

Recording Requested by,
And when Recorded Mail To:

City Clerk
City of Milpitas
455 E. Calaveras Blvd
Milpitas, CA 95035-5411

Recording fees waived pursuant to
Government Code Section 6103

AGREEMENT BETWEEN THE CITY OF MILPITAS
AND HEADWAY TECHNOLOGIES, INC.

This Agreement is entered into this ____ day of _____, 2008 by and between the City of Milpitas, a municipal corporation (“City”) and Headway Technologies, a wholly owned subsidiary corporation of SAE Magnetics of Hong Kong and TDK Corporation of Japan (“Headway”).

RECITALS

WHEREAS, Headway, an integrated circuit manufacturer headquartered in the City, plans to expand its production capability at its facility located at 497 South Hillview Drive; and

WHEREAS, on December 4, 2007 Headway submitted a request to the City to increase its permitted daily discharge of wastewater from 114,700 to 151,000 gallons per day; and

WHEREAS, Headway’s request for increased discharge rights is in accordance with the City’s municipal code and the adopted Council policy; and,

WHEREAS, on January 15, 2008 the City held a public hearing and did approve increasing Headway sewer discharge limits to 151, 000 gallons per day, provided that Headway agrees to the conditions of the City’s “Policy for Granting Industrial Wastewater Discharges” and agrees to ensure that its taxable sales/use from the facility is attributable to the City of Milpitas in accord with law.

NOW, THEREFORE, the parties hereto agree as follows:

1. Headway will incorporate water conservation and recycling into its processes to the maximum extent feasible to the satisfaction of the City Engineer.

2. Headway will reduce its wastewater discharge at a pro-rata rate if requested by the City in the event that the City's allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant is exceeded.
3. Headway will share in the cost with other local area high dischargers on a pro-rata basis for any local area improvements to the sanitary sewer collection system needed to accommodate the increased flow or at Headway's option, reduce its water discharge volume to 114,700 gallons per day.
4. Headway will operate this facility in a manner that is consistent with the City's economic development strategy. Headway agrees to take all reasonable lawful steps to have sales tax generated by the sale of products made at its Milpitas facilities or use tax generated by the purchase of products used at its Milpitas facilities, attributed to Milpitas in its filings with the State Board of Equalization. To that end, Headway agrees to apply for a Use Tax Direct Payment Permit from the State Board of Equalization to allow direct distribution of use tax revenues and to implement that Permit through its Board filings, to assist in assuring that the City of Milpitas receives the maximum amount of local use tax revenue to which it is entitled under the law.

In the event that Headway fails to take the steps necessary to apply for a Use Tax Direct Payment Permit and thereafter comply with its terms or otherwise does not act in good faith in implementing this paragraph 4, then the permitted water discharge volume to the sanitary sewer shall be reduced to 114,700 gallons per day at the City's discretion provided that the City has given Headway thirty (30) days' prior written notice of any failure by Headway to comply with the terms of this Paragraph 4 and Headway has failed to correct any such deficiency in its performance, or if more than thirty (30) days is required to correct the deficiency, has failed to begin taking good faith measures to correct them which continue until the deficiency has been corrected. However, to the extent the Use Tax Direct Payment Permit is not issued by the permitting authority solely due to the regulatory action by or authority of the State or Federal Government, such reduction in permitted water discharge shall not take place.

5. Headway shall reduce the levels of air pollutants, urban runoff, and noise pollution to the maximum extent feasible, and avoid discharges of pollutants that cannot be treated at the San Jose/Santa Clara Water Pollution Control Plant.
6. Headway shall pay City fees of \$23,200 to the City recycled water fund in accordance with City "Policy for Granting Industrial Wastewater Discharges

(Council Resolution 6840). This amount is based on a unit rate of gallons per day of discharged wastewater per square foot of building area as shown in Exhibit A. The City shall reimburse this fee to Headway if the City rescinds the increased discharge rights as described in Paragraph 4 above.

- 7. In accordance with Milpitas Municipal Code, Title VIII, Chapter 2, Section 7.04 Headway shall pay fees of \$108,419 to the City treatment plant fund as shown in Exhibit A. The City shall reimburse this fee to Headway if the City rescinds the increased discharge rights as described in Paragraph 4 above.
- 8. The Agreement shall be recorded with the County Recorder of the County of Santa Clara, California on all parcels comprising the Headway facility.

CITY OF MILPITAS

HEADWAY TECHNOLOGIES

Thomas C. Williams, City Manager

Title

ATTEST:

Mary Lavelle, City Clerk
Number

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

APPROVED AS TO CONTENT:

Greg Armendariz
Director of Public Works/City Engineer

Exhibit A – Calculation of Fees

Headway Technology Inc, 497 S. Hillview Dr, Milpitas, CA 95035

1. Treatment Plant Fee (TPF)

- Current Purchased Discharge Capacity = 114,700 gallons per day (gpd)
- Discharge capacity rights after 1/15/08 City approval = 151,000 gpd
- TPF for 1/15/08 Discharge Capacity = \$469,619
- TPF credit for fees paid to date = \$361,200
- TPF owed = \$108,419

2. Council Policy for Granting Industrial Wastewater Discharges (Reso 6840)

Contribute \$29,000 for every gallon per day per square foot of building area over the limit of 0.8.

- Discharge capacity rights after 1/15/08 City approval = 151,000 gpd
- Total building square footage = 94,000 sf
- Discharge rate per square foot = 1.6 gpd per square foot
- Baseline Allowable Discharge = 0.8 gpd per square foot
- Unit Cost per Resolution No. 6840 = \$29,000 gpd per square foot
- Total Contribution for Discharge above Allowable Discharge = \$23,200

3. Total Fees Due = \$131,619