AGREEMENT TO PROVIDE INSPECTION AND RELATED SERVICES OF FOOD SERVICE ESTABLISHMENTS FOR FATS OILS AND GREASE

This Agreement to Provide Inspection And Related Services of Food Service Establishments for Fats Oils and Grease ("Agreement") is made this __________day of ________________, 2017, by and between the City of San José, a municipal corporation ("San José"), and City of Milpitas, a _______________which owns the sanitary sewer collection system in its jurisdiction ("Collection System Owner"). The purpose of this Agreement is to provide inspection services for fats oils and grease, which have the potential to clog the sanitary sewer collection system.

1. RECITALS

1.1 California Waste Discharge Requirements ("WDR"), Order No. 2006-0003-DWQ issued by the Regional Water Quality Control Board in accordance with the Clean Water Act and the California Porter Cologne Water Quality Act, regulate the discharges permitted into the San Francisco Bay and local waterbodies;

1.2 WDRs specifically prohibit the discharge of raw or undertreated sewage;

1.3 In order to avoid sanitary sewer overflows ("SSO") that may discharge raw or untreated sewage into local waterways or the San Francisco Bay, the Collection System Owner must prepare and implement a fats, oils and grease ("FOG") source control program to reduce the amount of FOG discharged to the sanitary sewer system;

1.4 For years San Jose’s FOG inspection team has provided inspection services to Collection System Owner;

1.5 In May 2017, the San José / Santa Clara Regional Wastewater Facility (RWF) Treatment Plant Advisory Committee received a report stating that FOG was not an issue of concern for the RWF;

1.6 As of July 1, 2017, the City of San José will no longer be providing the FOG inspection services outside of the City of San José city limits;

1.7 Collection System Owner has requested that San José continue to provide FOG inspection services for a six month period and to assist in training new FOG inspectors; and
1.8 San José has agreed to provide FOG inspection, plan check, and training services for a limited term.

NOW THEREFORE, for good and valuable consideration, the amount and sufficiency of which is hereby acknowledged, the parties agree as follows:

2. TERM. The term of this Agreement is six months from July 1, 2017 through and December 31, 2017.

3. FOG INSPECTION SERVICES.

3.1 San José FOG Inspection Team (the “FOG Team”) will inspect up to ninety-one (91) (“Maximum Number”) of food service establishments (“FSE”) in the Collection System Owner’s jurisdiction area. The FOG inspection services will be consistent with historical FOG inspection services without any enhancements or additional documentation other than as provided in this Agreement.

3.2 The FOG Team will also perform grease investigation inspections (“GII”) associated with grease-related blockages or SSOs in commercial areas as requested by Collection System Owner. If, as a result of the GII, the FOG Team determines that a FOG inspection is also necessary, the City will add the FSE to the FOG inspection list and will remove lower-priority FSEs so as not to exceed the Maximum Number of FSEs specified in this Agreement.

3.3 The FOG Team will not provide any FOG inspection or GII inspection services to FSEs where they are denied full access to the FSE. If the Collection System Owner desires that the FSE be inspected, then the Collection System Owner must provide legal access for the FOG Team.

4. PLAN CHECKING SERVICES. FSEs must obtain food service plan checks to obtain building permits for remodels or new construction of FSEs. The FOG Team will continue to perform food service plan check services, as needed, during the term of the Agreement. Such services will be consistent with historical plan check services provided by San José without any enhancements or additional reporting on activity except as otherwise provided in this Agreement. Food service plan check services include review of drawings for building
remodels or new construction by an engineering professional to ensure adequately-sized grease control devices as required by local or state laws are included in the plans.

5. TRAINING. To aid in the transition of the FOG inspection program to the 
Collection System Owner, the FOG Team will provide the following services:

5.1 Once a month during the term, the FOG Team will provide a two-hour 
forum at San José City Hall for all Collection System Owner staff 
regarding how, when and why to perform FOG inspections.

5.2 Upon request, the FOG Team will also provide FOG inspection ride along 
opportunities to allow Collection System Owner staff to accompany FOG 
Inspectors during FOG inspections of FSE’s in Collection System Owner’s 
jurisdiction. Ride alongs will be scheduled when convenient for FOG 
inspectors.

6. PAYMENT.

6.1 Collection System Owner will compensate San José in the amount of 
Sixty-Thousand Two-Hundred Forty-Three dollars ($60,243) for the FOG 
inspection services, plan check services and training. Three (3) full-time 
FOG Inspectors, along with a proportion of management oversight, will be 
required to complete the proposed caseload for Collection System Owner 
and the other tributary agencies within the six-month period. Due to the 
varying pay rates, the current compensation will be based on costs of the 
current average salary of the three identified staff assigned to Collection 
System Owner and the tributary agencies for the FOG inspection program 
and include all ancillary costs including fringe benefits and overhead. If, 
during the term of the Agreement, the number of inspections per case 
dramatically increases or staff separation occurs, the level of service may 
be impacted or the reassigned staff may alter the average salary which 
would then alter the final compensation. At the time of such events, San 
José will notify Collection System Owner and negotiate changes to the 
scope of service or compensation, as necessary. Since San José staff is 
being retained to provide these services, Collection System Owner agrees
to commit to the entire six-month term of this Agreement; no early termination of this Agreement is allowed.

6.2 Collection System Owner will be invoiced on or around October 1, 2017, and January 1, 2017, for a fixed cost amount of Thirty-Thousand One-Hundred Twenty-One dollars and Fifty cents ($30,121.50) (i.e. one-half of total contract cost), with payment due within thirty (30) days of the date of invoice. Late payments will be subject to the maximum legal interest rate.

6.3 As a contingency, this agreement includes a not-to-exceed amount of Sixty-Six-Thousand Two-Hundred Sixty-Seven dollars ($66,267). San José and Collection System Owner may re-negotiate the terms of this Agreement via direct correspondence if compensation for this Agreement remains between the proposed, fixed costs of Sixty-Thousand Two-Hundred Forty-Three dollars ($60,243) and the not-to-exceed cost of Sixty-Six-Thousand Two-Hundred Sixty-Seven dollars ($66,267). The contingency funds of Six-Thousand Twenty-Four dollars ($6,024) cannot be accessed without prior written approval from Collection System Owner.

7. NO WARRANTY OR REPRESENTATIONS. Neither San José, nor its FOG Inspectors make any warranty or representations regarding the fitness of Collection System Owner’s sanitary sewer collections system, or the FSEs compliance activities between inspections. San José further makes no warranties or representations that SSOs will not occur from Collection System Owner’s collection system or any associate appurtenances. The parties recognize that inspections represent a snapshot in time and that the FOG Inspectors’ notes and records represent the condition of the FSE at the time of the inspection only.

8. ENFORCEMENT. The Collection System Owner is entirely responsible for any and all Level 4 enforcement actions, per the Enforcement Response Plan, to ensure FSEs’ compliance with the FOG requirements. The FOG Team will provide recommendations to the Collection System Owner regarding issuing Level 4 enforcement actions. The FOG Team will assist the Collection System
Owner only insofar as to provide any evidence they may have as a result of FOG inspections or GII.

9. RELEASE. Collection System Owner hereby releases San José, the FOG Team, San Jose’s employees, councilmembers, agents and affiliates from and against any and all claims, known or unknown, related, directly or indirectly, to any injury or death or property damage from the FOG inspections or San Jose’s performance under this Agreement.

Collection System Owner has read and understands Section 1542 of the California Civil Code and expressly waves the provisions thereof, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

10. INDEMNITY. The Collection System Owner agrees to indemnify, defend, and hold harmless San José, its employees, councilmembers and agents from and against and an all claims, expenses, fines, or penalties related in whole or in part to the FOG and GII inspection services, including without limitation, violations of the Clean Water Act or the Porter Cologne Water Quality Act and for any SSOs that may occur in Collection System Owner’s jurisdiction.

11. PROGRAM RELATED DOCUMENTATION. San José will provide the following documentation to Collection System Owner:

11.1 The FOG Team will provide packets of Tributary FOG Program information to Collection System Owner. These packets will include soft-copies of the FOG Control Inspection Enforcement Response Plan, Business Inspection Plan, FOG inspection-related standard operating procedures, and collateral “best management practices” outreach materials currently provided to FSEs during FOG inspections.

11.2 All previous inspection data/results for all FSEs inspected for Collection System Owner since San José began performing FOG inspections in Collection System Owner’s jurisdiction on or about 2008. San José will also provide Collection System Owner the complete FOG program hard
case file, which contains all FOG inspection information for all FSEs inspected within Collection System Owner’s jurisdiction since 2008.

11.3 San José will provide all information related to any cases in progress as well as completed inspection reports, including photographs and other inspection-related information, for all FOG inspections completed from July 1, 2017 through December 31, 2017.

11.4 San José will provide all information related to any open, ongoing FOG inspections or GII as of December 31, 2017.

12. MISCELLANEOUS PROVISIONS.

12.1 Waiver. No failure by any party to insist upon strict performance of any term or condition of this Agreement will constitute a waiver of such term or condition or of a breach thereof. Any such waiver must be in writing and signed by the waiving party.

12.2 Modification. This Agreement may not be modified except in writing signed by each of the parties, except that the compensation may be adjusted as provided in section 6.1 above simply with written notice from San José to Collection System Owner.

12.3 Interpretation. This Agreement will be construed in accordance with the laws of the State of California and any action to enforce the terms of this Agreement must be brought in the County of Santa Clara, State of California. No party will be deemed to have drafted this Agreement; instead, the parties recognize that this Agreement is the product of negotiations between the parties.

12.4 Notice. Any notice required to be provided under this Agreement will be deemed sufficiently given when delivered personally or upon deposit in the United States mail, with first-class postage affixed, or when sent by established courier, addressed to the parties as follows or upon sending notice via electronic mail either with confirmation of receipt or followed by a hard copy sent by US Mail first class postage affixed and sent to the following addresses:
To the City:  
City of San José  
Environmental Services Department  
Attn: Napp Fukuda  
200 E. Santa Clara Street, 7th Floor  
San José, CA  95113  
napp.fukuda@sanjoseca.gov

To Collection System Owner:  
City of Milpitas  
Public Works  
Attn: Nina Hawk  
455 E Calaveras Blvd  
Milpitas, CA 95035  
nhawk@ci.milpitas.ca.gov

12.5 Authorized Representative of the Parties. The person signing on behalf of each party represents and warrants that he/she is the authorized representative of that party and has been expressly authorized by the governing body of the party to bind that party to this Agreement.

12.6 Recitals. The parties agree that the recitals are a correct depiction of the factual basis upon which this Agreement is made and shall be considered a part of the terms of this Agreement.

12.7 Severability. If any provision or term of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, the remaining terms in this Agreement will remain in full force and effect, unless the purpose of this Agreement cannot be achieved without the severed provisions.
IN WITNESS WHEREOF, the Parties to this Agreement have executed this Agreement on the date below:

APPROVED AS TO FORM:

LEAH S. GOLDBERG
Sr. Deputy City Attorney

JULIE EDMONDS-MARES
Deputy City Manager

"City"
CITY OF SAN JOSÉ, a municipal corporation

Date: ________________

Collection System Owner

By:

Its:

Date: ________________