

RESOLUTION NO. _____

A JOINT RESOLUTION OF THE CITY OF MILPITAS AND THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS APPROVING EXECUTION AND IMPLEMENTATION OF A BOND EXPENDITURE AGREEMENT

WHEREAS, pursuant to ABx1 26 enacted in June 2011 (as amended by AB 1484 enacted in June 2012, the "Dissolution Law"), the Redevelopment Agency of the City of Milpitas (the "Dissolved RDA") was dissolved as of February 1, 2012, and the City of Milpitas, acting in a separate limited capacity and known as the Successor Agency of the Redevelopment Agency of the City of Milpitas, has elected to serve as the successor agency (the "Successor Agency") of the Dissolved RDA; and

WHEREAS, pursuant to Health and Safety Code Section 34173(g), as added by the Dissolution Law, the Successor Agency is a separate legal entity from the City of Milpitas (the "City"); and

WHEREAS, the City Council of the City of Milpitas serves in a separate capacity as the governing board of the Successor Agency; and

WHEREAS, the Successor Agency is charged with paying the enforceable obligations, disposing of the properties and other assets, and unwinding the affairs of the Dissolved RDA; and

WHEREAS, an oversight board for the Successor Agency (the "Oversight Board") has been formed and is functioning in accordance with Health and Safety Code Section 34179; and

WHEREAS, prior to its dissolution, the Dissolved RDA issued the following bonds: (See attached Exhibit A) (collectively, the "Bonds"). Proceeds of the Bonds were provided to the Dissolved RDA to be used for redevelopment purposes; and

WHEREAS, the Successor Agency received its Finding of Completion under California Health and Safety Code Section 34179.7 from the California Department of Finance on June 27, 2014; and

WHEREAS, California Health and Safety Code Section 34191.4(c) allows a successor agency that has received a finding of completion to use bond proceeds from bonds issued prior to 2011 for purposes for which the bonds were sold, provides that such proceeds in excess of amounts needed to satisfy approved enforceable obligations shall be expended in a manner consistent with the original bond covenants, and further provides that such expenditures shall constitute "excess bond proceeds obligations" that shall be listed separately on the successor agency's Recognized Obligation Payment Schedule ("ROPS"); and

WHEREAS, the Successor Agency holds pre-2011 tax allocation bond proceeds from the issuance of the Bonds that are not otherwise obligated for approved enforceable obligations under the Redevelopment Dissolution Law (the "Excess Bond Proceeds"); and

WHEREAS, the Successor Agency and the City desire to enter into a Bond Expenditure Agreement (the "Agreement"), in substantially the form accompanying this Resolution, to enable the City to use the Excess Bond Proceeds for the redevelopment purposes for which the tax allocation bonds were sold, in a manner consistent with the bond covenants, by undertaking projects, programs and activities

that were not previously funded and obligated by the Successor Agency prior to the enactment of the Redevelopment Dissolution Law; and

WHEREAS, the expenditure of Excess Bond Proceeds in accordance with this Agreement will benefit the affected taxing entities, because such expenditures will help eliminate physical, economic, and social burdens and blight within the applicable project area and promote the public peace, health, safety, and welfare through the construction of public infrastructure and community facilities within the former Redevelopment Area consistent with the Bond restrictions, thereby increasing the economic vitality of the areas through increased property tax revenues, sales tax revenues, and job creation, and improving the overall quality of life for the area's residents.

WHEREAS, the Agreement will effectuate the Successor Agency's efforts and obligations to expeditiously wind down the affairs of the Dissolved RDA in accordance with Health and Safety Code Section 34177(h); and

WHEREAS, California Health and Safety Code Section 34178 allows a successor agency and its sponsoring city to enter into agreements with the approval of the oversight board; and

WHEREAS, in accordance with Health and Safety Code Section 34180(h), upon request by the Successor Agency, the Oversight Board may approve an agreement between the Successor Agency and the City; and

WHEREAS, the Agreement will become effective only upon approval and direction of the Oversight Board and certain other actions pursuant to the Dissolution Law, as fully provided in Section 1 of the Agreement; and

WHEREAS, the Oversight Board held a meeting on September 18, 2014, and adopted its Resolution No. 38 approving the Agreement and directing the Successor Agency's execution and implementation of the Agreement with the City; and

WHEREAS, approval of this Resolution and execution and implementation of the Agreement do not constitute a "project" within the meaning of and are exempt from the requirements of the California Environmental Quality Act and the applicable state and local implementing guidelines (collectively, "CEQA"), as it can be seen with certainty that there is no possibility that such approval, execution and implementation will have a significant effect on the environment (see particularly, 14 California Code of Regulations Section 15061(b)(3)); and

WHEREAS, the staff report (the "Staff Report") accompanying this Resolution contains additional information and analysis upon which the findings and actions set forth in this Resolution are based.

NOW, THEREFORE, the City Council of the City of Milpitas and the Board of the Successor Agency hereby find, determine, and resolve as follows:

1. The City Council and the Successor Agency Board have considered the full record before them, 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 them. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. Approval of this Resolution and execution and implementation of the Agreement are exempt from the requirements of CEQA. The Milpitas Planning Director is hereby authorized and directed to file a notice of exemption in accordance with CEQA in connection with approval of this Resolution and execution and implementation of the Agreement.
3. The City Council and the Successor Agency Board hereby approve the Agreement attached hereto as Exhibit B, and authorize the City Manager and then Agency Executive Director, or their designees, to implement the Agreement on behalf of the City and Successor Agency, including taking any actions and executing any documents reasonably required to effectuate the purpose and intent of this Resolution and the Agreement.

PASSED AND ADOPTED this _____ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk/Successor
Agency Secretary

Jose S. Esteves, Mayor/Successor
Agency Chair

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney/Successor
Agency Counsel

EXHIBIT A

EXCESS BOND PROCEEDS

Milpitas Redevelopment Agency Redevelopment Project Area No. 1 Tax Allocation Bonds,
Series 1997 \$524,926

Milpitas Redevelopment Agency Redevelopment Project Area No. 1 2003 Tax Allocation Bonds
\$3,464,952

EXHIBIT B

BOND EXPENDITURE AGREEMENT

This Bond Expenditure Agreement (the "Agreement") is entered into as of _____, 2014 by and between the Successor Agency of the Redevelopment Agency of the City of Milpitas, a public entity (the "Successor Agency"), and the City of Milpitas, a municipal corporation (the "City"). The Successor Agency and the City (sometimes together referred to as the "parties", and individually as a "party") have entered into this Agreement on the basis of the following facts, understandings, and intentions:

RECITALS

A. This Agreement is entered into to implement terms and requirements of ABx1 26 enacted June 28, 2011, as modified by AB 1484 enacted June 27, 2012 (collectively, the Redevelopment Dissolution Law").

B. In accordance with the Redevelopment Dissolution Law:

1. The former Redevelopment Agency of the City of Milpitas (the "Dissolved RDA") was dissolved as of February 1, 2012 pursuant to Health and Safety Code Section 34172(a).

2. On January 4, 2012 and pursuant to Health and Safety Code Section 34173, the City Council of the City adopted a resolution declaring that the City would act in a limited capacity as the Successor Agency for the Dissolved RDA. Health and Safety Code Section 34173(g) (added to the Redevelopment Dissolution Law by AB 1484) clarifies that the Successor Agency is a separate and distinct legal entity from the City.

3. The Successor Agency is charged with paying the enforceable obligations, disposing of the properties and other assets, and unwinding the affairs of the Dissolved RDA.

4. An oversight board for the Successor Agency (the "Oversight Board") has been formed and is functioning in accordance with Health and Safety Code Section 34179.

C. Prior to its dissolution, the Dissolved RDA issued the following bonds: Milpitas Redevelopment Agency Redevelopment Project Area No. 1 Tax Allocation Bonds, Series 1997 and Milpitas Redevelopment Agency Redevelopment Project Area No. 1 2003 Tax Allocation Bonds (collectively, the "Bonds"). Proceeds of the Bonds were provided to the Dissolved RDA to be used for redevelopment purposes.

D. Pursuant to the bond indentures and trust for the Bonds, the Successor Agency is required to file annual continuing disclosure statements for each bond issuance (the "Continuing Disclosures").

E. From time to time, and to reduce debt service costs, the Successor Agency may choose in the future to participate in bond refundings as permitted under the Redevelopment

Dissolution Law, which require the Successor Agency to affirmatively represent that bond proceeds have been used in accordance with the respective tax certificate and other bond documents (the "Refunding Representations").

F. The Successor Agency received its Finding of Completion under California Health and Safety Code Section 34179.7 from the California Department of Finance on June 27, 2014.

G. California Health and Safety Code Section 34191.4(c) allows a successor agency that has received a finding of completion to use bond proceeds from bonds issued prior to 2011 for purposes for which the bonds were sold, provides that such proceeds in excess of amounts needed to satisfy approved enforceable obligations shall be expended in a manner consistent with the original bond covenants, and further provides that such expenditures shall constitute "excess bond proceeds obligations" that shall be listed separately on the successor agency's Recognized Obligation Payment Schedule ("ROPS").

H. The Successor Agency holds pre-2011 tax allocation bond proceeds that are not otherwise obligated for approved enforceable obligations under the Redevelopment Dissolution Law as set forth on Exhibit A (the "Excess Bond Proceeds").

I. The California Community Redevelopment Law (California Health and Safety Code Section 33000, *et seq.*) (the "Redevelopment Law") provides for a cooperative relationship between cities and their redevelopment agencies, as well as their successor agencies which have assumed the duties and obligations of the former redevelopment agencies. Under California Health and Safety Code Section 33220, a city may aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects. California Health and Safety Code Section 33220(e) specifically authorizes a city to enter into an agreement with any other public entity to further redevelopment purposes. California Health and Safety Code Section 34178 allows a successor agency and its sponsoring city to enter into agreements with the approval of the oversight board.

J. The City has requested that the Successor Agency provide the Excess Bond Proceeds to the City to enable the City to use such proceeds for the redevelopment purposes for which the tax allocation bonds were sold, in a manner consistent with the bond covenants, by undertaking projects, programs and activities that were not previously funded and obligated by the Successor Agency prior to the enactment of the Redevelopment Dissolution Law.

K. The Oversight Board for the Successor Agency has determined that the expenditure of Excess Bond Proceeds in accordance with this Agreement will benefit the affected taxing entities, because such expenditures will help eliminate physical, economic, and social burdens within the applicable project area and promote the public peace, health, safety, and welfare through the reconstruction of Main Street from Carlo to Curtis, thereby increasing the economic vitality of the areas through increased property tax revenues, sales tax revenues, and job creation, and improving the overall quality of life for the area's businesses and residents. The Oversight Board has approved the execution of this Agreement and the provision of Excess Bond Proceeds to the City for the purposes described herein.

L. To facilitate the use of Excess Bond Proceeds consistent with the bond covenants, the Successor Agency and the City have negotiated this Agreement authorizing the transfer of

Excess Bond Proceeds by the Successor Agency to the City, and the City's use of such proceeds consistent with applicable bond covenants and this Agreement. The parties intend that this Agreement shall constitute an "excess bond proceeds obligation" within the meaning of California Health and Safety Code Section 34191.4(c)(2)(A) to be paid from Excess Bond Proceeds. With Oversight Board approval, the Successor Agency shall list this Agreement authorizing the transfer of Excess Bond Proceeds, on its ROPS for January through June of 2015 ("ROPS 14-15B") as an obligation to be funded with Excess Bond Proceeds.

M. This Agreement will become effective only upon approval and direction of the Oversight Board and certain other actions pursuant to the Redevelopment Dissolution Law, as fully provided in Section 1.

NOW, THEREFORE, the Successor Agency and the City agree as follows:

Section 1. Effectiveness of Agreement. This Agreement shall become effective only upon satisfaction of the following conditions:

(a) Approval of this Agreement and direction by the Oversight Board for the Successor Agency to execute and implement this Agreement pursuant to Health and Safety Code Section 34180(h) (the "Oversight Board Action"); and

(b) Notification to the California Department of Finance of the Oversight Board Action and effectiveness of the Oversight Board Action in accordance with the provisions of Health and Safety Code Section 34179(h).

Section 2. Transfer of Excess Bond Proceeds. The Successor Agency shall transfer to the City, no later than January 31, 2015, Excess Bond Proceeds in the amount of three million nine hundred eighty nine thousand eight hundred and seventy eight dollars (\$3,989,878) or such other amount as approved on ROPS 14-15B.

Section 3. Expenditure of Excess Bond Proceeds. The City shall accept, hold, and use the Excess Bond Proceeds transferred to the City by the Successor Agency in compliance with the applicable bond covenants, the provisions of this Agreement and the Redevelopment Law. The City shall place the Excess Bond Proceeds in segregated account or accounts.

The City may spend Excess Bond Proceeds received or retained under this Agreement for any project, program, or activity authorized under the Redevelopment Law; provided that the City must spend Excess Bond Proceeds consistent with the bond covenants applicable to the particular Excess Bond Proceeds, including without limitation all requirements relating to maintaining the tax-exempt nature of any tax-exempt bonds, and in accordance with the applicable provisions of federal, state and local laws, including environmental laws such as the California Environmental Quality Act. The City shall be solely responsible for ensuring that Excess Bond Proceeds are maintained and spent in the Redevelopment Project Area and in accordance with the bond covenants applicable to the particular Excess Bond Proceeds, the Redevelopment Law and other applicable laws.

In particular, the City will expend the bond proceeds in compliance with the bond covenants, the Redevelopment Law and other applicable laws for purposes of implementing the

Main Street Pavement Reconstruction Project identified in the 2014-19 Five Year Capital Improvement Program for the City of Milpitas.

The City represents that it has reviewed the closing transcript for each of the tax-exempt tax allocation bond issues listed in Recital C and is aware of the covenants restricting the use of each respective bond issue. The City shall not take nor allow any recipient of the Excess Bond Proceeds to take any action that results in the inclusion in gross income from federal or State of California income tax purposes of the interest on the Excess Bond Proceeds derived from the tax-exempt bond issuances. The City shall diligently carry out and continue to completion, with all practicable dispatch, the work required for each project, program and activity funded by Excess Bond Proceeds, in a sound and economical manner. Subject to the covenants herein, the City shall have the sole responsibility with respect to the planning, design, specification, and implementation with respect to all components of the projects, programs and activities to be funded by the City with Excess Bond Proceeds. The City shall disburse or encumber one hundred percent (100%) of the Excess Bond Proceeds for eligible projects, programs or activities within five (5) years following the Effective Date of this Agreement. Excess Bond Proceeds shall be deemed encumbered if committed pursuant to a duly executed contract for expenditure for eligible projects, programs, or activities. All Excess Bond Proceeds shall be disbursed within ten (10) years following the Effective Date of this Agreement, or such sooner time as required by the applicable bond covenants. Any Excess Bond Proceeds that are not disbursed within the ten (10) year period described in the previous sentence shall be returned to the Successor Agency within thirty (30) days following the end of such ten (10) year period.

Section 4. Modification of Bond Covenants. In the event that following the Effective Date of this Agreement, the Successor Agency modifies any of the bond covenants with respect to any of the tax allocation bonds listed in Recital C, the Successor Agency shall provide written notice to the City of such modifications in accordance with Section 9 prior to the date of effectiveness of any such modification.

Section 5. Reporting. The City shall provide quarterly accounting of the use of Excess Bond Proceeds to the Successor Agency. Upon the Successor Agency's request, the City shall provide the Successor Agency with information reasonably required by the Successor Agency to meet its Continuing Disclosure Requirements and to allow the Successor Agency to make the necessary Refunding Representations. The City shall provide such other information related to the use of the Excess Bond Proceeds as reasonably requested from time to time by the Successor Agency.

Section 6. Records. The City shall maintain complete and accurate financial accounts, documents and records with respect to the performance of its obligations under this Agreement, and shall make same available to the authorized agents of the Successor Agency for copying and auditing upon reasonable prior notice. Such accounts, documents and records shall be retained by the City for at least three years following completion of any improvements involving expenditure of Excess Bond Proceeds.

Section 7. Inspection of Documents. During the regular office hours and upon reasonable prior notice, the Successor Agency, through its duly authorized representatives, shall have the right to inspect and make copies of any books, records or reports of the City pertaining to this Agreement.

Section 8. No Third Party Beneficiaries. No person or entity other than the City and the Successor Agency, and their permitted successors and assigns, shall have any right of action under this Agreement.

Section 9. Miscellaneous Provisions.

(a) Notices. Any notice or communication required to be given under this Agreement by a party shall be in writing, and may be given either personally or by reputable overnight courier or by registered or certified mail, return receipt requested. If delivered by registered or certified mail, a notice shall be deemed to have been given and received on the first to occur of: (a) actual receipt by any of the addressees designated below as a party to whom notices are to be sent; or (b) five (5) days after the registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If delivered personally or by overnight courier, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. A party may at any time, by giving written notice to the other party pursuant to this Section 9(a), designate any other addresses in substitution of the address to which such notice or communication shall be given.

Notices shall be given to the parties at their address set forth below:

City: City of Milpitas
455 E. Calaveras Boulevard
Milpitas, California 95035
Attention: City Manager

Successor Agency: Successor Agency of the Redevelopment Agency
of the City of Milpitas
455 E. Calaveras Boulevard
Milpitas, California 95035
Attention: Executive Director

(b) Non-Liability of Officials. No member, official, employee or agent of the parties shall be personally liable to any other party or any successor in interest, in the event of any default or breach by a party for any amount which may become due to another party or successor or on any obligation under the terms of this Agreement.

(c) Actions of the Parties. Except as otherwise provided in this Agreement, whenever this Agreement calls for or permits a party's approval, consent, or waiver, the written approval, consent, or waiver of the City Manager or the Successor Agency Executive Director shall constitute the approval, consent, or waiver of the respective parties, without further authorization required from the governing board of the party; provided, however, that the person vested with such authority may seek such further advice or authorization from the applicable governing board when he/she deems it appropriate.

(d) Litigation Regarding The Agreement. In the event litigation is initiated attacking the validity of this Agreement, the City and the Successor Agency shall in good faith defend and seek to uphold the Agreement.

(e) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that such counterparts shall together constitute one and the same instrument.

(f) Time is of the Essence. Time is of the essence in the performance of the terms and provisions of this Agreement.

(g) Binding on Successors. This Agreement shall be binding on and shall inure to the benefit of all successors and assigns of the parties, whether by agreement or operation of law.

(h) State Law. This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of California.

(i) Attorneys' Fees. In any action which a party brings to enforce its rights hereunder, the prevailing party shall be entitled to reasonable attorneys' fees.

(j) Additional Acts. The parties each agree to take such other and additional action and execute and deliver such other and additional documents as may be reasonably requested by the other party for purposes of consummating the transactions contemplated in this Agreement.

(k) Entire Agreement; Amendments. This Agreement constitutes the entire and integrated agreement of the parties and supersedes all prior negotiations, representations, or agreements, either written or oral, with respect to the matters addressed in this Agreement. This Agreement may be amended only by written instrument executed by the parties at the time of such amendment.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

APPROVED AS TO FORM:

CITY OF MILPITAS

City Attorney

By: _____
Thomas C. Williams, City Manager

APPROVED AS TO FORM:

SUCCESSOR AGENCY OF THE
REDEVELOPMENT AGENCY OF THE
CITY OF MILPITAS

Successor Agency Counsel

By: _____
Thomas C. Williams, Successor
Agency Executive Director

EXHIBIT A

EXCESS BOND PROCEEDS

Milpitas Redevelopment Agency Redevelopment Project Area No. 1 Tax Allocation Bonds, Series
1997 \$524,926

Milpitas Redevelopment Agency Redevelopment Project Area No. 1 2003 Tax Allocation Bonds
\$3,464,952