

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE SOLE SOURCE PURCHASE AND INSTALLATION OF UNIFORM HAZARDOUS MATERIALS PROGRAM CONSOLIDATED FORMS SOFTWARE FROM ECOMPLIANCE, INC., FOR THE TERM OF AUGUST 6, 2014 TO AUGUST 5, 2015, AND AUTHORIZING THE CITY MANAGER TO EXTEND THE AGREEMENT ON AN ANNUAL BASIS FOR UP TO FOUR (4) ADDITIONAL YEARS SUBJECT TO APPROPRIATION OF FUNDS AND WITHOUT FURTHER CITY COUNCIL APPROVAL**

**WHEREAS**, under Assembly Bill 2286 approved by the State on September 29, 2008, all hazardous materials regulated businesses are required to electronically submit Uniform Hazardous Materials Program Consolidated Forms information via the California Environmental Reporting System (CERS); and

**WHEREAS**, all local implementing agencies are required to report inspection and enforcement actions, as well as exchange data indentified under Title 27 of the California Code of Regulations (CCR) electronically via the internet to their respective Certified Unified Program Agency (CUPA); and

**WHEREAS**, the Milpitas Fire Department is a participating agency (PA) that reports to Santa Clara County Environmental Health Department as its CUPA; and

**WHEREAS**, the Santa Clara County Environmental Health Department has contracted out with eCompliance, Inc., a sole source, to develop a software product used to manage the creation, completion, management, and authentication and submittal of all Title 27 CCR data elements; and

**WHEREAS**, the eCompliance Service Agreement between the City of Milpitas and eCompliance, Inc., is primarily a license to use the finished software product for any and all activities related the Milpitas Fire Department’s Hazardous Materials Program in accordance with AB 2286; and

**WHEREAS**, after conducting a good faith review of the available sources and pursuant to Milpitas Municipal Code Section I-2-3.09 “Sole Source Procurement,” the City’s Purchasing Agent has determined that eCompliance, Inc., is the only source for the purchase and support of the Uniform Hazardous Materials Program Consolidated Forms software; and

**WHEREAS**, the Purchasing Agent recommends the City Council approve the Agreement for purchase and installation of the Uniform Hazardous Materials Program Consolidated Forms software from eCompliance Inc., in the initial amount of Eight Thousand dollars (\$8,000.00) for the period of August 6, 2014 to August 5, 2015, and authorize the City Manager to extend the Agreement on an annual basis for up to four (4) additional years in the annual not-to-exceed amount of Three-Thousand Five Hundred dollars (\$3,500.00):renewal year amounts may be increased by the Consumer Price Index or up to 5%, whichever is less, and subject to appropriation of funds and without further City Council approval.

**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. eCompliance, Inc., is approved as the sole source provider of software and software maintenance for the Milpitas Fire Department Hazardous Materials Program and compliance with AB 2286 for a five (5) year term from August 6, 2014 to August 5, 2019 pursuant to Milpitas Municipal Code Section I-2-3.09.
3. The City Council hereby approves the Agreement with eCompliance, Inc. for the purchase and installation of eCompliance Uniform Hazardous Materials Program Consolidated Forms software in the initial annual amount of Eight Thousand dollars (\$8,000.00) and for the term of August 6, 2014 to August 5, 2015. A copy of the eCompliance, Inc., Agreement is attached to this Resolution as **Exhibit A**.
4. The City Manager is authorized to extend the Agreement on an annual basis for up to four (4) years in the annual amount not to exceed Three Thousand Five Hundred Dollars (\$3,500.00); renewal year amounts may be increased by the Consumer Price Index or up to 5%, whichever is less, and subject to appropriation of funds and without further City Council approval.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2014, 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

## **eCompliance Services Agreement**

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The following agreement was entered into this day 6<sup>th</sup> day of August, 2014 (“Effective Date”), between City of Milpitas, a municipal corporation of the State of California (“City” or “Client”), and **eCompliance, Inc.**, a California corporation (“eCompliance” or “Consultant”) which is located at 1663 Mission Street, Ste. 525, San Francisco, CA 94103.

### **RECITALS**

Client is required to collect the annual hazardous materials disclosures, including Hazardous Materials Business Plan (HMBP), Underground Storage Tank and Above Ground Petroleum Storage Tank programs electronically to comply with Assembly Bill 2286, as approved by the State of California on September 29, 2008 and may be amended from time to time.

eCompliance has developed a software product (“Product”) used to manage the creation, completion, management, authentication and submittal of all Title 27 of the California Code of Regulations data elements. The Product will also allow Internet access to the information by first responders as well as the public in accordance with the Emergency Planning and Community Right to Know Act (“EPCRA”). The Product enables users to comply with the electronic reporting requirements required by AB2286 (2008) and will permit seamless reporting by Client to the State via the Santa Clara County Department of Environmental Health (“County”) portal, as required by AB2286.

Client desires to purchase a license (one time set-up fee) to access and use the Product and agrees to pay an annual license and maintenance fee to eCompliance to provide on-going support and maintenance to the Product currently hosted by the County.

eCompliance possesses the skill, experience, ability, background and knowledge to provide the technical, operational, and training support services, to the (“Client”) and to Client regulated business community, necessary to best implement, integrate with and use the Product (“Services”).

**NOW, THEREFORE**, it is mutually agreed by and between the undersigned parties as follows:

#### **1. LICENSE TO USE PRODUCT**

Subject to the terms of this Agreement, Client is granted a license to use the Product for any and all activities related to the Client’s Hazardous Materials Program, compliance with AB 2286 and EPCRA. Client may not sell, license, rent, or distribute the Product. The Client is entitled to make and keep backup copies of the Product for purposes of safekeeping and disaster recovery.

#### **2. TECHNICAL, OPERATIONAL, SUPPORT, AND TRAINING SERVICES**

In consideration of the Fees for Services set forth in **Attachment A** and payable hereunder, eCompliance agrees to provide technical, operational and training services to (“Client”) and to Client regulated business community, the scope of which is defined in **Attachment B** and Statement of Work, needed to implement the Product and to integrate the Product with Client’s

existing databases and applications, including but not limited to remote technical assistance and consultation to the Client staff and regulated facilities in Client's jurisdiction. eCompliance agrees to provide to the Client as part of the technical, operational and training services hereunder all revisions, updates, improvements, modifications and enhancements (the "Updates") to the Product. An Update, once incorporated by the Client into a Product, shall be considered part of the Product for all purposes hereunder and shall not cause a loss of existing functionality. All such Updates will be provided to the Client free of charge.

### **3. COMPENSATION TO ECOMPLIANCE**

Client shall pay eCompliance for the services on an annual flat rate basis, plus a one-time set up fee in accordance with the Schedule of Billing Rates attached hereto as Attachment A and incorporated herein by reference, provided the annual license fee rate for the final four (4) renewal option years may be increased by the Consumer Price Index or up to five percent (5%), whichever is lower.

### **4. TERM**

The initial term of the Agreement shall be from August 6, 2014 to August 5, 2015 (the "Initial Term"). The City reserves the right at its sole discretion to extend this Agreement on an annual basis for up to an additional four (4) years and in the annual amount of up to Three-Thousand Five Hundred dollars (\$3,500.00) with the final option year automatically expiring no later than August 5, 2019. If the City decides to extend the agreement, it shall do so by providing written notice to eCompliance prior to the expiration of the then applicable term and in the form attached hereto as "Notice of Exercise of Option to Extend Agreement". A copy of the Notice of Exercise of Option to Extend Agreement is attached to this Agreement as Exhibit C and incorporated fully herein.

### **5. TERMINATION**

This Agreement may be terminated by Client at the end of the Initial Term or any successive Term by written notice no later than thirty (30) days prior to the end of the term. Additionally, Client may terminate this Agreement for convenience with thirty (30) days written notice to eCompliance.

### **6. INSURANCE REQUIREMENTS**

Before beginning any work under this Agreement, Consultant 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 Consultant and its agents, representatives, employees, and subcontractors. Consultant 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. Consultant 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 Consultant's price. Consultant shall not allow any subcontractor to commence work on any subagreement until Consultant 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.

## **6.1 Commercial General and Automobile Liability Insurance.**

**6.1.1 General requirements.** Consultant, 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.

**6.1.2 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.

**6.1.3 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, consultants, 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 Consultant, including the insured’s general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, Contractors, consultants, 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, consultants, 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 CONSULTANT 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.

## **6.2 Requirements for All Policies.**

**6.2.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

**6.2.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant 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.

**6.2.3 Subcontractors.** Consultant 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.

**6.2.4 Deductibles and Self-Insured Retentions.** Consultant 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, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, Contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

**6.2.5 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, Consultant shall provide written notice to City at

Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

**6.3 Remedies.** In addition to any other remedies City may have if Consultant 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 Consultant'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 Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

**6.4 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.

**6.4.1** The City hereby waives the requirements for automobile liability insurance coverage previously set forth in this section 6.

## **7. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES**

Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, Contractors, consultants, 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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant 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, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant 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, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant 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.

## **8. CONFIDENTIAL AND PROPRIETARY INFORMATION**

All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and must not be disclosed to any person except as authorized by City, or as required by law.

With the exception of the Consultant's software licenses, all reports, documents or other materials developed or discovered by Contractor or any other person engaged directly or indirectly by Contractor to perform Contractor's services are City's property without restriction or limitation upon their use.

The City shall maintain ownership and control of the data throughout the contract period. Consultant shall have the right to use the data solely to perform services under the Agreement with the City. Consultant may not use the data, a subset of the data, and/or a summary of the data, or, cause or permit the data, a subset and/or a summary, to be used by any third party, outside the scope of the Agreement without the express written consent of the City.

Consultant shall provide City with a copy of the data in a mutually agreed upon format at regular intervals and at such additional times as the City deems appropriate. Contractor warrants that throughout all operational and maintenance activities the accuracy of the database and availability of content will be preserved.

## **9. MISCELLANEOUS**

This Agreement shall be governed by, and construed in accordance, with the laws of the California. This Agreement, together with any exhibits and/or appendices, attached hereto, contains the complete and exclusive understanding and agreement of the parties with respect to its subject matter and supersedes, merges, and replaces all prior writings, discussions, and understandings relating to such subject matter. This Agreement may only be amended by a written agreement duly executed by authorized representatives of both parties.

## **10. TAXES**

Consultant shall be responsible for payment of all taxes, fees contributions or charges applicable to the conduct of Consultant's business.

**11. COMPLIANCE WITH LAWS**

Consultant shall comply with all applicable laws, ordinances, codes and regulations (collectively, "laws") of the federal, state and local governments, including without limitation, any and all laws specified elsewhere in this Agreement.

**12. WARRANTY AGAINST INFRINGEMENT**

If any article sold, license, or otherwise installed hereunder is covered, or is purported to be covered by any patent or copyright, Consultant agrees to defend, indemnify and hold harmless the City, its officers, agents and employees, from and against it by any and all suits, claims, judgments and costs instituted or recovered against it by any person or persons whomsoever, on account of the purchase, use or otherwise of such article by City in violation or claimed violation of any rights under patent or copyright.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date indicated below.

CITY OF MILPITAS ("City" or "Client")

ECOMPLIANCE, INC. ("Consultant")

\_\_\_\_\_  
Thomas C. Williams

\_\_\_\_\_  
eCompliance, Inc. Representative

\_\_\_\_\_  
City Manager  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## ATTACHMENT A

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### Fee Schedule:

<b>One-time Setup Fees:</b>	<b>\$4,500.00</b>
<b>License and Maintenance Fees</b>	
<b>Initial Term</b>	<b>\$3,500.00</b>
<b>Annual Rate for successive Terms</b> (Fixed pricing for entire Term)	<b>\$3,500.00</b>

### Payment Schedule:

<b>Description</b>	<b>Milestone/Date</b>	<b>Amount</b>
One-Time Setup Fee	Signing of Agreement	\$4,500.00
Initial Term Fees	Signing of Agreement	\$3,500.00

Annual License and Maintenance Fees for successive terms are due at the beginning of the Term, starting 8/06/2014.

**ATTACHMENT B**

**Client Scope of Services  
(ONLY CHECKED SERVICES ARE PROVIDED)**

PA Forms – Requirements: - Title 27 (CERS) - CUPA Billing - Custom PA	<input checked="" type="checkbox"/> HMBP <input checked="" type="checkbox"/> UST <input type="checkbox"/> Tiered Permitting <input checked="" type="checkbox"/> APSA
PA Database Integration	<input checked="" type="checkbox"/> One-time upload via Excel spreadsheet <input type="checkbox"/> Two-way Synchrony
Emergency Response	<input type="checkbox"/> Chemical classification dictionary <input type="checkbox"/> Internet-independent laptop configuration <input type="checkbox"/> Web-based Response Module <input type="checkbox"/> Smart Phone (Android) Response App
Submission Review	<input checked="" type="checkbox"/> Submission Review Criteria <input checked="" type="checkbox"/> Business Login Request Processing <input checked="" type="checkbox"/> Email Notifications
Billing	<input type="checkbox"/> Business to CUPA Interface – Mailing updates, online payments <input checked="" type="checkbox"/> PA to CUPA Interface – Set facility status, set fees, add facilities <input type="checkbox"/> Initial setup of Client fee calculations. Fee calculations include all fees related to HMBP, Hazardous Waste, Tiered Permitting, and Fire Code programs <input type="checkbox"/> Ability for Client to generate, print and email invoice to business.
Inspections and Enforcements	<input type="checkbox"/> Inspection and Enforcement Interface <input checked="" type="checkbox"/> Client Excel uploads from Existing Inspection application.
Training	<input type="checkbox"/> Regulated Business Training (2x) – Spanish session available <input type="checkbox"/> First Responder Training (1x) <input checked="" type="checkbox"/> Client Training (1x)
Application Hosting	<input checked="" type="checkbox"/> Externally hosted server. Web-based connectivity, data backup provided by County <input type="checkbox"/> PA hosted
Hardware	<input type="checkbox"/> _____ Pads <input type="checkbox"/> _____ Laptops
Support	<input checked="" type="checkbox"/> M-F 9AM – 5 PM Excluding Holidays–Via Phone, Email, Web <input type="checkbox"/> 24x7 365 days a year

## Statement of Work

### Project Plan

The table below outlines the high-level tasks involved in a successful Product implementation. This serves as a starting point and will be refined as the project commences and delivered to the Client as a formal project plan in the form of a project backlog list of tasks.

Task	Estimated Duration	Responsible Resource
Create Product Submission Forms	3 Weeks	Client and ECompliance
Upload of Data from Clients database via excel Spread Sheet	1 Week	Client and ECompliance
Submission Review Criteria	2 Weeks	Client and ECompliance
Email Notifications to client of new/modified submittals to portal	2 Weeks	Client and ECompliance
Client Training	One training 2 hrs	Client and ECompliance
Business Community Training	Two Trainings- Each training 2 hours	Client and ECompliance

## Product Training

Product training is delivered to Client onsite and remotely. Onsite training is conducted at Clients location. Remote training is conducted over the Internet using Web conferencing tools and telephone services. Prior to each training session, ECompliance will deliver a training agenda to Client. One training session will be provided to the Client.

A minimum of two (2) training sessions will be provided to the regulated business community. The Client is responsible for providing the training facility and notifying the regulated business community of the two (2) training events prior to their occurrence.

Training schedules will be coordinated with Client. ECompliance requires a two week prior notice to ensure trainer availability.

**ATTACHMENT C  
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT**

<b>AGREEMENT TITLE and DATE:</b>	
<b>CONTRACTOR Name and Address:</b>	
<b>DATE OF OPTION:</b>	

*(date the notice is sent must be consistent with the time for exercise set forth in Agreement)*

Pursuant to the terms of the original Agreement referenced above, the City of Milpitas hereby exercises its option to extend the term under the following provisions:

<b>OPTION NO.</b>	
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**NEW OPTION TERM**

Begin date:	
End date:	

**CHANGES IN RATE OF COMPENSATION**

<b>Percentage change in CPI upon which adjustment is based:</b>	
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Pursuant to Section \_\_\_ of the Agreement the Rates of Compensation are hereby adjusted as follows:

*(use attachment if necessary)*

<b>MAXIMUM COMPENSATION for New Option Term:</b>	
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For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Milpitas hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

<p>CITY OF Milpitas a municipal corporation</p> <p>By _____</p> <p>Name of Authorized Representative: _____</p> <p>Title of Authorized Representative: _____</p>
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