including, without limitation, fixture connections, electrical supply and connections, panels, signs, copy and any equipment and accessories as Developer may place thereon, for purposes of advertising to be visible from U.S. Interstate 880.

E. Developer shall file applications for sign permits to erect and operate at most three (3) outdoor advertising displays on portions of the Properties for consideration by the City at the same time that this Agreement is considered.

F. Developer desires this Agreement with City to assure that Developer will, at the time of application, be issued a sign development permit for each Developer's outdoor advertising displays and may, except as expressly provided herein, proceed to construct and operate Developer's outdoor advertising display on each of the parcels that make up the Properties (each hereinafter described as the "Project Site") within the term of this Agreement in accordance with all applicable laws and regulations in effect at the Effective Date.

G. City has examined the environmental effects of this Agreement and Developer's proposed outdoor advertising displays in the environmental impact report ("EIR") prepared pursuant to the California Environmental Quality Act ("CEQA"). On, April 2, 2013, the City Council for the City reviewed and approved the EIR as adequate to assess the environmental effects of this Agreement and the Project. The terms and conditions of this Agreement are consistent with and within the scope of the EIR. Accordingly, no further environmental analysis is necessary or required under CEQA to enter into this Agreement and undertake its terms and conditions.

H. After conducting a duly noticed public hearing on April 2, 2013, the City Council for the City approved this Agreement by ordinance, authorizing its execution and finding that the provisions of the Agreement are consistent with the City's General Plan, are compatible with the requirements of the Zoning Ordinance, comply with applicable state law and City Resolution No. 6642, as amended, and provide substantial public benefits to the community, beyond the normal exactions for public benefit imposed in the development review process.

I. For the reasons recited herein, the City has determined that the construction and operation of Developer's proposed outdoor advertising display is a development for which this Agreement is appropriate. City finds that a substantial public benefit will accrue to City by reason of the advertising revenue that will be generated by Developer's outdoor advertising displays and shared with City, which adds value to the community by enabling City to undertake projects, programs and other activities for the benefit of City and its businesses and residents. In exchange for providing these public benefits, Developer receives assurance that it may proceed with the construction and operation of Developer's outdoor advertising displays and the Project in accordance with ordinances, resolutions and regulations existing as of the date of this Agreement, subject only to the terms and conditions contained herein.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which is hereby acknowledged, the parties agree as follows:

### 1. Definitions

The following definitions apply to this Development Agreement:

A. Agreement. The term "Agreement" shall mean this entire Development Agreement, including all appendices, exhibits and other documents attached hereto or incorporated herein by reference.

B. City. The term "City" shall mean the City of Milpitas, a municipal corporation, having its offices at 455 E. Calaveras Blvd., Milpitas, California 95035.

C. City Laws. The term "City Laws" shall have the meaning set forth in Section 3.B.

D. **Commencement Date.** The term “Commencement Date” shall mean the date of the complete erection and construction of the outdoor advertising display on the Project Site and receipt of the Certificate of Occupancy from the City by Developer. Developer shall provide to the City a Commencement Certificate to confirm the Commencement Date for each outdoor advertising display to insure that all parties have written confirmation of the appropriate Commencement Date to apply to such display.

E. **Developer.** The term “Developer” shall mean Milpitas Sign Company, LLC, a Delaware limited liability company, with leases or license agreements with the owners of the Properties.

F. **Gross Revenue.** The term “Gross Revenue” shall mean all money generated by the advertising displays subject to this Agreement, before deductions for expenses.

G. **New City Laws.** The term “New City Laws” shall have the meaning set forth in Section 3.C.

H. **Project.** The term “Project” shall mean the design, construction, installation, operation, maintenance, management, and marketing of advertising displays on the Properties.

I. **Properties.** The term “Properties” shall mean those parcels more particularly described in Exhibit A attached hereto and as otherwise referred to in Recital D above.

## 2. GENERAL PROVISIONS.

A. **City and State Laws.** This Agreement is subject to applicable laws pertaining to development agreements, specifically City Resolution No. 6642, and any of its amendments, and Government Code Sections 65864 et seq.

B. **Vested Rights.** The provisions of this Agreement shall create rights which shall vest in Developer. The burdens and benefits hereof shall bind and inure to the benefit of all successors in interest to the parties hereto. Notwithstanding anything to the contrary in this Agreement and for purposes of clarification, City and Developer acknowledge and agree that Developer is the real party in interest under this Agreement and that all rights accruing hereunder shall accrue to Developer and its permitted successors and assigns, notwithstanding the fact that leases and/or license agreements for the Properties have been entered into with third parties, it being the intent of the parties that Developer may place the outdoor advertising structures and accomplish the Project on the Properties or any other real properties to which Developer secures the relevant rights under applicable laws and regulation. Accordingly, any such lessors or licensors shall not be entitled to exercise any of the rights, or receive any of the benefits, granted to Developer under this Agreement.

C. **Term.** This Agreement shall be effective as of the Effective Date, and shall be for a term of thirty (30) years ("Term") commencing upon the Commencement Date and expiring thirty (30) years from the Commencement Date, unless terminated, modified or extended as provided herein or under City Resolution No. 6642 or Government Code Sections 65864 -

65869.5 or by mutual consent of the parties hereto. Commencement Date for the purposes hereof shall be as defined in Section 1.D above. Developer shall have the option to extend the Term of this Agreement for up to six (6) additional periods of five (5) years each by delivery of written notice to City no later than six (6) months prior to the expiration of the then current Term provided that at the time of such written notice Developer has not received a written notice of default under this Development Agreement which remains uncured.

D. Assignment. The rights of the Developer under this Agreement may not be transferred or assigned without the written consent of City. Developer may, however, assign its rights and obligations hereunder to (i) Clear Channel Outdoor, Inc. or an affiliate of Clear Channel Outdoor, Inc., or (ii) Sign-Co East, LLC, or a limited liability company or other entity in which Sign-Co East, LLC, or an affiliate of Sign-Co East, LLC, is a member, in each instance upon not less than sixty (60) days prior written notice to City.

E. Recitals. The recitals set forth above are incorporated herein and constitute an integral part of this Agreement.

### 3. DEVELOPMENT.

A. Development of Project. City hereby grants to Developer the exclusive right to construct and operate a maximum of three (3) outdoor advertising displays on the Properties, with back-to-back digital or static displays of up to 20 feet by 60 feet (collectively, the "Project"), subject to the condition that Developer complies with all conditions of approval issued in connection with Developer's sign permits for such Project Site. Development and construction of the Project shall be in accordance with Site Development Permit issued for each Project Site and the terms of corresponding development approvals, the terms of this Agreement and City Laws (as that term is defined herein) and all applicable State and Federal laws and permit requirements in effect on the Effective Date. The maximum height, size, location and design of Developer's outdoor advertising displays (including materials, color palate, and landscaping) shall be essentially as shown on the approved planning application drawings attached hereto as Exhibit B (the "Approved Planning Application Drawings"). Notwithstanding the foregoing, Developer agrees that the first two (2) outdoor advertising structures for displays constructed under this Agreement shall contain only digital display at the time of construction.

B. City Laws. Except as provided herein, City's laws, ordinances, rules, regulations and official policies applicable to the Project shall be those City laws, ordinances, rules, regulations and official policies in force as of the Effective Date governing uses of the Properties, and the maximum height, size, design and location of Developer's outdoor advertising displays (herein collectively referred to as "City Laws"). City agrees that under City Laws, the Project can be built and operated.

C. Applicable Future Laws and Regulations. Notwithstanding Paragraph 2.B. above, City may apply the following new City laws to the Project (as applied, such laws shall be defined as "New City Laws"):

(1) New City Laws which do not conflict with the existing City Laws or with the General Plan land use designations, permitted uses, density and intensity of use, height, size or location of the Project, or which do not diminish any of Developer's rights granted herein, or which are not in conflict with any of the terms and conditions hereof; and

(2) City Laws that are applicable to the following and are in effect at the time Developer submits an application for a building permit for the Project:

(a) Procedural requirements for building permit application submittal and issuance;

(b) Construction standards pursuant to all Uniform Building Codes incorporated by the Milpitas Municipal Code;

(c) Permit fees applicable to all similar parties and properly approved under the Code then in effect;

(d) Any fees payable upon issuance of a building permit for which City acts as a collecting agent for another governing agency provided such fees are applicable to all similar parties and properly approved under the Code then in effect; and

(e) Any requirements applicable upon issuance of a building permit for which City acts as an administering agent for another governing agency provided such requirement is applicable to all similar parties and properly approved under the Code then in effect.

D. Developer Obligations.

(1) Initial Payment. After the commencement of power service by Pacific Gas & Electric and concurrent with final inspection approval by the City under the Milpitas Building Code of each outdoor advertising structure with at least one digital display, the Developer shall pay a Fifty Thousand Dollar (\$50,000.00) advance to the City as to each digital advertising display. Thus, for example, an outdoor advertising structure with two back-to-back digital displays would require the payment of a One Hundred Thousand Dollar (\$100,000) advance. Such advance shall be deducted from future annual payments by Developer to the City under Section 3.D.2 below.

(2) Revenue Sharing. The following requirements shall apply to each advertising display. For the first three (3) years of this Agreement, Commencing on the date that is one (1) year from the Commencement Date, and continuing thereafter annually on each anniversary of the Commencement Date, Developer shall pay City within forty five (45) days following December 31<sup>st</sup> of each year during the Term an amount equal to ten percent (10%) of the Gross Revenue generated by Developer's outdoor advertising displays for the prior 12 month period (or in the case of the first partial year such prorated period between the Commencement Date and December 31 of such year). Along with each annual payment, Developer shall provide an accounting demonstrating the breakdown of Gross Revenue and payments provided. For each

digital display installed by the Developer, and commencing on the date that is four (4) full calendar years from the Commencement Date, Developer shall pay City annually an amount equal to the greater of (a) ten percent (10%) of the Gross Revenue generated by Developer's digital outdoor advertising displays, or (b) a minimum quarterly payment of \$10,000.00 per digital advertising display, and such minimum payment shall be increased annually by 2.5%. Notwithstanding the foregoing, if at any time during the Term of this Agreement Developer is not operating any or all of Developer's digital advertising displays in the Project for more than six (6) months in any annual period, then Developer shall only be required to pay City ten percent (10%) of the total Gross Revenue generated by each advertising display per year. Developer shall maintain adequate books and records with respect to the revenue generated by Developer's outdoor advertising displays in the Project, consistent with industry standards. City shall be permitted to review and audit Developer's books and records with respect to the revenue generated by Developer's outdoor advertising displays in the Project at any time during the Term of this Agreement, upon not less than thirty (30) days prior written notice to Developer. Any such review and/or audit shall be conducted during normal business hours at the office of Developer.

(3) Local Tax Issues. In order to assist City in its efforts to receive direct distribution of the local tax on materials associated with the development and operation of the Project, the California Sales and Use Tax (the "Local Tax") shall be allocated to the Project site, within the City, to the maximum extent reasonably possible. The Project, as currently envisioned, has the potential to be a significant source of additional local use tax revenue to the City. The Developer and all of its contractors, subcontractors, and suppliers shall cooperate with the City to the extent reasonably possible to maximize the allocation of the Local Tax to the City. Such cooperation shall include but not be limited to:

(a) Purchases: To the extent commercially reasonable, the Developer and its contractor and sub-contractor shall require equipment and material vendors and suppliers from which they make any individual purchases, which are subject to use tax and are to be used in the City, to allocate the local use tax to the City to the extent authorized by law. The incremental Local Tax generated from the construction of Project shall accrue to the City in accordance with applicable law.

(4) Public Use of Outdoor Advertising Displays. City shall have the right to use a portion of the advertising space available on Developer's outdoor advertising displays in the Project, not to exceed 5% of the total display time, on a space and/or time available basis for advertising non-commercial City sponsored programming. In no event shall City be required to pay Developer or any third party for any such use of the advertising displays on the outdoor advertising displays in the Project for the right to use such advertising space as provided above, provided, however, that City shall be solely responsible for payment of any and all production costs and expenses incurred in connection with creating the advertising copy or material in a format acceptable to Developer. The City shall be responsible for providing Developer with approved advertising copy which may be updated by the City at any time. By January 1<sup>st</sup> of each year City shall provide stock advertising copy or copies with artwork in acceptable format which may be utilized by Developer for that calendar year. City's use is subject to the following conditions and parameters: all copy must be submitted to Developer at least five (5) days before

the proposed display date and will be subject to Developer's standard advertising copy rejection and removal policies, which allow Developer, in its sole discretion, to approve or disapprove copy and remove copy once posted or displayed. If new copy is not provided by the City within such five (5) day period, Developer shall be entitled to substitute any stock copy provided to Developer. Developer may grant additional display time to the City as the sole discretion of Developer.

E. City Obligations.

No Additional Sign Rights. City and Developer acknowledge that Developer has been granted the exclusive right to construct and operate a maximum of three (3) outdoor advertising displays within the non-landscaped sections of U.S. Interstate 880 within the City limits north of State Route 237, subject to the contingencies set forth in this Agreement. This exclusive right excludes any area of land which falls within the Piercey Automotive property and an advertising display on Assessor's Parcel Number 086-03-019, bordered on its western side by Barber Lane and on its eastern side by a freeway interchange connecting the Interstate 880 Freeway and the Montague Expressway ("Barber Lane Property"). Furthermore, this exclusive right shall be reduced or extinguished in its entirety, in the event of removal or inactivity of Developer-operated displays or termination of this Agreement pursuant to Section 3.F.

Subject to such contingencies, during the Term of this Agreement, City shall not grant any additional rights to construct and operate outdoor advertising displays within the non-landscaped sections of U.S. Interstate 880 within the City limits, other than any rights which may be granted to (a) a third party to construct and operate a single outdoor advertising display on the Piercey Automotive property or some other location in lieu of said site, (b) a third party to construct and operate an advertising display at the Barber Lane Property or some other location in lieu of said site, and (c) a third party to construct and operate displays to replace inactive or removed displays of the Developer in accordance with this Agreement.

F. Development Not Required. Developer is not obligated to develop any part or all of the Project on the Project Site. In addition, Developer is the owner of the outdoor advertising display in the Project to the extent they are developed in whole or in part and has the right to remove any or all of the outdoor advertising displays in the Project at any time during the Term of this Agreement or at the expiration thereof, subject to any rights that the fee simple owners or tenants of the Properties may have under California law which have not been otherwise waived or modified in accordance with agreements relating to the Project Site. But in the event that the Developer does not perform and commence operations of at least one (1) display within twenty-four (24) months of the Effective Date, the Agreement shall be terminated as to all the Project Sites and the City shall be free to grant land use entitlements and other approvals for the development and operation of alternative advertising display by a third party. Once Developer meets the requirements of commencing operation under one (1) display within twenty-four months of the Effective Date, then Developer shall have up to five (5) years from the Effective Date of this Agreement to commence operation of the remaining displays under this Agreement. If any Project Sites have not commenced operation of a display within five (5) years following the Effective Date of this Agreement, the Agreement shall be terminated as to such Project Sites

and the City shall be free to grant land use entitlements and other approvals for the development and operation of alternative advertising display by a third party.

Furthermore, in the event that once constructed, any outdoor advertising display that is removed or goes inactive for a period of twenty four (24) months or more, the Agreement shall be terminated as to only the display which shall have been inactive or removed for such period. Such terminations shall be automatically incorporated into the Agreement and notices of termination of the Agreement shall be recorded on respective Properties at the Developer's expense. Furthermore, for each advertising display that is removed or goes inactive for a period of twenty four (24) months or more, the competing display restrictions of Section E.1. of this Agreement shall be automatically modified so as to allow third parties to develop a commensurate number of competing signs, if permitted by law. Any advance payment made by the Developer pursuant to Section 3.D.1. shall be considered non-refundable and the sole property of the City.

#### 4. AMENDMENT/RELOCATION.

A. Mutual Consent. This Agreement may be amended, or cancelled in whole or in part, at any time and from time to time by mutual consent of the parties or their successors in interest. Notice of, and a public hearing regarding an intention to amend or cancel any portion of this Agreement shall be given and held in the manner provided in City Resolution No. 6642.

B. Procedure for Modification or Termination Due to Conflict with State or Federal Laws. In the event that state or federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by the City, the parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state law or regulation. Any such amendment or suspension of the Agreement shall be approved by the City Council in accordance with Resolution No. 6642. If any such state or federal laws or regulations enacted after the Effective Date of this Agreement prohibit or prevent Developer from operating any of its outdoor advertising displays on the Properties and/or the parties are unable to reach a good faith accord and understanding as to the amendment of the Agreement, then Developer or the City shall have the right to terminate this Agreement upon not less than thirty (30) days prior written notice to any or all of its outdoor advertising displays in the Project. Upon such termination, no further payments shall be due to City under Section 3.D.2. of this Agreement other than any payments which may be due with respect to Project revenue earned through the date of termination. If, however, Developer or City elects to terminate this Agreement with respect to less than all of Developer's outdoor advertising displays, then any payments due to the City under Paragraph 3.D.2. of this Agreement shall be reduced as provided therein. In no event shall Developer be entitled to reimbursement for payments made to City under this Agreement.

C. Relocation; Damage; Destruction. If at any time during the Term of this Agreement or prior to commencement of construction, Developer determines that (1) the location of any or all of the outdoor advertising displays in the Project is or has become visually impaired, or (2) the location of any or all of the outdoor advertising displays in the Project is no

longer beneficial for, or is adversely affecting or limiting, the actual or prospective revenue generation of the other outdoor advertising display(s) in the Project, or (3) the economic benefit of the location of any or all of the locations that the outdoor advertising structures are diminished, Developer and City may agree to allow Developer to relocate the outdoor advertising display(s) to another location in the City of Milpitas and/or terminate this Agreement with respect to the applicable outdoor advertising display, subject to Developer's receipt of any necessary approvals from the City and the California Department of Transportation. Upon any such relocation, this Agreement shall continue in full force and effect in accordance with its terms. If for any reason any of the outdoor advertising displays, are removed, materially damaged or destroyed, then Developer, at its sole election, may reduce any guaranteed payments due to the City under Section 3.D.2. of this Agreement as provided therein until such time as the applicable outdoor advertising display(s) are fully operable and/or terminate this Agreement with respect to the applicable outdoor advertising display. If Developer elects to terminate this Agreement with respect to less than all of Developer's outdoor advertising displays, then any payments due to the City under Section 3.D.2. of this Agreement shall be reduced as provided therein. In the event the owner of the real property for any Project Site requests that Developer relocate a display on such Project Site in order to assist with development of the Project Site by such owner of real property, the City shall permit such relocation hereunder if requested by Developer and following such relocation, subject to Developer's receipt of any necessary approvals from the City and the California Department of Transportation, this Agreement shall continue in full force and effect in accordance with its terms.

## 5. DEFAULT, TERMINATION AND REMEDIES.

A. General Provisions. Any failure to perform, or any delay in performing, the terms and conditions hereof shall constitute a default under this Agreement. Any party alleging a default under this Agreement shall give the other party not less than sixty (60) days' notice in writing, specifying the nature of the alleged default and the manner in which it may be satisfactorily cured. During the period specified in the notice, the alleged default shall not be considered a default for purposes of termination or institution of legal proceedings. If the default is cured within the period specified in the notice, the noticing party shall take no further action.

B. Periodic Reviews. During the Term of this Agreement, the City may conduct annual reviews of Developer's good faith compliance with the terms and conditions of this Agreement in accordance with the procedures set forth in Section 8.0 of Resolution 6642. Failure of the City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement, nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

C. Default and Remedies. Developer shall be in default under this Agreement upon the happening of one or more of the following events:

(1) A finding and determination by the City is made following an annual or special review under the procedure provided for in Resolution No. 6642 and Government Code Section 65865.1 that, upon the basis of substantial evidence, Developer has not complied in good

faith with the terms and conditions of this Agreement following all applicable notice and cure periods; or

(2) Developer fails to fulfill any of its obligations set forth in this Agreement and such failure continues beyond any applicable cure period provided in this Agreement. This provision shall not be interpreted to create a cure period for any event of default where such cure period is not specifically provided for in this Agreement; provided, however, that if such default is not capable of being cured within such 60 day period, Developer shall have such additional time to cure as is reasonably necessary.

D. Procedures upon Default

(1) Upon the occurrence of an event of default after the expiration of all applicable notice and cure periods provided herein, City may terminate or modify this Agreement in accordance with the provisions of Government Code Section 65865.1 and Resolution No. 6642.

(2) The City shall not be deemed to have waived any claim of defect in Developer's performance if, on annual or special review, the City does not propose to terminate this Agreement.

(3) No waiver or failure by the City or Developer to enforce any provision of this Agreement shall be deemed to be a waiver of any provision of this Agreement or of any subsequent breach of the same or any other provision.

(4) Any actions for breach of this Agreement shall be decided in accordance with California law. The remedy for breach of this Agreement shall be limited to specific performance.

(5) The Parties shall give written notice of any default under this Agreement as provided in Section 3.D(1) herein.

E. Enforceability. Except as otherwise provided herein, the rights of the parties under this Agreement shall be enforceable notwithstanding any change subsequent to the Effective Date in any applicable General or Specific Plan or building, zoning, subdivision or other land use ordinance, including any ordinance governing or relating to signs or outdoor advertising displays. The City shall not attempt to enforce any ordinance against Developer if such ordinance became effective following the Effective Date, except as provided herein. Any attempt by the City to enforce such subsequent ordinances contrary to the provisions of this Agreement shall result in an event of default by the City hereunder.

6. INDEMNIFICATION.

To the fullest extent permitted by law, Developer shall indemnify, defend with counsel of the City's reasonable choosing that is mutually acceptable to both parties, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation,

reasonable attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or relate (directly or indirectly) to the construction, operation, maintenance, repair and/or removal of the outdoor advertising displays at the Properties. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding incurred by, City, its City Council, its boards and commissions, officials, officers, employees. The Developer shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Developer shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. City shall promptly notify the Developer of any claim, action, or proceeding and engage in reasonable efforts to cooperate with Developer in the defense against the claim, demand, obligation, damage, action, or suit. If City fails to so promptly notify the Developer, then the Developer's indemnification obligations as set forth in this condition of approval shall thereafter terminate. The Developer shall not be required to pay or perform any settlement unless the settlement is approved by the applicant.

7. NOTICES.

Any notice or communication hereunder must be in writing and may be given either by personal service or by registered or certified mail, return receipt requested. Any notice or communication personally served shall be deemed given and received on the date of personal service on the party noticed at the appropriate address designated below, and any notice or communication sent by registered or certified mail, return receipt requested, properly addressed to the appropriate address designated below, with postage prepaid, shall be deemed given and received on the fifth (5th) day after the date appearing on the signed return receipt. Any party hereto may at any time and from time to time, in the manner provided herein, designate any other address in substitution of the address to which such notice or communication shall be given. All such notices or communications shall be given to the parties at their addresses hereinafter set forth:

IF TO CITY:

City Clerk, City of Milpitas  
City Hall  
455 E. Calaveras Blvd.  
Milpitas, CA 95035  
ATTN: City Manager

IF TO DEVELOPER:

Milpitas Sign Company, LLC  
c/o Clear Channel Outdoor, Inc.  
555 12<sup>th</sup> Street, Suite 950  
Oakland, CA 94607  
Attn: President - San Francisco Division

With a copy to:

McCarthy Ranch  
15425 Los Gatos Blvd., Suite 102  
Los Gatos, CA 95032-2541  
Attn: Joey McCarthy

8. NO WAIVER.

No failure, delay or omission by a party in exercising or asserting any right, power or remedy hereunder shall impair such right, power or remedy, and no failure, delay or omission by a party occurring upon the other party's noncompliance with or failure to perform the terms and conditions of this Agreement shall be construed as a waiver thereof. A waiver by either party of any failure on the part of the other party to perform any of the terms or conditions to be performed by such other party shall not be construed as a waiver of any succeeding failure of the same or other terms or conditions hereof, nor shall any failure, delay or omission by a party in asserting any of its rights or remedies hereunder deprive such party of its right to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies.

9. RECORDING.

After this Agreement is approved and executed by the parties hereto, either party may submit it to the Santa Clara County Recorder to be recorded. Such recording shall occur within ten (10) days of the effective date of the ordinance adopting this Agreement. Upon the earlier of the expiration or sooner termination of this Agreement or any applicable lease/license agreement, Developer shall promptly execute and deliver to the applicable lessor/licensor a quitclaim deed or other appropriate documentation to release this Agreement from record title to the Properties.

10. MISCELLANEOUS.

A. No Joint Venture or Partnership. Nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developer joint venturers or partners.

B. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

C. Attorneys' Fees. In the event a lawsuit is filed to resolve any dispute between the parties involving the covenants or conditions contained herein, the prevailing party in such suit shall be entitled to recover its reasonable expenses, including attorneys' fees and all costs of suit. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Project Approvals, the parties shall cooperate in defending such action. Each party shall be responsible for its own court costs and attorneys' fees expended by such party in defense of any such action or other proceeding.

D. Further Assurance; Covenant to Sign Documents. Each party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be reasonably necessary or proper to achieve the purposes and objectives of this Agreement.

E. Time. Time is of the essence to this Agreement and to each and every term and condition hereof.

F. Force Majeure. Notwithstanding anything to the contrary contained herein, either party shall be excused for the period of any delay in the performance of any of its obligations hereunder, except the payment of money, when prevented or delayed from so doing by certain causes beyond its control, including, and limited to, major weather differences from the normal weather conditions for the South San Francisco area, war, acts of God or of the public enemy, fires, explosions, floods, earthquakes, invasions by non-United States armed forces, failure of transportation due to no fault of the parties, unavailability of equipment, supplies, materials or labor when such unavailability occurs despite the applicable party's good faith efforts to obtain same (good faith includes the present and actual ability to pay market rates for said equipment, materials, supplies and labor), strikes of employees other than Developer's, freight embargoes, sabotage, riots, acts of terrorism or results therefrom, and acts of the government (other than the City). The party claiming such extension of time to perform shall send written notice of the claimed extension to the other party within thirty (30) days from the commencement of the cause entitling the party to the extension.

G. Incorporation of Exhibits. Each of the exhibits attached hereto are incorporated herein by this reference and made a part hereof for all purposes.

IN WITNESS WHEREOF, Developer and City have executed this Agreement as of the day and year first written above.

CITY OF MILPITAS,  
Municipal Corporation

MILPITAS SIGN COMPANY, LLC, A  
a Delaware limited liability company

By: \_\_\_\_\_  
Jose Esteves, Mayor

By: Clear Channel Outdoor, Inc.,  
a Delaware corporation,  
Manager

ATTEST:

By: \_\_\_\_\_  
Mary Lavelle, City Clerk

By: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Michael J. Ogaz, City Attorney

**Exhibit A**

**Legal Description of Real Property**

REAL PROPERTY IN CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL ONE:

PARCEL 3 AS SAID PARCEL IS SHOWN UPON THAT CERTAIN PARCEL MAP (THE MAP) WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON MAY 19, 1994 IN BOOK 655 OF MAPS, AT PAGES 23 AND 24.

EXCEPTING THEREFROM THAT PORTION OF LAND CONVEYED TO THE CITY OF MILPITAS, A MUNICIPAL CORPORATION OF THE STATE OF CALIFORNIA, RECORDED JULY 22, 2002 AS DOCUMENT NO. 16377445 OF OFFICIAL RECORDS

PARCEL TWO:

A NON-EXCLUSIVE JOINT ACCESS EASEMENT (J.A.E.) FOR THE PURPOSE OF PEDESTRIAN AND VEHICULAR ACCESS AND INCIDENTS THERETO OVER, UPON AND ACROSS A PORTION OF PARCEL 1 AND PARCEL 2 AS SAID PARCELS AND EASEMENT ARE DELINEATED UPON THE MAP.

PARCEL THREE:

A NON-EXCLUSIVE PRIVATE STORM DRAIN EASEMENT (P.S.D.E.) FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING PRIVATE STORM DRAINAGE FACILITIES AND THEIR APPURTENANCE UNDER, UPON AND OVER A PORTION OF PARCEL 4 AS SAID PARCEL AND EASEMENT IS DELINEATED UPON THE MAP.

PARCEL FOUR:

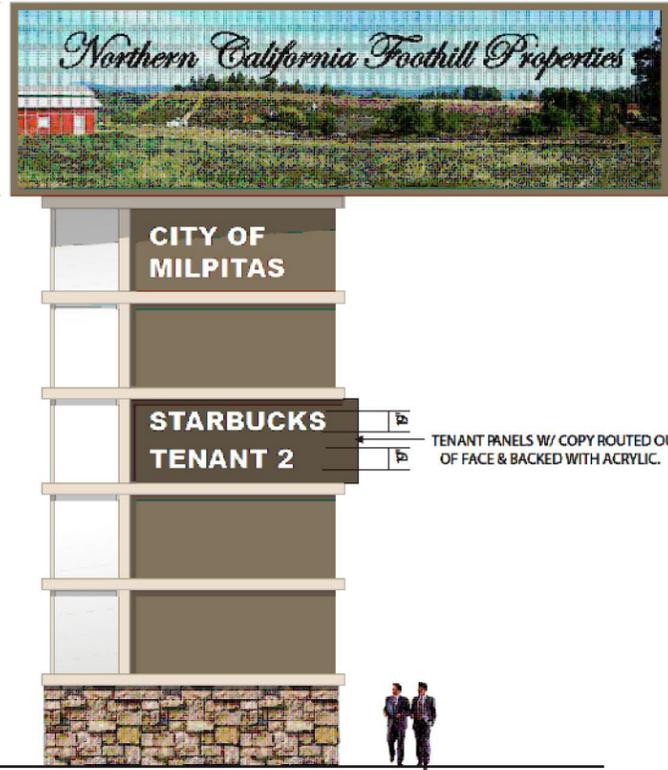
A NON-EXCLUSIVE PRIVATE WATER LINE EASEMENT (P.W.L.E.) FOR THE PURPOSE OF CONSTRUCTION AND MAINTAINING PRIVATE WATER LINES AND THEIR APPURTENANCES AND PRIVATE FIRE LINES AND THEIR APPURTENANCE, UNDER, UPON AND OVER A PORTION OF PARCEL 1 AND 2 AS SAID PARCELS AND EASEMENT IS DELINEATED UPON THE MAP.

APN: 022-37-049

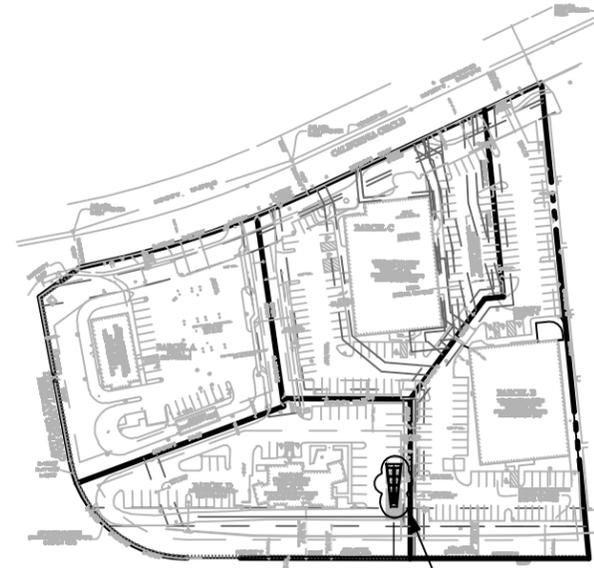
All that certain real property situated in the City of Milpitas, County of Santa Clara, State of California and more particularly described as follows:

Parcel 7, as said Parcel is shown on that certain Parcel Map, which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on January 27, 1983 in Book 508 of Maps, Pages 38, 39 and 40.

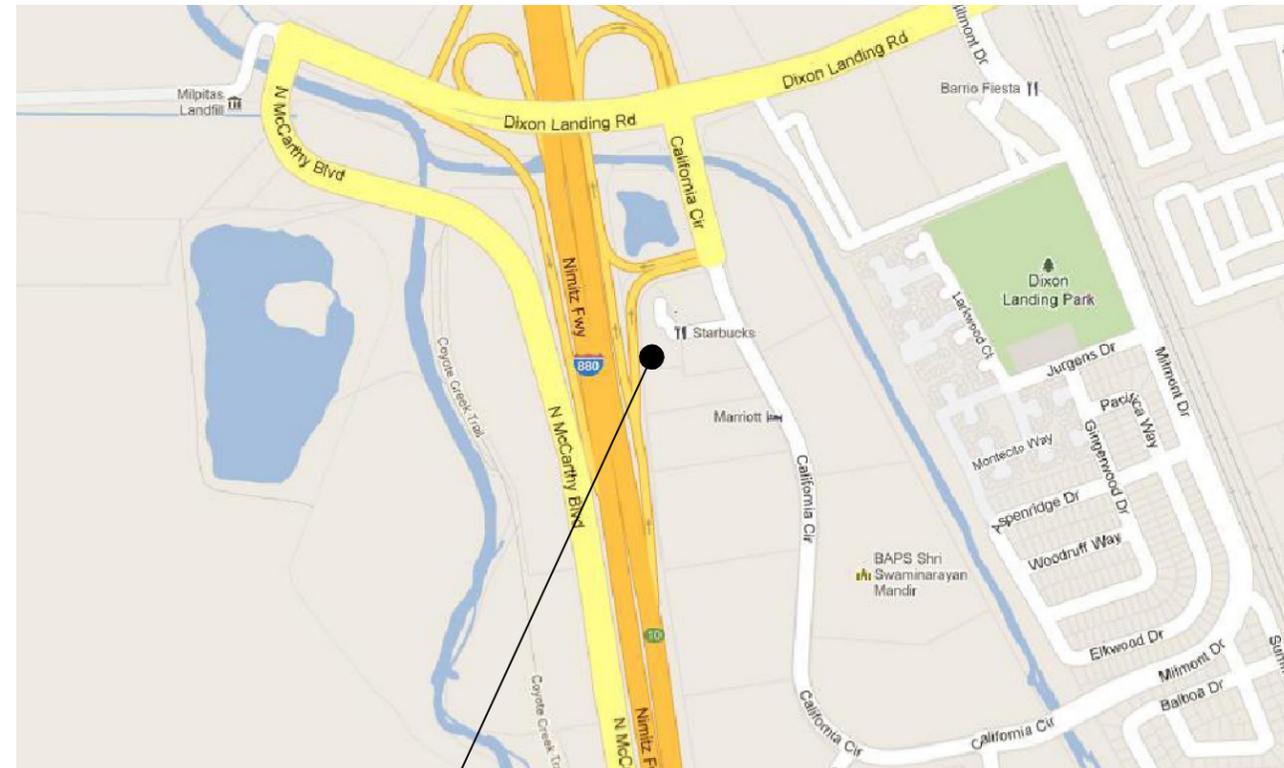
APN: 022-38-002



**SOUTH ELEVATION**



PROPOSED 14'X48'  
DIGITAL LED DISPLAY V-SIGN  
SEE PAGE 3 FOR DETAILED INFORMATION



PROJECT LOCATION:  
1545-1547 CALIFORNIA CIRCLE,  
MILPITAS, CA

**VICINITY MAP**



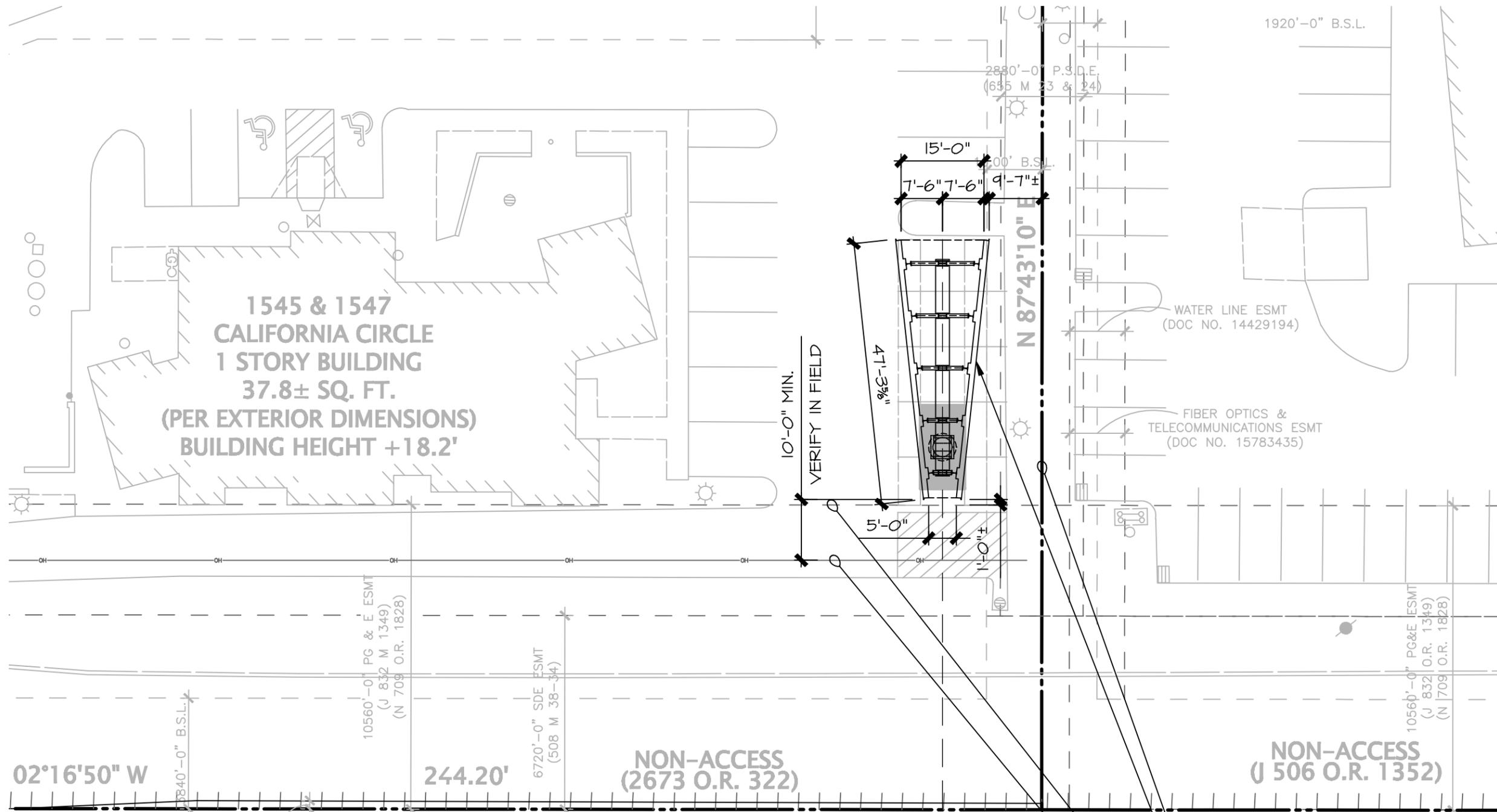
3400 Airport Ave., Suite #99  
Santa Monica, CA 90405  
Web: [www.vkkengineering.com](http://www.vkkengineering.com)  
Email: [vkk@vkkengineering.com](mailto:vkk@vkkengineering.com)  
Tel: 310.397.3700 Fax: 310.397.8797

Date 11/21/2012 Job # 12034  
Engr. VKK  
Sheet 1 of 5

**Vincent Kevin Kelly & Assoc., Inc.**  
structural engineering consultants

Client CLEAR CHANNEL OUTDOOR  
Project 14'x48' DIGITAL ADVERTISING V-SIGN  
1545-1547 CALIFORNIA CIRCLE, MILPITAS, CA





**SITE PLAN**

SCALE: 1" = 20'

SITE AND SURVEY INFORMATION PROVIDED BY EXTREME DRAFTING, INC. PROJECT DATED NOV 20, 2009

**NIMITZ FREEWAY INTERSTATE 880**

NOTE: THE LOCATION OF THE OVERHEAD ELECTRIC LINES SHOWN ON THIS PLAN IS APPROXIMATE. THE EXACT LOCATION OF THE OVERHEAD ELECTRIC LINES SHALL BE DETERMINED AND PROVIDED BY CLEAR CHANNEL OUTDOOR INC. OR A HIRED SURVEYOR. A MINIMUM CLEARANCE OF 10'-0" IS REQUIRED BETWEEN SIGN STRUCTURE / DISPLAY AND ANY ADJACENT ELECTRIC LINES.

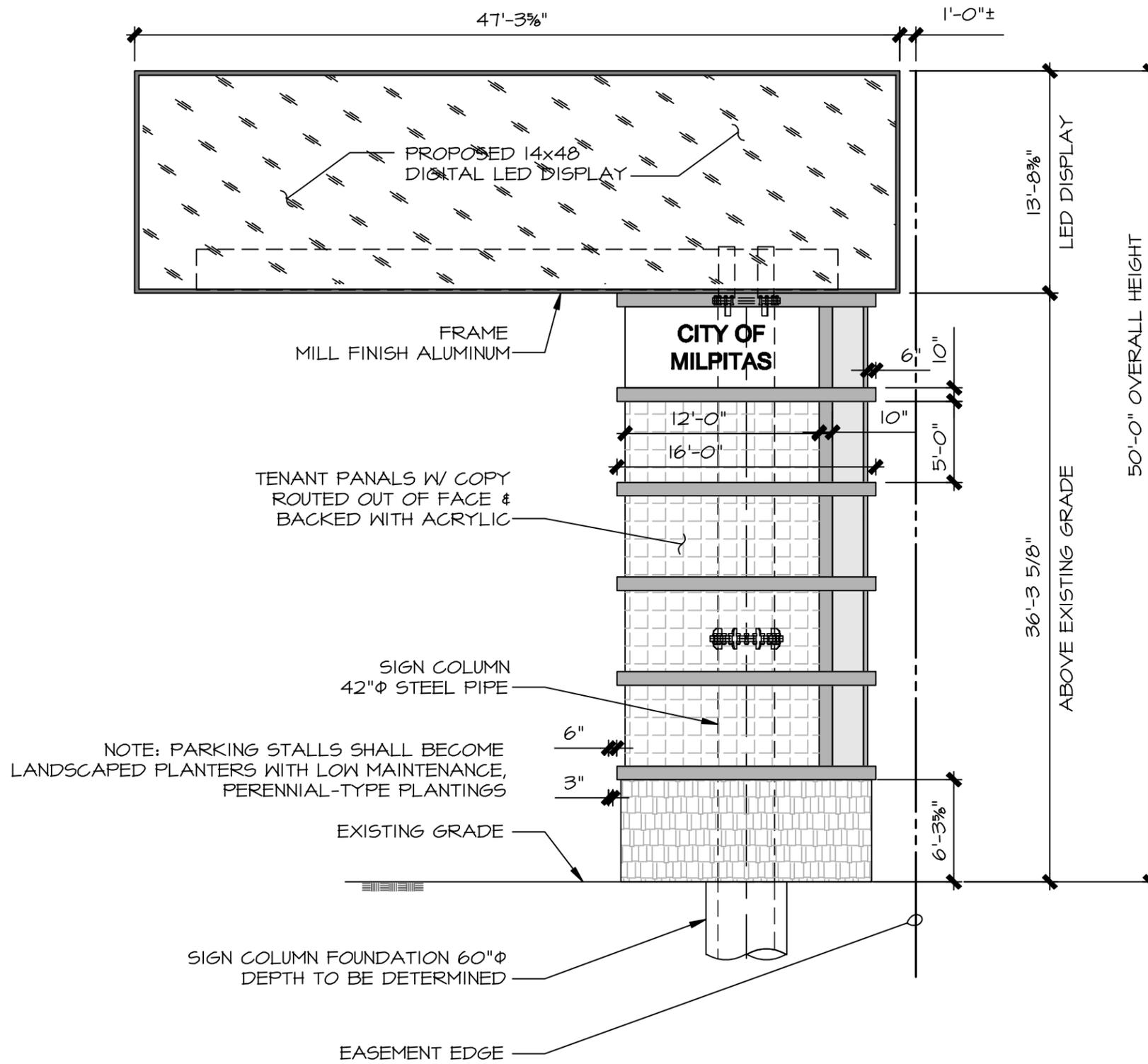
- PROPERTY LINE TYPICAL
- PROPOSED 14'x48' DIGITAL LED DISPLAY V-SIGN
- EASEMENT EDGE TYPICAL
- OVERHEAD ELECTRIC LINES



**Vincent Kevin Kelly & Assoc., Inc.**  
 structural engineering consultants

3400 Airport Ave., Suite #99  
 Santa Monica, CA 90405  
 Web: [www.vkkengineering.com](http://www.vkkengineering.com)  
 Email: [vkk@vkkengineering.com](mailto:vkk@vkkengineering.com)  
 Tel: 310.397.3700 Fax: 310.397.8797

<b>Client</b>	CLEAR CHANNEL OUTDOOR	<b>Date</b>	11/21/2012	<b>Job #</b>	12C34
<b>Project</b>	14'x48' DIGITAL ADVERTISING V-SIGN	<b>Engr.</b>	VKK	<b>Sheet</b>	3 of 5
	1545-1547 CALIFORNIA CIRCLE, MILPITAS, CA				



NORTH ELEVATION

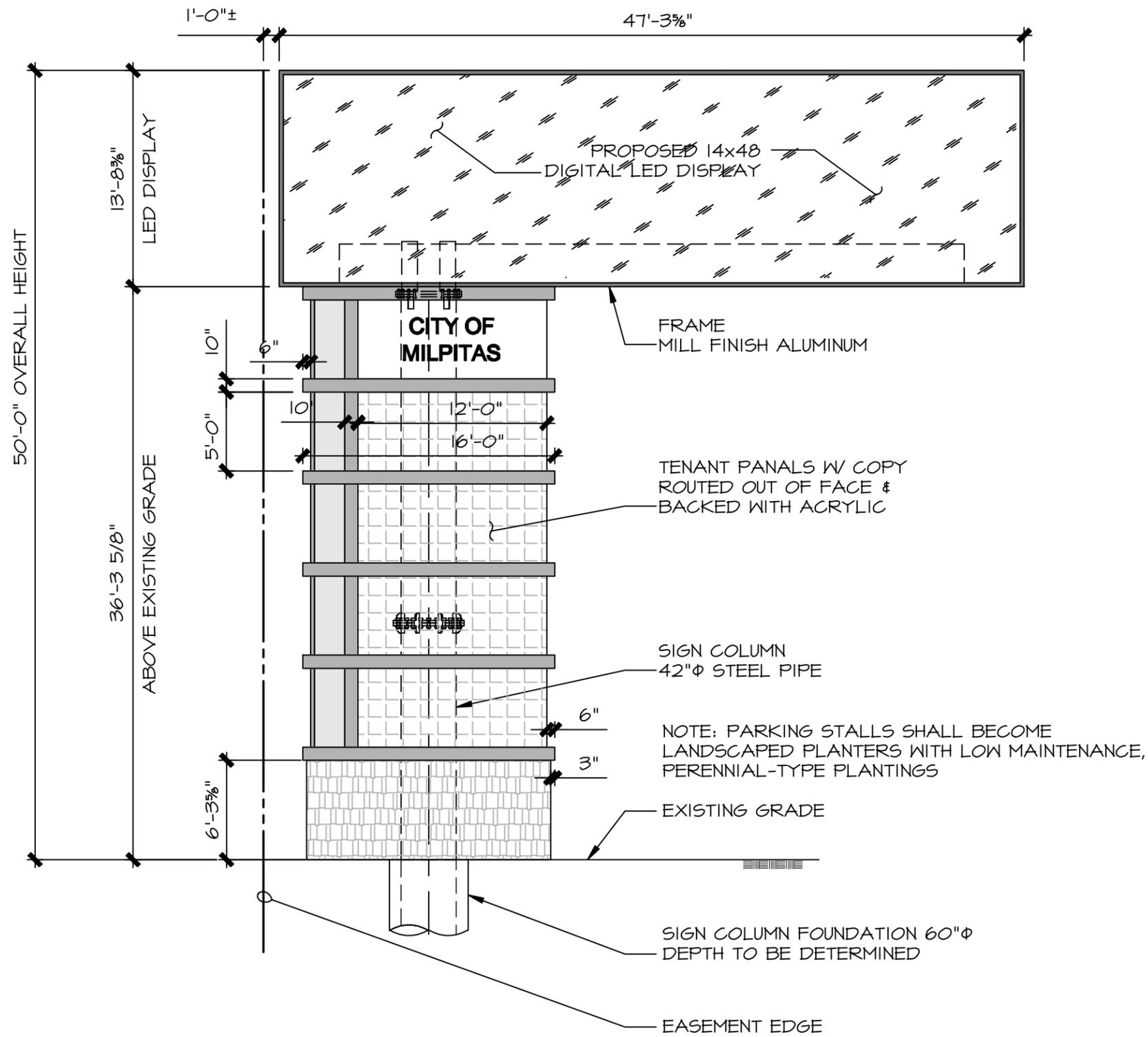
SCALE: 1/8" = 1'-0"

**Vincent Kevin Kelly & Assoc., Inc.**  
structural engineering consultants

3400 Airport Ave., Suite #99  
Santa Monica, CA 90405

Web: [www.vkkengineering.com](http://www.vkkengineering.com)  
Email: [vkk@vkkengineering.com](mailto:vkk@vkkengineering.com)  
Tel: 310.397.3700 Fax: 310.397.8797

<b>Client</b>	CLEAR CHANNEL OUTDOOR	<b>Date</b>	11/21/2012	<b>Job #</b>	12034
<b>Project</b>	14'x48' DIGITAL ADVERTISING V-SIGN	<b>Engr.</b>	VKK	<b>Sheet</b>	4 of 5
	1545-1547 CALIFORNIA CIRCLE, MILPITAS, CA				



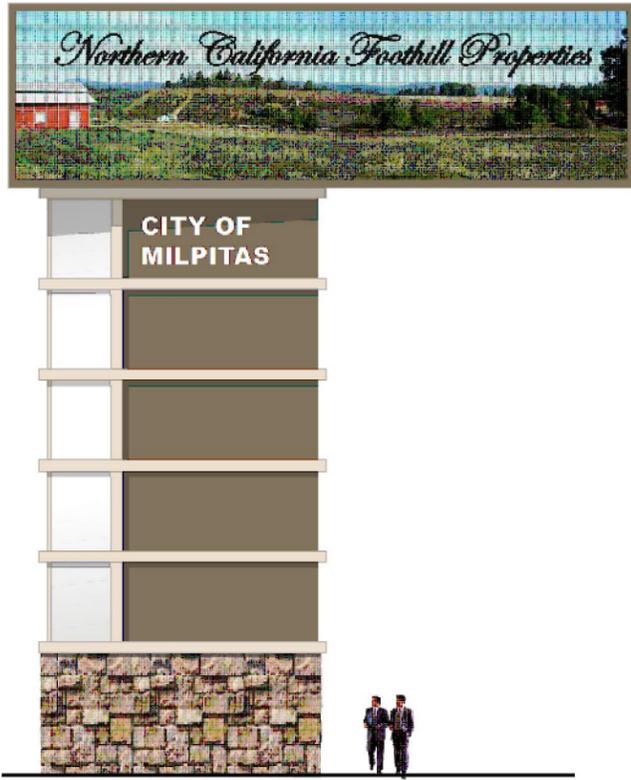
**SOUTH ELEVATION**

SCALE: 1/8" = 1'-0"

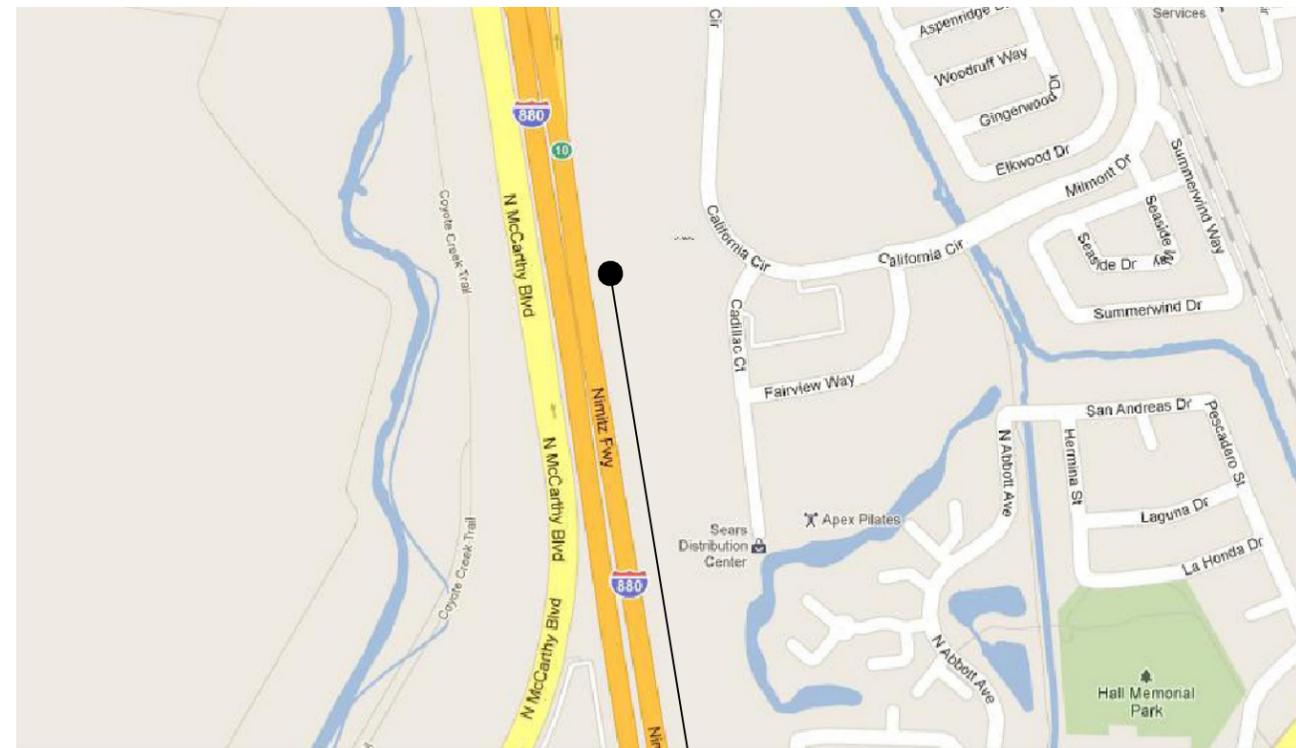
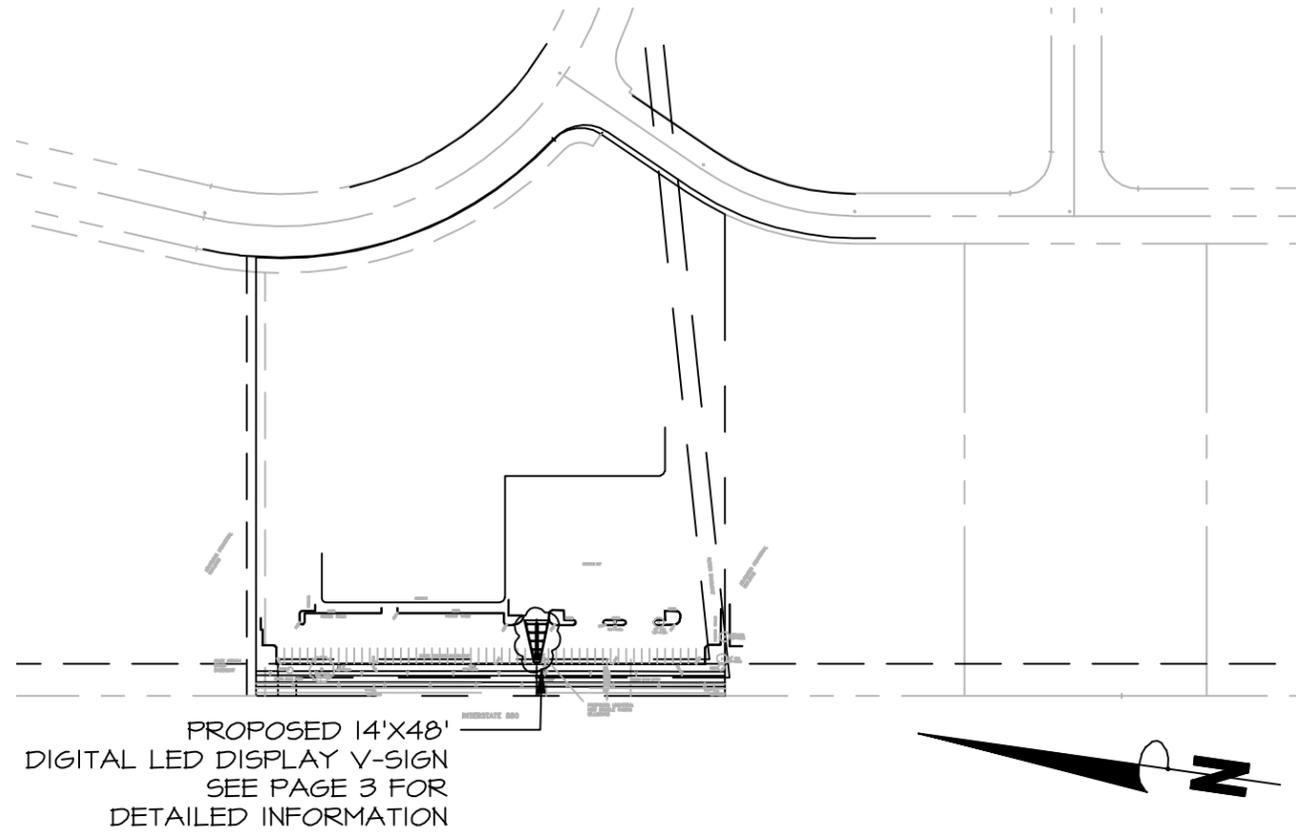
**Vincent Kevin Kelly & Assoc., Inc.**  
structural engineering consultants

3400 Airport Ave., Suite #99  
Santa Monica, CA 90405  
Web: [www.vkkengineering.com](http://www.vkkengineering.com)  
Email: [vkk@vkkengineering.com](mailto:vkk@vkkengineering.com)  
Tel: 310.397.3700 Fax: 310.397.8797

<b>Client</b>	CLEAR CHANNEL OUTDOOR	<b>Date</b>	11/21/2012	<b>Job #</b>	12034
<b>Project</b>	14'x48' DIGITAL ADVERTISING V-SIGN	<b>Engr.</b>	VKK		
	1545-1547 CALIFORNIA CIRCLE, MILPITAS, CA	<b>Sheet</b>	5	<b>of</b>	5



**SOUTH ELEVATION**



**VICINITY MAP**

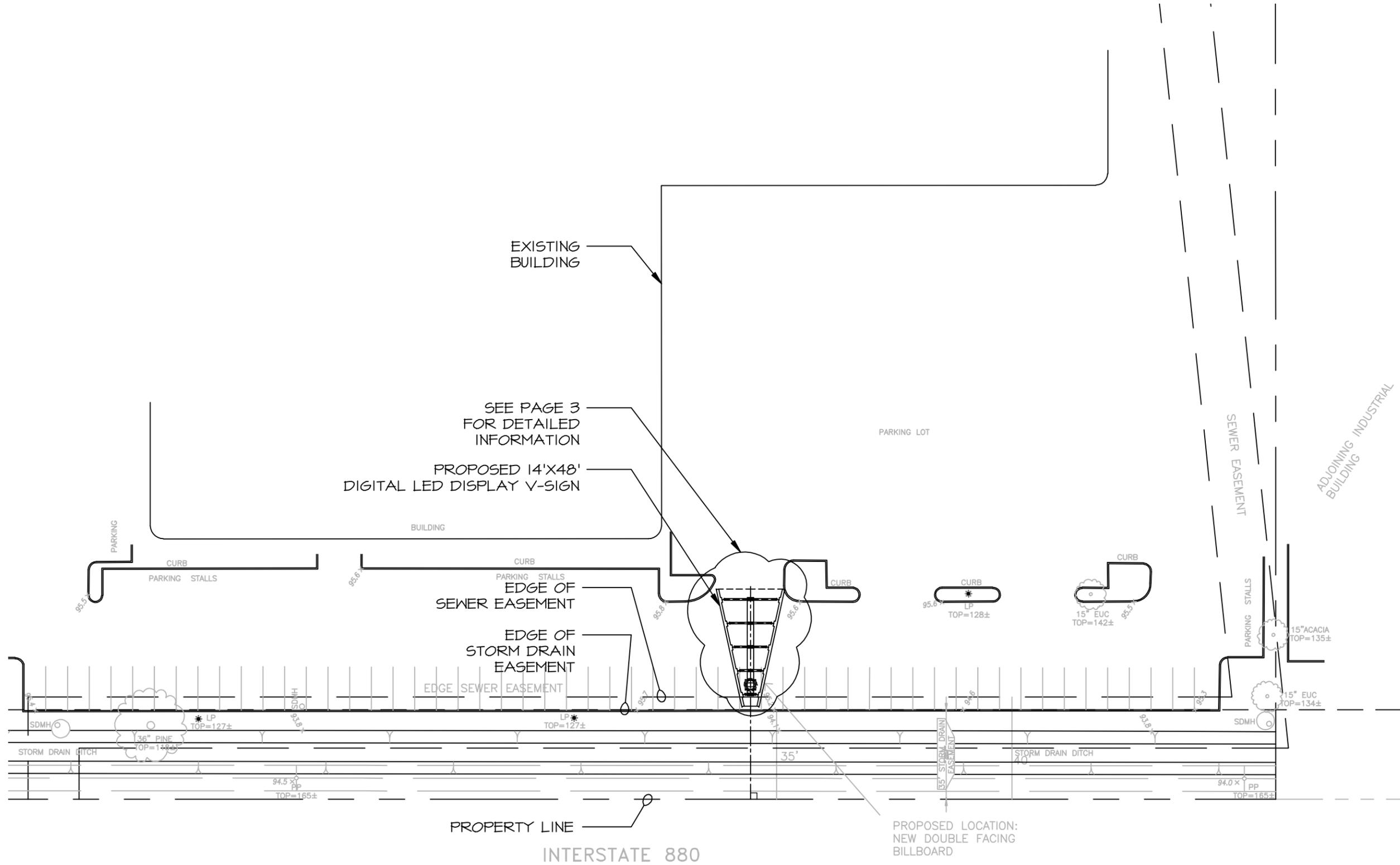
PROJECT LOCATION:  
1301 CALIFORNIA CIRCLE,  
MILPITAS, CA



3400 Airport Ave., Suite #99  
Santa Monica, CA 90405  
Web: [www.vkkengineering.com](http://www.vkkengineering.com)  
Email: [vkk@vkkengineering.com](mailto:vkk@vkkengineering.com)  
Tel: 310.397.3700 Fax: 310.397.8797

**Vincent Kevin Kelly  
& Assoc., Inc.**  
structural engineering consultants

<b>Client</b>	CLEAR CHANNEL OUTDOOR	<b>Date</b>	11/21/2012	<b>Job #</b>	11C56
<b>Project</b>	14'x48' V-SIGN (DIGITAL) 1301 CALIFORNIA CIRCLE, MILPITAS, CA	<b>Engr.</b>	VKK	<b>Sheet</b>	1 of 5



**SITE PLAN**

SCALE: 1" = 40'

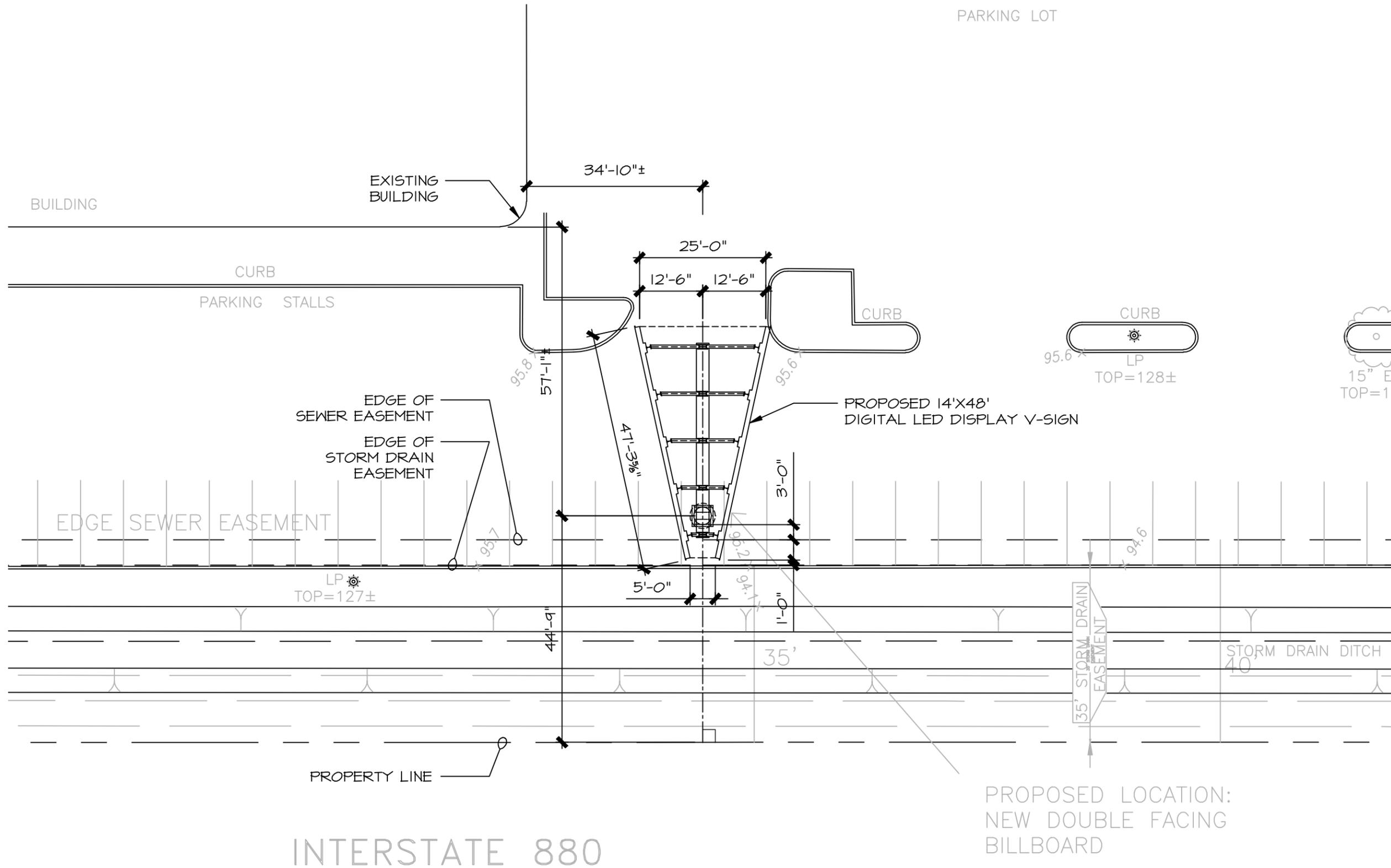
SITE AND SURVEY INFORMATION  
 PROVIDED BY CSA, INC.  
 PROJECT# 11173, DATED APR 18, 2012



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 & Assoc., Inc.**  
 structural engineering consultants

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 Santa Monica, CA 90405  
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 Tel: 310.397.3700 Fax: 310.397.8797

<b>Client</b>	CLEAR CHANNEL OUTDOOR	<b>Date</b>	11/21/2012	<b>Job #</b>	11C56
<b>Project</b>	14'x48' V-SIGN (DIGITAL) 1301 CALIFORNIA CIRCLE, MILPITAS, CA	<b>Engr.</b>	VKK	<b>Sheet</b>	2 of 5



**SITE PLAN**

SCALE: 1" = 20'

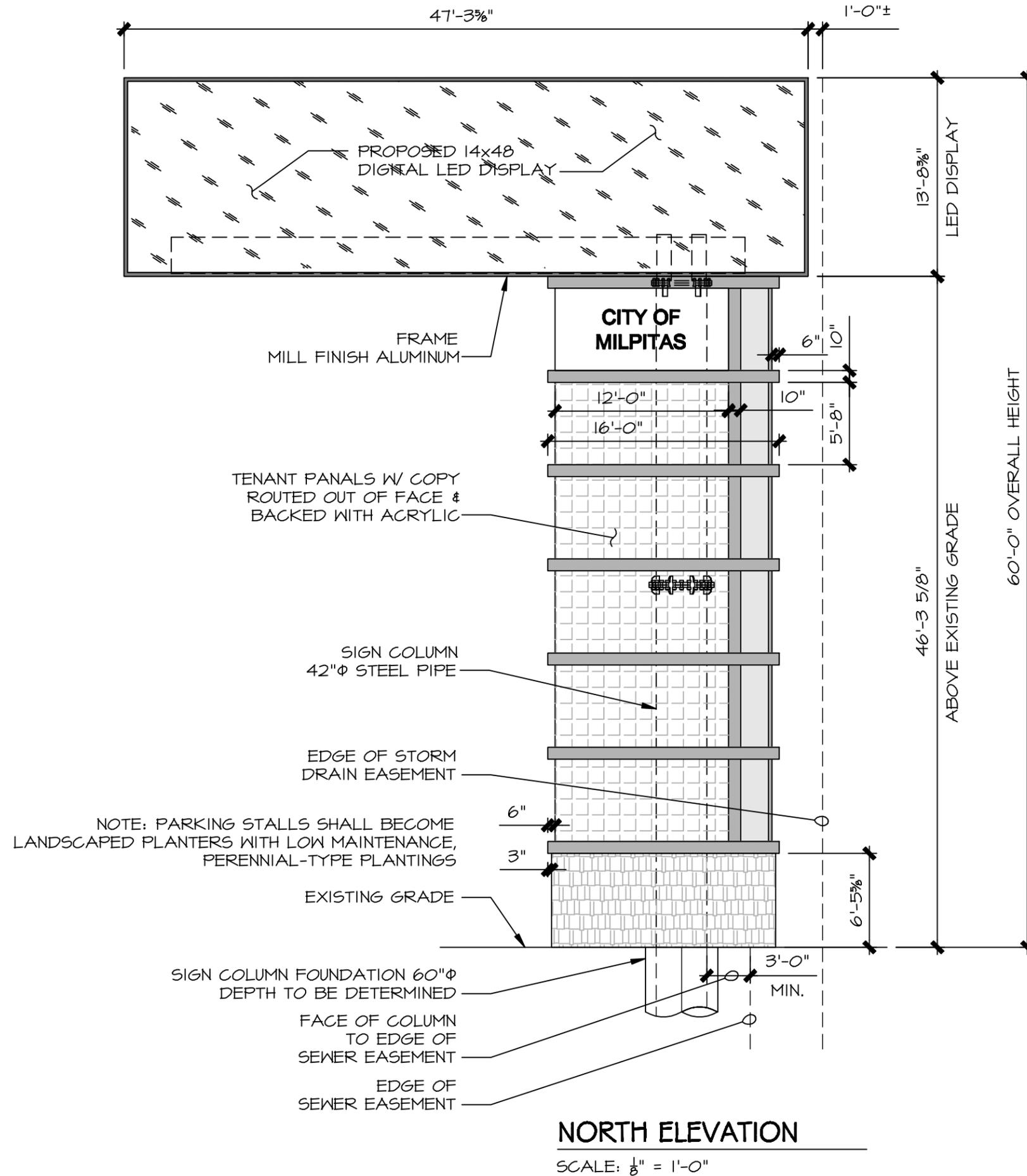
SITE AND SURVEY INFORMATION  
 PROVIDED BY CSA, INC.  
 PROJECT# 11173, DATED APR 18, 2012



3400 Airport Ave., Suite #99  
 Santa Monica, CA 90405  
 Web: [www.vkkengineering.com](http://www.vkkengineering.com)  
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 Tel: 310.397.3700 Fax: 310.397.8797

**Vincent Kevin Kelly & Assoc., Inc.**  
 structural engineering consultants

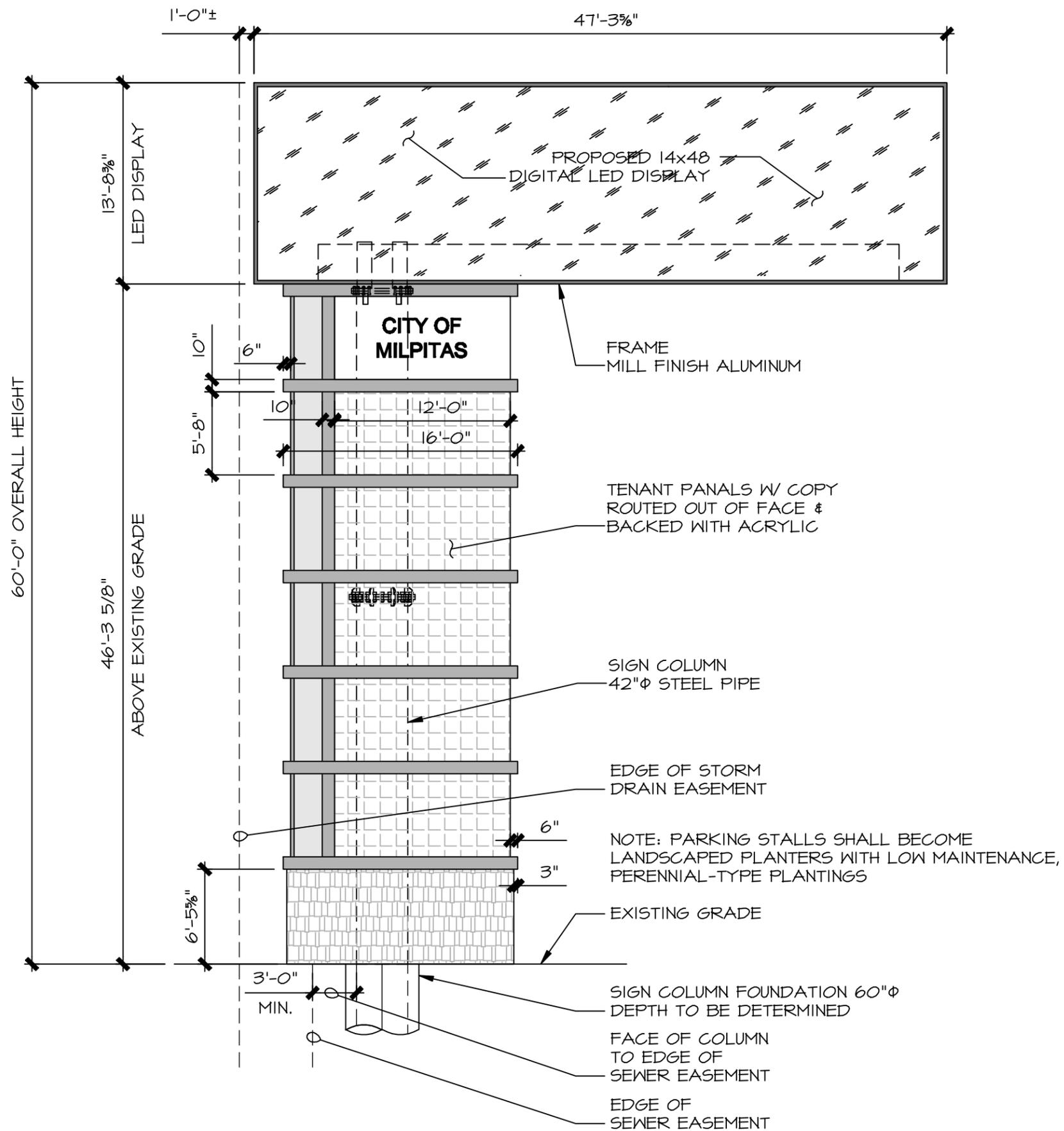
<b>Client</b>	CLEAR CHANNEL OUTDOOR	<b>Date</b>	11/21/2012	<b>Job #</b>	11C56
<b>Project</b>	14'x48' V-SIGN (DIGITAL) 1301 CALIFORNIA CIRCLE, MILPITAS, CA	<b>Engr.</b>	VKK	<b>Sheet</b>	3 of 5



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<b>Client</b>	CLEAR CHANNEL OUTDOOR	<b>Date</b>	11/21/2012	<b>Job #</b>	11C56
<b>Project</b>	14'x48' V-SIGN (DIGITAL) 1301 CALIFORNIA CIRCLE, MILPITAS, CA	<b>Engr.</b>	VKK	<b>Sheet</b>	3 of 5



**SOUTH ELEVATION**

SCALE: 1/8" = 1'-0"

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<b>Client</b>	CLEAR CHANNEL OUTDOOR	<b>Date</b>	11/21/2012	<b>Job #</b>	11C56
<b>Project</b>	14'x48' V-SIGN (DIGITAL) 1301 CALIFORNIA CIRCLE, MILPITAS, CA	<b>Engr.</b>	VKK	<b>Sheet</b>	3 of 5

# FINAL ENVIRONMENTAL IMPACT REPORT INTERSTATE 880 BILLBOARDS PROJECT

STATE CLEARINGHOUSE #2010062083

Prepared by

CITY OF MILPITAS

With the Assistance of

WAGSTAFF/MIG  
Urban and Environmental Planners

March 2012

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## 1. INTRODUCTION

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### 1.1 RELATIONSHIP BETWEEN DRAFT EIR AND FINAL EIR

The Final Environmental Impact Report (Final EIR) for the proposed Interstate 880 Billboards Project has been prepared by the City of Milpitas (City), the Lead Agency, in keeping with state environmental documentation requirements set forth in the California Environmental Quality Act (CEQA). The City has prepared the Final EIR pursuant to the CEQA Guidelines, including sections 15086 (Consultation Concerning Draft EIR), 15088 (Evaluation of and Response to Comments), and 15132 (Contents of Final Environmental Impact Report). In conformance with these guidelines, the Final EIR consists of the following **two volumes**:

- (1) the **Draft EIR**, which was circulated for a 45-day public review and comment period on May 20, 2011 and circulated for a 45-day State agency review and comment period on May 18, 2011; and
- (2) this **Final EIR document**, which includes a list of all commenters on the Draft EIR during and immediately after the Draft EIR public review period; verbatim versions of all communications (letters) received during and immediately after the Draft EIR review period; the responses of the EIR authors to all environmental points raised in these communications; and associated revisions to the Draft EIR.

Both volumes of the Final EIR are available for public review at the City of Milpitas Planning Department, 455 East Calaveras Boulevard, Milpitas.

The responses to comments included in this document are correlated to the letters by code numbers, which have been posted in the right hand margin of the letters.

### 1.2 PROPOSED PROJECT

#### 1.2.1 Proposed Project Summary

*This summary should not be relied upon for a thorough understanding of the details of the project, its individual impacts, and related mitigation needs. Please refer to Draft EIR Chapter 3 for a complete description of the project, and Chapters 4 through 7 for a complete description of identified environmental impacts, mitigation measures, and alternatives.*

The project consists of the installation of three new billboard structures at three separate locations along the Interstate 880 (I-880) freeway in the City of Milpitas. The proposed three billboards would be located on three of four possible sites currently under consideration. The four possible sites are located along the western boundary of commercial and industrial parcels on California Circle and Cadillac Court, adjacent to the east edge of I-880, south of the Dixon Landing Road interchange.

Each of the three billboards would include two approximately 14-foot high by 48-foot wide displays facing opposite directions, mounted on a single sign column. The overall height of the billboards would be 70 feet. Initially, four static and two electronic “digital” facings are proposed. As market demand increases, it is anticipated that the four static facings would also be converted to electronic “digital” facings incrementally over a period of approximately five years or longer. Each of the electronic billboard facings would display a number of static LED images in continuous rotation, with each image displayed for no less than four seconds.

As used in this Final EIR, the term "project" is defined to mean the proposed I-880 Billboards Project and all associated discretionary approvals, including the requested Development Agreement and Site Development Permit from the City of Milpitas, the Highway Outdoor Advertising Permit from Caltrans, as well as other local and state approvals, entitlements, permits, and actions that may be required to implement the project.

### **1.2.2 Changes to the Proposed Project Since Public Review of the Draft EIR**

There have been minor changes to the proposed project since public review of the Draft EIR:

- The location of Site Option 1, the southernmost site option under consideration, has been changed from parcel 002-38-020 (1001 Cadillac Court) to the northwest corner of the adjacent parcel to the south, parcel 002-38-019 (901 Cadillac Court).
- The Draft EIR explains that initially, two of the six advertising facings on the three billboard structures would be digital LED displays and, ultimately, up to all six of the facings would be LED displays. Due to market conditions, the project applicant now anticipates that four of the six facings may initially contain LED displays.

The responses to comments on the Draft EIR in Section 2 and revisions to the Draft EIR in Section 3 reflect these minor changes to the project.

According to CEQA Guidelines Section 15088.5, “A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term “information” can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project’s proponents have declined to implement.”

The impact analyses and conclusions presented in Chapters 4 through 6 of the Draft EIR remain valid for the change in location of Site Option 1. The changed location would be closer to adjacent residential uses (as close as approximately 300 feet from multiple family residential buildings on N. Abbott Avenue, 400 feet from homes on Glenmoor Circle, and 600 feet from homes on Heath Street and Redwood Avenue). At these distances, at relatively the same elevation as the nearest homes, with partial blockage by the approximately 30-foot high industrial building and the eight-foot-high masonry block wall on the site, and within the context of the surrounding industrial and commercial development, the billboard displays would not be highly prominent in daytime views from these nearest residential vantage points, and the impacts of the project on adjacent residential visual character would still be less-than-significant.

With the change in location of Site Option 1, the project would have a similar significant unavoidable impact related to I-880 gateway visual character and similar significant and mitigatable light, glare and sky glow impacts.

The visual simulations presented in Figures 4.2 through 4.7 are also adequately representative of project aesthetic effects for these minor changes to the proposed project. The photosimulations depict the size, shape, height, placement, design character and daytime visibility of the proposed billboards and provide an approximate indication of the visibility of the billboards from key public vantage points. Figures 4.2, 4.3, 4.6 and 4.7, which illustrate Site Option 1 and Site Option 3 in views from northbound and southbound I-880, are also adequately representative of the visibility and character of the minor change in location of Site Option 1. No new photosimulation of Site Option 1 is necessary.

The Draft EIR evaluates an ultimate scenario with all six of the facings containing LED displays, which represents a “worst-case” scenario with respect to potential aesthetic and transportation impacts. The potential impacts of some number of static displays and fewer LED displays would be similar to and less substantial than the impacts of the scenario of all facings containing LED displays evaluated in the Draft EIR. Alternative 4: All Non-LED Billboards evaluated in Chapter 7, Alternatives, of the Draft EIR compares the impacts and mitigation needs of all non-LED billboards to those of the project. As indicated by the evaluation of Alternative 4, some number of static displays and fewer LED displays would have a similar significant unavoidable impact related to I-880 gateway visual character and less substantial but still significant and mitigatable light, glare and sky glow impacts as the project. The Draft EIR evaluations of the project and of Alternative 4 adequately cover the range of potential impacts of the possible combinations of static displays and LED displays.

In accordance with CEQA Guidelines Section 15088.5, the new information explained in this section and added in revisions to the Draft EIR in Section 3 does not disclose a new significant impact, a substantial increase in the severity of an impact, or a different feasible alternative or mitigation measure that the project proponent declines to adopt, and so does not constitute significant new information requiring recirculation.



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## 2. RESPONSES TO COMMENTS ON THE DRAFT EIR

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After completion of the Draft EIR, the Lead Agency (the City) is required under CEQA Guidelines sections 15086 (Consultation Concerning Draft EIR) and 15088 (Evaluation of and Response to Comments) to consult with and obtain comments from other public agencies having jurisdiction by law with respect to the project, and to provide the general public with an opportunity to comment on the Draft EIR. Under CEQA Guidelines section 15088, the Lead Agency is also required to respond in writing to substantive environmental points raised in this Draft EIR review and consultation process.

The Draft EIR was circulated for public review and comment on May 20, 2011 and for State agency review and comment on May 18, 2011. The required 45-day public review period (for State review) on the Draft EIR began on May 18, 2011 and ended on July 1, 2011.

Comments on the Draft EIR were submitted in the form of four letters received by the City during the Draft EIR review period.

CEQA Guidelines section 15132 (Contents of Final Environmental Impact Report), subsection (b), requires that the Final EIR include the full set of "comments and recommendations received on the Draft EIR either verbatim or in summary"; section 15132, subsection (c), requires that the Final EIR include "a list of persons, organizations, and public agencies commenting on the Draft EIR"; and section 15132, subsection (d), requires that the Final EIR include "the responses of the Lead Agency to significant environmental points raised in the review and consultation process." In keeping with these guidelines, this Responses to Comments chapter includes the following sections:

- a **list of Draft EIR commenters** (section 2.1) which lists each individual and organization that submitted written comments (letters) to the City during the Draft EIR review period;
- a **responses to written comments** section (section 2.2), which includes copies of the three letters received, followed by a summary of and response to each comment therein pertaining to Draft EIR content or adequacy.

### 2.1 LIST OF DRAFT EIR COMMENTERS

The individuals and organizations who commented on the Draft EIR in writing during the Draft EIR review period are listed below alphabetically. Each letter received is also identified by a code in parentheses--e.g., letters L 1, L 2, L 3, etc. The code numbers are chronological in the general order that the letters were received.

Raluca Nitescu, PE, Project Engineer, County of Santa Clara, Roads and Airports Department (L 1);

Gary Arnold, District Branch Chief, Local Development-Intergovernmental Review, California Department of Transportation, District 4 (L 2);

Scott Morgan, Director, State Clearinghouse, Governor's Office of Planning and Research (L 3);  
and  
Roy Molseed, Senior Environmental Planner, Santa Clara County Valley Transportation  
Authority (L 4).

## **2.2 RESPONSES TO WRITTEN COMMENTS RECEIVED ON THE DRAFT EIR**

The following section includes copies of letters received during the Draft EIR public review period, each followed by written responses to each comment on the content or adequacy of the Draft EIR or on a substantive environmental point. The comments and responses are correlated by code numbers added to the right margin of each letter.



# County of Santa Clara

Roads and Airports Department



L 1

101 Skyport Drive  
San Jose, California 95110-1302  
(408) 573-2400

June 20, 2011

Mr. Sheldon Ah Sing  
Planning and Neighborhood Services Department  
City of Milpitas  
455 E. Calaveras Boulevard  
Milpitas, CA 95035

Subject: Notice of Completion and Availability of Draft Environmental Impact Report for  
proposed Interstate 880 Digital Billboards Project

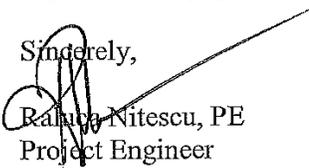
Dear Mr. Sing,

Your Notice along with the attachments for the subject project has been reviewed. We have no comments.

L1.01

Thank you for the opportunity to review and comment on this project.  
If you have any questions, please contact me at 408-573-2464.

Sincerely,

  
Raluca Nitescu, PE  
Project Engineer

cc: MA, WRL, File

L 1 Raluca Nitescu, PE, Project Engineer, County of Santa Clara, Roads and Airports  
Department, June 20, 2011

*Comment L 1.01:* Letter acknowledges that the County reviewed the Draft EIR and has no comments.

*Response:* Comment acknowledged. No further response is required.

L-2

STATE OF CALIFORNIA — BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN, Jr., Governor

**DEPARTMENT OF TRANSPORTATION**

P.O. BOX 23660  
OAKLAND, CA 94623-0660  
PHONE (510) 286-5541  
FAX (510) 286-5559  
TTY 711



*Flex your power!  
Be energy efficient!*

June 30, 2011

SCL-880/10.4  
SCL880240  
SCH# 2010062083

Mr. Sheldon AhSing  
City of Milpitas, Planning Division  
455 East Calaveras Boulevard  
Milpitas, CA 95035

Dear Mr. AhSing:

**Interstate 880 Digital Billboards Project – Draft Environmental Impact Report (DEIR)**

Thank you for including the California Department of Transportation (Department) in the environmental review process for the above-referenced project. We have reviewed the proposed project's DEIR and are pleased to offer the following comments.

As lead agency, the City of Milpitas (City) is responsible for all project mitigation, including any needed improvements to state highways. The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures. The project's traffic mitigation fees should be specifically identified in the environmental document. Any required roadway improvements should be completed prior to issuance of project occupancy permits. While an encroachment permit is only required when the project involves work in the State Right of Way (ROW), the Department will not issue an encroachment permit until our concerns are adequately addressed. Therefore, we strongly recommend that the lead agency ensure resolution of the Department's California Environmental Quality Act (CEQA) concerns prior to submittal of the encroachment permit application. Further comments will be provided during the encroachment permit process if required; see the end of this letter for more information regarding the encroachment permit process.

L2.01

L2.02

Design plans for any proposed freeway monument signage should be provided to the Department for review and, depending on proposed sign location, approval. The plans should depict the layout, roadway setback, orientation, glare intensity, and sign size. The Department is required by law to enforce the Outdoor Advertising Act and Regulations regarding the placement of advertising along the highways. That document is available on the internet at [http://www.dot.ca.gov/hq/oda/download/ODA\\_Act\\_&\\_Regulations.pdf](http://www.dot.ca.gov/hq/oda/download/ODA_Act_&_Regulations.pdf). For additional information, please contact Mr. James Arbis at (916) 654-6413.

L2.03

L 2

Mr. Sheldon AhSing/City of Milpitas  
June 30, 2011  
Page 2

**Traffic Safety**

The "Traffic Safety Impacts" analysis of Section 5.3.2 (see page 5-8) correctly states the potential impacts of the proposed displays to traffic safety, due to the message duration, location, and particularly the message sequencing. However, the Department does not concur with the determination by the City that these potential impacts are "less than significant" to traffic safety. We believe the project poses potentially significant impacts, based on the analysis below under the "Roadside Management & Landscape Architecture" comments.

L2.04

**Roadside Management & Landscape Architecture**

The proposed project description of Section 1.1 Proposed Project (see page 1-1) describes four signage locations as being 1,000 feet apart. However, Site Option 2 is depicted in Figure 4.1 (see page 4-8) as being closer than 1,000 feet from both Site Option 1 and Site Option 3, so there cannot be three billboard structures if Site Option 2 is selected. Additionally, there is no visual billboard structure simulation provided for Site Option 2.

L2.05

L2.06

Also, the project description states that, initially, four static and two electronic "digital" facings are planned with the four static facings being converted to digital in the future. Please identify which display facing will be digital and which static display facings will be converted. Also, the City's General Plan discusses possible future landscaping. If the City adds landscaping to this section of Interstate (I-) 880, this section of I-880 could be reclassified at that time as a landscaped freeway.

L2.07

L2.08

**Design**

Generally, the Department finds the DEIR lacking in specificity. For example, as discussed above in the "Roadside Management & Landscape Architecture" comments, the DEIR does not specify which display facing is to be digital and which static facings may later be converted to digital. Also, the DEIR does not discuss possible future landscaping in the project area under the City's General Plan. The Department prefers "Alternative 3: Fewer Billboards" (see Section 7. Alternatives, page 7-1).

L2.09

L2.10

L2.11

**Encroachment Permit**

Work that encroaches onto the State ROW requires an encroachment permit that is issued by the Department. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating State ROW must be submitted to the address below. Traffic-related mitigation measures should be incorporated into the construction plans during the encroachment permit process.

L2.12

Office of Permits  
California DOT, District 4  
P.O. Box 23660  
Oakland, CA 94623-0660

See the website link below for more information.  
<http://www.dot.ca.gov/hq/traffops/developserv/permits/>

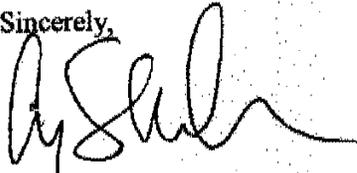
Further comments may be forthcoming, as the CEQA and review processes continue.

**L 2**

Mr. Sheldon AhSing/City of Milpitas  
June 30, 2011  
Page 3

Please feel free to contact Brian Brandert at (510) 286-5505, if you have any questions regarding this letter.

Sincerely,



GARY ARNOLD  
District Branch Chief  
Local Development-Intergovernmental Review

c: Scott Morgan (State Clearinghouse)

L 2 Gary Arnold, District Branch Chief, Local Development-Intergovernmental Review,  
California Department of Transportation, District 4

*Comment L 2.01:* As Lead Agency, the City is responsible for all project mitigation. Mitigation details should be fully discussed. The project's traffic mitigation fees should be identified. Any required roadway improvements should be completed before issuance of occupancy permits.

*Response:* The project would not generate any new vehicle trips, cause any change in traffic patterns, or change the traffic capacity of the local circulation system. The project would not directly or indirectly affect traffic operations on Interstate 880 or local streets. The project would have no impact related to traffic capacity and operations. The project would not require roadway improvements, improvements to State highways, payment of traffic mitigation fees, or any other traffic mitigations.

*Comment L 2.02:* Caltrans will not issue an encroachment permit until its CEQA concerns are addressed.

*Response:* The project is not expected to require an encroachment permit from Caltrans. Although the proposed billboards would be located near the eastern edge of the I-880 right-of-way, the billboards would be located on private property and no part of the billboards would overhang the freeway right-of-way. As explained on pages 1-1 and 3-21 of the Draft EIR, the project would require a Highway Outdoor Advertising Permit from Caltrans to allow the placement of off-premise advertising displays adjacent to a Caltrans facility.

*Comment L 2.03:* Caltrans enforces the Outdoor Advertising Act and regulations regarding the placement of advertising along highways. The project would require a Highway Outdoor Advertising Permit from Caltrans. Design plans should be provided for Caltrans review.

*Response:* As explained on pages 1-1 and 3-21 of the Draft EIR, the project would require a Highway Outdoor Advertising Permit from Caltrans to allow the placement of off-premise advertising displays adjacent to a Caltrans facility. Design plans for the proposed billboards would be provided to Caltrans for review and approval with the Highway Outdoor Advertising Permit application.

*Comment L 2.04:* The project poses potentially significant impacts on traffic safety, based on the analysis in comments 2.05 through 2.08.

*Response:* The comment notes that Caltrans believes that the project poses a potentially significant impact on traffic safety based on the analysis contained in comments 2.05 through 2.08. Comment 2.05 pertains to billboard spacing. Comment 2.06 pertains to aesthetic impacts. Comment 2.07 pertains to which of the billboard facings would be LED displays and which would initially be static displays. Comment 2.08 pertains to possible future reclassification of the subject segment of I-880 as a landscaped freeway.

The Draft EIR on page 5-8 notes that the project could reduce traffic safety due to the digital billboard message duration, location, and message sequencing. The proposed 4 second message duration is less than the minimum message duration of 8 seconds recommended by the FHWA and the longer message durations recommended by some

traffic safety experts, research studies and governmental agencies, and this shorter message duration has the potential to increase driver distraction. The placement of the proposed digital billboard at Site Option 4 adjacent to driver decision and action points and official traffic control signs associated with the northbound off-ramp to California Circle and Dixon Landing Road could reduce traffic safety. Due to their proximity to one another and their placement in succession, the three billboards could be used for message sequencing, which would also have the potential for driver distraction and could reduce traffic safety.

However, the Draft EIR concludes that there are no known existing standards or significance thresholds that would definitively indicate that reduced traffic safety due to the digital billboard message duration, location, and message sequencing would represent a potentially significant impact.

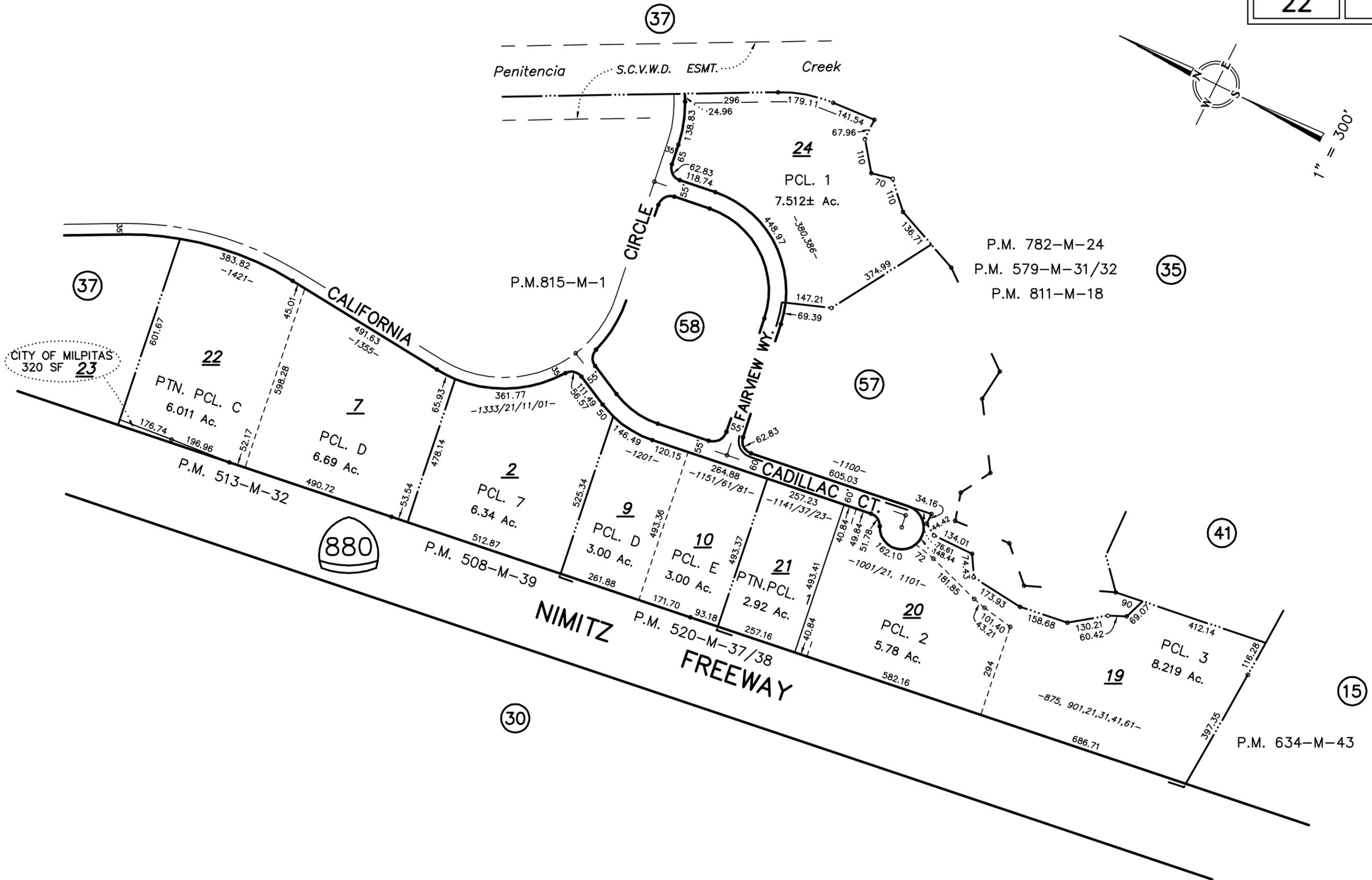
Although not identified as a mitigation measure, the Draft EIR nonetheless suggests that the Agreement between the project applicant and the City required by Title XI, Chapter 10, Section 24.05(G)(3)(a) of the Milpitas Municipal Code include provisions to enable the City to maintain limited ongoing oversight of billboard operation, and to facilitate updates to operational control requirements should new technologies emerge or should new operational data or research findings suggest needed changes to sign physical or operating characteristics.

*Comment L 2.05:* The Draft EIR on page 1-1 incorrectly states that the four possible sign locations under consideration are spaced at least 1,000 feet apart. Site Option 2 is located less than 1,000 feet from Site Option 1 and Site Option 3, so there could not be three billboards if Site Option 2 is selected.

*Response:* The proposed billboards would be spaced at least 1,000 feet apart, as required for digital billboards under the federal Highway Beautification Act of 1965, the California Outdoor Advertising Act, and the Milpitas Municipal Code. The federal Highway Beautification Act of 1965 and the California Outdoor Advertising Act require a minimum spacing of 1,000 feet between LED displays, and 500 feet between non-LED displays. The Milpitas Municipal Code requires a minimum spacing of 1,000 feet between off-site advertising displays adjacent to Interstate highways regardless of LED or non-LED displays.

The locations of the proposed billboards within each parcel at Site Option 1, Site Option 2 and Site Option 3 shown on Figures 3.2 through 3.6 are only approximate locations. The proposed billboards may be located anywhere along the western boundary of the subject parcels, Assessor Parcel Number (APN) 022-38-019, APN 022-38-010, and APN 022-38-002, but at no time would the locations be closer than 1,000 feet.

The location of the proposed billboard at Site Option 4 shown on Figures 3.2, 3.3 and 3.7, within the parking area at the southwestern corner of the lot with its site constraints, is a more precise location; the proposed billboard at Site Option 4 would replace the existing approximately 45-foot high freeway-oriented on-premise advertising sign at this location.



Only three out of the four locations will be chosen and at no time will the signs be closer than 1,000 feet. This spacing requirement may preclude choosing certain locations. As shown on the assessor parcel map on the following page, Site Option 2 (APN 022-38-010), Site Option 3 (APN 022-38-002) and the parcel between them (APN 022-38-009) combined have a total freeway frontage of 1,039.63 feet. Site Option 1 (APN 022-38-019), Site Option 2 (APN 022-38-010) and the intervening parcels (APNs 022-38-020 and 022-38-021) combined have a total freeway frontage of 1,104.20 feet. Billboards placed near the southern boundary of Site Option 2 and the northern boundary of Site Option 3 would be at least 1,000 feet apart. Billboards placed near the southern boundary of Site Option 2 and on Site Option 1 would be at least 1,000 feet apart. With the change in the location of Site Option 1 to APN 022-38-019, three billboards could be placed on Site Option 1, Site Option 2 and Site Option 3 at least 1,000 feet apart.

Draft EIR pages 3-5 and 3-18 have been revised to reflect that the proposed billboards at Site Option 1, Site Option 2 and Site Option 3 are only approximate. The visual simulations presented in Figures 4.2 through 4.7 are adequately representative of project aesthetic effects for any given location along the western boundary of Site Option 1, Site Option 2 and Site Option 3. The impact analyses and conclusions presented in Chapters 4 through 6 of the Draft EIR remain valid for any given location along the western boundary of Site Option 1, Site Option 2 and Site Option 3.

*Comment L 2.06:* The Draft EIR does not include a visual simulation of Site Option 2.

*Response:* The six viewpoints considered most representative of project aesthetic effects were selected for simulation and presented in Figures 4.2 through 4.7 of the Draft EIR:

- Site Options 1 and 3 from Northbound I-880,
- Site Options 3 and 4 from Northbound I-880,
- Site Option 4 from California Circle,
- Site Option 4 from East Side of Penitencia Creek Channel,
- Site Option 3 from Southbound I-880, and
- Site Option 1 from Southbound I-880.

The photosimulations depict the size, shape, height, placement, design character and daytime visibility of the proposed billboards and provide an approximate indication of the visibility of the billboards from key public vantage points. All of the billboards would be similar in size, shape, height, orientation and design character. Figures 4.2, 4.3, 4.6 and 4.7, which illustrate Site Option 1 and Site Option 3 in views from northbound and southbound I-880, are also adequately representative of the visibility and character of Site Option 2. No additional photosimulation of Site Option 2 is necessary.

*Comment L 2.07:* Please identify which of the billboard facings would be LED displays and which would be static displays initially and later converted to LED displays.

*Response:* The Draft EIR explains that initially, two of the six advertising facings on the three billboard structures would be digital LED displays and, ultimately, up to all six of the facings would be LED displays. Due to market conditions, the project applicant now

anticipates that four of the six facings may initially contain LED displays. The Draft EIR have been revised to reflect this possibility.

The Draft EIR evaluates an ultimate scenario with all six of the facings containing LED displays, which represents a “worst-case” scenario with respect to potential aesthetic and transportation impacts. The potential impacts of some number of static displays and fewer LED displays would be similar to and less substantial than the impacts of the scenario of all facings containing LED displays evaluated in the Draft EIR. Alternative 4: All Non-LED Billboards evaluated in Chapter 7, Alternatives, of the Draft EIR compares the impacts and mitigation needs of all non-LED billboards to those of the project. As indicated by the evaluation of Alternative 4, some number of static displays and fewer LED displays would have a similar significant unavoidable impact related to I-880 gateway visual character and less substantial but still significant and mitigatable light, glare and sky glow impacts as the project. The Draft EIR evaluations of the project and of Alternative 4 adequately cover the range of potential impacts of the possible combinations of static displays and LED displays.

*Comment L 2.08:* If the City adds landscaping to this segment of I-880 as identified in the General Plan, the segment of the freeway could be reclassified as a landscaped freeway.

*Response:* As explained on page 3-13 of the Draft EIR, a “landscaped freeway” is defined in the California Outdoor Advertising Act as a Caltrans-designated freeway segment that is now, or may in the future be, improved by the planting of lawns, trees, shrubs, flowers or other ornamental vegetation requiring reasonable maintenance on one or both sides of the freeway (Government Code Section 5216). Under the Outdoor Advertising Act, off-premise signs are not allowed along Caltrans-designated “landscaped freeways,” except when approved as part of relocation agreements involving the removal of an existing billboard elsewhere along the “landscaped freeway.” Within Milpitas, I-880 is designated a “landscaped freeway” from Montague Expressway to Great Mall Parkway (postmile (PM) 5.97 to PM 7.48) and from SR 237 to the southern boundary of Site Option 1 (PM 8.01 to PM 9.45). Remaining segments of I-880 within Milpitas, including the portion containing the project sites, are non-landscaped freeways and so the proposed billboards would not be precluded.

As explained on pages 4-6 through 4-8 of the Draft EIR, General Plan Open Space & Environmental Conservation Element Figure 4-6, Scenic Resources and Routes, identifies the southbound I-880 freeway segment at the northern city limits at Dixon Landing Road as a major visual “gateway” into Milpitas. The City’s Streetscape Master Plan includes landscaping and signage recommendations for General Plan-identified major “gateways,” including the I-880 “gateway” segment. The project would not preclude the potential future installation of “gateway” freeway landscaping along I-880 at Dixon Landing Road, although it may limit the extent of the landscaping south along I-880, so as not to conflict with State law and the objectives of this project.

*Comment L 2.09:* The Draft EIR lacks specificity. The document does not specify which billboard facings would be LED displays and which would be static displays initially and later converted to LED displays.

*Response:* As stipulated by the CEQA Guidelines, the project description has been detailed to the extent needed for evaluation and review of environmental impacts. The

Draft EIR explains that initially, two of the six advertising facings on the three billboard structures would be digital LED displays and, ultimately, up to all six of the facings would be LED displays. Due to market conditions, the project applicant now anticipates that four of the six facings may initially contain LED displays. The Draft EIR have been revised to reflect this possibility.

*Comment L 2.10:* The Draft EIR does not discuss possible future landscaping along this segment of I-880 as identified in the General Plan.

*Response:* General Plan Open Space & Environmental Conservation Element Figure 4-6, Scenic Resources and Routes, identifies the southbound I-880 freeway segment at the northern city limits at Dixon Landing Road and the eastbound SR 237 highway segment at the western city limits as major visual “gateways” into Milpitas. The City’s Streetscape Master Plan includes landscaping and signage recommendations for General Plan-identified major “gateways,” including the I-880 “gateway” segment. Pages 4-6 through 4-8 of the Draft EIR describe these City policies from the Milpitas General Plan and the Milpitas Streetscape Master Plan.

Impact 4-1 on page 4-16 of the Draft EIR explains that the project may be perceived by many as substantially degrading the visual character and quality of the General Plan-identified southbound I-880 “gateway” to Milpitas, which would represent a potentially significant impact. Mitigation 4-1 on pages 4-16 and 4-17 would require changes in the Agreement between the project applicant and the City required by Title XI, Chapter 10, Section 24.05(G)(3)(a) of the Milpitas Municipal Code to include provisions to enable the City to require adjustments to the digital display brilliance, content, motion, recess, aim, focus, shielding, etc. if deemed necessary over time. However, despite these measures, the impact on the southbound I-880 gateway visual character would remain significant and unavoidable.

*Comment L 2.11:* Caltrans prefers Alternative 3: Fewer Billboards.

*Response:* Comment acknowledged. No further response is required.

*Comment L 2.12:* Work that encroaches into the State right-of-way would require an encroachment permit from Caltrans. Traffic-related mitigation measures should be incorporated into the construction plans during the encroachment permit process.

*Response:* The project is not expected to require an encroachment permit from Caltrans. Although the proposed billboards would be located near the eastern edge of the I-880 right-of-way, the billboards would be located on private property and no part of the billboards would overhang the freeway right-of-way. As explained on pages 1-1 and 3-21 of the Draft EIR, the project would require a Highway Outdoor Advertising Permit from Caltrans to allow the placement of off-premise advertising displays adjacent to a Caltrans facility. Design plans for the proposed billboards would be provided to Caltrans for review and approach with the Highway Outdoor Advertising Permit application. The project would have no traffic impacts and would not require any traffic-related mitigations.



Edmund G. Brown Jr.  
Governor

STATE OF CALIFORNIA  
Governor's Office of Planning and Research  
State Clearinghouse and Planning Unit



Ken Alex  
Director

July 5, 2011

Sheldon AhSing  
City of Milpitas  
455 E. Calaveras Boulevard  
Milpitas, CA 95035

Subject: Interstate 880 Digital Billboards Project  
SCH#: 2010062083

Dear Sheldon AhSing:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on July 1, 2011, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

L3.01

Sincerely,

Scott Morgan  
Director, State Clearinghouse

Enclosures  
cc: Resources Agency

**Document Details Report  
State Clearinghouse Data Base**

**SCH#** 2010062083  
**Project Title** Interstate 880 Digital Billboards Project  
**Lead Agency** Milpitas, City of

**Type** EIR Draft EIR

**Description** The project applicant, SignCo East, LLC, is proposing to install up to three separate billboard structures containing two advertising facings per structure along the I-880 freeway corridor in Milpitas. The three new signs are proposed to include electronic digital reader board components. The signs are proposed to be similar in size to existing digital reader board signs located along other stretches of I-880 in the subregion. Top-of-sign heights of up to 70 ft. and maximum sign areas of 14 by 48 ft. are proposed.

**Lead Agency Contact**

**Name** Sheldon AhSing  
**Agency** City of Milpitas  
**Phone** 408-586-3278 **Fax** 408-586-3305  
**email** sahsing@ci.milpitas.ca.gov  
**Address** 455 E. Calaveras Boulevard  
**City** Milpitas **State** CA **Zip** 95035

**Project Location**

**County** Santa Clara  
**City** Milpitas  
**Region**  
**Lat / Long**  
**Cross Streets** I-880 East Frontage & Cadillac Court, CA Circle, & Dixon Landing Rd.  
**Parcel No.** 022-38-020, -010, -002; 022-37-049  
**Township** **Range** **Section** **Base**

**Proximity to:**

**Highways** SR-237  
**Airports**  
**Railways**  
**Waterways**  
**Schools**  
**Land Use** Industrial Park (MP)

**Project Issues** Aesthetic/Visual; Traffic/Circulation; Cumulative Effects

**Reviewing Agencies** Resources Agency; Department of Fish and Game, Region 3; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 4; Regional Water Quality Control Board, Region 2; Native American Heritage Commission

**Date Received** 05/18/2011 **Start of Review** 05/18/2011 **End of Review** 07/01/2011

L 3 Scott Morgan, Director, State Clearinghouse, Governor's Office of Planning and Research,  
July 5, 2011

*Comment L 3.01:* Letter lists the State agencies that reviewed the Draft EIR, transmits comments from responding State agencies, and acknowledges that the City has complied with State Clearinghouse requirements for draft environmental documents pursuant to CEQA.

*Response:* Comment acknowledged. No further response is required.



July 8, 2011

City of Milpitas  
Planning Division  
455 East Calaveras Boulevard  
Milpitas, CA 95035-5479

Attention: Sheldon Ah Sing

Subject: I-880 Digital Billboards

Dear Mr. Sing:

Santa Clara Valley Transportation Authority (VTA) staff have reviewed the Draft EIR for three new digital signs on I-880 between Dixon Landing Road and SR 237. We have no comments at this time.

Thank you for the opportunity to review this project. If you have any questions, please call me at (408) 321-5784.

Sincerely,

A handwritten signature in black ink, appearing to read "RM", is written over a large, light-colored circular mark.

Roy Molseed  
Senior Environmental Planner

L 4 Roy Molseed, Senior Environmental Planner, Santa Clara County Valley Transportation Authority, July 8, 2011

*Comment L 1.01:* Letter acknowledges that the Santa Clara County Valley Transportation Authority (VTA) reviewed the Draft EIR and has no comments.

*Response:* Comment acknowledged. No further response is required.

### 3. REVISIONS TO THE DRAFT EIR

The following section includes all revisions to the May 18, 2011 Draft EIR made in response to comments received during the Draft EIR comment period. All text revisions are indicated by a bracket in the left margin next to the revised line(s). All of the revised pages supersede the corresponding pages in the May 18, 2011 Draft EIR. None of the criteria listed in CEQA Guidelines section 15088.5 (Recirculation of an EIR Prior to Certification) indicating the need for recirculation of the EIR has been met as a result of the revisions which follow. In particular:

- no new significant environmental impact due to the project or due to a new mitigation measure has been identified;
- no substantial increase in the severity of an environmental impact has been identified; and
- no additional feasible project alternative or mitigation measure considerably different from others previously analyzed in the Draft EIR has been identified that would clearly lessen the significant environmental impacts of the project, but the project proponents decline to adopt.



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## 1. INTRODUCTION

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This Draft Environmental Impact Report (Draft EIR) has been prepared by the City of Milpitas in accordance with the California Environmental Quality Act (CEQA)<sup>1</sup> and associated CEQA Guidelines<sup>2</sup> to describe the potential environmental consequences of the proposed Interstate 880 Billboards Project (Project). The Project applicant, SignCo East, LLC, proposes to install three separate billboard structures containing a total of six advertising facings, two per structure, along the east side of Interstate 880 (I-880) south of Dixon Landing Road in Milpitas. This Draft EIR is intended to serve as an informational document for use by public agency decision makers and the public in their consideration of the Project.

### 1.1 PROPOSED PROJECT

Four possible sites are under consideration for the three proposed billboard structures. The four possible sites are located along the western boundary of commercial and industrial parcels adjacent to the east edge of the I-880 freeway right-of-way. Initially, two static and four electronic “digital” facings are planned. As market demand increases, it is anticipated that the two static facings would also be converted to electronic “digital” facings.

Each billboard structure would include two approximately 14-foot high by 48-foot wide displays facing opposite directions, mounted on a single sign column. The overall height of the billboards would be 70 feet. Each of the electronic billboard facings would display a number of static LED images in continuous rotation, with each image displayed for no less than four seconds.

The Project would require City of Milpitas (City) approval of a Development Agreement and Site Development Permit, as well as building permits. Each billboard would also require a Highway Outdoor Advertising Permit from the California Department of Transportation (Caltrans). A detailed description of the Project is provided in Chapter 3, Project Description, herein.

As used in this EIR, the term "Project" is defined to mean the proposed Interstate 880 Billboards Project and all associated discretionary approvals, including the requested Development Agreement and Site Development Permit from the City, the Highway Outdoor Advertising Permit from Caltrans, as well as other local and state approvals, entitlements, permits, and actions that may be required to implement the Project.

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<sup>1</sup>The California Environmental Quality Act (CEQA) is codified in section 21000, et seq., of the California Public Resources Code.

<sup>2</sup>The CEQA Guidelines are set forth in sections 15000 through 15387 of the California Code of Regulations, Title 14, Chapter 3.

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## 2. SUMMARY

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This EIR chapter provides a summary description of the proposed action (the Interstate 880 Billboards Project), a list of associated environmental issues to be resolved, a summary identification of significant impacts and mitigation measures associated with the Project, and a summary identification of possible alternatives to the Project (pursuant to CEQA Guidelines Section 15123, Summary).

*This summary should not be relied upon for a thorough understanding of the details of the Project, its individual impacts, and related mitigation needs. Please refer to Chapter 3 for a complete description of the Project, Chapters 4 and 5 for a complete description of environmental impacts and associated mitigation measures, Chapter 6 for CEQA-required assessment conclusions, and Chapter 7 for a complete description and evaluation of identified alternatives to the Project.*

### 2.1 PROPOSED PROJECT

#### 2.1.1 Project Area Location and Site Characteristics

(a) Regional and Local Setting. The proposed three billboard structures would be located along the east side of the Interstate 880 (I-880) freeway segment south of the Dixon Landing Road interchange, in the northwestern corner of the city of Milpitas in Santa Clara County. The three billboard structures would be located between the interchange and a point approximately two miles south of the interchange. Lands east of this two-mile segment of I-880 are developed with suburban, low- to medium-density industrial, commercial and residential uses; lands west of this segment of I-880 are mostly undeveloped agricultural land and baylands.

(b) Project Site Characteristics. The three billboard structures would be located on already developed properties on the east side of the freeway and along the west side of California Circle and Cadillac Court containing industrial, office and commercial uses. The three structures would be located on three of four possible sites currently under consideration. The four possible sites are referred to in this EIR, in order from south to north, as Site Option 1, Site Option 2, Site Option 3, and Site Option 4--i.e.:

- *Site Option 1*: assessor's parcel number (APN) 022-38-019 at 901 Cadillac Court;
- *Site Option 2*: APN 022-38-010 at 1181 Cadillac Court;
- *Site Option 3*: APN 022-38-002 at 1301 California Circle; and
- *Site Option 4*: APN 022-37-049 at 1545-1547 California Circle.

### **2.1.2 Project Background**

(a) Digital Billboards. Electronic “digital” billboard facings are an emerging media type. A digital billboard facing typically contains a light emitting diode (LED) display that produces images controlled remotely by computer. Typically, approximately eight advertisements rotate continuously, each displaying a static image for about eight seconds. Scrolling, flashing, or moving images are generally prohibited by current federal, State and local regulations.

Currently, approximately 200 of the more than 10,000 freeway billboards in California are digital billboards. As of January 1, 2010, there were 35 digital billboards in the San Francisco Bay Area, including one on U.S. Highway 101 in Santa Clara County and five on I-880 in Alameda County.

(b) Digital Billboards in Milpitas. Over the past few years, there has been an emerging interest by the City and private entities in installing digital billboards at selected locations along the Milpitas segments of I-880, Interstate 680 (I-680), and State Route 237 (SR 237). The City has been interested in considering digital billboards as a potential source of municipal revenue and for possible use of a portion of the advertising in rotation to promote local businesses and economic development.

In November 2006, the City certified an EIR which identified the impacts of locating three new freeway billboards and replacing the two existing freeway billboards along I-680 and I-880. Two of the freeway billboards considered in 2006 were to be digital billboards. At the time, the City’s Sign Ordinance prohibited freeway billboards. In August 2010, the City adopted a new Sign Ordinance which authorizes City consideration of freeway billboards along I-880, I-680, and SR 237.

(c) Billboard Regulation. Freeway billboards, including digital billboards, are regulated at the federal, State and local levels. The primary federal and State laws pertaining to billboards along highways are the federal Highway Beautification Act of 1965 and the State’s Outdoor Advertising Act. At the local level, the City’s Sign Ordinance establishes minimum City standards for billboards and specifies required findings for City approval of a proposed digital billboard. A Development Agreement and Site Permit Approval for one of the five billboards, the “Toyota sign,” located at 950 Thompson Street (APN 086-05-026) in the northeast quadrant of the I-880/Great Mall Parkway interchange, were approved in June 2010.

### **2.1.3 Project Objectives**

The Project applicant, SignCo East, LLC, has identified the following basic objectives of the Project:

- Install up to three new digital billboard structures at a Milpitas freeway location with high traffic volumes and visibility;
- Provide substantial billboard-generated economic benefits to the applicant and City, including new revenues and promotion of local businesses;
- Minimize associated visual and noise impacts on vicinity residential and hotel uses; and

- Comply with all federal, State, City and outdoor advertising industry laws, regulations and standards in order to adequately address potential billboard-related light, glare, traffic safety, and other impacts.

#### **2.1.4 Project Characteristics**

The Project consists of the installation of three new separate billboard structures containing a total of six advertising facings, two per structure, along the east side of I-880 south of Dixon Landing Road in Milpitas. Initially, two static and four digital facings are planned. As market demand increases, the two static facings would be converted to digital facings.

(a) Proposed Billboards Locations. The three billboard structures would be installed along the western boundary of three of four possible sites currently under consideration, parcels 002-038-019 (Site Option 1), 002-038-010 (Site Option 2), 022-38-002 (Site Option 3), and 002-037-049 (Site Option 4), adjacent to the freeway, and spaced at least 1,000 feet apart. If Site Option 4 is selected, the Project would also require removal of one existing free-standing advertising sign located on Site Option 4.

(b) Digital Billboards Characteristics. All three billboard structures would be identical in design. The advertising displays would be mounted on a single approximately eight-foot diameter sign column. The bottom of the displays would be approximately 56 feet above ground level. The top of the displays and overall height of the billboard structure would be 70 feet. Each billboard would have two 14-foot high by 48-foot wide displays facing opposite directions and slightly angled toward freeway viewers. Each of the digital facings would display a number of static images in continuous rotation, with each image displayed for no less than four seconds.

(c) Project Construction. One drilling rig, one crane, and one four- or five-person crew would be used for all three Project sites. A hole five feet in diameter and 32 feet deep would be drilled for each sign. Construction would last approximately five days.

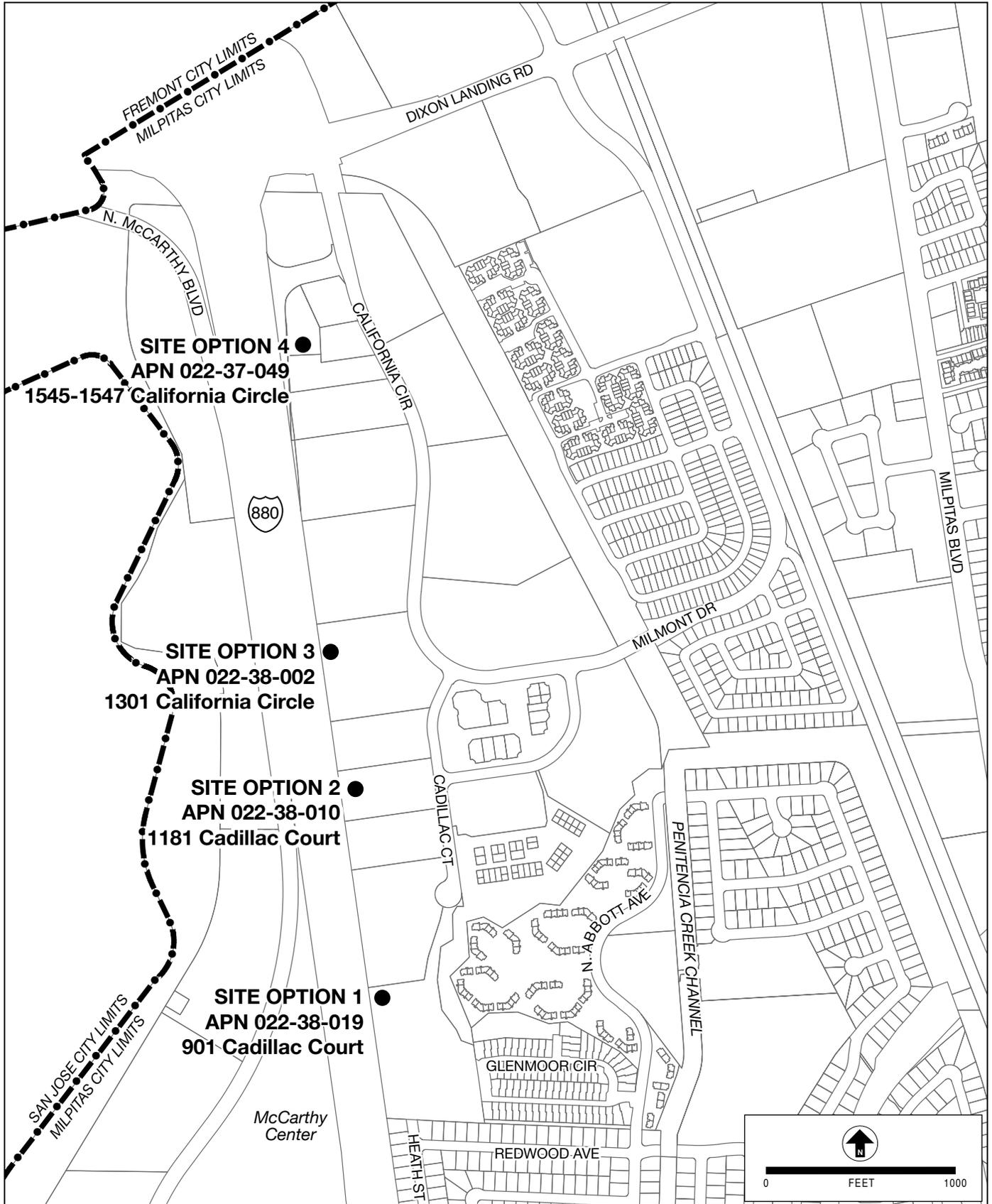
#### **2.1.5 Required Project Approvals**

(a) City of Milpitas. The Project would require City approval of a Development Agreement and Site Development Permit. Each billboard would also require a City building permit.

(b) Caltrans. Each billboard would also require a Highway Outdoor Advertising Permit from Caltrans to allow the placement of an "off-premise" advertising display adjacent to a Caltrans facility.

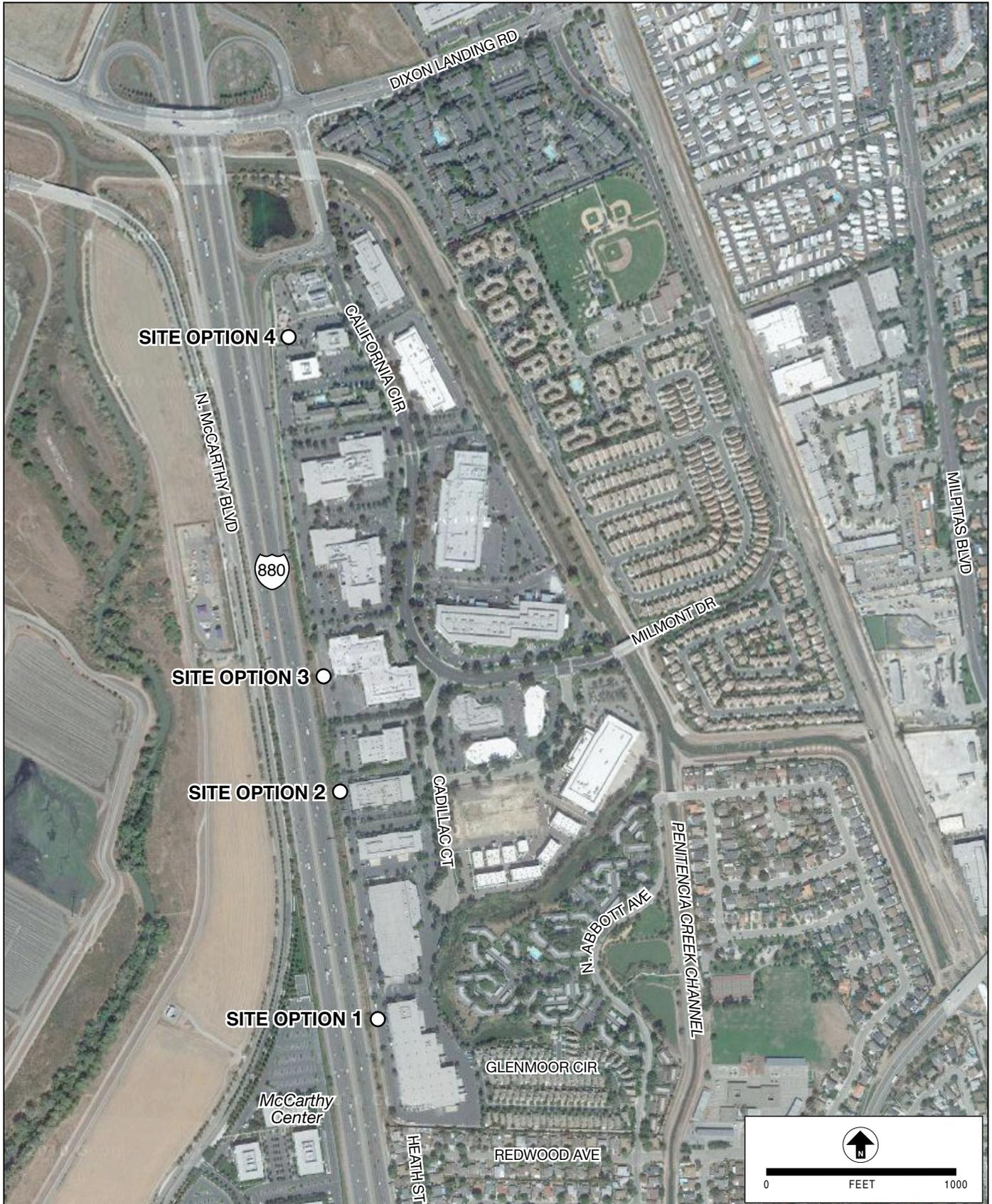
## **2.2 ENVIRONMENTAL ISSUES**

As required by the State CEQA Guidelines, the scope of this EIR includes all environmental issues to be resolved and all areas of controversy known to the Lead Agency (the City), including those issues and concerns identified as possibly significant by the City, and by other agencies, organizations, and individuals in response to the City's Notice of Preparation dated June 28, 2010. These areas of environmental concern include aesthetics (Chapter 4) and transportation (Chapter 5).



SOURCE: Google; McCarthy Ranch

Figure 3.2  
**LOCAL PROJECT MAP:  
SITE OPTIONS 1, 2, 3 AND 4**



SOURCE: Google; McCarthy Ranch

Figure 3.3  
**LOCAL PROJECT AERIAL:  
SITE OPTIONS 1, 2, 3 AND 4**

single family homes on Glenmoor Circle; a multiple family residential complex containing approximately 30 two-story buildings located off of N. Abbott Avenue; and two-story single family homes and three-story townhomes and apartments further to the east, off of Milmont Drive, east of the Penitencia Creek channel.

(c) South. Single-story single family homes are located on Heath Street and Redwood Avenue south of the Project sites. The SR 237 interchange is located approximately one mile south of the Project sites.

(d) West. I-880 is located adjacent to the Project sites on the west. North McCarthy Boulevard, a four-lane, roadway, is located on the opposite (west) side of I-880. The undeveloped lands on the west side of North McCarthy Boulevard are within the 203-acre McCarthy Ranch Master Plan area, and were approved in 2009 for an office park, industrial park, and general commercial uses (the Campus at McCarthy Ranch Project and the McCarthy Ranch Mixed Use Project). The 68-acre McCarthy Center complex, which contains approximately one million square feet of office and research and development uses spread among 19 two-story buildings in a campus setting, is located further south along North McCarthy Boulevard.

### **3.1.2 Project Site Characteristics**

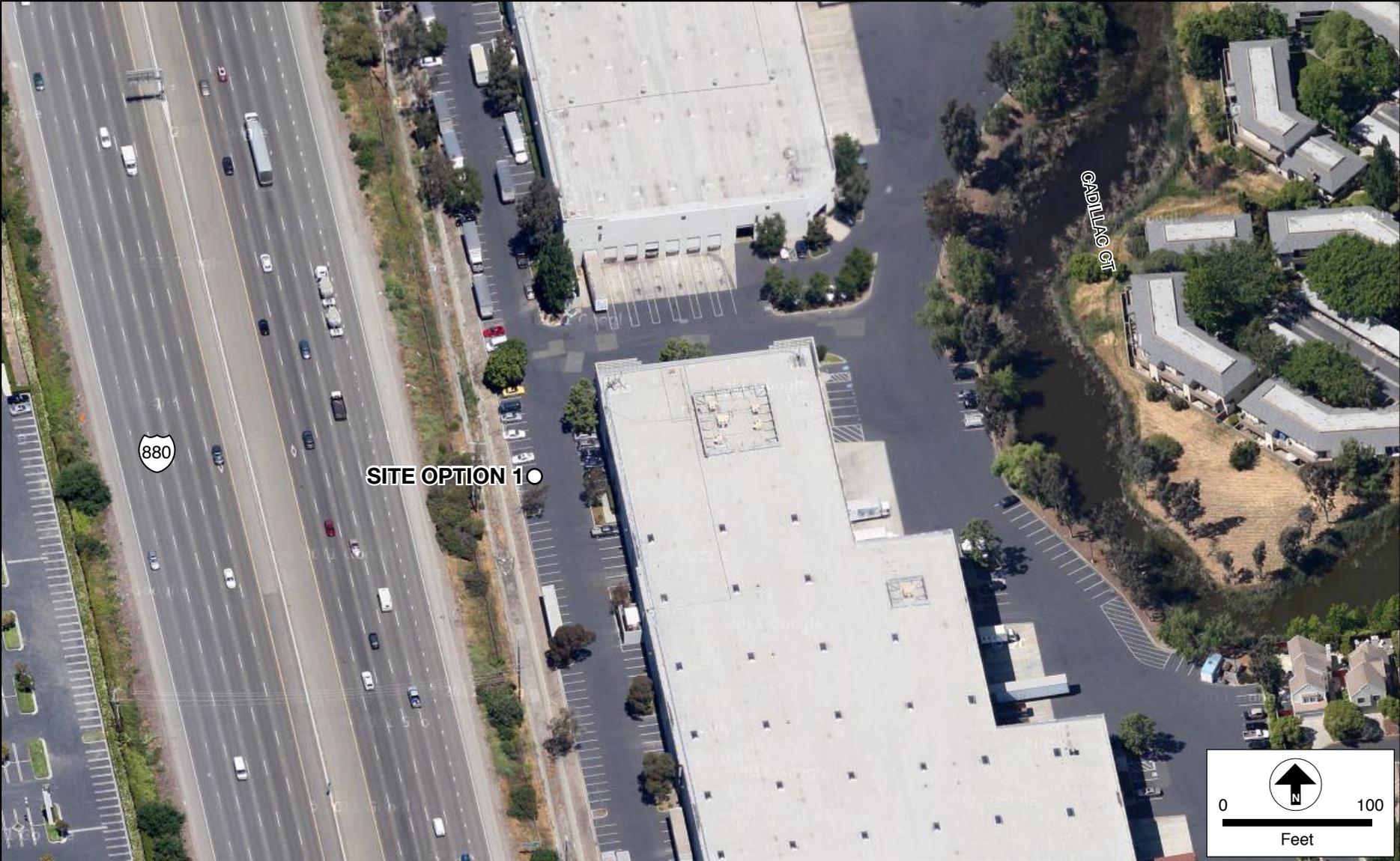
The three billboard structures would be located on three of four possible sites currently under consideration. All four possible sites are located on already developed properties containing industrial park and general commercial uses, located east of I-880 and south of Dixon Landing Road, on California Circle and Cadillac Court. The four Project site options are referred to in this EIR, from south to north, as Site Option 1, Site Option 2, Site Option 3 and Site Option 4. The four Project site options are shown in Figures 3.2 and 3.3. Each of the four site options is shown in greater detail in Figures 3.4 through 3.7, and is further described below. The locations of the proposed billboards within each parcel are approximately only. The proposed billboards may be located anywhere along the western boundary of the subject parcels, but at no time will the signs be located closer than 1,000 feet.

(a) Site Option 1. Site Option 1 is located adjacent to the I-880 freeway right-of-way at 901 Cadillac Court on assessor's parcel number (APN) 022-38-019. As shown on Figure 3.4, Site Option 1 is developed with one freestanding, approximately 30-foot high, flex industrial building surrounded by parking and loading areas. An electrical transmission line on wooden poles and a drainage channel are located along the western edge of Site Option 1, and on the western edges of Site Options 2 and 3. Residential uses are located to the south and east of Site Option 1.

(b) Site Option 2. Site Option 2 is located adjacent to the I-880 freeway right-of-way at 1181 Cadillac Court on APN 022-38-010. As shown on Figure 3.5, Site Option 2 is developed with one freestanding, approximately 30-foot high flex industrial building surrounded by parking and loading areas.

(c) Site Option 3. Site Option 3 is located adjacent to the I-880 freeway right-of-way at 1301 California Circle on APN 022-38-002. As shown on Figure 3.6, Site Option 3 is developed with one freestanding, approximately 30-foot high flex industrial building surrounded by parking and loading areas.

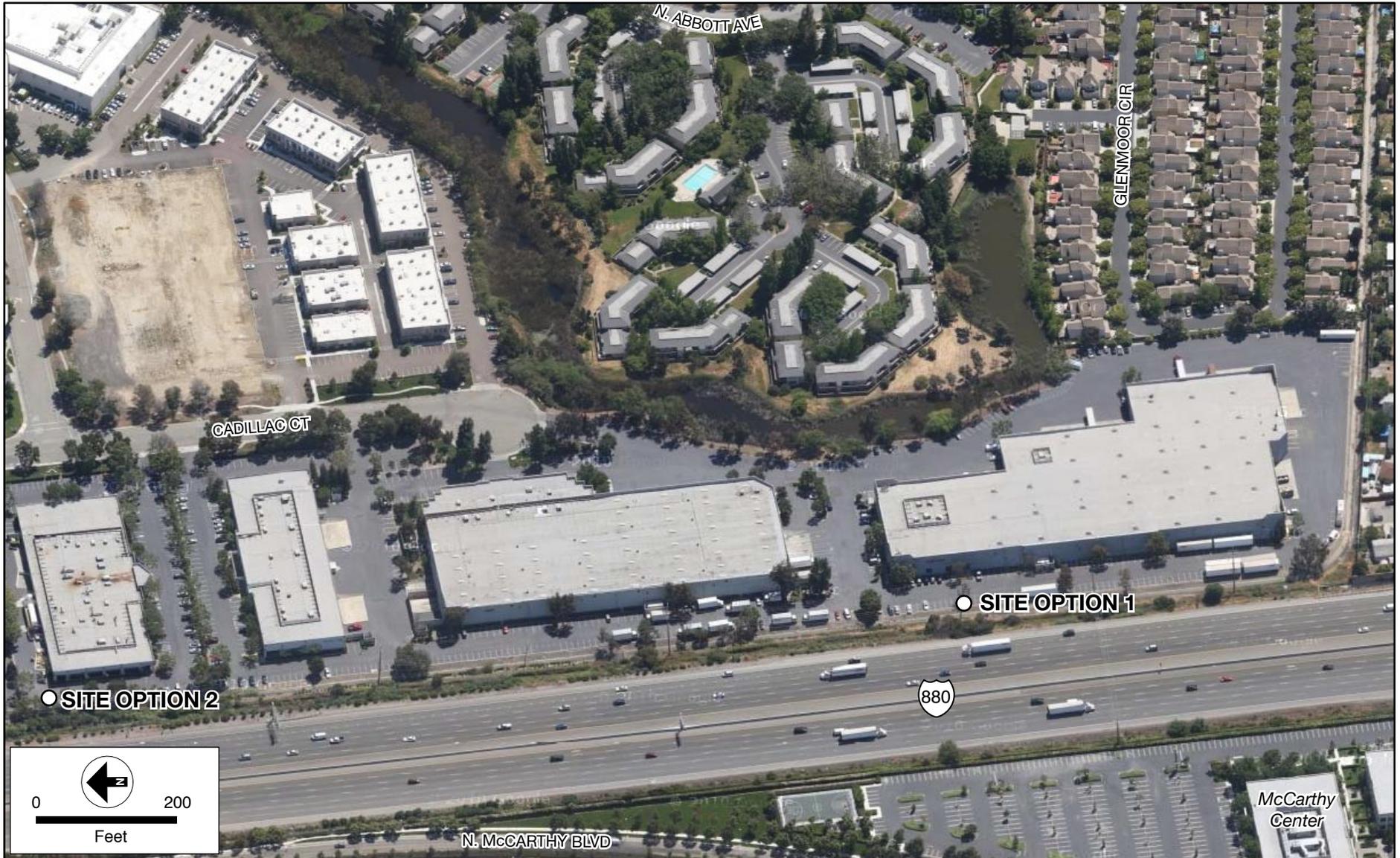
(d) Site Option 4. Site Option 4 is located adjacent to the I-880 freeway right-of-way at 1545-1547 California Circle on APN 022-37-049, adjacent to the I-880 northbound off-ramp to Dixon Landing Road. As shown on Figure 3.7, Site Option 3 contains a one-story Starbucks coffee



SOURCE: Google; McCarthy Ranch

Figure 3.4

# PROJECT SITE OPTION 1



SOURCE: Google; McCarthy Ranch

Figure 3.5

## PROJECT SITE OPTIONS 1 AND 2

- j. Any off-site advertising display shall include the words "City of Milpitas" and/or the City insignia somewhere on the structure.*
- k. Digital Billboard (changeable copy signs) Limitations.*
  - i. Digital billboards shall contain static messages only, and shall not have movement, or the appearance or optical illusion of movement, of any part of the sign structure, design, or pictorial segment of the sign, including the movement or appearance of movement of any illumination or flashing or scintillating light.*
  - ii. Minimum display time. In compliance with State standards, each message on the sign must be displayed for a minimum of four (4) seconds.*
  - iii. Notwithstanding anything to the contrary in the Code, digital billboards shall not operate at brightness levels of more than 0.3 foot candles above ambient light, as measured using a foot candle meter at a pre-set distance consistent with acceptable practices.*
- 6. Required Findings. In order to grant a Site Development Permit for the proposed off-site advertising display, the Planning Commission and the City Council must determine that the following objective requirements have been met:*
  - a. The proposed off-site advertising display will not create a hazard to vehicular or pedestrian traffic, and measures have been taken to reduce potential impacts upon the existing visual character of the site and its surroundings.*
  - b. All advertising on the off-site advertising display will conform with the Outdoor Advertising Act in the California Business and Professions Code and other applicable state and federal rules and regulations.*
  - c. The development of the off-site advertising display will result in a public benefit to the City outweighing any adverse impacts that might be caused by the advertising display.*
  - d. The development of the off-site advertising display will promote economic development within the City.*
  - e. The design, including lighting, scale, size and materials, of the off-site advertising display is consistent with the intent of the design criteria of the off-site advertising display provisions.*
  - f. The development and location of the proposed off-site advertising display is consistent with the goals of the Milpitas General Plan.*

### **3.3 PROJECT OBJECTIVES**

The Project applicant has identified the following basic objectives of the Project:

- Install up to three new billboard structures at a Milpitas freeway location with high traffic volumes and visibility;

- Provide billboard-generated economic benefits to the applicant and City, including advertising revenue and promotion of local business;
- Minimize associated visual and noise impacts on vicinity residential and hotel uses; and
- Comply with all federal, State, City and outdoor advertising industry laws, regulations and standards in order to adequately address potential billboard-related light, glare and traffic safety impacts.

### 3.4 PROJECT CHARACTERISTICS

The Project consists of the installation of three new billboard structures at three separate locations along the east side of the I-880 freeway south of Dixon Landing Road in Milpitas.

#### 3.4.1 Possible Billboard Locations

The proposed three new billboard structures would be located on three of four possible sites currently under consideration. The locations of the proposed billboards within each parcel are approximately only. The proposed billboards may be located anywhere along the western boundary of the subject parcels. The four Project site options are shown in Figures 3.4 through 3.7 and are described below:

- *Site Option 1.* The southernmost site option under consideration is along the western boundary of parcel 002-038-019 at 901 Cadillac Court (Figure 3.4).
- *Site Option 2.* The second site option under consideration is along the western boundary of parcel 002-038-010 at 1181 Cadillac Court (Figure 3.5).
- *Site Option 3.* The third site option under consideration is along the western boundary of parcel 002-038-002 at 1301 California Circle (Figure 3.6).
- *Site Option 4.* The northernmost billboard would be installed along the western boundary of parcel 002-037-049 at 1545-1547 California Circle, in the southwestern corner of the Starbucks coffee parking lot, at the location of an existing off-premise advertising sign which would be removed, and adjacent to the I-880 northbound off-ramp to Dixon Landing Road (Figure 3.7).

At no time will the locations of the 3 selected sites be closer than 1,000 feet.

#### 3.4.1 Proposed Digital Billboard Characteristics

All three billboard structures would be basically identical. Initially, four static and two electronic “digital” facings are planned. As market demand increases, the four static facings would be converted to digital facings incrementally over the course of the project. The proposed billboard characteristics are illustrated by Figures 3.8 and 3.9, and are described below:

(a) Billboard Structure. On each of the three proposed billboard structures, the billboard advertising displays, both static and digital, would be mounted on a steel, approximately eight-foot diameter, circular sign column. Each sign column would be placed directly into the ground with no built-up sign base.

The bottom of the displays would be approximately 56 feet above ground level. The top of the displays and the overall height of the billboard structure would be 70 feet above ground level.

(b) Displays. Each billboard would have two 14-foot high by 48-foot wide displays facing in opposite directions and slightly angled toward freeway viewers. The precise angle has not been specified by the Project applicant.

(c) Operational Characteristics. Initially, four of the six advertising facings on the three billboard structures would be digital LED displays. Ultimately, up to all six of the facings would be LED displays. LED display operational characteristics would comply with federal, State, City and outdoor advertising industry laws, regulations and standards. Lighting levels on each LED display would not exceed 0.3 foot candles over ambient levels. Light sensors would be installed with each sign to measure ambient light levels and to adjust light intensity to respond to ambient conditions.

Each LED display would display a number of static images in continuous rotation, with each image displayed for no less than four seconds. Due to their proximity to one another and their placement in succession, the three billboards would have the capability to be used together to describe a single advertisement message over two or three successive billboards.

(d) Design Character. Each of the three billboard structure columns would have a brushed aluminum finish and a six-inch recessed accent. No other sign base structure is proposed. Landscaping would be provided at the base of each sign in accordance with the City's Sign Ordinance. The applicant would conduct a geotechnical study to evaluate soil conditions at each of the Project sites to determine structural design specifications. Unusual soil conditions may affect the final design of the sign structure.

(e) Additional Signs. At this initial implementation phase, it is anticipated that an approximately nine-foot wide by 14-inch high "Clear Channel" identification LED display would be located beneath each of the initial two main LED displays. Additionally, a "Milpitas" identification sign would be located on the sign column beneath each main display. The City's Sign Ordinance allows such additional fixed signs on a billboard's supporting structure, which do not count towards the maximum display area. No additional fixed signs have been specified by the Project applicant.

### **3.4.2 Project Construction**

(a) Construction Equipment and Personnel. One drilling rig, one crane, and one crew (usually four or five persons) would be used for sign installation at all three Project sites. Crews and equipment would move from one site to another as work progresses.

(b) Construction Duration and Sequencing. Construction would typically proceed as follows for each site.

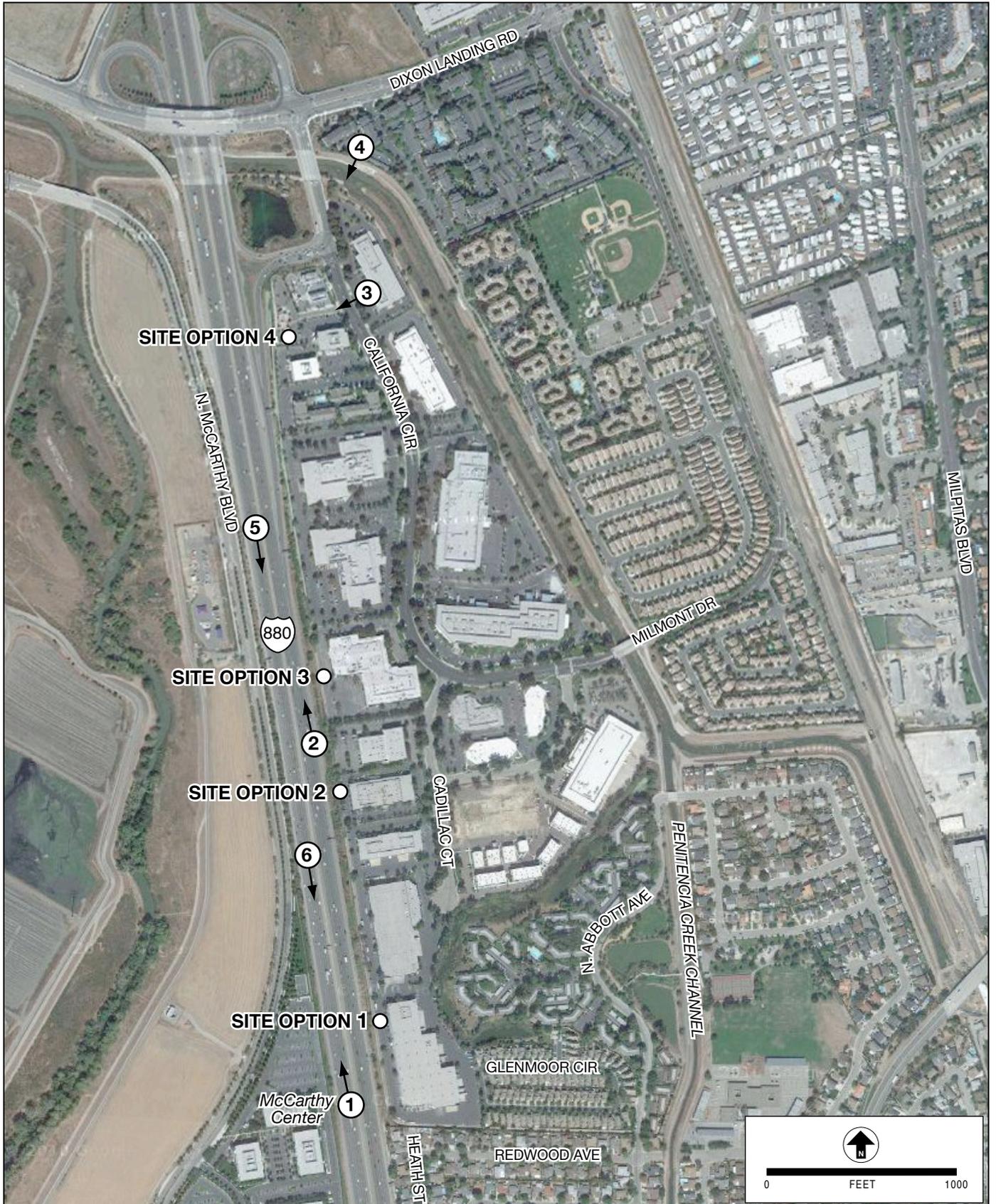
freestanding, approximately 30-foot high, concrete tilt-up flex light industrial buildings of various sizes, fronting on California Circle and Cadillac Court. The buildings are placed at the center of the sites surrounded by surface parking and loading areas, with landscaped planters at the edges and entries of buildings, along the rear and sides of some of the lots, and within landscaped islands within the parking lots. Existing exterior lighting at each of the three sites generally consists of approximately 20- to 30-foot high parking lot lights as well as wall-mounted building lights. Existing signage consists of low monument signs at the entry to each individual building site. An electrical transmission line on wooden poles is located along the western edge of the three properties, adjacent to the freeway right-of-way.

(d) Surrounding Commercial Center Uses. As shown on Figure 3.7, at the north end of the Project area, adjacent to the Dixon Landing Road interchange, there are a Chevron gas station and car wash, a Starbucks coffee commercial “pad” with drive-thru, two two-story office buildings, and a three-story Residence Inn. Existing signage includes an approximately 20-foot high on-premise pole sign for the Residence Inn and an approximately 45-foot high on-premise sign for the commercial center. Both of these signs are oriented toward the freeway.

(e) Adjacent Residential Neighborhoods. As shown on Figures 3.3 and 3.4, residential uses are located to the south and east, as well as east of the Penitencia Creek channel.

- *North Abbott Avenue.* A multiple family residential complex containing approximately 30 two-story buildings is located off of North Abbott Avenue, approximately 300 feet east of Site Option 1, across a drainage channel/detention lagoon. There is no property line fence along this portion of Site Option 1. A number of large trees, shrubs and grasses line the drainage channel but are not sufficiently dense to screen views from these homes.
- *East of Penitencia Creek Channel.* Two-story single family homes and three-story townhomes and apartments are located on the east side of the Penitencia Creek channel, off of Milmont Drive, approximately 1,000 to 1,500 feet from the Project sites.
- *Heath Street and Redwood Avenue.* Single-story, single family homes on small lots are located on Heath Street and Redwood Avenue approximately 600 feet south of Site Option 1. There is an approximately eight-foot high masonry block wall along the northern boundary of these lots.
- *Glenmoor Circle.* Two-story single family homes are located on Glenmoor Circle approximately 400 feet southeast of Site Option 1.

(e) Areas West of I-880. North McCarthy Boulevard, a four-lane, roadway, is located on the opposite, west side of I-880. The remaining undeveloped land west of North McCarthy Boulevard between SR 237 and Dixon Landing road has been recently approved office park, industrial park and general commercial development (The Campus at McCarthy Ranch and the McCarthy Ranch Mixed Use Project). Coyote Creek is located west of these two projects. The Coyote Creek Trail, a Class I bicycle/pedestrian trail, part of the San Francisco Bay Trail and the Juan Bautista de Anza National Historic Trail, parallels the east side of the creek. The 68-acre McCarthy Center complex, which contains approximately one million square feet of office, research and development and commercial uses spread among 19 two-story buildings in a campus setting, is located to the southwest.



SOURCE: McCarthy Ranch; Clear Channel Communications, Inc.

Figure 4.1

### VISUAL SIMULATION VIEWPOINTS

project refinements would not change the basic visual impact and mitigation conclusions in this EIR.

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**Impacts on Adjacent Residential Area Visual Character.** A billboard display at Site Option 1 would be visible from multiple family residential buildings on N. Abbott Avenue (approximately 300 feet away) and single family homes on Glenmoor Circle (approximately 600 feet away). Site Option 1 would likely not be visible to homes on Heath Street or Redwood Avenue, which are approximately 800 feet away and whose views towards the freeway are blocked by an approximately eight-foot-high masonry block wall located along the northern boundary of these lots, an approximately 30-foot high building at 875 Cadillac Court, and adjacent homes.

A billboard display at Site Option 2 may be visible from multiple family residential buildings on N. Abbott Avenue and homes on Glenmoor Circle.

A billboard at Site Option 3 would likely not be highly visible from any residential uses.

A billboard at Site Option 4 would be visible from three-story residential buildings located east of the Penitencia Creek channel (approximately 1,000 feet away).

At these distances of 300 feet or more, at relatively the same elevation as the nearest homes, and within the context of the surrounding industrial and commercial development, the billboard displays would not be highly prominent in views from these nearest residential vantage points. The Project would therefore not substantially degrade the existing visual character and quality of views from these residences. Impacts on adjacent residential visual character would therefore be **less than significant**. Project spill light and sky glow impacts are discussed in Impact 4-2 below.

**Mitigation.** No significant impact has been identified; no mitigation is required.

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**Impacts on Scenic Vistas.** There are no scenic vistas officially designated by the City or State along I-880 within Milpitas. However, as described in section 4.1.2 above, the Mission Hills and Monument Peak form a distinctive scenic backdrop to Milpitas and are important to the Milpitas community identity and character. The Mission Hills are visible in the background of views to the east from I-880 in the Project vicinity, and provide an orienting feature that frames views of the surrounding area. Due to the flat terrain, the width of the freeway and the low prevailing heights of surrounding buildings, the proposed billboard structures would not obstruct or substantially degrade views of the Mission Hills from the freeway during the day. The proposed billboard facings would be the brightest and most visually prominent at night, but the Mission Hills are generally not visible at night. Therefore, the Project would not have a substantial adverse effect on scenic vistas; i.e., the Project impact on scenic vistas would be **less than significant**.

**Mitigation.** No significant impact has been identified; no mitigation is required.

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**Impacts on State Scenic Highways.** There are no officially designated or eligible State Scenic Highways within Milpitas or along I-880. The Project impact on State Scenic Highways would therefore be **less than significant**.

### **7.2.3 Attainment of Project Objectives**

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

## **7.3 ALTERNATIVE 3: FEWER BILLBOARDS**

### **7.3.1 Principal Characteristics**

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

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

### **7.3.2 Impacts and Mitigations**

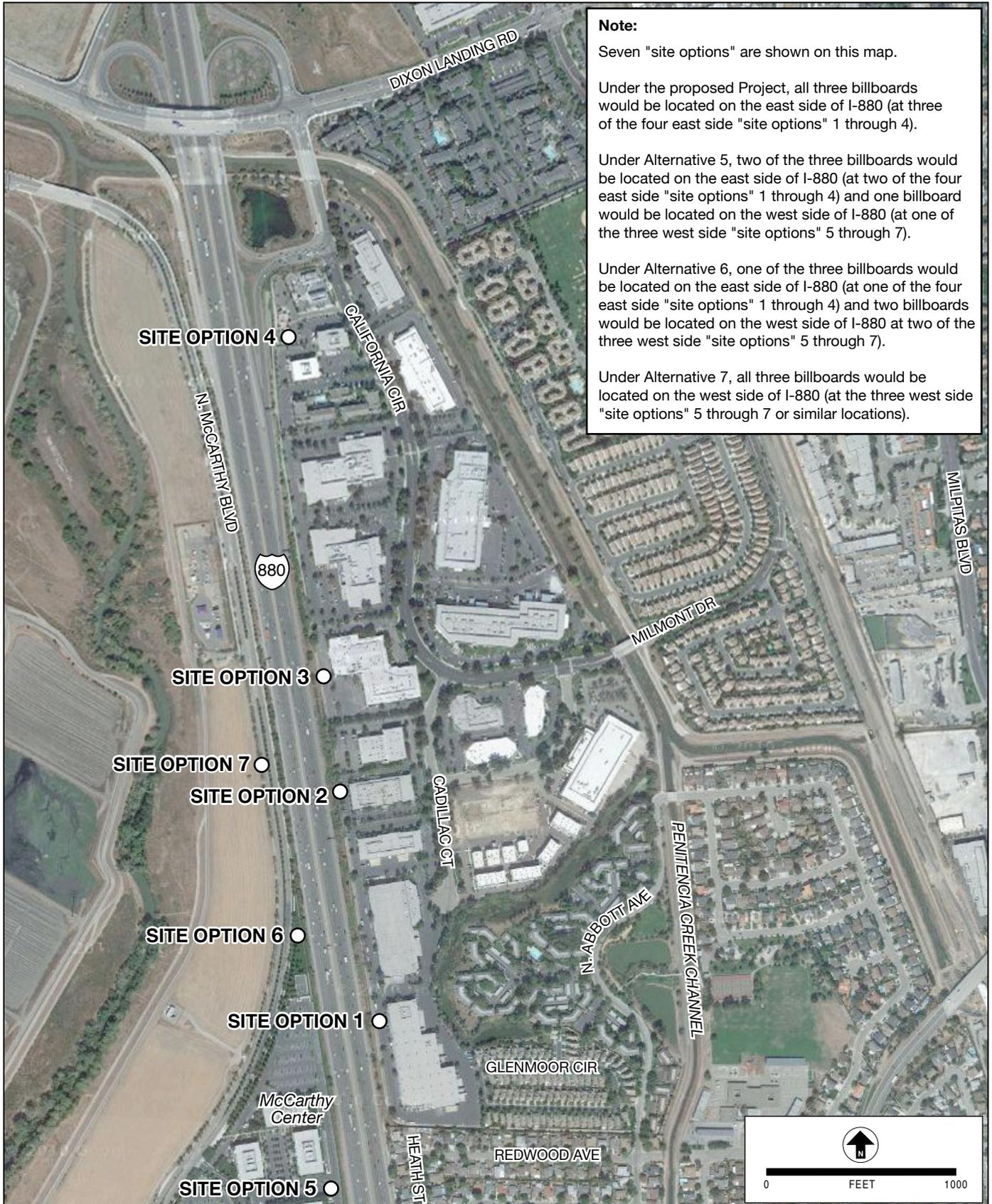
(a) Aesthetics. Alternative 3 would allow for optimal placement of the billboards to reduce or avoid visual impacts on nearby homes. With only two billboards instead of three, there would be a proportional decrease in impacts on light, glare and sky glow. Alternative 3 would also reduce or avoid Project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

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

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

### **7.3.3 Attainment of Project Objectives**

Alternative 3 would achieve the basic Project objectives of erecting new freeway digital billboards, as well as providing benefits to the applicant and City in terms of local business



SOURCE: Wagstaff/MIG

Figure 7.1

## ALTERNATIVE BILLBOARD LOCATIONS

promotion and generation of associated advertising revenue. However, with only two billboards instead of three, there would be a proportional decrease in benefits accruing to the billboard owner and operator, as well as to the City.

## **7.4 ALTERNATIVE 4: ALL NON-LED BILLBOARDS**

### **7.4.1 Principal Characteristics**

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

### **7.4.2 Impacts and Mitigations**

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

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

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

### **7.4.3 Attainment of Project Objectives**

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

## **7.5 ALTERNATIVE 5: ALTERNATIVE LOCATION--TWO BILLBOARDS ON EAST SIDE AND ONE BILLBOARD ON WEST SIDE OF I-880**

### **7.5.1 Principal Characteristics**

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

### **7.5.2 Impacts and Mitigations**

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

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

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

### **7.3.3 Attainment of Project Objectives**

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

## **7.6 ALTERNATIVE 6: ALTERNATIVE LOCATION--ONE BILLBOARD ON EAST SIDE AND TWO BILLBOARDS ON WEST SIDE OF INTERSTATE 880**

### **7.6.1 Principal Characteristics**

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

### **7.6.2 Impacts and Mitigations**

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

The two billboards located on the west side of I-880 would result in similar significant and unavoidable impacts on the Dixon Landing Road interchange gateway to Milpitas. Due to the

interchange overpass and southbound on-ramp embankment, the two billboards on the west side of the freeway would be visible to drivers entering Milpitas for a shorter distance.

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

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

### **7.6.3 Attainment of Project Objectives**

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

## **7.7 ALTERNATIVE 7: ALTERNATIVE LOCATION--ALL THREE BILLBOARDS ON WEST SIDE OF INTERSTATE 880**

### **7.7.1 Principal Characteristics**

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

### **7.7.2 Impacts and Mitigations**

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

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

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



## MILPITAS PLANNING COMMISSION AGENDA REPORT

**PUBLIC HEARING**

Meeting Date: January 23, 2013

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- APPLICATION:** **Site Development Permit No. SD12-0007: Electronic Freeway Orientated Signs**
- APPLICATION SUMMARY:** A request to allow two freeway billboard signs along the east side of Interstate 880.
- LOCATION:** 1545 California Circle (APN: 22-37-049) and 1301 California Circle (APN: 22-38-002)
- APPLICANT:** Milpitas Sign Company, LLC; 555 12<sup>th</sup> St. #950, Oakland, CA 94607
- OWNER:** APN: 22-37-049: Westcore Greenfield LLC; 1761 South Hotel Cir., Ste. 100, San Diego, CA 92122  
APN: 22-38-002: A1 Pak CA LLC; 480 Gianni St., Santa Clara, CA 95054
- RECOMMENDATION:** **Staff recommends that the Planning Commission adopt Resolution No. 13-004 recommending approval of project to the City Council.**
- PROJECT DATA:**
- General Plan/  
Zoning Designation: Industrial Park (INP)/Industrial Park (MP)
- Overlay: Site and Architectural (-S)
- CEQA Determination: Certify the Final EIR (SC#201062083) pursuant to Section 15090 of the CEQA Guidelines.
- PLANNER:** Sheldon S. Ah Sing, Senior Planner
- PJ:** 3221
- ATTACHMENTS:**
- A. Resolution No. 13-004
  - B. Project Plans
  - C. Final Environmental Impact Report

# LOCATION MAP



## **BACKGROUND**

There has been an interest by the City of Milpitas and private entities to develop off site advertising displays or digital billboards, also known as “changeable copy or static copy freeway signs” along Interstates 880 and 680. The purpose of these signs is to promote economic development, expand the communication of community services, and provide a reliable and ongoing source of revenue for the City of Milpitas.

In November 2006, the City certified an Environmental Impact Report that summarized and identified the impacts of locating three new signs along Interstate 680 and Interstate 880 for the purposes of offsite advertising. Of those signs, two of them would be capable of transmitting electronic changeable media.

The City’s Municipal Code includes a process for off-site advertising displays adjacent to interstate highways and state routes. The Code identifies specific criteria to ensure that the development of off-site advertising displays in the city does not create visual clutter or create other operational impacts on surrounding uses, and that it promotes the public health, safety and general welfare. The provisions are consistent with state and federal laws that govern such signs and with the accepted standards of the Outdoor Advertising Association of America.

This application for the Site Development Permit and the Development Agreement are submitted pursuant to the Municipal Code ordinance [Title XI, Chapter 10, Section 24.05(G)]. A Development Agreement is also required that requires only City Council approval and is not a part of this Site Development Permit application. The Planning Commission will make a recommendation on the Site Development Permit to the City Council.

## **PROJECT DESCRIPTION**

### ***Discussion***

The project includes the following two components:

- (1) A Site Development Permit is submitted to consider the design and compliance of the signs with the zoning ordinance regulations; and
- (2) A Development Agreement between the City and Milpitas Sign Co., LLC proposes to identify the timeframe for responsibilities, obligations and shared benefits of erecting an off-site advertising display.

### ***Site Development Permit***

The applicant proposes two off-site advertising displays on private property along the east side of Interstate 880. The Code provisions and development standards are as follows:

### **Review Process**

Two sign vendors were chosen by the City through a competitive selection process. Each sign vendor will enter into an agreement with the City regarding the location, construction, maintenance and define the public benefit of the signs. The design of the signs requires consideration of a Site Development Permit by the Planning Commission and the City Council. It is the intent that the signs by the two vendors are to be compatible in design, but not necessarily identical.

Zoning Development Standards for Off-Site Advertising Signs

*Maximum Height*

The overall height of the sign shall not exceed seventy (70) feet.

*Distance between other off-site advertising displays.*

No off-site advertising display shall be placed within one-thousand (1,000) feet from another advertising display on the same side of any portion of the interstate.

*Maximum sign area*

The maximum sign area shall not exceed one-thousand, two-hundred (1,200) square feet on each side. Ancillary fixed signs or logos may be permitted on the sign's supporting structure that would not count towards the maximum allowed sign area.

*Illumination*

The two-sided displays would use LED technology. Light intensity would be in compliance with state laws. An automatic dimming device or light sensors must be integrated into the sign and illumination must be designed to reduce glare or casting on adjacent properties.

**Analysis of the Two Proposed Signs**

1545-1547 California Circle Sign Location and Design

The sign is proposed to be located within the parking lot of the retail parcel shown on the attached site plan (Attachment B).

The main support column of the sign is 50 feet tall from grade. The dimension from the grade to the underside of the display is 46'-3". The total display area is 672 square feet for each side (14 feet by 48 feet) and includes panels on the support structure for "City of Milpitas" and the adjacent retail tenants. The structure includes a stone veneer base, and multiple panels for ancillary signs. The trim and structure have earth tone colors. Refer to the project plans for detailed information.

Illumination of the sign is by Light Emitting Diodes (LED) technology. As required by the Code, the sign will include automatic dimming circuitry or light sensors to reduce glare or casting on adjacent properties. The light intensity will be consistent with state and federal laws.

At the base of the sign, drought tolerant plants will be used to form the planter as required by the sign code.

1301 California Circle Sign Location and Design

The sign is proposed to be located within the parking lot of the industrial building shown on the attached site plan (Attachment B).

The main support column of the sign is 60 feet tall from grade. The dimension from the grade to the underside of the display is 46'-3". The total display area is 672 square feet for each side (14 feet by 48 feet) and includes panels on the support structure for "City of Milpitas". The structure

includes a stone veneer base, and multiple panels for ancillary signs if necessary. The trim and structure have earth tone colors. Refer to the project plans for detailed information.

Illumination of the sign is by Light Emitting Diodes (LED) technology. As required by the Code, the sign will include automatic dimming circuitry or light sensors to reduce glare or casting on adjacent properties. The light intensity will be consistent with state and federal laws.

At the base of the sign, drought tolerant plants will be used within the base planter as required by the sign code.

**ADOPTED PLANS AND ORDINANCES CONSISTENCY**

***General Plan***

The table below outlines the project’s consistency with applicable General Plan Guiding Principles and Implementing Policies:

**Table 1**  
**General Plan Consistency**

<b>Policy</b>	<b>Consistency Finding</b>
<i>2.a-I-3 Encourage economic pursuits which will strengthen and promote development through stability and balance.</i>	<b>Consistent.</b> The proposed development agreement and signs promote and balances economic development by creating a medium for local businesses to advertise and ensures quality identification.
<i>2.a-I-4 Publicize the position of Milpitas as a place to carry on compatible industrial and commercial activities with special emphasis directed toward the advantages of the City’s location to both industrial and commercial use.</i>	<b>Consistent.</b> The proposed development agreement and signs allow the City to position itself for appropriate identification for businesses and projects a positive quality image for Milpitas.
<i>2.a-I-7 Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.</i>	<b>Consistent.</b> The proposed development agreement and signs provide a partnership and provides an opportunity to promote businesses.

***Zoning Ordinance***

The proposed sign is consistent with the zoning ordinance regarding development and operational standards. The design, scale, size and materials of the sign as depicted in the project plans are consistent with the requirements of the sign ordinance. The sign complements the architectural theme of buildings along the I-880 corridor within Milpitas.

The development of the sign will result in a public benefit to the City outweighing any adverse impacts that may be caused by the displays. The proposed display will present a positive image of the City of Milpitas and increase its visibility and presence to the traveling public, thereby informing travelers of amenities and products available in the redevelopment project area. The proposed display will also provide opportunities for advertising or information regarding community events and programs.

### **ENVIRONMENTAL REVIEW**

Staff conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that because the proposal was not entirely covered by the previous Supplemental Environmental Impact Report (EIR), another subsequent EIR be drafted.

The scope of the EIR included the installation of three separate billboards containing a total of six advertising facings, two per structure, along the east side of I-880 south of Dixon Landing Road. While the EIR includes four possible locations where three of the billboards could be located, the signs will only be located two of the locations based on leasing negotiations with property owners and distance limitations imposed by State law. The Notice of Preparation for the EIR was circulated for public review between July 25, 2010 and August 25, 2010. The responsible agency was identified as Caltrans at the time.

The Draft EIR was circulated for public review for 45 days beginning May 18, 2011. The impacts identified in the EIR affect aesthetics at the project and cumulative levels.

The EIR concludes that the three billboards may be perceived as degrading the visual character and quality of the General Plan identified I-880 “gateway” to Milpitas. Implementation of suggested mitigation measures may reduce the impact, but cannot guarantee that the impacts can be reduced to a level of less than significant and therefore, the impact remains “significant and unavoidable”. The EIR also identifies that the electronic displays may cause spill over glare and glow impacts in the vicinity. Suggested mitigation measures, such as built in dimming mechanisms and periodic review will reduce the impact to “less than significant”. Taking into account the previous EIR and that there are other billboards proposed for the Interstate 880 corridor, the cumulative impact on the community visual character would be “significant and unavoidable” because any of the suggested mitigation measures may reduce the impacts of the signs, but it cannot be assured that the impacts would be reduced to a level of less than significant.

Staff notes that while the EIR discusses the project’s billboard structures being 70 feet in height, the proposed project’s billboard heights are 50 and 60 feet respectively, which corresponds closely with Alternative 2 (Lower Height) within the EIR (Chapter 7), thus reducing the anticipated impacts of the project.

The City Council will need to make findings of overriding considerations for any significant and unavoidable impacts of this EIR. Those findings would consider economic benefits that outweigh the physical impacts of the billboard signs.

The project's Final EIR was drafted and responds to the four responders to the EIR. The Final EIR, which includes the Draft EIR, any revisions to the Draft EIR and the response to comments are included at Attachment C.

#### **PUBLIC COMMENT/OUTREACH**

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public.

#### **CONCLUSION**

The City has expressed a desire to allow off-site advertising displays to promote economic development. The project's EIR identifies potential impacts to the environment and statements of overriding consideration are necessary. Specific provisions and development and operational standards ensure compatibility with surrounding uses and acknowledge that the public benefits outweigh adverse impacts. The proposed sign is consistent with the provisions of the sign ordinance.

#### **RECOMMENDATION**

**STAFF RECOMMENDS** that the Planning Commission close the public hearing and adopt Resolution No. 13-004, recommending approval of the project to the City Council.

#### *Attachments:*

- A. Resolution No. 13-004
- B. Project Plans
- C. Final Environmental Impact Report

**IX. PUBLIC HEARING****1. SITE DEVELOPMENT  
PERMIT NO. SD12-  
0007**

**Sheldon Ah Sing, Senior Planner**, presented a request to allow two electronic freeway billboard signs along the east side of I-880, located at 1545 California Circle and 1301 California Circle, zoned Industrial Park with Site and Architectural Overlay. Applicant: Clear Channel Outdoor, Inc.

The purpose of the billboards is to promote economic development, expand communication of community services, and provide a source of revenue for the City. An Environmental Impact Report (EIR) summarized impacts of signs in 2006. A sign program was approved in 2008, and a zoning code amendment to allow off-site billboards was approved in 2010. The project includes a subsequent EIR to address impacts of the four possible locations (two of which are being considered this evening). A Site Development Permit considers the design and compliance with the sign ordinance. There will also be a development agreement to consider revenue sharing with the City.

Staff reviewed the applicant's proposal, which includes two of the four possible locations (options 3 & 4) and the design of the structures. Site option 3: The sign height at the 1301 California Circle location would be 60 ft. Site option 4: The sign height at the 1545 California Circle location would be 50 ft. At site option 4 there is currently a 45 ft high sign which will be replaced by one of the new billboard signs.

These two proposed signs are below the identified sign height in the EIR of 70 ft. The signs would be double panels in a "V" shape, illuminated by LED lighting directed towards the freeway and away from residents' views. The signs need to be located 1,000 ft from each other and both signs are 672 sq. ft.

Some unavoidable impacts are identified. I-880 gateway visual character and cumulative impact on community aesthetic character. There was public outreach with noticing regarding the EIR. Staff heard back from CalTrans and received comments from some residents and from the adjacent Chevron Station.

The City Council has expressed a desire to allow billboards to promote economic development. Conditions of approval and the development agreement assure operational compliance.

*(Recommendation: Adopt Resolution No. 13-004 recommending approval of the project to the City Council.)*

**Staff clarified some concerns of the Commissioners:**

The operator of the sign will have the authority to select the advertising vendors on the sign and negotiate the price. There would be an allocation of time for City community advertising in a standard rotation.

When staff drafted the sign ordinance they researched other cities, ordinances in place and federal regulations to determine what would be safe and feasible for the development of billboard signs. The applicant would need to adhere to the State Outdoor Advertising Act and apply for a permit from CalTrans. Ongoing maintenance of the sign will be the

responsibility of the sign provider, not the City.

Staff stated that the alternative locations are a result of the EIR process, but the two locations presented are the project locations to be evaluated, not the other locations. The height is a result of view sheds and power line limitations. The location of the signs depends on the ability to lease the property as well as meeting the requirements of the sign code and CalTrans. The distance between site options 2 & 3 is less than 1,000 ft. This would preclude using one site or the other.

Of the four possible site options, staff recommends sites 3 & 4 because they are spaced out enough to allow drivers to view the advertisements with enough time and those are the locations proposed by the applicant. The signs have two panels at a “V angle” that would be visible from both northbound and southbound traffic and directed away from residents.

The Council has certified the EIR in 2006 which identified locations of signs. The Council has given direction that there be six signs.

**Commissioner Madnawat** – Would like to recommend the Commission put a condition to limit the operation time of the lighted sign between certain hours. Additionally, he feels that signs should not be so high and is not beneficial.

**Bruce Qualls, representing Clear Channel Outdoor.** Mr. Qualls confirmed that the distance between signs needs to be a minimum of 1,000 ft. The 1,000 ft. regulation is based on one side of the freeway. There will be a rotation of advertisement on the billboards with eight (8) separate advertisements lasting eight (8) seconds each. 64 second cycle of the advertisements.

They ensure the brightness of signs (increase & ambient light) is limited to 0.3 ft candles at less than 250 ft. away, which can be analyzed with a light meter. There are 9 light meters built into the sign that measures the ambient light and adjusts automatically. There is no movement, motion or flashing of the advertisement.

**Commissioner Barbadillo** referred to a traffic safety concern from the Dept of Transportation in the attached letter dated June 2011. They state that the recommendations from the City of Milpitas fall short by saying that it is not a traffic concern. The Department of Transportation state that studies from different agencies indicate that shorter messages are a major traffic safety concern. Commissioner Barbadillo asked if the proposed ad duration of 64 seconds is considered to be a short message.

**Sheldon Ah Sing, Senior Planner** – Stated that the operator of the signs will need to follow the CalTrans outdoor advertising act to be consistent with their regulation and that what is proposed is safe.

#### **Open the Public Hearing:**

**Mr. Sanga, representing Chevron Gas Station on California Circle** – In 2008 this Chevron location requested from the City permission for their own sign, which was denied. The City informed the Chevron station to place their signage on the sign that had been erected on the

Starbucks location. Mr. Sanga feels they are being extorted by the sign owner on the Starbucks property and that they need to have their own separate sign. They are against the proposed new sign and will be seeking legal remedy.

**Chevron Station speaker** expressed concern if the sign at site option #4 next to the Dixon Landing exit will be safe. He feels that drivers will be distracted trying to read the sign as they exit. If the Chevron Station property owner removes their name from this sign program, will the proposed sign be legal?

**Kristen Valus, City of Milpitas resident** – Ms. Valus is not in favor of the proposed billboard signs and she was not in favor of the prior sign program back in 2008. Ms. Valus emailed pictures taken from her residence third floor where the current 45 ft high can be seen. She questions why it is necessary to erect an even higher and bigger sign, and why the signs can't be placed on the other side of the freeway where there are no residences. She feels the applicant is not concerned about the needs of the residents that will be able to see the light glow from the signs.

**Kelly Alexander City of Milpitas resident** – Mr. Alexander drives the 237 corridor every day and he will be impacted by the light from the proposed signs. Even though studies may say that certain light levels are safe, does not mean that it should be done. The light is annoying to drivers and the City should not make this section of the freeway like other highway areas.

**Motion** to close the public hearing.

M/S: Sandhu / Ciardella

AYES: 5

NOES: 0

ABSENT: 2 (Mohsin, Luk)

ABSTAIN: 0

**Clarifications / Deliberations:**

**Sheldon Ah Sing, Senior Planner** – The Commission will make their recommendation on the proposal for sites 3 & 4. The City Council will make the final decision on the selected alternative sites. At that time they will have the development agreement. A notice was sent to CalTrans regarding the final EIR study from the state; and as yet they have not responded to us. Staff briefly went over the EIR process and approval. The land where the signs will be erected is owned by Westcore Greenfield and Al Pak CA. The Chevron Station may apply to withdraw from their current sign program, and apply for their own sign, which would be based on the City sign ordinance.

**Commissioner Barbadillo** – Addressed the concerns of the two Milpitas

residents and provided information on ways they could seek relief.

**Commissioner Madnawat** – Feels that the Commission can approve both sign, but only allow one sign be erected first, with a nighttime curfew, get public feedback and observe if the sign impacts traffic or accidents. Thereafter, the second sign can be erected if there is no impact. He also feels that the signs should not be so close together.

**Commissioner Barbadillo** – Also feels that the signs should be approved one at a time and that the public should be more informed about what will take place.

**Chair Mandal** – If we approve the signs as a package, the two signs would have consistency. Maybe we could consider site options 1 & 3 in order to have more distance between signs. It would be difficult placing restricted hours of sign operation. He is concerned about the public concerns heard tonight, but also concerned about business needs to have a sign.

**Commissioner Ciardella** – Would like to adopt the resolution as stated, adding that City Staff to work with the applicant and owner of the property to work something out for the Chevron Station sign problem.

**Motion** to adopt Resolution No. 13-004 recommending approval of the project to the City Council with City staff to work with the applicant.

M/S: Ciardella / Sandhu

AYES: 3 (Ciardella, Mandal, Sandhu)

NOES: 1 (Barbadillo)

ABSENT: 2 (Mohsin, Luk)

ABSTAIN: 1 (Madnawat)

# MEMORANDUM

*Department of Planning and Neighborhood Services*

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**To:** Planning Commission  
**From:** Sheldon S. Ah Sing, Senior Planner  
**Subject:** **Item IX-1, Freeway Billboard Signs**  
**Date:** January 23, 2013

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The correspondence below was sent to Planning Staff today:

**From:** Kristen Valus [mailto:klvalus@yahoo.com]  
**Sent:** Tuesday, January 22, 2013 7:58 PM  
**To:** Joann DeHerrera  
**Cc:** Kelly Alexander  
**Subject:** 1/23/13 Public Hearing re: Billboard comments

To Whom It May Concern:

We are writing in opposition of the request by Clear Channel Outdoor to allow two freeway billboard signs on the east side of 880 at 1545 and 1301 California Circle. We live at 464 Cascadita Terrace and our bedroom and living room windows face the direction of the freeway.

We opposed the billboards for several reasons. First, the freeway corridor is relatively free of signage and has no billboards in this area. It is a notable difference from the area along 880 just south of us in San Jose which has billboard after billboard and is very unsightly. What is to stop other companies following suit wanting billboards along our section of freeway? What will these billboards be advertising? Will they be lighted? How high will they be? Please be thoughtful about the can of worms you are opening up for minor additional revenue to the city as well as furthering the industrial "look" of our neighborhood.

We are concerned that the needs of the neighborhoods which are extremely close to the light industrial areas around California Circle are not being taken into consideration. We have already endured Solyndra's building being abandoned perhaps left with industrial waste, extremely bright lights in the Solyndra parking lots that shine all night into our bedroom, several very large churches adding major structures in the back of their property (which faces our neighborhood) and now additional signage.

Several years ago, we also objected to the signage request by the 1545 California Circle property but the sign was built and remains empty except for Starbucks. Our concerns at the time were that this signage would be tall enough to be seen from our property but were told by the engineers and the developers that that would be impossible. Well, we CAN see it from our property, out of our bedroom windows and it is lighted and very annoying! We do not want any more signage on that property that can be seen, especially ugly billboards!

If this request is approved to go to the City Council as the Planning Commission has indicated they are likely to, we request that great care is taken to place these billboards where they cannot be seen from the neighborhoods at all and they are are not lighted!

We are sorry we cannot attend the meeting tonight to express our opposition in person.

Mr. Kelly Alexander  
464 Cascadita Terrace  
415-867-9673

## RESOLUTION NO. \_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADDING A RECREATION PROGRAMS AND SERVICES TRANSACTION FEE COVERING THE COST OF IMPLEMENTING RECREATION SERVICES REGISTRATION SOFTWARE**

**WHEREAS**, pursuant to Milpitas Municipal Code Section IV-3-2.00, the City Manager is directed to calculate and propose adjustments to fees and charges imposed by various City of Milpitas departments to assure recovery of all or part of costs “reasonably borne” in providing the facilities, products or services provided by said City departments; and

**WHEREAS**, modest increases are proposed herein and being passed through by the City’s contracted provider, Active Network, directly to the recreation services participant and the City is not adding additional charges to those pass-through increases; and

**WHEREAS**, the City has conducted a diligent service and cost analysis related to the provision of recreation customer services registration, the costs reasonably borne by the City in providing those services, the beneficiaries of those services, and the revenues produced by those paying fees for such services; and

**WHEREAS**, the proposed added Transaction Fee of 1.5.% is a de minimus addition to the overall fees and does not materially affect compliance with the percentage limitations of Milpitas Municipal Code Section IV-3-4.00 (Listing Percentage of “Costs Reasonably Borne” to Be Recovered for Various Service Centers); and

**WHEREAS**, the proposed Transaction Fee shall ensure that general fund monies are not unfairly and inequitably used to subsidize certain services and facilities usage to the detriment of other vital and important public needs; and

**WHEREAS**, pursuant to Government Code Sections 66016, 66017, and 66018, the specific fees to be charged for certain services must be adopted by the City Council by ordinance or resolution, after providing notice and holding a public hearing; and

**WHEREAS**, a notice of public hearing has been provided per California Government Code Sections 6062a and 66016, and the required public hearing was held on April 2, 2013, at which time oral and written presentations were made and received; and

**WHEREAS**, an update of certain fees and charges to be paid by those requesting such services needs to be adopted so that the City might ensure that fees for services rendered do not exceed the cost of providing the services for which they are imposed; and

**WHEREAS**, the proposed fee update is supported by records and calculations based upon past performance; and

**WHEREAS**, the Administrative Report regarding this item has been made available to the public and has been made an official part of the record and justification for the fees proposed in this Resolution; and

**WHEREAS**, the cost recovery of vendor charges through the fees authorized herein are dependent upon City Manager execution of an agreement with vendor Active Network providing for the installation and utilization of registration services software enabling the application of a 1.5% fee on all Recreation Programs and Services registered through that Active Network system; and

**WHEREAS**, the nature of the fees and the total amounts thereof, including the added 1.5% Transaction Fee, which are described and listed in Exhibit A, are hereby determined to be reasonable in that the amounts thereof are not in excess of the estimated reasonable costs of providing the services for which the fees are proposed to be charged. The basis upon which this finding is made is set forth in the Staff Report and any attachments submitted

for consideration of this Resolution at the April 2, 2013 public hearing of the City Council and the supporting documentation kept on file at the Office of the City Clerk, the latter of which was made available at least ten (10) days in advance of the April 2, 2013 City Council public hearing; and

**WHEREAS**, all requirements of California Government Code Sections 66016, 66017, and 66018 are hereby found to have been complied with; and

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The Transaction Fee of 1.5% shall be assessed and added to all existing fees for programs and services listed in Exhibit A and the total fees after such addition are hereby determined to not exceed the estimated reasonable costs of providing said services.
3. If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Resolution.
4. The Recreation Programs and Services Transaction Fee shall become effective on January 1, 2014 or at such other time as the ActiveNet software is put in operation.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote:

AYES:  
 NOES:  
 ABSENT:  
 ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

## CITY OF MILPITAS – RECREATION MASTER FEE SCHEDULE

**\* All fees, as listed in the Recreation Master Fee Schedule, will be subject to a 1.5% Transaction Fee.**

DEPARTMENT OR DIVISION	DESCRIPTION OF FEE, RATE OR CHARGE	CURRENT FEE and FEE STRUCTURE	OBJECTIVE 1= Recover Cost 2= User Fee 3= Penalty 4= Tax	DATE FEE LAST CHANGED
Recreation	GENERAL RENTAL INFORMATION	See below	1,2	Res No. 7426 7/6/04

### GENERAL RENTAL INFORMATION

- Rental facilities may be viewed during regular business hours, by appointment only, provided no other functions are scheduled. To make an appointment please call the desired rental facility.
- No phone, mail or fax reservations are accepted. Rental permits available for  
Community Center, City Hall, Sal Cracolice, Special Events & Equipment, Higuera Adobe building & Parks: Community Center, 457 East Calaveras Blvd., Monday-Thursday, 8:00 am to 6:00 pm, Friday, 8:00 am to 5:00 pm., 408-586-3210.  
Barbara Lee Senior Center, 40 N. Milpitas Blvd. Monday - Friday, 9:00 am to 4:00 pm., 408.586.3400.  
Sports Center, Sports Fields and Teen Center: Sports Center, 1325 E. Calaveras Blvd., Monday - Thursday, 6:00 am to 9:00 pm, Fridays, 6:00 am to 2:00 pm, Saturday, 8:00 am to 1:00 pm., 408-586-3225.  
Milpitas Police Department Community Room: Police Department, 1275 N. Milpitas Blvd., Monday-Friday, 8:00 am to 5:00 pm., 408-586-2400, resident use only.  
  
 Entertainment Event permits must be obtained in person at the Planning Department office, located at 455 E. Calaveras Blvd., Monday - Friday, 8:00 am to 5:00 pm.
- Facilities may be reserved for use anytime from 7:00 am to 12 midnight with the exception of the Police Department Community Room, which is available for residents only from 8:00 am to 11:00 pm. Rental fees are charged from the time you or your caterers, florists, etc. enter the facility until your function is over. When planning your rental times, be sure to include setup time for decorating, caterers, florist, etc. Please note: the Barbara Lee Senior Center is not available Monday – Friday, 9:00 a.m. – 4:00 p.m.

### RESERVATIONS TIMELINE

- The City of Milpitas must receive a Facility Use Application, a cleaning & damage deposit and an application fee before any function may be scheduled (at the appropriate location above). All fees must be paid in the form of a cashier's check, money order, cash or VISA/MC. Cashier's check or money orders must be payable to: City of Milpitas. No personal checks will be accepted. Final rental fees, set-up diagram, proof of insurance (if applicable) are due 30 days prior to the rental date and must be paid in person.
- Reservations can be made according to these timelines: Milpitas Residents – (two forms of proof of residency required, photo ID & current utility bill) Up to 1 year in advance; Non Residents – Up to 6 months in advance; Resident Non-Profits, See guidelines below.

### RESIDENT NON-PROFITS/ORGANIZATION TIMELINE (Applies only to meeting room, does not include Auditorium)

- Organizations may reserve up to three dates on one application.** Resident non-profits must submit, every January, the following:
- A current roster with 51% or more Milpitas Residents and a letter verifying current non-profit status.
  - A letter listing two (2) individuals authorized to make reservations, changes or cancellations.
  - A mission statement of the organizations purpose.

#### For Non-Profit Meetings In

January-March  
 April-June  
 July-September  
 October-December

#### Non -Profit Application Accepted

December 1  
 March 1  
 June 1  
 September 1

## CITY OF MILPITAS – MASTER FEE SCHEDULE

DEPARTMENT OR DIVISION	DESCRIPTION OF FEE, RATE OR CHARGE	CURRENT FEE and FEE STRUCTURE	OBJECTIVE 1= Recover Cost 2= User Fee 3= Penalty 4= Tax	DATE FEE LAST CHANGED
Recreation	FACILITY USE RULES AND REGULATIONS FOR INDOOR & OUTDOOR FACILITIES, continued	See below	1,2	Res No. 7426 7/6/04

The purchase cost of special event insurance from the City per day according to classification of hazard is as follows:

Please Note: All permits requiring insurance will be assessed a \$15 insurance processing fee.

### TENANT/USER EVENT RATES PER DAY\*

	Hazard Class I	Hazard Class II	Hazard Class III
Attendance	Premium	Premium	Premium
1-100	\$ 83.32	\$122.46	\$194.42
101-500	\$116.15	\$213.36	\$342.13
501-1500	\$174.32	\$252.50	\$451.97
1501-3000	\$225.98	\$420.41	\$710.78
3001-5000	\$342.13	\$536.56	\$872.38
Add Liquor Liability if applicable	65.65	Must obtain company's prior approval for liquor liability	Must obtain company's prior approval for liquor liability

\*fees subject to change

### EXAMPLE OF PREMIUM CALCULATION:

Wedding with 300 serving alcohol: Hazard Class I Total Attendance: 300	Attendance Category: 101-500	Total Premium: \$116.15 + \$65.65 = \$181.80
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### TENANT/USER EVENT RISK CLASSIFICATIONS

Hazard Class I	Hazard Class II	Hazard Class III
Plays	Animal Training	**Baseball
Bazaars	* Block Parties/Street Closures	* Carnivals (no rides)
Gymnastic Competitions	* Concerts Outdoor (under 1,500)	**Karate Meets
* Concerts indoor (under 1,500)	Dance Parties	**Softball
Fishing Events	Dog Shows	Animal Acts/Shows
Private parties/meetings serving alcohol	Food Concessions	Zoos

**Notes:**

- \* Requires prior insurance company's approval dependent upon the number of attendance and/or liquor
- \*\* Athletic Event's coverage requires prior company's approval and signed waiver(s) by participant.  
The City reserves the right to classify any other non-listed event.

## CITY OF MILPITAS – MASTER FEE SCHEDULE

DEPARTMENT OR DIVISION	DESCRIPTION OF FEE, RATE OR CHARGE	CURRENT FEE and FEE STRUCTURE	OBJECTIVE 1= Recover Cost 2= User Fee 3= Penalty 4= Tax	DATE FEE LAST CHANGED
Recreation	SPECIAL EVENT RULES AND REGULATIONS, continued	See below	1,2	Res No. 7426 7/6/04

### V. EQUIPMENT RENTAL

- 5.1 A Special Events Application must be completed and submitted to Parks and Recreation Services Customer Services staff to request the use of any City equipment and/or supplies at least two (2) months prior to the organizations/groups event.
- 5.2 A deposit is required of all rented equipment and is refundable upon the return of the equipment provided no damage has occurred to any of the items. Milpitas Parks and Recreation Services will review the request and upon approval or denial a letter will be mailed to the address listed on the Special Event application, which will include the necessary rental fee. All equipment availability is based on Milpitas Parks and Recreation Services events schedule. (See below for fee schedule)
- 5.3 Special detailed inspections should be well documented for the mobile stage and related equipment, stage rigging, etc. Special attention should be paid to paths and walkways in and around facilities and sports fields.
- 5.4 All outdoor equipment (i.e. bleachers, picnic tables, barbecue pits, etc.) are not moveable and shall remain in designated locations.
- 5.5 Additional equipment (i.e. bounce houses, chairs, additional seating, staging/platforms, etc.) must be noted on the application and pre approved by staff. All additional event features must be obtained independently by the applicant, including rental costs, fees, insurance and delivery.
- 5.6 Equipment Fee Schedule:

	<u>Fee</u>	<u>Deposit (refundable)</u>
*Mobile Stage	Actual Cost of towing** (according to fee schedule)	\$1,000/day
White Fencing	N/A	
PA System	N/A	
Field Lights	N/A	
Platforms	N/A	

Please Note:

The rental fee of equipment/supplies NOT listed is to the discretion of Parks and Recreation Services.

N/A = Not Available

\*The Mobile Stage is not allowed outside Milpitas City limits.

\*\*Plus 2 hours of staff time

## CITY OF MILPITAS – MASTER FEE SCHEDULE

DEPARTMENT OR DIVISION	DESCRIPTION OF FEE, RATE OR CHARGE	CURRENT FEE and FEE STRUCTURE	OBJECTIVE <small>1= Recover Cost 2= User Fee 3= Penalty 4= Tax</small>	DATE FEE LAST CHANGED
Recreation	Facility Fees	See below	1,2	Res No. 7426 7/6/04

<b>City Hall Building Plaza and Grounds</b>				
Facility / Service	<i>Milpitas Schools, Chamber, and Gov Agencies (Priority II)</i>	<i>Resident Non- Profits (Priority III)</i>	<i>Milpitas Residents (Priority IV)</i>	<i>Non- Residents (Priority V)</i>
Reservations Accepted	9 months to proposed date	9 months to proposed date	1 year to proposed date	6 months to proposed date
Rental Damage Deposits: Council Chambers	None	\$250.00	\$500.00	\$1,000.00
Rental Damage Deposits: Other rooms/outdoor areas	None	\$150.00	\$500.00	\$600.00
Application Fee (non-refundable)	\$20 per application	\$20 per application	\$20 per application	\$20 per application
Insurance Processing Fee	\$15.00	\$15.00	\$15.00	\$15.00
<b>Council Chambers – no food/drink allowed in room</b>				
Council Chambers (2 hr. min)/160 capacity with fixed seating	No Fee	\$75.00/hr	\$250.00/hr	\$1,000.00/hr
<b>Rotunda Area &amp; Committee Room</b>				
Rotunda Area (2 hr. min) 284 capacity	No Fee	\$37.50/hr	\$75.00/hr	\$1,000.00/hr
Committee Room (2 hr. min) 55 capacity without tables	No Fee	\$37.50/hr	\$75.00/hr	\$150.00/hr
<b>Patios – no tables and chairs are provided</b>				
City Council 2 <sup>nd</sup> Floor Balcony/Patio (2 hr. min) 55 capacity	No Fee	\$25.00/hr	\$50.00/hr	\$100.00/hr
Front Patio (2 hr. min) 49 capacity	No Fee	\$25.00/hr	\$50.00/hr	\$100.00/hr
Back Patio (2 hr. min) 180 capacity	No Fee	\$37.50/hr	\$75.00/hr	\$150.00/hr
<b>Outdoor Areas (no tents, chairs, or structures allowed on the grass)</b>				
Flag Plaza Area/Grass Amphitheatre (2 hr. min) 230 capacity	No Fee	\$37.50/hr	\$75.00/hr	\$150.00/hr
<b>Personnel Costs (per person)</b>				
Information Services Staff (required for Council Chambers)	\$50.00/hr	\$50.00/hr	\$50.00/hr	\$50.00/hr
Maintenance Staff	\$50.00/hr	\$50.00/hr	\$50.00/hr	\$50.00/hr

NOTE: All City Hall facility rentals require City Staff. The type and number of staff (Maintenance, Information Services, Building Maintenance, etc) will be determined by the City Manager (or his/her authorized representative) on a per event basis. Personnel costs are based on over-time + benefits.

## CITY OF MILPITAS – MASTER FEE SCHEDULE

DEPARTMENT OR DIVISION	DESCRIPTION OF FEE, RATE OR CHARGE	CURRENT FEE and FEE STRUCTURE	OBJECTIVE 1= Recover Cost 2= User Fee 3= Penalty 4= Tax	DATE FEE LAST CHANGED
Recreation	Facility Fees, continued	See below	1,2	Res No. 7426 7/6/04

<b>Community Center</b>				
Facility / Service	Milpitas Schools, Chamber, and Gov Agencies (Priority II)	Resident Non- Profits (Priority III)	Milpitas Residents (Priority IV)	Non- Residents (Priority V)
Reservations Accepted	1year to proposed date	1year to proposed date	1year to proposed date	6 months to proposed date
Rental Deposits: Community Hall	None	\$500.00	\$500.00	\$500.00
Rental Deposits: All other rooms	None	\$75.00	\$100.00	\$150.00
Auditorium (3 hr minimum)	No fee	\$50.00/hr	\$115.00/hr	\$145.00/hr
Conference Room (2 hr minimum)	No fee	\$20.00/hr	\$50.00/hr	\$73.00/hr
Dance Studio/ Craft Classroom (2 hr minimum)	No fee	\$14.50/hr	\$21.50/hr	\$28.00/hr
Facility Attendant Fees	\$30.00/hr	\$30.00/hr	\$30.00/hr	\$60.00/hr
Piano	No fee	\$17.50 / day	\$17.50 / day	\$35.00 / day
Application Fee (non-refundable)	\$20.00 / application	\$20.00 / application	\$20.00 / application	\$20.00 / application
Mobile Stage				
<ul style="list-style-type: none"> <li>• Reservation</li> </ul>	1month to proposed date	1month to proposed date	1month to proposed date	Not Available
<ul style="list-style-type: none"> <li>• Deposit</li> </ul>	\$1,000	\$1,000	\$1,000	Not Available
<ul style="list-style-type: none"> <li>• Rental (Actual Cost of towing plus 2 hours of staff time) (within City of Milpitas city limits, maximum 8 hours of use)</li> </ul>	\$Actual cost of towing plus 2 hours of staff time*	\$Actual cost of towing plus 2 hours of staff time*	\$Actual cost of towing plus 2 hours of staff time*	Not Available

- At least 51% of the non-profit agency's members must be Milpitas residents.
- \*\*Facility attendant fee included

<b>DEPARTMENT OR DIVISION</b>	<b>DESCRIPTION OF FEE, RATE OR CHARGE</b>	<b>CURRENT FEE and FEE STRUCTURE</b>	<b>OBJECTIVE</b> 1= Recover Cost 2= User Fee 3= Penalty 4= Tax	<b>DATE FEE LAST CHANGED</b>
<b>Recreation</b>	Facility Fees, continued	See below	1,2	Res No. 7426 7/6/04

<b>Teen Center</b>				
<i>Facility / Service</i>	<i>Milpitas Schools, Chamber, and Gov Agencies (Priority II)</i>	<i>Resident Non- Profits (Priority III)</i>	<i>Milpitas Residents (Priority IV)</i>	<i>Non- Residents (Priority V)</i>
Reservations Accepted	90 days to proposed date	90 days to proposed date	1 year to proposed date	6 months to proposed date
Rental Deposits	None	\$500.00	\$500.00	\$500.00
Large gathering room w/kitchen (2 hr minimum)	No fee	\$28.00/hr	\$50.00/hr	\$60.00/hr
Facility Attendant Fees (per attendant)	\$30.00/hr	\$30.00/hr	\$30.00/hr	\$60.00/hr
Application Fee (non-refundable)	\$20.00 / application	\$20.00 / application	\$20.00 / application	\$20.00 / application

<b>Sal Cracolice Building</b>				
<i>Facility / Service</i>	<i>Milpitas Schools, Chamber, and Gov Agencies (Priority II)</i>	<i>Resident Non- Profits (Priority III)</i>	<i>Milpitas Residents (Priority IV)</i>	<i>Non- Residents (Priority V)</i>
Reservations Accepted	9 months to proposed date	9 months to proposed date	1 year to proposed date	6 months to proposed date
Rental Deposits: Auditorium	None	\$500.00	\$500.00	\$500.00
Rental Deposits: Classrooms	None	\$75.00	\$100.00	\$150.00
Auditorium (3 hr minimum)	No fee	\$28.00/hr	\$70.00/hr	\$120.00/hr
Small Meeting Room (2 hr. minimum)	No fee	\$14.50/hr	\$25.00/hr	\$35.00/hr
Facility Attendant Fees (per attendant)	\$30.00/hr	\$30.00/hr	\$30.00/hr	\$60.00/hr
Application Fee (non-refundable)	\$20.00 / application	\$20.00 / application	\$20.00 / application	\$20.00 / application

## CITY OF MILPITAS – MASTER FEE SCHEDULE

DEPARTMENT OR DIVISION	DESCRIPTION OF FEE, RATE OR CHARGE	CURRENT FEE and FEE STRUCTURE	OBJECTIVE 1= Recover Cost 2= User Fee 3= Penalty 4= Tax	DATE FEE LAST CHANGED
Recreation	Facility Fees, continued	See below	1,2	Res No. 7426 7/6/04

<b>Milpitas Sports Center</b>				
Facility/Sports Fields / Service	<i>Milpitas Schools, Chamber, and Gov Agencies (Priority II)</i>	<i>Resident Non- Profits (Priority III)</i>	<i>Milpitas Residents (Priority IV)</i>	<i>Non- Residents (Priority V)</i>
Reservations Accepted	90 days to proposed date	90 days to proposed date	90 days to proposed date	60 days to proposed date
Rental Deposits	None	\$500.00	\$500.00	\$500.00
Large Gymnasium (3 hr minimum)	\$55.00	\$50.00	\$50.00	\$100.00
Training Pool (2hr minimum)	No fee	\$50.00/hr + 2 guards	\$50.00/hr + 2 guards	\$100.00/hr + 2 guards
Yard Pool (2 hr minimum)	No fee	\$60.00/hr + 2 guards	\$60.00/hr + 2 guards	\$120.00/hr + 2 guards
Meter Pool (2 hr minimum)	No fee	\$70.00/hr + 2 guards	\$60.00/hr + 2 guards	\$140.00/hr + 2 guards
Tiny Tot Pool (2 hr minimum)	No fee	\$40.00/hr + 2 guards	\$40.00/hr + 2 guards	\$80.00/hr + 2 guards
Football / Soccer Field w/o lights (2 hr min)	No fee	\$30.00/hr	\$30.00/hr	\$60.00/hr*
Football/Soccer Field w/lights (2 hr min)	No Fee	\$40.00/hr	\$40.00/hr	\$80.00/hr
Softball / Baseball Field w/o lights (2hr min)	No fee	\$20.00/hr	\$20.00/hr	\$40.00/hr*
Softball / Baseball Field w/ lights (2 hr min)	No fee	\$30.00/hr	\$30.00/hr	\$6 0.00/hr*
Facility Attendant / Scorekeeper (per attendant)	\$30.00/hr	\$30.00/hr	\$30.00/hr	\$60.00/hr*
Lifeguard Fees (per Lifeguard)	\$15.00/hr	\$15.00/hr	\$15.00/hr	\$30.00/hr
Application Fee (non-refundable)	\$20.00 / application	\$20.00 / application	\$20.00 / application	\$20.00 / Application

\* At least 51% of the non-profit agency's members must be Milpitas residents.

## CITY OF MILPITAS – MASTER FEE SCHEDULE

DEPARTMENT OR DIVISION	DESCRIPTION OF FEE, RATE OR CHARGE	CURRENT FEE and FEE STRUCTURE	OBJECTIVE 1= Recover Cost 2= User Fee 3= Penalty 4= Tax	DATE FEE LAST CHANGED
Recreation	Facility Fees, continued	See below	1,2	Res No. 7426 7/6/04

<b>Picnic Areas</b>				
Facility/Fields / Service	<i>Milpitas Schools, Chamber, and Gov Agencies (Priority II)</i>	<i>Resident Non-Profits (Priority III)</i>	<i>Milpitas Residents (Priority IV)</i>	<i>Non- Residents (Priority V)</i>
Reservations Accepted	90 days to proposed date	90 days to proposed date	1 year to proposed date	6 months to proposed date
Small Parks with Restrooms Picnic Area – 50 or less capacity Peak Hours (Friday – Sunday)	No fee	\$60/day/area	\$60/day/area	\$90/day/area
Small Parks with Restrooms Picnic Area – 50 or Less Capacity Non Peak Hours (Monday - Thursday)	No fee	\$40/day/area	\$40/day/area	\$70/day/area
Small Parks Without Restrooms Monday – Sunday)	No fee	\$40/day/area	\$40/day/area	\$54/day/area
Large Parks – More than 50 capacity Peak Hours (Friday – Sunday)	No fee	\$120/day/area	\$120/day/area	\$160/day/area
Large Parks More than 50 capacity Non Peak Hours (Monday – Thursday)	No fee	\$80/day/area	\$80/day/area	\$120/day/area
Rental Deposit: Large Picnic Areas	\$250	\$250	\$250	\$250
Softball Field w/ lights (2 hr min)	No fee	\$9.00/hr	\$30.00/hr	\$60.00/hr
Attendant Fee (per attendant)	\$30.00/hr	\$30.00/hr	\$30.00/hr	\$60.00/hr*
Application Fee (non-refundable)	\$20.00 / application	\$20.00 / application	\$20.00 / application	\$20.00 / application

<b>Senior Center Building</b>				
Facility / Service	<i>Milpitas Schools, Chamber, and Gov Agencies (Priority II)</i>	<i>Resident Non- Profits (Priority III)</i>	<i>Milpitas Residents (Priority IV)</i>	<i>Non- Residents (Priority V)</i>
Reservations Accepted	Not Available	90 days to proposed date	1 year to proposed date	6 months to proposed date
Rental Deposits: Auditorium	Not Available	\$1,000.00	\$1,000.00	\$1,000.00
Rental Deposits: Classrooms	Not Available	\$200.00	\$200.00	\$200.00
Community Room Auditorium (3 hr min)	Not Available	\$110.00/hr	\$220.00/hr	\$320.00/hr
Classroom 140 and 141 (Full)	Not Available	\$35.00/hr	\$70.00/hr	\$90.00/hr
Classroom 140 or 141 (Half)	Not Available	\$17.50/hr	\$35.00/hr	\$55.00/hr
Facility Attendant Fees (per attendant)	Not Available	\$30.00/hr	\$30.00/hr	\$60.00/hr
Application Fee (non-refundable)	\$20.00 / application	\$20.00 / application	\$20.00 / application	\$20.00 / application

\* At least 51% of the non-profit agency's members must be Milpitas residents.

## CITY OF MILPITAS – MASTER FEE SCHEDULE

<i>DEPARTMENT OR DIVISION</i>	<i>DESCRIPTION OF FEE, RATE OR CHARGE</i>	<i>CURRENT FEE and FEE STRUCTURE</i>	<i>OBJECTIVE 1= Recover Cost 2= User Fee 3= Penalty 4= Tax</i>	<i>DATE FEE LAST CHANGED</i>
<b>Recreation</b>	Facility Fees, continued	See below	1,2	Res No. 7426 7/6/04

<b>Higuera Adobe</b>				
<i>Facility/Fields / Service</i>	<i>Milpitas Schools, Chamber, and Gov Agencies (Priority II)</i>	<i>Resident Non- Profits (Priority III)</i>	<i>Milpitas Residents (Priority IV)</i>	<i>Non- Residents (Priority V)</i>
Reservations Accepted	90 days to proposed date	90 days to proposed date	1 year to proposed date	6 months to proposed date
Rental Deposits	None	\$500.00	\$500.00	\$500.00
Auditorium	No fee	\$15.50/hr	\$50.00/hr	\$72.50/hr
Facility Attendant Fees (per attendant)	\$30.00/hr	\$30.00/hr	\$30.00/hr	\$60.00/hr
Application Fee (non-refundable)	\$20.00 / application	\$20.00 / application	\$20.00 / application	\$20.00 / application

<b>Tournament Field</b>				
<i>Facility / Service</i>	<i>Milpitas Schools, Chamber, and Gov Agencies (Priority II)</i>	<i>Resident Non- Profits (Priority III)</i>	<i>Milpitas Residents (Priority IV)</i>	<i>Non- Residents (Priority V)</i>
Tennis Court Reservations (per court)	No fee	\$8.00/hr	\$8.00/hr	\$12.00/hr
Tennis Court Lights	No fee	\$10.00/hr	\$10.00/hr	\$14.00/hr
Application Fee (non-refundable)	\$20.00 / application	\$20.00 / application	\$20.00 / application	\$20.00 / application

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## CITY OF MILPITAS – MASTER FEE SCHEDULE

<i>DEPARTMENT OR DIVISION</i>	<i>DESCRIPTION OF FEE, RATE OR CHARGE</i>	<i>CURRENT FEE and FEE STRUCTURE</i>	<i>OBJECTIVE 1= Recover Cost 2= User Fee 3= Penalty 4= Tax</i>	<i>DATE FEE LAST CHANGED</i>
<b>Recreation</b>	Facility Fees, continued	See below	1,2	Res No. 7426 7/6/04

<b>Festival Rental Fees</b>				
<i>Facility/Fields / Service</i>	<i>Milpitas Schools, Chamber, and Gov Agencies (Priority II)</i>	<i>Resident Non- Profits (Priority III)</i>	<i>Milpitas Residents (Priority IV)</i>	<i>Non- Residents (Priority V)</i>
Football Field / Open Space Fee w/o lights	No fee	\$500.00 / day	\$500.00 / day	\$500.00 / day
Staff Fees	\$30.00/hr	\$30.00/hr	\$30.00/hr	\$60.00/hr
Application Fee (non-refundable)	\$20.00 /appli-cation	\$20.00 / application	\$20.00 / application	\$20.00 / application

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## CITY OF MILPITAS – MASTER FEE SCHEDULE

DEPARTMENT OR DIVISION	DESCRIPTION OF FEE, RATE OR CHARGE		CURRENT FEE and FEE STRUCTURE	OBJECTIVE 1= Recover Cost 2= User Fee 3= Penalty 4= Tax	DATE FEE LAST CHANGED
<b>Recreation</b>		Fitness Passes – Visit Books	5 uses: \$15 10 uses: \$30 15 uses: \$45 20 uses: \$60 Drop-in fee: \$5 Annual Non-resident fee: \$50/year* Valid 1 year from date purchased	2	Mar 03 *Res. 8088 5/10/11 (non resident fee)
		Adult Sports Programs	Time & Materials (within the policy ranges established by the Council)	1,2	Res 6449 7/18/95
		Softball League (full season)	\$500 per team + \$10 per non resident/season	2	Res. 8088 5/10/11
		Basketball League (full season)	\$500 per team + \$10 per non resident/season	2	Res. 8088 5/10/11
		Youth Sports Programs	Time & Materials (within the policy ranges established by the Council)	1,2	Res 6449 7/18/95
		Youth Sports User Fee	\$10/player/season	1,2	Res. 8008 5/10/11
		Youth Sports Camps	Negotiated with instructor	2	Mar 03
		Adult/Youth Recreation Classes Varies by Instructor <ul style="list-style-type: none"> <li>• 75/25 split – Golf, Tennis *</li> <li>• 70/30 split</li> <li>• 65/35 split</li> <li>• Hourly per class/student</li> </ul> Recreation retains lower amount of split.	Fee negotiated by City staff with instructor for competitive rates	2	

## CITY OF MILPITAS – MASTER FEE SCHEDULE

DEPARTMENT OR DIVISION	DESCRIPTION OF FEE, RATE OR CHARGE	CURRENT FEE and FEE STRUCTURE	OBJECTIVE 1= Recover Cost 2= User Fee 3= Penalty 4= Tax	DATE FEE LAST CHANGED
<b>Recreation</b>	Trips	Actual cost to City + Trip Admin Fee	1,2	Dec 91
	Private Contract Admin Fee	\$15/person	2	Dec 91
	Adult Trip Admin Fee	\$10/person	2	Dec 91
	Youth Trip Admin Fee	\$5/person	2	Dec 91
	General Non-resident Fees	\$20/person/class/month program or trip.	2	Mar '07
	Brochure First Class mailing fee (3 per year)	\$5/year	2	Dec 91
	Milpitas Non-resident Senior Citizen Discount (50 years +)	25% off any Senior class or trip	2	Dec 91
	City-wide Events	No charge to the public. Booth participants will range from no charge to time & materials	1,2	Res 6449 7/18/95
	4 <sup>th</sup> of July Entrance Fee	\$2.00/person age 12 and older Free/person under age 12	1,2	Res. 8088 5/10/11
	4 <sup>th</sup> of July Craft Faire space	\$30 per space	2	Dec 91
	4 <sup>th</sup> of July Food Booth (non-profit)	\$125/booth	2	Dec 91
	4 <sup>th</sup> of July Food Booth (profit)	\$275/booth	2	Dec 91
	Recreation Services T-shirt	Actual cost to City + \$7 per shirt	1,2	Dec 91
	Pre-school Program			
	Pre-school Program	\$6.50/hour	2	Mar 03
	Late fee for Pre-school	\$10/10 minutes	3	
	After-school Program – After the Bell			
	After-school Program (After the Bell)	\$7.00/day for residents; \$7.00/day for non-residents with additional \$20/year	2	Res. 8088 5/10/11
Late fee for After-School Programs	\$10/10 minutes	3		
Day Camp (Regular Day)	\$175/week	2	Res. 8088 5/10/11	
Extended Care Day Camp	\$40/week	2	Res. 8088 5/10/11	
<b>Recreation</b>				
	Community Garden Plot			
	Senior residents (50+ years of age \$15.00/year	Resident \$60.00/year	Non-resident \$90.00/year	

## CITY OF MILPITAS – MASTER FEE SCHEDULE

DEPARTMENT OR DIVISION	DESCRIPTION OF FEE, RATE OR CHARGE	CURRENT FEE and FEE STRUCTURE	OBJECTIVE 1= Recover Cost 2= User Fee 3= Penalty 4= Tax	DATE FEE LAST CHANGED
<b>Recreation</b>	Teen Programs	Range from no charge to time & materials	1,2	Res 6449 7/18/95
	Teen Center Events	\$3-\$10	2	
	Teen Center Snacks	\$0.50-\$2.00	2	
	Teen Center Drop-in Programs	\$2/visit	2	

<b>Recreation</b>	Aquatics Program			
	Recreational Swim	\$2 per person	2	Mar 03
	Swimming Lessons Group	\$69.00 Residents \$89.00 Non Residents	2	Res. 8088 5/10/11
	Private Swimming Lessons	\$30/half hour	2	Mar 03
	Parent-tot Drop-in swim pass – 5 visits	\$10 plus \$10 annual non-resident fee if applicable	2	
	Swim Team Support	Time & Materials	1,2	Res 6449 7/18/95
	Monthly Swim Team Fee (Tidal Waves)	See table below	2	Res. 8008 5/10/11

Family Member	Resident	Non-resident
Developmental Group	\$68/month	\$108 per month*
Juniors/Intermediate Group	\$78.00/month	\$118 per month*
Senior Group	\$88.00/month	\$128 per month*

\*Plus yearly \$60 USS registration fee.

\*\* Multiple Child Discount (child must be of the same family): \$10 off 2<sup>nd</sup> child, \$20 off 3<sup>rd</sup> child or more

<b>Recreation</b>	Sports Center Membership Card replacement fee	\$5	2	
	Lost Locker Key	\$20	2	
	Kid Fit	\$2/2 hours	2	
	Open Gym Drop in Use only (no use of locker, shower or fitness center)	\$5/visit	2	

## CITY OF MILPITAS – MASTER FEE SCHEDULE

DEPARTMENT OR DIVISION	DESCRIPTION OF FEE, RATE OR CHARGE		CURRENT FEE and FEE STRUCTURE	OBJECTIVE 1= Recover Cost 2= User Fee 3= Penalty 4= Tax	DATE FEE LAST CHANGED
Recreation		Rainbow Theatre			
		• Cast	\$100 resident/play \$150.00 non-resident/play	2	Res. 8088 5/10/11
		• Tickets Ages 0-12	\$6.00/child	2	Res. 8088 5/10/11
		• Ages 13-17	\$12.00/child	2	Res. 8088 5/10/11
		• 18+	\$12/adult	2	Res. 8088 5/10/11
		• Season Ticket Holder	\$100 (3 shows, reserved seating, and acknowledgement)	2	Res. 8088 5/10/11
		• Costume Fee	\$100.00	2	
		• Picture/CD Fee	\$5.00-10.00	2	
	Costume/Prop Rentals	\$20.00-\$100.00	2		
Recreation		Senior Citizen Programs			
		Senior Citizen Programs-Classes	\$2.00/ - \$4.00/hour	2	Res. 8088 5/10/11
		Senior Citizen Programs-Activity Card	\$12.00 resident \$30.00 non-resident Membership fee	2	Res. 8008 6/15/10
		Senior Citizen Trip Admin Fee	\$5.00-10.00/activity (depending upon trip costs)	2	Res. 8088 5/10/11
		Senior Citizen Trips	Actual cost to city + Trip Admin/Transportation Fee	1,2	Dec 91
		Senior Dances	Free-\$15.00	1,2	
		Misc. Staff-run Programs (e.g., Holiday Dinner, Tea Parties, Cooking Classes, Misc. Activities)	Free-\$15.00	1,2	
		Non Resident Fee	\$10/class	2	Res. 8088 5/10/11
		Senior Center Fitness Access Fee	\$1.50/visit	2	Re. 8088 5/10/11

### Late Fee Policy

For the safety of our participants, it is required that they are picked up on time at the end of each class. Should the participant be picked up late, a \$10 late fee starting one (1) minute after the end of the class will be charged, with an additional \$10 for every ten (10) minutes thereafter. Should the participant not be picked up within thirty (30) minutes at the end of the class the Milpitas Police Department will be contacted.

### Contract Instructor Percentage Splits

The following percentage splits and criteria were implemented for Summer 2007:

- a) 60/40 – All new instructors offering programs in City facilities recruited for Summer 2007 and into the future would be paid at a 60/40 split. This percentage provides us a clear definition of what we need to do to ensure the success of their programs and the benefits they receive by contracting with us. This will require more negotiation with future instructors.
- b) 65/35 – We currently have one instructor at 65/35 split, a large number of instructors at 70/30 and a few at 75/25. Those that are at 70/30 will be renegotiated to 65/35 unless they fit into the criteria outlined in the 70/30 section. After one year, the 65/35 level will be re-evaluated. If the current economic climate improves, contract will be re-negotiated to 70/30.
- c) 70/30 – Majority of current instructors falls under this level. At this level longtime instructors with programs that continually meet the maximum enrollment are recognized for their loyalty and providing outstanding programs.
- d) 75/25 – This level would only be used for “unique programs” that we do not have the ability to offer without the contractor’s facility or equipment. Current examples include the Jensen School for the Performing Arts, Funakoshi Shotokan Karate, Bay Area Golf Learning Center, City Beach Rock Club, Mark Dorcak School of Golf. High-risk programs that require a large amount of additional insurance or overhead could be considered for this level on a case-by-case basis.

**A JOINT RESOLUTION OF THE CITY OF MILPITAS HOUSING AUTHORITY AND THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE APPROVAL OF A LOAN FROM THE HOUSING AUTHORITY TO THE CITY OF MILPITAS FOR THE DEMOLITION OF BUILDINGS AT 1650-1690 AND 1740-1830 McCANDLESS DRIVE**

**WHEREAS**, on February 19, 2013, City Council adopted Resolution No. 8227 delegating the Public Works Director the authority to take emergency action and to allow emergency contracts to be executed without giving notice soliciting competitive bids; and

**WHEREAS**, the City of Milpitas desires to enter into a contract agreement with DR Horton for the demolition of City buildings at 1650-1690 and 1740-1830 McCandless Drive pursuant to the findings stated in Resolution No. 8227; and

**WHEREAS**, the City of Milpitas Housing Authority desires to authorize a loan in the amount of \$621,500.00 to the City of Milpitas to pay for the demolition of said City buildings and the City of Milpitas desires to repay the loan to the Housing Authority with interest at a rate of five percent (5%) upon the City of Milpitas collecting park-in-lieu fee from developers within the Transit Area Specific Plan; and

**WHEREAS**, the City of Milpitas Housing Authority and the City of Milpitas are agreeable to the terms and conditions of said loan in the amount of \$621,500.00 with five percent (5%) interest which shall be paid back to the Milpitas Housing Authority by the City of Milpitas within one year of the date of this Resolution (April 2, 2014).

**NOW, THEREFORE**, the Housing Authority and the City Council of the City of Milpitas hereby find, determine, and resolve as follows:

1. The Authority and the City Council have considered the full record before them, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to them. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The Housing Authority agrees to provide the City of Milpitas with a loan in the amount of \$621,500.00 for the demolition of the above-referenced City buildings on McCandless Drive, subject to the terms and conditions stated hereinabove.
3. The City of Milpitas agrees to repay said loan under the terms and conditions stated hereinabove.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2013\_\_, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, Housing Authority Secretary/City Clerk

\_\_\_\_\_  
Jose S. Esteves, Chair/Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, Housing Authority Counsel/City Attorney

PROJECT NAME	Milpitas	Bidder: Buccaneer Demolition				Bidder: R&B Equipment				Bidder: Gilroy Construction inc.			
TRADE	PROJECT #	Bid Date: 3/5/2013				Bid Date: 2/28/2013				Bid Date: 3/12/2013			
DESCRIPTION	Cost Code	QTY	Unit	Unit Price	Total Price	QTY	Unit	Unit Price	Total Price	QTY	Unit	Unit Price	Total Price
Demolish Site	1520. 25050	1	ls	\$ 521,198.00	\$ 521,198.00	1	ls	\$ 422,500.00	\$ 422,500.00	1	ls	\$ 415,000.00	\$ 415,000.00
Utility Allowance	1520. 25050	1	ls	\$ 75,000.00	\$ 75,000.00	1	ls	\$ 75,000.00	\$ 75,000.00	1	ls	\$ 75,000.00	\$ 75,000.00
Asbestos Removal Allowance	1520. 25050	1	ls	\$ 75,000.00	\$ 75,000.00	1	ls	\$ 75,000.00	\$ 75,000.00	1	ls	\$ 75,000.00	\$ 75,000.00
<b>Sub-Total</b>	<b>1520. 25050</b>			\$ -	\$ 671,198.00			\$ -	\$ 572,500.00			\$ -	\$ 565,000.00
<b>AWARDED TO:</b>													
<b>REASON FOR AWARD:</b>		Notes:				Notes:				Notes:			
<b>APPROVED BY:</b>													
DENNIS HUDSPETH, VP LAND DEVELOPMENT													
<b>DATE:</b>													
Items in red are plug in numbers for items not bid													



March 5, 2013

DR Horton  
6630 Owens Drive  
Pleasanton, CA 94588

Attention: Mr. Daryl Bauman

RE: 1690, 1830 and 1768 McCandless Dr, Milpitas

Dear Mr. Bauman:

Buccaneer Demolition, Inc. is pleased to provide a proposal for the demolition for the above referenced project per site visit on 2/27/13

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#### SITE DEMOLITION SCOPE OF WORK:

1. Mobilize the project with required prevailing wage labor and equipment
2. Remove refrigerant from all air conditioners
3. Remove and properly dispose of all fluorescent light tubes
4. Demolish 3 commercial tilt up buildings
5. Demolish loading docks
6. Demolish all trees on site.
7. Demolish all on site flat work including asphalt parking lot and concrete curbs/walkways
8. Grind asphalt, crush concrete and leave stockpiled on site for use by others
9. Haul all additional debris to an appropriate facility and provide recycling tags to GC

Base Bid Price: \$521,198.00

Add alternate for underground utility demolition and cut/cap: \$75,000.00 allowance

#### QUALIFICATIONS:

1. Others to put in place temporary fences, barricades, dust barriers etc as needed
2. Others to complete disconnection, safe-off and capping of all utilities in such a manner to allow reasonable production by the demolition contractor

3. Temporary power, water, and sanitary facility will be available at site, we will provide a hydrant meter
4. GC to provide sufficient area to crush and stockpile AC and Concrete on site
5. All work to be completed in one mobilization
6. There are assumed to be no basements
7. All buildings are assumed to have foundations no deeper than 3'
8. Asphalt and concrete slabs assumed to be no thicker than 4"

**STANDARD EXCLUSIONS:**

1. All permits, bonds, fees, deposits unless noted otherwise
2. Testing and abatement of hazardous contaminated or asbestos-containing materials, ballasts containing PCBs, Freon, lead paint, hazardous chemicals, fluorescent tubes, or soils unless noted otherwise
3. Salvage and layouts unless noted
4. Clearing and grubbing
5. Removal and/or relocation of under ground utilities, basins & vaults unless noted otherwise
6. Earthwork - excavation, backfilling, compaction and grading unless noted otherwise
7. Removing base rock
8. Removing contaminated soils
9. O.T. or off hours work.
10. Any thing that is not specifically included in the scope of work above

Buccaneer Demolition Inc., as a part of it's performance under this proposal, has the right, at it's option to possess, retain, sell, distribute, recycle, use, or otherwise utilize, all, or a portion, of the salvageable materials, if any, which may result from the work of Buccaneer Demolition on any structures or other fixtures located on the customer's premises as a result of this proposal becoming a sub-contract agreement, unless other arrangements are made in advance of this bid proposal.

Signature Authorizing Acceptance: \_\_\_\_\_

**We Recycle Above Industry Standards**

**PAYMENTS IN FULL NET 30 DAYS NO RETENTIONS  
THIS PROPOSAL IS GOOD FOR 30 DAYS**

All payments shall bear interest at the rate of one and one-half percent (1.5%) per month if not paid when due. In the event any legal action or arbitration is commenced to collect any sums due hereunder the prevailing party in any such proceeding shall be entitled to reasonable attorneys fees and associated costs in addition to any other relief awarded

Sincerely,  
**BUCCANEER DEMOLITION, INC.**



Arturo Ramirez  
Division Manager

2/28/13

D. R. Horton

Atten: Dennis

Re: 1680, 1690, 1768,1788, 1810 & 1830 McCandless Blvd.



Dennis,

R & B Equipment is pleased to submit our proposal to furnish all labor, equipment, materials and supplies necessary to complete the demolition and site clearing on the above referenced project.

Scope:

- 1) Pull BAAQMD permit for demo and clearing.
- 2) Demo and off haul all demo debris and recycle per City requirements.
- 3) Clear site of all trees and vegetation and recycle per City requirements.
- 4) Demo all existing concrete and asphalt and crush onsite to ¾" class 2 spec.
- 5) Remove all underground utilities and cap at limit of demolition.
- 6) Backfill and compact voids left from demolition with on site material so as to be able to stock pile both concrete rubble and ¾" base rock.
- 7) Areas not used for concrete crushing activity to be left open for back fill by others.

Exclude:

- 1) Demo permits.
- 2) Hazardous materials handling or removal.
- 3) Backfill or compaction other than concrete crushing areas.
- 4) Hand picking of roots.
- 5) Utility relocation.
- 6) Removal of stumps in areas of utilities to remain.
- 7) Removal of asphalt with petrimat, if any.
- 8) Retention.

Pricing:

Lump sum demo and clearing .....\$497,500

Includes allowance for underground removal, crushing of approx. 12,500 tons of base rock and the paying of prevailing wage. Thank you for the opportunity to quote this project. Please feel free to contact me if you have any questions regarding this proposal.

Respectfully submitted,

  
Rick Jeffery



**VIA ELECTRONIC MAIL**

Tuesday, March 13, 2012

Dennis Hudspeth  
VP Land Development  
DR Horton, America's Builder  
6630 Owens Drive  
Pleasanton, Ca. 94588  
MB: (925) 575-4228  
PH: (925) 225-7453  
FX: (925) 225-7405  
EM: [DHudspeth@drhorton.com](mailto:DHudspeth@drhorton.com)

**Re: DEMOLITION PROPOSAL**  
**MCCANDLES AT MONTAGUE – MILPITAS, CA**  
**BUILDINGS 1680, 1690, 1768, 1788, 1810 & 1830**

Dear Dennis:

Attached herewith please find a copy of Gilroy Construction, Inc.'s Exhibit A - Proposal for mass demolition and rough grading of City owned Building in Milpitas, CA

We are prepared to start work immediately and we look forward to working with you on this project. If you have any questions or comments please feel free to contact myself directly @ (408) 639-2528 or Vince Giacalone @ (408) 722-8913.

Sincerely;

A handwritten signature in blue ink, appearing to read "Michael McDermott", with a stylized flourish at the end.

Michael McDermott  
Gilroy Construction, Inc.  
Lic. #: 892638 A&B

**Exhibit A**  
**PROPOSAL**

Gilroy Construction, Inc. is pleased to provide the following quotation for the demolition and rough grade for the above mentioned project.

**SCHEDULE A - DEMOLITION**

Demolish Superstructures -

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

**SCHEDULE B - EXCLUSIONS**

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

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

**SCHEDULE C - PRICE**

Gilroy Construction, Inc. proposes to perform the above-described work for the price of FOUR HUNDRED 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).

# Milpitas Complaints

Received by BAAQMD From 2/01/201 to 02/28/2013

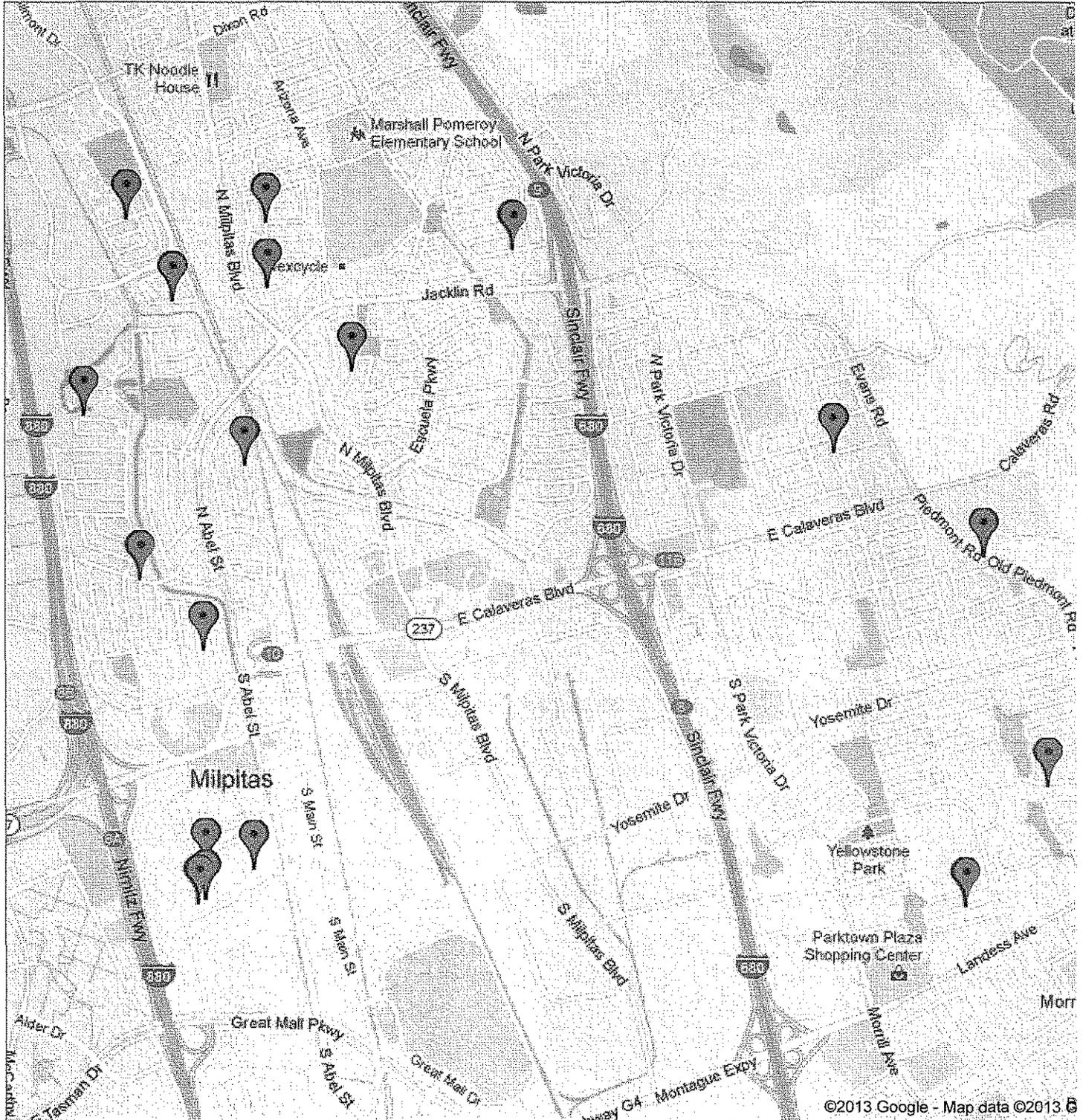
<u>Complaint#</u>	<u>Received</u>	<u>Occured</u>	<u>Alleged Source</u>	<u>Description</u>	<u>General Location</u>	<u>Status</u>	<u>Attributed Site#</u>	<u>Referral</u>	<u>Comments</u>
213607	2/6/13 11:09	2/6/13 11:00	International Disposal Corporation of Calif	garbage	1300 ELKWOOD DR	Unconfirmed			
213619	2/8/13 7:49	2/8/13 7:30	NONE	bad sewage	1500 PLATT AVE	Pending			
213627	2/10/13 18:41	2/10/13 17:00	NONE	sewage	1500 PLATT AVE	Unconfirmed			
213641	2/12/13 15:54	2/10/13 15:54	NONE	foul air	400 GEMMA DR	Unconfirmed			
213644	2/12/13 17:46	2/12/13 17:00	BFI - The Recyclery	garbage	400 MARLYN DR	Unconfirmed			
213645	2/12/13 18:29	2/12/13 18:29	Walmart	garbage	xxx xxxxxxx	Unconfirmed			
213651	2/13/13 11:43	2/13/13 11:30	BFI - The Recyclery	compost	1000 CAMERON PLACE	Unconfirmed			
213655	2/13/13 17:30	2/13/13 16:30	NONE	garbage/compost	2100 AGUILAR CT	Unconfirmed			
213656	2/13/13 18:47	2/13/13 18:15	San Jose/Santa Clara Water Pollution Control	sewage	1500 PLATT AVE	Unconfirmed			
213657	2/13/13 18:36	2/13/13 17:00	San Jose/Santa Clara Water Pollution Control	sewage	1500 PLATT AVE	Unconfirmed			
213658	2/13/13 18:18	2/13/13 18:15	San Jose/Santa Clara Water Pollution Control	Horrible	2000 SKYLINE DR	Unconfirmed			
213659	2/13/13 19:31	2/13/13 19:00	BFI - The Recyclery	garbage	1200 NORTH ABBOTT	Unconfirmed			
213660	2/13/13 20:21	2/13/13 20:21	BFI - The Recyclery	garbage	100 BEAUMERE WAY	Unconfirmed			
213661	2/13/13 18:31	2/13/13 0:00	San Jose/Santa Clara Water Pollution Control	very bad	xxx xxxxxxx	Unconfirmed			
213683	2/18/13 9:36	2/18/13 0:00	NONE	landfill	200 INDIAN HILL RD	Unconfirmed			
213689	2/19/13 16:40	2/19/13 12:00	NONE	garbage	2100 AGUILAR CT	Unconfirmed			
213690	2/20/13 8:52	2/20/13 7:00	NONE	garbagee	400 MARLYN DR	Confirmed			
213695	2/21/13 9:31	2/21/13 9:30	NONE	bad	xxx xxxxxxx	Unconfirmed			
213718	2/25/13 7:47	2/25/13 7:00	NONE	compost	400 MARLYN DR	Unconfirmed			
213719	2/24/13 18:42	2/24/13 18:30	NONE	rotten eggs	400 ALVAREZ COMMON	Unconfirmed			
213731	2/25/13 17:52	2/25/13 17:00	NONE	garbage	1000 VIDA LARGA LOOP	Unconfirmed			
213735	2/26/13 12:48	2/26/13 12:40	NONE	chemical	100 BEAUMERE WAY	Unconfirmed			
213738	2/26/13 17:28	2/26/13 9:00	NONE	strong	800 CLARIDAD LOOP	Confirmed			
213740	2/26/13 19:42	2/26/13 19:00	NONE	garbage	900 LUZ DEL SOL LOOP	Unconfirmed			
213741	2/26/13 20:22	2/26/13 20:00	BFI - The Recyclery	garbage	200 SUMMERWIND DR	Unconfirmed			
213742	2/27/13 8:44	2/27/13 8:00	NONE	bad compost	400 MARLYN DR	Unconfirmed			
213743	2/27/13 8:57	2/27/13 8:40	NONE	strong	xxx xxxxxxx	Unconfirmed			
213747	2/27/13 9:33	2/27/13 9:00	NONE	bad	1700 ROCKY MOUNTAIN AVE	Unconfirmed			
213759	2/28/13 16:08	2/28/13 15:00	NONE	bad	2200 SKYLINE DR	Unconfirmed			
213761	2/28/13 19:05	2/28/13 19:00	BFI - The Recyclery	bad	400 MARLYN DR	Unconfirmed			
<b>Total:</b>	30								



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**BAAQMD Odor Complaint Locations (February 19 through March 18, 2013)**

Unlisted · 0 views

MAR 18 2013

CITY OF MILPITAS  
COMMISSION/COMMITTEE APPLICATION

**\*4**  
**RECEIVED**

Economic Development  
COMMISSION APPLYING FOR ↑

PROVIDE COMPLETE INFORMATION (in black ink)

Mr.

Mrs./Ms.

Name: MARK First LOANG Middle WONG Last

Address: 1026 Number NORTH AIRBOTT AVE Street (apt. # if needed), Milpitas CA 95035

Telephone Number(s) 408-273-8789 e-mail address mark@agentmarkwong.com

Present Employer Self-employed (STATE FARM) Business Telephone 408-273-8789

Address 391 JACKLIN ROAD, MILPITAS, CA 95035 Occupation INSURANCE & FINANCIAL SERVICE

Education: If Youth Advisory Commission applicant, indicate your grade/school: \_\_\_\_\_

College, Professional, Vocational, or other schools attended	Major Subject	Date	Degree

List community organizations to which you belong or have belonged (additional information may be attached). If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Date	Name of Organization or Branch of Military	Officer / Member

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

I have owned the fastest growing agency in Northern California. My experience in small business marketing and operational growth can be an asset to the commission.

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

[Signature]  
Signature

3/18/2013  
Date

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant.

**NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD**  
Mail, fax (586-3030), e-mail ([mlavelle@ci.milpitas.ca.gov](mailto:mlavelle@ci.milpitas.ca.gov)) or drop off your completed application to City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035

City Clerk's Office

MAR 18 2013

CITY OF MILPITAS COMMISSION/COMMITTEE APPLICATION

RECEIVED

Art Commission COMMISSION APPLYING FOR

PROVIDE COMPLETE INFORMATION (In black ink)

Mr.

Mrs./Ms.

Name: Marsha Tran

Address: 387 Rudyard Dr. Milpitas CA 95035

Telephone Number(s): 408-857-4212 e-mail address: transtran@yahoo.com

Present Employer: C.S.L.O.T. Business Telephone:

Address: 39420 Liberty St Fremont CA 94538 Occupation: HR Manager

Education: If Youth Advisory Commission applicant, indicate your grade/school:

Table with 4 columns: College, Professional, Vocational, or other schools attended; Major Subject; Date; Degree. Row 1: San Jose State University, Social Science, 1997, BA

List community organizations to which you belong or have belonged (additional information may be attached). If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Table with 3 columns: Date; Name of Organization or Branch of Military; Officer / Member. Rows include: 2006-present Donate for Children (Member), 2008-2013 Community Advisory (alternate member), 2011 Veteran's Hospital ice cream social (volunteer), 2012 present Cystic Fibrosis Research Inc. (volunteer)

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

I truly believe that volunteering is the most beneficial way for me to help the community & others. I have been actively volunteering for a number of non-profit organizations and city of Milpitas. I am interested to serve for Art Commission where my knowledge and creativity can be an asset to the Milpitas Comm.

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Signature: Marsha Tran

Date: 3/18/2013

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD. Mail, fax (568-3030), e-mail (mlavelle@ci.milpitas.ca.gov) or drop off your completed application to City Clerk, 466 E. Calaveras Blvd., Milpitas, CA 95035

**CITY OF MILPITAS  
COMMISSION/COMMITTEE APPLICATION**

City Clerk's Office

MAR - 8 2013

**RECEIVED**

CAC

COMMISSION APPLYING FOR ↑

Sister City

PROVIDE COMPLETE INFORMATION (in black ink)

- Mr.
- Mrs./Ms./Miss

Name: WILLY First Middle Last WONG

Address: 798 TERRA BELLA DRIVE Number Street (apt. # if needed) MILPITAS CA 95035 City & Zip Code

Telephone Number(s) 408-946-4015 e-mail address WillyW798@gmail.com

Present Employer \_\_\_\_\_ Business Telephone \_\_\_\_\_

Business Address \_\_\_\_\_ Occupation \_\_\_\_\_

Education: If **Youth Advisory Commission** applicant, indicate your grade/school: \_\_\_\_\_

College, Professional, Vocational, or other schools attended	Major Subject	Date	Degree
CAL POLY	ENGINEERING	1975	BS

List community organizations to which you belong or have belonged (additional information may be attached). If application is for **Veterans Commission**, indicate branch and service in any U.S. military organization (retired or active duty).

Date	Name of Organization or Branch of Military	Officer / Member

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

---



---



---

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Signature: [Handwritten Signature] Date: 3/8/13

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. **Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant.**

**NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD**

Fax (586-3030), e-mail ([mlavelle@ci.milpitas.ca.gov](mailto:mlavelle@ci.milpitas.ca.gov)), mail or drop off your completed application to:  
City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035

MAR - 8 2013

RECEIVED

CITY OF MILPITAS  
COMMISSION/COMMITTEE APPLICATION

Sister Cities Commission

COMMISSION APPLYING FOR ↑

SENIOR ADVISORY

PROVIDE COMPLETE INFORMATION (in black ink)

- Mr.
- Mrs./Ms./Miss

Name: PATRICK First YUNG Last

Address: 365 Number TRAMWAY DR. Street (apt. # if needed) MILPITAS. 95035 City & Zip Code

Telephone Number(s) (408) 655-8082 e-mail address PJYUNG@HOTMAIL.COM

Present Employer RETIRED Business Telephone

Business Address Occupation ENGINEER

Education: If Youth Advisory Commission applicant, indicate your grade/school: \_\_\_\_\_

College, Professional, Vocational, or other schools attended	Major Subject	Date	Degree
GONZAGA UNIVERSITY	ENGINEERING	'74	B.S.

List community organizations to which you belong or have belonged (additional information may be attached). If application is for **Veterans Commission**, indicate branch and service in any U.S. military organization (retired or active duty).

Date	Name of Organization or Branch of Military	Officer / Member
8	EX-RECYCLING COMMISSION	

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Patricia Yung  
Signature

3/8/13  
Date

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. **Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant.**

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

Fax (586-3030), e-mail ([miavelle@ci.milpitas.ca.gov](mailto:miavelle@ci.milpitas.ca.gov)), mail or drop off your completed application to:  
City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035



---

# MILPITAS Emergency Operations Plan (EOP)



**8/13/12**

---

**Sean Simonson**  
**Milpitas Office of Emergency Services**  
**ssimonson@ci.milpitas.ca.gov**  
**408-586-2810**



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# **PART ONE**

## **GENERAL INFORMATION**

### **THE PLAN**

The MILPITAS Emergency Operations Plan (EOP) addresses the planned response to extraordinary emergency situations associated with disasters affecting MILPITAS. The plan also addresses integration and coordination with other governmental agencies when required. This plan is not intended to address the normal day-to-day emergency or well-established emergency procedures.

This plan accomplishes the following:

- ◆ Establishes the emergency management organization required to mitigate any significant emergency or disaster affecting MILPITAS
- ◆ Establishes the overall operational concepts associated with MILPITAS' Emergency Operations Center (EOC) activities and the recovery process

This plan is based on the functions and principles of the California Standardized Emergency Management System (SEMS), the National Incident Management System (NIMS), and the California Incident Command System (ICS). It identifies how the MILPITAS emergency operational system fits into the overall California and National risk-based, all-hazard emergency response and recovery operations plan.

This document serves as a planning reference and as a basis for effective response to any hazard that threatens MILPITAS. Departments within MILPITAS and other agencies that have roles and responsibilities identified by this plan are encouraged to develop plans, detailed Standard Operating Procedures (SOPs), and emergency response checklists based on the provisions of this plan.

This document serves as the legal and conceptual framework for emergency management in MILPITAS and is divided into the following parts:

#### **Part 1 – General Information**

The "basic plan" which describes the emergency management organization, its roles, responsibilities, and operational concepts

#### **Part 2 – Threat Summaries and Assessments**

A general description of MILPITAS and a brief analysis of how hazards might affect the City.

#### **Part 3 – References**

EOP Annexes, Authorities and References, Acronyms

## **Emergency Operations Plan Requirements**

The MILPITAS EOP requires approval by MILPITAS City Council. The City Council is responsible for its periodic review, updates, re-publishing and re-distribution. Records of revision to this plan will be maintained by Sean Simonson in the MILPITAS Office of Emergency Services. The plan may be modified as a result of post-incident analyses and/or post-exercise critiques. It may be modified if responsibilities, procedures, laws, rules, or regulations pertaining to emergency management and operations change. Those agencies or departments having assigned responsibilities under this plan are obligated to inform MILPITAS when changes need to be made.

MILPITAS agencies and organizations may separately publish documents that support this EOP.

## **PURPOSE/OBJECTIVES/GOALS/ASSUMPTIONS**

### **Purpose**

This EOP establishes policies and procedures and assigns responsibilities to ensure the effective management of emergency operations within MILPITAS. It provides information on MILPITAS emergency management structure and how and when the EOC staff is activated.

### **Objectives**

The overall objective of emergency management is to ensure the effective management of response forces and resources in preparing for and responding to situations associated with natural disasters, technological incidents and national security emergencies. To carry out its responsibilities, the emergency management organization will accomplish the following objectives during a disaster/emergency:

- Maintain overall coordination of emergency response and recovery operations, including on-scene incident management as required
- Coordinate and liaise with appropriate other local government agencies, as well as applicable segments of private sector entities and volunteer agencies
- Establish priorities and resolve conflicting demands for support
- Prepare and disseminate emergency public information to alert, warn, and inform the public
- Disseminate damage information and other essential data

### **Goals**

- Provide effective life safety measures and reduce property loss and damage to the environment
- Provide for the rapid resumption of impacted businesses and community services
- Provide accurate documentation and records required for cost recovery efforts

## Assumptions

- MILPITAS is primarily responsible for emergency actions and will commit all available resources to save lives, minimize injury to persons, and minimize damage to property and the environment
- MILPITAS will utilize SEMS and NIMS in emergency response and management operations
- The Milpitas Office of Emergency Services will coordinate MILPITAS disaster response in conformance with its Emergency Organization and Functions.
- The resources of MILPITAS will be made available to local agencies and citizens to cope with disasters affecting this area
- MILPITAS will commit its resources to a reasonable degree before requesting mutual aid assistance
- Mutual aid assistance will be requested when disaster relief requirements exceed MILPITAS's ability to meet them

## CONCEPT OF OPERATIONS

The emergency management organization in MILPITAS will identify potential threats to life, property and the environment, and develop plans and procedures to protect those assets. These plans and procedures will direct emergency response and recovery activities and will be validated by the conduct of actual response or exercising. The goal is to maintain a robust emergency management organization with strong collaborative ties with other local government, community-based organizations and volunteers, public service agencies, and the private sector under SEMS/NIMS.

Actions are often categorized by four emergency management phases indicated below. However, not every disaster necessarily includes all indicated phases.

### 1. Preparedness Phase

The preparedness phase involves activities taken in advance of an emergency. These activities develop operational capabilities and effective responses to a disaster. Preventative actions might include mitigation activities, emergency/disaster planning, training, exercises and public education. Members of the emergency management organization should prepare Standard Operating Procedures (SOPs), Emergency Operating Procedures (EOPs), and checklists detailing personnel assignments, policies, notification rosters, and resource lists. Personnel should be acquainted with these SOPs, EOPs and checklists through periodic training in the activation and execution procedures.

#### Training and Exercising

MILPITAS will inform its departments of training opportunities associated with emergency management. Those with responsibilities under this plan must ensure their personnel are properly trained to carry out these responsibilities.

The best method of training emergency responders is through exercises. Exercises allow emergency responders to become familiar with the procedures, facilities and systems that they will actually use in emergency situations.

Exercises will be conducted on a regular basis to maintain readiness. Exercises should include MILPITAS EOC Staff and City Council. MILPITAS will document exercises by conducting a

critique, and using the information obtained from the critique to complete an After Action Report (AAR) and to develop a Corrective Action Plan (CAP) plan, revising standard operating procedures as necessary.

## 2. Response Phase

### Pre-Emergency

When a disaster is inevitable, actions are precautionary and emphasize protection of life. Typical responses might be:

- Alerting necessary agencies, placing critical resources and personnel on stand-by
- Evacuation of threatened populations to safe areas
- Advising threatened populations of the emergency and apprising them of safety measures to be implemented
- Identifying the need for mutual aid
- Proclamation of a Local Emergency by local authorities

### Emergency Response

During this phase, emphasis is placed on saving lives and property, control of the situation and minimizing effects of the disaster. Immediate response is accomplished within the affected area by local government agencies and segments of the private sector.

### Sustained Emergency

In addition to continuing life and property protection operations, mass care, relocation, public information, situation analysis, status and damage assessment operations will be initiated.

## 3. Recovery Phase

At the onset of an emergency, actions are taken to enhance the effectiveness of recovery operations. Recovery is both short-term activities intended to return vital life-support systems to operation, and long-term activities designed to return infrastructure systems to pre-disaster conditions. Recovery also includes cost recovery activities.

The recovery period has major objectives which may overlap, including:

- Reinstatement of family and individuals' autonomy
- Provision of essential public services
- Permanent restoration of private and public property
- Identification of residual hazards
- Plans to mitigate future hazards
- Recovery of costs associated with response and recovery efforts
- Coordination of state and federal, private and public assistance

As the immediate threat to life, property and the environment subsides, the rebuilding of MILPITAS will begin through various recovery activities. Recovery activities involve the restoration of services to the public and rebuilding the affected area(s). Examples of recovery activities include:

- Restoring all utilities
- Establishing and staffing Local Assistance Centers and Disaster Assistance Centers
- Applying for appropriate assistance programs
- Conducting hazard mitigation analysis
- Identifying residual hazards
- Determining recovery costs associated with response and recovery

#### **4. Prevention/Mitigation Phase**

Preventing damage and losses from disaster includes those efforts known as mitigation activities. Mitigation efforts occur both before and following disastrous events. Post-disaster mitigation is part of the recovery process. Preventing, eliminating or reducing the impact of hazards that exist within MILPITAS and are a threat to life and property are part of the mitigation efforts. Mitigation tools include:

- Local ordinances and statutes (zoning ordinance, building codes and enforcement, etc.)
- Structural measures
- Tax levee
- Public information and community relations
- Land use planning

## **EMERGENCY MANAGEMENT ORGANIZATION & RESPONSIBILITIES**

### **MILPITAS –City Manager**

The City Manager is supported by MILPITAS and has overall responsibility for the following:

- Organizing, staffing and operating the EOC
- Operating communications and warning systems
- Providing information and guidance to the public and elected officials
- Maintaining information on the status of resources, services, and operations
- Directing overall operations
- Identifying and analyzing potential hazards and recommending appropriate counter-measures
- Collecting, evaluating and disseminating damage assessment and other essential information

### **MILPITAS Disaster Council (City Council)**

The MILPITAS Disaster Council reviews, evaluates, and communicates decisions on all matters pertaining to disaster preparedness. The Council is responsible for the following:

- Review and evaluate disaster preparedness progress in the public and private sectors.
- Promote disaster preparedness through communication and education
- Harness the power of every resident through education and outreach, training, and volunteer service to make their families, homes and communities safer from natural and/or man-made disasters or emergencies

### **Santa Clara County Operational Area Emergency Management**

When a disaster occurs and two or more of the county's local jurisdictions' EOCs (or at the request of one local jurisdiction) within the Santa Clara County Operational Area (OA) are activated, the Operational Area EOC serves as the focal point for information transfer and supports requests by cities such as MILPITAS.

### **SEMS and NIMS**

#### **Standardized Emergency Management System (SEMS)**

After the 1991 Oakland East Bay Hills Fire, State Senator Petris passed the Senate Bill 1841 (SB1841) introducing the Standardized Emergency Management System (SEMS). Since 1994 SEMS has been required by Government Code Section 8607(a) for managing response to multi-agency and multi-jurisdiction emergencies in California. SEMS consists of five organizational levels that are activated as necessary: field response, local government, operational area, regional and state.

SEMS has been used throughout the State of California to manage and coordinate any emergency response involving more than one agency or jurisdiction. Local governments must use SEMS to be eligible for reimbursement of their personnel-related costs under state disaster assistance programs. A local government under SEMS is a county, city/town, or special district. Special districts under SEMS are units of local government with authority or responsibility to own, operate or maintain a project (as defined in California Code of Regulations 2900(s) for purposes of natural disaster assistance). This may include joint powers authority established under Section 6500 et seq. of the Code.

Cities are responsible for emergency response within their boundaries, although some cities contract for some municipal services from other agencies.

Special districts are primarily responsible during emergencies for restoration of services that they normally provide. They may also be responsible for safety of people at their facilities or on their property and for warning of hazards from their facilities or operations.

All local governments are responsible for coordinating with other local governments, the field response level and the operational area. Local governments are also responsible for providing mutual aid within their capabilities.

### **National Incident Management System (NIMS)**

In response to the September 11<sup>th</sup> 2001 attacks on the World Trade Center in New York City, the Pentagon and Flight 93, President Bush issued Homeland Security Presidential Directive-5 (HSPD-5). Released on February 28, 2003, HSPD-5 directed the Secretary of the Office of Homeland Security (OHS) to develop and administer a National Incident Management System (NIMS). NIMS includes the following components:

- Command and Management, including the Incident Command System (ICS)
- Communications and Information Management
- Preparedness
- Resource Management
- Supporting Technologies
- Joint Information System (JIS)
- NIMS Management and Maintenance

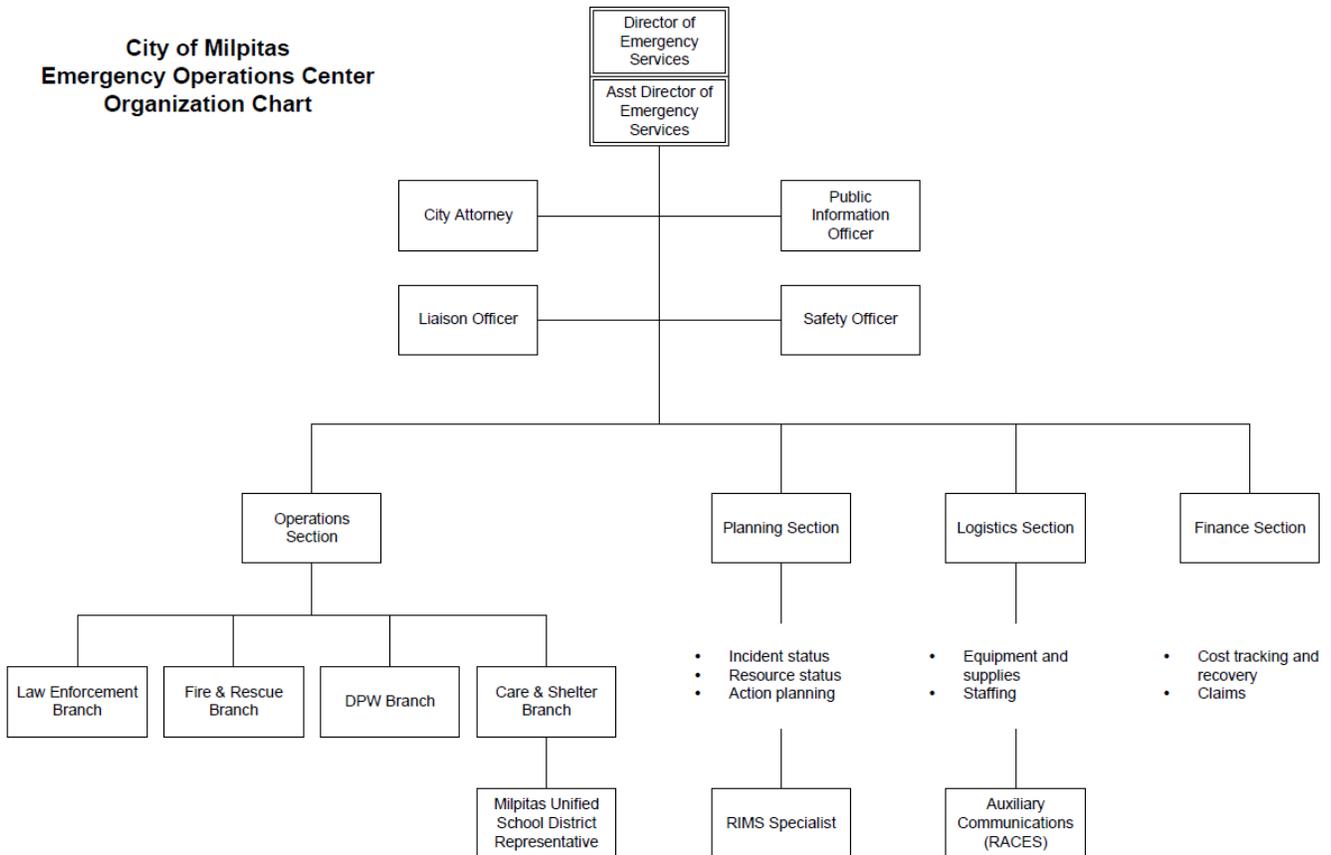
### **Relationship to SEMS and NIMS:**

MILPITAS is responsible for emergency response within its geographical boundaries.

Under SEMS and NIMS, MILPITAS has responsibilities at two levels: The Field Response and the Local Government level.

At the field response level, all agencies will use the Incident Command System (ICS) to standardize the emergency response.

At the MILPITAS level, the designated EOC is used as the central location for gathering and disseminating information, coordinating all jurisdictional emergency operations, and coordinating with the Santa Clara County Office of Emergency Services (OES) and the Santa Clara County Operational Area EOC level during events outside the scope of MILPITAS.



**Organization Flexibility – Modular Organization**

The five essential ICS functions in SEMS and NIMS are identified as “sections” in the EOC. All other functions are organized as branches, groups or units within these sections. Only functional elements that are required to meet current objectives will be activated.

**Management of Personnel - Hierarchy of Command and Span-of-Control**

Management of personnel within the EOC will be accomplished through the assignment of Section Chiefs for Operations, Planning/Intelligence, Logistics, and Finance/Administration functions. Section Chiefs will report to the EOC Director

**Multi-Agency or Inter-Agency Coordination**

Multi-agency or inter-agency coordination is important for establishing priorities for response and allocating critical resources. Strategies for handling multi-agency response problems need to be developed while jurisdictional and agencies’ objectives are not compromised. MILPITAS departments,

agencies and possibly affiliated special districts, volunteer agencies and private organizations coordinate emergency response at the EOC.

### **EOC Action Plans**

At local, operational area, regional and state levels, the use of EOC action plans provide designated personnel with knowledge of the objectives to be attained and the steps required for achievement. Action plans give direction and provide a basis for measuring achievement of objectives and overall system performance.

### **Special District Involvement**

Special districts are defined as local governments in SEMS/NIMS. The emergency response role of special districts is generally focused on the return to normal services. During disasters, some types of special districts may be more extensively involved in the emergency response by assisting other local governments when the disaster extends beyond MILPITAS.

Coordination and communications should be established among special districts that are involved in emergency response, other local governments and the operational area. This may be accomplished in various ways depending on the local situation. Relationships among special districts, cities/towns, county government and the OA are complicated by overlapping boundaries and by the multiplicity of special districts. Special districts need to work with the local governments, as in MILPITAS, in their service areas to determine how best to establish coordination and communication in emergencies.

When a special district is wholly contained within the City, the special district should have a liaison at the city/town EOC to provide direct support. An exception may occur when there are many special districts within the city/town

When there are many special districts within a city/town, it may not be feasible for their EOC to accommodate representatives from all special districts during area-wide disasters. In such cases, the city/town should work with the special districts to develop alternate ways of establishing coordination and communication.

## **MUTUAL AID**

### **Introduction**

The foundation of California's emergency planning and response is a statewide mutual aid system which is designed to ensure adequate resources, facilities and other support is provided to jurisdictions whenever their own resources prove to be inadequate to cope with given situation(s). The basis for the system is the California Disaster and Civil Defense Master Mutual Aid Agreement, as provided in the *California Emergency Services Act*. This Agreement was developed in 1950 and has been adopted by the state, all 58 counties and most incorporated cities in the State of California. The Master Mutual Aid Agreement creates a formal structure wherein each jurisdiction retains control of its own facilities, personnel and resources, but may also receive or render assistance to other jurisdictions within the state. State government is obligated to provide available resources to assist local jurisdictions in emergencies. It is the responsibility of the local jurisdiction to negotiate, coordinate and prepare mutual aid agreements.

Mutual aid agreements exist in:

- Law Enforcement

- Fire Services
- Medical
- Public Health
- Emergency Managers
- Hazardous Materials
- Public Utilities
- Engineers
- Coroner, and others

### **Mutual Aid System**

A statewide mutual aid system, operating within the framework of the Master Mutual Aid Agreement, allows for the progressive mobilization of resources to and from emergency response agencies, local governments, operational areas, regions and state with the intent to provide requesting agencies with adequate resources.

The statewide mutual aid system includes several discipline-specific mutual aid systems, such as fire and rescue, law, medical and public works. The adoption of SEMS does not alter existing mutual aid systems. These systems work through local government, operational area, regional and state levels consistent with SEMS/NIMS and the Incident Command System (ICS). Mutual aid may also be obtained from other states. Interstate mutual aid may be obtained through direct state-to-state contacts, pursuant to interstate agreements and compacts, or may be coordinated through federal agencies.

### **Mutual Aid Coordinators**

To facilitate mutual aid, discipline-specific mutual aid systems work through designated mutual aid coordinators at the operational area, regional and state levels. The basic role of a mutual aid coordinator is to receive mutual aid requests, coordinate the provision of resources from within the coordinator's geographic area of responsibility and pass on unfilled requests to the next level.

Mutual aid requests that do not fall into one of the discipline-specific mutual aid systems are handled through the emergency services mutual aid system by emergency management staff at the local government, operational area, regional and state levels.

Mutual aid coordinators may function from an EOC, their normal departmental location or other locations depending on the circumstances. Some incidents require mutual aid but do not necessitate activation of the affected local government or operational area EOCs because of the incident's limited impacts. In such cases, mutual aid coordinators typically handle requests from their normal work location. When EOCs are activated, all activated discipline-specific mutual aid systems should establish coordination and communications with the EOCs as follows:

### **Volunteer and Private Agencies in Mutual Aid**

Volunteer and private agencies may participate in the mutual aid system along with governmental agencies. For example, the disaster medical mutual aid system relies heavily on private sector involvement for medical/health resources. Some volunteer agencies such as the American Red Cross, Salvation Army and others are an essential element of the statewide emergency response to meet the needs of disaster victims. Volunteer agencies mobilize volunteers and other resources through their own systems. They also may identify resource needs that are not met within their own systems that would be requested through the mutual aid system. Volunteer agencies with extensive involvement in the emergency response should be represented in EOCs.

Some private agencies have established mutual aid arrangements to assist other private agencies within their functional area. For example, electric and gas utilities have mutual aid agreements within their industry and established procedures for coordinating with governmental EOCs. In some functional areas, services are provided by a mix of special district, municipal and private agencies. Mutual aid arrangements may include both governmental and private agencies.

A liaison should be established between activated EOCs and private agencies involved in a response. Where there is a need for extensive coordination and information exchange, private agencies should be represented in activated EOCs at the appropriate SEMS level.

- Number and type of personnel needed
- Type and amount of equipment needed
- Reporting time and location
- To whom forces should report
- Access routes
- Estimated duration of operations
- Risks and hazards

## **VOLUNTEER RESOURCES**

In response to disaster, management of resources requires integration of material, as well as personnel, into the existing Emergency Management System of MILPITAS. Volunteer groups trained in emergency response can greatly enhance and supplement emergency response personnel. Jobs for all personnel assigned to emergency response must be trained, equipped, and aligned with a qualified organization. Spontaneous volunteers, when trained and managed appropriately, can provide valuable resources to the community.

### **Radio Amateur Civil Emergency Service (RACES/ACS)**

#### **RACES**

RACES (Radio Amateur Civil Emergency Services) is made up of FCC licensed Amateur Radio Operators who have volunteered their services and equipment for use in times of emergency to support civil defense activities. RACES is supported by the Federal Emergency Management Agency (FEMA). When a governmental entity (such as the City of Milpitas or Santa Clara County) requests amateur radio assistance, the response is through RACES. This is because governmental activation alters several aspects of disaster-response funding, including insurance coverage. RACES operators are covered in California by Disaster Service Worker (DSW) insurance--this is a type of Worker's Compensation. All RACES operators are registered as Disaster Service Workers by the City of Milpitas.

RACES operators using pre-positioned communications equipment at the Main EOC, or Alternate EOC, can provide a backup communications capability when city resources are overloaded during an emergency. Police, fire, and public works radio frequencies are usually saturated with tactical or

operational traffic in emergencies. RACES personnel and frequencies can be used to provide an administrative frequency for use in coordination of the relief effort and to provide a backup to other city communications channels. RACES personal can thus free up public-safety officers and other city employees for other more pressing duties.

RACES operators using their own personal radios can also be positioned at locations throughout the city, such as with SAFE Teams (CERT) or care shelters, to provide additional situational awareness for the EOC staff.

### **Community Emergency Response Team (CERT)**

Following a major disaster, first responders who provide fire and medical services will not be able to meet the demand for these services. Factors as number of victims, communication failures, and road blockages will prevent people from accessing emergency services they have come to expect at a moment's notice through 911. The CERT program in MILPITAS presents citizens training with the facts about what to expect following a major disaster and also in life saving skills with emphasis on decision-making skills and rescuer safety. It organizes teams so that certified CERT members are an extension of first responder services offering immediate help to victims until professional services arrive.

CERT includes education topics such as earthquake survival, fire prevention and suppression, search and rescue, disaster first aid, and general emergency preparedness. CERT courses and information on organizing neighborhood teams is available at MILPITAS public building and online at [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov).

### **Other MILPITAS Volunteers**

There are additional volunteer groups who contribute significantly during both disaster and non-disaster times. Volunteers may be called upon for their specialized training and professional skills in the following areas:

- Fire Explorers
- Police Explorers
- Citizen Volunteers
- Spontaneous Unaffiliated Volunteers

## **MILPITAS EMERGENCY OPERATIONS CENTER (EOC)**

### **Introduction**

Day-to-day operations are conducted from departments and agencies that are widely dispersed throughout MILPITAS. An EOC is a location from which centralized emergency management can be performed during a major emergency or disaster. This facilitates a coordinated response by the Coordinator of Emergency Services and Emergency Management Staff. The level of EOC staffing will vary with the specific emergency situation.

An EOC provides a central location of authority and information. It allows for face-to-face coordination among personnel who must make emergency decisions. The following functions are performed in the MILPITAS EOC:

- Managing and coordinating emergency operations
- Receiving and disseminating warning information
- Developing emergency policies and procedures
- Collecting intelligence from, and disseminating information to, the various EOC representatives, and, as appropriate, to county, other cities/towns, special districts, and political representatives
- Preparing intelligence/information summaries, situation reports, operational reports, and other reports as required
- Maintaining general and specific maps, information display boards, and other data pertaining to emergency operations
- Continuing analysis and evaluation of all data pertaining to emergency operations
- Directing, controlling and coordinating, within established policy, the operational and logistical support of MILPITAS resources committed to the emergency
- Maintaining contact and coordination with support to other local government EOCs and the Santa Clara County Operational Area EOC
- Providing emergency information and instructions to the public, making official releases to the news media and the scheduling of press conferences as necessary

### **EOC Location and Description**

The MILPITAS EOC is located at the Milpitas Police Department (1275 North Milpitas Boulevard)

The EOC is well supplied and serves as a place for the collection and dissemination of information. Staffing pattern is SEMS based, and operational periods are determined during the initial stages of an event.

### **Alternate EOC Location and Description**

The MILPITAS Alternate EOC is located at Milpitas Fire Station #1 (777 North Main Street) in the Training Room.

The Alternate EOC is well supplied and also serves as a place for the collection and dissemination of information. Staffing pattern are, as well, SEMS based and operational periods are determined during the initial stages of an event.

**When to Activate the EOC:**

The EOC can be activated when deemed necessary by the Activation Personnel listed below. This can be for events as simple as a festival or as complex as an earthquake.

**Who Can Activate the EOC:**

The following individuals, either acting as the EOC Director or on behalf of the EOC Director, or their appointed representatives are authorized to activate the EOC:

- City Manager
- Police Chief
- Fire Chief

**How to Activate the EOC:**

- Contact the MILPITAS Police/Fire Dispatch
- Communicate the purpose of the activation
- Respond to the EOC
- Direct dispatch to notify all EOC participant of the activation
- Verify participants response to the EOC

**MILPITAS EOC Activation Levels Examples**

Trigger Event/Situation	Activation Level	Staffing	Activities
Severe Weather Watch	Stand-By	None Limited to office or other location.	None EOC is configured; All systems ready.
Severe Weather or Tsunami Warning	Minimal	EOC Director EOC Coordinator Liaison Officer PIO and Deputy PIO Section Chiefs Law, Fire, Personnel, Supply, Communications, IT Support	Situation analysis Public Information Response coordination Resource coordination Liaison Logistics support Financial support
Significant incidents involving two or more cities			
Earthquake Advisory Level I			
Severe Weather or Tsunami Warning	Partial	All Minimal Level staff plus:  Branches and Units as appropriate to situation  Liaison/Agency reps as appropriate	Situation analysis Public Information Response coordination Resource coordination Liaison Logistics support Financial support
Earthquake with substantial damage reported			
Earthquake Advisory Level II or III			
Major wind or rain storm with damage			
Two or more large incidents involving two or more cities			
Wildfire affecting developed area			
Major scheduled event			
Incident involving large-scale or possible large-scale evacuations			
Major city or regional emergency - multiple areas with heavy resource involvement	Full	All positions  Liaison/Agency reps as Appropriate	Situation analysis Response coordination Resource coordination Logistics support Public Information  Sustained Operations
Earthquake with severe damage			

**Status Boards**

Because the EOC’s major purpose is accumulating and sharing information to ensure coordinated and timely emergency response, status boards for tracking emergency activities will be made available for use in both the primary and alternate EOCs. All EOC sections must maintain display devices so that other sections can quickly comprehend what actions have been taken, what resources are available, and to track damage in MILPITAS. The Planning/Intelligence Section is responsible for coordinating the display of information. All display charts, boards, and materials are stored in the EOC.

At the onset of any disaster, a log will also be compiled for the duration of the emergency situation. Key disaster related information will be recorded in the log; e.g., casualty information, health concerns, property damage, fire status, size of risk area, scope of the hazard to the public, number of evacuees, etc. The posting of the log is the responsibility of the Planning/Intelligence Section staff.

## **Communications**

Communications are provided for in the EOC by the Logistics Section.

## **EOC Coordination with Volunteer and Private Agencies**

Local jurisdictions' EOCs will generally be a focal point for coordination of response activities with many non-governmental agencies and should establish communication with private and volunteer agencies providing services within their jurisdiction.

Agencies that play key roles in the response should have representatives in the EOC. If an agency supports several functions and has only one representative in the EOC, the agency representative should be located in the liaison area. If an agency is supporting one function only, its representative may be located with that functional element. Some agencies may have several personnel participating in functional elements in the EOC. For example, American Red Cross (ARC) personnel may be part of the staffing for the Care and Shelter element of the EOC.

During large events, agencies that have countywide response roles and cannot respond to numerous local jurisdictions' EOCs should be represented at the OA level.

Coordination with volunteer and private agencies that do not have representatives at the EOC may be accomplished through telecommunications, liaison with community councils that represent several agencies or involvement of agencies in special multi-agency groups on specific issues.

**Coordination Links**

<b>Field Level Response</b>	
Police/ Fire	Public Works
<b>Local Government EOCs</b>	
EOC	Alternate EOC
<b>Santa Clara Operational Area EOC</b>	
<b>Governor’s Office of Emergency Services Coastal Region/Mutual Aid Region II</b>	
<b>Governor’s Office of Emergency Services</b>	

**Emergency Operations Center (EOC) Management Structure**

SEMS regulations require local governments to provide five functions: management, operations, planning/intelligence, logistics and finance/administration. These functions are the basis for structuring the EOC organization

Management - Responsible for overall emergency policy and coordination through the joint efforts of governmental agencies and private organizations

Operations - Responsible for coordinating all jurisdictional operations in support of emergency response through implementation of the local government’s EOC Action Plan

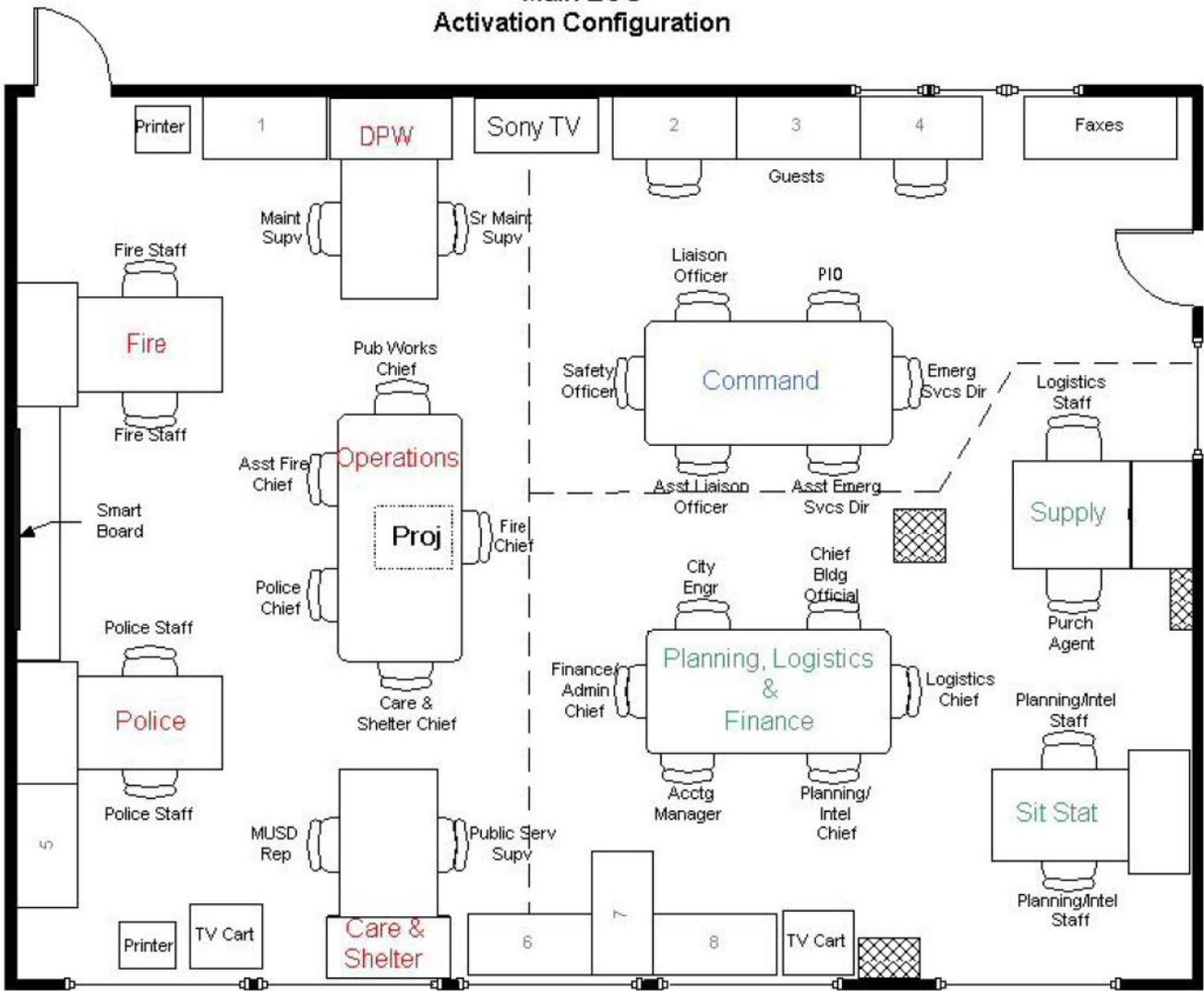
Planning/Intelligence - Responsible for collecting, evaluating and disseminating information; assist in developing the County OA’s EOC Action Plan, After Action Report, and Corrective Action Report, in coordination with the EOC Emergency Services Coordinator

Logistics - Responsible for supporting operations, providing facilities, services, personnel, equipment and materials

Finance/Administration - Responsible for financial activities and other administrative aspects

The EOC organization may include representatives from special districts, volunteer agencies, and private agencies with significant response roles

### Main EOC Activation Configuration



## **EOC POSITION DESCRIPTIONS AND RESPONSIBILITIES**

### **Management Section**

The Management Section is responsible for overall management and administration of the incident. Management also includes certain support staff functions required to support the EOC Management function and the field command function.

### **Operations Section**

The Operations Section is under the supervision of the Operations Section Chief who is in charge of all functions within the Operations Section. The Operations Section directs the MILPITASX operational resources and coordinates mutual aid resources. In addition, the Operations Section is responsible for coordinating with the County field incident commanders.

### **Planning/Intelligence Section**

The Planning/Intelligence Section is under the supervision of the Planning Section Chief. The duties and responsibilities of the Planning Section are to gather and analyze all data regarding the incident and the assigned resources. The Planning Section maintains an incident log, EOC display maps, and charts. The Planning Section is also responsible for preparing situation reports, assessing damage, conducting planning meetings, documenting all EOC activities, and assisting in the preparation of the Action Plan.

### **Logistics Section**

The Logistics Section is under the supervision of the Logistics Section Chief and provides all emergency support needs. The Logistics Section orders all resources, manages volunteer personnel, and provides communications, facilities, transportation, supplies, equipment, fuel, food, and shelter.

### **Finance/Administration Section**

The Finance/Administration Section provides for the tracking of the time worked by all emergency personnel involved in the incident, provides cost analysis and projections, and records any and all injury claims for compensation.

## EMERGENCY PROCLAMATIONS

### Local Emergency

At the local government level an emergency may be proclaimed by the Director of Emergency Services or his designee. MILPITAS shall advise the Santa Clara County Sheriff's Office of Emergency Services (OES) of the declaration. The proclamation of a Local Emergency provides the governing body with the legal authority to:

- Promulgate or suspend orders and regulations necessary to provide for the protection of life and property, including issuing orders or regulations imposing a curfew within designated boundaries
- Exercise full power to provide mutual aid to any affected area in accordance with local ordinances, resolutions, emergency plans, or agreements
- Require the emergency services of any local official or employee
- Requisition necessary personnel and materials from any local department or agency
- Obtain vital supplies and equipment and, if required, immediately commandeer the same for public use
- Impose penalties for violation of lawful orders
- Conduct emergency operations without incurring legal liability for performance, or failure of performance. *Note: Article 17 of the Emergency Services Act provides for certain privileges and immunities*

## CONTINUITY OF GOVERNMENT

### Purpose

A major disaster or an enemy attack could result in great loss of life and property, including the death or injury of key government officials. At the same time, there could be partial or complete destruction of established seats of government, and the destruction of public and private records essential to continued operations of government and industry.

In the aftermath of a major disaster, law and order must be preserved and essential government services must be maintained. Civil government accomplishes this best. To this end, it is particularly essential that local units of government continue to function.

Applicable portions of the California Government Code and the State Constitution (cited in the next paragraphs) provide authority for the continuity and preservation of state and local government.

### Responsibilities

Government at all levels is responsible for providing continuous, effective leadership and authority under all aspects of emergency services operations (preparedness, response, recovery, and mitigation). Under California's concept of mutual aid, local officials remain in control of their jurisdiction's emergency operations while others may provide additional resources upon request.



Public Works	Maint. Supervisor
Public Works	Acting Maint. Sup.
Care & Shelter	Recreation Serv Dir
Care & Shelter	Public Serv. Supv.
Care & Shelter	Sports Center Supv.
Care & Shelter	Comm. Center Supv
Care & Shelter	Maint. Supervisor
Care & Shelter	Sr. Center Supv.
Care & Shelter	Rec. Supervisor
Care & Shelter	Program Coor.
Care & Shelter	Program Coor.
Care & Shelter	Program Coor.
Planning/Intel.	Planning Director
Planning/Intel.	Chief Bldg Official
Planning/Intel.	Sr. Planner
Planning/Intel.	Acting City Engr.
Planning/Intel.	Sr. Bldg Inspector
Planning/Intel.	Sr. Public Works Ins
Planning/Intel.	Permit Center Mgr
Planning/Intel.	Principal Engineer
Planning/Intel.	Acting CIP Manager
Planning/Intel.	Assoc. Civil Engr.
Logistics	Human Res. Dir
Logistics	Purchasing Agent
Logistics	Buyer
Logistics	Admin Analyst
Logistics	I.S. Operations Mgr.
Finance/Admin.	Finance Director
Finance/Admin.	Accounting Mgr.
Finance/Admin.	Budget Manager
Finance/Admin.	Senior Accountant
Finance/Admin.	Accountant
Finance/Admin.	Accountant

**Preservation of Vital Records**

- In MILPITAS's, the City Clerk's Office is responsible for the preservation of vital records:  
Each department within MILPITAS should identify, maintain and protect its own essential records.



## **Transportation and Infrastructure**

(Janice Spuller)

### **POTENTIAL HAZARDS AND THREATS SUMMARY**

There are three broad categories of hazards: natural, technological and man-made threats.

#### *Natural*

- Earthquake
- Flood
- Wildland Fire
- Winter Storm
- Tsunami
- Landslide
- Drought
- Public Health Crisis

#### *Technological*

- Hazardous Materials Incident
- Transportation Accident
- Dam Failure
- Energy Disruption
- Radiological Incident

#### *Manmade*

- Terrorism
- Civil Disturbance
- National Security Emergency

## **THREAT ASSESSMENT 1: EARTHQUAKE**

### General Situation

Varying in type and intensity, earthquakes are perhaps the least predictable of any of the potential hazards. They may cause no real damage or the area could be heavily impacted. Often, the main earthquake is followed by a series of aftershocks. Aftershocks can be larger than the original quake and pose a significant threat to those responding to the first event.

Located within and next to Santa Clara County are several known active and potentially active earthquake faults, including the Calaveras and the Hayward Faults.

- The Calaveras Fault is a major branch of the San Andreas Fault located in northern California in the San Francisco Bay Area. To the east of the Hayward-Rodgers Creek fault, the Calaveras fault extends 123 km, splaying from the San Andreas Fault near Hollister and terminating at Danville at its northern end.
- The Hayward Fault is about 74 mi (119 km) long and is situated mainly along the western base of the hills on the east side of San Francisco Bay. It runs from Richmond to San Jose.

A major earthquake occurring in or near these areas could result in deaths, casualties, property and environmental damage, and disruption of normal government and community services and activities. The effects could be aggravated by collateral emergencies such as fires, flooding, hazardous material spills, utility disruptions, landslides, dam failures, and transportation emergencies. The location of the epicenter, as well as the time of day and season of the year, would significantly influence the number of casualties and the amount of damage.

Such an event would exceed the response capability of MILPITAS' emergency management organization, requiring assistance from volunteer and private agencies, the Santa Clara County OES, the Governor's Office of Emergency Services and the federal government. Response efforts will be significantly hampered by the loss of communications and transportation systems.

A major effort would be needed to remove debris and clear roadways, demolish unsafe structures, assist in reestablishing public services and utilities and provide continuing care and temporary housing for affected citizens.

The economic impact of a major earthquake may also be significant. Employment may decline, businesses may suffer or even fail, tourism will drop, and a corresponding reduction in tax revenues will strain the basic financial systems in local communities. Additionally, costs for basic services and supplies can be expected to increase along with additional infrastructure maintenance, replacement, or repair expenses. Effects can last for months and years unless addressed quickly and aggressively.

### Specific Situation

#### *Freeways and Major Highways*

Freeways and critical highways pass through key parts of Milpitas. Alternate routes need to be identified. Should overpasses or bridges collapse or become unsafe, or roads close due to landslides, communities could be isolated for days. The opening of crossings and traffic control will be a major factor for emergency services personnel.

### *Railroads*

Many railroad bridges are susceptible to seismic damage because of age, design and construction. Large lengths of line are vulnerable to landslide.

### *Hazardous Sites*

Underground fuel pipelines, chemical storage tanks, and manufacturing locations may be damaged or destroyed and the resulting leaks may constitute a considerable threat to individual areas. Additionally, the area is crossed with many high voltage lines which supply power to the majority of the area. Should they fall, roadways will be blocked and the potential for fire and shock hazards will be significant until Pacific Gas and Electric can shut them off.

### *Population Control*

In addition to caring for their own citizens, the City may also have to support seasonal visitors in the area at the time of the event or evacuees from other Bay Area jurisdictions. Local agencies may have to restrict access and dedicate large numbers of resources to traffic management and transportation. Such populations may place excessive demands upon any established mass care facilities or shelters.

## Damage to Vital Public Services, Systems and Facilities

### *Medical Facilities*

Approximately half of the beds in the county's medical facilities could be lost during a major earthquake due to the age and type of construction of some of the hospitals and rehabilitation centers in Santa Clara. These hospitals will have services limited by damages, staff shortages, and lack of supplies. Local clinics, surgical facilities, and field treatment sites may be needed to handle the initial demand. Santa Clara's Mass Casualty Incident (MCI) plan will be implemented but may be overwhelmed by the number of victims.

The most common injuries will be glass cuts on hands and feet. The most serious injuries will be crush or burn. It may be necessary to transport many injured to out-of-county facilities.

### *Fire Operations*

Although total collapse of fire stations is not expected, possible disruption of utilities, damaged doors and loss of power can create major problems. Numerous fires due to disruption of power and natural gas networks can be expected. Many connections to major water sources may be damaged and storage facilities would have to be relied upon. Water supplies could be inadequate or non-existent. Rescuers should expect loss of power and water, jammed doors, restricted mobility due to debris, possible loss of communications capability and delays in reaching maximum effectiveness due to personnel shortages.

### *Communications*

The use of telephones will be limited. Traditional and cellular systems will be affected by infrastructure failure, overloads, and loss of electrical power. Immediately following an event, numerous failures will occur, compounded by system use overloads.

### *Electrical Power*

Extra-high-voltage transmission equipment is generally the most susceptible component of the

electrical system. Repairs may require physically clearing roadways, bringing in special equipment, and safeguarding against aftershocks and other hazards. Close coordination is required with regional and local utility representatives. Power restoration may take days or even weeks.

#### *Natural Gas*

Damage to natural gas facilities serving Milpitas' communities will consist primarily of isolated breaks in major transmission lines. Breaks in mains and individual service connections within the distribution system will be significant. Leaks pose a fire threat in these susceptible areas of intense ground shaking and/or poor ground.

#### *Propane Gas*

Some residents and businesses rely upon propane or bottled gas. Many of these tanks are not secured and will likely tip over or become disconnected. The leaking tanks will pose a fire/explosion hazard. Re-supply and repair of this service will be delayed until roads can be cleared and outside assistance is brought into the area by the vendors. Priority for repair and re-supply will be given to critical facilities such as medical sites, shelters, and emergency generators at remote radio repeater sites.

#### *Water*

Primary water sources may be incapacitated due to damage to the chlorine treatment stations and/or the pipelines that distribute potable water.

Priority for water distribution will go to fire suppression, life support, medical facilities, decontamination, and shelter operations. This may result in significant rationing. The use of surface-laid pipes and water tanker trucks to maintain a minimal supply to some areas will be almost certainly required.

#### *Sanitation Systems*

These systems will be generally affected in the same manner and degree as potable water. However, there is limited storage capacity in the wastewater plants. This could result in releases of minimally treated or even untreated sewage. Damaged or un-powered pumping stations and sewer line breaks may result in small spills of untreated sewage. Household sewer connections may break and plug.



### Earthquake Faults

## THREAT ASSESSMENT 2: FLOOD

### General Situation

Floods are generally classed as either slow-rise or flash floods. Slow-rise floods may be preceded by a warning time measured in hours or days. Evacuation and sandbagging for a slow-rise flood may lessen flood-related damage. Conversely, flash floods are the most difficult to prepare for, due to the extremely short warning time, if any is given at all. Flash flood warnings usually require immediate evacuation within the hour.

The National Weather Service issues flash flood watches and warnings. A flash flood “**Watch**” is issued when flash flooding is possible within the designated watch area -- all persons should be alert. A flash flood “**Warning**” is issued when a flash flood has been reported or is imminent -- all persons should take necessary precautions.

No area is immune to flash floods. In small streams, especially near the headwaters of river basins, water levels may rise quickly in heavy rainstorms, and flash floods can begin before the rains stop. There is little time between the detection of flood conditions and the arrival of the flood crest. Swift action is essential to protect life and property.

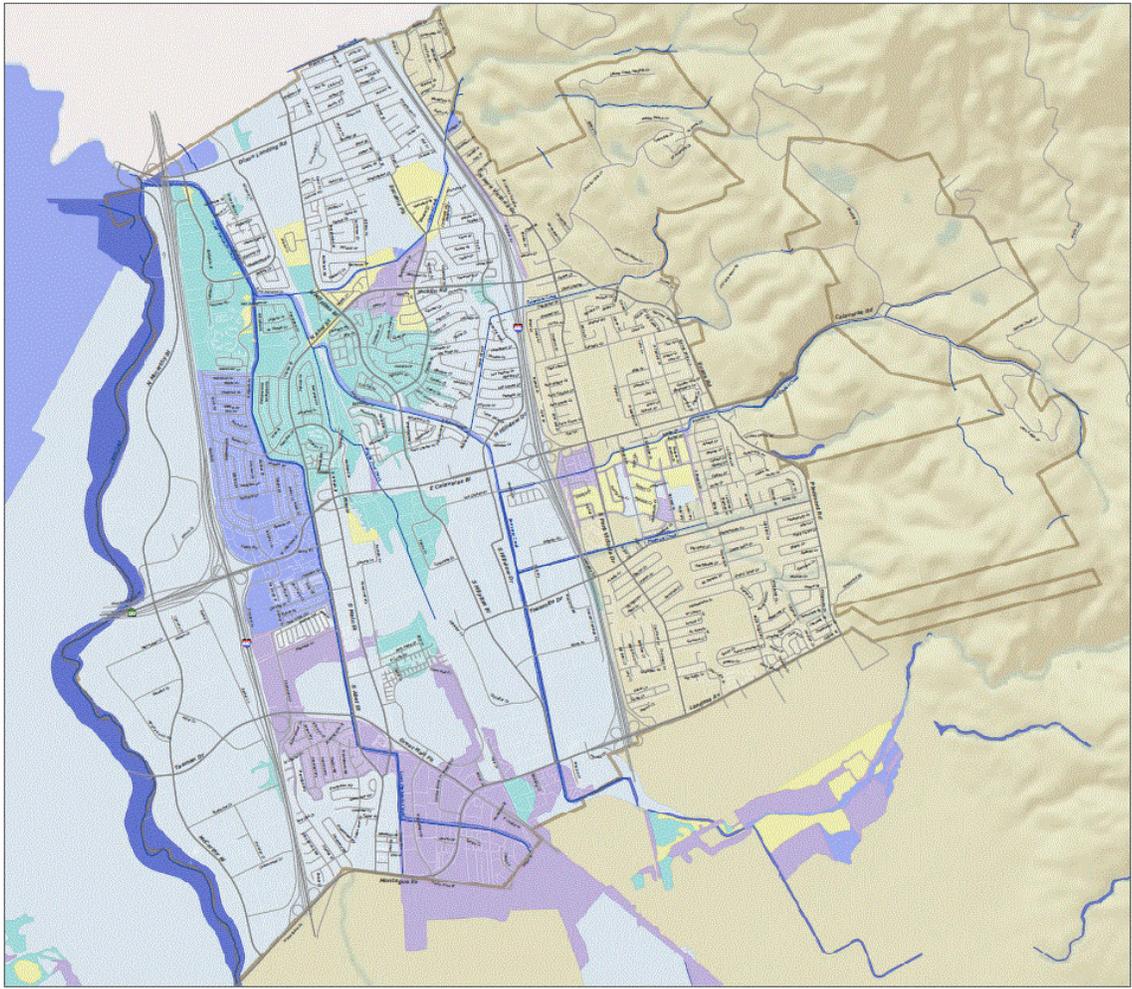
All low lying areas are subject to flood conditions. Urban development in flood plain areas are often subject to seasonal inundation. The flood plain is a natural extension of any waterway, although infrequently used. Storm water runoff, when exceeding the capabilities of the physical channel characteristics of a stream, results in the natural flooding of a localized area, inundating vehicles and causing considerable damage to residential and industrial properties located near stream and drainage channels.

Once flooding begins, personnel will be needed to assist in rescuing persons trapped by flood water, securing utilities, evacuating residents, moving equipment, cordoning off flooded areas and controlling traffic. These actions may overtax local agencies, and additional personnel and resources may be required.

### Specific Situation

Key areas of Milpitas are subject to flash flooding, urban flooding (storm drain failure/infrastructure breakdown), and river channel overflow.

Winter storms can generate heavy wave action along the coast which, either by itself, or when combined with high tides and/or high winds, can cause localized flooding in low-lying areas.



### Flood Hazards

FEMA "Special Flood Hazard Area": 1% or greater annual chance of flooding:

- Zone A: areas for which no base flood elevations have been determined
- Zone AE: areas for which base flood elevations have been determined
- Zone AO: shallow flooding, 1-3 ft, usually as sheet flow from a stream flood
- Zone AH: shallow flooding, 1-3 ft, usually as ponding areas

Other flood area:  
Zone X: 0.2% annual chance of flooding

Other area:  
Zone X1: less than 0.2% annual chance  
Zone D: not analyzed for flooding hazard; possible but undetermined

- Creeks
- City boundary

**Disclaimer:**  
The City of Milpitas does not guarantee the accuracy, completeness, or usefulness of any information displayed or implied within.  
The City of Milpitas provides this information on an "as is" basis without warranty of any kind, expressed or implied, and assumes no responsibility for any use or misuse of this information.

Compiled June 2010

Flood hazard data source: FEMA, May 2009

Map produced by GIS Division, Information Services Dept., City of Milpitas

## **THREAT ASSESSMENT 3: WILDLAND FIRE**

### General Situation

Wildland fire hazards exist in varying degrees in Milpitas. The fire season generally lasts from five to six months. The wildland fire hazard is caused by a combination of factors including rugged terrain, highly flammable vegetation and forest, long summers, and human activity.

In several areas, an “Urban Interface” fire hazard is created as older neighborhoods directly border wild lands, parks, or forests. These areas often have mature vegetation which could cause fire to spread quickly.

### Specific Situation

#### *Fire Causes*

People, and their activities, may cause wildland fires. Since the heaviest concentrations of people are found along Highway 880. Use of equipment, people playing with fire, arson, mowing, and debris burning are among the most common causes of wildland fires.

#### *Wildland Fire in Combination with Other Threats*

The fire hazard can be significantly affected by other hazards such as an earthquake. One worst-case scenario could involve a major earthquake during fire season. Broken gas lines or downed electrical wires could spark multiple fires. Firefighters would be hampered by disrupted communications, impassible roads, and the need to perform rescue/medical operations.

## **THREAT ASSESSMENT 4: TSUNAMI**

### General Situation

A tsunami is a series of traveling ocean waves generated by earthquake or underwater landslides. As the tsunami crosses the deep ocean, its length from crest to crest may be one hundred miles or more, its height from the bottom of the wave to the crest only a few feet. It cannot be felt aboard ships in deep water and cannot be seen from the air, but in deep water, tsunami waves may reach forward speeds exceeding 600 miles per hour.

As the tsunami enters the shallow water of coastlines in its path, the velocity of its waves diminishes and wave height increases. It is in these shallow waters that tsunamis become a threat to life and property, as they can crest to heights of more than 100 feet, and strike with devastating force. This danger is not over until the entire wave-series has passed. All tsunamis, like hurricanes, are potentially dangerous, even though they may not damage every area they strike. At present, there is no way to determine, in advance, the amplitude or size of tsunamis in specific locations. A small tsunami at one beach can be a giant one a few miles away.

Tsunamis may also be generated by earthquakes or underwater landslides just off shore. These "near-shore tsunamis" can also be very large but may arrive with little or no warning. In addition to the initial event, additional - and even larger - waves may continue to arrive for hours.

### *Damage*

The great waves of a tsunami may crush buildings, smash vehicles and boats, uproot trees, and disrupt vital public services, systems and facilities. The effects may be aggravated by the secondary effects of fire. In Milpitas the biggest threat is the flooding caused by the event. Efforts may be required to remove debris and clear roadways, reestablish public services and utilities and provide temporary housing for displaced persons.

### *Evacuation*

It is essential to evacuate persons in low-lying areas for these areas consistently sustain the greatest damage by tsunamis.

### *Tsunami Warning System*

The National Oceanic and Atmospheric Administration (NOAA) maintain the international Tsunami Warning System. The occurrence of a major earthquake anywhere in the Pacific Ocean area brings an immediate response from the system.

### *Tsunami Watch*

When an earthquake of sufficient magnitude to generate a tsunami occurs, Tsunami Warning System staff determines the location of the earthquake epicenter. If the epicenter is under or near the ocean, a tsunami is possible. The Warning System issues a TSUNAMI WATCH, which tells recipients that an earthquake has occurred, its location, and that the possibility of a tsunami exists. A TSUNAMI WATCH constitutes the System's first alerting action.

## **THREAT ASSESSMENT 5: LANDSLIDE**

### General Situation

Landslides include all movements of soil, rock or debris as a result of falling, sliding or flowing. Landslides are categorized according to the types of motion and material involved. They can be directly caused by earthquakes or be completely independent of them.

Falls describe the sudden movement of material from vertical or near-vertical slopes, and are generally labeled by the type or material displaced (e.g., soil fall, rock fall).

Slides refer to movements in which the material moves more or less as a unit along recognizable shear surfaces. If the shear surface is concave, the slide movement will be rotational, and is denoted by the term "slump". If the shear surface is flat, the term "slide" is used alone.

Flows describe the movement of material in which small-scale movements, rather than massive sliding, is the dominant mechanism of transport. Flows are described by the type of material involved and the rate at which it moves (e.g., debris flow, mudflow).

Landslides can occur due to both natural and human factors. Natural factors include the cohesive strength and characteristics of the affected minerals, the orientation of joints and planes of weakness between slide material and bedrock, the steepness of slopes, seismic activity, the degree of saturation of ground materials (highly affected by rainfall), and the density of vegetation. Human factors include the creation of excessively steep and overloaded slopes, the removal of natural vegetation, and the addition of water to the soil by watering lawns and septic system drain fields, and onsite creations of ponds for storm runoff.

Landslides will usually be associated with earthquakes or heavy rainfall. There are many identified sites within the county. Many threaten key highways. Some jurisdictions may be directly affected or simply isolated. Landslides will normally be associated with some other incident such as winter storm or earthquake.

Landslides and debris flowing can damage or destroy buildings, block roads, sever utilities, disrupt water supplies, and injure or kill people. Damage control and emergency response operations may be seriously hampered by road closures and loss of communications. Evacuation of dangerous areas may become necessary. Extensive efforts may be needed to rescue trapped people, recover bodies, remove debris, and restore utilities and services.

(Move to the end?)

**THREAT ASSESSMENT 6: PUBLIC HEALTH CRISIS**General Situation

One of the gravest threats to the life safety of Milpitas residents and visitors is posed by biological agents that occur naturally. Bacteria and viruses continue to evolve and spread. Drug-resistant strains of these pathogens also pose serious challenges to modern medicine. A public health crisis will immediately impact the width and breadth of emergency medical services.

In order to reduce costs, the medical community has worked to increase its efficiency by reducing or closing facilities, reducing staff, and relying on just-in-time inventory systems for medical supplies. This has resulted in an indirect reduction in the capacity to handle large-scale health events and an increased reliability on crisis response systems.

Public Health events are likely to impact whole regions and nations. Resources from outside Milpitas may not be available. American society has not had to respond to a major health crisis in modern times. Existing concepts and response systems may be overwhelmed.

## **THREAT ASSESSMENT 7: HAZARDOUS MATERIALS INCIDENT**

### General Situation

A hazardous material is any substance that may be explosive, flammable, poisonous, corrosive, reactive, radioactive, or any combination thereof, because of its quantity, concentration or characteristics. Hazardous materials require special care and handling because of the threats they pose to public health, safety and the environment. The production, transportation, and use of hazardous materials have become a normal part of society.

Accidental releases of hazardous materials can be especially damaging when they occur in highly populated areas or along transportation routes used simultaneously by commuters and hazardous materials transports. Incidents are more likely to occur along highways and railways. Fixed facilities, such as manufacturing and light industrial facilities release hazardous materials incidents; however stringent safety requirements help to limit these.

Hazardous materials incidents in the urban areas of the county may require precautionary evacuations, or may have residents do shelter-in-place. Such an event may produce many victims suffering from exposure to the agent or burns and require implementation of the County's Mass Casualty Incident (MCI) Plan.

### *Transportation Routes or Fixed Hazardous Materials Facilities*

Hazardous materials incidents in Milpitas would most likely occur on the transportation routes or at fixed hazardous materials sites within the various cities. Hazardous materials are often moved through the area on Highway's 880 and 237. Surface streets are used for the local transportation of hazardous materials.

### *Oil Spill*

An oil spill can be a significant hazard to Milpitas' ecosystems including wildlife and environmentally sensitive sites

### *Sewage Spills*

Sewage spills into the City's waterways or the San Francisco Bay may cause significant contamination causing sickness people who come in contact with those waters as well as distressed and sick wildlife. Sewage spill is often caused by waste treatment facilities pump and alarm failures as well as human errors.

### *Other Sources*

Another source of hazardous materials incidents is the illegal manufacturing of drugs in clandestine laboratories. The residue and hazardous waste from these laboratories are usually dumped illegally, posing a public health and safety hazard and a threat to the environment. In many cases, criminals will conduct their activities in the midst of residential or commercial neighborhoods to remain hidden.

## **THREAT ASSESSMENT 8: TRANSPORTATION ACCIDENTS**

A major incident involving an airplane, truck, or train could result in numerous casualties and could significantly impact Milpitas' transportation systems. The ability of emergency response teams to respond and transport victims to hospitals will be affected by the time of day and traffic congestion.

A major incident on any of the primary routes will produce road closures of at least four or more hours. Extensive search and rescue operations may be required to assist trapped and injured persons. Emergency medical care and temporary shelter would be required for injured or displaced persons. Identification, movement and temporary storage of any significant number of dead will be difficult. Families may be separated, particularly if the incident should occur during working hours. In some instances, the loss of communications and disruption of other essential services may hamper emergency operations.

Under certain circumstances, government effort will be required to remove debris and clear roadways, demolish unsafe structures, and assist in re-establishing public services. It may be necessary to provide continuing care and welfare for the affected population.

Each of these hazards could produce several secondary threats, such as a hazardous materials incident, fire, severe damage to nearby buildings or vehicles, loss of life in either adjacent buildings or vehicles and pedestrians.

Major accidents could involve an airplane crash, trucking incident or a train crash. The following assessments provide additional details unique to each type of incident:

### **Airplane Crash**

#### General Situation

Often the impact of a disabled aircraft as it strikes the ground creates the potential for multiple explosions, resulting in an intense fire. Wherever the crash occurs, the resulting explosion and fires have the potential to cause injuries, fatalities and the destruction of property. The time of day when the crash occurs may have a profound effect on the number of dead and injured. As well, an airplane crash produces profound mental health issues for survivors, surrounding residents, and emergency responders.

#### Specific Situation

Milpitas has no commercial service airports with regularly scheduled air carrier passenger service, however, the San Jose International Airport is home to several airlines. Milpitas lies along the north end of air traffic flight path from this airport. The crash of an aircraft would result in obvious issues if the incident took place near heavily-populated areas. In remote areas, the rugged terrain could make access and communications difficult. A large area could be affected with falling parts, burning fuel and destroyed buildings. Many state and federal agencies would respond to the scene in a very short period and media attention would be intense.

## **Trucking Incident**

### General Situation

A major truck incident that occurs in a heavily-populated industrial area or residential area can result in considerable loss of life and property. Potential hazards could be overturned tank trailers, direct impact either into a residence or industrial building, or cutting into the normal flow of traffic.

### Specific Situation

The main transportation arteries through Milpitas are Interstates 880 and 680. These routes are heavily used most hours of the day and the control of vehicular traffic in and around the affected area of a multi-casualty or hazardous materials incident will be the primary problem at any time.

In many areas there are few, if any, good alternate routes. During commute hours, the problem will be severely compounded. It will be essential to expedite the flow of essential emergency response vehicles through the area and divert nonessential traffic. In a major accident, it is not uncommon for these roads to close for most of a day to support rescue, recovery and accident investigation activities.

In a major disaster, increased reliance on goods and equipment being trucked into the county and into MILPITAS combined with restricted or damaged roads could result in a greater chance for a major accident.

## **Train Crash**

### General Situation

A major train derailment that occurs in a heavily populated industrial area can result in considerable loss of life and property. As a train leaves its track, there is no longer any control as to the direction it will travel. Potential hazards could include overturned rail cars, hazardous materials incidents, and impact to an industrial building or entering into normal street traffic.

Train accidents could be caused by derailment, an accident with a vehicle at a crossing, an accident with a pedestrian at a crossing, a collision with another train, or an explosion or fire in or near the train. Any hazardous materials carried as freight or in another impacted vehicle could substantially complicate response actions and require that the situation be monitored until all debris is removed.

There would be a great number of agencies responding to the scene. Traffic control and resource management will be difficult but essential to maintain. Schools near the site may be isolated or called upon to evacuate immediately. Media attention can be expected to be significant.

## **THREAT ASSESSMENT 9: ENERGY DISRUPTION**

### General Situation

Modern society has increasingly grown dependent on technologies which use various sources of energy. Events in the last 30 years have underscored the major impacts that a disruption in the energy supply can have:

- The major Arab Oil Embargo in 1973 led to significant economic and political changes including increased domestic oil production, additional investment in alternative energy sources, inflation, and a marked reduction in the Gross National Product.
- The California electrical shortages of 2001 resulted in the use of rotating electrical outages, also known as rolling blackouts. This crisis created a great deal of confusion, loss of power, increased utility rates, and negatively impacted the state budget.

### *Fossil Fuels*

This includes natural gas, oil, and gasoline. Disruptions in the supply of these resources would immediately cause serious problems in transportation, electrical generation, business, communications, and would cause prices for most goods and services to rise dramatically.

### *Electrical Power*

A power failure is any interruption or loss of electrical service due to disruption of power generation or transmission caused by an accident, sabotage, natural hazard, equipment failure, or fuel shortage. These interruptions can last anywhere from a few seconds to several days. Power failures are considered significant problems only if the local emergency management organization is required to coordinate the provision of food, water, heating, etc. as a result. Power failures are common when severe weather and winter storm activity occur. Critical systems including telecommunications will fail unless provided with alternate or redundant power sources.

### Specific Situation

Petroleum products are imported to Milpitas via highways from Bay Area refineries. A natural gas pipeline feeds the majority of the population along the U.S. Highway 880 corridor.

## **THREAT ASSESSMENT 10: RADIOLOGICAL INCIDENT**

### General Situation

Depending upon the type, location, and quantity released, nuclear (radiological) materials can damage human health, the environment, and property. Such an accidental release is extremely rare. Commercial nuclear plants began generating power in 1957. The United States has had only one major incident that occurred at the Three Mile Island facility near Harrisburg, Pennsylvania in 1979. Other minor incidents have occurred, but these have been infrequent and have caused few off-site consequences.

Common sources of radiological materials include those used in medical procedures, research, industrial production, and construction.

It is important to note that a radiological event differs from a regular Hazardous Materials spill in that the affected area could be large; radioactivity is difficult to detect; specialized equipment is required to pinpoint sources; and clean up may require tremendous resources. Long-term effects may be difficult to determine. Public perception will play a critical role in the incident. Media coverage of such an event will be massive. Federal agencies will play a key role in managing response and recovery efforts.

Generally, shielding, limited exposure time, and increased distance from the source are the keys to effective mitigation and response.

### Specific Situation

Milpitas is a combination suburban/rural area. Only a few sites (mostly medical facilities) use such materials - and these are considered a relatively low-level threat. As U.S. Highway 880 is the primary north/south corridor for Santa Clara County, some industrial and medical grade radiological materials are transported on this route.

## **THREAT ASSESSMENT 11: TERRORISM**

### General Situation

The Federal Bureau of Investigation (FBI) defines terrorism as “the unlawful use of force against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in the furtherance of political or social objectives.”

Since the events of September 11, 2001, a significant increase in the assessment and preparation for terrorism has been a national priority.

Terrorism can be state-sponsored or the outgrowth of a frustrated, extremist fringe of polarized and/or minority groups of people. Extremists have a different concept of morality than the mainstream society. Terrorist groups include:

- Ethnic separatists and political refugees
- Leftwing radical organizations
- Rightwing racists, anti-authority survivalist groups
- Extremist issue-oriented groups such as animal rights, environmental, religious, anti-abortionists

Events could typically be expected in urban areas near public gatherings, government facilities, or highly visible areas, but no one area is less likely to be a target than any other. Communities are vulnerable to terrorist incidents and most have high visibility and vulnerable targets. These facilities, sites, systems, and special events in the community are usually located near routes with high transportation access. Examples include:

- Government office buildings, courthouses, schools, hospitals, and shopping centers
- Dams, water supplies, power distribution systems
- Military installations
- Railheads, interstate highways, tunnels, airports, ferries, bridges, seaports, pipelines
- Recreational facilities such as stadiums, theaters, parks, casinos, concert halls
- Financial institutions and banks
- Sites of historical and symbolic significance
- Scientific research facilities, academic institutions, museums
- Telecommunications, newspapers, radio and television stations
- Chemical, industrial, and petroleum plants, business offices, and convention centers
- Law, fire, emergency medical services facilities, and operations centers
- Special events, parades, religious services, festivals, celebrations
- Family planning facilities

### *Weapons of Mass Destruction*

Experts generally agree that there are five categories Weapons of Mass Destruction (WMD) which terrorists could use: Chemical, Biological, Radiological, Nuclear, and Explosive (CBRNE). It is important to note that developing and properly employing such weapons is very difficult - but not impossible. Each category of weapon is discussed below:

- Chemical agents are compounds with unique chemical properties that can produce lethal or damaging effects in humans, animals, and plants. Chemical agents can exist as solids, liquids, or gases depending on temperature and pressure. Most chemical agents are liquid and can be introduced into the unprotected population relatively easily using aerosol generators, explosive devices, breaking containers, or other forms of covert dissemination. Dispersed as an aerosol, chemical agents have their greatest potential for inflicting mass

casualties.

- Biological agents pose a serious threat because of their accessible nature and the rapid manner in which they spread. These agents are disseminated by the use of aerosols, contaminated food or water supplies, direct skin contact, or injection. Several biological agents that could be adapted for use by terrorists include anthrax, tularemia (rabbit fever), cholera, the plague, botulism, and pandemic flu. A biological incident will most likely be first recognized in the hospital emergency room, medical examiner's office, or within the public health community long after the terrorist attack. The consequences of such an attack will present communities with an unprecedented requirement to provide mass protective treatment to exposed populations, mass patient care, mass fatality management, and environmental health clean-up procedures and plans.
- A radiological weapon involves the detonation of a large conventional explosive that incorporates nuclear material or detonation of an explosive in close proximity to nuclear materials in use, storage, or transit.
- A nuclear threat is the use or threatened detonation of a nuclear bomb or device. At present, there is no known instance in which any non-governmental entity has been able to obtain or produce a nuclear weapon.
- Explosive incidents account for 70 percent of all terrorist attacks worldwide. Bombs are the terrorist's weapon of choice. The Internet and local libraries provide ample information on the design and construction of explosive devices. The FBI reported that 3,163 bombing incidents occurred in the United States in 1994, 77 percent were due to explosives. Residential properties are the bombers' most common targets.

### *Cyber terrorism*

In addition to WMD attacks, cyber terrorism is a relatively new phenomenon used to potentially disrupt our society and exploit our increasing reliance on computers and telecommunication networks. Cyber terrorism threatens the electronic infrastructure supporting the social, health, and economic well being of our communities. Interlinked computer networks regulate the flow of power, water, financial services, medical care, telecommunication networks, and transportation systems.

### Specific Situation

The San Francisco Bay Area contains many high profile sites and buildings which are considered potential terrorist targets. Even if Santa Clara County and MILPITAS don not suffer an attack, it is likely that we will be asked to provide support to other metropolitan areas that has been impacted. Another consideration is the potential for large numbers of the public to move from the impacted area due to actual or perceived dangers.

The federal and state response to terrorist activities has been intense since the attack of September 11, 2001. Emergency Management actions have centered on terrorist threat assessment, planning, grant administration, and training. Detailed terrorism threat assessments for the County and the State of California have been completed and are considered confidential.

**THREAT ASSESSMENT 12: CIVIL DISTURBANCE**

Civil disturbance includes incidents that are intended to disrupt a community to the degree that law enforcement intervention is required to maintain public safety. Civil disturbances are generally associated with controversial political, judicial, or economic issues and/or events. The effects of civil disturbances could include traffic congestion or gridlock, illegal assemblies, disruption of utility service, property damage, injuries and potential loss of life. This is in contrast to Civil Disobedience.

## **THREAT ASSESSMENT 13: NATIONAL SECURITY EMERGENCY**

A national defense emergency will normally be announced by the Federal government; however, unless there is a sudden, unprovoked attack, there should be some time available for planning and initiation of evacuation procedures. It is not the duty of civil authorities to fight the war, but rather to control and care for the local population. Local and state authorities under a "State of War" have not been exercised since World War Two.

Potential impacts of a national security emergency include:

### Military Call-up and Activity

A major national defense emergency would require the activation of the Military Reserve Forces and the National Guard. Members of those organizations would be called to duty. Their service in the federal government takes precedence over local authority. There would be no trained replacement personnel immediately available. This would affect government agencies at all levels and organizational restructuring might be necessary. There are very few military installations in the region which would be deploying troops. However, movement through the area could place a great deal of strain on major highways and local resources.

### Civilian Activity

The civilian population may also be immediately affected by a declaration of a national emergency. Most certainly there will be a significant portion of the population which would try to evacuate the area in advance. This could produce some civil disobedience. Employee safety could become a significant concern.

### Outright War or Attack

An attack upon the United States (either conventional or nuclear) is extremely unlikely. The potential for such an event, however, does not exist. Although the chances of a massive nuclear strike on the U.S. have greatly diminished, several countries throughout the world have developed, or are seeking to develop the capability of deploying nuclear weapons, either on a tactical basis or a strategic one. Additionally, the possibility exists that a terrorist organization might acquire the capability of creating a small nuclear detonation. A single nuclear detonation in the United States would likely produce fallout affecting an area many times greater than that of the blast itself.

In the event of a conflict involving the major world powers, an attack on the Bay Area would be an almost certainty. In most probability, the attack would be from missiles with nuclear warheads. An attack on the coast by amphibious forces is unlikely. This is normally the responsibility of the federal agencies; however, protection of municipal facilities and resources would be an important consideration.

There are several "strategic" targets in the Bay Area which are/would be targeted for a nuclear strike. In addition to the military installations, defense production and communications-related civilian activities may be designated as targets. Destruction would be complete in many areas and all normal sources of power and water will cease to exist. The surviving population would flee the area by any means possible. Areas not directly affected by the blast of weapons will suffer the effects of radioactive particulate dispersed into the atmosphere.

In the event of a massive attack, there would be no help from outside agencies for a prolonged period. It would be the responsibility of law enforcement to restore order and the job of the entire government to re-assert its authority and re-establish any systems possible to aid in the placement and care of refugees as well as local citizens.

## **PART THREE**

### **REFERENCES AND ACRONYMS**

#### **OPERATIONAL AREA ANNEXES**

Available reference material includes annexes that supplement the Santa Clara County Operational Area EOP. These documents provide information or additional detail for hazards or response functions. The list below indicates current Santa Clara County Annexes. Additional annexes will be developed. All current annexes are available to all agencies within the Santa Clara County Operational Area.

- Care and Shelter Annex
- Spontaneous Volunteer Annex
- Tsunami Annex
- Vulnerable/Special Needs Populations Annex

#### **AUTHORITIES AND REFERENCES**

The California Emergency Services Act (Chapter 7 of Division 1 of Title 2 of the Government Code), hereafter referred to as, "The Act", provides the basic authorities for conducting emergency operations following a proclamation of Local Emergency, State of Emergency or State of War Emergency by the Governor and/or appropriate local authorities, consistent with the provisions of the Act.

The Standardized Emergency Management System (SEMS) Regulations (Chapter 1, Division 2 of Title 19 of the California Code of Regulations), establishes SEMS to provide an effective response to multi-agency and multi-jurisdiction emergencies in California.

Homeland Security Presidential Directive (HSPD-5) gives the Secretary of Homeland Security the responsibility of developing and administering the National Incident Management System (NIMS).

The California Emergency Plan, which is promulgated by the Governor, is published in accordance with the Act and provides overall statewide authorities and responsibilities, and describes the functions and operations of government at all levels during extraordinary emergencies, including wartime. Section 8568 of the Act states, in part, that "the State Emergency Plan shall be in effect in each political subdivision of the state, and the governing body of each political subdivision shall take such action as may be necessary to carry out the provisions thereof". Local emergency plans are, therefore, considered to be extensions of the California Emergency Plan.

The National Response Plan (NRP) establishes a single, comprehensive approach to domestic incident management to prevent, prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies. The NRP is an all-hazards plan built on the template of the National Incident Management System (NIMS). The NRP can be partially or fully implemented in the context of a threat, anticipation of a significant event, or in response to an incident requiring a coordinated Federal response. The NRP applies to all incidents requiring a coordinated Federal response as part of an appropriate combination of Federal, State, local, tribal, private-sector, and nongovernmental entities. The NRP is always in effect; however, the implementation of NRP coordination mechanisms is flexible and scalable.

The California Civil and Government Codes contain several references to liability release (Good Samaritan Act) for those providing emergency services.

**Federal**

Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (Public Law 93-288, as amended)

Federal Civil Defense Act of 1950 (Public Law 920), as amended

Federal Response Plan (FEMA)

Federal Departments and agencies HSPD-5 requirements for adoption of NIMS by State and local organizations

NRT-1, Hazardous Materials Emergency Planning Guide and NRT-1A Plan Review Guide (Environmental Protection Agency's National Response Team)

**State**

Standardized Emergency Management System (SEMS) Regulations (Chapter 1 of Division 2 of Title 19 of the California Code of Regulations) and (Government Code Section 8607(a).  
Standardized Emergency Management System (SEMS) Guidelines.

California Emergency Services Act (Chapter 7 of Division 1 of Title 2 of the Government Code).

'Good Samaritan' Liability

California Emergency Plan

California Natural Disaster Assistance Act (Chapter 7.5 of Division 1 of Title 2 of the Government Code)

Preservation of Local Government, Article 15 of the California Emergency Services Act (Chapter 7 of Division 1 of Title 2 of the Government Code)

Temporary County Seats, Section 23600, Article 1 of Chapter 4 of Division 1 of Title 3 of the Government Code

California Hazardous Materials Incident Contingency Plan

California Health and Safety Code, Division 20, Chapter 6.5, Sections 25115 and 25117, Chapter 6.95, Sections 2550 et seq., Chapter 7, Sections 25600 through 25610, dealing with hazardous materials

Orders and Regulations which may be Selectively Promulgated by the Governor during a State of Emergency

Orders and Regulations Promulgated by the Governor to Take Effect upon the Existence of a State of War Emergency

California Master Mutual Aid Agreement

California Law Enforcement Mutual Aid Plan

California Fire and Rescue Operations Plan

Judicial System, Article VI, Section 1, 4, 5, and 10, of the Constitution of California

Local Government, Article XI, of the Constitution of California

**Americans with Disabilities Act**

All operations and facilities involved in the disaster response activities shall take special note of the Americans with Disabilities Act (ADA). Appropriate efforts shall be made to insure that necessary considerations are given to accommodate victims with disabilities. Public warning, emergency communications, transportation, and sheltering are areas that require special attention.

## ACRONYMS

AAR	After Action Report
ADA	Americans with Disabilities Act
ARC	American Red Cross
C&S	Care and Shelter
CAD	Computer Aided Dispatch
CalFire	California Fire
CalTrans	California Department of Transportation
CAO	Chief Administrative Officer
CAP	Corrective Action Plan
CBRNE	Chemical, Biological, Radiological, Nuclear and Explosive
CDF	California Department of Fire
CERT	Community Emergency Response Team
CHP	California Highway Patrol
DC3	Disaster & Citizens Corps Council
DPW	Department of Public Works
EAS	Emergency Alert System
EDIS	Emergency Digital Information System
EMS	Emergency Medical Services
EOC	Emergency Operations Center
EOP	Emergency Operations Plan/Emergency Operating Procedures
EPA	Environmental Protection Agency
FBI	Federal Bureau of Investigation
FCC	Federal Communications Commission
FEMA	Federal Emergency Management Agency
HSPD-5	Homeland Security Presidential Directive -5
ICS	Incident Command System
JIC	Joint Information Center
MACC	Multi-Agency Coordination Center
MCI	Mass Casualty Incident
NIMS	National Incident Management System
NOAA	National Oceanic and Atmospheric Administration
NRP	National Response Plan
OA	Operational Area
OHS	Office of Homeland Security
PHO	Public Health Officer
PIO	Public Information Officer
RACES	Radio Amateur Civil Emergency Services
REOC	Regional Emergency Operations Center
RIMS	Response Information Management System
SEMS	Standardized Emergency Management System
SOC	State Operations Center
SOP	Standard Operating Procedures
TSA	The Salvation Army
TENS	Telephone Emergency Notification System
WMD	Weapons of Mass Destruction

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE PURCHASE OF 25 COPVU WEARABLE CAMERAS AND APPROVING SOLE SOURCE AND STANDARDIZATION OF THE PRODUCT**

**WHEREAS**, Section I-2-3.07 of the Milpitas Municipal Code authorizes the City Council to enter into contracts without competitive bid when the Purchasing Agent determines that there is only one source for the product, the purchase of which is in the City’s best interest; and

**WHEREAS**, the City of Milpitas already went through the evaluation process that resulted in the purchase of 16 CopVu Wearable Cameras from Watch Guard, which also wrote special programming specifically to be compatible with that of the City of Milpitas; and

**WHEREAS**, there are no local suppliers or contractors who provide the same product at competitive rates; and

**WHEREAS**, the City’s purchase of 25 more CopVu Wearable cameras will match with the equipment already on hand, thus reducing inter-operability issues, training time, and maintenance expenses.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Manager is authorized to execute a separate contract with Watch Guard for the not-to-exceed amount of \$22,000.00.
3. Watch Guard is hereby designated as a sole source vendor under section I-2-3.09 “Sole Source Procurement” of the Municipal Code, and CopVu Wearable Cameras are hereby standardized under section I-2-3.13 “Standardization” of the Municipal Code.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

\_\_\_\_\_  
Jose S. Esteves, Mayor

ATTEST:

\_\_\_\_\_  
Mary Lavelle, City Clerk



415 Century Parkway, Allen, TX 75013  
 (972) 423-9777 Fax: (972) 423-9778  
 National Toll-Free 1-800-605-MPEG (6734)  
 www.watchguardvideo.com

# CAMERA QUOTE

Quote #: QUO-11587-GBRF Rev #: 1

<b>Customer:</b>	
Milpitas Police Department	
Attn: Daniel Nam	
1275 N Milpitas Blvd, Milpitas, CA, 95035	
Telephone Number	Fax Number
(408) 586-2712	
Email Address	
dnam@ci.milpitas.ca.gov	

<b>Quote Information</b>		
Quote Valid From:	To: 4/13/2013	
Quote Presented By:	Fran Judge	
Presenter Contact:	FJudge@WatchGuardVideo.com	
Est. Ship Date	Ship Via	Payment Terms
30 days	UPS Ground	Net 30

#	Part Number	Description	Unit Price	Qty	Ext Price
1	CVU-COP-VU1-CAM	CopVu Wearable Camera, with Spring Clip	\$795.52	25	\$19,888.00
2	CVU-COP-VU1-KIT	CopVu Retail Accessory Kit (with New CopVu Only)	Included	25	Included
3	WAR-STD-CVU-90D	CopVu Standard 90 Day Warranty	Included	25	Included
4	WGD00076	Guide, CopVu Quick Reference	Included	25	Included

Comments:

Subtotal	\$19,888.00
Shipping	\$250.00
Taxes	\$1,736.90
<b>Total</b>	<b>\$21,874.90</b>



**CITY OF MILPITAS**  
**ENGINEERING DIVISION**  
 BID SUMMARY(Revised\*)

**\*7**

**Project Name:** 2011 Park Pathways  
**Project No. :** 5091  
**Bid Date:** March 20, 2013

ITEM	DESCRIPTION	BASED BID		Engineer's Estimate		DRT		R & M Paving		Wattis Construction Co.		Guerra Construction Group		McNabb Construction	
		Qty.	UNIT	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension
<b>Augustine Park</b>															
1	Mobilization	1	LS	\$2,500.00	\$3,385.50	\$500.00	\$500.00	\$2,500.00	\$2,500.00	\$3,025.00	\$3,025.00	\$3,000.00	\$3,000.00	\$6,300.00	\$6,300.00
2	Traffic Control	1	LS	\$1,500.00	\$1,500.00	\$300.00	\$300.00	\$3,000.00	\$3,000.00	\$2,125.00	\$2,125.00	\$3,000.00	\$3,000.00	\$2,800.00	\$2,800.00
3	Water Pollution Control Work	1	LS	\$1,500.00	\$1,500.00	\$800.00	\$800.00	\$1,500.00	\$1,500.00	\$6,100.00	\$6,100.00	\$2,000.00	\$2,000.00	\$910.00	\$910.00
4	Remove and Replace Sidewalk	100	SF	\$12.00	\$1,200.00	\$15.00	\$1,500.00	\$15.00	\$1,500.00	\$41.70	\$4,170.00	\$20.00	\$2,000.00	\$9.80	\$980.00
5	3-inch AC Base Repair	2,804	SF	\$5.00	\$14,020.00	\$5.30	\$14,861.20	\$2.50	\$7,010.00	\$5.00	\$14,020.00	\$6.00	\$16,824.00	\$8.40	\$23,553.60
6	Conforms & Wedge Cuts	520	SF	\$0.20	\$104.00	\$5.30	\$2,756.00	\$6.00	\$3,120.00	\$3.25	\$1,690.00	\$2.50	\$1,300.00	\$8.40	\$4,368.00
7	1-1/2 Inch Ac Overlay	16,000	SF	\$3.00	\$48,000.00	\$1.70	\$27,200.00	\$2.00	\$32,000.00	\$1.60	\$25,600.00	\$2.25	\$36,000.00	\$4.90	\$78,400.00
8	Type C Curb Ramp	2	EA	\$5,000.00	\$10,000.00	\$4,000.00	\$8,000.00	\$4,500.00	\$9,000.00	\$3,705.00	\$7,410.00	\$3,000.00	\$6,000.00	\$1,750.00	\$3,500.00
9	Asphalt Concrete Crack Seal	1	LS	\$2,500.00	\$2,500.00	\$500.00	\$500.00	\$2,440.00	\$2,440.00	\$1,465.00	\$1,465.00	\$2,000.00	\$2,000.00	\$1,750.00	\$1,750.00
<b>Pinewood Park</b>															
10	Mobilization	1	LS	\$2,500.00	\$3,385.50	\$300.00	\$300.00	\$2,500.00	\$2,500.00	\$2,988.00	\$2,988.00	\$2,000.00	\$2,000.00	\$3,500.00	\$3,500.00
11	Traffic Control	1	LS	\$1,500.00	\$1,500.00	\$300.00	\$300.00	\$3,000.00	\$3,000.00	\$2,022.00	\$2,022.00	\$2,000.00	\$2,000.00	\$2,100.00	\$2,100.00
12	Water Pollution Control Work	1	LS	\$1,500.00	\$1,500.00	\$500.00	\$500.00	\$1,500.00	\$1,500.00	\$4,200.00	\$4,200.00	\$1,500.00	\$1,500.00	\$910.00	\$910.00
13	Remove and Replace concrete at tot lot	35	SF	\$12.00	\$420.00	\$20.00	\$700.00	\$20.00	\$700.00	\$54.70	\$1,914.50	\$30.00	\$1,050.00	\$49.00	\$1,715.00
14	Grind Pcc at tot lot	200	SF	\$10.00	\$2,000.00	\$23.94	\$4,788.00	\$5.00	\$1,000.00	\$20.00	\$4,000.00	\$8.00	\$1,600.00	\$9.80	\$1,960.00
15	3-inch Base Repair	1,329	SF	\$5.00	\$6,645.00	\$7.50	\$9,967.50	\$4.00	\$5,316.00	\$6.00	\$7,974.00	\$9.00	\$11,961.00	\$8.40	\$11,163.60
16	Remove & Replace asphalt Concrete	3,500	SF	\$8.00	\$28,000.00	\$2.60	\$9,100.00	\$4.00	\$14,000.00	\$3.00	\$10,500.00	\$5.00	\$17,500.00	\$5.60	\$19,600.00
17	1-1/2 inch Asphalt Overlay	6,000	SF	\$3.00	\$18,000.00	\$1.85	\$11,100.00	\$2.50	\$15,000.00	\$1.75	\$10,500.00	\$3.00	\$18,000.00	\$4.90	\$29,400.00
18	Wedge Grind & Conform	150	SF	\$0.20	\$30.00	\$7.50	\$1,125.00	\$6.00	\$900.00	\$9.25	\$1,387.50	\$4.00	\$600.00	\$8.40	\$1,260.00
19	Asphalt Concrete Crack Seal	1	LS	\$2,500.00	\$2,500.00	\$300.00	\$300.00	\$1,500.00	\$1,500.00	\$1,465.00	\$1,465.00	\$1,000.00	\$1,000.00	\$1,750.00	\$1,750.00
20	Type C Curb Ramp	3	EA	\$5,000.00	\$15,000.00	\$3,985.00	\$11,955.00	\$4,266.00	\$12,798.00	\$3,715.00	\$11,145.00	\$3,000.00	\$9,000.00	\$1,750.00	\$5,250.00
21	Remove & Replace Sidewalk	80	SF	\$12.00	\$960.00	\$15.00	\$1,200.00	\$12.50	\$1,000.00	\$46.50	\$3,720.00	\$25.00	\$2,000.00	\$9.80	\$784.00
22	Remove & Replace Header Board	190	LF	\$15.00	\$2,850.00	\$9.25	\$1,757.50	\$8.00	\$1,520.00	\$10.60	\$2,014.00	\$7.00	\$1,330.00	\$17.50	\$3,325.00
				<b>\$165,000.00</b>		<b>\$109,510.20</b>		<b>\$122,804.00</b>		<b>\$129,435.00</b>		<b>\$141,665.00</b>		<b>* \$205,279.20</b>	

\* Mathematical summation error and a unit extension error

**Apparent Low Bidder**

**List of Sub-Contractors**

Description	DRT	R & M Paving	Wattis Construction Co.	Guerra Construction Group	McNabb Construction
Trip Hazard repair	Trip Stop				
Concrete Work		Innovate Engineering, Inc			

City of Milpitas, California

**BUDGET CHANGE FORM**

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:				
<input checked="" type="checkbox"/> Budget Appropriation	250-2940 321-9515091- 3834	\$ 77,778  77,778	250-3940 321-95150917- 4800	\$ 77,778  77,778
<input type="checkbox"/> Budget Transfer				

**Explain the reason for the budget change:**

**Background:** On May 1, 2012, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for the "Pathways" Park Renovation 2011. The project provides for repairs to pathways at Pinewood Park and Albert J. Augustine Jr. Memorial Park. The installation of new Americans with Disabilities Act (ADA) compliant curb ramps connecting the pathways to City sidewalks is also included. The Engineer's Estimate for the base bid project work is \$165,000.

On April 17, 2012, the City Council approved grant funding for this project in the amount of \$77,778 through the Community Development Block Grant (CDBG) program. These funds now need to be appropriated into Project No. 5091.

The project was advertised and five (5) sealed bid proposals were received on March 20, 2013. Bid proposals ranged from \$109,510 to \$205,279, with the lowest responsible base bid submitted by DRT Grading & Paving Inc. in the amount of \$ 109,510. The construction contingency established for this project is \$30,000, and the change order authority would not exceed this amount and would not require additional appropriation.

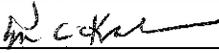
**Fiscal Impact:** A budget appropriation to add the CDBG funding obtained in the amount of \$77,778 is required in order to award this project. The remainder of the funds are available in the project budget.

**Recommendations:**

1. Award Construction Contract to DRT Grading & Paving Inc. for the Park Renovation 2011, Project No. 5091, in the amount of \$109,510.
2. Approve a budget appropriation of \$77,778 from the Community Development Block Grant (CDBG) into the Park Renovation 2011 Project No. 5091.
3. Authorize staff to execute change orders up to \$30,000 for the Park Renovation 2011, Project No. 5091.

Check if City Council Approval required.

Meeting Date: April 2, 2013

Requested by:	Department Head: Kathleen Phalen	Date: March 25, 2013
Reviewed by:	Finance Director: 	Date: 3/25/13
Approved by:	City Manager:	Date:
Date approved by City Council, if required:		Confirmed by:

**THIRD AMENDMENT TO THE AGREEMENT  
FOR CONSULTATION AND OTHER SERVICES**

**\*8**

This Amendment is entered into on April 2, 2013, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and CalRecovery, Inc. (hereafter referred to as "CONSULTANT").

**RECITALS**

WHEREAS, the parties entered into a Consulting Services Agreement on April 14, 2009 for general odor-related analysis work; and

WHEREAS, the parties amended the Agreement on May 18, 2010 and on June 19, 2012 to allow the CONSULTANT to perform additional professional services; and

WHEREAS, the parties desire to further amend the Agreement to provide for additional CONSULTANT services.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to amend the Agreement as follows:

1. Section 1, entitled "Services" is amended to extend the contract term by exercising the second of two 1-year options for an expiration date of June 30, 2014.
2. Section 2, entitled "Compensation" is amended to add \$20,000. Section 2 is further amended by changing the following at the beginning of the section:

City agrees to pay Consultant a guaranteed maximum price not to exceed \$49,000 for all services to be performed and reimbursable costs incurred under this Agreement.

3. All other provisions of the Agreement shall remain in full force and effect.

This Amendment is executed as of the date written above.

CITY OF MILPITAS

CONSULTANT

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
George Savage, Executive Vice President

APPROVED AS TO CONTENT

\_\_\_\_\_  
Kathleen Phalen, Acting City Engineer/  
Public Works Director

APPROVED AS TO FORM

\_\_\_\_\_  
Mike J. Ogaz, City Attorney

**FIRST AMENDMENT TO THE AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM**

The Agreement for Countywide Household Hazardous Waste Collection Program (AGREEMENT) by and between the City of Milpitas (CITY) and the County of Santa Clara (COUNTY) previously entered into on July 1, 2012, is hereby amended as set forth below.

The COUNTY and the CITY agree that:

- 1. Section 18. ADDITIONAL SERVICES UNDER THIS AGREEMENT is amended in full to read:

- 18. ADDITIONAL SERVICES UNDER THIS AGREEMENT

CITY may elect to augment funding provided for in this Agreement with CITY funds. Additional services shall be made available upon written agreement between the CITY's authorized representative and the Director of the Department of Agriculture and Environmental Management. Additional services may include, but are not limited to, additional appointments (charged at the variable cost per car rate), door-to-door HHW collection, universal waste collection, and abandoned waste collection.

CITY agrees to augment up to an additional \$ 5,000 to the Countywide HHW Program during Fiscal Year 2014 for the purpose of increased resident participation above the 4% service level at the scheduled collection dates listed in Attachment C. Augmentation will be calculated at the Variable Cost per Car rate which is \$62.00 per car. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

At the end of each fiscal year, a final annual cost statement shall be prepared by COUNTY and issued to CITY by November 30th. The annual cost statement will take into consideration costs incurred on behalf of CITY for additional services and all payments made by CITY to COUNTY. If any balance is owed to COUNTY, it will be due within 30 days following receipt of the annual cost statement. If any credit is owed to CITY, COUNTY will refund that amount to CITY within 30 days following delivery of the annual cost statement.

//  
 //  
 //  
 //

2. Attachment C to the AGREEMENT is replaced in full by the Exhibit C "HHW Schedule For Collection Events for Fiscal Year 2013/2014" attached hereto and incorporated herein by this reference.

Except as provided herein, all terms and conditions of the AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, COUNTY and CITY, through their duly authorized representatives, have entered into this First Amendment to the AGREEMENT on the last date shown below:

COUNTY OF SANTA CLARA

OF

Signature:

Signature:

Amy L Brown

\_\_\_\_\_

Amy Brown  
Director of Department of Agriculture and  
Environmental Management

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: 3/13/13

Date: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGALITY**

**APPROVED BY THE OFFICE  
OF THE COUNTY EXECUTIVE**

Mark Bernal

Mark Bernal  
Deputy County Counsel

Date: 2-27-13

Sylvia Gallegos

Sylvia Gallegos  
Deputy County Executive

Date: 05/11/2013

## EXHIBIT C

## HHW SCHEDULE FOR COLLECTION EVENTS FISCAL YEAR 2013/2014

2013/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
July	<b>Saturday</b>	<b>6</b>	<b>No Event</b>	<b>No Event</b>	<b>FOURTH OF JULY</b>
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	<b>Saturday</b>	<b>20</b>	<b>Sunnyvale</b>	<b>Permanent</b>	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
	<b>Saturday</b>	<b>27</b>	<b>Santa Clara</b>	<b>Temporary</b>	
August	<b>Fri,Sat</b>	<b>2,3</b>	<b>San Martin</b>	<b>Permanent</b>	
	Thurs,Fri,Sat	1,2,3	San Jose	Permanent	
	Thurs,Fri,Sat	8,9,10	San Jose	Permanent	
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	<b>Saturday</b>	<b>17</b>	<b>Sunnyvale</b>	<b>Permanent</b>	
	Thurs,Fri,Sat	22,23,24	San Jose	Permanent	
	Thurs,Fri	29,30	San Jose	Permanent	
	<b>Saturday</b>	<b>31</b>	<b>No Event</b>	<b>No Event</b>	<b>LABOR DAY WEEKEND</b>
September	<b>Fri,Sat</b>	<b>6,7</b>	<b>San Martin</b>	<b>Permanent</b>	
	Thurs,Fri,Sat	5,6,7	San Jose	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	<b>Saturday</b>	<b>21</b>	<b>Sunnyvale</b>	<b>Permanent</b>	
	Thurs,Fri,Sat	26,27,28	San Jose	Permanent	
	<b>Saturday</b>	<b>28</b>	<b>Santa Clara</b>	<b>Temporary</b>	
October	<b>Fri,Sat</b>	<b>4,5</b>	<b>San Martin</b>	<b>Permanent</b>	
	Thurs,Fri,Sat	3,4,5	San Jose	Permanent	
	Thurs,Fri,Sat	10,11,12	San Jose	Permanent	
	Thurs,Fri,Sat	17,18,19	San Jose	Permanent	
	<b>Saturday</b>	<b>19</b>	<b>Sunnyvale</b>	<b>Permanent</b>	
	Thurs,Fri,Sat	24,25,26	San Jose	Permanent	
November	<b>Fri,Sat</b>	<b>1,2</b>	<b>San Martin</b>	<b>Permanent</b>	
	Thurs,Fri,Sat	31,1,2	San Jose	Permanent	
	Thurs,Fri,Sat	7,8,9	San Jose	Permanent	
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	<b>Saturday</b>	<b>16</b>	<b>Sunnyvale</b>	<b>Permanent</b>	
	Thurs,Fri,Sat	21,22,23	San Jose	Permanent	
	<b>Saturday</b>	<b>30</b>	<b>No Event</b>	<b>No Event</b>	<b>THANKSGIVING</b>
December	<b>Fri,Sat</b>	<b>6,7</b>	<b>San Martin</b>	<b>Permanent</b>	
	Thurs,Fri,Sat	5,6,7	San Jose	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	<b>Saturday</b>	<b>28</b>	<b>No Event</b>	<b>No Event</b>	<b>CHRISTMAS</b>
	2014/Jan	<b>Fri,Sat</b>	<b>3,4</b>	<b>San Martin</b>	<b>Permanent</b>
Thurs,Fri,Sat	2,3,4	San Jose	Permanent		
Thurs,Fri,Sat	9,10,11	San Jose	Permanent		
Thurs,Fri,Sat	16,17,18	San Jose	Permanent		
<b>Saturday</b>	<b>18</b>	<b>Sunnyvale</b>	<b>Permanent</b>		
Thurs,Fri,Sat	23,24,25	San Jose	Permanent		

HHW SCHEDULE FOR FISCAL YEAR 2013/2014-continued

2014/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
<b>February</b>	<b>Fri,Sat</b>	<b>31,1</b>	<b>San Martin</b>	<b>Permanent</b>	
	Thurs,Fri,Sat	30,31,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	<b>Saturday</b>	<b>15</b>	<b>Sunnyvale</b>	<b>Permanent</b>	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
<b>March</b>	<b>Fri,Sat</b>	<b>28,1</b>	<b>San Martin</b>	<b>Permanent</b>	
	Thurs,Fri,Sat	27,28,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	<b>Saturday</b>	<b>15</b>	<b>Sunnyvale</b>	<b>Permanent</b>	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27,28,29	San Jose	Permanent	
<b>April</b>	<b>Fri,Sat</b>	<b>4,5</b>	<b>San Martin</b>	<b>Permanent</b>	
	Thurs,Fri,Sat	3,4,5	San Jose	Permanent	
	Thurs,Fri,Sat	10,11,12	San Jose	Permanent	
	<b>Saturday</b>	<b>12</b>	<b>Los Altos</b>	<b>Temporary</b>	
	Thurs,Fri,Sat	17,18,19	San Jose	Permanent	
	<b>Saturday</b>	<b>19</b>	<b>Sunnyvale</b>	<b>Permanent</b>	
	Thurs,Fri,Sat	24,25,26	San Jose	Permanent	
	<b>Saturday</b>	<b>26</b>	<b>Santa Clara</b>	<b>Temporary</b>	
<b>May</b>	<b>Fri,Sat</b>	<b>2,3</b>	<b>San Martin</b>	<b>Permanent</b>	
	Thurs,Fri,Sat	1,2,3	San Jose	Permanent	
	Thurs,Fri,Sat	8,9,10	San Jose	Permanent	
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	<b>Saturday</b>	<b>17</b>	<b>Sunnyvale</b>	<b>Permanent</b>	
	<b>Saturday</b>	<b>24</b>	<b>No Event</b>	<b>No Event</b>	<b>MEMORIAL DAY WEEKEND</b>
	Thurs,Fri,Sat	29,30,31	San Jose	Permanent	
<b>June</b>	<b>Fri,Sat</b>	<b>6,7</b>	<b>San Martin</b>	<b>Permanent</b>	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	<b>Saturday</b>	<b>21</b>	<b>Sunnyvale</b>	<b>Permanent</b>	
	Thurs,Fri,Sat	26,27,28	San Jose	Permanent	
	<b>Saturday</b>	<b>28</b>	<b>Milpitas</b>	<b>Temporary</b>	

\*SUBJECT TO CHANGE

## PRODUCTION AGREEMENT (Special)

This agreement ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by and between **Pyro Spectaculars North, Inc.**, a California corporation, hereinafter referred to as ("PYRO"), and **City of Milpitas**, hereinafter referred to as ("CLIENT"). PYRO and CLIENT are sometimes referred to as "Party" or collectively as "Parties" herein.

1. **Engagement** - CLIENT hereby engages PYRO to provide to CLIENT one fireworks production ("Production"), and PYRO accepts such engagement upon all of the promises, terms and conditions hereinafter set forth. The Production shall be substantially as outlined in Program "A", attached hereto and incorporated herein by this reference.

1.1 **PYRO Duties** – PYRO shall provide all pyrotechnic equipment, trained pyrotechnicians, shipping, pyrotechnic products, application for specific pyrotechnic permits (the cost of which, including standby fees, shall be paid by CLIENT) relating to the Production, insurance covering the Production and the other things on its part to be performed as more specifically set forth below in this Agreement and in the Scope of Work ("Scope of Work"), attached hereto, incorporated herein by this reference, and made a part of this Agreement as though set forth fully herein.

1.2 **CLIENT Duties** – CLIENT shall provide to PYRO a suitable site ("Site") for the Production, security for the Site as set forth in Paragraph 6 hereof, access to the Site, any permission necessary to utilize the Site for the Production, and the other things on its part to be performed as more specifically set forth below in this Agreement and in the Scope of Work. All Site arrangements are subject to PYRO's reasonable approval as to pyrotechnic safety, suitability, and security. All other conditions of the Site shall be the responsibility of CLIENT, including, but not limited to, access, use, control, parking and general safety with respect to the public, CLIENT personnel and other contractors.

2. **Time and Place** - The Production shall take place on July 4, 2013, at approximately 9:30PM, at Milpitas Sports Center Football Field and surrounding area, 1367 E. Calaveras Blvd , Milpitas, CA, Site.

3. **Fees, Interest, and Expenses** -

3.1 **Fee** - CLIENT agrees to pay PYRO a fee of ~~\$21,600.00~~ USD (~~TWENTY-ONE THOUSAND SIX HUNDRED DOLLARS~~) ("Fee") for the Production. CLIENT shall pay to PYRO ~~\$10,800.00~~ USD (~~TEN THOUSAND EIGHT HUNDRED DOLLARS~~) of the Fee plus estimated permit and standby fees, specified production costs, and other regulatory costs approximated at ~~\$00.00~~, for a total of ~~\$10,800.00~~, as a deposit ("Deposit") upon the execution of this Agreement by both parties but no later than April 4, 2013. The balance of the Fee shall be paid no later than July 5, 2013. CLIENT authorizes PYRO to receive and verify credit and financial information concerning CLIENT from any agency, person or entity including but not limited to credit reporting agencies. The "PRICE FIRM" date, the date by which the executed Agreement must be delivered to Pyro, is set forth in paragraph 20.

3.2 **Interest** - In the event that the Fee is not paid in a timely manner, CLIENT will be responsible for the payment of 1.5% interest per month or 18% annually on the unpaid balance. If litigation arises out of this Agreement, the prevailing party shall be entitled to reasonable costs incurred in connection with the litigation, including, but not limited to attorneys' fees.

3.3 **Expenses** – PYRO shall pay all normal expenses directly related to the Production including freight, insurance as outlined, pyrotechnic products, pyrotechnic equipment, experienced pyrotechnic personnel to set up and discharge the pyrotechnics and those additional items as outlined as PYRO's responsibility in the Scope of Work. CLIENT shall pay all costs related to the Production not supplied by PYRO including, but not limited to, those items outlined as CLIENT's responsibility in this Agreement and Scope of Work.

4. **Proprietary Rights** - PYRO represents and warrants that it owns all copyrights, including performance rights, to this Production, except that PYRO does not own CLIENT-owned material or third-party-owned material that has been included in the Production, and as to such CLIENT-owned and third-party-owned material, CLIENT assumes full responsibility therefore. CLIENT agrees that PYRO shall retain ownership of, and all copyrights and other rights to, the Production, except that PYRO shall not acquire or retain any ownership or other rights in or to CLIENT-owned material and third-party-owned material and shall not be responsible in any way for such material. If applicable, CLIENT consents to the use of CLIENT-owned material and represents that it has or will obtain any permission from appropriate third parties sufficient to authorize public exhibition of any such material in connection with this Production. PYRO reserves the ownership rights in its trade names that are used in or are a product of the Production. Any reproduction by sound, video or other duplication or recording process without the express written permission of PYRO is prohibited.

5. **Safety** - PYRO and CLIENT shall each comply with applicable federal, state and local laws and regulations and employ safety programs and measures consistent with recognized applicable industry standards and practices. At all times before and during the Production, it shall be within PYRO's sole discretion to determine whether or not the Production may be safely discharged or continued. It shall not constitute a breach of this Agreement by PYRO for fireworks to fail or malfunction, or for PYRO to determine that the Production cannot be discharged or continued as a result of any conditions or circumstances affecting safety beyond the reasonable control of PYRO.

6. **Security** - CLIENT shall provide adequate security personnel, barricades, and Police Department services as may be necessary to preclude individuals other than those authorized by PYRO from entering an area to be designated by PYRO as the area for the set-up and discharge of the Production, including a fallout area satisfactory to PYRO where the pyrotechnics may safely rise and any debris may safely fall. PYRO shall have no responsibility for monitoring or controlling CLIENT's other contractors, providers or volunteers; the public; areas to which the public or contractors have access; or any other public or contractor facilities associated with the Production.

7. **Cleanup** - PYRO shall be responsible for the removal of all equipment provided by PYRO and clean up of any live pyrotechnic debris made necessary by PYRO. CLIENT shall be responsible for any other clean up which may be required of the Production or set-up, discharge and fallout areas including any environmental clean-up.

8. **Permits** - PYRO agrees to apply for permits required for the firing of pyrotechnics only from the **MILPITAS FIRE DEPARTMENT**, FAA, and USCG, if required. CLIENT shall be responsible for any fees associated with these permits including standby fees. CLIENT shall be responsible for obtaining any other necessary permits, paying associated fees, and making other appropriate arrangements for Police Departments, other Fire Departments, road closures, event/activity or land use permits or any permission or permit required by any Local, Regional, State or Federal Government.

9. **Insurance** - PYRO shall at all times during the performance of services herein ensure that the following insurance is maintained in connection with PYRO's performance of this Agreement: (1) commercial general liability insurance, including products, completed operations, and contractual liability under this Agreement; (2) automobile liability insurance, (3) workers' compensation insurance and employer liability insurance. Such insurance is to protect CLIENT from claims for bodily injury, including death, personal injury, and from claims of property damage, which may arise from PYRO's performance of this Agreement, only. The types and amounts of coverage shall be as set forth in the Scope of Work, on page 4 of this Agreement. Such insurance shall not include claims which arise from CLIENT's negligence or willful conduct or from failure of CLIENT to perform its obligations under this Agreement, coverage for which shall be provided by CLIENT.

The coverage of these policies shall be subject to reasonable inspection by CLIENT. Certificates of Insurance evidencing the required general liability coverage shall be furnished to CLIENT prior to the rendering of services hereunder and shall include that the following are named as additionally insured: City of Milpitas, its officers, officials, employees and volunteers; and Permitting Authorities, with respect to the operations of PYRO at the Production. Pyrotechnic subcontractors or providers, if any, not covered under policies of insurance required hereby, shall secure, maintain and provide their own insurance coverage with respect to their respective operations and services.

10. **Indemnification** - PYRO represents and warrants that it is capable of furnishing the necessary experience, personnel, equipment, materials, providers, and expertise to produce the Production in a safe and professional manner. Notwithstanding anything in this Agreement to the contrary, PYRO shall indemnify, hold harmless, and defend CLIENT and the additional insureds from and against any and all claims, actions, damages, liabilities and expenses, including but not limited to, attorney and other professional fees and court costs, in connection with the loss of life, personal injury, and/or damage to property, arising from or out of the Production and the presentation thereof to the extent such are occasioned by any act or omission of PYRO, their officers, agents, contractors, providers, or employees. CLIENT shall indemnify, hold harmless, and defend PYRO from and against any and all claims, actions, damages, liability and expenses, including but not limited to, attorney and other professional fees and court costs in connection with the loss of life, personal injury, and/or damage to property, arising from or out of the Production and the presentation thereof to the extent such are occasioned by any act or omission of CLIENT, its officers, agents, contractors, providers, or employees. In no event shall either party be liable for the consequential damages of the other party.

11. **Limitation of Damages for Ordinary Breach** - Except in the case of bodily injury and property damage as provided in the insurance and indemnification provisions of Paragraphs 9 and 10, above, in the event CLIENT claims that PYRO has breached this Agreement or was otherwise negligent in performing the Production provided for herein, CLIENT shall not be entitled to claim or recover monetary damages from PYRO beyond the amount CLIENT has paid to PYRO under this Agreement, and shall not be entitled to claim or recover any consequential damages from PYRO including, without limitation, damages for loss of income, business or profits.

12. **Force Majeure** - CLIENT agrees to assume the risks of weather, strike, civil unrest, terrorism, military action, governmental action, and any other causes beyond the control of PYRO which may prevent the Production from being safely discharged on the scheduled date, which may cause the cancellation of any event for which CLIENT has purchased the Production, or which may affect or damage such portion of the exhibits as must be placed and exposed a necessary time before the Production. If, for any such reason, PYRO is not reasonably able to safely discharge the Production on the scheduled date, or at the scheduled time, or should any event for which CLIENT has purchased the Production be canceled as a result of such causes, CLIENT may (i) reschedule the Production and pay PYRO such sums as provided in Paragraph 13, or (ii) cancel the Production and pay PYRO such sums as provided in Paragraph 14, based upon when the Production is canceled.

13. **Rescheduling Of Event** - If CLIENT elects to reschedule the Production, PYRO shall be paid the original Fee plus all additional expenses made necessary by rescheduling plus a 15% service fee on such additional expenses. Said expenses will be invoiced separately and payment will be due in full within 5 days of receipt. CLIENT and PYRO shall agree upon the rescheduled date taking into consideration availability of permits, materials, equipment, transportation and labor. The Production shall be rescheduled for a date not more than 90 Days subsequent to the date first set for the Production. The Production shall not be rescheduled to a date, or for an event, that historically has involved a fireworks production. The Production shall not be rescheduled between June 15th and July 15th unless the original date was July 4th of that same year, or between December 15th and January 15th unless the original date was December 31st of the earlier year unless PYRO agrees that such rescheduling will not adversely affect normal business operations during those periods.

14. **Right To Cancel** - CLIENT shall have the option to unilaterally cancel the Production prior to the scheduled date. If CLIENT exercises this option, CLIENT agrees to pay to PYRO, as liquidated damages, the following percentages of the Fee as set forth in Paragraph 3.1. 1) 50% if cancellation occurs 30 to 90 days prior to the scheduled date, 2) 75% if cancellation occurs 15 to 29 days prior to the scheduled date, 3) 100% thereafter. In the event CLIENT cancels the Production, it will be impractical or extremely difficult to fix actual amount of PYRO's damages. The foregoing represents a reasonable estimate of the damages PYRO will suffer if CLIENT cancels the Production.

15. **No Joint Venture** - It is agreed, nothing in this Agreement or in PYRO's performance of the Production shall be construed as forming a partnership or joint venture between CLIENT and PYRO. PYRO shall be and is an independent contractor with CLIENT and not an employee of CLIENT. The Parties hereto shall be severally responsible for their own separate debts and obligations and neither Party shall be held responsible for any agreements or obligations not expressly provided for herein.

16. **Applicable Law** - This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with the laws of California. In the event that the scope of the Production is reduced by authorities having jurisdiction or by either Party for safety concerns, the full dollar amounts outlined in this Agreement are enforceable.

17. **Notices** - Any Notice to the Parties permitted or required under this Agreement may be given by mailing such Notice in the United States Mail, postage prepaid, first class, addressed as follows: PYRO - Pyro Spectaculars North, Inc., P.O. Box 2329, Rialto, California, 92377, or for overnight delivery to 3196 N. Locust Avenue, Rialto, California 92377. CLIENT - City of Milpitas, 457 East Calaveras Blvd, Milpitas, CA 95035-5411.

Pyro Spectaculars North, Inc.  
5301 Lang Avenue  
McClellan, CA 95652  
Tel: 909-355-8120 ::: Fax: 909-355-9813

City of Milpitas  
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18. **Modification of Terms** – All terms of the Agreement are in writing and may only be modified by written agreement of both Parties hereto. Both Parties acknowledge they have received a copy of said written Agreement and agree to be bound by said terms of written Agreement only.

19. **Severability** – If there is more than one CLIENT, they shall be jointly and severally responsible to perform CLIENT's obligations under this Agreement. This Agreement shall become effective after it is executed and accepted by CLIENT and after it is executed and accepted by PYRO at PYRO's offices in Rialto, California. This Agreement may be executed in several counterparts, including faxed and emailed copies, each one of which shall be deemed an original against the Party executing same. This Agreement shall be binding upon the Parties hereto and upon their heirs, successors, executors, administrators and assigns.

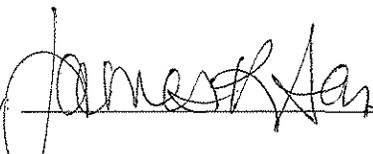
20. **Price Firm** – If any changes or alterations are made by CLIENT to this Agreement or if this Agreement is not executed by CLIENT and delivered to PYRO on or before the PRICE FIRM date shown below, then the price, date, and scope of the Production are subject to review and acceptance by PYRO for a period of 15 days following delivery to PYRO of the executed Agreement. In the event it is not accepted by PYRO, PYRO shall give CLIENT written notice, and this Agreement shall be void.

**PRICE FIRM through April 4, 2013**  
EXECUTED AGREEMENT MUST BE DELIVERED TO PYRO BY THIS DATE.  
See PRICE FIRM conditions, paragraph 20, above.

EXECUTED as of the date first written above:

PYRO SPECTACULARS NORTH, INC.

CITY OF MILPITAS

By:   
Its: President 

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Print Name

SHOW PRODUCER: Jeff Thomas

**SCOPE OF WORK**  
**PYRO SPECTACULARS NORTH, INC. (“PYRO”)**  
**and**  
**CITY OF MILPITAS (“CLIENT”)**

Pyro shall provide the following goods and services to CLIENT:

- One Pyro Spectaculars North, Inc., Production on July 4, 2013, at approximately 9:30pm at Milpitas Sports Center Football Field, 1367 E. Calaveras Blvd, Milpitas, CA.
- All pyrotechnic equipment, trained pyrotechnicians, shipping, and pyrotechnic product.
- Application for specific pyrotechnic permits relating to the Production.
- Musical soundtrack for the Production supplied in agreed upon format.
- Insurance covering the Production as set forth in the Agreement with the following limits:

<u>Insurance Requirements</u>	<u>Limits</u>	
<u>Commercial General Liability</u>	\$5,000,000.00	Combined Single Limit- Each Occurrence (Bodily Injury & Property Damage)
<u>Business Auto Liability- Owned, Non-Owned and Hired Autos</u>	\$5,000,000.00	Combined Single Limit- Each Occurrence (Bodily Injury & Property Damage)
<u>Workers' Compensation</u>	Statutory	
<u>Employer Liability</u>	\$1,000,000	Per Occurrence

CLIENT shall provide to PYRO the following goods and services:

- All on-site labor costs, if any, not provided or performed by PYRO personnel including, but not limited to, local union requirements, all Site security, Police and Fire Dept. standby personnel, stagehands, electricians, audio and fire control monitors, carpenters, plumbers, clean-up crew. All these additional personnel and services shall be fully insured and the sole responsibility of CLIENT.
- Coordination and any applicable non-pyrotechnic permitting with the local, state or federal government that may hold authority within the Production.
- Costs of all permits required for the presentation of the Production and the event as a whole.
- Provision of a Safety Zone in accordance with applicable standards and all requirements of the authorities having jurisdiction throughout the entire time that the pyrotechnics are at the Site or the load site (if different) on the date of the Production and all set-up and load-out dates, including water security to keep unauthorized people, boats, etc. from entering the Safety Zone.
- A professional grade Audio System including all necessary equipment, installation of such equipment and trained audio engineers for operation based on audio and communications requirements provided by PYRO.
- 24-hour on-site security for any time that pyrotechnic worksites are unattended by PYRO personnel.
- General Services including, but not limited to, Site and audience security, fencing, adequate work light, dumpster accessibility, a secure office for PYRO personnel within the venue, secure parking for PYRO vehicles, access to washrooms, tents, equipment storage, hazmat storage, electrical power, fire suppression equipment, access to worksites, necessary credentialing, etc., will be required as necessary.