



**CITY OF MILPITAS  
FINANCE SUBCOMMITTEE**

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**SPECIAL MEETING AGENDA  
4:00 PM. – 5:00 P.M.**

**Thursday, November 21, 2024**

**1<sup>st</sup> Floor Committee Conference Room 455 E. Calaveras Blvd, Milpitas**

- 1. Call to Order**
- 2. Pledge of Allegiance**
- 3. Roll Call**
- 4. Approval of Agenda:** November 21, 2024
- 5. Approval of Meeting Minutes:** November 15, 2023
- 6. Public Forum**  
*Members of the audience are invited to address the Subcommittee on any subject not on the agenda. Speakers must state their name (address is optional) for the record and limit their remarks to three minutes or less. For items not listed on the agenda, no response is required of City staff or the subcommittee. However, the Subcommittee may ask staff to place the item on a future meeting agenda.*
- 7. Announcements**
- 8. Business Items**
  - i. Status of Financial Audit
  - ii. Investment Report
  - iii. Enterprise Resource Planning (ERP) deployment update
  - iv. Financial Resiliency Model
- 9. City Staff Comments**
- 10. Adjournment**

**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 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: [mmutalipassi@milpitas.gov](mailto:mmutalipassi@milpitas.gov) / 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.milpitas.gov](http://www.milpitas.gov) by selecting "I Want to . . . View" link.*

Materials related to an item on this agenda submitted to the Commission after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas and on the City website. Commission agendas and related materials can be

viewed online: <http://www.milpitas.gov/our-government/commission/> (select meeting date)

**APPLY TO SERVE ON A CITY COMMISSION**

Commission application forms are available online at <http://www.milpitas.gov> or at Milpitas City Hall. Contact the City Clerk's office at 408-586-3003 for more information.

*If you need assistance, per the Americans with Disabilities Act, for a City of Milpitas public meeting, please call Ria Lauren Abellera at 408-586-3125 or send an e-mail to [rabellera@milpitas.gov](mailto:rabellera@milpitas.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 City Council Chambers for all meetings.*



# CITY OF MILPITAS FINANCE SUBCOMMITTEE

Mayor Carmen Montano  
Vice Mayor Evelyn Chua

## MEETING MINUTES

11:00 a.m. - 12:00 p.m.

Wednesday, November 15, 2023  
1<sup>st</sup> Floor Committee Conference Room  
455 E. Calaveras Blvd, Milpitas

<b>CALL TO ORDER</b>	Mayor Montano called the meeting to order at 11:00 AM and called the roll.
<b>PLEDGE of ALLEGIANCE</b>	Mayor Montano led the pledge of allegiance.
<b>ROLL CALL</b>	<b>PRESENT:</b> Mayor Montano, Vice Mayor Chua <b>ABSENT:</b> None
<b>APPROVAL OF AGENDA</b>	Motion/Second Vice Mayor Chua/Mayor Montano Motion carried by a vote of AYES: <u>All</u> NOES: <u>None</u>
<b>APPROVAL OF MINUTES</b>	October 23, 2023 Minutes Motion/Second Vice Mayor Chua/ Mayor Montano Motion carried by a vote of AYES: <u>All</u> NOES: <u>None</u>
<b>PUBLIC FORUM</b>	There were no members of the public present.
<b>ANNOUNCEMENTS</b>	There were no announcements given.
<b>BUSINESS ITEMS</b>	i. Report of City Manager Approved Contracts, ARPA Related Contracts, and the City Manager's Procurement Card Activity – October 2023 a. The Committee reviewed and approved contracts and the City Manager credit card transaction(s) for October 2023 Motion/Second: A vote was not required Recommendation: Receive October 2023 Report ii. The Committee received a presentation by the City independent financial auditor, Grace Zhang, Audit Partner of Maze & Associates. Ms. Zhang explained the FY2022-23 audit planning and procedures, determination of no material or significant deficiency of internal controls, and forthcoming issuance of an unqualified ("clean") audit opinion for the Annual Financial Comprehensive Report (AFCR).
<b>CITY LIAISON REPORTS</b>	No reports given.
<b>ADJOURNMENT</b>	Mayor Montano adjourned the meeting at 11:38 AM.



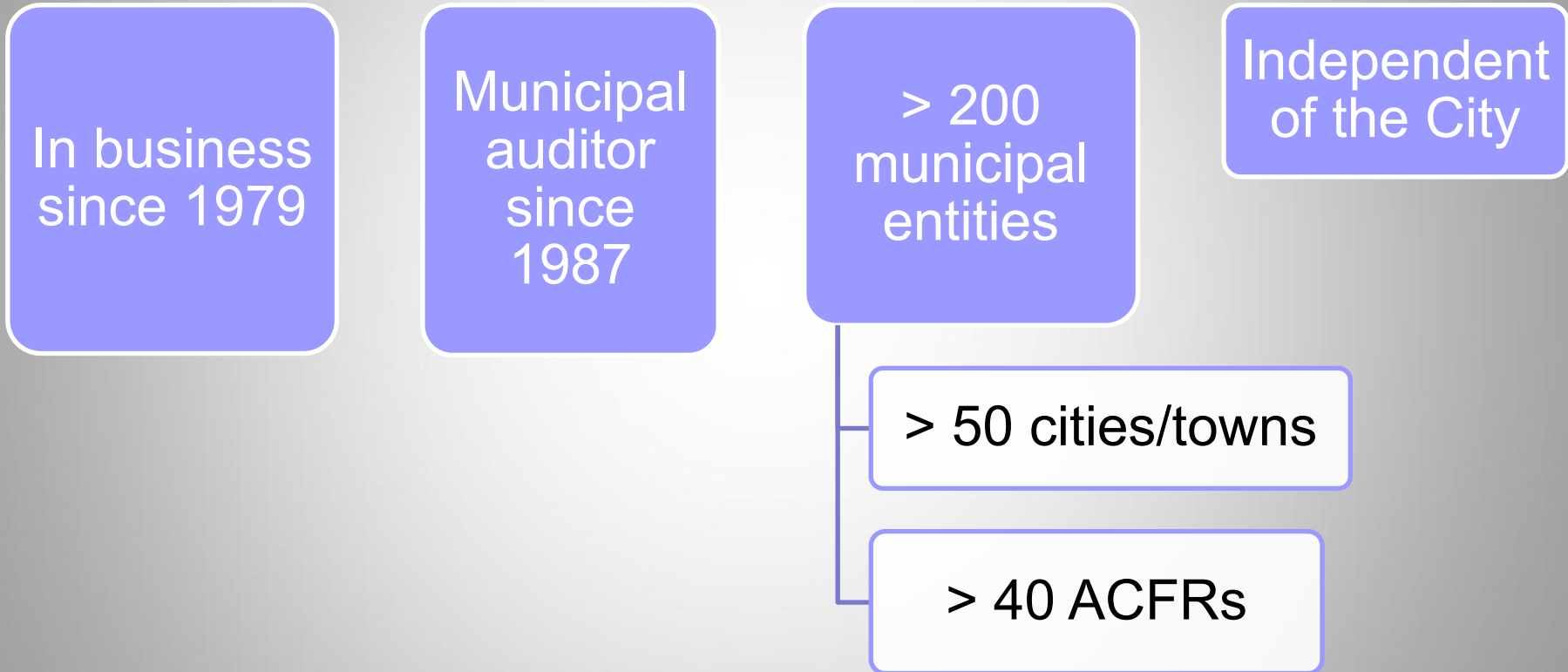
**City of Milpitas**

**Independent Auditor's Presentation**

**For Fiscal Year Ended June 30, 2023**

Grace Zhang, CPA  
Audit Partner

# Who We Are



# Annual Audit

- Completed
  - Audit of City's financial statements
  - Agreed-upon procedures on the City's Appropriation Limit calculation
  
- To be completed
  - Single Audit in January 2024

# Standards

Auditing standards  
generally accepted  
in the USA

Government  
Auditing Standards

# Annual Timing

## Interim

- June 2023
- Internal control environment

## Final

- September 2023
- Verification of financial data

# Results

- Audit
  - **Unmodified** (i.e. Clean) Opinions
- Appropriation Limit calculation AUP
  - **No exception noted**

# Components of ACFR

Comprehensive Annual  
Financial Report (ACFR)

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graph TD; A[Comprehensive Annual Financial Report (ACFR)] --- B[Basic Financial Statements (BFS)]; A --- C[Other components]
```

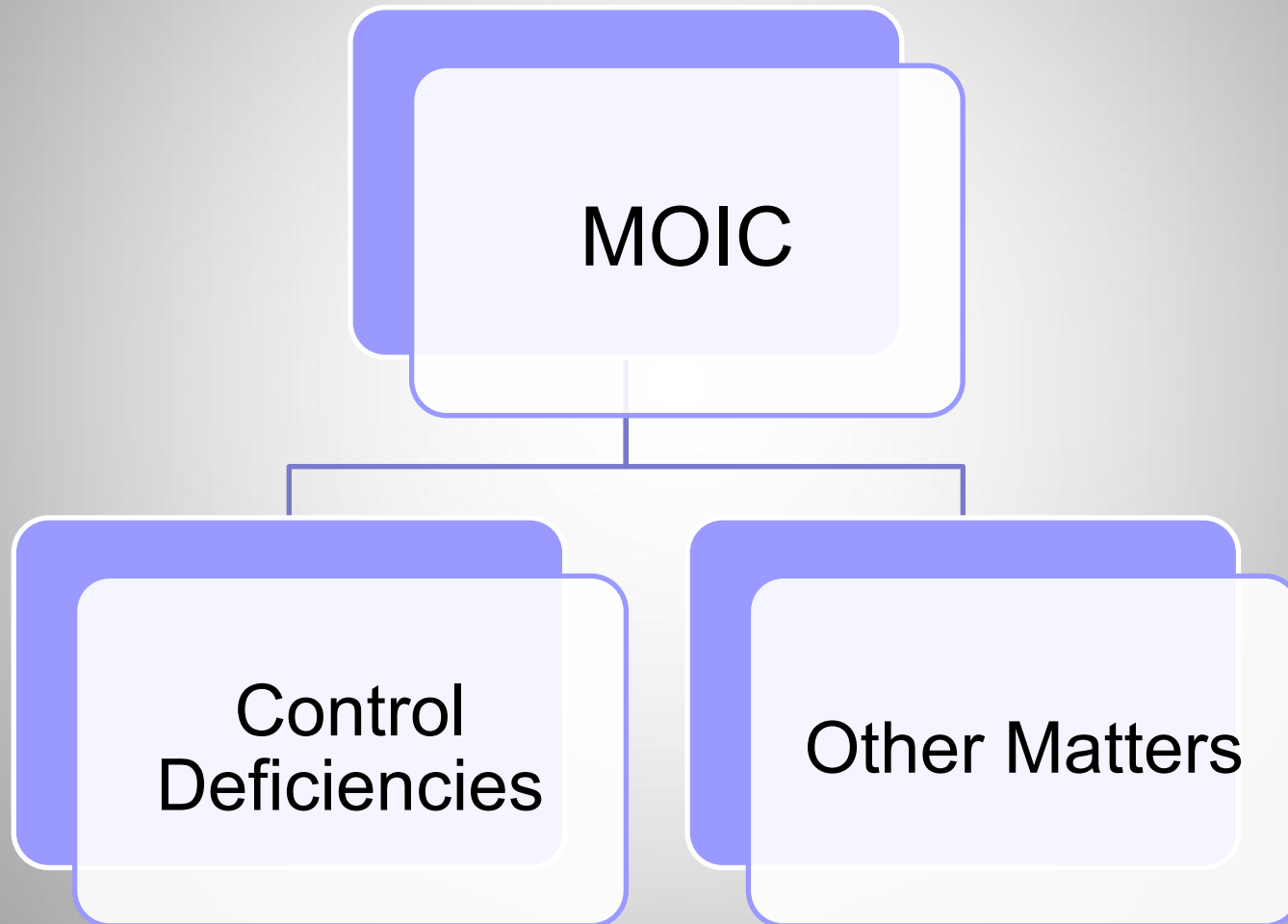
Basic Financial Statements  
(BFS)

Other components

# High Level Summaries

- Management's Discussion and Analysis (pages 5 to 21 of ACFR)
- Statistical Section (pages 137 to 167 of ACFR)

# Memorandum on Internal Control (MOIC) and Required Communications



# Control Deficiency

What?

- The design or operation of a control

Who?

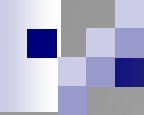
- Management or employees

When?

- In the normal course of performing their assigned functions

Does not allow

- The prevention, detection or correction of misstatements on a timely basis



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graph TD; A[Control Deficiency Reported on MOIC] --> B[Material Weakness]; A --> C[Significant Deficiency]
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# Control Deficiency Reported on MOIC

Material Weakness

Significant Deficiency

# FY 22 Audit



**No Material Weakness**

**One Significant Deficiency**

DOCUMENT: 20957728

Pages: 22



Fees..... \* No Fees  
Taxes....  
Copies... \_\_\_\_\_  
AMT PAID

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.

REGINA ALCOMENDRAS  
SANTA CLARA COUNTY RECORDER  
Recorded at the request of  
City 38.796

RDE # 005  
11/12/2010  
12:32 PM

20957728

After recordation, mail to:

OFFICE OF THE CITY ATTORNEY  
City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

**DEVELOPMENT AGREEMENT**

**By and Between**

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

**and**

**MILPITAS AUTO PROPERTIES, LLC,  
a California Limited Liability Company**

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 17<sup>th</sup> day of August, 2010 (the "Effective Date"), by and among Milpitas Auto Properties, LLC, a California 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. 38.796 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 the holder of a long-term Ground Lease in certain real property where the Piercey Toyota dealership is presently located in the City of Milpitas.

D. After issuing a request for proposals, the City at its May 5, 2009 City Council meeting gave approval to Developer to develop, erect and operate up to three (3) electronic advertising display signs along certain freeway locations, as well as at the Developer's auto dealership site in the City of Milpitas, subject to further permitting, licensing, and development applications and land use approvals.

E. In accordance with this Agreement, the Developer wishes to memorialize its rights to design, construct, install, operate, maintain, manage and market advertising opportunities on an electronic advertising display sign ("Project") at the Piercey Toyota dealership site, located at 950 Thompson Street in the City of Milpitas ("Property").

F. The City understands and expects that the Developer will enter into other agreements with the City or, as appropriate, an amendment of this Agreement, for the design, construction, installation, operation, maintenance, management and marketing of signs at two other sign locations. The Developer understands and expects that with regard to other agreements with the City for the design, construction, installation, operation, maintenance, management and marketing of signs at the other two (2) sign locations, such agreements will be on the same or similar terms as this Agreement.

G. Developer desires this Agreement with the City to assure that the Developer will, at the time of application, be issued a building permit and may, except as expressly provided

herein, proceed to construct and complete the Project at any time within the term of this Agreement in accordance with all applicable laws and regulations in effect at the Effective Date.

H. The environmental effects of the Project were previously considered in the final Supplemental Environmental Impact Report, State Clearinghouse No. 2006082087 ("SEIR"), prepared pursuant to the California Environmental Quality Act ("CEQA") and certified by the Redevelopment Agency of the City of Milpitas on November 21, 2006 in connection with the Merger of the Milpitas Redevelopment Project Area No. 1 and the Great Mall Redevelopment Project Area. The terms and conditions of this Agreement are consistent with and within the scope of the earlier SEIR. Accordingly, no further environmental analysis is necessary or required under CEQA to enter into this Agreement and undertake its terms and conditions.

I. After conducting a duly noticed public hearing on June 9, 2010, the Planning Commission for the City considered this Agreement and recommended its approval.

J. In conjunction with the consideration of this Agreement and after conducting a duly noticed public hearing on August 17, 2010, 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 benefit to persons residing outside the boundaries of the Project, beyond the normal exactions for public benefit imposed in the development review process. The City Council also approved a Project Site Plan (attached hereto as Exhibit B) and a Site Development Permit for the Project.

K. The Developer and the City both understand and acknowledge that the City shall not have physical possession of the Sign or the real property surrounding and underlying it, shall not be responsible for performing any of the obligations nor bear any costs whatsoever that the Developer may have for development, construction, permitting, use, maintenance and marketing of the Sign under this Agreement and shall not be liable for any breach under any other related agreement or arrangement regarding development of the Property.

L. For the reasons recited herein, Developer and City have determined that the Project is a development for which this Agreement is appropriate. City finds and Developer represents that a substantial economic benefit to the City will result in accordance with the public benefit under which the Project has been undertaken and which adds value to the community by the generation of revenue that has been projected by the Developer from the sign advertising and which is to be shared in by the City. In exchange for providing these public benefits, Developer receives assurance that it may proceed with 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:

### SECTION 1

#### DEFINITIONS

##### A. Definitions

The following definitions apply to this Agreement:

- (1) Agreement. The term "Agreement" shall mean this entire Development Agreement, including all appendices, exhibits and other documents attached hereto or incorporated herein by reference.
- (2) City. The term "City" shall mean the City of Milpitas, a municipal corporation, having its offices at 455 E. Calaveras Blvd., Milpitas, California 95035.
- (3) Developer. The term "Developer" shall mean Milpitas Auto Properties, LLC, a California Limited Liability Company holding a long-term ground lease on the real property located at 950 Thompson Street, Milpitas, California 95035.
- (4) Adjusted Gross Revenue. The term "Adjusted Gross Revenue" shall mean gross receipts from the sale of advertising time by the Developer and/or its sublessee, CBS Outdoor, Inc. ("CBS"), on the Sign, less advertising agency commissions, which shall not exceed 16.667% on any given advertising sale, and electricity costs related solely to Sign operations.
- (5) Project. The term "Project" shall mean the design, construction, installation, operation, maintenance, management, and marketing of the Sign to be located on the Project Site.
- (6) Project Site. The term "Project Site" shall mean that certain part of the Property more particularly described in Exhibit B attached hereto and as otherwise referred to in Recital E above.
- (7) Sign. The term "Sign" shall mean that one (1) off-site advertising signboard which shall have an electronic screen displaying advertisements and operating on an ongoing basis pursuant to the terms of this Agreement.

## SECTION 2

### GENERAL PROVISIONS

#### A. City and State Laws

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

#### B. Term

The term of this Agreement (“Term”) shall commence upon the Effective Date and shall expire on August 17, 2020, 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. Developer shall have the option to extend the initial term for three (3) additional ten (10) year periods at the expiration of the initial term, if not in default, after giving written notice of intent to extend not later than 180 days before, and no sooner than 360 days before the expiration of the initial term.

#### C. Assignment

Except as to a contemplated sublease agreement with CBS, the rights of the Developer under this Agreement may not be transferred or assigned without the written consent of City which consent will not be unreasonably withheld, delayed or conditioned.

#### D. Recitals

The recitals set forth above are true and correct and incorporated herein by this reference, and constitute an integral part of this Agreement.

#### E. Adequacy of Consideration

The City and Developer have determined that the Developer’s performance of its covenants and other obligations, as well as the agreed-upon percentage of Adjusted Gross Revenue that the City will share in as set forth in Section 3.D (1) below that will be generated by the Sign, represents fair and adequate consideration to the City for entering into this Agreement.

### SECTION 3

#### DEVELOPMENT

##### A. Development of Project Site

City specifically consents to the development of the Property with a Sign at the Project Site, subject to the Developer's compliance with all conditions of approval of the City and the terms and conditions set forth in this Agreement. Development of the Sign at the Project Site and construction of the Sign shall be in accordance with the City Council Economic Development Subcommittee's recommendations of May 17, 2010, the City Council's May 5, 2010 conceptual development approval, the terms of this Agreement and City Laws (as that term is defined herein) in effect on the Effective Date. The design, construction and location of the Project Site (including signage materials and landscaping) shall conform to the conceptual drawings attached hereto as Exhibit C (the "Conceptual Drawings").

##### 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 or amendments thereto in force at the Effective Date or adopted coterminously with this Agreement (herein collectively referred to as "City Laws"). Such City Laws generally govern the allowable maximum height, bulk, size, design and location of the Project. City agrees that under City Laws, the Project can be developed, built, used, maintained, and located on the subject Project Site.

##### C. Applicable City Laws and Regulations

Notwithstanding Paragraph B. above, City may apply the following City laws that are Project specific to the Project Site as regards the development, design, construction, use, improvement, maintenance, management and marketing of the Sign Parcels:

(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, bulk, 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;

(2) New City Laws which are specifically mandated and required by changes in state or federal laws and regulations; and

(3) 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) Engineering specifications for construction of any public improvements such as curbs, gutters and sidewalks;

(d) Standard Permit Fees;

(e) Impact or linkage fees adopted by ordinance or resolution, applicable to sign projects on a City- or area-wide basis, and payable upon issuance of a building permit;

(f) Any Standard fees payable upon issuance of a building permit for which City acts as a collecting agent for another governing agency; and

(g) Any Standard requirements applicable upon issuance of a building permit for which City acts as an administering agent for another governing agency.

(4) Moratoria adopted by City as an emergency ordinance on the basis of its finding that such action is a health or safety necessity.

D. Developer Obligations

(1) Developer shall pay to the City ten percent (10%) of the Adjusted Gross Revenue generated by the Sign. Payments shall be made on a quarterly basis by the Developer. Along with each quarterly payment, Developer shall provide an accounting demonstrating the breakdown of Adjusted Gross Revenue and payments provided.

(2) After the commencement of power service by Pacific Gas & Electric and concurrent with final inspection approval by the City under the Milpitas Building Code, the Developer shall pay a one-time, One Hundred Thousand Dollar (\$100,000.00) advance to the City. Such advance shall be deducted from future quarterly payments by Developer to the City.

(3) Developer shall be solely responsible for securing all applicable approvals, permits and licenses from non-City regulatory agencies (such as the California Department of Transportation) and landowners (such as the County of Santa Clara), as necessary.

(4) Developer shall prohibit and not display any adult-oriented content or allow the advertisement of any adult-oriented businesses or products on the Sign.

(5) Developer shall reserve at least five percent (5%) of electronic display time for City-promoted community events, messages and performances.

(6) Developer shall maintain and keep in good repair and clean condition the Project Site and the Sign erected thereon at all times during the term of this Agreement.

(7) Developer shall not permit any shrubs, trees, vines, buildings, or other signs or billboards to be planted or erected on the Property which would obstruct or materially impair the visibility of the Sign.

(8) Developer shall not permit any other billboards or signs advertising off-site uses to be erected on the Property.

(9) Developer shall comply with all laws, regulations, ordinances and rules, including but not limited to any and all environmental laws, rules and regulations, applicable to the construction, erection, maintenance, replacement and removal of signs, sign structures and equipment used or placed on the Property.

(10) After prior written Notice to cure the condition and except for Force Majeure events as defined in Section 10, Developer shall demolish and remove the Sign in the event that it remains vacant or unused for a period of six (6) months or more or upon the termination or expiration of this Agreement.

(11) 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.

(12) Developer expressly acknowledges and agrees that the obligations set forth herein are reasonable restraints on Owner's right to own, use, maintain and transfer the Property and any estate or interest therein, and are not and shall not be construed to be an unreasonable restraint or alienation.

(13) Developer shall maintain and make available for inspection, audit, and/or copying at any time during regular business hours, upon 48 hours oral or written request

of the City, records or documents relating to the collection and calculation of Adjusted Gross Revenue.

E. City Obligations

(1) The City shall assist the Developer and its Sublessee, CBS, with expeditiously processing the Developer and its Sublessee, CBS required submittals, such as public hearings, site plan and construction approvals, any environmental reviews, permits, etc., in order that Developer may obtain final City action on the Project; provided however that the City does not warrant or represent that such approval shall be obtained.

(2) The City shall not permit any shrubs, trees, vines, buildings or other signs or billboards to be planted or erected on any of their Properties which would obstruct or materially impair the visibility of this Sign; nor permit any other billboards or signs be erected on adjoining property that would negatively impact the Developer's marketing and usage of the Sign.

F. Development Not Required

Notwithstanding anything to the contrary contained herein, Developer is not obligated to develop the Project.

SECTION 4

AMENDMENT

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. Conflict with State or Federal Laws and Regulations

In the event that state or federal laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified in accordance with the provisions set forth in this Section or suspended as may be necessary to comply with such state or federal laws or regulations. Notwithstanding the foregoing, Developer shall have the right to challenge, at its sole cost, in a court of competent jurisdiction, the law or regulation preventing compliance with the terms of this Agreement and, if the challenge in a court of competent jurisdiction is successful, this Agreement shall remain unmodified and in full force and effect.

C. Procedure for Modification 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.

SECTION 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. Default and Remedies

Developer shall be in default under this Agreement upon the happening of one or more of the following events:

(1) If a warranty, representation or statement as relates to the Piercey Toyota dealership sign parcel made or furnished by Developer to the City subsequent to the Request for Proposals process is false or proves to have been false in any material respect when it was made; or,

(2) A finding and determination by the City 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; or,

(3) 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 30 day period, Developer shall have such additional time to cure as is reasonably necessary.

C. Procedure upon Default

(1) Upon the occurrence of an event of default, 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 City shall give Developer written notice of any default under this Agreement, and Developer shall have thirty (30) days after the date of the notice to cure the default or to reasonably commence the procedures or actions needed to cure the default.

D. 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.

SECTION 6

INDEMNIFICATION

City and Developer shall defend, hold harmless and indemnify each other and their respective officials, employees, agents, and representatives, as appropriate, from and against any and all claims, suits, demands, liability, loss, costs, damages, and other expenses of litigation arising from or relating to the negligence or willful misconduct of the City or the Developer.

SECTION 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 Manager, City of Milpitas  
City Hall  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

IF TO DEVELOPER:  
Tom Chadwell, Member  
Milpitas Auto Properties, LLC  
13600 Beach Blvd.  
Westminster, CA 92638

IF TO CBS OUTDOOR, INC.:  
Robert H. Harbin, III, Director  
CBS Outdoor  
1695 Eastshore Hwy.  
Berkeley, CA 94710

#### SECTION 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.

## SECTION 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 with ten (10) days of the effective date of the ordinance adopting this Agreement.

## SECTION 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

(1) Prevailing Party. 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.

(2) Action by Third Party. 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. Developer shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse City for all reasonable court costs and attorneys' fees expended by City 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 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. Bankruptcy

The obligations of this Agreement shall not be dischargeable in bankruptcy.

H. Governing Law and Venue

The laws of the State of California shall govern this Agreement. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state court of California in the County of Santa Clara.

I. Incorporation of Exhibits

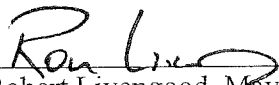
Each of the exhibits attached hereto are incorporated herein by this reference and made a part hereof for all purposes.

J. Counterparts

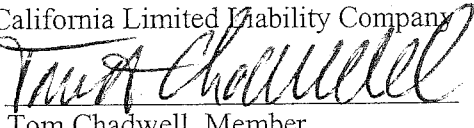
This Agreement may be executed in counterparts and each counterpart will have the same force and effect as an original.

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

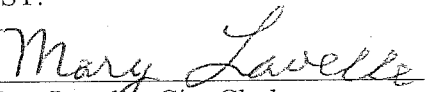
CITY OF MILPITAS  
A Municipal Corporation

By:   
Robert Livengood, Mayor

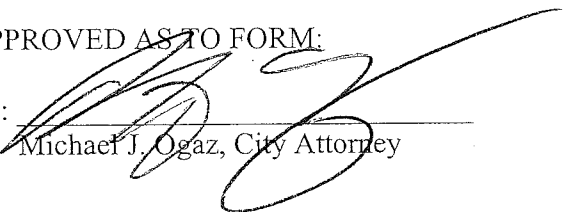
MILPITAS AUTO PROPERTIES,LLC  
A California Limited Liability Company

By:   
Tom Chadwell, Member

ATTEST:

By:   
Mary Lavelle, City Clerk

APPROVED AS TO FORM:

By:   
Michael J. Ogaz, City Attorney

## EXHIBIT A

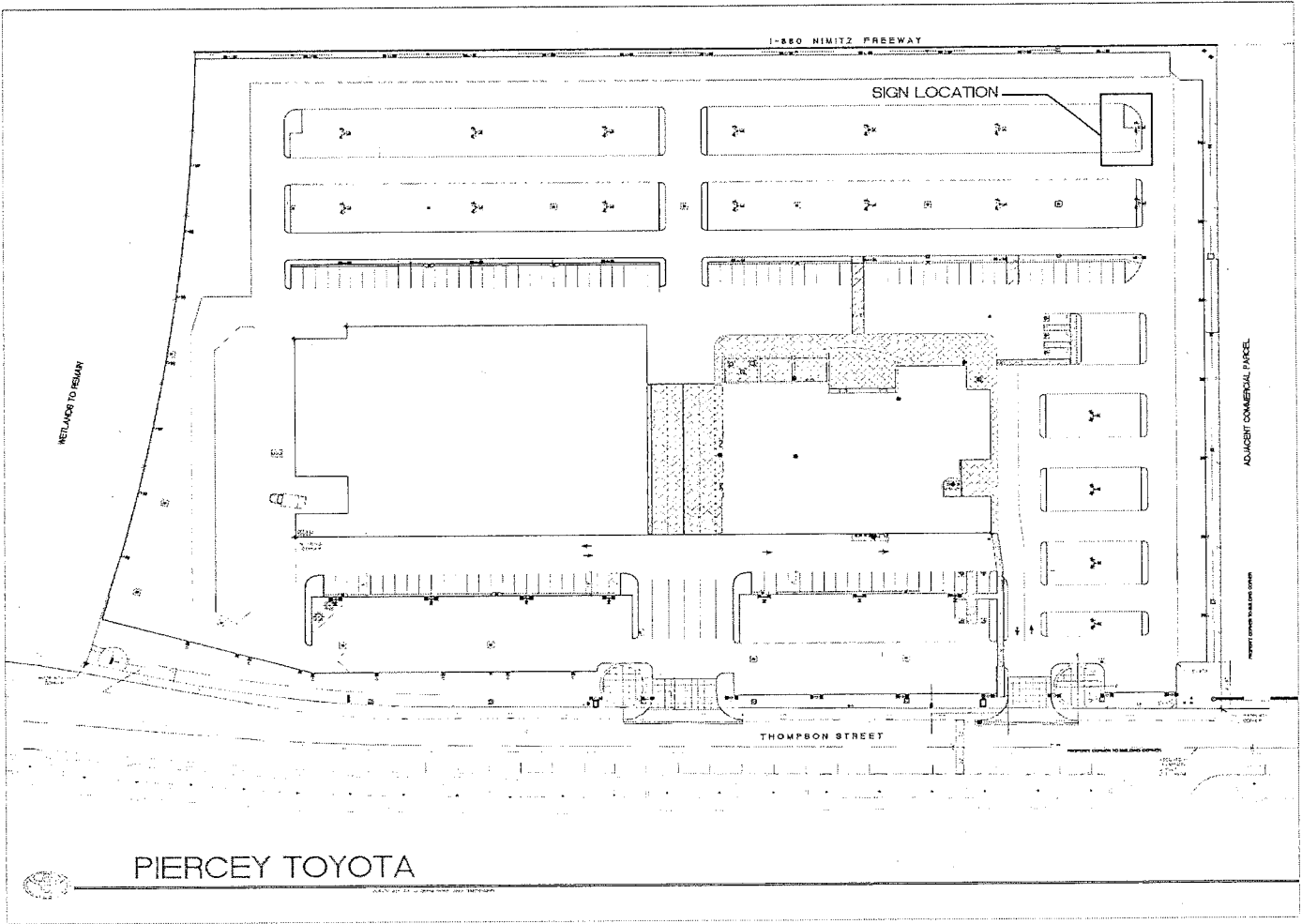
### Legal Description

All that certain real property situated in the City of Milpitas, County of Santa Clara, State of California, commonly described as Piercey Toyota, 950 Thompson Street, Milpitas, CA 95035, and being more particularly described as follows:

APN: 086 - 05 - x021

**EXHIBIT B**

**PROJECT SITE PLAN**



Site Plan – Piercey Toyota



**EXHIBIT C**

**CONCEPTUAL DRAWINGS**

26'-11.25" (323.25")

12'-0" (144")

52'-6" (630")

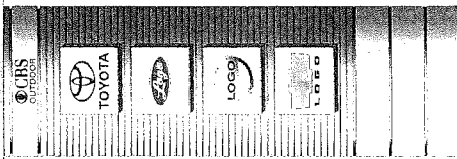
48'-0" (576")



CITY SEALS:  
8-0" DIAMETER x 5" DEEP CHANNEL SHAPES  
RETURNS PAINTED BLACK  
ACRYLIC FACES w/ 1st SURFACE SCOTCHCAL  
INTERNAL ILLUMINATION w/ LED  
INSET INTO CURVED SIGN BODY

48' x 48' RGB LED DISPLAY

16'-4" (196")



25'-5" (305")

LOGO CANS:  
62" x 62" x 5" DEEP CHANNEL SHAPES  
RETURNS PAINTED BLACK  
ACRYLIC FACES w/ 1st SURFACE SCOTCHCAL  
INTERNAL ILLUMINATION w/ LED

DISPLAY SHROUD, COLUMN CLADDING,  
SUPPORTS & EMBELLISHMENTS PAINTED  
METALLIC SILVER

\*CBS OUTDOOR\* - ALUMINUM CLADDING PANEL  
PAINTED METALLIC SILVER  
COPY ROUTED & BACKED w/ BLUE ACRYLIC  
INTERNAL ILLUMINATION w/ LED

31" x 7"  
ACCESS  
DOOR

CONCRETE SLAB BASE

52'-

13'-4" (160")

22'-0" (264")

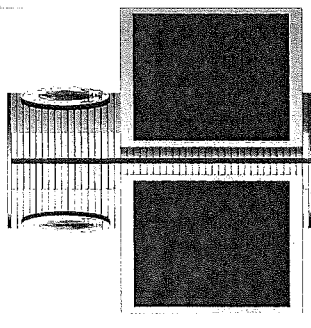
15'-10" (190")

60"

15'-10" (190")

26'-11.25" (323.25")

12'-0" (144")



**PROVIDED CONCEPT**  
REVISED TO 70' CANH - 27 SEP 10  
REVISED TO SINGLE POLE 8 OCT 10  
SCALE: 3/32" = 1'-0"

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

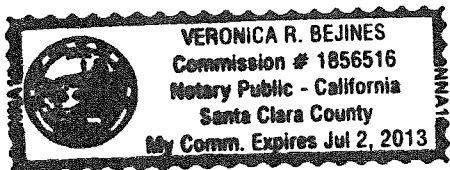
State of California

County of Santa Clara }

On 11-2-10 before me, Veronica R. Bejines Public Notary  
Date Here Insert Name and Title of the Officer

personally appeared Robert Livengood  
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Signature: Veronica R. Bejines  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Ord. 38.796 - Approve Development Agreement

Document Date: 8-17-10 Number of Pages: between the

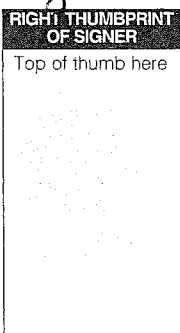
Signer(s) Other Than Named Above: none city and

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Robert Livengood Signer's Name: \_\_\_\_\_  
mayor \_\_\_\_\_ City and  
\_\_\_\_\_ \_\_\_\_\_ Milpitas  
\_\_\_\_\_ \_\_\_\_\_ Auto Properties

Corporate Officer — Title(s): mayor  Corporate Officer — Title(s): \_\_\_\_\_

- Individual
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

- Individual
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



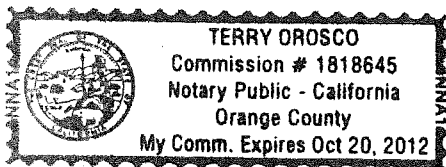
Signer Is Representing: \_\_\_\_\_

STATE OF CALIFORNIA

COUNTY OF ORANGE }  
}

On this 5th day of November 2010, before me Terry Orosco, the undersigned Notary Public, personally appeared **TOM A. CHADWELL**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or entity upon behalf of which the person acted, executed this instrument.

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



WITNESS my hand and official seal.

*Terry Orosco*  
\_\_\_\_\_  
Notary Public in and for said County and State

---

Description of Attached Document

Title of Document:

Development Agreement

By and Between

The City of Milpitas, a municipal corporation,

and

Milpitas Auto Properties, LLC, a California Limited Liability Company

Document Date: August 17, 2010

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.

**CONFORMED COPY:** This document has not been compared with the original.  
**SANTA CLARA COUNTY CLERK-RECORDER**

Doc#: 20957728  
11/12/2010 12:32 PM

After recordation, mail to:

OFFICE OF THE CITY ATTORNEY  
City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

**DEVELOPMENT AGREEMENT**

**By and Between**

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

**and**

**MILPITAS AUTO PROPERTIES, LLC,  
a California Limited Liability Company**

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 17<sup>th</sup> day of August, 2010 (the "Effective Date"), by and among Milpitas Auto Properties, LLC, a California 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. 38.796 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 the holder of a long-term Ground Lease in certain real property where the Piercey Toyota dealership is presently located in the City of Milpitas.

D. After issuing a request for proposals, the City at its May 5, 2009 City Council meeting gave approval to Developer to develop, erect and operate up to three (3) electronic advertising display signs along certain freeway locations, as well as at the Developer's auto dealership site in the City of Milpitas, subject to further permitting, licensing, and development applications and land use approvals.

E. In accordance with this Agreement, the Developer wishes to memorialize its rights to design, construct, install, operate, maintain, manage and market advertising opportunities on an electronic advertising display sign ("Project") at the Piercey Toyota dealership site, located at 950 Thompson Street in the City of Milpitas ("Property").

F. The City understands and expects that the Developer will enter into other agreements with the City or, as appropriate, an amendment of this Agreement, for the design, construction, installation, operation, maintenance, management and marketing of signs at two other sign locations. The Developer understands and expects that with regard to other agreements with the City for the design, construction, installation, operation, maintenance, management and marketing of signs at the other two (2) sign locations, such agreements will be on the same or similar terms as this Agreement.

G. Developer desires this Agreement with the City to assure that the Developer will, at the time of application, be issued a building permit and may, except as expressly provided

herein, proceed to construct and complete the Project at any time within the term of this Agreement in accordance with all applicable laws and regulations in effect at the Effective Date.

H. The environmental effects of the Project were previously considered in the final Supplemental Environmental Impact Report, State Clearinghouse No. 2006082087 ("SEIR"), prepared pursuant to the California Environmental Quality Act ("CEQA") and certified by the Redevelopment Agency of the City of Milpitas on November 21, 2006 in connection with the Merger of the Milpitas Redevelopment Project Area No. 1 and the Great Mall Redevelopment Project Area. The terms and conditions of this Agreement are consistent with and within the scope of the earlier SEIR. Accordingly, no further environmental analysis is necessary or required under CEQA to enter into this Agreement and undertake its terms and conditions.

I. After conducting a duly noticed public hearing on June 9, 2010, the Planning Commission for the City considered this Agreement and recommended its approval.

J. In conjunction with the consideration of this Agreement and after conducting a duly noticed public hearing on August 17, 2010, 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 benefit to persons residing outside the boundaries of the Project, beyond the normal exactions for public benefit imposed in the development review process. The City Council also approved a Project Site Plan (attached hereto as Exhibit B) and a Site Development Permit for the Project.

K. The Developer and the City both understand and acknowledge that the City shall not have physical possession of the Sign or the real property surrounding and underlying it, shall not be responsible for performing any of the obligations nor bear any costs whatsoever that the Developer may have for development, construction, permitting, use, maintenance and marketing of the Sign under this Agreement and shall not be liable for any breach under any other related agreement or arrangement regarding development of the Property.

L. For the reasons recited herein, Developer and City have determined that the Project is a development for which this Agreement is appropriate. City finds and Developer represents that a substantial economic benefit to the City will result in accordance with the public benefit under which the Project has been undertaken and which adds value to the community by the generation of revenue that has been projected by the Developer from the sign advertising and which is to be shared in by the City. In exchange for providing these public benefits, Developer receives assurance that it may proceed with 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:

### SECTION 1

#### DEFINITIONS

##### A. Definitions

The following definitions apply to this Agreement:

- (1) Agreement. The term "Agreement" shall mean this entire Development Agreement, including all appendices, exhibits and other documents attached hereto or incorporated herein by reference.
- (2) City. The term "City" shall mean the City of Milpitas, a municipal corporation, having its offices at 455 E. Calaveras Blvd., Milpitas, California 95035.
- (3) Developer. The term "Developer" shall mean Milpitas Auto Properties, LLC, a California Limited Liability Company holding a long-term ground lease on the real property located at 950 Thompson Street, Milpitas, California 95035.
- (4) Adjusted Gross Revenue. The term "Adjusted Gross Revenue" shall mean gross receipts from the sale of advertising time by the Developer and/or its sublessee, CBS Outdoor, Inc. ("CBS"), on the Sign, less advertising agency commissions, which shall not exceed 16.667% on any given advertising sale, and electricity costs related solely to Sign operations.
- (5) Project. The term "Project" shall mean the design, construction, installation, operation, maintenance, management, and marketing of the Sign to be located on the Project Site.
- (6) Project Site. The term "Project Site" shall mean that certain part of the Property more particularly described in Exhibit B attached hereto and as otherwise referred to in Recital E above.
- (7) Sign. The term "Sign" shall mean that one (1) off-site advertising signboard which shall have an electronic screen displaying advertisements and operating on an ongoing basis pursuant to the terms of this Agreement.

## SECTION 2

### GENERAL PROVISIONS

#### A. City and State Laws

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

#### B. Term

The term of this Agreement ("Term") shall commence upon the Effective Date and shall expire on August 17, 2020, 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. Developer shall have the option to extend the initial term for three (3) additional ten (10) year periods at the expiration of the initial term, if not in default, after giving written notice of intent to extend not later than 180 days before, and no sooner than 360 days before the expiration of the initial term.

#### C. Assignment

Except as to a contemplated sublease agreement with CBS, the rights of the Developer under this Agreement may not be transferred or assigned without the written consent of City which consent will not be unreasonably withheld, delayed or conditioned.

#### D. Recitals

The recitals set forth above are true and correct and incorporated herein by this reference, and constitute an integral part of this Agreement.

#### E. Adequacy of Consideration

The City and Developer have determined that the Developer's performance of its covenants and other obligations, as well as the agreed-upon percentage of Adjusted Gross Revenue that the City will share in as set forth in Section 3.D (1) below that will be generated by the Sign, represents fair and adequate consideration to the City for entering into this Agreement.

## SECTION 3

### DEVELOPMENT

#### A. Development of Project Site

City specifically consents to the development of the Property with a Sign at the Project Site, subject to the Developer's compliance with all conditions of approval of the City and the terms and conditions set forth in this Agreement. Development of the Sign at the Project Site and construction of the Sign shall be in accordance with the City Council Economic Development Subcommittee's recommendations of May 17, 2010, the City Council's May 5, 2010 conceptual development approval, the terms of this Agreement and City Laws (as that term is defined herein) in effect on the Effective Date. The design, construction and location of the Project Site (including signage materials and landscaping) shall conform to the conceptual drawings attached hereto as Exhibit C (the "Conceptual Drawings").

#### 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 or amendments thereto in force at the Effective Date or adopted coterminously with this Agreement (herein collectively referred to as "City Laws"). Such City Laws generally govern the allowable maximum height, bulk, size, design and location of the Project. City agrees that under City Laws, the Project can be developed, built, used, maintained, and located on the subject Project Site.

#### C. Applicable City Laws and Regulations

Notwithstanding Paragraph B. above, City may apply the following City laws that are Project specific to the Project Site as regards the development, design, construction, use, improvement, maintenance, management and marketing of the Sign Parcels:

(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, bulk, 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;

(2) New City Laws which are specifically mandated and required by changes in state or federal laws and regulations; and

(3) 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) Engineering specifications for construction of any public improvements such as curbs, gutters and sidewalks;

(d) Standard Permit Fees;

(e) Impact or linkage fees adopted by ordinance or resolution, applicable to sign projects on a City- or area-wide basis, and payable upon issuance of a building permit;

(f) Any Standard fees payable upon issuance of a building permit for which City acts as a collecting agent for another governing agency; and

(g) Any Standard requirements applicable upon issuance of a building permit for which City acts as an administering agent for another governing agency.

(4) Moratoria adopted by City as an emergency ordinance on the basis of its finding that such action is a health or safety necessity.

D. Developer Obligations

(1) Developer shall pay to the City ten percent (10%) of the Adjusted Gross Revenue generated by the Sign. Payments shall be made on a quarterly basis by the Developer. Along with each quarterly payment, Developer shall provide an accounting demonstrating the breakdown of Adjusted Gross Revenue and payments provided.

(2) After the commencement of power service by Pacific Gas & Electric and concurrent with final inspection approval by the City under the Milpitas Building Code, the Developer shall pay a one-time, One Hundred Thousand Dollar (\$100,000.00) advance to the City. Such advance shall be deducted from future quarterly payments by Developer to the City.

(3) Developer shall be solely responsible for securing all applicable approvals, permits and licenses from non-City regulatory agencies (such as the California Department of Transportation) and landowners (such as the County of Santa Clara), as necessary.

(4) Developer shall prohibit and not display any adult-oriented content or allow the advertisement of any adult-oriented businesses or products on the Sign.

(5) Developer shall reserve at least five percent (5%) of electronic display time for City-promoted community events, messages and performances.

(6) Developer shall maintain and keep in good repair and clean condition the Project Site and the Sign erected thereon at all times during the term of this Agreement.

(7) Developer shall not permit any shrubs, trees, vines, buildings, or other signs or billboards to be planted or erected on the Property which would obstruct or materially impair the visibility of the Sign.

(8) Developer shall not permit any other billboards or signs advertising off-site uses to be erected on the Property.

(9) Developer shall comply with all laws, regulations, ordinances and rules, including but not limited to any and all environmental laws, rules and regulations, applicable to the construction, erection, maintenance, replacement and removal of signs, sign structures and equipment used or placed on the Property.

(10) After prior written Notice to cure the condition and except for Force Majeure events as defined in Section 10, Developer shall demolish and remove the Sign in the event that it remains vacant or unused for a period of six (6) months or more or upon the termination or expiration of this Agreement.

(11) 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.

(12) Developer expressly acknowledges and agrees that the obligations set forth herein are reasonable restraints on Owner's right to own, use, maintain and transfer the Property and any estate or interest therein, and are not and shall not be construed to be an unreasonable restraint or alienation.

(13) Developer shall maintain and make available for inspection, audit, and/or copying at any time during regular business hours, upon 48 hours oral or written request

of the City, records or documents relating to the collection and calculation of Adjusted Gross Revenue.

E. City Obligations

(1) The City shall assist the Developer and its Sublessee, CBS, with expeditiously processing the Developer and its Sublessee, CBS required submittals, such as public hearings, site plan and construction approvals, any environmental reviews, permits, etc., in order that Developer may obtain final City action on the Project; provided however that the City does not warrant or represent that such approval shall be obtained.

(2) The City shall not permit any shrubs, trees, vines, buildings or other signs or billboards to be planted or erected on any of their Properties which would obstruct or materially impair the visibility of this Sign; nor permit any other billboards or signs be erected on adjoining property that would negatively impact the Developer's marketing and usage of the Sign.

F. Development Not Required

Notwithstanding anything to the contrary contained herein, Developer is not obligated to develop the Project.

SECTION 4

AMENDMENT

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. Conflict with State or Federal Laws and Regulations

In the event that state or federal laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified in accordance with the provisions set forth in this Section or suspended as may be necessary to comply with such state or federal laws or regulations. Notwithstanding the foregoing, Developer shall have the right to challenge, at its sole cost, in a court of competent jurisdiction, the law or regulation preventing compliance with the terms of this Agreement and, if the challenge in a court of competent jurisdiction is successful, this Agreement shall remain unmodified and in full force and effect.

C. Procedure for Modification 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.

SECTION 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. Default and Remedies

Developer shall be in default under this Agreement upon the happening of one or more of the following events:

(1) If a warranty, representation or statement as relates to the Piercey Toyota dealership sign parcel made or furnished by Developer to the City subsequent to the Request for Proposals process is false or proves to have been false in any material respect when it was made; or,

(2) A finding and determination by the City 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; or,

(3) 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 30 day period, Developer shall have such additional time to cure as is reasonably necessary.

C. Procedure upon Default

(1) Upon the occurrence of an event of default, 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 City shall give Developer written notice of any default under this Agreement, and Developer shall have thirty (30) days after the date of the notice to cure the default or to reasonably commence the procedures or actions needed to cure the default.

D. 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.

SECTION 6

INDEMNIFICATION

City and Developer shall defend, hold harmless and indemnify each other and their respective officials, employees, agents, and representatives, as appropriate, from and against any and all claims, suits, demands, liability, loss, costs, damages, and other expenses of litigation arising from or relating to the negligence or willful misconduct of the City or the Developer.

SECTION 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 Manager, City of Milpitas  
City Hall  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

IF TO DEVELOPER:  
Tom Chadwell, Member  
Milpitas Auto Properties, LLC  
13600 Beach Blvd.  
Westminster, CA 92638

IF TO CBS OUTDOOR, INC.:  
Robert H. Harbin, III, Director  
CBS Outdoor  
1695 Eastshore Hwy.  
Berkeley, CA 94710

#### SECTION 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.

SECTION 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 with ten (10) days of the effective date of the ordinance adopting this Agreement.

SECTION 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

(1) Prevailing Party. 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.

(2) Action by Third Party. 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. Developer shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse City for all reasonable court costs and attorneys' fees expended by City 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 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. Bankruptcy

The obligations of this Agreement shall not be dischargeable in bankruptcy.

H. Governing Law and Venue

The laws of the State of California shall govern this Agreement. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state court of California in the County of Santa Clara.

I. Incorporation of Exhibits

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

J. Counterparts

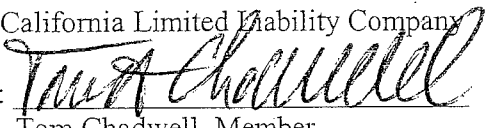
This Agreement may be executed in counterparts and each counterpart will have the same force and effect as an original.

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

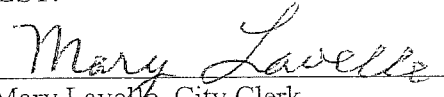
CITY OF MILPITAS  
A Municipal Corporation

By:   
Robert Livengood, Mayor

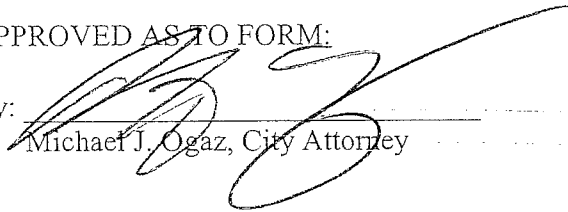
MILPITAS AUTO PROPERTIES, LLC  
A California Limited Liability Company

By:   
Tom Chadwell, Member

ATTEST:

By:   
Mary Lavelle, City Clerk

APPROVED AS TO FORM:

By:   
Michael J. Ogaz, City Attorney

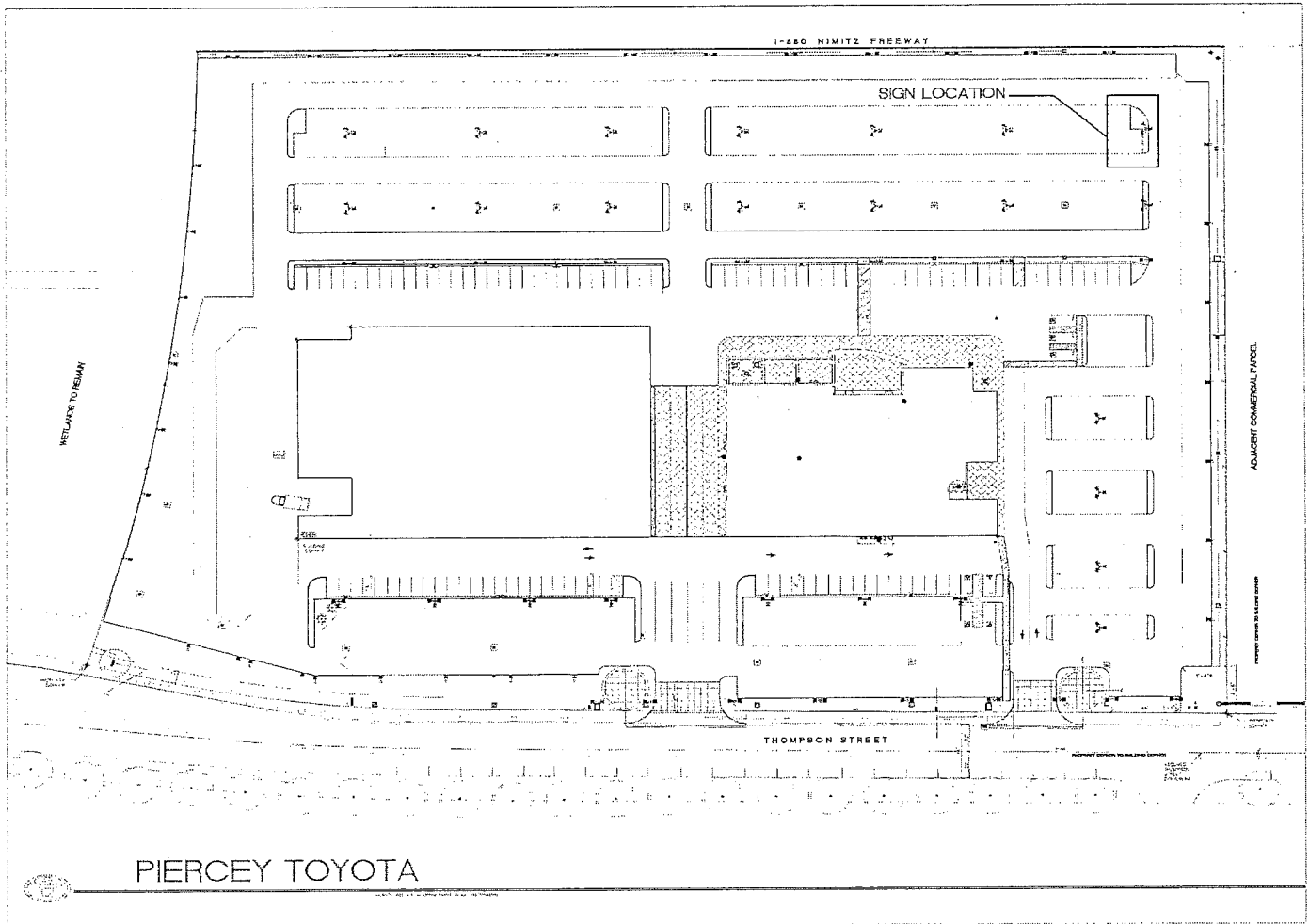
**EXHIBIT A**

**Legal Description**

All that certain real property situated in the City of Milpitas, County of Santa Clara, State of California, commonly described as Piercey Toyota, 950 Thompson Street, Milpitas, CA 95035, and being more particularly described as follows:

APN: 086 -- 05 -- x021

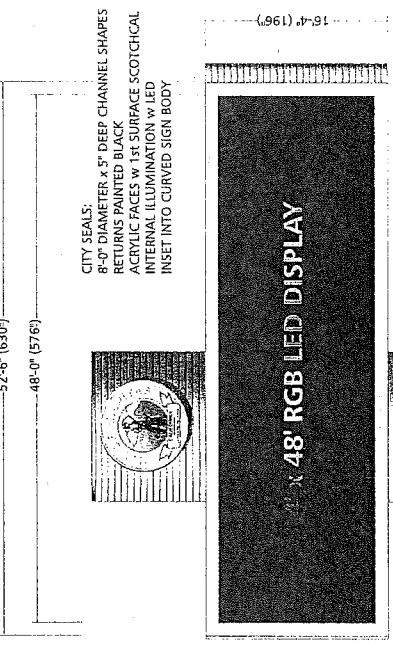
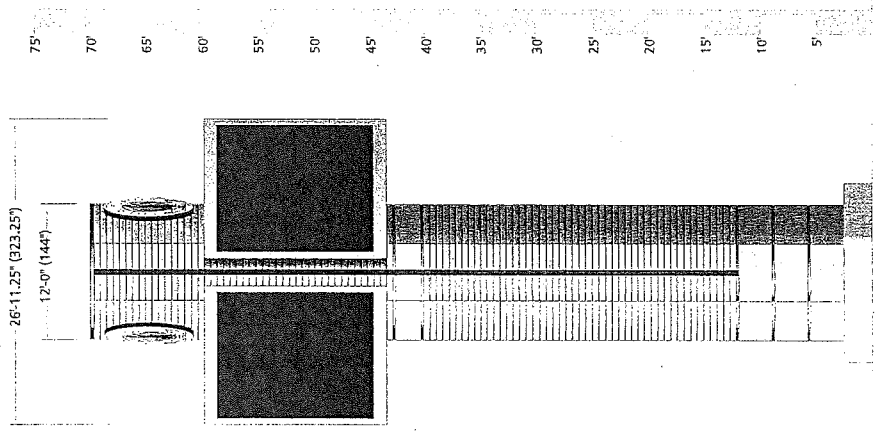
**EXHIBIT B**  
**PROJECT SITE PLAN**



Site Plan – Piercey Toyota

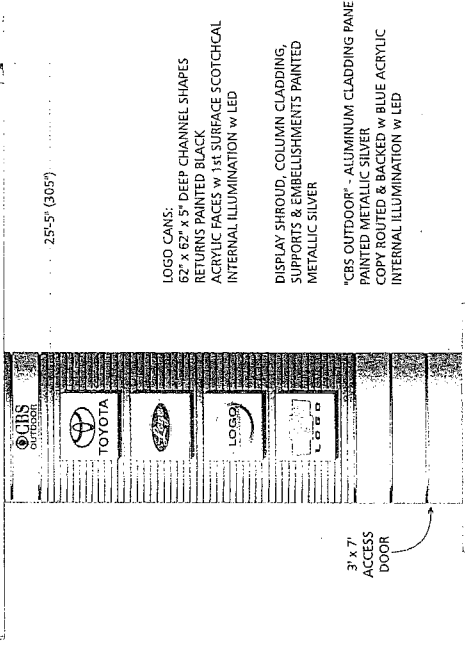


EXHIBIT C  
CONCEPTUAL DRAWINGS



CITY SEALS:  
 8-0" DIAMETER x 5" DEEP CHANNEL SHAPES  
 RETURNS PAINTED BLACK  
 ACRYLIC FACES w/ 1st SURFACE SCOTCHCAL  
 INTERNAL ILLUMINATION w/ LED  
 INSET INTO CURVED SIGN BODY

48' RGB LED DISPLAY

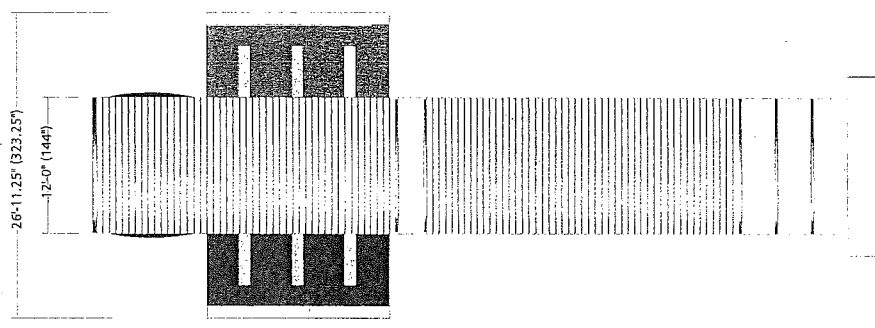


LOGO CANS:  
 62" x 62" x 5" DEEP CHANNEL SHAPES  
 RETURNS PAINTED BLACK  
 ACRYLIC FACES w/ 1st SURFACE SCOTCHCAL  
 INTERNAL ILLUMINATION w/ LED

DISPLAY SHROUD, COLUMN CLADDING,  
 SUPPORTS & EMBELLISHMENTS PAINTED  
 METALLIC SILVER

"CBS OUTDOOR" - ALUMINUM CLADDING PANEL  
 PAINTED METALLIC SILVER  
 COPY ROUTED & BACKED w/ BLUE ACRYLIC  
 INTERNAL ILLUMINATION w/ LED

CONCRETE SLAB BASE



**PROVIDED CONCEPT**  
 REVISED TO 70' OAH - 27 SEP 10  
 REVISED TO SINGLE POLE 8 OCT 10  
 SCALE: 3/32" = 1' 0"

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

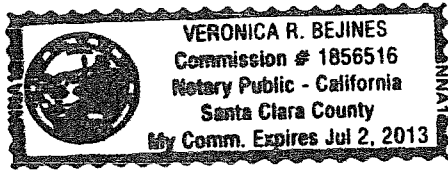
State of California

County of Santa Clara }

On 11-2-10 before me, Veronica R. Bejines Public Notary  
Date Here Insert Name and Title of the Officer

personally appeared Robert Livengood  
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Signature: Veronica R. Bejines  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Ord. 38.796 - Approve Development Agreement

Document Date: 8-17-10 Number of Pages: between the

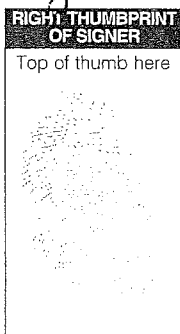
Signer(s) Other Than Named Above: none city and

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Robert Livengood Signer's Name: \_\_\_\_\_  
milpitas  
Auto Properties

Corporate Officer — Title(s): mayor  Corporate Officer — Title(s): \_\_\_\_\_

- Individual
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

- Individual
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

STATE OF CALIFORNIA

COUNTY OF ORANGE }

On this 5th day of November 2010, before me Terry Orosco, the undersigned Notary Public, personally appeared TOM A. CHADWELL, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or entity upon behalf of which the person acted, executed this instrument.

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



WITNESS my hand and official seal.

*Terry Orosco*  
\_\_\_\_\_  
Notary Public in and for said County and State

Description of Attached Document

Title of Document:

Development Agreement

By and Between

The City of Milpitas, a municipal corporation,

and

Milpitas Auto Properties, LLC, a California Limited Liability Company

Document Date: August 17, 2010

DOCUMENT: 22329269

Pages: 28



Fees....	5.00
Taxes...	
Copies..	
AMT PAID	5.00

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.

REGINA ALCOMENDRAS  
SANTA CLARA COUNTY RECORDER  
Recorded at the request of  
City

RDE # 024  
8/02/2013  
10:26 AM

After recordation, mail to:

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

**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 16th day of April, 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. 38.807 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.

(5) Preference to City Businesses. In the course of the marketing and sales of available advertising space for all users in any given month, Developer shall give preference to businesses located in the City of Milpitas, so long as such users pay the rate of the competitive market for that sign space or such sign space as is sold by Developer in package offerings.

(6) Maintenance of Signs. Upon written notification by City of any sign or project element requiring maintenance, such required maintenance shall begin no more than 15 calendar days from receipt of said notice.

(7) No Offensive or Lewd Material. No Sign display shall contain "obscene matter," as that term is defined in California Penal Code section 311 or may advertise an adult business as defined in the Municipal Code for the City, section III-4-2.010.

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,  
A Municipal Corporation

MILPITAS SIGN COMPANY, LLC,  
a Delaware limited liability company

By: [Signature]  
Tom Williams, City Manager

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

APPROVED AS TO FORM:

By: [Signature]  
Bryan Parker

By: [Signature]  
Michael J. Ogaz, City Attorney

Its: EVP, Real Estate & Operations

**ACKNOWLEDGMENT**

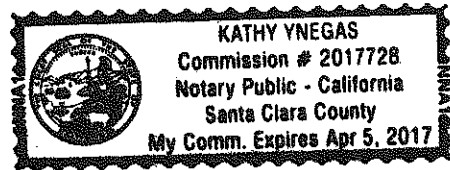
State of California  
County of Santa Clara

On July 30, 2013 before me, KATHY YNEGAS, Notary Public,  
personally appeared THOMAS C. WILLIAMS who  
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the  
person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

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

Witness my hand and official seal.

Signature [Signature]



**ACKNOWLEDGMENT**

State of ARIZONA     )  
                                          ) ss  
County of MARICOPA )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Bryan Parker, personally known to me to be the Executive Vice President of CLEAR CHANNEL OUTDOOR, INC., a Delaware corporation, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he/she signed, sealed and delivered the said instrument in his/her said capacity and as his/her free and voluntary act, for the uses and purposes therein set forth. Given under my hand and official seal, this 2nd day of July 2013.

Notary Public *Christina J. Speakman*  
My Commission Expires *Sept 16*, 20 *15*



**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.

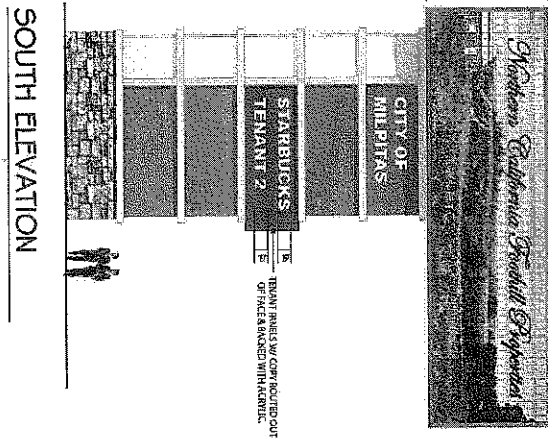
APN: 022-37-049

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.

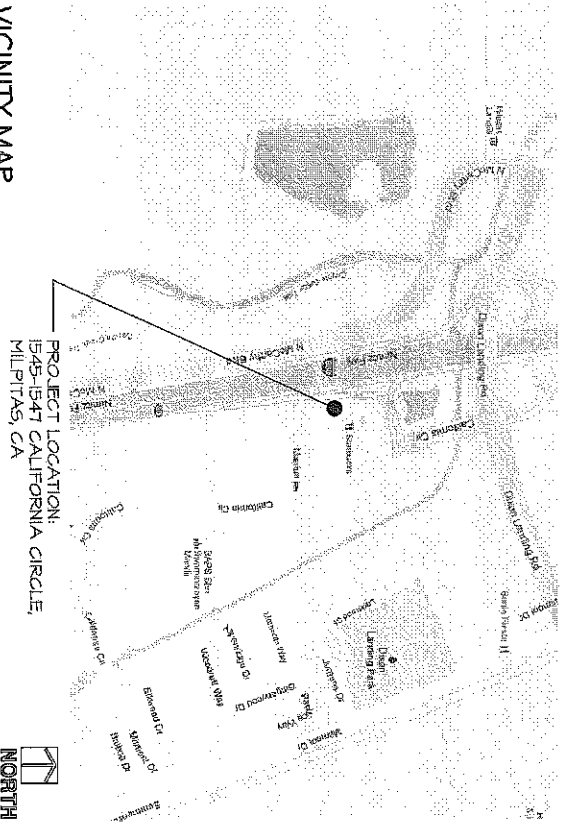
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# Exhibit B

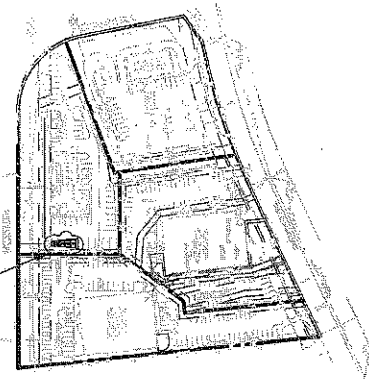


SOUTH ELEVATION

VICINITY MAP



PROPOSED 14'x48'  
DIGITAL LED DISPLAY V-SIGN  
SEE PAGE 3 FOR DETAILED INFORMATION



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

3400 Airport Ave., Suite #89  
Santa Monica, CA 90405  
Web: [www.vkkengineering.com](http://www.vkkengineering.com)  
Email: [vk@vkkengineering.com](mailto:vk@vkkengineering.com)  
Tel: 310.397.3700 Fax: 310.397.8797

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

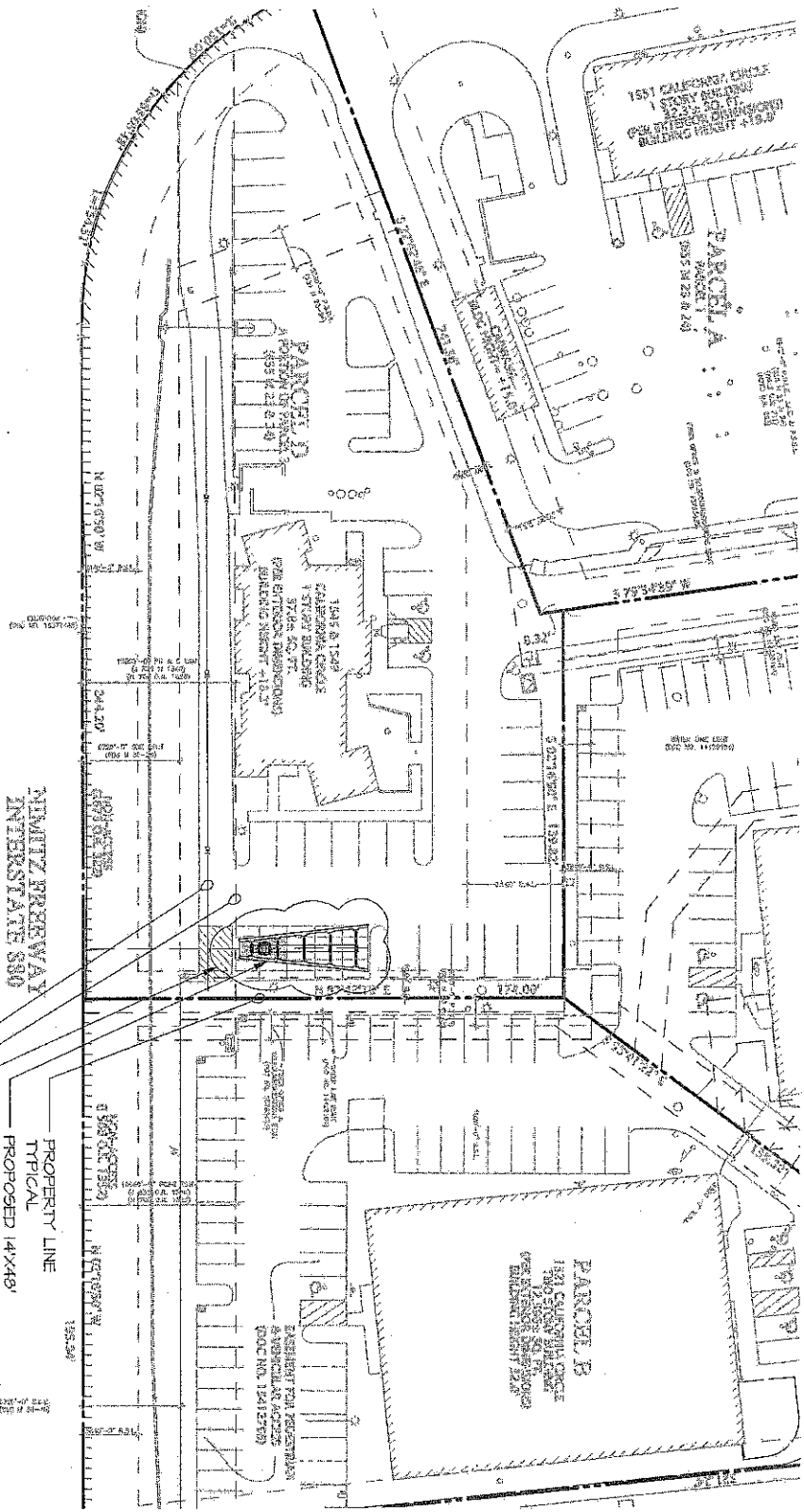
Date 11/21/2012 Job # 12034  
Engr. VKK  
Sheet 1 of 5

11/21/2012

**SITE PLAN**  
 SCALE: 1" = 40'  
 SITE AND SURVEY INFORMATION  
 PROVIDED BY EXTREME DRAFTING, INC.  
 PROJECT DATED NOV 20, 2004

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
- SEE PAGE 3 FOR DETAILED INFORMATION
- EASEMENT EDGE TYPICAL
- OVERHEAD ELECTRIC LINES



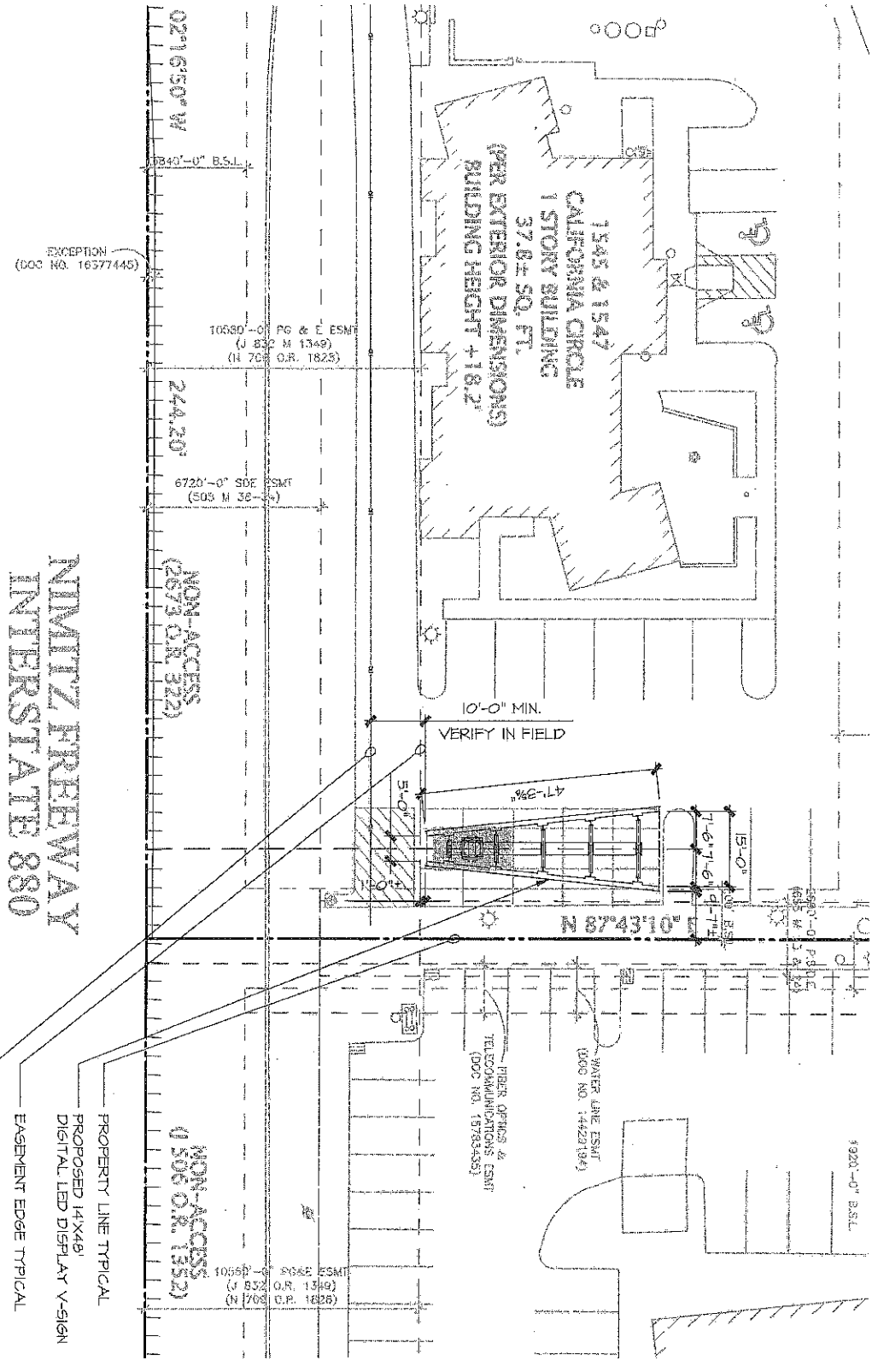
**Vincent Kevin Kelly & Assoc., Inc.**  
 structural engineering consultants

3400 Airport Ave., Suite #99  
 Santa Monica, CA 90406  
 Web: www.vkkengineering.com  
 Email: vkk@vkkengineering.com  
 Tel: 310.397.3700 Fax: 310.397.8797

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

Date 11/21/2012 Job # 12C34  
 Engr. VKK  
 Sheet 2 of 5

**SITE PLAN**  
 SCALE: 1" = 20'  
 SITE AND SURVEY INFORMATION  
 PROVIDED BY EXTREME DRAFTING, INC.  
 PROJECT DATED NOV. 20, 2009



**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.

**NIMITZ FREEWAY INTERSTATE 880**

NON-ACCESS (2673 O.R. 322)

NON-ACCESS (4506 O.R. 1352)

PROPERTY LINE TYPICAL

PROPOSED 14'x48' DIGITAL LED DISPLAY V-SIGN

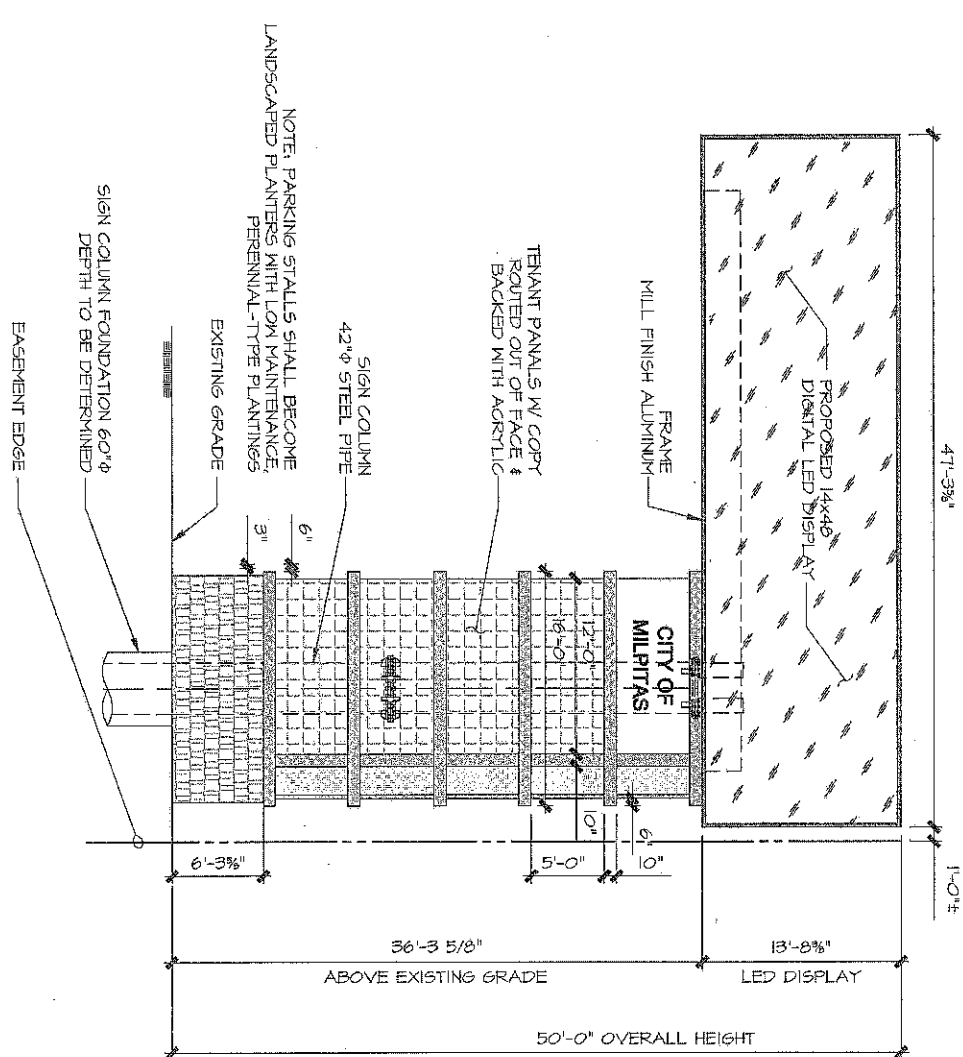
OVERHEAD ELECTRIC LINES

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

Date: 11/21/2012 Job #: 12C34  
 Engr.: VKK  
 Sheet 3 of 5



NORTH ELEVATION SCALE: 1/4" = 1'-0"

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

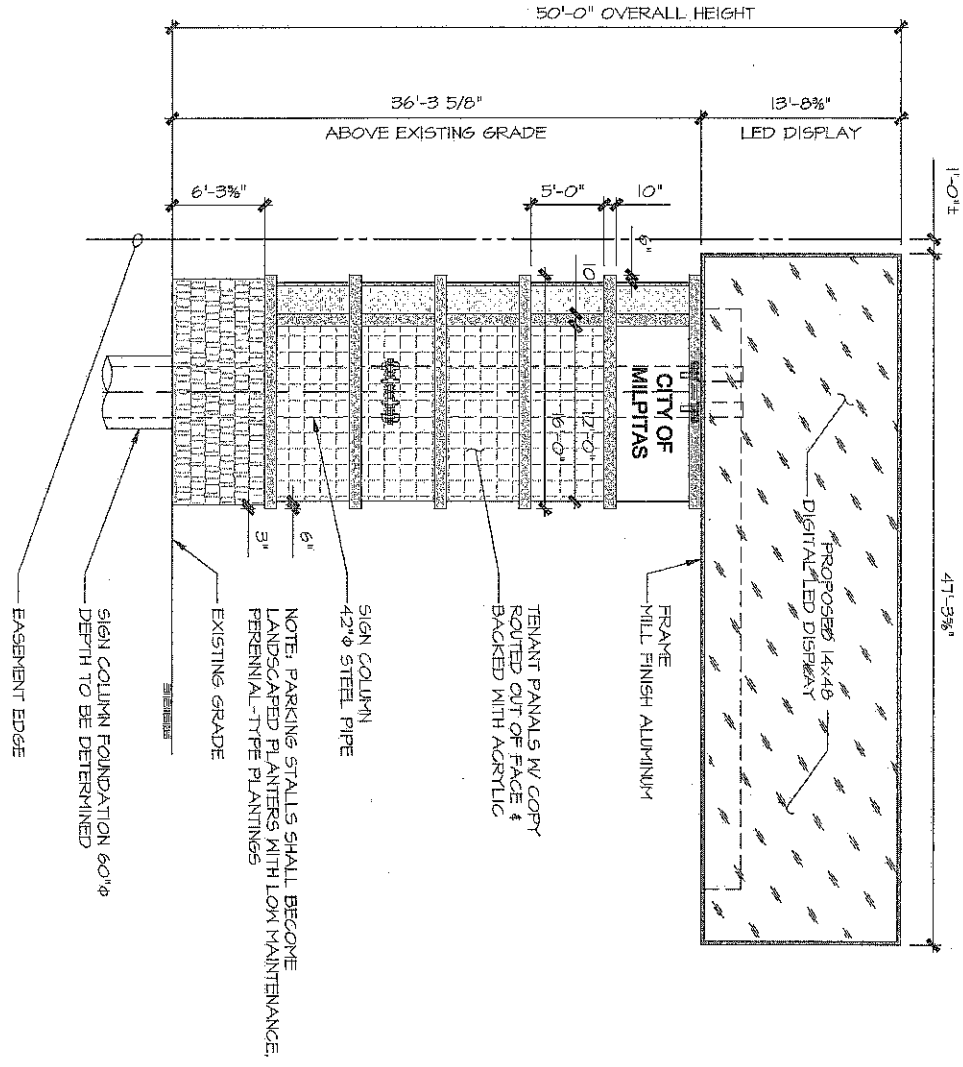
3400 Airport Ave., Suite #99  
Santa Monica, CA 90405  
Web: www.vkengineering.com  
Email: vkk@vkengineering.com  
Tel: 310.397.3700 Fax: 310.397.8797

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

Date 11/21/2012 Job # 12034  
Engr. VKK  
Sheet 4 of 5

**SOUTH ELEVATION**

SCALE:  $\frac{1}{8}" = 1'-0"$



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

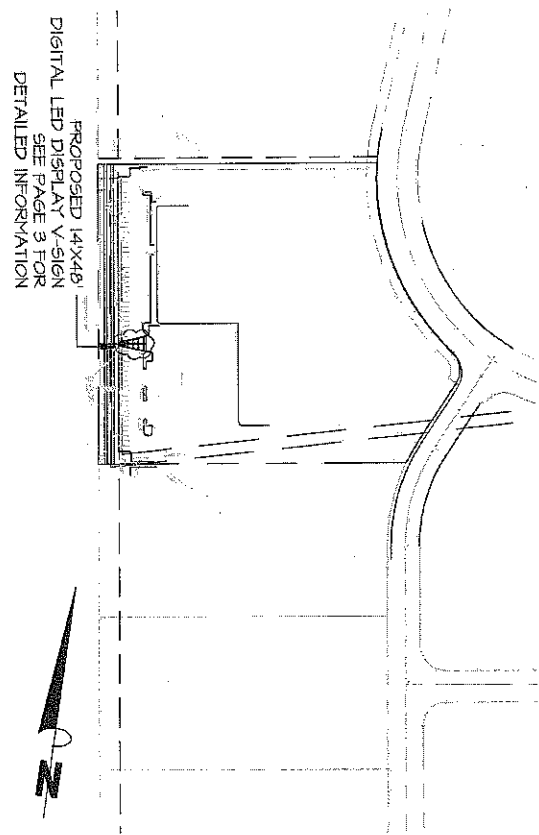
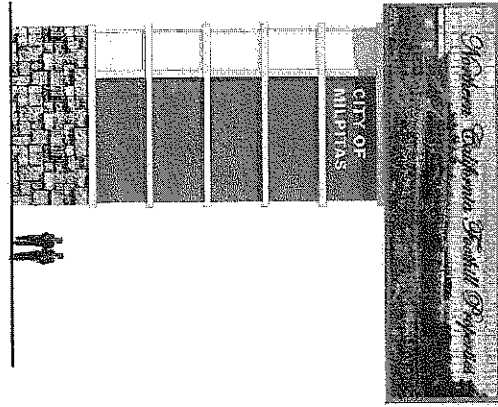
3400 Airport Ave., Suite #99  
Santa Monica, CA 90405  
Web: www.vkkengineering.com  
Email: vkk@vkkengineering.com  
Tel: 310.397.3700 Fax: 310.397.8797

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

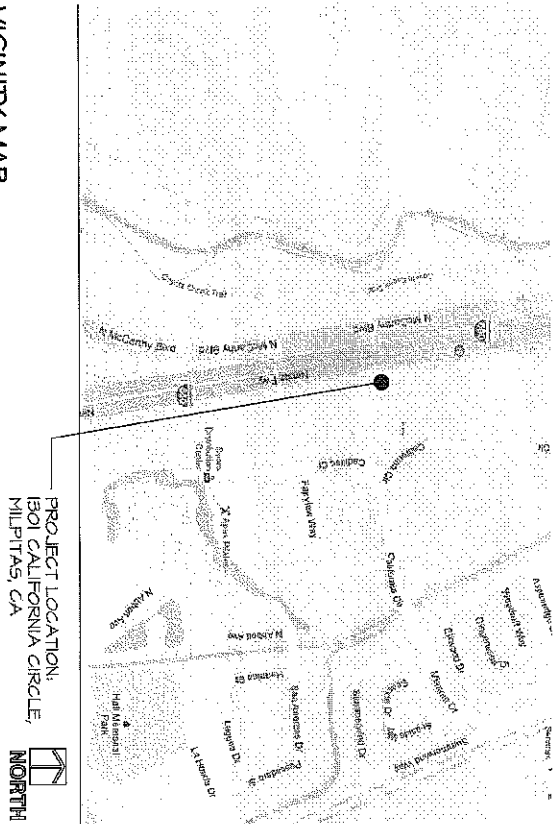
Date: 11/21/2012 Job #: 12634  
Engr.: VKK  
Sheet 5 of 5



**SOUTH ELEVATION**



**VICINITY MAP**



PROJECT LOCATION:  
1301 CALIFORNIA CIRCLE,  
MILPITAS, CA



**Vincent Kevin Kelly & Assoc., Inc.**  
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Santa Monica, CA 90405  
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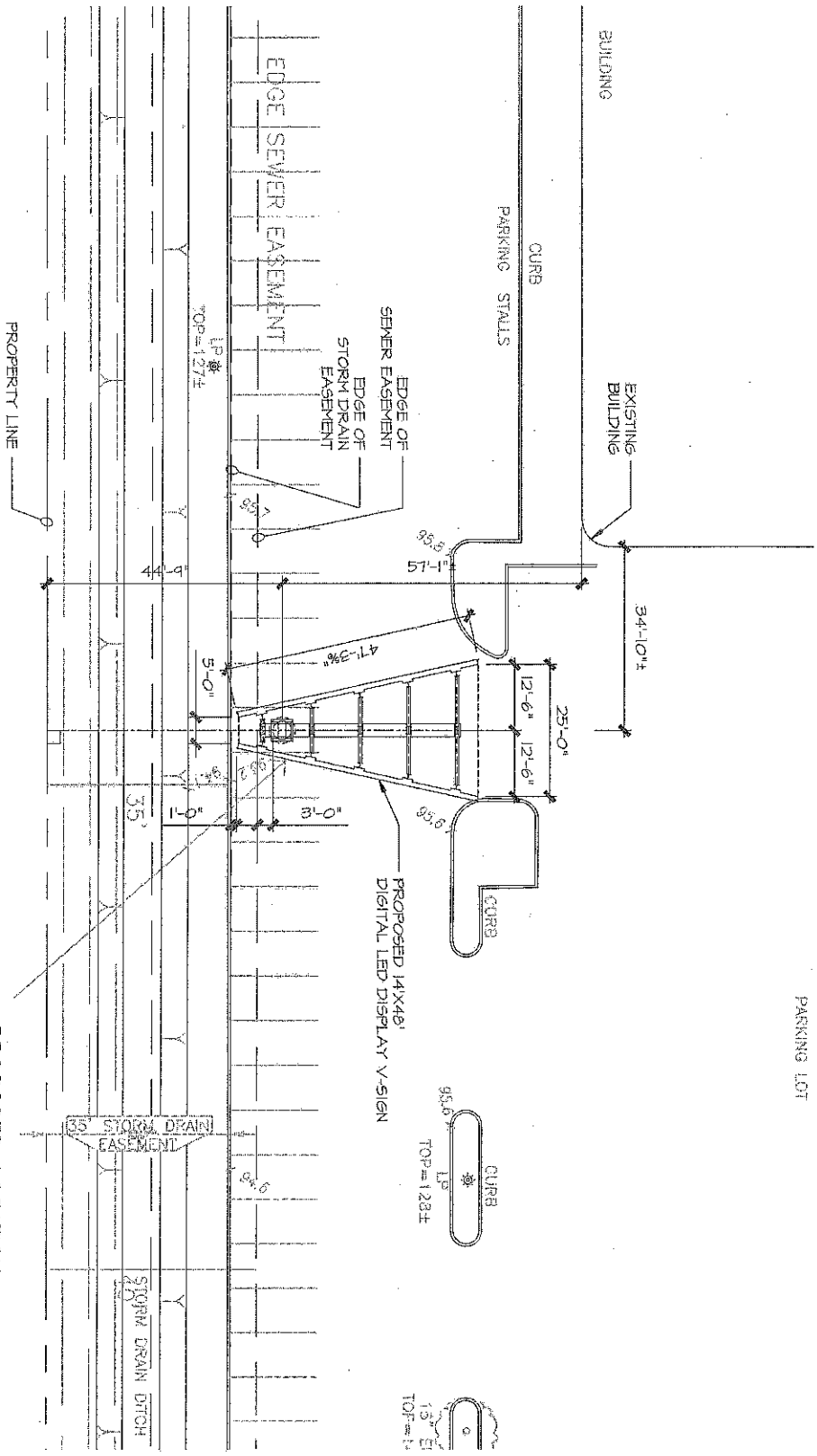
Client: CLEAR CHANNEL OUTDOOR  
Project: 14x48' V-SIGN (DIGITAL)  
1301 CALIFORNIA CIRCLE, MILPITAS, CA

Date: 11/21/2012 Job #: 11c56  
Engr.: VKK  
Sheet: 1 of 5

**SITE PLAN**  
 SCALE: 1" = 20'  
 SITE AND SURVEY INFORMATION  
 PROVIDED BY CSA, INC.  
 PROJECT# 11173, DATED APR 19, 2012

**INTERSTATE 880**

PROPOSED LOCATION:  
 NEW DOUBLE FACING  
 BILLBOARD

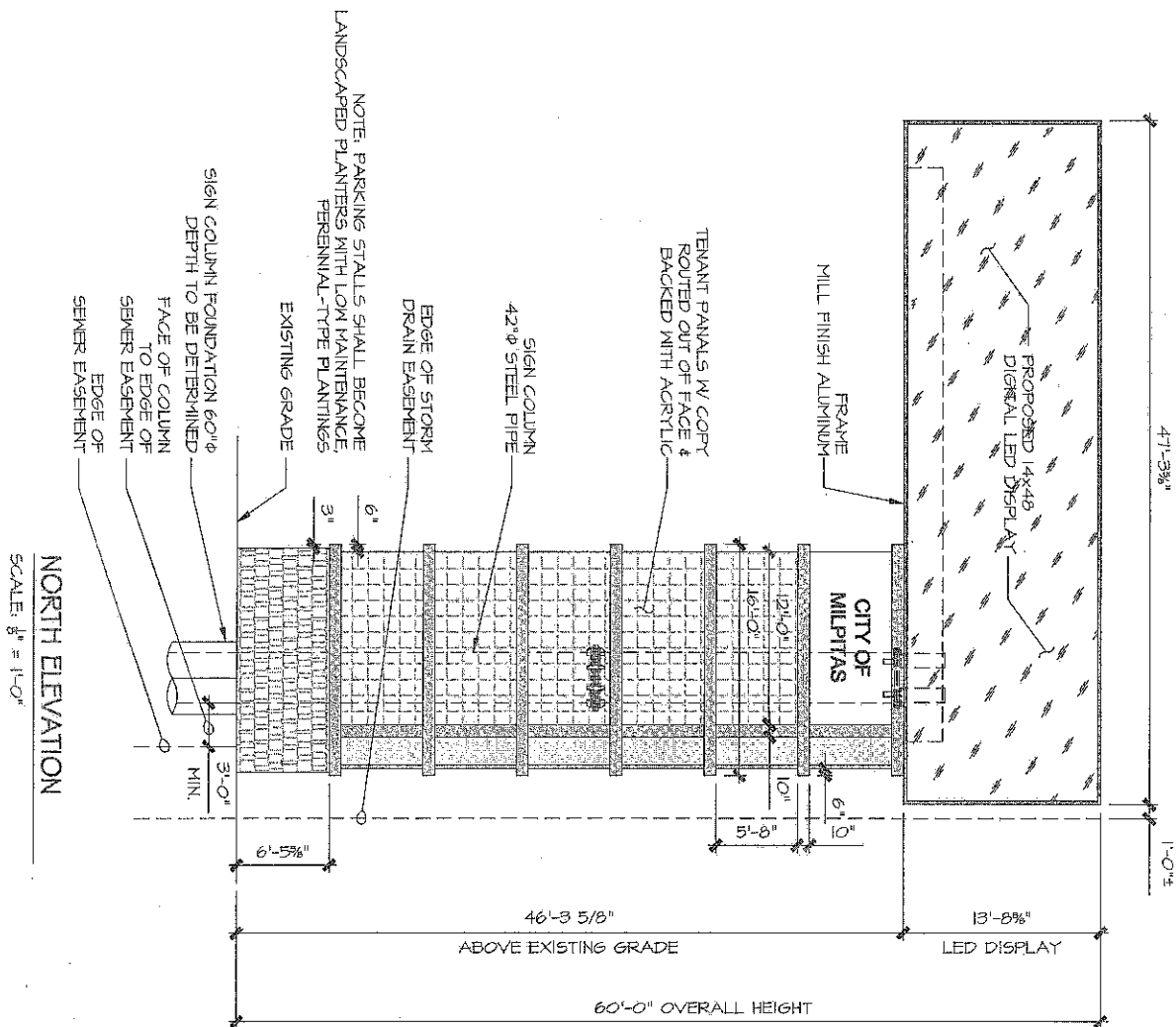


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 Tel: 310.397.3700 Fax: 310.397.8797

Client CLEAR CHANNEL OUTDOOR  
 Project 14'X14' V-SIGN (DIGITAL)  
 1301 CALIFORNIA CIRCLE, MILPITAS, CA

Date 11/21/2012 Job # 11C56  
 Engr. YKK  
 Sheet 3 of 5

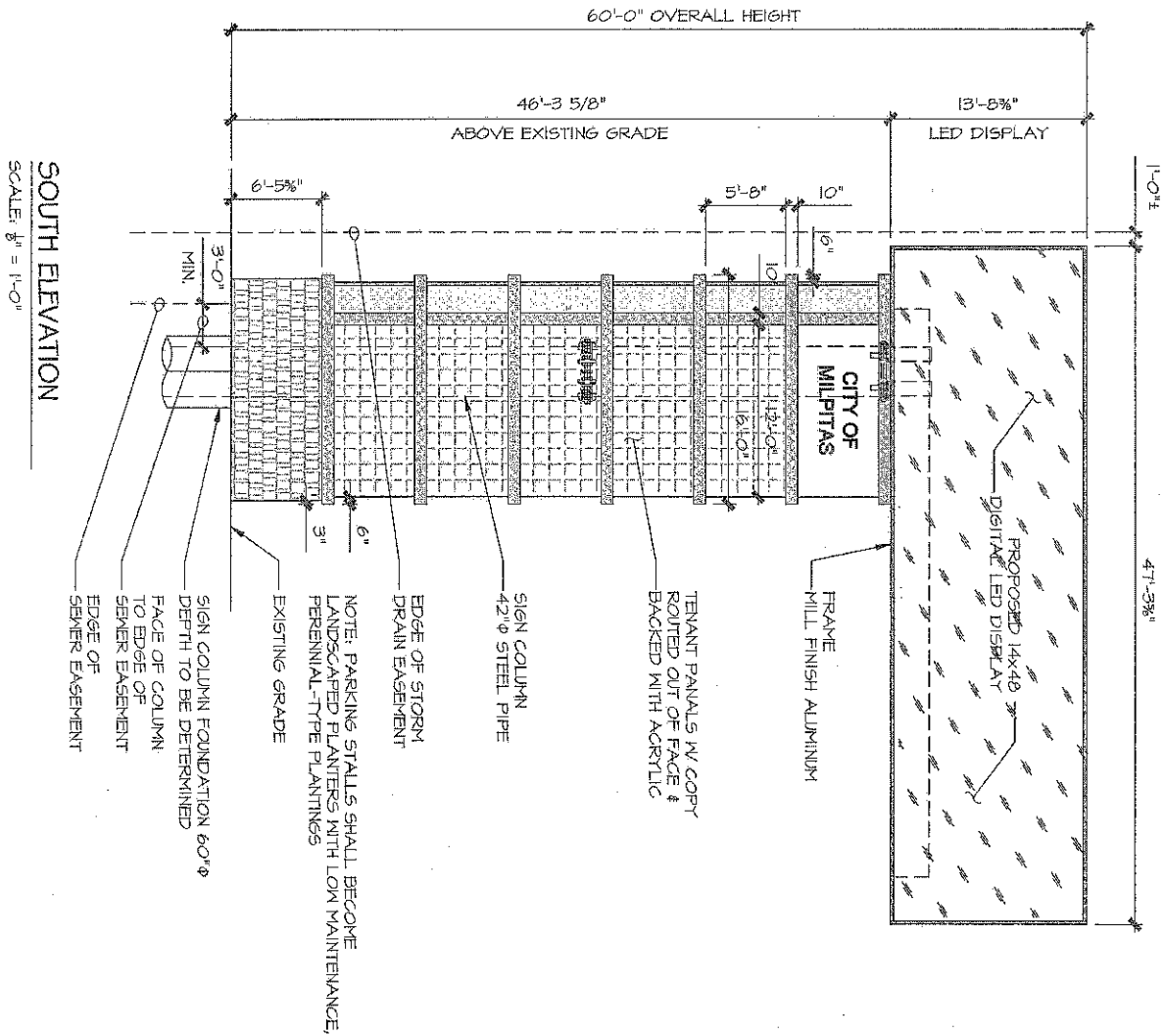



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 Tel: 310.397.3700 Fax: 310.397.8797

Client: CLEAR CHANNEL OUTDOOR  
 Project: 14x48' V-SIGN (DIGITAL)  
 1301 CALIFORNIA CIRCLE, MILPITAS, CA

Date: 11/21/2012 Job #: 11C56  
 Engr.: YKK  
 Sheet 3 of 5



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