

**BUSINESS RETENTION SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
MILPITAS CHAMBER OF COMMERCE**

THIS AGREEMENT for business retention services is made by and between the City of Milpitas ("City") and the Milpitas Chamber of Commerce ("Chamber") as of July 1, 2011.

AGREEMENT

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Chamber shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on September 30, 2011, at which time approximately one fourth of the work described in Exhibit A shall be completed, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. It is contemplated that the full scope of work described in Exhibit A will be completed through a series of quarterly contract amendments, at the City's discretion, which will extend the contract through June 30, 2012. The time provided to Chamber to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Chamber shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Chamber is engaged in the geographical area in which Chamber practices its profession. Chamber shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Chamber's profession.
- 1.3 **Assignment of Personnel.** Chamber shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Chamber shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Chamber shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above and to complete Chamber's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Chamber a payment not to exceed \$ 20,000 for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay

Chamber for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Chamber for services rendered pursuant to this Agreement. Chamber shall submit all invoices or reports to City in the manner specified herein. Except as specifically authorized by City, Chamber shall not bill City for duplicate services performed by more than one person.

Chamber and City acknowledge and agree that compensation paid by City to Chamber under this Agreement is based upon Chamber's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Chamber. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Chamber and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 **Invoices.** Chamber shall not submit invoices, since payment is up-front per Section 2.2, below; however, on a quarterly basis during the term of this Agreement, based on the services performed during the quarter, Chamber shall report to City. Reports shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, payments received, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- At City's option, the total number of hours of work performed under the Agreement by Chamber and each employee, agent, and subcontractor of Chamber performing services hereunder, and shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Chamber's signature.

2.2 **Quarterly Payment.** The initial payment of the entire \$20,000 contract amount will be made to the Chamber at the beginning of the contract. Thereafter, the City shall make payments only as negotiated under subsequent contract amendments for additional services performed in accordance with the Performance Measurements identified in Exhibit A.

2.3 **Total Payment.** City shall pay for the services to be rendered by Chamber pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Chamber in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Chamber submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Chamber identifies additional work outside the scope of services specified in Section 1.1 that may be required to complete the work required under this Agreement, Chamber shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

- 2.4 **Hourly Fees.** Intentionally left blank.
- 2.5 **Reimbursable Expenses.** Intentionally left blank.
- 2.6 **Payment of Taxes.** Chamber is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.
- 2.7 **Payment upon Termination.** In the event that the City or Chamber terminates this Agreement pursuant to Section 8, the Chamber shall reimburse City for work not performed, as required under Section 1.1, as of the date of written notice of termination. Chamber shall maintain adequate logs and timesheets in order to verify costs incurred to that date.
- 2.8 **Authorization to Perform Services.** The Chamber is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Chamber shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Chamber's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Chamber shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Chamber and its agents, representatives, employees, and subcontractors. Chamber shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Chamber shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Chamber's price. Chamber shall not allow any subcontractor to commence work on any subcontract until Chamber has obtained all insurance required

herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 **Workers' Compensation.** Chamber shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Chamber. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Chamber may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Chamber, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.2 **Commercial General and Automobile Liability Insurance.**

- 4.2.1 **General requirements.** Chamber, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

- 4.2.2 **Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

4.2.3 **Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, contractors, Chambers, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Chamber, including the insured's general supervision of Chamber; products and completed operations of Chamber; premises owned, occupied, or used by Chamber; and automobiles owned, leased, or used by the Chamber. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, Chambers, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, Chambers, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CHAMBER to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3 **Professional Liability Insurance.** If Chamber shall be performing licensed professional services, Chamber shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

- 4.3.3 The policy must contain a cross liability clause.
- 4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:
- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.
 - c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Chamber must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Chamber's sole cost and expense, any extended reporting provisions of the policy, if the Chamber cancels or does not renew the coverage.
 - d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 **Requirements for All Policies.**

- 4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.
- 4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Chamber shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
- 4.4.3 **Subcontractors.** Chamber shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 4.4.4 **Deductibles and Self-Insured Retentions.** Chamber shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Chamber may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, Chambers, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Chamber procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

4.4.5 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Chamber shall provide written notice to City at Chamber's earliest possible opportunity and in no case later than five days after Chamber is notified of the change in coverage.

4.5 Remedies. In addition to any other remedies City may have if Chamber fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Chamber's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Chamber to stop work under this Agreement or withhold any payment that becomes due to Chamber hereunder, or both stop work and withhold any payment, until Chamber demonstrates compliance with the requirements hereof; and/or
- Declare Chamber in material breach of the Agreement and terminate the Agreement.

4.6 Waiver. The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

Section 5. INDEMNIFICATION AND CHAMBER'S RESPONSIBILITIES. Chamber shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, Chambers, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Chamber or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Chamber shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants or volunteers and (2) the actions of

Chamber or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Chamber to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Chamber from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Chamber acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Chamber or any employee, agent, or subcontractor of Chamber providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Chamber shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Chamber or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CHAMBER.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Chamber shall be an independent contractor and shall not be an employee of City. City shall have the right to control Chamber only insofar as the results of Chamber's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Chamber accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Chamber and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant No Agent.** Except as City may specify in writing, Chamber shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Chamber shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Chamber and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Chamber and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Chamber represents and warrants to City that Chamber and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Chamber represents and warrants to City that Chamber and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Chamber and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Chamber shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Chamber under this Agreement. Chamber shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Chamber thereby.

Chamber shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Chamber.

In the event of termination, Chamber shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. Chamber shall reimburse City for payments made for work not completed as set forth in Section 2.7. Upon termination, Chamber shall deliver to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Chamber or prepared by or for Chamber or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a

written amendment to this Agreement, as provided for herein. Chamber understands and agrees that, if City grants such an extension, City shall have no obligation to provide Chamber with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Chamber for any otherwise reimbursable expenses incurred during the extension period. Notwithstanding this provision, it is contemplated by the parties that contract amendment will be required to complete the full scope of services set forth in Exhibit A and that such amendment will include additional compensation.

8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

8.4 **Assignment and Subcontracting.** City and Chamber recognize and agree that this Agreement contemplates personal performance by Chamber and is based upon a determination of Chamber's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Chamber. Chamber may not assign this Agreement or any interest therein without the prior written approval of the City. Chamber shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Chamber's proposal, without prior written approval of the City.

8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Chamber shall survive the termination of this Agreement.

8.6 **Options upon Breach by Chamber.** If Chamber materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

8.6.1 Immediate cancellation of the Agreement;

8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Chamber pursuant to this Agreement prior to cancellation; and

8.6.3 Retention of a different Consultant at Chamber's cost to complete the work described in Exhibit A not finished by Chamber.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Chamber's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Chamber

prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Chamber hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Chamber to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Chamber agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

- 9.2 **Chamber's Books and Records.** Chamber shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Chamber to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Chamber to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** 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 courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any

provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 **No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Chamber shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Chamber may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Chamber in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Chamber shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Chamber hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Chamber were an employee, agent, appointee, or official of the City in the previous twelve months, Chamber warrants that it did not participate in any manner in the forming of this Agreement. Chamber understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Chamber will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Chamber will be required to reimburse the City for any sums paid to the Chamber. Chamber understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Chamber certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Chamber) in connection with procuring this Agreement, nor has Chamber agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 **Solicitation.** Chamber agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

- 10.9 **Contract Administration.** This Agreement shall be administered by City's Economic Development Manager who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.** Any written notice to Chamber shall be sent to:
Carol Kassab, CEO
Milpitas Chamber of Commerce
828 North Hillview Drive
Milpitas, CA 95035
- Any written notice to City shall be sent to:
Economic Development Manager/City Manager
City of Milpitas
455 East Calaveras Boulevard
Milpitas, California 95035
- 10.11 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Chamber and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 **Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

MILPITAS CHAMBER OF COMMERCE

Thomas C. Williams, City Manager

Carol Kassab, CEO

APPROVED AS TO CONTENT:

Taxpayer Identification Number

Diana Barnhart, Economic Development Manager

City of Milpitas Business License Number

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

APPROVED:

Emma Karlen, Finance Director/Risk Manager

ATTEST:

Mary Lavelle, City Clerk

EXHIBIT A

SCOPE OF SERVICES

DESCRIPTION OF PROGRAM/S

The Chamber will create and implement the Business Retention in Milpitas (BRIM) Program for business outreach services to business employing from 49 to 99 employees.

TASK/S

Task 1. “Deliver the Message” (1 point)

An important aspect for the City was that a message be delivered to their businesses that the City is not only concerned for their well being, but is proactively doing something about it.

“Deliver the Message” will be the 20 to 30 second conversation made from our BRIM Chamber representative to the Key Business Person (KBP): 1) Owner, 2) CFO, or 3) recognized City liaison or Business Development Officer. Every KBP will be introduced to our program, that it is an effort by the Chamber and City to help identify ways to strengthen their business or add actual revenue to their bottom line via a 10 to 20 minute Business Review.

This positive, promotional message for the City will be the ancillary to a completed Business Review. Similar programs in other cities show that even if the KBP is unwilling or unable to complete the Business Review with the Chamber, a positive impact is made as they will at least have the knowledge that their City is trying to engage them, to involve them in the process, and better support their ongoing success.

Task 2: Completed Business Review (2 points)

The goal of BRIM calls and face-to-face meetings is to have a Business Review completed. The City will participate in the creation of the Business Review survey.

This 10 to 20 minute process will cover key topics including the following:

- a. Why did you decide on having your business in Milpitas?
- b. How was your experience in working with the City?
- c. Do you expect any growth in the immediate future that would require more employees or a larger business space?
- d. Are there any pending issues your business faces that you could use support in?
- e. Are you familiar with Foreign Trade Zones and how they can be used to lower or eliminate duties on your imported components?*
- f. If you do expect growth of more than 10 or 20 employees, would you be open to investor injection to help expedite this growth?*

*: These questions would only be asked of businesses that we had information supporting that they would most likely have a specific need/benefit.

Also, we have a set list of questions, but would welcome additional questions submitted by the City and/or Economic Development Manager to improve the City's acquired data via this medium.

Task 3: Foreign Trade Zones (5, 10, and 50 points)

The importance of the Foreign Trade Zone (FTZ) for local businesses is that it can help to lower or completely eliminate duties paid on imports of components that are exported back out of the US or are manufactured/assembled/manipulated into a finished product and resold.

For the City, once a business establishes an FTZ into their physical business location, it can only be used for the original, designated physical location. If the business considers a move in the future they may leave the building or the City, but they cannot take their FTZ with them. It then becomes an asset for marketing the vacant space.

The approximate time for creating a FTZ, from start to finish, is six to eight months if the business is diligent and has constant follow up. For those unsupported businesses it takes longer or is never completed.

5 Points: For a qualified business that is referred to the appointed FTZ International Program Manager, currently Mr. Joe Hedges, and a meeting occurs (by definition there is genuine interest from the business and FTZ program information and business information exchanged). This will be tracked and reported by the Chamber and confirmed by email from the FTZ IPM.

10 Points: An FTZ application is started with the FTZ IPM. The initial application completed and submitted to the first round of review will be confirmed by email from the FTZ IPM and tracked in our monthly reporting. This would be an additional 5 points, if 5 points was previously given for a meeting.

50 Points: When an FTZ is completed for a Milpitas business that was referred by a Chamber agent.

Task Four: EB5 Visa Funding Project (10, 20, and 100* points)

The Chamber's "big ticket" item would be to have a business or project within Milpitas City limits funded via the EB5 program as the program provides large investments and jobs created.

EB5 funded projects need at least \$500,000 increments and need to produce 10+ "sustainable" jobs (at least two years in duration or perpetual) per every \$500,000 increment funded through EB5.

The approximate time from start to finish is a few months to over a year. This would take the coordination of the Chamber, City and designated Regional Center who would directly facilitate the process. The two Resource Centers identified for use are the Silicon Valley Regional Center and Bay Area Regional Center.

10 Points: For a qualified business that is referred to the appointed Regional Center and a meeting occurs (by definition there is genuine interest from the business/project and EB5 program information and business information exchanged). This will be tracked and reported by the Chamber and confirmed by email from the Regional Center representative.

20 Points: An EB5 application is started with the Regional Center. The initial application completed will be confirmed by email from the Regional Center representative and tracked in our monthly reporting. This would be an additional 10 points, if 10 points was previously given for an initial meeting.

100* Points: When a business or project is completed and funded that was referred by a Chamber agent then we would track *100 points PER \$500,000 funded AND 10+ jobs created. This does create a large pooling of points for a completed funding, but considering what is acquired, it is not overcompensated. We will also ensure other minimums are in place to prevent activity drop off in any one quarter that an EB5 funding occurs.

2* Points: We will also help to address the City request to help expand the Targeted Employment Areas (TEA) within the city limits. For each total aggregate hour of time allocated and tracked by the Chamber 2 points of activity will be reported.

Reporting Tasks and associated points:

Task 1: Delivering the Message: the Chamber will report the date, business name, Key Business Person, and any notes taken during the delivery of the message. These will be reported on a monthly basis to the appointed City representative.

Task 2: For Completed Business Reviews: the Chamber will have results of the surveys reported on a monthly basis to the appointed City representative. Any critical information will be reported immediately to the City.

IMPORTANT: To ensure the integrity of these reports, the Chamber insures there will be no duplication of reporting. No business can accrue an aggregate in excess of two points in any single quarter from "Delivering the Message" or a completed Business Review.

Example: if a KBP is contacted and there's no interest in completing a Business Review is apparent, then one point is reported. If that business changes their mind and completes the Business Review in that same quarter, then only one additional point is awarded.

The Chamber is striving to deliver a positive message and collect data, not to collect points.

Tasks 3 & 4: For the FTZ and EB5 programs we will track and report only activity that has a confirmation from the FTZ International Program Manager or EB5 Regional Center representative respectively. These, too, will be reported monthly to the appointed City representative.

Total goal and minimum thresholds:

The Chamber seeks to deliver a total aggregate of 250 Points per quarter of productivity based on the detailed point metrics described in this Exhibit.

Initially, we expect that the majority of productivity will be from Delivering the Message and completed Business Reviews. Over time we expect that as FTZs and EB5s are being completed the higher point valuations will be predominant.

Again, to ensure a sufficient and ongoing level of new businesses being contacted and engaged in the Business Reviews we will commit of the aggregate 250 points to a minimum level of 60 points per quarter that need to be derived from the Delivering the Message and Business Review categories.(Tasks #1 and #2)

We expect that our overall performance and subsequent funding will be reviewed and approved or disapproved on a quarterly basis.