

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A TAX REVENUE
SHARING AGREEMENT WITH SILICON GRAPHICS INTERNATIONAL CORPORATION**

WHEREAS, Silicon Graphics International Corporation, a Delaware corporation registered in the State of California (“SGI”) develops, markets and sells computer server and data storage solutions and software and currently has a corporate headquarters in Fremont, California with over one thousand three hundred seventy five (1,375) employees worldwide; and

WHEREAS, SGI has proposed entering into a tax revenue sharing agreement with the City of Milpitas in consideration of relocation of its corporate headquarters and facilities from the City of Fremont to the City of Milpitas and the City of Milpitas has previously negotiated tax sharing agreements with other company(ies) as part of its economic development and Use Tax Outreach program; and

WHEREAS, the site contemplated for SGI’s Milpitas headquarters and facilities (“Site”) and has been vacant for a number of years and SGI’s relocation of two hundred ten (210) employees to the Site may serve as a catalyst to attract other high-tech companies to the neighboring vacant sites; and

WHEREAS, if SGI relocates to the City of Milpitas, SGI anticipates paying property taxes (real property and personal property taxes) at the rate of one percent (1%) of the assessed land value, improvements, and personal properties for the Site (“Property Tax”) pursuant to Proposition 13 and a certain amount of the Property Tax would be allocated and paid by Santa Clara County to the City of Milpitas on an annual basis; and

WHEREAS, the State of California imposes a sales and use tax on every retailer of personal property at a rate which includes a one percent (1%) use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law and as further codified in Section 3 of Chapter IX-1 of the Milpitas Municipal Code (“Bradley-Burns 1% Use Tax”); and

WHEREAS, the Bradley-Burns 1% Use Tax is collected based upon the storage, use or other consumption of tangible personal property purchased from any retailer in the City and if SGI relocates to the City of Milpitas, SGI anticipates making the Bradley-Burns 1% Use Tax payments to the California State Board of Equalization on an annual basis and a certain amount of the Bradley-Burns 1% Use Tax would be allocated and paid by the California State Board of Equalization to the City; and

WHEREAS, the City of Milpitas imposes a Transient Occupancy Tax (“TOT”) in the amount of ten percent (10%) of the rent charged by hotel operators to transients for the privilege of occupancy in any hotel located in the City of Milpitas; and

WHEREAS, if SGI relocates to the City of Milpitas, SGI anticipates having its business guests stay at hotels located in the City of Milpitas, which, will generate additional TOT for the City of Milpitas; and

WHEREAS, SGI now desires to relocate its headquarters and facilities from Fremont, California to Milpitas, California, in exchange for a rebate of fifty percent (50%) of the Property Tax, Bradley-Burns 1% Use Tax, and TOT collections as further described in this Resolution; and

WHEREAS, such rebate arrangements would further the valid public purposes of expansion of economic opportunities for surrounding businesses in the City of Milpitas, expansion of the City of Milpitas’ employment base, generation of aggregate property tax, use tax, and TOT increases that the City of Milpitas could use to fund vital governmental services such as police, fire, street maintenance, and parks and recreation programs, and the general improvement of the economic health of the City of Milpitas; and

WHEREAS, as a general law city, the City of Milpitas has the authority to enter into contractual agreements, including tax revenue sharing agreements with private companies; and

WHEREAS, approval of the proposed tax revenue sharing agreement does not constitute a “project” for purposes of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guideline Section 15378(b)(4) in that the creation of this funding mechanism does not involve any commitment to any specific project or the relocation of SGI’s headquarters from the City of Fremont to the City of Milpitas.

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. The City Manager is authorized to negotiate and execute a Tax Revenue Sharing Agreement Between the City of Milpitas and Silicon Graphics International Corporation, a Delaware corporation, based upon the following terms and a conditions and as approved as to form by the City Attorney:
 - a. Contract term of five (5) years commencing on the date (i) SGI completes construction to relocate its headquarters and facilities from the City of Fremont to the City of Milpitas; and (ii) receives its Certificate of Occupancy, including any temporary or partial Certificate of Occupancy, to begin occupying its newly relocated headquarters and facilities in the City of Milpitas.
 - b. A fifty percent (50%) sharing of Property Tax and Bradley-Burns 1% Use Tax paid by SGI for its proposed new headquarters and facilities in the City of Milpitas and allocated to the City of Milpitas and a fifty percent (50%) sharing of TOT for hotel guests who SGI books and stays in a Milpitas hotel, all subject to review, documentation, and verification by the Director of Finance.
 - c. The relocation of SGI’s headquarters and facilities to the City of Milpitas will be subject to all applicable local, State and federal rules, regulations and laws.
3. If SGI relocates its headquarters and facilities to the City of Milpitas and executes a Tax Revenue Sharing Agreement as set forth herein, the Director of Finance of the City of Milpitas is directed to disburse the Property Tax, Bradley-Burns 1% Use Tax, and TOT rebates to SGI pursuant to the terms and conditions set forth above and the fully executed Tax Revenue Sharing Agreement.

PASSED AND ADOPTED this _____ day of _____ 2013, 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