CITY OF MILPITAS

Mitigated Negative Declaration

Pursuant to Section 21000 et seq of the Public Resources Code, a Mitigated Negative Declaration is hereby granted for the following project:

1. Project Title:	South Milpitas Boulevard Bridge
2. Lead Agency Name and Address:	City of Milpitas 455 E. Calaveras Boulevard Milpitas, CA 95035
3. Contact Person and Phone Number:	Lyhak Eam, P.E. Principal Civil Engineer City of Milpitas leam@milpitas.gov Tel: (408) 586-3349
4. Project Location and APNs:	South Milpitas Boulevard across the Penitencia East Channel 086-36-030, 086-36-041, 086-37-018, 086-37-039, and 086-37-040
5. Project Sponsor's Name & Address:	City of Milpitas 455 E Calaveras Boulevard Milpitas, CA 95035
6. General Plan Designation:	MMSP - Milpitas Metro Specific Plan
7. Zoning:	Park Open Space (086-37-018), R5 Urban Residential (086-37-039, and 086-37-040), R4 Multiple - Family Very High Density (086-36-030), and R3 Multiple - Family (086-36-041)
8. Description of Project:	The South Milpitas Boulevard Bridge project proposes to construct a bridge across Penitencia East Channel and associated roadway connections. The proposed bridge would serve

vehicles, pedestrians, and cyclists and would connect South Milpitas Boulevard on the north side of the channel with a new connector street to be constructed between Tarob Court and Sango Court on the south side of the channel. The proposed project would require demolition of the existing vacant office building located at 1831-1841 Tarob Court (APN 086-36-030) which is owned by the City of Milpitas.

FINDING

The City of Milpitas Planning Department finds the project described above will not have a significant effect on the environment in that the attached Initial Study identifies one or more potentially significant effects on the environment for which the project, before public release of this draft Mitigated Negative Declaration (MND), has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

A. AESTHETICS - The project will not have a significant impact on this resource; therefore, no mitigation is required.

B. AGRICULTURE AND FOREST RESOURCES - The project will not have a significant impact on this resource; therefore, no mitigation is required.

C. AIR QUALITY

MM AIR-3.1: The project shall implement the following Bay Area Air Quality Management District (BAAQMD) basic and additional construction mitigation measures during all applicable phases of construction:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent (i.e., three times a day). Moisture content shall be verified by lab samples or moisture probe.
- All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
- The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be phased to reduce the amount of disturbed surfaces at any one time.
- Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks shall have at maximum 50 percent air porosity.

- Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- Site accesses to a distance of 100 feet from the paved road shall be treated with a six to 12-inch compacted layer of wood chips, mulch, or gravel.
- All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to two minutes (as required by the California airborne 14 toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.

MM AIR-3.2: The project shall develop a plan demonstrating that the off-road equipment used on-site to construct the project would achieve a fleet-wide average 86 percent reduction in diesel particulate matter (DPM) exhaust emissions or greater.

- All diesel-powered off-road equipment, larger than 25 horsepower, operating on the site for more than two days continuously shall, at a minimum, meet U.S. Environmental Protection Agency (EPA) particulate matter emissions standards for Tier 4 Final engines.

- Where Tier 4 equipment is not available, all construction equipment larger than 25 horsepower used at the site for more than two continuous days shall meet U.S. EPA emissions standards for Tier 3 engines and include California Air Resources Board-certified Level 3 Diesel Particulate Filters or equivalent that altogether achieves a 86 percent reduction in exhaust emissions. Equipment that is electrically powered or uses non-diesel fuels would also meet this requirement.

D. BIOLOGICAL RESOURCES

MM BIO-1.1: **Worker Environmental Awareness Program.** All construction personnel working on the bridge will participate in a worker environmental awareness program. These personnel will be informed about the potential presence of native fish and northwestern pond turtles within and downstream from the project site. Prior to construction activities, a qualified biologist will instruct all construction personnel about (1) the description and status of these species; (2) the importance of their associated habitats; (3) a list of measures being taken to reduce impacts on these species during project construction; and (4) procedures to be followed if a northwestern pond turtle is observed by construction personnel in or near the project area during construction. If construction personnel observe any turtle in an area where it is at risk of injury or mortality due to the project, or where construction activity could prevent the turtle from returning to perennial habitat downstream from the project site, they will contact a qualified biologist immediately. All project activities that could impact the turtle will stop until the biologist has arrived at the site and determined whether the turtle is a northwestern pond turtle and (with any necessary USFWS approval) relocated the turtle to an appropriate location downstream.

MM BIO-1.2: **Preconstruction Survey and Fish Exclusion Prior to Dewatering Activities.** Prior to conducting dewatering activities, a qualified biologist will conduct a survey of the project area to look for fish and northwestern pond turtles. If any northwestern pond turtles are detected in areas where they are at risk of injury or mortality due to the project, or where construction activity could prevent the turtles from returning to perennial habitat downstream from the project site, the biologist will relocate the turtles to suitable habitat in the perennial reach of Penitencia East Channel downstream. If northwestern pond turtle has been listed by the USFWS under FESA by the time construction occurs, the biologist will handle/relocate individual turtles only with USFWS approval.

During the preconstruction survey, the biologist will determine whether there is any potential for native fish to be present in the project area based on presence/absence and depth of water. If any fish are or have the potential to be present in the on-site segment of creek channel, and if continuous flow is present from the project site downstream to the perennial reach of creek, the

biologist will use block nets to exclude fish from the reach to be dewatered. A block net will be placed at the upper end of the reach to be dewatered. Subsequently, qualified biologists will walk from the upper to lower end of the reach with a seine stretched across the channel to encourage fish to move out of the construction area. When the lower end of the construction area is reached, a second block net will be installed to isolate the construction reach. This procedure will be repeated as needed until no fish remain in the construction area. If surface water is not continuous between the project site and the perennial reach downstream, so that fish excluded from the site are unable to reach suitable habitat downstream, then the qualified biologist will capture native fish using appropriate methods and immediately release them in the perennial reach of the channel downstream.

MM BIO-1.3: **Maintenance of Flow through the Site.** In the unlikely event that fish are present within the channel when construction occurs, continuous flow will be maintained through the project site (e.g., in a temporary pipe) so that any fish upstream from the site are able to disperse downstream.

MM BIO-1.4: **Minimization and Shielding of Lighting.** All lighting for vehicular and pedestrian safety shall be minimized to the extent feasible (i.e., shall be no brighter than necessary for safety purposes), shall be oriented toward the bridge rather than outwards toward the Penitencia East Channel, and shall be fully shielded to block illumination from shining upward or outward toward the creek channel.

MM BIO-1.5: **Review of the Lighting Plan.** The lighting plan shall be reviewed by a qualified biologist prior to construction to ensure that the level of lighting would not result in adverse effects on wildlife in adjacent areas or attracting/disorienting nocturnal migrant birds.

MM BIO-1.6: In conformance with MMSP Policy SC 9.1 and SC 9.2, the following project-specific measures would be implemented to avoid impacts to nesting birds during construction and ensure compliance with the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code:

- If feasible, construction activities shall be avoided during the nesting season (i.e., February 1 through August 31).
- Potential nesting substrate (e.g., bushes, trees, snags, grass, and suitable artificial surfaces) that would be impacted by development shall be removed during the non-breeding season (i.e., September 1 through January 31), to preclude nesting in the study area.
- If it is not feasible to schedule construction activities during the non-breeding season, preconstruction surveys for nesting birds shall be conducted by a qualified ornithologist to ensure that no nests will be disturbed during construction activities. This survey shall be conducted no more than seven days prior to the initiation of

construction activities. During this survey, the ornithologist shall inspect all trees, shrubs, and other potential nesting habitats in and immediately adjacent to the study area for nests. If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist shall determine the extent of a buffer zone to be established around the nest, typically 300 feet for raptors and 100 feet for other birds, to ensure that no nests of species protected by the MBTA or the California Fish and Game Code will be disturbed during construction activities.

MM BIO-2.1: **Work Period.** Construction work within the stream banks shall be restricted to the period of April 15 to October 15 (or as otherwise allowed by resource agency permits). Riparian restoration work (refer to MM BIO-2.4 below) using hand tools shall be completed within the wet season the same year following completion of the project.

MM BIO-2.2: **Work Area Delineation**. Permittee shall clearly show all riparian habitat on project plan sets and place flagging around the work limits within the stream, riparian, and wetland areas to prevent inadvertent impacts to areas not proposed to be disturbed by the project. Flagging shall be removed and appropriately disposed of within five calendar days of the completion of construction work. Access paths and staging areas shall be adequately fenced or flagged during the construction period to prevent damage to adjacent stream, riparian or wetland habitat.

MM BIO-2.3: **Prevention of Spread of Invasive Plant Species.** To prevent the spread of invasive weed infestations,

- All ground disturbing equipment used within the riparian corridors shall be washed (including tracks, and undercarriages) at a legally operating equipment yard both before and after being used at the site.
- All applicable construction materials used on-site, such as straw wattles, mulch, and fill material, shall be certified weed free.
- Invasive plant species with a "high" ecosystem impact rating by the California Invasive Plant Council (Cal-IPC; http://www.cal-ipc.org/paf/) shall be actively monitored and controlled in the first three years following planting. The percent cover of "high" invasive plant species shall be maintained at less than ten percent of the total plant cover in areas disturbed by project work. A qualified ecologist shall assess the type, distribution, and abundance of invasive plant species and recommend effective control measures. Invasive plants shall be removed from the project site on an as-needed basis.

MM BIO-2.4: **Revegetation of Temporary Impact Areas.** Temporary impact areas within the bed and banks of the channel shall be restored to preconstruction conditions or better. Restoration shall include restoring the topography of temporary impact areas to preconstruction conditions to the extent feasible,

bank stabilization, and reestablishment of appropriate vegetation. A habitat-appropriate, weed-free native seed mix or propagated plants shall be applied or installed. Species such as California buckwheat (*Eriogonum fasciculatum*), California fuschia (*Epilobium canum*), coyote brush (*Baccharis pilularis*), purple needlegrass (*Stipa pulchra*), and seaside heliotrope (*Heliotropium curassavicum*) would be appropriate. The project proponent shall not plant, seed, or otherwise introduce invasive exotic plant species. Revegetation shall be completed as soon as possible after grading at the project site is completed. Seeding placed between October 15 and April 15 shall be covered with broadcast straw, jute netting, coconut fiber blanket, or similar erosion control blanket. Erosion control products with monofilament or woven plastic strands shall not be used. The revegetation will be considered successful if the vegetative cover in the temporary impact areas reaches 75% of the existing baseline cover, excluding species rated as "high" by Cal-IPC.

A qualified ecologist will monitor conditions in the temporary riparian and stream/marsh impact areas for a minimum of 3 years, or until the success criteria for vegetation cover are attained, whichever is later. Prior to commencement of construction, the ecologist will establish at least four permanent photographic documentation stations (i.e., one station near each corner of the bridge) to provide representative views of vegetation cover. The locations of the photographic documentation stations will be recorded using a GPS, and the direction of the photographs documented with a compass. The ecologist will prepare site maps with the photo-documentation points clearly marked for the project site. Prior to commencement of construction, the ecologist will photographically document the pre-project condition of the project site from each documentation station and estimate the vegetation cover at each station. Following implementation of the project, including any seeding or plant installation, a qualified ecologist will visit the site at least once in late spring to photographically document the postconstruction condition of the project site and estimate vegetation cover. The ecologist will report the results of these inspections (including the assessment of overall vegetation cover described in this measure and the assessment of invasive plants described in Mitigation Measure BIO-5) in a brief memo following each year's site visit. Monitoring and maintenance may be extended if the success criteria are not attained by year 3. Remedial measures to be considered include, but are not limited to, supplemental planting or seeding, increased maintenance frequency, increased invasive plant removal activities, or alteration of maintenance strategies.

E. CULTURAL RESOURCES

MM CUL-2.1: Prior to the issuance of any grading permits, the project applicant shall retain a qualified archaeologist and engage a Native American monitor approved by Tamien Nation to be present at the site during all ground disturbing activities. Submit a copy of the agreement to the Director of Engineering or the Director's designee.

MM CUL-2.2: Pursuant to CEQA Guidelines 15064.5 (f), if potentially significant cultural resources are discovered during ground-disturbing activities associated with project preparation, construction, or completion, work shall halt in that area until a qualified archaeologist can assess the significance of the find, and, if necessary, develop appropriate treatment measures in consultation with Santa Clara County, Tamien Nation, and other appropriate agencies and interested parties. If such resources are found to be Native American, the treatment measures shall obtain approval from Tamien Nation. A qualified archaeologist shall follow accepted professional standards in recording any find including submittal of the standard Department of Parks and Recreation (DPR) Primary Record forms (Form DPR 523) and locational information to the California Historical Resources Information Center office (Northwest Information Center). The consulting archaeologist shall also evaluate such resources for significance per California Register of Historical Resources eligibility criteria (Public Resources Code Section 5024.1; Title 14 CCR Section 4852). If the archaeologist determines that the find does not meet the CEQA standards of significance, construction shall proceed. In the event the archaeologist determines that further information is needed to evaluate significance, the Engineering Department staff shall be notified and a data recovery plan shall be prepared. If such resources are found to be Native American, a Tamien Nation Tribal representative shall be engaged for evaluation and the data recovery plan shall be prepared in consultation with Tamien Nation.

MM CUL-3.1: In the event that human remains are encountered, the City shall halt work in the immediate area and contact the Santa Clara County coroner. The coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the coroner will contact the Native American Heritage Commission (NAHC) which will designate the Most Likely Descendants (MLD). The MLD will inspect the remains and make a recommendation for the respectful treatment of the remains and related burial goods.

F. ENERGY - The project will not have a significant impact on this resource; therefore, no mitigation is required.

G. GEOLOGY AND SOILS

MM GEO-6.1: A qualified paleontologist shall attend a preconstruction meeting to ensure construction workers are able to identify potential paleontological resources. In the event fossils are encountered, construction shall be temporarily halted. The City's Engineering Department shall be notified immediately, a qualified paleontologist shall evaluate the fossils, and steps needed to photo document and recover the fossils shall be taken.

H. GREENHOUSE GAS EMISSIONS - The project will not have a significant impact on this resource; therefore, no mitigation is required.

I. HAZARDS AND HAZARDOUS MATERIALS

MM HAZ-2.1: Prior to demolition and grading, a Risk Management Plan (RMP) shall be prepared to protect the health and safety of construction workers and site users adjacent to construction activities. The RMP shall be implemented during all phases of construction and shall include engineering controls, monitoring, and security measures to prevent unauthorized entry to the construction site and to reduce hazards outside of the construction site. The RMP shall address the possibility of encountering subsurface hazards and include procedures to protect workers and the public. The RMP shall also include procedures for managing soils and groundwater removed from the site to ensure that any excavated soils and/or dewatered groundwater with contaminants are stored, managed, and disposed of in accordance with applicable regulations and permits. Protocols for the handling, transport, and disposal of both known and previously unidentified hazardous materials that may be encountered during project development shall be specified. If prescribed exposure levels are exceeded, personal protective equipment shall be required for workers in accordance with Occupational Safety and Health Administration (OSHA) regulations. Finally, the RMP shall also include procedures for the use, storage, disposal, of hazardous materials used during construction activities to prevent the accidental release of these materials into the environment during construction.

MM HAZ-2.2: To reduce the potential for construction workers and nearby sensitive receptor to be exposed to hazardous materials (asbestos containing materials [ACMs] and lead-based paint), the following measures shall be incorporated at all times during the construction of the project.

- In conformance with state and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building(s) to determine the presence of asbestos-containing materials and/or lead-based paints.
- Prior to demolition, all building materials containing lead-based paint shall be removed in accordance with the California Division of Occupational Safety and Health Lead in Title 8, California Code of Regulations, Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
- All potentially friable asbestos-containing materials shall be removed in accordance with National Emission Standards for Hazardous Air Pollutants guidelines prior to demolition or renovation activities that may disturb asbestos-containing materials. All demolition activities shall be undertaken in accordance with the California Division of Occupational

Safety and Health standards contained in Title 8, California Code of Regulations, Section 1529, to protect workers from asbestos exposure.

- A registered asbestos abatement contractor shall be retained to remove and dispose of asbestos-containing materials identified in the asbestos survey performed for the site in accordance with the standards stated above.
- Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with Bay Area Air Quality Management District requirements and notifications.
- Based on California Division of Occupational Safety and Health rules and regulations, the following conditions are required to limit impacts to construction workers.
    - Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint.
    - During demolition activities, all building materials containing lead-based paint shall be removed in accordance with the California Division of Occupational Safety and Health Lead in Construction Standard, Title 8, California Code of Regulations, Section 1532.1, including employee training, employee air monitoring and dust control.
    - Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of waste being disposed.

J. **HYDROLOGY AND WATER QUALITY -** The project will not have a significant impact on this resource; therefore, no mitigation is required.

K. **LAND USE AND PLANNING** - The project will not have a significant impact on this resource; therefore, no mitigation is required.

L. **MINERAL RESOURCES** - The project will not have a significant impact on this resource; therefore, no mitigation is required.

M. **NOISE –** The project will not have a significant impact on this resource; therefore, no mitigation is required.

N. **POPULATION AND HOUSING** - The project will not have a significant impact on this resource; therefore, no mitigation is required.

O. **PUBLIC SERVICES** - The project will not have a significant impact on this resource; therefore, no mitigation is required.

P. **RECREATION -** The project will not have a significant impact on this resource; therefore, no mitigation is required.

Q. **TRANSPORTATION/TRAFFIC** - The project will not have a significant impact on this resource; therefore, no mitigation is required.

R. **TRIBAL CULTURAL RESOURCES -** As described in Section 4.5 Cultural Resources, the project will be required to have a Tribal Monitor present during ground disturbing activities (MM CUL-2.1). In addition, the project would implement MM CUL-2.2 and MM CUL-3.1 under Impact CUL-2 and Impact CUL-3 in Section 4.5 Cultural Resources to reduce the potential for adverse impacts to buried cultural resources (including TCRs) to a less than significant level.

S. **UTILITIES AND SERVICE SYSTEMS** - The project will not have a significant impact on this resource; therefore, no mitigation is required.

T. **WILDFIRE –** The project site is not located in or near state responsibility areas or lands classified as very high fire hazard severity zones. Accordingly, the project would not result in wildfire impacts.

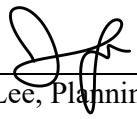
U. **MANDATORY FINDINGS OF SIGNIFICANCE** – With the implementation of the mitigation measures identified above, the project would not degrade the quality of the environment, substantially affect the biological resources, or eliminate important examples of California history or prehistory. The mitigation measures would also ensure that the project's contribution to cumulative impacts would not be cumulatively considerable, and the project would not cause substantial adverse effects on human beings, either directly or indirectly.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **April 1, 2024** any person may:

1. Review the Draft MND as an informational document only; or

2. Submit written comments regarding the information and analysis in the Draft MND. Before the MND is adopted, City staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.



2/27/24

Jay Lee, Planning Director — Date