

**LOAN AGREEMENT
BETWEEN
THE CITY OF MILPITAS
AND
MILPITAS CHAMBER OF COMMERCE**

THIS LOAN AGREEMENT (“**Agreement**”) dated as of September 3, 2013 (the “**Effective Date**”), is entered into by and between the City of Milpitas, a municipal corporation of the State of California (hereinafter “**City**”) and Milpitas Chamber of Commerce, a California 501(c) non-profit corporation (hereinafter “**Chamber**”). City and Chamber are hereafter individually referred to as a “**Party**” and hereafter collectively referred to as the “**Parties**.”

RECITALS

A. WHEREAS, the Chamber has proposed to organize an event called “2013 International BBQ & Festival” scheduled for September 28 and 29, 2013 located on South Milpitas Boulevard between Los Coches and Turquoise Streets.

B. WHEREAS, the event will feature a “friendly” BBQ cook-off for those who wish to participate, with “professional” BBQers featured on Saturday and “backyard” BBQers featured on Sunday, with additional arts and crafts, food, refreshments, and family entertainment taking place on both days.

C. WHEREAS, at the August 6, 2013 City Council meeting, the City Council agreed to be a co-sponsor of the 2013 International BBQ & Festival event with the Chamber.

D. WHEREAS, the proposed event would bring international recognition to the City of Milpitas, feature Milpitas businesses, and unite the general Milpitas community in fun and camaraderie.

E. WHEREAS, the Chamber seeks a short term loan from the City in the amount of Twenty Thousand Dollars (\$20,000.00) to be fully repaid within ten (10) days of the conclusion of the event, as further set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Chamber hereby agree as follows.

ARTICLE I

TERM OF LOAN

1.1 Loan Amount. City agrees to loan the Chamber the sum of Twenty Thousand Dollars (\$20,000.00) (the “Loan Amount”) for the purpose of organizing the

2013 International BBQ & Festival scheduled to take place on September 28 and 29, 2013 in the City of Milpitas, subject to the terms and conditions of this Agreement. City agrees to provide the Chamber the full amount of Twenty Thousand Dollars (\$20,000.00) within five (5) days of full execution of this Agreement.

- 1.2 Promise to Pay Loan Amount. Chamber agrees to pay City the full amount of Twenty Thousand Dollars (\$20,000.00) and all other fees and charges on or before 5:00 p.m. (PST) on October 9, 2013.
- 1.3 Event Revenues. Chamber acknowledges and agrees that any and all “Revenues” generated, arising from, or relating to the 2013 International BBQ & Festival event shall first be allocated and used for the full repayment of the Loan Amount to the City under this Agreement prior to the payment or satisfaction of any other debts, obligations, or otherwise. Revenues as used in this Section 1.3 shall mean any and all proceeds collected by the Chamber in relations to or arising from the International BBQ and Festival event including, but not limited to, the sale of advertising space, sponsorships, food and beverages, payments from vendors, contractors, or other businesses, application fee, business row participant fee, or BBQ contest applicant fee.
- 1.3 Interest. If Chamber fails to fully repay the Loan Amount as required in Section 1.1 above, interest shall begin to accrue on November 08, 2013 at a rate of two percent (2%) per annum on the outstanding Loan Amount until fully paid.

ARTICLE II

GENERAL PROVISIONS

- 2.1 Non-Waiver. Failure to exercise any right the City may have or be entitled to, in the event of any default thereunder, shall not constitute a waiver of such right or any other right in the event of subsequent default.
- 2.2 Collection Costs. If an attorney is engaged by the City to enforce or interpret any provision of this Agreement, or as a consequence of any default or event of default hereunder, with or without the filing of any legal action proceeding, then Chamber shall immediately pay upon demand all attorney’s fees and all other costs incurred by City, together with interest thereon from the date of such demand until paid at the rate of interest applicable to the Loan Amount owing hereunder as if such unpaid attorney’s fees and costs have been added to the Loan Amount.
- 2.3 Notice. Any demand or notice to be made or given under the terms hereof or any instrument now or hereafter securing this Agreement by the City hereof to Chamber shall be effective when personally served on Chamber or when mailed to Chamber, postage prepaid, by Certified Mail, return receipt requested, addressed to Chamber at Chamber’s address of 828 N. Hillview Drive, Milpitas, CA 95035.

- 2.4 Default. Each of the following occurrences shall constitute an event of default hereunder:
- (a) Any breach by Chamber of any term or provision of this Agreement.
 - (b) Any misrepresentation or misstatement of any facts upon which Chamber's eligibility for the loan evidenced hereby is based.
 - (c) Transfer or attempted Transfer of all or any portions of Chamber's right, title and/or interest in and to the Agreement, by any means or method, whether voluntary or involuntary, or by operation of law, without City's prior written approval.
- 2.5. Remedies. In the event that there is a default in payment as scheduled herein or any other event of default under the terms of this Agreement, the City may at its election and without further notice, declare all amounts of the outstanding principal and accrued interest thereon immediately due and payable. In the event that the City elects to declare default as stated herein this Agreement shall bear interest after default at the rate of ten percent (10%) per annum, and City may take such action under the law as City may determine necessary to enforce its rights, and City may take such action under the law securing this Agreement as City may determine necessary to enforce its rights hereunder.
- 2.6 Governing Law and Venue. City and Chamber agree that the law governing this Agreement shall be that of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.
- 2.7 Severability. If any provision of this Note is held by a court of law to be illegal, invalid or unenforceable, (a) that provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision, and (b) the legality, validity and enforceability of the remaining provisions of this Note shall not be affected or impaired thereby.
- 2.8 Voluntary. Chamber has read each and every part of this Agreement and Chamber freely and voluntarily has entered into this Agreement. This Agreement is a negotiated document and shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.
- 2.9 Entire Agreement. This Agreement represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This

Agreement may be modified only by written amendment duly executed by the parties to this Agreement.

IN WITNESS WHEREOF, Chamber and City have entered into this Loan Agreement as of the Effective Date.

CITY OF MILPITAS

MILPITAS CHAMBER OF COMMERCE

By: _____
Thomas C. Williams, City Manager

By: _____

APPROVED AS TO FORM AND
LEGALITY:

Michael J. Ogaz, City Attorney