

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE CITY MANAGER TO AWARD RFP 2026 TO EXTRATEAM AND ENTER INTO AN AGREEMENT FOR DELIVERY AND INSTALLATION OF A NEW TELEPHONE SYSTEM; EXECUTE AN AMENDMENT TO THE AGREEMENT WITH COMMUNICATION STRATEGIES FOR SYSTEM IMPLEMENTATION SERVICES; EXECUTE AN AMENDMENT TO THE EXISTING EQUIPMENT LEASE AGREEMENT WITH KEY GOVERNMENT FINANCE FOR A TELEPHONE SYSTEM EQUIPMENT PURCHASE AND RELATED COSTS; AND APPROVE A BUDGET APPROPRIATION

WHEREAS, competitive procurements were duly conducted in compliance with Milpitas Municipal Code requirements for the delivery and installation of a new municipal telephone system and related management services thereto; and

WHEREAS, the City previously engaged the professional services of Communication Strategies (Com-Strat, LLC) for equipment solicitation, proposal and evaluation services, and now wishes to engage them for project management services; and

WHEREAS, the City also previously entered into a Master Lease Agreement with Key Government Finance to defray and finance the costs of procurement of equipment and services like those associated with the municipal telephone system replacement.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. Request for Proposals (Telephone System Purchase and Installation) is hereby awarded to ExtraTeam. The City Manager is authorized to enter into an agreement for delivery and installation of a new telephone system for a price not to exceed \$387,612.97.
3. The City Manager is authorized to execute an amendment to the City’s existing agreement with Communication Strategies to cover system implementation services for an additional not to exceed price of \$49,025.
4. The City Manager is authorized to execute an amendment and/or take other actions necessary to amend the existing lease agreement with Key Government Finance so as to extend its scope to telephone system equipment purchase, installation, project management and contingency costs in the amount of \$480,301.77.
5. The amount of \$97,313.96 is hereby appropriated from the Information Technology Replacement Fund for the first annual lease payment.

PASSED AND ADOPTED this _____ day of _____, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
EXTRATEAM, INC.**

Project: Telephone System Purchase and Installation
Proposal No: RFP 2026
Amount of Contract: \$387,612.97

THIS CONTRACT, made this 18th of September, 2012, by and between the City of Milpitas, hereinafter referred to as the "City of Milpitas" and ExtraTeam, Inc., 7031 Koll Center Parkway, Pleasanton, CA 94566, hereinafter referred to as "Contractor",

WITNESSETH:

- A. WHEREAS, the City of Milpitas has caused specifications, drawings and other contract documents, hereinafter referred to as "Specifications", to be prepared for certain work on the referenced project; and
- B. WHEREAS, the term of this agreement shall become effective upon the execution of the agreement by all parties; and
- C. WHEREAS, the agreement shall remain in effect until City of Milpitas executes a formal Delivery and Acceptance form; and
- D. WHEREAS, said Specifications include:
 - a. RFP 2026 for Telephone System Purchase and Installation
 - b. Vendor's Response to RFP 2026 for Telephone System Purchase and Installation
 - c. Terms and Conditions incorporated in RFP 2026
 - d. Addenda
 - e. Schedule A – RFP Pricing Worksheet
 - f. Schedule B – RFP Site Summary
 - g. Schedule C – RFP Requirements Summary
 - h. Schedule D – Recommended Bill Of Material From City Of Milpitas
 - i. Schedule E –Bill of Material Quoted by Vendor
 - j. Proposal Form
 - k. Non-Collusion Affidavit
 - l. Proposer's Statement Regarding Insurance Coverage
 - m. Worker's Compensation Insurance Certificate
 - n. Contractor's Nondiscriminatory Employment Certificate
 - o. Subcontractors List
 - p. Certificate of Compliance
 - q. Insurance Requirements – General
 - r. Contractor's Scope of Work (if applicable)
- E. WHEREAS, contractor has offered to perform the proposed work in accordance with the terms of said Specifications as set forth by submission of the contractor's proposal;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained in said Specifications and contractor's proposal, which are made a part hereof as though fully set forth, contractor hereby agrees to complete the work at the prices and on the terms and conditions therein contained, and the City of Milpitas hereby employs the contractor and agrees to pay the contractor the contract prices therein provided for the fulfillment of the work and the performance of the covenants therein set forth.

IN WITNESS WHEREOF, this contract has been executed on the day and year first above written.

City of Milpitas,
A Municipal Corporation

ExtraTeam, Inc.

Thomas C. Williams, City Manager

Michelle Setchell, Vice President

Approved As
To Form:

Michael J. Ogaz, City Attorney

Approved As
To Content:

Matthias Schwarz, Telecommunications Manager

Business Tax Compliance: Certificate No. _____

FIRST AMENDMENT TO CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF MILPITAS AND COMMUNICATION STRATEGIES (COM-STRAT, LLC)

THIS FIRST AMENDMENT to that certain Consulting Services Agreement dated February 23, 2012, is entered into on this 18th day of September 2012 by and between the City of Milpitas, hereinafter “City,” and Com-Strat, LLC (sometimes referred to herein as “Consultant” or “Communication Strategies”), collectively referred to herein as “the Parties.”

RECITALS:

WHEREAS, the Parties entered into a written contract, entitled the Consulting Services Agreement Between the City of Milpitas and Communication Strategies (Com-Strat, LLC) Consulting Services Agreement dated February 23, 2012, (“Agreement”) and now wish to amend that Agreement as set forth below.

NOW, THEREFORE, IT IS HEREBY AGREED as follows:

1. The compensation amount set out in Section 2, Compensation, is amended to add an additional not to exceed amount of \$49,025, bringing the total not to exceed amount of aggregate compensation to \$69,005.
2. The Scope of Services is hereby amended with a new Addendum A-1, attached to this First Amendment as Addendum A-1, for Phase 3 work.
3. The Compensation Schedule is hereby amended with a new Addendum B-1, attached to this First Amendment as Addendum B-1, for Phase 3 work.
4. The City notice provisions of Section 10.10 are hereby revised to read as follows:

City of Milpitas-Information Services
c/o Matthias Schwarz
1265 N. Milpitas Boulevard
Milpitas, California 95035

5. All other terms and conditions of the original Agreement remain unchanged.

CITY OF MILPITAS

CONSULTANT

Thomas C. Williams, City Manager

Communication Strategies (Com-Strat, LLC)

APPROVED AS TO FORM:

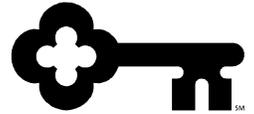
Michael J. Ogaz, City Attorney

ADDENDUM A-1 SCOPE OF WORK

Communication Strategies' role is provide as much or as little support as required by our clients, leveraging client and vendor resources to the extent possible. It is not uncommon for our role to expand or contract during a project. We bill only for actual hours worked, so it is possible that the total cost of the project will be less than what is stated below. Where Vendor or IT Department appears in the Net Hours column, the work will be performed by those entities as they are best suited to provide the information in order to minimize the overall cost of the engagement.

Phase 3 - Project Management	Quantity	Hours	Net Hours
Negotiate final contract and T&C	1	6	6
Evaluate contract and SoW for industry best practice	1	6	6
Vendor kickoff meeting	1	4	4
Develop database templates	2	2	4
Telco design, order, follow up	1	4	4
Address VoIP readiness issues	1	4	4
Develop installation schedule	1	6	Vendor
Prepare project plan, update & manage	16	2	Vendor
Review Installation and Project Plan	2	4	8
LAN/QoS Design Workshops	2	2	4
Telephony Design Workshops	4	2	8
Call Center	2	2	4
Mobility, Unified Communications Design	2	2	4
Complete cutsheets with user and phone details	1	24	IT Dept.
Review cutsheet and database preparation	2	2	4
Prepare test plan	1	8	8
Prepare system acceptance plan	1	4	4
Review training strategy and training materials	1	3	3
Execute VoIP/QoS Readiness test plan	2	5	10
Execute system test plan	2	7	14
Pilot Trial PM and remediation	3	4	12
Remediation after Testing	2	1	2
System cutover	2	8	16
System cutover coverage	2	14	28
Manage post install punch list and remediation	2	4	8
Manage system acceptance process	1	8	8
Participate in weekly planning meetings	16	1.5	24
Miscellaneous emails, PM and follow up - weekly	16	4	64
Prepare weekly meeting notes	16	1	Vendor
Project close out	1	4	4
	Total	Hours:	265

Time Table: It is expected that the engagement for Phase 3 work will last approximately 16 weeks.



Key Government Finance, Inc.
1000 South McCaslin Boulevard
Superior, CO 80027-9456

Tuesday, September 11, 2012

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

Re: Key Government Finance, Inc.
Property Schedule No. 2

Dear Mr. Schwarz:

Enclosed, please find two (2) sets of financing documents for your review and execution. (If these documents were emailed to you, please print out two (2) sets.) Execute both sets and return all of the originals to my attention. **The original sets of the executed documents are required prior to funding your transaction. To expedite the return of these documents, please overnight them to me using Key Government Finance's FedEx account #129905042, and send to:**

KEY GOVERNMENT FINANCE, INC. ATTN: JANICE THOMAN
1000 S. MCCASLIN BLVD, SUPERIOR, CO 80027.

Please Note: All fully executed documents must be returned no later than Friday, September 21, 2012; otherwise, the transaction is subject to re-pricing. Only the person with Signing Authority should execute the documents. For verification of original documents, please execute in blue ink. Upon closing, Key Government Finance will return a fully executed original set for your files.

Please refer to the enclosed Document Checklist when preparing the documents.

Executed documents required for funding are:

1. Property Schedule No. 2
2. Property Description and Payment Schedule (Exhibit 1)
3. Lessee's Counsel's Opinion (Exhibit 2) – **Agreed to use "Approved as to Form" stamp in place of formal letter.**
4. Lessee's Certificate (Exhibit 3) – **Need the City's Resolution in place of the Lessee's Certificate.**
5. Payment of Proceeds Instructions (Exhibit 4)
6. Acceptance Certificate (Exhibit 5)
7. Bank Qualification and Arbitrage Rebate (Exhibit 6)
8. Certificate of Insurance – **Required prior to funding.**
9. Notification of Tax Treatment with Tax Exemption Certificate or Letter – **Required for annual state tax audits..**
10. Invoicing Instructions – **Required in order to ensure that invoices are directed to the proper area in your organization.**
11. *Escrow Agreement*
12. *Invoice for 1st Payment*

****An IRS Form 8038-G will be required for this transaction. Please consult with your Legal/Bond Counsel for instruction to complete this form. The original form will be required for funding, which we will submit to the IRS on your behalf. Or, you may submit the original completed form to the IRS directly. KGF will require a copy of the completed form and proof of filing prior to funding.****

Please contact me at 720-304-1636 with any questions or concerns you may have.

Sincerely,
Janice Thoman, Account Manager

DOCUMENTATION CHECKLIST

- Property Schedule 2***
- Property Description and Payment Schedule** -Exhibit 1
- Lessee's Counsel's Opinion** - Exhibit 2. ***Agreed to use "Approved as to Form" stamp in place of formal letter.***
- Lessee's Certificate** - Exhibit 3. ***Need the City's Resolution in place of the Lessee's Certificate.***
- Payment of Proceeds Instructions** - Exhibit 4. This is the Vendor payment information.
- Acceptance Certificate** - Exhibit 5. ***The date of Acceptance will need to be filled in*** with the date the equipment is installed and accepted.
- Bank Qualification Certificate** -Exhibit 6 – One of two boxes MUST be checked.
- Request for Certificate of Insurance** – Please fill out the form and fax it to your insurance company. The Insurance Certificate is required prior to funding.
- Notification of Tax Treatment**
- Invoicing Instructions** – The information you provide enables us to invoice you correctly.
- Escrow Agreement**

*The items above marked with an asterisk require a signature in the presence of a witness/attestor. The attesting of the signature does not require a notary, but the signature of a person present at the time the document is signed.

** **IRS Form 8038-G** – Blank form provided for your use. Please consult with your Legal/Bond Counsel for instruction to complete this form.**

Property Schedule No. 2

Master Tax-Exempt Lease/Purchase Agreement

This **Property Schedule No. 2** is entered into as of the Commencement Date set forth below, pursuant to that certain Master Tax-Exempt Lease/Purchase Agreement (the "Master Agreement"), dated as of 1/13/2009, between Key Government Finance, Inc., and City of Milpitas.

1. Interpretation. The terms and conditions of the Master Agreement are incorporated herein by reference as if fully set forth herein. Reference is made to the Master Agreement for all representations, covenants and warranties made by Lessee in the execution of this Property Schedule, unless specifically set forth herein. In the event of a conflict between the provisions of the Master Agreement and the provisions of this Property Schedule, the provisions of this Property Schedule shall control. All capitalized terms not otherwise defined herein shall have the meanings provided in the Master Agreement.
2. Commencement Date. The Commencement Date for this Property Schedule is 9/18/12.
3. Property Description and Payment Schedule. The Property subject to this Property Schedule is described in Exhibit A hereto. Lessee shall not remove such property from the locations set forth therein without giving prior written notice to Lessor. The Rental Payment Schedule for this Property Schedule is set forth in Exhibit 1.
4. Opinion. The Opinion of Lessee's Counsel is attached as Exhibit 2. Lessor agrees to allow Lessee to use "Approved as to Form" stamp in lieu of the formal letter.
5. Lessee's Certificate. The Lessee's Certificate is attached as Exhibit 3. Lessor agrees to accept resolution in lieu of this document.
6. Proceeds. Lessor shall disburse the proceeds of this Property Schedule in accordance with the instructions attached hereto as Exhibit 4.
7. Acceptance Certificate. The form of Acceptance Certificate is attached as Exhibit 5.
8. Additional Purchase Option Provisions. In addition to the Purchase Option provisions set forth in the Master Agreement, Rental Payments payable under this Property Schedule shall be subject to prepayment as follows: See termination amount in Exhibit 1 (Payment Schedule), subject to per diem adjustment.
9. Bank Qualification Certificate. Attached as Exhibit 6.
10. Expiration. Lessor, at its sole determination, may choose not to accept this Property Schedule if the fully executed, original Agreement (including this Property Schedule all ancillary documents) are not received by Lessor at its place of business by 9/21/12.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Property Schedule to be executed in their names by their duly authorized representatives as of the Commencement Date above.

Lessor: Key Government Finance, Inc.
By:
Name:
Title:

Lessee: City of Milpitas
By:
Name:
Title:

Attest
By
Name:
Title:

EXHIBIT 1

Property Description and Payment Schedule

Re: **Property Schedule No. 2** to Master Tax-Exempt Lease/Purchase Agreement between Key Government Finance, Inc. and City of Milpitas.

The Property is as follows: The Property as more fully described in Exhibit A incorporated herein by reference and attached hereto.

EQUIPMENT LOCATION: City of Milpitas, 455 E. Calaveras Blvd., Milpitas, CA 95035-5411

USE: Networking Equipment - This use is essential to the proper, efficient and economic functioning of Lessee or to the services that Lessee provides; and Lessee has immediate need for and expects to make immediate use of substantially all of the Property, which need is not temporary or expected to diminish in the foreseeable future.

Rental Payment Schedule

If the Due Dates are not defined in this Rental Payment Schedule, they shall be defined as the day of each period of this Rental Payment Schedule commencing with the Acceptance Date.

Total Principal Amount **\$480,301.77**

The financing table below is net of the special financing promotion payment from Extra Team in the amount of \$23,414.47. This payment will be made by Extra Team to Lessor.

Financing Start Date: 9/18/12

Payment No.	Due Date	Rental Payment from City of Milpitas	Rental Payment from Extra Team	Principal	Interest	Termination
1	18-Sep-2012	97,252.15	23,414.47	120,666.62	0.00	370,424.20
2	18-Sep-2013	97,252.15		85,685.78	11,566.37	282,167.85
3	18-Sep-2014	97,252.15		88,441.56	8,810.60	191,073.04
4	18-Sep-2015	97,252.15		91,285.96	5,966.19	97,048.50
5	18-Sep-2016	97,252.15		94,221.85	3,030.31	0.00

Lessee: City of Milpitas
By:
Name:
Title:

EXHIBIT A

Property Description

Equipment as described in Extra Team Quote #EXTQ2576-08 dated 9/5/12

Project Management – Com Strat

Contingency – vendor to be determined at a later date

EXHIBIT 2

Lessee's Counsel's Opinion

Lessor has agreed to allow the Lessee to use “Approved as to Form” stamp in place of a formal letter.

EXHIBIT 3

Lessee's Certificate

In lieu of the Lessee's Certificate, City of Milpitas has agreed to send their Resolution.

EXHIBIT 4

Payment of Proceeds Instructions

Key Government Finance, Inc.
1000 South McCaslin Blvd.
Superior, CO 80027

Re: Property Schedule No. 2 (the "Property Schedule") to Master Tax-Exempt Lease/Purchase Agreement between Key Government Finance, Inc. ("Lessor") and City of Milpitas ("Lessee").

Ladies and Gentlemen:

The undersigned, an Authorized Representative of the Lessee hereby requests and authorizes Lessor to disburse the net proceeds of the Property Schedule as follows:

Name of Payee: Key Bank, N.A.

By check _____

By wire transfer _____

City of Milpitas

By: _____

Name: _____

Title: _____

EXHIBIT 5

Acceptance Certificate

Key Government Finance, Inc.
1000 South McCaslin Blvd.
Superior, CO 80027

Re: **Property Schedule No. 2** to Master Tax-Exempt Lease/Purchase Agreement between Key Government Finance, Inc. and City of Milpitas

Ladies and Gentlemen:

In accordance with the above-referenced Master Tax-Exempt Lease/Purchase Agreement (the "Master Agreement"), the undersigned ("Lessee") hereby certifies and represents to, and agrees with, Key Government Finance, Inc. ("Lessor"), as follows:

- (1) The Property, as such terms are defined in the above-referenced Property Schedule, has been acquired, made, delivered, installed and accepted on the date indicated below.
- (2) Lessee has conducted such inspection and/or testing of the Property as it deems necessary and appropriate and hereby acknowledges that it accepts the Property for all purposes.
- (3) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default or an Event of Nonappropriation (as such terms are defined in the Master Agreement) exists at the date hereof.

Date: _____

City of Milpitas
as Lessee

By: _____

Name: _____

Title: _____

EXHIBIT 6

Bank Qualification Certificate

Key Government Finance, Inc.
1000 South McCaslin Blvd.
Superior, CO 80027

Re: **Property Schedule No. 2** to Master Tax-Exempt Lease/Purchase Agreement Key Government Finance, Inc. and City of Milpitas.

Bank Qualified Tax-Exempt Obligation

(Check box for Bank Qualified designation)

Lessee hereby designates this Property Schedule as a "qualified tax-exempt obligation" as defined in Section 265(b)(3)(B) of the Code. Lessee reasonably anticipates issuing tax-exempt obligations (excluding private activity bonds other than qualified 501(c)(3) bonds and including all tax-exempt obligations of subordinate entities of the Lessee) during the calendar year in which the Commencement Date of this Property Schedule falls, in an amount not exceeding \$10,000,000.00.

Non-Bank Qualified Tax-Exempt Obligation

(Check box for Non-Bank Qualified designation)

Lessee reasonably anticipates issuing more than \$10,000,000.00 in tax-exempt obligations in the calendar year of the Commencement Date as defined in the Property Schedule.

****Note: ONE of the boxes above MUST be checked.**

Lessee: City of Milpitas
By:
Name:
Title:

****Please fill out this form and fax it to your insurance company****

Request for Certificate of Insurance

TO:

Insurance Carrier: (Name) _____
(Address) _____
(Address) _____
(Contact Name) _____
(Contact Phone) _____
(Contact Fax) _____

FROM:

Customer/Lessee: City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035-5411
Contact Name: Matthias Schwarz
Contact Phone: 408-586-2711
Contact Fax: 408-586-2725

City of Milpitas is in the process of financing networking equipment with Key Government Finance, Inc..

City of Milpitas requests that Key Government Finance, Inc. be listed as "Key Government Finance, Inc., their successors and assigns" and that it be named ADDITIONAL INSURED as to liability coverage and LOSS PAYEE as to property coverage. A copy of said certificate should be forwarded to Key Government Finance, Inc. as described below.

NOTE: Coverage is to include:

- (1) insurance against all risks of physical loss or damage to the Equipment;
- (2) commercial general liability insurance (including blanket contractual liability coverage and products liability coverage) for personal and bodily injury and property damage of not less than \$1,000,000; and
- (3) if applicable, automobile liability coverage of not less than \$3,000,000.

Key Government Finance, Inc. is to receive **30 days** prior written notice of cancellation or material change in coverage. **Qualifying language such as "endeavor to provide"; "but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representative" or the like will NOT be accepted and will delay funding.**

- 1.** Please **FAX** this completed information to:

Key Government Finance, Inc.
Janice Thoman, Account Manager
Phone Number: 720-304-1636
Fax Number: 866-840-3016

- 2.** Please **MAIL** a Certificate of Insurance to:

Key Government Finance, Inc.
Janice Thoman
1000 S. McCaslin Boulevard
Superior, CO 80027

- 3.** Please **CONTACT** the Account Manager:

- ✓ When faxing this Certificate.
- ✓ If this cannot be completed today.
- ✓ If you have any questions.

Notification of Tax Treatment

Key Government Finance, Inc. is required to collect and remit sales/use tax in the taxing jurisdiction where your equipment will be located. In the event we do not receive a valid sales tax exemption certificate prior to the date your lease commences, you will be charged sales/use tax.

Personal property tax returns will be filed as required by local law. In the event that any tax abatements or special exemptions are available on the equipment you will be leasing from us, please notify us as soon as possible and forward the related documentation to us. This will ensure that your leased equipment will be reported correctly.

Please indicate below if you feel that your lease is subject to tax or whether a valid exemption exists.

- I agree that my lease is subject to sales/use tax.
- I am exempt from sales/use tax and I have attached a completed exemption certificate to Key Government Finance, Inc.
- I have previously provided a completed exemption certificate to Key Government Finance, Inc. which is valid for this transaction.
- I am exempt from state tax but subject to local tax. I have attached a completed exemption certificate.
- I have a valid abatement or property tax exemption (documentation attached).

If applicable to the tax rates in your state, are you outside the city limits or in an unincorporated area? _____

Additional comments:

Lessee: City of Milpitas
By:
Name:
Title:

LESSEE INVOICE INSTRUCTIONS
(The information you provide enables us to invoice you correctly.)

City of Milpitas

BILL TO ADDRESS:

BILLING CONTACT:

First, M.I. and Last Name:

Title:

Phone Number:

Fax Number:

PURCHASE ORDER NUMBER:

Invoices require purchase order numbers: YES _____ NO _____

Purchase Order Number:

FEDERAL TAX ID NUMBER:

EQUIPMENT LOCATION (If different from Billing Address):

ADDITIONAL INFORMATION NEEDED ON INVOICE:

ESCROW AGREEMENT

This Escrow Agreement (the "Escrow Agreement"), dated as of 9/18/2012 and entered into among Key Government Finance, Inc. ("Lessor"), City of Milpitas ("Lessee") and KeyBank National Association (the "Escrow Agent").

RECITALS:

A. Lessor and Lessee are parties to a Master Tax-Exempt Lease/Purchase Agreement, dated as of 1/13/2009 and Schedule No. 2 thereunder, dated as of 9/18/2012 (the "Lease") whereunder Lessee is acquiring from Lessor certain personal property more particularly described therein (the "Property").

B. Lessor and Lessee intend to cause or have caused certain funds to be deposited with Escrow Agent to pay for costs of the Property, and Escrow Agent has agreed to disburse said funds in accordance with the terms and conditions of this Escrow Agreement.

C. Each of the parties has authority to enter into this Escrow Agreement and has taken all actions necessary to authorize the execution of this Escrow Agreement by the officers whose signatures are affixed hereto.

NOW, THEREFORE, the parties agree as follows:

1. Appointment of Escrow Agent. Lessor, Lessee and Escrow Agent agree that Escrow Agent shall act as sole Escrow Agent under the Lease and this Escrow Agreement, in accordance with the terms and conditions set forth in this Escrow Agreement. The Escrow Agent, in its capacity as escrow agent hereunder, shall not be deemed to be a party to the Lease, and this Escrow Agreement shall be deemed to constitute the entire agreement regarding the Acquisition Fund (as hereinafter defined) among Lessor, Lessee and Escrow Agent.

2. Acquisition Fund. There is hereby established in the custody of Escrow Agent a special trust fund designated as the "City of Milpitas Acquisition Fund" (the "Acquisition Fund") to be held and administered by Escrow Agent in trust for Lessee in accordance with this Escrow Agreement, subject to Lessor's rights under Section 3 hereof. It is anticipated that the funds in the Acquisition Fund and earnings thereon shall be sufficient to pay the cost of acquisition of the Property. In the event such sums are insufficient, Lessee shall be responsible for the timely payment of any deficiency.

The moneys and investments held by Escrow Agent under this Escrow Agreement are irrevocably held in trust for the benefit of Lessee and Lessor, and such moneys, together with any income or interest earned thereon, shall be expended only as provided in this Escrow Agreement, and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of Lessee (other than Lessor) or Lessor. Lessor, Lessee and Escrow Agent intend that the Acquisition Fund constitute an escrow account in which Lessee has no legal or equitable right, title or interest until satisfaction in full of all conditions contained herein and in the Lease for the disbursement of funds by Escrow Agent therefrom. However, if the parties' intention that Lessee shall have no legal or equitable right, title or interest until all conditions for disbursement are satisfied in full is not respected in any legal proceeding, the parties hereto intend that Lessor have a security interest in such account, and such security interest is hereby granted to Lessor by Lessee, to secure payment of all sums due to Lessor under the Lease. For such purpose, Escrow Agent hereby agrees to act as agent for Lessor in connection with the perfection of such security interest and agrees to note, or cause to be noted, on all books and records relating to such accounts, Lessor's interest therein.

2.A. Deposit in Acquisition Fund. There shall be deposited in the Acquisition Fund the sum of **\$480,301.77**. Escrow Agent shall maintain accounting records sufficient to permit calculation of the income on investments and interest earned on deposit of amounts held in the Acquisition Fund, and such income and interest shall become part of the Acquisition Fund and may be expended as provided herein.

2.B. Disbursements from Acquisition Fund. Escrow Agent shall make payments from the Acquisition Fund to pay costs of the Property upon receipt of requisitions from Lessee, signed by an authorized individual substantially in the form attached hereto as Exhibit A, which is incorporated by reference herein. In the event Escrow Agent is directed or requested by Lessee to hold or deposit any retained funds or to accept a retainage bond (in lieu of funds) as may be required by law or the terms of the acquisition contract to which Lessee is a party, Escrow Agent shall act in accordance with Lessee's instructions, and such retained funds (or performance bond) and any interest thereon shall be paid as provided in instructions to Escrow Agent from Lessee. The final requisition shall include the final acceptance certificate required in the Lease, which shall be executed by the Lessee and delivered to the Escrow Agent. Where requisitions involve titled motor vehicles, the requisition shall also include:

- (i) Manufacturer's Certificate of Origin.
- (ii) Motor vehicle paperwork appropriate to state of registration, noting Key Government Finance, Inc. as **lien holder**.
- (iii) Insurance certificate naming **Key Government Finance, Inc.**, its successors and assigns as sole loss payee and additional insured for the specified equipment.

3. Termination of Escrow.

(a) Acquisition of Property. Upon the final acceptance of the Property by Lessee, as evidenced by execution by Lessee of a final acceptance certification pursuant to the Lease and delivered to Escrow Agent, and the payment of all costs related thereto (i) any retainage shall be disbursed as directed by Lessee, and (ii) any amounts remaining in the Acquisition Fund (including the earnings from investments thereof) shall be transferred to Lessee and be applied toward reimbursement of Lessee for funds advanced for the Property. To the extent that additional moneys in excess of those needed to reimburse Lessee for the acquisition of the Property exist in the Acquisition Fund, such amounts shall be paid to Lessor and applied first to the next payment due on the Lease and then applied to prepayment of the principal component of installment payments and Lessor shall recalculate the lease payment schedule for the remaining term such that the remaining lease payments shall be level. Upon disbursement of all sums in the Acquisition Fund, this Escrow Agreement shall terminate, provided that the indemnifications by Lessee shall survive the termination of this Escrow Agreement.

(b) Eighteen Months. This Escrow Agreement shall terminate eighteen (18) months from the date of this Escrow Agreement. It may, however, be extended by mutual consent of the Lessee and Lessor in writing to the Escrow Agent either in advance of the termination or retroactively. Any money remaining in the Acquisition Fund at the time of termination under this subsection (b) shall be transferred to Lessor and shall be applied first to the next payment due under the Lease, and then, if there are amounts remaining, applied to the prepayment of the Lease being applied to principal and Lessor shall recalculate the lease payment schedule for the remaining term such that the remaining lease payments shall be level. Lessee shall be deemed to have accepted all Property paid for from the Acquisition Fund at the time of termination under this subsection (b). Upon disbursement of all sums in the Acquisition Fund, this Escrow Agreement shall terminate, provided that the indemnifications by Lessee shall survive the termination of this Escrow Agreement.

(c) Event of Default; Nonappropriation. Upon receipt of written notice from Lessor of an event of default by Lessee under the Lease or an event of nonappropriation, if provided for under the Lease, Escrow Agent shall disburse the funds in the Acquisition Fund to Lessor for application in accordance with the Lease. Upon such payments from the Acquisition Fund, this Escrow Agreement shall terminate, provided that the indemnifications by Lessee shall survive the termination of this Escrow Agreement.

4. Investment of Acquisition Fund; Arbitrage Rebate.

(a) Investment of Acquisition Fund. Monies held by Escrow Agent hereunder shall be invested and reinvested by Escrow Agent upon written instructions from Lessee in an investment which is a permitted investment for Lessee under the laws of the state in which Lessee is organized. Escrow Agent shall have no responsibility for advising Lessee or Lessor as to the permissibility of any investment of monies in the Acquisition Fund. If Escrow Agent does not receive a written direction from Lessee as to the investment or reinvestment of monies in the Acquisition Fund, Escrow Agent may hold such monies uninvested until such direction is received. Escrow Agent shall have no responsibility for any losses suffered from any investment of monies on deposit in the Acquisition Fund authorized by Lessee.

(b) Arbitrage Rebate. Lessee hereby represents, covenants and warrants that pursuant to Treasury Regulations Section 1.148-7(d), the gross proceeds of the Lease will be expended for the governmental purposes for which the Lease was entered into, as follows: at least 15% within six months after the Commencement Date, such date being the date of deposit of funds into the Acquisition Account under Section 2.A., hereof, at least 60% within 12 months after the Commencement Date, and 100% within 18 months after the Commencement Date. If Lessee is unable to comply with Section 1.148-7(d) of the Treasury Regulations, Lessee shall, at its sole expense and cost, compute rebatable arbitrage on the Lease and pay rebatable arbitrage to the United States at least once every five years, and within 60 days after payment of the final rental or installment payment due under the Lease.

5. Amendment and Modification. This Escrow Agreement may not be amended, modified, altered, supplemented or waived except by a written instrument executed by Lessor, Lessee and Escrow Agent.

6. Regarding the Escrow Agent.

(a) Duties of Escrow Agent. Escrow Agent undertakes to perform only such duties as are specifically set forth in this Escrow Agreement. Escrow Agent shall be under no implied obligation or subject to any implied liability hereunder. Escrow Agent shall incur no liability whatsoever except for its gross negligence or willful misconduct so long as it is acting in good faith. Escrow Agent shall not be required to take notice of any of the provisions of the Lease or any document or instrument executed in connection therewith, except as expressly set forth in this Escrow Agreement. The permissive right of the Escrow Agent to do things enumerated in this Escrow Agreement shall not be construed as a duty.

(b) Escrow Agent Reliance. Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions hereof has been duly authorized to do so. Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of any instrument deposited with it, nor as to the identity, authority or right of any person executing the same; and its duties hereunder shall be limited to those specifically provided herein.

(c) Counsel and Fees; Reliance upon Counsel. If Escrow Agent believes it to be reasonably necessary to consult with counsel concerning any of its duties in connection herewith, or in case the Escrow Agent becomes involved in litigation on account of acting hereunder, then, in either case, its cost, expenses and reasonable attorneys fees shall be paid by Lessee. Escrow Agent's right to receive its attorneys' fees and expenses shall survive the termination of this Escrow Agreement. If Escrow Agent consults with counsel, Escrow Agent may act, in good faith, in reliance upon the advice of counsel concerning its duties in connection herewith or in acting hereunder.

(d) No Obligation to Take Legal Action. Escrow Agent shall not be under any obligation to take any legal action in connection with this Escrow Agreement or for its enforcement, or to appear, prosecute or defend any action or legal proceeding which, in its opinion, would or might involve it in any costs, expense, loss or liability, or to otherwise expend or risk its own funds or incur any financial liability in the performance of this Escrow Agreement, unless and as often required by it, it shall be furnished with security and indemnity satisfactory against all such costs, expenses, losses or liabilities. If any controversy arises between the parties hereto or with any third person, the Escrow Agent shall not be required to resolve the same or to take any action to do so (other than to use its best efforts to give notice of such controversy to Lessor and Lessee) but may, at its discretion, institute such interpleader or other proceedings as it deems proper.

(e) Quarterly Statement. Escrow Agent shall issue a quarterly accounting statement showing receipts to and disbursements from the Acquisition Fund. Such statement shall be mailed to Lessor and Lessee.

(f) Resignation and Termination. Escrow Agent may, upon providing thirty days written notice, resign its position as Escrow Agent and terminate its liabilities and obligations hereunder. In the event Escrow Agent is not notified within thirty days of a successor Escrow Agent, Escrow Agent shall be entitled to transfer all funds to a court of competent jurisdiction with a request to have a successor appointed, at the expense of Lessee. Upon filing such action and delivering such assets, Escrow Agent's obligations and responsibilities shall cease. Lessor and Lessee may jointly terminate Escrow Agent and appoint a successor Escrow Agent by providing 15 days written notice to Escrow Agent.

7. Indemnification. To the extent permitted by law, Lessee hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and keep harmless the Escrow Agent and its respective successors, assigns, agents, employees and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by or asserted against, Escrow Agent at any time (whether or not also indemnified against the same by Lessee or any other person under any other agreement or instrument, but without double indemnity) in any way relating to or arising out of the execution, delivery and performance of this Escrow Agreement, the establishment hereunder of the Acquisition Fund, the acceptance of the funds and securities deposited therein, the purchase of any securities to be purchased pursuant thereto, the retention of such securities or the proceeds thereof, and any payment, transfer or other application of moneys or securities by Escrow Agent in accordance with the provisions of this Escrow Agreement; provided, however, that Lessee shall not be required to indemnify, protect, save or keep harmless Escrow Agent against Escrow Agent's own gross negligence or willful misconduct or gross negligence or willful misconduct of Escrow Agent's respective successors, assigns, agents and employees or the material breach by Escrow Agent of the terms of this Escrow Agreement. The indemnities contained in this Section shall survive the termination of this Escrow Agreement.

8. Notices. Any notices permitted or required under this Escrow Agreement shall be made in writing and shall be deemed given upon the date of personal delivery or 48 hours after deposit in the United States mail, certified or registered, postage fully prepaid, return receipt requested, addressed to the addresses set forth on the signature page of this Escrow Agreement. The party to whom notices or copies of notices are to be sent shall have the right at any time and from time to time to change its address for notice or person to receive notice by giving notice in the manner specified in this paragraph.

9. Escrow Agent's Fee. Escrow Agent shall be paid no fee for setting up the escrow. In the event that Escrow Agent is made a party to litigation with respect to the Acquisition Fund, or brings an action in interpleader, or Escrow Agent is required to render any service not provided for in this Escrow Agreement, or there is any assignment of interests in this escrow or any modification hereof, Escrow Agent shall be entitled to reasonable compensation for such extraordinary services and reimbursement by Lessee for all fees, costs, liability and expenses, including attorney fees. Lessee also agrees to pay any investment fees or other charges of Escrow Agent, such as wire transfer charges and disbursement charges and agrees such fees and charges may be deducted by and paid to the Escrow Agent from funds in or to be deposited in the Acquisition investment earnings to be deposited in the Acquisition Fund.

10. Counterparts. This Escrow Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This Escrow Agreement is to be executed by the parties hereto in sufficient numbers so that an Escrow Agreement bearing each party's original signature can be held by the Escrow Agent.

11. Waiver. Any waiver by any party of any breach of any term or condition of this Escrow Agreement shall not operate as a waiver of any other breach of such term or condition or any other term or condition, nor shall any failure to enforce such provision hereof operate as a waiver of such provision or of any other provision hereof, nor constitute nor be deemed a waiver or release of any other party for anything arising out of, connected with, or based on this Escrow Agreement.

12. Exhibits. All exhibits, schedules and lists attached to this Escrow Agreement or delivered pursuant to this Escrow Agreement shall be deemed a part of this Escrow Agreement and incorporated herein, where applicable, as if fully set forth herein.

13. Applicable Law. This Escrow Agreement shall be governed by the laws of the state in which Lessee is located.

14. Successors and Assigns. This Escrow Agreement shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns. Any corporation or association into which the Escrow Agent may merge, or to which Escrow Agent may sell or transfer its banking business, shall automatically be and become successor Escrow Agent hereunder and vested with all powers as was its predecessor without the execution or filing of any instruments or further act, deed or conveyance on the part of the parties hereto.

15. Severability. In the event any provision of this Escrow Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

IN WITNESS WHEREOF, Lessor, Lessee and Escrow Agent have caused this Escrow Agreement to be executed by their duly authorized representatives, all as of the date first above written.

Key Government Finance, Inc.

City of Milpitas

By _____
Authorized Officer

By _____
Authorized Officer

Title _____

Title _____

Address: 1000 S McCaslin Blvd
Superior, CO 80027

Address: 455 E Calaveras Blvd
Milpitas, CA 95035

KEYBANK NATIONAL ASSOCIATION

By _____
Authorized Officer

Address: 127 Public Square
Cleveland OH 44114

[Please type on your letterhead]

EXHIBIT A
FORM OF REQUISITION
COSTS OF PROPERTY

C/O Key Government Finance, Inc.
1000 South McCaslin Blvd.
Superior, CO 80027
Attn: Janice Thoman
720-304-1636

On Behalf of:
KeyBank National Association
127 Public Square
Cleveland OH 44114

Amount Requested: \$ _____

Total Disbursements to Date: \$ _____

Requisition No.: _____

1. The undersigned, an officer or official of Lessee, hereby requests and authorizes KeyBank National Association, as Escrow Agent under the Escrow Agreement dated as of 9/18/2012, among City of Milpitas (the "Lessee"), Key Government Finance, Inc. (the "Lessor") and Escrow Agent, to pay to or upon the order of the Lessee the amount specified above for the payment or reimbursement of costs of Property described in Schedule 1 attached.

2. The Lessee hereby certifies that:
(a) each obligation mentioned in Schedule 1 has been properly incurred, is a proper charge against the Acquisition Fund and has not been the basis of any previous disbursement;
(b) no part of the disbursement requested hereby will be used to pay for materials not yet incorporated into the Property or for services not yet performed in connection therewith;
(c) insurance requirements of the Lease have been complied with and such coverage is in force;
(d) as of the date of this Requisition no event of default or event of nonappropriation, if any, as such terms are defined in the Lease between Lessor and Lessee has occurred and is continuing and no event which with notice or lapse of time, or both, has occurred and is continuing which would constitute such event of default or event of nonappropriation; and
(e) the Property acquired with this disbursement is functionally complete and operationally independent and is hereby accepted. If this is the final requisition, the final acceptance certification required in the Lease is attached hereto.

3. All capitalized terms herein shall have the meanings assigned to them in the Escrow Agreement

4. The list of equipment, set forth in the equipment/property description to the Lease, shall be deemed amended upon payment of this requisition to include the property set forth in Schedule 1 hereto and any property paid with funds of this requisition.

City of Milpitas

By: _____

Name: _____

Title: _____

Date: _____

Approved by Lessor, or in the event Lessor's right, title and interest in the Lease has been assigned, by the current assignee of Lessor's right, title and interest in the Lease Agreement:

Key Government Finance, Inc.

By: _____

Name: _____

Title: _____

Date: _____

[Lessee to attach final acceptance certification if final disbursement request.]

SCHEDULE 1
DISBURSEMENT SCHEDULE

To Requisition No. _____ for the Acquisition Fund:

1. Amount: \$ _____

Payee: _____

By check _____ By wire transfer _____

If by check, Payee's address: _____

If by wire transfer, instructions as follows:

Pay to:

Bank Name:
Bank Address:
Bank City, State, Zip:
Bank Phone:
For Account of:
Account No.:
ABA No.:

2. Amount: \$ _____

Payee: _____

By check _____ By wire transfer _____

If by check, Payee's address: _____

If by wire transfer, instructions as follows:

Pay to:

Bank Name:
Bank Address:
Bank City, State, Zip:
Bank Phone:
For Account of:
Account No.:
ABA No.:

City of Milpitas

By: _____

Name: _____

Title: _____

Date: _____

INVOICE



Key Government Finance, Inc.
 1000 S. McCaslin Blvd.
 Superior CO 80027

Bill to: City of Milpitas Accounts Payable 455 E. Calaveras Blvd. Milpitas, CA 95035-5411	Invoice No.	Milpitas (02) -01
	Invoice Date:	9/11/12
	Lease No.	TBD
	Purchase Order No.	
	Contract No.	
	CSA No.	
	ACT No.	
	Reference:	

Qty	Item	Description	Total
1	Lease Payment	Payment due with executed docs	\$97,252.15
		Tax	
		Balance Due	\$97,252.15

Please remit funds to: Key Government Finance, Inc. 1000 S. McCaslin Blvd. Superior, CO 80027	REMITTANCE INFORMATION	
	Date:	
	Amount Due:	
	Amount Enclosed:	

- Please remember to:
- 1) Make checks payable to Key Government Finance, Inc.
 - 2) Return a copy of this invoice with your payment.
 - 3) Keep a copy of this invoice for your records.
 - 4) Direct all inquiries to the contact listed above.

Comments:

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:				
<input checked="" type="checkbox"/> Budget Appropriation	505-2970	\$ 97,252	505-112-4242	\$ 97,252
<input type="checkbox"/> Budget Transfer				

Explain the reason for the budget change:

Background: In 1998, the City purchased approximately \$600,000 of telephone equipment to replace legacy system provided by Pacific Bell. The telephone system has now been in operation for 14 years. The planned life for this type of equipment is generally between 7 and 10 years. After such extended period of continuous operation, the equipment is prone to failure and often support is no longer available from the manufacturer. In the past several years, the City has experienced an increasing rate of significant equipment failures. A major failure of the telephone system would seriously impact service delivery in all departments, including critical public safety functions.

In February 2012, the City engaged an outside consulting firm specializing in telecommunications project management, Communication Strategies, to facilitate the Request for Proposal process and to obtain the best possible value for the City. The RFP process was completed in August 2012 and an Intend to Award was issued in favor of ExtraTeam, Inc., the highest-scoring bidder.

Staff explored various options to acquire the necessary equipment and to finance implementation services. It would require in excess of four years to accumulate sufficient funds in the Technology Replacement Fund to purchase the equipment for the new telephone system. The City has entered into a Master Lease Agreement with Key Government Finance when replacing and upgrading the City's computer network equipment in 2009. An option available to the City is to add a new schedule of materials and services to this existing Master Lease Agreement at very favorable conditions for a payment period of 5 years.

ExtraTeam, the selected vendor, has worked with the equipment manufacturer and the leasing company to achieve a discount level resulting in a close to zero percent finance cost to the City. There are no fees associated with the program and the lease includes provisions for termination should the City be unable to fund the annual payment. The annual payment would be \$97,252 and would commence in FY12/13 and terminate in FY16/17. At the completion of the lease, the equipment would become the property of the City. Pursuant to Municipal Code Title I, Section 2-3.08 Cooperative Purchasing, the City can enter into the lease without a competitive bidding process.

Given the difficulties of funding the total purchase price, staff is recommending that the City proceed with the lease agreement in order to start the telephone system replacement project this fiscal year and avoid a potentially major failure of the City's telecommunications network. Currently there is sufficient funding for the first annual payment in the Information Technology Replacement Fund. The remaining payments will be programmed in the Information Technology Replacement Fund as part of the annual budgeting process.

Fiscal Impact: Appropriate the first annual lease payment of \$97,252 from the Information Technology Replacement Fund. There is sufficient finding in the Information Technology Replacement Fund for the first annual payment.

Check if City Council Approval required.

Meeting Date: September 18, 2012

Requested by:	Alan Rich, Information Services Department	Date: September 7, 2012
Reviewed by:	Finance Director: 	Date: 9/11/12
Approved by:	City Manager:	Date:
Date approved by City Council, if required:		Confirmed by: