JOINT MEETING OF THE MILPITAS CITY COUNCIL & SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY

AGENDA

TUESDAY, NOVEMBER 21, 2017

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA
5:00 P.M. (CLOSED SESSION)
7:00 P.M. (PUBLIC BUSINESS)

Vice Mayor Grilli will participate by telephone conference from Mountainside Inn, 333 S. Davis St., Telluride, CO

SUMMARY OF CONTENTS

I. CALL TO ORDER JOINT MEETING by Mayor and ROLL CALL by City Clerk

II. ADJOURN TO CLOSED SESSION (5:00 PM)

(a) CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING
Pursuant to California Government Code Section 54957.6
City Negotiator: Tina Murphy
Employee Groups: Milpitas Employees Association, International Association of Fire Fighters, and unrepresented employees
Under Negotiation: Wages, Hours, Benefits, and Working Conditions

(b) PUBLIC EMPLOYEE APPOINTMENT/HIRING
Pursuant to California Government Code Section 54957
Title of position to be filled: City Manager

(c) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to California Government Code section 54956.9(d)(1)
Tom Williams v. City of Milpitas, et al. - Santa Clara County Superior Court Case No. 17CV309235

(d) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to California Government Code section 54956.9(d)(1)
First Amendment Coalition v. City of Milpitas – Santa Clara County Superior Court Case No. 17CV310994

(e) CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION
Pursuant to California Government Code section 54956.9(d)(1)
Tom Williams v. City of Milpitas, et al. - American Arbitration Case No. 01-17-0003-5823

(f) CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION
Pursuant to California Government Code section 54956.9(d)(4)

III. CLOSED SESSION ANNOUNCEMENT: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. INVOCATION (Councilmember Phan)

VI. PRESENTATION

- Recognition to organizations for fundraising effort for Philippines hospital

VII. PUBLIC FORUM

Those in the audience are invited to address City Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. However, the Council may instruct the City Manager to place the item on a future meeting agenda.

VIII. ANNOUNCEMENTS

IX. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

X. APPROVAL OF AGENDA

XI. CONSENT CALENDAR

Consent Calendar items are considered to be routine and will be considered for adoption by one motion of the City Council. The City Manager will indicate any matters not eligible for consent. City Councilmembers shall either (a) state the agenda items they want placed on the Consent list, or (b) declare that they do not have any items for consent. From the dais, Council will then vote to approve all items going onto Consent Calendar and move to approve the listed items in one motion.

Any items not placed on Consent Calendar will be discussed in the order in which they appears on the agenda.

1. Accept Schedule of Meetings/City Council Calendars - November and December 2017

2. Approve City Council Meeting Minutes of November 4 and 7, 2017 (Staff Contact: Mary Lavelle, 408-586-3001)

XII. UNFINISHED BUSINESS

3. Discuss City of Milpitas Commissions and Process for Commission Appointments (Staff Contact: Steve Pangelinan, 408-586-3050)

4. Review List for City Council of Items Due Back for Response from City Staff (Staff Contacts: Steve Pangelinan, 408-586-3051 and Mary Lavelle, 408-586-3001)

5. Per Request of Councilmembers Nuñez and Phan, Consider Approving More than 4 Hours of Staff Time to Return to Council with Plan to Preserve Industrial Land in the City (Contacts: Councilmember Nuñez, 408-586-3023 and Councilmember Phan, 408-586-3032)

6. Waive the First Reading and Introduce Ordinance No. 48.21 Amending Title V, Chapter 200 of the Milpitas Municipal Code Regarding Solid Waste Management (Staff Contact: Steve Erickson, 408-586-3301)

XIII. REPORTS

7. Per Request of Mayor Tran, Consider Approving More than 4 Hours of Staff Time to Return to Council with a Comprehensive Homeless Strategy (Contact: Mayor Tran, 408-586-3029)

8. **Per Request of Councilmember Phan, Consider Approving More than 4 Hours of Staff Time to Study the Feasibility of Establishing Enhanced Infrastructure Financing Districts (EIFDs) within Milpitas and to Return to Council with a Report (Staff Contact: Will Fuentes, 408-586-3111)**

9. **Per Request of Councilmember Nuñez, Receive a Report on the Process of Labor Negotiations in the City of Milpitas (Contact: Councilmember Nuñez, 408-586-3023)**

10. **Per Recommendation of the City Council Facilities Naming Subcommittee, Approve the Name of a New Park in the Transit Area (Staff Contact: Renee Lorentzen, 408-586-3409)**

XIV. NEW BUSINESS

11. **Receive Report on City of Milpitas Healthy Cities Dashboard (Staff Contacts: Tina Murphy, 408-586-3086 and Renee Lorentzen, 408-586-3409)**

XV. ORDINANCE

12. **Waive the Second Reading and Adopt Ordinance No. 296 Authorizing the Implementation of a Community Choice Aggregation Program for Milpitas (Staff Contact: Edesa Bitbadal, 408-586-3052)**

XVI. RESOLUTIONS

13. **Adopt Six Resolutions Authorizing the Operation of Property Assessed Clean Energy Financing Programs Within the City of Milpitas, Authorize the City Manager to Execute Agreements with Four Programs and Other Documents Necessary to Implement Property Assessed Clean Energy Financing Programs, and Find that the Actions are Exempt from Environmental Review under CEQA Guidelines Section 15378(b)(4) (Staff Contact: Edesa Bitbadal, 408-586-3052)**

14. **Adopt a Resolution Authorizing Issuance, Sale and Delivery of Wastewater Revenue Refunding Bonds for the Purpose of Refinancing the Costs of Acquiring and Constructing Wastewater System Improvement Projects, Approving an Official Statement and Related Matters (Staff Contact: Will Fuentes, 408-586-3111)**

15. **Adopt a Resolution Granting Final Acceptance of Public Improvements and Releasing Performance Bond for the Apex Apartment Project Located at 1102 South Abel Street by Milpitas Centria West, LLC, Tract No. 9773, Project No. 2583 (Staff Contact: Steve Erickson, 408-586-3301)**

16. **Adopt a Resolution Granting Initial Acceptance, Release the Performance and Payment Bonds and Authorize Acting City Engineer to Issue the Notice of Final Acceptance After the One-Year Warranty Period for the Daniel Court Water Main and Services Replacement, Projects No. 7110 and No. 7131 (Staff Contact: Steve Erickson, 408-586-3301)**

XVII. AGREEMENTS

17. **Approve and Authorize the City Manager to Execute a Consultant Services Agreement with Bartle Wells Associates to Conduct a Comprehensive Water Rate and Cost of Service Study for the Amount Not to Exceed $45,000 (Staff Contact: Tony Ndah, 408-586-2602)**

18. Approve and Authorize the City Manager to Execute a Consultant Services Agreement with Crocker & Crocker for the Water Rate Community Engagement Program for the Amount Not to Exceed $40,000 (Staff Contact: Tony Ndah, 408-586-2602)

19. Consider the Subdivision Improvement Agreement, the Public Street Maintenance Agreement and the Fee Reimbursement Agreement for a 199-unit Senior Assisted Living Residential Development at 1504-1620 South Main Street by Milpitas Phase I, LP (Staff Contact: Steve Erickson, 408-586-3301)

20. SUCCESSOR AGENCY
Authorize the Executive Director of the Successor Agency of the Former Milpitas Redevelopment Agency to Execute a Purchase & Sale Agreement with the Milpitas Community Museum for Property at 230 N. Main Street (APNs 028-34-001 through 028-34-094) (Staff Contact: Jane Corpus, 408-586-3125)

XVIII. REPORTS OF MAYOR & COUNCILMEMBERS – from the assigned Commissions, Committees and Agencies

XIX. ADJOURN JOINT MEETING

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035 e-mail: cdiaz@ci.milpitas.ca.gov / Phone: 408-586-3040

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.ci.milpitas.ca.gov by selecting the Milpitas Municipal Code link.

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on the City website.

All City Council agendas and related materials can be viewed online here: www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Current vacancies on: Arts Commission
Bicycle Pedestrian Advisory Commission
Community Advisory Commission
Economic Development Commission
Emergency Preparedness Commission
Parks, Recreation & Cultural Resources Commission
Recycling & Source Reduction Advisory Commission
Sister Cities Commission; Library Commission
Telecommunications Commission
Youth Advisory Commission

Commission application forms are available online at www.ci.milpitas.ca.gov or at Milpitas City Hall. Contact the City Clerk's office at 408-586-3003 for more information.

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi *408-586-3122*

对中国人来说，请用 *408-586-3263*

Para sa Tagalog, tumawag sa 408-586-3051

Para español, llame 408-586-3232

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, call the City Clerk at 408-586-3001 or send an e-mail to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the City Council Chambers for all meetings.

AGENDA REPORTS

XII. UNFINISHED BUSINESS

3. Discuss City of Milpitas Commissions and Process for Commission Appointments (Staff Contact: Steve Pangelinan, 408-586-3050)

Background: Councilmembers have expressed an interest to discuss the 14 Council-appointed City of Milpitas Commissions, and the process for appointing residents to serve as voting Commissioners and Alternate Members on the Commissions.

Recommendation: Discuss City Commissions and process of appointments. Direct staff, as requested.

Attachments:
a) Directory of Local Officials (roster of members)
b) Commission Application

4. Review List for City Council of Items Due Back for Response from City Staff (Staff Contacts: Steve Pangelinan, 408-586-3051 and Mary Lavelle, 408-586-3001)

Recommendation: Review list (provided in agenda packet) and provide additional input on the draft document, prepared by City Clerk for the Council.

Attachment: List of Items requested by City Council

5. Per Request of Councilmembers Nuñez and Phan, Consider Approving More than 4 Hours of Staff Time to Return to Council with Plan to Preserve Industrial Land in the City (Contacts: Councilmember Nuñez, 408-586-3023 and Councilmember Phan, 408-586-3032)

Recommendation: Consider request and if desired, approve more than four hours of staff time toward a plan to preserve industrial land in the City of Milpitas.

Attachment: None

6. Waive the First Reading and Introduce Ordinance No. 48.21 Amending Title V, Chapter 200 of the Milpitas Municipal Code Regarding Solid Waste Management (Staff Contact: Steve Erickson, 408-586-3301)

Background: The Milpitas Municipal Code specifies requirements related to Solid Waste Management. On December 1, 2017, a franchise agreement with the City's new solid waste collector, Milpitas Sanitation, Inc. will commence. The Municipal Code is proposed to be revised to correlate the new solid waste provisions which become effective by the contract's start date of December 1.

Fiscal Impact: None. There is no fiscal impact to the proposed Ordinance adoption.

Recommendation: Following a reading of the title by the City Attorney, move to waive the first reading beyond the title and introduce Ordinance No. 48.21 to amend Chapter 200 of Title V of the Milpitas Municipal Code regarding solid waste management.

Attachment: Ordinance No. 48.21

XIII. REPORTS

7. Per Request of Mayor Tran, Consider Approving More than 4 Hours of Staff Time to Return to Council with a Comprehensive Homeless Strategy (Contact: Mayor Tran, 408-586-3029)

Recommendation: Consider Mayor's request and if desired, approve more than four hours of staff time toward a plan for a comprehensive homeless strategy for City of Milpitas.

Attachment: None

8. Per Request of Councilmember Phan, Consider Approving More than 4 Hours of Staff Time to Study the Feasibility of Establishing Enhanced Infrastructure Financing Districts (EIFDs) within Milpitas and to Return to Council with a Report (Staff Contact: Will Fuentes, 408-586-3111)

Background: At the November 4 City Council Budget Education Workshop, Council-member Phan discussed the use of Enhanced Infrastructure Financing Districts (EIFDs) per Senate Bill (SB) 628 as a means to pay for infrastructure needs within Milpitas . He wishes to request more than 4 hours of staff time to study the feasibility of establishing EIFDs within Milpitas.

Fiscal Impact: Staff time not used for other purposes and associated costs.

Recommendations: Authorize staff to spend more than four hours of staff time to study the feasibility of establishing Enhanced Infrastructure Financing Districts (EIFDs) within the City of Milpitas and return to Council with a report.

Attachment: None.

9. Per Request of Councilmember Nuñez, Receive a Report on the Process of Employee Labor Negotiations in the City of Milpitas (Contact: Councilmember Nuñez, 408-586-3023)

Background: City staff will provide information to the Mayor and City Council at the meeting regarding the process for municipal employee labor negotiations in the City of Milpitas.

Recommendation: Receive report from city staff on labor negotiation process.

Attachment: None.

10. Per Recommendation of the City Council Facilities Naming Subcommittee, Approve the Name of a New Park in the Transit Area (Staff Contact: Renee Lorentzen, 408-586-3409)

Background: The Facilities Naming Subcommittee was formed on October 26, 2015 to review and recommend the naming of City streets, parks and facilities for final City Council approval. With input from the Parks, Recreation and Cultural Resources Commission, the subcommittee has reviewed and recommended one park name for final City Council approval.

The members of the Subcommittee recommend the Council authorize naming a new City park in the Transit Area Specific Plan area on Expedition Drive as the "Augustus Rathbone Park." Augustus Rathbone was the first storekeeper in Milpitas in the 19th century and was the first to open a saloon on the famous Campbell's Corner site (at current Main and Serra intersection).

Augustus Rathbone is on the approved "Milpitas Historical Names" naming list and per the Council Naming Subcommittee, meets the City Streets, Parks and Facilities Naming Standard Operating Procedure Criteria, 1.C and 1.D:

c. Historical or cultural significance: the name of a historical figure can be considered if the figure had a significant and extraordinary historical influence on the area, state, national or international level;

d. The name of any person or family that has made a significant impact in the community and/or in development of the street, park, facility;

Fiscal Impact: None.

Recommendation: Per City Council Facilities Naming Subcommittee, move to approve naming a new park in the Transit Area as the "Augustus Rathbone Park."

Attachments:
a) Meeting Minutes of the 11/08/17 Council Facilities Naming Subcommittee
b) List of Approved Names

XIV. NEW BUSINESS

11. Receive Report on City of Milpitas Healthy Cities Dashboard (Staff Contacts: Tina Murphy, 408-586-3086 and Renee Lorentzen, 408-586-3409)

Background: In 2016, the Santa Clara County Department of Public Health, in partnership with the Cities Association of Santa Clara County, launched the Santa Clara County Healthy Cities Initiative (HCI) to communicate and acknowledge work that cities and towns in Santa Clara County are doing to promote health.

Part of the Healthy Cities initiative is sharing the county-wide benchmark policies and strategies on health related themes, including Active and Safe Communities, Healthy Food and Beverage Environments, Tobacco-Free Communities, and Cross-Cutting Strategies. The City of Milpitas received the 2017 City of Milpitas Healthy Cities Dashboard on November 9, 2017.

Fiscal Impact: None

Recommendation: Receive a report from staff on City of Milpitas Healthy Cities Dashboard and provide direction, as appropriate.

Attachment: Healthy Cities Initiative Frequently Asked Questions (FAQs)

XV. ORDINANCE

12. Waive the Second Reading and Adopt Ordinance No. 296 Authorizing the Implementation of a Community Choice Aggregation Program for Milpitas (Staff Contact: Edesa Bitbadal, 408-586-3052)

Background: Ordinance No. 296 was introduced upon first reading at the November 7, 2017 City Council meeting. A Community Choice Aggregation Program enables cities, counties, and joint powers authorities (comprised of municipalities) that do not operate municipally-owned electric utilities to pool the electricity demand within their jurisdictions in order to procure and/or generate electrical power supplies on behalf of its residents and businesses while maintaining the existing local electricity provider for electricity billing, transmission and distribution services. This is ordinance is now ready for second reading and adoption.

Recommendation: Waive the second reading and adopt Ordinance No. 296.

Attachment: Ordinance No. 296

XVI. RESOLUTIONS

13. Adopt Six Resolutions Authorizing the Operation of Property Assessed Clean Energy Financing Programs Within the City of Milpitas, Authorize the City Manager to Execute Agreements with Four Programs and Other Documents Necessary to Implement Property Assessed Clean Energy Financing Programs, and Find that the Actions are Exempt from Environmental Review under CEQA Guidelines Section 15378(b)(4) (Staff Contact: Edesa Bitbadal, 408-586-3052)

Background: On September 19, 2017, the City Council directed staff to establish a greater level of consumer protection for Property Assessed Clean Energy (PACE) providers and establish these conditions as requirements for PACE Financing Programs in the City of Milpitas. The City shall only authorize those providers that have signed agreements. The City Council may adopt resolutions authorizing the operation of PACE Financing Programs within the City of Milpitas.

PACE programs provide property owners with a financing option to underwrite energy efficiency retrofits and renewable energy installations. PACE programs allow for the financing of these types of improvements without requiring a down payment or payment of the upfront capital cost of the improvement. The property owner repays the cost of the improvement "PACE loan" through their property tax bills over time for up to 20 years. In California, PACE programs are enabled through two different laws, Assembly Bill 811 (AB 811, 2008) and Senate Bill 555 (SB 555, 2011), with additional laws clarifying and expanding program parameters.

The City has no direct role in PACE program implementation or in the assessment transactions. Instead, the PACE provider arranges capital, administers programs, partners with a pre-approved contractor, and places special tax assessments in coordination with county tax collectors. To date, the only PACE provider authorized to operate in Milpitas is the California Statewide Communities Development Authority sponsored CaliforniaFIRST program. This was enabled through a resolution adopted by Council on January 5, 2010.

During the month of July 2017, city staff were approached by two PACE providers expressing interest in operating in Milpitas. Since then, staff have identified four possible PACE programs already authorized to operate in several nearby local jurisdictions. Should the City Council decide to add additional PACE programs to Milpitas, the Council must take actions to adopt a resolution to sponsor the program and join the associated Joint Powers Agreement, per the requirements of AB 811 and SB 555.

The City established operating conditions for PACE providers to successfully enable the City to achieve the greatest level of consumer protection. The conditions would be included in a Letter of Agreement, called the Letter of Agreement Regarding Operational Requirements for Property Assessed Clean Energy (PACE) Programs in the City of Milpitas, to be signed by the PACE providers in order for the City to sponsor the program. These conditions include:

- Provider will not charge differential interest rates or pre-payment penalties for early payoff of the PACE assessment.
- Provider has signed the Association of Bay Area Governments' (ABAG) Regional Collaborative Services Agreement (RCSA) and will continue to implement the requirements of the RCSA. ABAG and PACE providers active in the Bay Area developed and agreed in 2016 to follow a set of best practices, called an Agreement for Collaborative Services for Property Energy Financing.

- Provider will provide to each Registered Contractor the City's requirement to obtain a business license, pay the applicable business license tax and on fingerprinting and will continue to provide the requirements on a yearly basis to ensure contractor oversight.

The City Council is recommended to adopt six resolutions authorizing the operation of the following PACE programs (Ygrene Energy Fund California LLC, California Home Energy Renovation Opportunity by Renovate America, Figtree Company, Inc., and California Statewide Communities Development Authority Open PACE) within the City of Milpitas, and authorize the City Manager to execute agreements and other documents necessary to implement PACE financing programs. These resolutions shall take effect once they are adopted only for a program administrator that has signed and agreed to the Letter of Agreement Regarding Operational Requirements for Property Assessed Clean Energy (PACE) Programs in the City of Milpitas and the Association of Bay Area Governments' Agreement for Collaborative Services.

Benefits in allowing more than one PACE provider to serve property owners from Milpitas are:

- Ability for the City to achieve climate action plan goals through reductions in greenhouse gas emissions.
- PACE program is 100% voluntary; property owners utilize this source of financing only if they choose.
- Creates competition in the marketplace and allows property owners to have a choice in their PACE provider.
- Each PACE provider has different interest rates and terms allowing property owners to have more choices.
- Each PACE provider covers a different range of energy, water and seismic upgrades, so more options means more types of projects can be eligible to the property owner.

Fiscal Impact: None. There is no direct cost to the City to join the various Joint Powers Agreement in order to sponsor PACE programs.

Recommendations:

1. Adopt two resolutions authorizing the inclusion of properties within the City's jurisdiction in the Ygrene program through the California Home Finance Authority Community Facilities District No. 2014-1 (Clean Energy) under SB 555 and under AB 811 and approving an amendment to the California Home Finance Authority/Golden State Finance Authority's Joint Powers Agreement (formerly the California Rural Home Mortgage Finance Authority) adding the City of Milpitas as an Associate Member, and authorize the City Manager to execute the amendment to the California Home Finance Authority/Golden State Finance Authority's Joint Powers Agreement adding Milpitas as an Associate Member.
2. Adopt a resolution authorizing the inclusion of properties within the City's jurisdiction in the California Home Energy Renovation Opportunity Program and approving an amendment to the Western Riverside Council of Governments Joint Powers Agreement adding the City of Milpitas as an Associate Member, and authorize the City Manager to execute the Associate Member Agreement with the Western Riverside Council of Governments.
3. Adopt a resolution approving, authorizing, and directing execution of an amended and restated joint exercise of powers agreement relating to the California Statewide Communities Development Authority, and adopt a resolution authorizing the inclusion of properties within the territory of the City of Milpitas in the California Statewide Communities Development Authority Open PACE Program for those providers signing the City's Letter of Agreement and the ABAG Regional Agreement.

4. Adopt a resolution authorizing the City to join the FigTree Property Assessed Clean Energy Program, authorizing the California Enterprise Development Authority to conduct contractual assessment proceedings and levy contractual assessments within the territory of the City of Milpitas.
5. Find that the actions are Exempt from Environmental Review under CEQA Guidelines Section 15378(b)(4).

Attachments:
a) PACE Provider Comparison Matrix
b) Resolution for Ygrene per Senate Bill 555
c) Resolution for Ygrene per Assembly Bill 811
d) Resolution – Home Energy Renovation Opportunity/Western Riverside Council of Govts
e) Resolution – CA Statewide Communities Development Authority Joint Exercise of Powers
f) Resolution – CA Statewide Communities Development Authority Open PACE Program
g) Resolution – Figtree

14. Adopt a Resolution Authorizing Issuance, Sale and Delivery of Wastewater Revenue Refunding Bonds for the Purpose of Refinancing the Costs of Acquiring and Constructing Wastewater System Improvement Projects, Approving an Official Statement and Related Matters (Staff Contact: Will Fuentes, 408-586-3111)

Background: As discussed at the October 17, 2017 City Council meeting and due to favorable market conditions, the City can refinance the 2006 Series A Certificates of Participation Sewer Financing ("2006 Certificates") via the issuance, in one or more series, of bonds. The bonds would be issued by the City pursuant to applicable provisions of the California Government Code and be secured by a pledge of net revenues of the wastewater (sewer) system.

To obtain funds to finance certain capital projects that are part of the wastewater (sewer) system, the City previously entered into an Installment Sale Agreement, dated as of December 1, 2006, between the Milpitas Public Financing Authority and the City (the "2006 Agreement"). Payments by the City under the 2006 Agreement were secured by a pledge of net revenues of the wastewater (sewer) system, and used by the Authority as security for the execution and delivery of the 2006 Certificates, in the initial principal amount of $9,535,000. The pledge of net revenues of the wastewater (sewer) system in the 2006 Agreement is similar to what is being proposed in the current refinancing.

Staff has determined, in consultation with its municipal advisor Fieldman, Rolapp & Associates, Inc. (FRA), that current bond market conditions are favorable for the issuance of refunding bonds to refinance the outstanding 2006 Certificates. Estimated average annual debt service savings based on current market conditions are approximately $45,000 per year beginning in 2018 and $379,000 total in Net Present Value Savings over the remaining nine year term of the refunded bonds. Any debt service savings as a result of the refunding will be a benefit to the City and the wastewater (sewer) system ratepayers.

City Council previously approved the refinancing of the 2006 Certificates and the financing team at the October 17, 2017 meeting. Approval of the proposed Resolution is the next step in the process and would authorize the issuance and sale of the City of Milpitas 2017 Wastewater Revenue Refunding Bonds (the "2017 Refunding Bonds") to refund the outstanding 2006 Certificates. The Resolution will also approve execution of an Indenture of Trust and other legal documents described below:

Indenture of Trust – The 2017 Refunding Bonds shall be issued pursuant to and secured by the Indenture of Trust (the "Indenture"), between the City and U.S. Bank National Association, which will be appointed to act as trustee on the Bonds (the "Trustee"). The Indenture describes the terms of the 2017 Refunding Bonds and contains provisions relating

to the redemption, prepayment, defeasance, default and amendment of or to the Refunding Bonds. Pursuant to the Resolution, the City Council will authorize the delivery and performance by the City Manager, the Director of Financial Services or the designee of either (each, an "Authorized Officer"), each acting alone, to execute and deliver the Indenture in such form, together with such changes, insertions and deletions as may be approved by an Authorized Officer.

Bond Purchase Agreement – The Bond Purchase Agreement authorizes the sale of the 2017 Refunding Bonds to an Underwriter. Per City Council approval at the October 17, 2017 meeting, the City has chosen Stifel, Nicolaus & Company as its Underwriter for the 2017 Refunding Bonds. The Bond Purchase Agreement outlines the conditions under which the refunding bonds will be issued, and requires the City of Milpitas to make a number of covenants and representations.

Irrevocable Refunding Instructions – The 2006 Certificates shall be prepaid pursuant to Irrevocable Refunding Instructions (the "Refunding Instructions"). The Refunding Instructions are from the City of Milpitas to the Trustee (U.S. Bank National Association), acting as trustee for the 2006 Certificates (the "Prior Trustee"), and specify the terms and conditions to provide for the payment and redemption of the outstanding 2006 Certificates.

The Resolution further authorizes the Authorized Officers who are identified as City Manager, the Director of Financial Services, or the designee of either, to subsequently execute certain documents and take other official actions necessary for issuing the 2017 Refunding Bonds, on behalf of the City of Milpitas and the City Council.

Refunding Process – It is anticipated that the refunding will take approximately two months to complete. One key milestone is already completed and several more milestones to complete the refunding are:

- City Council's approval to initiate the refunding of the 2006 Certificates and retain financing team (Completed – October 17, 2017)
- City Council approving a resolution to refund 2006 Certificates and approving legal documents (recommended action)
- Secure underlying credit ratings (November, 2017)
- Negotiated sale of 2017 Refunding Bonds (November 30, 2017)
- Bond closing and payoff of outstanding 2006 Certificates (December 14, 2017)

Preliminary Official Statement (POS) - The Preliminary Official Statement (POS) is still in draft form and staff is continuing to work with the City's Municipal Advisor and the City's Bond Counsel and Disclosure Counsel at Jones Hall to finalize the Preliminary Official Statement. Upon approval of the recommended resolution, the Authorized Officer on behalf of the City will deem the Preliminary Official Statement "final" pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule") prior to its distribution to prospective purchasers of the Bonds.

The Authorized Officers will be authorized and directed to cause the Preliminary Official Statement to be brought into the form of a final Official Statement and to execute said final Official Statement, dated as of the date of the sale of the Bonds, and a statement that the facts contained in the final Official Statement, and any supplement or amendment thereto (which shall be deemed an original part thereof for the purpose of such statement) were, at the time of sale of the Bonds, true and correct in all material respects and that the final Official Statement did not, on the date of sale of the Bonds, and does not, as of the date of delivery of the Bonds, contain any untrue statement of a material fact with respect to the City or omit to state material facts with respect to the City required to be stated where necessary to make any statement made therein not misleading in the light of the circumstances under which it was made. The Authorized Officers shall take such further actions prior to the signing of the final

Official Statement as are deemed necessary or appropriate to verify the accuracy thereof. The execution of the final Official Statement, which shall be in substantially the form of the Preliminary Official Statement and which shall include such changes and additions thereto deemed advisable by the Authorized Officers and such information permitted to be excluded from the Preliminary Official Statement pursuant to the Rule, shall be conclusive evidence of the approval of the final Official Statement by the City. The final Official Statement, when prepared, is approved for distribution in connection with the offering and sale of the Bonds.

Fiscal Impact: Due to favorable market conditions, the City can refinance the 2006 Certificates via the issuance of the Bonds. Net present value (NPV) savings to the City are currently estimated at $379,129 total or 7.38% of refunded bonds. These savings will be realized over the next nine years and be a benefit to the City and the wastewater (sewer) system ratepayers. Government Finance Officers Association (GFOA) guidance recommends pursuing refinancing opportunities when the NPV savings are greater than 3%. This refinancing exceeds that threshold by 4.38 percentage points. However, potential savings are based on market conditions as of the date of the staff report, and could change.

Recommendation: Adopt a resolution authorizing the issuance, sale and delivery of Wastewater Revenue Refunding Bonds for the purpose of refinancing the costs of acquiring and constructing Wastewater System Improvement Projects, approving an Official Statement, and related matters.

Attachments:
a) Resolution
b) Indenture of Trust
c) Bond Purchase Agreement
d) Irrevocable Refunding Instructions
e) Preliminary Official Statement (POS)

15. Adopt a Resolution Granting Final Acceptance of Public Improvements and Releasing Performance Bond for the Apex Apartment Project Located at 1102 South Abel Street by Milpitas Centria West, LLC, Tract No. 9773, Project No. 2583 (Staff Contact: Steve Erickson, 408-586-3301)

Background: On August 19, 2014, City Council adopted Resolution No. 8405 granting initial acceptance of public improvements installed, approved the reduction of the performance bond from $1,000,000 to $100,000 (10%), and authorized the start of the warranty period associated with the Apex Apartment Project No. 2583.

Public improvements installed included underground utilities and street improvements along the South Abel Street frontage, and a public park on a half-acre City parcel at the corner of South Abel Street and Great Mall Parkway. A final inspection of the improvements was made and they were found to be satisfactory. Pursuant to Milpitas Municipal Code Section XI-1-17.05 (a), the project is now ready for final acceptance and release of the performance bond.

Fiscal Impact: None. Construction was completed and the project is ready for City final acceptance.

Recommendation: Adopt a resolution granting final acceptance of public improvements and releasing performance bond for the Apex Apartments project located at 1102 South Abel Street by Milpitas Centria West, LLC, Tract No. 9773, Project No. 2583.

Attachment: Resolution

16. Adopt a Resolution Granting Initial Acceptance, Release the Performance and Payment Bonds and Authorize Acting City Engineer to Issue the Notice of Final Acceptance After the One-Year Warranty Period for the Daniel Court Water Main and Services Replacement, Projects No. 7110 and No. 7131 (Staff Contact: Steve Erickson, 408-586-3301)

Background: The City Council awarded the Daniel Court Water Main and Service Replacement, Projects No. 7110 and No. 7131 to D & D Pipelines, Inc. on June 20, 2017. The project provided for the installation of a new water main, service laterals, and the asphalt overlay of Daniel Court. The work was successfully completed on time and within budget this last August.

Staff recommends the City Council adopt a resolution granting initial acceptance of the project and to authorize the release of the contractor's faithful performance and payment bonds and initial the one-year warranty for the work. Staff also recommends the City Council authorize the City Engineer to issue the Notice of Final Acceptance after the one year warranty period without further City Council action, provided all warranty work is completed to the satisfaction of the City Engineer.

Fiscal Impact: None. Construction has been completed.

Recommendation: Adopt a resolution granting initial acceptance of the Daniel Court Water Main and Service Replacement, Projects No. 7110 and No. 7131, subject to a one year warranty period and releasing the faithful performance and payment bonds; and granting authorization to the City Engineer to issue the notice of final acceptance bond after the one-year warranty period without further City Council action.

Attachment: Resolution

XVII. AGREEMENTS

17. Approve and Authorize the City Manager to Execute a Consultant Services Agreement with Bartle Wells Associates to Conduct a Comprehensive Water Rate and Cost of Service Study for the Amount Not to Exceed $45,000 (Staff Contact: Tony Ndah, 408-586-2602)

Background: In the fall of 2015, staff retained the services of Bartle Wells Associates to conduct a comprehensive water rate and cost of service study for the City. The study examined the City's water fixed and variable costs for operations and maintenance, and capital improvements. The 2015 water rates study recommended the following:

- Adopt American Water Works Association capacity standards to scale fixed charges with all meters 6-inches and larger paying the same rate.
- Implement a uniform rate instead of a tiered rate for the volumetric (i.e. quantity) charge.
- Implement long-term financing (bonds) to fund capital projects with long-term benefits.
- Recover capital costs through a capital program surcharge.

In December 2015, Council adopted a uniform water rates structure for the City, which was implemented over two years, with the first increase occurring in January 2016, and the second increase occurring in April 2016. In September 2016, Council approved the creation of a citizen's task force on water rates and one of the objectives of the task force was to explore the feasibility of alternative water rate structures. At a special council meeting on October 18, 2017, the Citizen's Task Force on Water Rates recommended that Council direct staff to

work with a consultant to develop a tiered water rate structure suitable for the City that does not violate the conditions of Proposition 218.

A scope of work for a comprehensive water rate and cost of service study was developed to include an update of the City's existing uniform rate structure and for a consultant to develop water rate alternatives based on a robust cost analysis for the City to evaluate. Since Bartle Wells Associates worked with the City on its most recent rate study in December 2015,that firm has existing knowledge of the City's water system, related capital improvements, operational needs, and the existing uniform rate structure. As such, Bartle Wells is most suited to provide the services needed to update the existing uniform rate and have the practical experience relative to the City's specific needs to prepare alternative rate structures for the City's consideration.

The proposed consultant services agreement with Bartle Wells Associates has a sum total not to exceed $45,000.

California Environmental Quality Act: The action is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

Fiscal Impact: None. There are sufficient funds in the Utility Engineering operating budget through June 30, 2017.

Recommendation: Approve and authorize the City Manager to execute a Consultant Services Agreement with Bartle Wells Associates to conduct a Comprehensive Water Rate and Cost of Service Study for a sum not to exceed $45,000.

Attachment: Agreement with Bartle Wells Associates

18. Approve and Authorize the City Manager to Execute a Consultant Services Agreement with Crocker & Crocker for the Water Rate Community Engagement Program for the Amount Not to Exceed $40,000 (Staff Contact: Tony Ndah, 408-586-2602)

Background: The City is considering water rate adjustments in order to maintain proper revenue to cover operations and maintenance expenses, fund proposed capital improvements, and maintain adequate reserves in the water utility fund.

In December 2015, the City Council conducted a public hearing and adopted a new water rate structure for the City, and the new water rates were implemented in two phases, with the first increase occurring in January 2016, and the second increase occurring in April 2016. During the December 2015 public hearing, residents commented that the City should have done more outreach efforts to engage the public on the new water rates. In September 2016, Council created the Citizen's Task Force on Water Rates. At a special council meeting on October 18, 2017, the Task Force recommended that Council direct staff to work with a consultant to implement a community engagement program for water rates.

Staff developed a scope of work for consultant services to develop and implement a community outreach program for the City's upcoming water rate adjustment. The proposed public outreach and community engagement program will focus on developing strong community partnerships that reach residential and commercial audiences, stakeholder groups, and the media.

Crocker & Crocker has successfully performed similar functions for other cities in the area with the development and implementation of successful outreach programs that resonated with property owners, stakeholder groups, businesses, business organizations, and the media to provide information related to water rates and services. The proposed Crocker & Crocker

consultant services agreement has a total sum not to exceed $40,000. This agreement will allow the firm assist staff with public outreach and education efforts in support of the contemplated water rate adjustments for the City.

California Environmental Quality Act: The action is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

Fiscal Impact: None. There are sufficient funds in the Utility Engineering operating budget through June 30, 2017.

Recommendation: Approve and authorize the City Manager to execute a consultant services agreement with Crocker & Crocker for the Water Rate Community Engagement Program for a sum not to exceed $40,000.

Attachment: Agreement with Crocker & Crocker

19. Consider the Subdivision Improvement Agreement, the Public Street Maintenance Agreement and the Fee Reimbursement Agreement for a 199-unit Senior Assisted Living Residential Development at 1504-1620 South Main Street by Milpitas Phase I, LP (Staff Contact: Steve Erickson, 408-586-3301)

Background: On November 18, 2014, the City Council conditionally approved a Vesting Minor Tentative Map and a Site Development Permit for a 199-unit senior assisted living residential development at 1504-1620 South Main Street between Abel Street and Cedar Way by Milpitas Phase I, LP.

The Parcel Map for the vesting minor tentative map was approved by the Milpitas Planning Commission on September 27, 2017. The City Engineer has reviewed and approved public improvement plans (E-EN16-0149 and E-PI16-0002) pursuant to Milpitas Municipal Code XI-1-7.09-2. Public improvements to be constructed as part of this development include approximately 1,250 liner feet of new 12 inch sanitary sewer main line; new traffic signal facilities at the intersection of South Main Street and the new eastern extension Cedar Way; and two new public streets Costa Street and the eastern extension of Cedar Way with new utilities, curb, gutter, sidewalk, curb ramps, streetlight and street trees.

The developer has executed a Subdivision Improvement Agreement and provided improvement securities (in the total amount of $2,742,000 for faithful performance and for labor and materials respectively) as required to guarantee completion of all required public improvements.

The developer has also executed a Public Street Maintenance Agreement as required by the project conditions for perpetual maintenance of the two new public streets. Additionally, the developer has executed a Fee Reimbursement Agreement as required by project condition for replacement of an existing sanitary sewer main line within South Main Street. The three aforementioned agreements have been approved by the City Attorney as to form and by the City Engineer as to substance.

California Environmental Quality Act: Consideration of these agreements would not be a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

Fiscal Impact: The fee reimbursement for replacement of the sanitary sewer main would be partially funded by Transit Area Specific Plan (TASP) fees and the Sewer Fund. The actual amount of the reimbursement will be based upon the actual cost for construction of the sanitary sewer main. The estimated reimbursement amount is $1.3 million, and staff will

return to the City Council for approval of a budget appropriation once installation of the sewer main has been completed and the final cost of construction has been determined.

Recommendation: City Council shall consider the Subdivision Improvement Agreement, the Public Street Maintenance Agreement and the Fee Reimbursement Agreement for a 199-unit senior assisted living rental residential development known as Senior Lifestyle at 1504-1620 South Main Street by Milpitas Phase I, LP.

Attachments:
a) Subdivision Improvement Agreement
b) Public Street Maintenance Agreement
c) Fee Reimbursement Agreement

20. SUCCESSOR AGENCY

Authorize the Executive Director of the Successor Agency of the Former Milpitas Redevelopment Agency to Execute a Purchase & Sale Agreement with the Milpitas Community Museum for Property at 230 N. Main Street (APNs 028-34-001 through 028-34-094) (Staff Contact: Jane Corpus, 408-586-3125)

Background: As a result of the Dissolution Act and the Settlement Agreement entered into with the State of California, the County of Santa Clara and other involved parties, a Long Range Property Management Plan ("LRPMP") was approved by the Oversight Board that addresses the disposition and use of the real properties of the former Milpitas Redevelopment Agency. The LRPMP identifies four properties as assets of the Successor Agency that are required to be sold through a Request for Proposals ("RFP") process. Three of the properties have previously been sold and the fourth is located at 230 N. Main Street (APN 028-34-001 through 028-34-094). On November 8, 2017, the Oversight Board approved the sale of the property to the Milpitas Community Museum, a nonprofit organization which made the highest offer of $315,000. The Oversight Board also directs the Successor Agency to execute the Purchase & Sale Agreement within 15 days of its execution by the Milpitas Community Museum ("Buyer"). Included in the Council/Agency's agenda packet is the executed agreement by the Buyer and the Buyer's Proposal to Purchase.

Fiscal Impact: The City of Milpitas will receive approximately 16% of the net sale proceeds.

Recommendation: Authorize the Executive Director of the Successor Agency of the former Milpitas Redevelopment Agency to execute a purchase and sale agreement with the Milpitas Community Museum for property located at 230 N. Main Street (Assessor Parcel Numbers 028-34-001 through 028-34-094).

Attachments: Sale Agreement and Proposal to Purchase

XVIII. REPORTS OF MAYOR & COUNCILMEMBERS – from the assigned Commissions, Committees and Agencies

XIX. ADJOURN JOINT MEETING

NEXT REGULAR CITY COUNCIL MEETING
TUESDAY, DECEMBER 5, 2017

October 2017

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

December 2017

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

MILPITAS CITY COUNCIL CALENDAR
November 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 **2:00 PM**-Santa Clara VTA Monthly Briefing - Northeast Group (BN) (Santa Clara) **7:00 PM**-Community Advisory Commission (MG)	**2** **1:30 PM**-Santa Clara County Library Joint Powers Authority Board (GB) **5:30 PM**-Chamber of Commerce Board **5:30 PM**-Santa Clara Valley Transp. Authority Board of Directors (BN) ~~**7:00 PM** Bicycle Pedestrian Advisory Commission (MG)~~	**3**	**4** **12:00 PM**-Special Council Meeting – Budget Work-shop (Senior Center)
5	**6** **7:00 PM**-Parks, Recreation & Cultural Resources Commission (GB)	**7** **5:00 PM**-Closed Session **7:00 PM**-City Council	**8** **1:30 PM** Council Facilities & Streets Naming Subcommittee (GB/AP) **1:30 PM**-Milpitas Oversight Board **7:00 PM**-Planning Commission	**9** **4:00 PM**-Santa Clara VTA Policy Advisory Committee (BN) **4:00 PM**-Treatment Plant Advisory Committee (MG) (San Jose) **7:00 PM**-Cities Association of Santa Clara County (MG) ~~**7:00 PM** Youth Advisory Commission (AP)~~	**Friday, November 10** All City Departments closed in observance of Veterans Day **Saturday, November 11** **VETERAN'S DAY CEREMONY** 9 AM – Veteran's Memorial Plaza	
12	**13** **4:00 PM**-Economic Development Commission (AP)	**14**	**15** **6:00 PM** – New Recycling and Garbage Program Community Meeting (Committee Room)	**16** **10:00 AM**-VTA Congestion Management Program & Planning Committee (BN) **12:00 PM**-VTA Administration & Finance Committee (BN) **6:30 PM**-Bay Area Water Supply & Conserv Agency (RT) (San Mateo) **7:00 PM**-Emergency Preparedness Commission (MG)	**17**	**18**
19	**20** ~~**7:00 PM** Telecommunications Commission (GB)~~ **7:00 PM**-Library Advisory Commission (GB)	**21** **5:00 PM**-Closed Session **7:00 PM**-City Council	**22** ~~**7:00 PM** Planning Commission~~	**23 and 24** **THANKSGIVING DAY** All City Departments closed for Holiday 		**25**
26	**27** **7:00 PM**-Arts Commission (MG)	**28**	**29** **7:00 PM**-Planning Commission	**30** ~~**6:00 PM** Sister Cities Commission~~		

Updated 11/15/2017

November 2017

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

January 2018

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

MILPITAS CITY COUNCIL CALENDAR

December 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 **30th ANNIVERSARY - TREE LIGHTING CEREMONY** **6:30PM to 8:30 PM** **Civic Center Plaza**	**2**
3	**4** **7:00 PM**-Parks, Recreation & Cultural Resources Commission (GB)	**5** **5:00 PM**-Closed Session **7:00 PM**-City Council	**6** **2:00 PM**-Santa Clara VTA Monthly Briefing - Northeast Group (BN) (Santa Clara) **5:30 PM**-Veterans Commission (RT) **7:00 PM**-Community Advisory Commission (MG)	**7** **5:30 PM**-Santa Clara VTA Board of Directors (BN) **5:30 PM**-Milpitas Chamber of Commerce Board	**8**	**9** **MILK & COOKIES WITH SANTA** **10 AM to 11:30 AM** **12PM to 1:30 PM** **Milpitas Community Center**
10	**11**	**12**	**13** **7:00 PM**-Planning Commission	**14** **12:00 PM**-Terrace Gardens Board of Directors (BN) **4:00 PM**-Santa Clara VTA Policy Advisory Committee (BN) **7:00 PM**-Youth Advisory Commission (AP)	**15**	**16**
17	**18**	**19** **5:00 PM**-Closed Session **7:00 PM**-City Council	**20**	**21** **10:00 AM**-Santa Clara VTA Congestion Management Program & Planning Committee (BN) **12:00 PM**-Santa Clara VTA Administration & Finance Committee (BN)	**22** **CITY HALL closed for Holiday** 	**23**
24	**25** **CITY HALL closed for Holiday** 	**26** **1:30 PM**-Senior Advisory Commission (BN)	**27**	**28**	**29**	**30**
31	**JAN 1, 2018** **CITY HALL closed for Holiday** 					

Printed 11/15/2017

Draft MEETING MINUTES
CITY OF MILPITAS

Minutes of: **Special Meeting of Milpitas City Council**
Date: **Saturday, November 4, 2017**
Time: **12:00 PM**
Location: **Barbara Lee Senior Center, Room 140-141**
140 N. Milpitas Blvd., Milpitas, CA

CALL TO ORDER

Vice Mayor Grilli called the meeting to order at 12:18 PM. City Clerk Mary Lavelle called the roll.

PRESENT: Vice Mayor Grilli, Councilmembers Nuñez and Phan

ABSENT: Mayor Tran and Councilmember Barbadillo

All members of the Senior Management Team (department heads excepting the City Attorney) were present along with consultants.

STUDY SESSION

Acting City Manager Steve Pangelinan introduced Mr. Greg Larson from the Management Partners firm, who would lead the budget session at this meeting. Mr. Larson then introduced Steve Toler and Jim Steele from his firm. Others who would work on the Milpitas project were: Larry Lisenbee, Heain Lee and Nina Bucar. He started out by sharing eight best practices for local government budgeting in California cities. Then the consultant would hear from Council about priorities for Milpitas in order to provide project support to the City.

Councilmember Nuñez asked questions about the impact of the existing adopted Strategic Plan. Mr. Larson responded that the existing document was only one input of many for the budget planning on this date. Some Council members wanted to know if the new Council would work on adopting a new Strategic Plan for the City. Mr. Larson responded what could be done while the work on this date was not about whether or not to update it, to use the existing one or to begin a process for a new Strategic Plan. More focus would occur on engagement with the public on the budget process in Milpitas, with realistic timelines. The proposed project approach, in five steps, was explained along with the timeline.

Vice Mayor Grilli asked how input would be gained from all city employees, if there was a way beyond interviews with labor groups. Mr. Toler expressed that would happen during Community Engagement, via survey and meetings. Three ways for community engagement were defined: group interviews with stakeholders, online surveys, and community workshops. Mrs. Grilli wanted to have some employee focus groups. Mr. Nuñez commented on a list of groups to participate and his view of whom to include, such as San Francisco Public Utilities Commission and Santa Clara Valley Water District (water wholesalers) but not the neighboring City of Fremont.

Councilmember Nuñez would like to see a stronger partnership with using schools to reach communities (e.g. those that did not have Homeowners Associations), and not necessarily NextDoor online.

Councilmember Phan emphasized with outreach to the community to be sure to incorporate clear communication with those who speak minority languages. He requested to have a person to receive the survey feedback who speak other languages.

Next, Finance Director Will Fuentes explained there would be a demonstration of Peak Democracy software, (a company recently acquired by OpenGov) as a tool for online community engagement. There was a demonstration by Mike Cohen via conference call showing an example - City of Salinas, CA – where the product was in use. It was more versatile than the Survey Monkey program. The Peak representative said the cost would be approximately $10,800 per year.

Vice Mayor Grilli said the Council would take a break at 2:06 PM and later reconvened at 2:27 PM.

After the break, the Finance Director described various resources available to the City Council, including the City's adopted budget, Capital Improvement Program, and the GFOA's "An Elected Officials Guide to Government Finance" booklet which he distributed.

Next, Assistant Finance Director Jane Corpus reviewed a valuable handout with the summary of all of the City's budget funding sources (fund accounting). She explained all funds, what was restricted and by what regulation, and answered questions from the Council.

Councilmember Nuñez commented on the explanation by Ms. Corpus of the two lines (p. 2 of spreadsheet distributed) on the Water Maintenance and Operation fund and the Water CIP fund. He felt those should be combined to best allow customers to understand why they paid the $6.53 service fee on their bill.

Councilmember Nuñez said he may need to talk to the Chief about the requirement for the fee charged for public art and perhaps to re-visit that ordinance.

Councilmember Phan said he'd like to request on a City Council agenda for four hours or more of staff time to research and find out about Enhanced Infrastructure Financing Districts (EIFDs) and consider those for Milpitas.

Next, Ms. Corpus went over with the City Council "how to read" the adopted final budget book for FY 2017-18.

Councilmember Nuñez asked how often the staff came back to City Council to report on how it's going with the budget. Ms. Corpus said it was quarterly on the General Fund, later on water and sewer funds. At the mid-year, typically, staff came to City Council with any needed adjustments to the adopted budget.

Next, Acting City Engineer Steve Erickson reviewed with the City Council "how to read" the adopted Capital Improvement Program book for FY 2017-22. He detailed how staff and Council arrived at the final CIP each year, and detailed the funding sources and expenditures for the many projects. For FY 2016-17, the amount budgeted for CIPs was $59,633,540 in total.

Councilmember Nuñez recommended to seek and get community input into the CIP well ahead of the budget workshop and public hearing, in response to Mr. Erickson's explanation of currently implemented CIP. He suggested it was unneeded to go to Finance Subcommittee, if that was not mandatory.

Next, Mr. Fuentes discussed achieving long-term fiscal sustainability of the City. He described PERS pension costs and obligations of the city to fund those. $165.18 million was the current figure of unfunded pension liability for the City as of July 30, 2017 for both public safety and miscellaneous employees. Also noted were Other Post-Employment Benefits (OPEB), currently at $39.1 million as unfunded liability.

The Finance Director described the coming "GovInvest" web tool for PERS pension and OPEB liabilities presentation online for cities to clearly understand these major obligations. Mr. Fuentes anticipated bringing this to the Milpitas City Council in the spring of 2018.

ADJOURNMENT Vice Mayor Grilli adjourned the special City Council meeting at 5:07 PM.

Meeting minutes respectfully submitted by
Mary Lavelle, City Clerk

Draft MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**Joint Meeting of Milpitas City Council, Successor Agency and Public Financing Authority**
Date:	**Tuesday, November 7, 2017**
Time:	**5:00 PM Closed Session** **7:00 PM Open Session**
Location:	**Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas**

CALL TO ORDER

Mayor Tran called the joint meeting to order at 5:01 PM. City Clerk Mary Lavelle called the roll.

PRESENT: Mayor Tran, Vice Mayor Grilli, Councilmembers Nuñez and Phan

ABSENT: Councilmember Barbadillo was absent at roll call and arrived in Closed Session at 5:10 PM.

CLOSED SESSION

City Council convened in Closed Session to discuss labor negotiations, litigation and personnel matters, as listed on the agenda. City Attorney Chris Diaz said that Mayor Tran would recuse himself on Closed Session agenda item (e).

City Council then convened in Open Session at 7:01 PM with all members present.

ANNOUNCEMENT

The City Attorney stated there was no reportable action out of Closed Session.

PLEDGE

Boy Scouts Troop No. 163 presented the flags and led the pledge of allegiance.

INVOCATION

Councilmember Phan yielded invite to Mayor Tran, who invited Pastor Darren Johnson to give the invocation prayer.

PRESENTATIONS

Mayor Tran proclaimed *America Recycles Day* on November 15, 2017.

The Mayor commended Knights of Columbus for its work on People with Intellectual Disabilities fundraising campaign by St. Elizabeth Council#8747, held October 21-22, 2017. The Commendation was accepted by Gwan Ali-Santosa, Voltaire Montemayor and Guillermo.

PUBLIC FORUM

Councilmember Phan asked for a moment of silence for the victims of a shooting in Texas. He thanked the audience. He expressed the need for action on gun violence and called for that.

Rob Means, 1421 Yellowstone resident, commented on legislation needed for gun control. He referred to mail received at his home about energy storage system, for Tesla home energy.

Robert Marini, Milpitas resident, displayed a slide on "Current Water Rate CIP Plan." He discussed details of that plan, describing savings and losses on water costs.

Voltaire Montemayor, Milpitas resident, said it was risky if there was bionondegradable soil in the City. He commended those Knights of Columbus and mentioned unused potable water.

Michael Tsai, Milpitas resident, was happy that Council found a solution to help the residents of Sunnyhills Apartments. He appreciated their leadership, especially that of Councilmember Nuñez. He said gun violence topic was hitting home, with recent incidents and he felt fortunate for having the professional police department here.

ANNOUNCEMENTS

Acting City Manager Steve Pangelinan anounced that the Police Department was up and running with the new Safe Zone Exchange available at the front parking lot at the police station.

Councilmember Nuñez wanted to thank the many Milpitas firefighters who had responded to fires recently in northern California, and for their services here in the City. Many were in the audience at this meeting.

Vice Mayor Marsha Grilli thanked Will Fuentes, Jane Corpus, Steve Pangelinan and all the staff who provided a great budget workshop for the Council last Saturday. The Council and staff were getting ready to include lots of input from the community for the next budget.

Vice Mayor Grilli referred to a recent Santa Clara County Office of Supportive Housing report. It spurred to ask for maybe in January or February, for the City Attoreny to bring back a Just Cause Ordinance and perhaps a Rent Subsidy Ordinance. The City should join the home investement consortium. She suggested that perhaps in January, staff could come back to Council on this.

Mayor Tran felt all the staff had been outstanding, highlighting the many excellent Recreation events in the fall, for example.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. None were reported.

APPROVAL OF AGENDA

Motion: to approve the meeting agenda, as amended

The Acting City Manager noted that staff requested to remove agenda item no. 26 (Public Trail Maintenance Agreement at 31 S. Milpitas Blvd.).

Mayor Tran asked to move agenda item No. 13 to go to next Council meeting (homeless strategy).

Councilmember Nuñez asked to move up to be heard first agenda item No. 19 (CCE). He noted that the County had a Homeless Services Consortium, including cities, and asked if the City had someone represented on it. Perhaps Milpitas could have someone from the City attend.

Mayor Tran asked to move up agenda item No 17 to be heard earlier and to move no. 22 up front.

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

City Attorney Diaz described the new process for this evening's meeting and in the future, requesting Councilmembers state which items they wish to place onto the consent calendar.

Councilmember Nuñez requested to place these agenda items on consent: 1, 2, 3, 5, 6, 12, 18, 20, 23, 24, 25, 27 and 28. Vice Mayor Grilli agreed with his list.

Councilmember Phan made a request on item no. 2 (meeting minutes October 18) on the bond refinancing vote, his said his vote was nay on that item, and agreed with placing approval of meeting minutes onto consent. He requested to add to consent items no. 9, 11 and 16.

Motion: to approve the Consent Calendar with 16 items on the list as determined at the meeting

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

*1. Council Calendar — Accepted City Council calendar for November 2017.

*2. Meeting Minutes — Approved City Council meeting minutes of October 17, 18 and 26, 2017.

UNFINISHED BUSINESS

*3. Update of odor report — Received the monthly update of the Odor Control Report.

4. GPAC update — Planning Director Brad Misner presented the status of the General Plan update and introduced the consultant. Mr. Ben Richie from DeNovo Planning Group, project manager for the City's GP update. This was a two-year process which involved a great deal of public outreach. He identified steps in the public participation process for creating a new long-term General Plan for the City. Mr. Richie listed outreach efforts made so far and planned for, in the coming year.

The General Plan Advisory Committee had met six times this year, since April. The appointed members were intended to serve as community liaisons and project ambassadors. The seven elements of the General Plan were identified. A Preliminary Draft Policy was set for: noise, safety, Parks & Recreation and open space. The group had not yet begun discussions on the major element on land use.

Mayor Tran asked how long the consultant had served and he said one year. The Mayor liked the framework of the plan and the key element of community input and participation.

Mr. Misner said staff and consultant would have to go out to the community and get more than 30-40 people at outreach public meetings. He noted the project website: milpitas.generalplan.org

Mayor Tran asked about the school district and its involvement in the process. Staff replied that the Milpitas Unified Schools Superintendent Cheryl Jordan served on the GPAC. He inquired about the two city Specific Plans and how those fit with the General Plan. Staff said those were their own specific plans, with very detailed sections for one area of the City. The General Plan was a broader policy document, not focused on one area of town.

The Mayor sought more economic development and more recreation services. Those two should be emphasized alongside land use plans.

Councilmember Barbadillo said he was expecting more at this meeting. He'd looked at the website and information on meetings held so far. He knew there were a lot of amendments to the General Plan. How about incorporating all of those into the updated General Plan, he suggested. Since September 2016, had the staff and the consultant looked at those amendments, toward creating the new General Plan? Topic by topic, they would do so, the consultant said. Mr. Barbadillo wanted assurance that the consultant would incorporate any General Plan amendments in the Land Use element.

Councilmember Nuñez commented on the process from the past, including that someone from schools was specifically included in the General Plan process. To date, he was not impressed. What he saw on the website, and for was spent so far, he saw very little return. He was looking forward to the General Plan starting with the Council (not the process done so far).

Mayor Tran asked when the process started and when would the final product be ready. Mr. Misner responded it began in September 2016, when the General Plan was first discussed for revision. In March of 2017, GPAC members began to meet.

Councilmember Phan asked about various Elements of the General Plan. Seven were required and seven others (non-mandated ones) were directed to go in the new plan for Milpitas. He wanted to ensure the Economic Development office was included, especially the Economic and Fiscal Sustainability Element. Mr. Richie noted that the Economic Development Director was involved since the start. He asked if community outreach could be aligned with other plans, such as budget outreach and the strategic plan.

	Mr. Misner explained how the major land use plan differed from those other city efforts. Community outreach might be involved with the budget, too. Mr. Phan asked about a study session on land use, and if that could be brought to the GPAC as well. He asked if marijuana fit in with this plan. The consultant replied that it could, as much as Council wanted it to, or not. Councilmember Phan asked about the people appointed to the GPAC and whether or not they included business stakeholders, who should be on it. Councilmember Nuñez was looking to the Council, about rolling up their sleeves and to look at maps. He asked staff if that would be a Saturday meeting and the acting City Manager said it could be. The Planning Director would get back to Council on doing that part of the work with the City Council. Staff was open to having workshops with Councilmembers on how to do those the way the Council would like. Councilmember Barbadillo urged staff to include the Planning Commission on any study session that would be scheduled on the General Plan. No vote was taken on this topic. The Council moved next to agenda items no. 15 and no. 21.
*5. Resolution – Approve Site Development 430 Evans Road	Adopted Resolution No. 8709 approving Site Development Permit No. SD17-0009 to construct a new carport with rooftop solar photovoltaic system on a 5.1 acre site located at 430 Evans Road.
*6. Agreement with RMC	Approved and authorized the City Manager to execute Consultant Services Agreement with RMC Water and Environment for support on the Bay Area Rapid Transit Project, CIP No. 4265 and Montague Expressway Widening Project, CIP No. 4179.
7. List of items	This item was not heard and would be continued to the next agenda.
8. Commissions	This item was not heard and would be continued to the next agenda.
*9. Comcast store closure	Received a report from the Information Services Director regarding the Comcast Cable store closure and directed staff to continue working with Comcast on an amendment to the agreement.
10. Introduce Ordinance No. 48.21 on Solid Waste	This item was not heard and would be continued to the next agenda.
*11. Resolution – purchase 4 vehicles for Police	Adopted Resolution No. 8610 authorizing the Purchasing Agent to purchase four City vehicles from the National Auto Fleet Group for an amount not to exceed $148,941.54 through a cooperative procurement contract through the National Joint Powers Alliance.
*12. Improvement Agreement	Approved and authorized the City Manager to execute an Improvement Agreement for a new self-storage facility at 1 Hanson Court by One Hanson, LLC.

REPORTS

13. Homeless Strategy	Mayor Tran requested to defer this topic to a future meeting date.
14. Request for Staff Time	This item was not heard and would be continued to the next agenda.

NEW BUSINESS

15. FY 2016-17 Year End

Finance Director Will Fuentes gave the fiscal year-end report for FY 2016-17, with mostly good news overall. Revenues were $101.94 million and Expenditures were $80.30 million, leaving $21.64 million in overall surplus. 15% must go to reserves, and that left $24.30 million in unassigned Contingency Reserve balance. Most of the figures referred to the General Fund.

Mayor Tran thanked Mr. Fuentes for the report and was pleased on hearing the surplus. He wondered if expenditures would increase with all the hiring (more employees) and other costs. Mr. Fuentes said expenditures may go up due to various factors, including new contracts. The Mayor asked about settlements paid due to lawsuits and where those were paid from and staff responded, the General Fund.

Councilmember Nuñez referred to figures in the staff report, regarding the School District's payment for land. Mr. Nuñez asked staff what he based his prediction for increasing revenues on e.g., the last 4 or 6 months of revenue this year. Mr. Fuentes said it was on the last quarter of the year and other factors.

Councilmember Phan (on table 3) asked question about a seemingly high loss of investment income line from FY 15-16 v. FY 16-17. Mr. Fuentes replied it was a "paper loss" only and provided further explanation of that line on the Table 2 General Fund Revenues chart. He asked if the City could invest in companies operating in the city and staff said yes, up to a certain amount. Mr. Phan wanted to support great companies in the city, to be successful and to thrive.

No vote on the Finance Director's report was taken.

*16. Investment Report

17. Joint Meeting – Loan Documents 355 Sango Ct.

Planning Director Brad Misner, with Housing Manager Tim Wong, explained the request for a $150,000 predevelopment loan for a new proposed development at 355 Sango Court, which would include units for low-income residents. Mr. Wong listed details of the loan agreement, including a collateral agreement. The developer was Resources for Community Development (RCD), which had executed a purchase agreement with the landowner already, to move ahead on a 102-unit apartment site strictly for low-income and extremely-low income residents. A representative (Dan) from the developer was present.

Mayor Tran mentioned concerns about those with mental health or substance abuse, a vulnerable population who needed outside services. There was a need to have what's appropriate at this site. Mr. Misner reported that on-site residential services were requested in the project. The RDC representative said his company would be partnering with the County, which would fund some staff and social services for residents on-site.

Councilmember Nuñez asked how secure the Measure A funds were and how this program fit in the group's overall efforts. Services there were important, and also needed was transportation. Mr. Misner responded about the final overall plan would come to the Council later, with some outreach to the community. Mr. Nuñez asked about a possible local preference for Milpitas residents to live there.

Councilmember Phan expressed his support for this project, and the reputable track record of the organization. He urged the City to expedite the entitlement process in any way possible.

Councilmember Barbadillo, asked if assuming that it will not generate so much Measure A funds, was it part of an affordable housing policy to partner with the group to build low income housing? Mr. Wong replied all were very confident that the Sango Ct. project would get the Measure A funds. Staff and developer would seek all funds needed to get the homes built.

Councilmember Nuñez asked the detail, what density per acre for this development. Mr. Misner responded that it was up to 60 for the zoning, and with a density bonus, RCD could get a 35% bonus, which would be up to 80 per acre, and the site was a little more than 100 acres.

Three actions were then approved by motions.

Motion: to approve the $150,000 predevelopment loan documents, in substantial form

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to appropriate $150,000 from the Housing Authority Fund to the Planning and Neighborhood Services operating budget

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to authorize the Interim Executive Director to execute the loan documents on behalf of the City's Housing Authority

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

ORDINANCES

*18. Ordinance No. 289.1

Waived the second reading and adopted Ordinance No. 289.1 amending Chapter 2 and Chapter 4 of Title I of the Municipal Code relating to Purchasing and Contract Authority.

19. Two Resolutions and Ordinance No. 296

Economic Development Director Edesa Bitbadal summarized the discussion held at the City Council meeting on October 17 about this program. At this meeting, the Council needed to take the legal actions to join the community choice energy program, Silicon Valley Clean Energy. SVCE staff Alan Suleiman spoke to the Council at the podium. He described communication efforts that were done and would be made for residents and businesses in Milpitas.

Councilmember Barbadillo referred to a requirement, that prior to membership, there should first be a study, certified by the state. Last time he asked about it, that phase was skipped and it would come after joining the CCE. Ms. Bitbadal explained that a technical study was done when forming a CCE. With this organization, it was already launched, was viable already and the study was done prior to forming.

Vice Mayor Grilli noted that this topic was Council directed. She'd asked to have this group come to the City Council.

Councilmember Phan referred to a state law requirement and asked about "opt out" fees. He asked more about outreach efforts to residents in Milpitas. He objected to the $5 fee for low income residents.

Councilmember Nuñez asked if the City had determined what the savings would be. Staff responded not yet, and could come back with that at the time a board member shall be appointed. With five to six months to get started, that was a good amount of time to reach out to all the residents. With the commercial element to the program, it would make Milpitas more competitive in the marketplace. He favored it.

Mayor Tran asked if anyone had sleep apnea, and referred to a friend who received a break from PG&E for his medical needs. So, he asked if this was this available with the new program. SVCE would save 30% more if customers switched over to the new electricity provider. Medical baseline customers would get additional savings.

The Mayor invited comment from the audience.

Rob Means, Milpitas resident, said it was more like PG&E was offering what's not really a good deal. He talked about all the money PG&E was collecting with the higher rates. With the new SVCE, the City of Milpitas would benefit in so many ways, including clean energy generation.

Voltaire Montemayor, resident, carbon free electricity, solar source, was not there yet. It was positive, so join now while the neighbors were joining.

(1) Motion: to adopt Resolution No. 8711 requesting that the City be approved as a member of the Silicon Valley Clean Energy Authority by the Authority's Board of Directors

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5
NOES: 0

(2) Motion: to adopt Resolution No. 8712 approving the Silicon Valley Clean Energy Authority Joint Powers Agreement and authorizing the Mayor to execute the agreement after the City of Milpitas is approved as a member of Silicon Valley Clean Energy Authority

Motion/Second: Vice Mayor Grilli/Councilmember Barbadillo

Motion carried by a vote of: AYES: 5
NOES: 0

City Attorney Diaz read aloud the title of Ordinance No. 296, "An Uncodified Ordinance of the City Council of the City of Milpitas Electing to Implement a Community Choice Aggregation Program."

(3) Motion: to waive the first reading beyond the title of Ordinance No. 296

Motion/Second: Vice Mayor Grilli/Councilmember Barbadillo

Motion carried by a vote of: AYES: 5
NOES: 0

(4) Motion: to introduce Ordinance No. 296

Motion/Second: Councilmember Phan/Councilmember Nuñez

Motion carried by a vote of: AYES: 5
NOES: 0

Staff would return to the City Council in the future with a recommendation for appointment of a Director and an alternate Director to the Authority's Board of Directors.

RESOLUTIONS

*20. Resolution – Censure — Adopted Resolution No. 8703 approving a censure policy for the Milpitas City Council.

21. FY 2016-17 General Fund surplus — Finance Director Will Fuentes described and identified the surplus at the conclusion of FY 2016-17 and the plan for the General Fund amount of $21.64 million.

He gave a recommendation to City Council on how way to allocate those funds, including allocations to Contingency Reserves, PERS stabilization, Storm Drain Reserve and General Government Capital Improvements. He provided a revised policy on how to assign the remaining funds for the operating surplus.

Mayor Tran inquired about the PERS reserve amount and unfunded liability. Mr. Fuentes responded with information on PERS assumptions on the rate of return and the longer term impact to the City.

Councilmember Nuñez said the changes recommended made sense to him and they were sound. He questioned why the Storm Drain was identified on the Proposed Reserve Policy Changes listing. Mr. Fuentes explained it was under its own fund (not the General Fund), meant to fund routine replacements and it was a capital fund (not an enterprise fund). Mr. Nuñez sought and got more information on storm drain work from Acting Public Works Director Tony Ndah.

Next, the Mayor called for public comment from the audience.

Leslie Stobbe, City employee and shop steward for the mid-management group, mentioned on the surplus funds, she urged Council to consider using those to support employees of this service organization. Non-sworn employees had already had done more with less over many years in Milpitas. She quoted the amount contributed by past cuts. She urged the Mayor and Council to use surplus funds to bring up employee salaries to the 75th percentile, based on the recent "class and comp" study completed.

Councilmember Phan asked on the contingency reserve, how much was there. Mr. Fuentes said since Council had not yet acted, the entire $37.33 million of the unassigned fund balance was still unassigned (at the moment the question was asked). Mr. Phan wanted to know if it was possible to earmark 5% to the housing fund (prior to PERS amount noted).

Mayor Tran suggested to wait on such a major decision.

Councilmember Phan proposed 5% for the housing fund, and he knew it could be at the end after paying for all other items, while he'd like that amount to be first.

Vice Mayor Grilli agreed with the increase on contingency reserve so that the City would be prepared for a major emergency. She agreed with the storm drain and PERS stabilization amounts. She asked if some money from General Fund CIP amount could go to affordable housing, and the Finance Director said yes. That could be accomplished by taking action on the contingency funding and storm drain and PERS reserve funds, while waiting on the General CIP and Remaining Unassigned amounts to be allocated later.

Councilmember Nuñez was in favor of that funding described and agreed with the Vice Mayor.

Councilmember Barbadillo felt the priority first was on spending the surplus. He considered the honest opinion from the Finance Director. The Councilmember felt the water utility was a priority. The Council must be responsive to needs and get professional input.

Councilmember Phan suggested an alternative motion to approve $2.07 million for the Fire Apparatus and later on discuss everything else. That was not accepted.

(1) Motion: to accept the majority of the staff recommendation for transferring funds from the General Fund surplus, approving $10.6 million from the General Fund Surplus to contingency reserve for the PERS stabilization account ($10.1 million) and to the Storm Drain Fund ($500,000); and, to return at a later date to discuss further disbursement of the remaining amount of surplus funds (while not withholding those allocated for the new vehicle equipment for the Milpitas Fire Department, in the following agenda item)

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 4
NOES: 1 (Phan)

(2) Motion: to adopt Resolution No. 8713 updating the City's fiscal policies as it relates to reserves

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 4
NOES: 1 (Phan)

The Council meeting was concluded after this item at 12:19 AM.

22. Resolution – purchase of firefighting equipment

Many firefighters were in the audience for support of the Council's action on this item.

Chief Robert Mihovich gave a response to Councilmember Nuñez about the need for the new fire engines and equipment, modernizing the fire service in the City. Many fine details were reviewed to get to this meeting.

Councilmember Barbadillo asked why the City was using the General Fund surplus for this cost, and the Finance Director responded. Currently, the two pieces of equipment were in the CIP, but were pushed out into the future by several years. So, now the purchase was moved ahead a bit to effect great savings on the new fire equipment and due to a need in the department.

Mayor Tran expressed his support for public safety and to spend these funds on the needed fire vehicles. Councilmember Phan thanked all the firefighters for sticking around at this meeting (those in audience) and appreciated their work.

(1) Motion: to adopt Resolution No. 8714 approving the sole source purchase of one Velocity fire pumper and one 100-foot Velocity tractor drawn aerial from Pierce Manufacturing Inc. for a total not-to-exceed amount of $2,270,576

Motion/Second: Councilmember Phan/Councilmember Nuñez

Motion carried by a vote of: AYES: 5
NOES: 0

Chief Mihovich thanked the Mayor and Council along with Battalion Chief Galahad Zamora, the Fire Department point person on the apparatus.

(2) Motion: to appropriate $200,000 from the Equipment Fund and $2,070,576 from the FY 2016-17 General Fund surplus to the CIP No. 3439 Fire Apparatus Replacement Plan

Motion/Second: Vice Mayor Grilli/Councilmember Phan

Motion carried by a vote of: AYES: 5
NOES: 0

The Mayor announced the Council would take a break at 9:28 PM and reconvened at 9:44 PM.

*23. Resolution – Condos into CFD, at 260 So. Main St.

1. Adopted Resolution No. 8715 certifying election results and adding Tract No. 10435 to Community Facilities District 2005-1 (Annexation No. 18); and
2. Approved Final Map Tract No. 10435, including approval of street names and acceptance of all offers of dedications as stated and depicted on the final map upon completion and acceptance of improvements; and
3. Approved and authorized the City Manager to execute the Subdivision Improvement Agreement.

*24. Resolution – EMPG funds

Adopted Resolution No. 8716 authorizing the City Manager or his designee to execute an agreement for the acceptance and use of the 2017 Emergency Management Performance Grant (EMPG) in the amount of $17,500.
Approved a budget appropriation in the amount of $17,500 to the Fire Department's Emergency Services operating budget.

*25. Resolution – 2 Volumes of Hazard Mitigation Plan	Adopted Resolution No. 8717 adopting all of Volume 1 and the City of Milpitas' portion of Volume 2 of the Santa Clara County Operational Area Hazard Mitigation Plan.

AGREEMENTS

26. Public Trail Maintenance	This item was removed from the agenda and would be considered at a future Council meeting.
*27. Improvement Agreement – Self Storage at Pecten Ct.	Approved and authorized the City Manager to execute an improvement agreement for three new self-storage buildings at 1600, 1601 Watson Court and 1080 Pecten Court by Storage Equities/PS Partners IV – Pecten CT.
*28. Amendment No. 6 to Agreement with Cayenta	Approved Amendment No. 6 to the agreement with Cayenta, subject to any minor revision deemed necessary by the City Attorney, and authorized the City Manager to execute the amendment to the Cayenta Software Support and Maintenance Service Agreement for the financial and utility billing system for the not-to-exceed amount of $24,000 and a total agreement not-to-exceed amount of $139,784.
REPORTS of MAYOR & COUNCILMEMBERS	None
ADJOURNMENT	Mayor Tran adjourned the joint City Council and Housing Authority meeting at 12:19 AM on Wednesday, November 8, 2017.

Meeting minutes respectfully submitted by
Mary Lavelle, City Clerk

DIRECTORY OF LOCAL OFFICIALS

City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035
City Hall phone: 408-586-3000
www.ci.milpitas.ca.gov

CITY COUNCIL

NAME	ADDRESS & PHONE	CITY HALL PHONE	DATE ELECTED	TERM EXPIRES
Richard Tran Mayor		City Hall office 408-586-3029	November 8, 2016	December 2018
Marsha Grilli Vice Mayor		City Hall office 408-586-3031	November 4, 2014	December 2018
Garry Barbadillo Councilmember		City Hall office 408-586-3024	November 4, 2014	December 2018
Bob Nuñez Councilmember		City Hall office 408-586-3023	November 8, 2016	December 2020
Anthony Phan Councilmember		City Hall office 408-586-3032	November 8, 2016	December 2020

STAFF:

City Manager	408-586-3050	@ci.milpitas.ca.gov
Rachelle Currie, Executive Secretary	408-586-3051	rcurrie@ci.milpitas.ca.gov
Chris Diaz, City Attorney	408-586-3041	cdiaz@ci.milpitas.ca.gov
Susan Barrett, Executive Secretary	408-586-3044	
Mary Lavelle, City Clerk	408-586-3001	mlavelle@ci.milpitas.ca.gov
Pam Caronongan, Deputy City Clerk	408-586-3003	pcaronongan@ci.milpitas.ca.gov

3A

ARTS COMMISSION (AC)

(Meets 4th Mondays, 7:00 P.M., in City Hall Committee Room in January, March, May, July, September and November)

Founded October 17, 2000. The Milpitas Arts Commission serves as an advisory body to the City Council. On June 3, 2014, the City Council approved Ordinance No. 271.1 which directed the Arts Commission and Public Art Committee be combined and the duties of both executed by the Arts Commission. Nine members are appointed to three-year terms and three alternates are appointed to two-year terms. The Milpitas Unified School District also has a voting member appointed to the Commission.

Member	Office	Alt. Appt.	Comm. Appt.	Term Expires
Cyd Mathias	Chair	*10-18-2011	06-03-2014	10-2017
Tess Santos	Vice Chair	11-18-2008	10-06-2009	10-2019
Becky Strauss		03-18-2008	10-21-2008	10-2017
Robin Hays			10-17-2000	10-2016
Harriett McGuire		11-18-2003	05-17-2005	10-2018
Daniel Bobay	MUSD Board of Trustees rep		04-19-2016	10-2016
Nicole Phan		08-16-2011	12-18-2012	10-2018
Robert “Bob” Gill		08-02-2011	11-02-2011	10-2017
VACANT				10-2020
Alternate Members:				
Marsha Tran	Alternate No. 1	04-02-2013		10-2018
Christina Driggers	Alternate No. 2	09-03-2013		10-2017
Lu Qiang Shu	Alternate No. 3	10-06-2015		10-2018

Liaisons			
Council:	Vice Mayor Marsha Grilli	586-3031	mgrilli@ci.milpitas.ca.gov
Staff:	Rosana Cacao, Recreation Services Supervisor	586-3207	rcacao@ci.milpitas.ca.gov
Staff:	Justin Yount, Public Services Assistant	586-3223	jyount@ci.milpitas.ca.gov

BICYCLE PEDESTRIAN ADVISORY COMMISSION (BPAC)

(Meets six times per year at 7:00 p.m. at City Hall Committee Room, on 1st Thursdays in Jan, March, May, July, Sept and Nov)

Founded June 19, 1990. The Bicycle Pedestrian Advisory Commission (BPAC) advises the Council about modification and expansion of the City of Milpitas' bikeway system. The Commission's goal is providing information that ultimately results in safe and convenient bicycle and pedestrian routes throughout the City while connecting to other cities for use by all cyclists and walkers. The Commission consists of five members and two alternates, with members appointed to 3-year terms and alternates appointed to 2-year terms.

Member	Office	Alt. Appt.	Comm. Appt.	Term Expires
Christine Sanchez		03-16-2010	01-15-2013	08-2019
Chris Lee	Vice Chair	01-04-2011	01-15-2013	08-2017
Kristal Caidoy		01-15-2013	12-16-2014	08-2017
William Barnes		12-16-2014	12-15-2015	08-2018
VACANT				08-2019
Alternate Members:				
Philip Tuet	Alternate No.1	12-15-2015		08-2018
Bernel Hallera	Alternate No.2	02-02-2016		08-2017

Liaisons			
Council:	Vice Mayor Marsha Grilli	586-3031	mgrilli@ci.milpitas.ca.gov
Staff:	Steve Chan, Traffic Engineer	586-3324	schan@ci.milpitas.ca.gov

COMMUNITY ADVISORY COMMISSION (CAC)

(Meets 1st Wednesdays, 7:00 p.m. in City Hall Committee Room)

Founded July 20, 1954. The Community Advisory Commission (CAC) serves as an advisory body on matters affecting Milpitas residents, especially those relating to community improvement. The CAC also evaluates and makes recommendations to the City Council on diverse issues including City-wide beautification, which includes community and neighborhood clean-ups, a holiday home decorating program, and reviewing issues related to neighborhood abatement. CAC also advises City Council on recommended funding for the Community Development Block Grant program. CAC consists of nine members who serve four-year terms and four alternates who serve two-year terms.

Member	Office	Alt. Appt.	Comm. Appt.	Term Expires
Syed Mohsin	Chair	08-06-2002	06-17-2003	01-2018
Jose Rosario		06-21-2011	01-17-2012	01-2019
Michelle Manassau		09-07-2010	04-19-2011	01-2018
Oscar Leon		08-21-2012	02-05-2013	01-2019
Van Lan Truong		02-19-2013	04-01-2014	01-2020
Ashish Kathapurkar		04-01-2014	01-20-2015	01-2019
Ashok Sharma		04-01-2014	01-20-2015	01-2018
Mike Bilbao		10-07-2014	08-04-2015	01-2020
Thelma Batilo	Vice Chair	09-06-2011	08-21-2012	01-2020
Alternate Members:				
Michael Lee	Alternate No. 1	04-07-2015		01-2019
VACANT	Alternate No. 2			01-2019
George Chen	Alternate No. 3	08-18-2015		01-2018
Vishal Gandhi	Alternate No. 4	10-06-2015		01-2018

Liaisons			
Council:	Vice Mayor Marsha Grilli	586-3031	mgrilli@ci.milpitas.ca.gov
Staff:	Tim Wong, Housing Manager	586-3286	twong@ci.milpitas.ca.gov

>>> FPPC Form 700/Statement of Economic Interests is required to be filed by all CAC members to reveal any conflict of interest. <<<

ECONOMIC DEVELOPMENT COMMISSION (EDC)

(Meets 2nd Mondays, 4:00 p.m. in City Hall Committee Room – no meetings in July and December)

Founded February 18, 2003. The Economic Development Commission (EDC) was established to advise the Council on business issues and to make recommendations on the design, development, and implementation of economic development for the City of Milpitas. EDC by-laws were amended on 3-17-09 to add two additional voting members. Eleven members representing various business sectors are appointed to three-year terms and two alternates to two-year terms. Commission does not meet in July nor December.

Member	Representing	Alt. Appt.	Comm. Appt.	Term Expires
Ricardo Ablaza, Chair	Commercial Real Estate		01-19-2010	04-2020
Dhaval Brahmbhatt Vice Chair	Technology		04-15-2003	04-2020
Jeffrey Chen	Hotel G.M.	12-06-2016		04-2018
Warren Wettenstein	Chamber of Commerce		02-01-2011	04-2018
Donald Peoples	Business owner		04-15-2003	04-2018
Charlene Tsao	Restaurants	04-20-2004	05-17-2005	04-2018
Minh Nguyen	Residents	05-17-2005	09-02-2008	04-2018
Anna Wang	Commercial/Resid. Real Estate		10-06-2015	04-2018
Lynne Rice	Retail		05-16-2017	04-2018
VACANT	Milpitas School Board member			04-2019
VACANT	Residents			04-2019
Alternate Members:				
VACANT	Alternate No. 1			04-2019
Raghu Reddy	Alternate No. 2	11-03-2015		04-2018

Liaisons			
Council:	Councilmember Anthony Phan	586-3032	aphan@ci.milpitas.ca.gov
Staff:	Edesa Bitbadal, Economic Development Director	586-3052	ebitbadal@ci.milpitas.ca.gov
Staff:	Daniel Degu, Economic Development Specialist	586-3054	ddegu@ci.milpitas.ca.gov

>>> FPPC Form 700/Statement of Economic Interests is required to be filed by all EDC members to reveal any conflict of interest. <<<

EMERGENCY PREPAREDNESS COMMISSION (EPC)

(Meets 3rd Thursdays of Jan., March, May, July, Sept., Nov. 7:00 p.m. in City Hall Committee Room)

Founded May 17, 1988. Newly termed EPC on June 3, 2008 (formerly Citizens Emergency Preparedness Advisory Commission), this body advises the City Council regarding emergency preparedness and disaster planning. EPC coordinates, along with the Milpitas Unified School District, an annual emergency evacuation drill and Mass Feeding exercise at one Milpitas school campus. The Commission consists of six citizens, one large industry person, one small industry person, one school board representative, and two alternate members. Members are appointed to three-year terms and alternates are appointed to two-year terms.

Member	Office	Address	Contact Phone (408 Area Code unless noted)	E-Mail	Alt. Appt.	Comm. Appt.	Term Expires
Michael Berryhill	Chair				08-03-2004	05-17-2005	06-2018
Tim Howard	Vice Chair, Small Industry					09-1996	06-2017
Don Clendenin					08-03-2010	02-15-2011	06-2019
Mercedes Albana					02-15-2011	01-17-2012	06-2017
Betty Jo Reutter					01-17-2012	08-06-2013	06-2019
Nasir Lalani					08-06-2013	01-21-2014	06-2018
Jonathan Nakapalau					01-21-2014	12-06-2016	06-2019
VACANT	Milpitas Unified School District						06-2020
VACANT							06-2018
Alternate Members:							
VACANT	Alternate No. 1						06-2019
Vicki Young	Alternate No. 2				12-06-2016		06-2017

Liaisons			
Council:	Vice Mayor Marsha Grilli	586-3031	mgrilli@ci.milpitas.ca.gov
Staff:	Toni Charlop Harris, OES Coordinator	586-2801	tharris@ci.milpitas.ca.gov

LIBRARY ADVISORY COMMISSION (LAC)

(Meets at 7:00 p.m. on 2nd Monday of January, and 3rd Mondays of March, May, September and November in Milpitas Public Library Conference Room)
No July meeting

Founded January 17, 1961. The Library Advisory Commission makes recommendations to the City Council on matters pertaining to the operation of library services and facilities in Milpitas. The Commission consists of seven members and two alternates, all of whom are appointed to two-year terms.

Member	Office	Alt. Appt.	Comm. Appt.	Term Expires
Yu-Lan Chou	Chair	01-2003	06-07-2005	06-2018
Ha Phan	Vice Chair	06-2005	06-19-2012	06-2018
Hellie Mateo		06-19-2012	12-15-2015	06-2018
Sonny S. Wang			11-1992	06-2017
Elpidio Estioko		06-2005	06-19-2007	06-2018
Trinidad Aoalin			06-19-2001	06-2018
VACANT				06-2019
Alternate Members:				
Nonie McDonald	Alternate No. 1	03-19-2013		06-2017
Tony Cailles	Alternate No. 2	12-15-2015		06-2017

Liaisons			
Library:	Steve Fitzgerald, Community Librarian Milpitas Library, 160 N. Main St., Milpitas	262-1171 x3600	sfitzgerald@sccl.org
Library:	Nancy Howe, County Librarian 14600 Winchester Blvd., Los Gatos, CA 95032	293-2326 x3080	nancy.howe@sccl.org
Council:	Councilmember Garry Barbadillo	586-3024	gbarbadillo@ci.milpitas.ca.gov
Staff:	Tim Wong, Housing Services Manager	586-3286	twong@ci.milpitas.ca.gov

PARKS, RECREATION, AND CULTURAL RESOURCES COMMISSION (PRCRC)

(Meets 1st Mondays, 7:00 p.m. in City Hall Committee Room)

Founded July 1, 1992. The Parks, Recreation, and Cultural Resources Commission (PRCRC) was formed when the City Council combined the functions of the Parks, Recreation and Cultural Arts Commission (originally founded May 25, 1964) and Cultural Resources Preservation Board (originally founded April 16, 1985) into one commission in 1992. PRCRC advises the Council on operation and maintenance of recreation, leisure services, and historic preservation activities. The Commission also advises on acquisition, planning, and development of new and existing parks and facilities. It assists with identifying, protecting, and enhancing structures and other features reflecting special aspects of the City's cultural heritage. Powers and duties of Commissioners are identified in the Municipal Code. The Commission has seven voting members and two alternates, with members appointed to three-year terms and alternates appointed to two-year terms.

Member	Office	Alt. Appt.	Comm. Appt.	Term Expires
Vishnu Mathur	Chair	05-06-2008	05-05-2009	06-2019
Satish Bansal	Vice Chair	06-18-2013	06-21-2016	06-2019
Rohit Sharma		01-18-2011	10-18-2011	06-2018
Steve Munzel			11-06-2000	06-2018
Evelyn Ramirez		02-07-2012	09-18-2012	06-2018
Bhupinder (Bill) Singh		09-18-2012	01-20-2015	06-2017
VACANT				06-2020
Alternate Members:				
Aakar Shah	Alternate No. 1	06-21-2016		06-2018
Voltaire Montemayor	Alternate No. 2	05-16-2017		06-2019

Liaisons			
Council:	Councilmember Garry Barbadillo	586-3024	gbarbadillo@ci.milpitas.ca.gov
Staff:	Renee Lorentzen, Recreation Services Manager	586-3409	rlorentzen@ci.milpitas.ca.gov
Staff:	Lisa Ciardella, Public Services Assistant	586-3213	lciardella@ci.milpitas.ca.gov

>>> FPPC Form 700/Statement of Economic Interests is required to be filed by all PRCRC members to reveal any conflict of interest. <<<

PLANNING COMMISSION
(Meets 2nd and 4th Wednesdays, 7:00 p.m. in City Hall, Council Chambers)

The Planning Commission consists of seven members and one alternate, who are Milpitas registered voters appointed by the City Council to staggered terms of three years each. Members serve with a stipend of $25 per meeting and cannot hold any other public office or position in the City while serving on this body. The Commission regularly meets monthly on 2nd and 4th Wednesdays at 7:00 PM in City Council Chambers, and broadcast live on cable television. The Planning Commission Subcommittee (2 members) usually meets at 6:30 PM on the same evening as regular meetings of the Commission.

This Commission has all powers and duties imposed upon a planning commission and zoning agency by California Planning and Zoning laws, subject to the provisions of the Municipal Code, and acts as the advisory agency per the Subdivision Map Act. In addition, the Planning Commission considers overall architectural development, including color and material of exteriors, of all commercial, industrial and residential developments for which a use permit or architectural review permit is required. Members review and act on the following: 1. General Plan and General Plan amendments; 2. Neighborhood and specific area plans; 3. Environmental Impact Reports and Negative Declarations; 4. Tentative subdivision maps; 5. Planned Development permit applications for developments; 6. Subdivision Ordinance exceptions; 7. Zoning and subdivision Ordinance amendments; and 8. Special studies and reports. For current Planning Commission activities, contact the Planning & Neighborhood Services Director.

Member	Office	Initial Appt.	Last Appt.	Term Expires
Sudhir Mandal	Chair	01-11-2005	11-15-2016	12-2019
Lawrence Ciardella		11-30-2005	12-16-2014	12-2017
Gurdev “Dave” Sandhu		03-1999	01-15-2013	12-2018
Rajeev Madnawat	Vice Chair	01-03-2012	12-01-2015	12-2018
Ray Maglalang		01-06-2015		12-2017
Demetress Morris		02-05-2013	11-15-2016	12-2019
Zeya Mohsin		01-06-2015	12-06-2016	12-2018
Alternate Member:				
Evelyn Chua		12-06-2016		12-2018

Liaisons			
Staff:	Bradley Misner, Planning and Neighborhood Services Director	586-3273	bmisner@ci.milpitas.ca.gov
Staff:	Elia Escobar, Secretary	586-3271	eescobar@ci.milpitas.ca.gov

>>> Planning Commissioners must file Fair Political Practices Commission Form 700/Statement of Economic Interests annually with the City Clerk to reveal any conflicts of interest. Milpitas City Clerk is required to forward all original forms to FPPC in Sacramento. <<<

RECYCLING AND SOURCE REDUCTION ADVISORY COMMISSION (RSRAC)

(Meets 4th Tuesdays in January, April, July, and October at 6:00 p.m. at City Hall Committee Room)

Founded February 5, 1991. Initially founded as the Solid Waste Reduction Advisory Committee, the name was changed by the City Council on June 15, 1993. This Commission advises the City Council on matters pertaining to recycling and solid waste management. The seven members recommend programs designed to reduce solid waste and monitor the City's achievement of 25% and 50% diversion goals mandated by the California Integrated Waste Management Act of 1989. Members are appointed to three-year terms and alternates are appointed to two-year terms, by the City Council. Commission membership shall consist of three Milpitas residents or residents within the boundaries of the Milpitas Unified School District, three business sector representatives, and one institutional representative.

Member	Represents		Alt. Appt.	Comm. Appt.	Term Expires
Marta Martinez, Chair	Business	c/o Elite Recycling Services		03-15-2016	10-2019
Manpreet Badesha, Vice Chair	Resident		12-16-2014	03-15-2016	10-2019
VACANT	Business				10-2020
Christopher Salian	Resident		01-18-2011	03-01-2011	10-2017
Echo Arthur	Resident		05-06-2008	09-16-2008	10-2016
VACANT	Resident				10-2018
Brian Shreve	Institution: schools	c/o Milpitas Unified School District		02-17-2015	10-2018
Alternate Members:					
Mandeep Singh	Alternate No. 1		03-15-2016		10-2017
Yue George Liu	Alternate No. 2		03-15-2016		10-2018

Liaisons			
Council:	Councilmember Bob Nuñez	586-3023	bnunez@ci.milpitas.ca.gov
Staff:	Elizabeth Koo, Administrative Analyst	586-3353	ekoo@ci.milpitas.ca.gov
Staff:	Leslie Stobbe, Public Information Specialist	586-3352	lstobbe@ci.milpitas.ca.gov

SENIOR ADVISORY COMMISSION (SAC)

(Meets 4th Tuesdays of February, April, June, August, October, and December at 1:30 p.m. at Barbara Lee Senior Center)

Founded April 20, 1993. Originally founded as the Senior Advisory Committee on December 14, 1978, this Committee served in advisory capacity to the Parks, Recreation and Cultural Resources Commission. The Commission now advises the City Council on matters pertaining to recreation, leisure, and nutrition services for the Senior Citizens of Milpitas. Nine members and two alternates serve two-year terms.

Member	Office	Alt. Appt.	Comm. Appt.	Term Expires
Barbara Ebright	Chair	07-06-2004	02-07-2006	12-2017
Melba Holliday	Vice Chair	12-07-2010	05-17-2011	12-2018
Denny Weisgerber			08-06-2002	02-2013
Patrick Yung		04-02-2013	01-07-2014	12-2017
Karen Adams		09-02-2008	12-01-2009	12-2017
Estrella Gilana		02-06-2007	12-07-2010	12-2017
Deborah Langley		05-17-2011	04-16-2013	12-2018
Jae Kuk Wi		08-06-2013	08-05-2014	12-2018
Jenny Berryhill		01-07-2014		12-2017
Alternate Members:				
Willy Wong	Alternate No. 1	08-05-2014		12-2017
Nona Tolentino	Alternate No. 2	08-02-2016		12-2018

Liaisons			
Council:	Councilmember Bob Nuñez	586-3032	bnunez@ci.milpitas.ca.gov
Staff:	John Macon, Recreation Services Supervisor	586-3226	jmacon@ci.milpitas.ca.gov
Staff:	David Sanchez, Public Services Assistant	586-3401	dsanchez@ci.milpitas.ca.gov

SISTER CITIES COMMISSION (SCC)
(Meets 4th Thursdays, 6:00 p.m. in City Hall Committee Room)

Founded May 21, 1996. The Milpitas Sister Cities Commission (SCC) serves as an advisory body to the City Council on matters affecting sister cities relationships, programs, and activities. The Sister Cities Commission will also review applications for sister city affiliations and forward recommendations to the City Council for the establishment of future agreements. Members are appointed to three-year terms and alternates are appointed to two-year terms. The Commission hosts two non-voting members: one from the Milpitas Unified School Board and one student from Milpitas High School. Milpitas currently has three sister cities: Tsukuba, Japan; Huizhou, China and, Dagupan, Philippines.

Member	Office	Alt. Appt.	Comm. Appt.	Term Expires
Dennis Grilli	Chair		09-03-1996	09-2017
Massoud Arefi		02-03-2004	04-18-2006	09-2018
Peter Chang		02-05-2013	05-05-2015	09-2018
Dipak Awasthi		01-19-2016	08-02-2016	09-2019
Michael Tsai			12-06-2016	09-2017
Jennifer Strohfus			12-06-2016	09-2019
VACANT				09-2019
Alternate Members:				
VACANT	Alternate No. 1			09-2018
Rhoda Shapiro	Alternate No. 2	01-17-2017		09-2017
Student Non-Voting Member				
Tiffany Dinh, 11th grader			09-06-2016	09-2017

Liaisons			
Council:	Councilmember Anthony Phan	586-3032	aphan@ci.milpitas.ca.gov
MUSD Board:	c/o MUSD, 1331 E. Calaveras Blvd.		
Staff:	Leslie Stobbe, Public Information Specialist	586-3352	lesliestobbe@ci.milpitas.ca.gov

TELECOMMUNICATIONS COMMISSION
(Meets 3rd Mondays, 7:00 p.m. in City Hall - Council Chambers)

Founded September 6, 1994. The era of information technology, with the explosion of communication services offered through the internet and wireless communications, created a diversity of challenges for the City of Milpitas. To address ongoing and rapid changes in communications technology, the City Council formed the Telecommunications Commission. It advises the City Council on matters of telecommunications policy, legislation, and implementation at the local, state, and federal levels. The Commission also considers and recommends information technology services to benefit the Milpitas community. Nine members and two alternates are appointed to two-year terms.

Member	Office	Alt. Appt.	Comm. Appt.	Term Expires
Albert Alcorn	Chair		08-05-1997	01-2017
Dinesh Gupta	Vice Chair		06-17-1997	01-2018
William Lam			12-17-2002	01-2019
Sukhi Singh		10-04-2011	05-15-2012	01-2018
Hai Tran		10-17-2006	08-05-2008	01-2018
Niranjan Gupta			01-20-1998	01-2018
Kurt Bohan		08-05-2008	10-04-2011	01-2019
Ernesto Bautista		05-15-2012	01-06-2015	01-2019
VACANT				01-2018
Alternate Members:				
Anh Bao	Alternate No. 1	03-04-2014		01-2019
Arun Bakthavatchalam	Alternate No. 2	08-02-2016		01-2018

Liaisons			
Council:	Councilmember Garry Barbadillo	586-3024	gbarbadillo@ci.milpitas.ca.gov
Staff:	Mike Luu, Information Services Director	586-2706	mluu@ci.milpitas.ca.gov
Staff:	Eliren Pasion, Video Media Specialist	586-2730	epasion@ci.milpitas.ca.gov

>>> FPPC Form 700/Statement of Economic Interests is required to be filed by all Telecomm. members to reveal any conflict of interest. <<<

VETERANS COMMISSION

(Meets 1st Wednesdays at 5:30 PM of February, April, June, August, October and December at City Hall Committee Room)

Established on December 1, 2009, the Veterans Commission consists of a seven member body with two alternates and began meeting in the spring of 2010. Members serve a term of three years, and meet bi-monthly. The Commission consists of honorably discharged U.S. veterans or actively serving members in any branch of the U.S. military, with seven voting members and two alternates, each appointed to terms of three years.

Member	Rank/Military	Alt. Appt.	Comm. Appt.	Term Expires
Arthur Ebright, Chair	Lt. Commander US Navy Retired		02-16-2010	02-2019
Denny Weisgerber, Vice Chair	S/Sergeant USMC Retired		01-19-2010	02-2019
Andre Ramones	Sergeant US Army	08-05-2014	12-16-2014	02-2019
Ed Ackerman	US Navy	12-16-2014	11-17-2015	02-2019
William Devereux	US Air Force	01-05-2016	09-20-2016	02-2019
Liliana Ramos	CM Sergeant USAF Retired	03-02-2010	08-05-2010	02-2019
Dana Arbaugh	Lt. Colonel USAF Retired		02-02-2010	02-2019
Alternate Members:				
John Schmidt Alternate No. 1	US Air Force	05-03-2016		02-2019
Ricardo Martinez Alternate No. 2	E5 – Sp5 US Army	09-20-2016		02-2019

Liaisons			
Council:	Mayor Rich Tran	586-3029	rtran@ci.milpitas.ca.gov
Staff:	Dale Flunoy, Recreation Services Supervisor	586-3228	dflunoy@ci.milpitas.ca.gov
Staff:	Pam Caronongan, Deputy City Clerk	586-3003	pcaronongan@ci.milpitas.ca.gov

YOUTH ADVISORY COMMISSION (YAC)

(Meets 2nd Thursdays monthly, 7:00 p.m. at the Sports Center conference room)
No meeting is held in June.

Founded April 1996. The Youth Advisory Commission (YAC) was established to advise the Council on matters pertaining to youth and teens in Milpitas. Commissioners must be students in grades 7 through 12 and live in Milpitas. Nine members and four alternates are appointed to one-year terms.

Member	Office	Grade In School		Alt. Appt.	Comm. Appt.	Term Expires
Clare Sern		12th		09-17-2013	09-02-2014	09-2017
Emerald Gilana		12th		09-16-2015	09-06-2016	09-2017
Claudia Wang		11th		09-16-2014	09-15-2015	09-2017
Christie Maly		11th		09-16-2014	10-06-2015	09-2017
Ravit Sharma		10th		09-16-2014	09-15-2015	09-2017
VACANT						09-2018
VACANT						09-2018
VACANT						09-2018
VACANT						09-2018
Alternate Members:						
VACANT	Alternate No. 1					09-2018
VACANT	Alternate No. 2					09-2018
Amanda Jimenez	Alternate No. 3	12th	amanda4410@yahoo.com	10-06-2015		09-2017
Isaac Chang	Alternate No. 4	11th	isaac.chang.e@hotmail.com	09-06-2016		09-2017

Liaisons			
Council:	Councilmember Anthony Phan	586-3032	aphan@ci.milpitas.ca.gov
Staff:	Andrew Mendes, Program Coordinator	586-3231	amendes@ci.milpitas.ca.gov

CITY OF MILPITAS
COMMISSION APPLICATION

3B

PROVIDE COMPLETE INFORMATION (in black ink)

COMMISSION APPLYING FOR ↑ _____

☐ **Mr.**

☐ **Ms. / Miss / Mrs.**

Name: First (middle) Last

Address: Number Street (apt. # if needed) City & Zip Code

Telephone Number(s) **e-mail address**

Present Employer **Business Telephone**

Business Address **Occupation**

Education: If **Youth Advisory Commission** applicant, indicate your grade/school: _____

College, Professional, Vocational, or other schools attended	Major Subject	Date	Degree

List community organizations to which you belong or have belonged (additional information may be attached). If application is for ***Veterans Commission***, indicate branch and service in any U.S. military organization (retired or active duty).

Date	Name of Organization or Branch of Military	Officer / Member

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

_____ _____

Signature **Date**

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. **Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant.**

PLEASE BE AWARE THAT ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

E-mail, send in US mail or drop off your completed application to:

City Clerk, Milpitas City Hall 3rd floor, 455 E. Calaveras Blvd., Milpitas, CA 95035, email: mlavelle@ci.milpitas.ca.gov

CITY OF MILPITAS – LIST OF COMMISSIONS

ARTS COMMISSION: Founded July 6, 2000. Meetings are held at 7:00 PM on 4th Mondays alternate months in the City Hall Committee Room. The Arts Commission serves as an advisory body to the City Council on matters pertaining to supporting and promoting the arts in the City. The Milpitas Unified School District has one voting member appointed to the Commission. Three Members are appointed to 3-year terms and two alternates to 2-year terms.

BICYCLE PEDESTRIAN ADVISORY COMMISSION: Founded June 19, 1990. Meetings are held at 7:00 PM on the first Thursday in February, April, June, August, October, and December. Advises Council about modification and expansion of City Bikeway System. The Commission's goal is to provide information that result in safe and convenient bicycle routes throughout the city while connecting routes to other cities for the use of all cyclists. The Commission consists of five members with 3-year terms and two alternates appointed to 2-year terms.

COMMUNITY ADVISORY COMMISSION: Founded July 20, 1954. Meetings are held at 7:00 PM on the first Wednesday of each month in the City Hall Committee Room. CAC is as an advisory body on matters affecting Milpitas citizens, especially community improvement. CAC evaluates and makes recommendations to the City Council on issues including Citywide beautification, community and neighborhood clean-up and abatement issues. The Commission advises the Council on recommended Community Development Block Grant funds. CAC has 9 members appointed to 4-year terms and 4 alternates appointed to 2-year terms.

ECONOMIC DEVELOPMENT COMMISSION: Founded February 18, 2003. Meetings are held at 4:00 PM on the second Monday every month at the City Hall Committee Room. EDC was established to advise the Council on business issues and to make recommendations on the design, development, and implementation of a comprehensive economic development program for the City of Milpitas. The Commission consists of 11 members appointed to 3-year terms and two alternates appointed to 2-year terms. Members represent specific industries and business community segments in Milpitas.

EMERGENCY PREPAREDNESS COMMISSION: Founded April 23, 1988. Meetings are held at 7:00 PM on the third Thursday in January, March, May, July, September, and November at the City Hall Committee Room. The Emergency Preparedness Commission advises the City Council regarding emergency preparedness and disaster planning. EPC consists of six residents, one industry person, two business persons, one rep. from the MUSD, and 2 alternate members.

LIBRARY ADVISORY COMMISSION: Founded January 17, 1961. Meetings are held at 7:00 PM on the second Monday of January, and third Monday of March, May, July, September, and November at the Library. Advises the Santa Clara County Library which operates the Milpitas Library under the jurisdiction of a Joint Powers Authority, informs the City Council and County Librarian of community needs, and helps to determine library activities and levels of service. The Commission consists of 7 members and 2 alternates. Members and alternates are appointed to 2-year terms.

PARKS, RECREATION & CULTURAL RESOURCES COMMISSION: Founded July 1, 1992. Meetings are held monthly at 7:00 PM on the first Monday at City Hall Committee Room. PRCRC was formed when the Council combined functions of Parks & Recreation Commission and Cultural Resources Preservation Board into one body. Advises Council on operation of recreation services and historic preservation activities, and advises in the acquisition, planning, and development of new and existing parks and facilities. PRCRC assists activities related to City's cultural heritage. Commission consists of seven members in 3-year terms and two alternates appointed to two-year terms.

PLANNING COMMISSION: Consists of seven appointed commissioners to 3-year terms and one alternate member appointed to 3-year term. Commissioners have responsibiltiies specifically related to land use decisions on zoning, the General Plan, Housing Element and other documents and plans. Meetings are held on 2nd and 4th Wednesdays at 7:00 PM in the City Council Chambers at City Hall.

RECYCLING & SOURCE REDUCTION ADVISORY COMMISSION: Founded February 5, 1991. Meetings are held at 6:00 PM on 4th Tuesdays of January, April, July, and October. Initially founded as the Solid Waste Reduction Advisory Commission on June 15, 1993. Advises Council on matters pertaining to recycling and solid waste management. Seven members recommend programs designed to reduce solid waste, and monitor the City's achievement of diversion goals mandated by the state. Members are appointed to 3-year terms and alternates to 2-year terms.

SENIOR ADVISORY COMMISSION: Founded April 20, 1993. Meetings are held at 1:30 PM on 4th Tuesdays of February, April, June, August, October, and December at the Barabara Lee Senior Center. Originally founded as the Senior Advisory Committee on December 14, 1978, it served in an advisory capacity to the Parks, Recreation, & Cultural Resources Commission. SAC advises the Council on matters pertaining to the recreation and other services for senior citizens of Milpitas. Nine Members and two alternates serve 2-year terms.

SISTER CITIES COMMISSION: Founded May 21, 1996. Meetings are held at 6:00 PM on the 4th Thursday of each month at the City Hall Committee Room. Advises the Council on matters affecting sister cities' relationships, programs, and activities. Commissioners review applications for sister city affiliations and forward recommendations to the City Council for the establishment of future agreements. Seven Members are appointed to three-year terms and two alternates are appointed to two-year terms. Milpitas Unified School District also has a non-voting member appointed to the Commission. In 2009, City Council authorized a new student non-voting member.

TELECOMMUNICATIONS COMMISSION: Founded September 6, 1994. Meetings are held at 7:00 PM on 3rd Mondays each month in the City Council Chambers. Information technology and information services offer challenges to Milpitas, so Commissioners advise on matters of telecommunications policy, legislation, and implementation at the local, state, and federal levels. Nine Members and two alternates are appointed to 2-year terms.

VETERANS COMMISSION: Founded December 1, 2009. Meetings are held on first Wednesdays at 5:30 PM at City Hall in February, April, June, August, October and December. Seven members and two alternates with three-year terms are appointed by the City Council to advise the City Council on matters pertaining to veterans in Milpitas. All Commissioners are current or retired military service members.

YOUTH ADVISORY COMMISSION: Founded May 21, 1996. Meetings are held at 7:00 PM on the second Thursday of each month excluding June. Commissioners must be ages 13 to 19 years, in grades 7 through 12, and live in Milpitas. YAC advises the City Council on issues involving youth and teens in Milpitas. Members and alternates are appointed to one-year terms.

LIST OF ITEMS REQUESTED BY CITY COUNCIL

TOPIC	LEAD COUNCIL MEMBER	LEAD STAFF	GENERATED	STATUS/ACTION TO DATE	TARGET COMPLETION	ACTUAL COMPLETION	Follow up
LONG TERM							
City Council Handbook update		Chris Diaz	following swearing-in of new CC	revised version presented early in 2017 by City Attorney; no action	2018		Full, lengthy version needs update
Affordable Housing concerns	All	Brad Misner	Sunnyhills apts & other matters	meetings continue. Housing impact fee requested 10/05/2017	2017-18		
Just Cause Eviction and Rent Subsidy ords	Grilli	Chris Diaz (+ Edesa + Brad)	Request at 11/07/17 CC mtg	City Attorney may have draft ords from other cities	Jan-Feb 2018		
Wage theft ordinance	Phan, Grilli	Chris Diaz, Edesa Bitbadal	2 Councilmembers, Oct 2017	Economic Development staff studying issue	2018		
Report on Parking Issues City Wide		Steve Chan, City Engineer	request of Council, spring 2017		2017		Enforcement ?s
Reimbursement for mutual aid from County		Robert Mihovich	9/11/2017 CC mtg				
Plan for Milp. Police to patrol BART parking lots		Steve Pangelinan	9/11/2017 CC mtg				
Make-up of & method of appointment to City Commissions		Mary Lavelle	various requests of Council members	first scheduled for discussion 9/05/2017	11/21/2017		
Study Session on history of employment, land use & fiscal impacts	Grilli, Nunez & Phan	Edesa Bitbadal, Brad Misner	per Council vote 10/03/2017	to be scheduled	Dec 2017		
SHORT TERM							
Remove 10% water use restriction by ord.	Grilli	Chris Diaz, Tony Ndah	requested at 10/18/17 CC mtg	requires updated Ordinance	Dec 2018		
Write a policy for A/R write-offs	Nunez	Will Fuentes	Council request at a 2017 CC mtg	Staff working on draft			
Stricter regulation of massage establishments	Mayor	Brad Misner	8/01/2017 CC mtg	Council voted for more regs.	2017-18		
Oversight Board appt		Will Fuentes	8/01/2017 CC	CC discussed, chose not to appt staff			Mayor shall provide rec.

LIST OF ITEMS REQUESTED BY CITY COUNCIL

TOPIC	LEAD COUNCIL MEMBER	LEAD STAFF	GENERATED	STATUS/ACTION TO DATE	TARGET COMPLETION	ACTUAL COMPLETION	Follow up
Parking solution for residents The Pines	Mayor	Steve Chan, City Engineer	request of Mayor, 08/01/2017 CC	Council voted for Permit Parking @The Pines	2018		Could serve as pilot program
Travel SOP - for City staff & Council		Will Fuentes	8/01/2017 CC mtg	Existing SOP from 1997			Update needed
Annual Credit Card program report	Nunez	Will Fuentes	Request of B Nunez at 9/11/17 CC mtg	report will include list of employees who have a City credit card	each January		
Report back on $ saved due to bonds re-financed	Tran	Will Fuentes	Request of Mayor at 10/17/17 CC mtg	report back after refinancing concluded	early 2018		
ONGOING							
Regular Update of Council line item budget	Grilli	Will Fuentes; City Manager	request of M. Grilli 8/01/17 CC mtg	report periodically to Council on own budget status	Nov 2017		
Appointments to City Commissions	Mayor	Mary Lavelle	as Commrs. resign or term expires	Mayor needs to appt. members to 21 vacancies on Commissions & re-appoint those whose terms expired	2017-2018		
Energy retrofit financing program		Edesa Bitbadal and Chris Diaz	spring 2017	Bring JPA & operating agreements - up to 5 Property Assessed Clean Energy programs	11/21/2017		info presented 10/03/2017
Officeholder accounts	Phan	Chris Diaz	request of A. Phan 8/01/17 CC mtg	FPPC may permit this type of committee (not campaign funds)			
COMPLETED							
Help to Assoc of Indo Americans	Phan, Nunez	Mary Lavelle	Request of B Nunez at 8/01/17 CC mtg	A. Phan requested fee waiver for group's August event	9/05/2017	9/05/17	Swades event at Murphy Park
Report of Citizens Task Force on Water Rates		Tony Ndah, Will Fuentes	by prior Council, eatablished in 2016	Final Task Force meeting held 9/12/2017	10/18/2017	10/18/17	
Response to E. Chua on Safe Exchange zones	n/a	Steve Pangelinan	Public Forum at CC mtg 8/01/2017	Police Dept allocated space at PD. Cameras on order	reported at 10/17/17 CC	11/07/17	
Censure policy	Nunez	Chris Diaz	Council request	Censure policy & reso discussed 10/05/2017	11/07/2017	11/07/17	
Community Choice Energy program		Edesa Bitbadal	spring 2017	City to join Silicon Valley Community Energy JPA	fall 2017	11/07/17	report given at 10/17/17 CC

PLEASE NOTE:

This copy of Ordinance No. 48.21 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: 48.21

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 200 OF TITLE V OF THE MILPITAS MUNICIPAL CODE RELATING TO SOLID WASTE MANAGEMENT

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by_____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the current franchise agreement for solid waste collection and disposal has been in place since September 2, 1986, as amended from time to time, and will terminate on December 1, 2017; and

WHEREAS, service providers operating under two new franchise agreements for solid waste collection and solid waste disposal, respectively, will begin operations on December 1, 2017 and

WHEREAS, the Milpitas Municipal Code provisions related to solid waste management are tailored to correlate with the current franchise agreement; and

WHEREAS, the Milpitas Municipal Code provisions relating to solid waste management must be updated to correlate with the terms and conditions of the two new solid waste franchise agreements.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE CHAPTER 200, TITLE V

Chapter 200 of Title V of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Chapter 200

SOLID WASTE MANAGEMENT*

Sections:

~~* Prior ordinance history: Ords. 48, 48.1, 48.2, 48.3, 48.4, 48.5, 48.6, 48.7, 48.8, 48.9, 48.10, 48.11.~~

V-200-1 General Provisions

V-200-2 Definitions

V-200-3 Keeping or Accumulating Solid Waste

V-200-4 Collection and Disposal

V-200-5 Authorized Contractors

V-200-6 Authorized Contractors' Rates, Charges and Fees

V-200-7 Manner of Collection, Removal and Transportation

V-200-8 Waste Disposal

V-200-9 Enforcement and Penalties

V-200-10 Disaster Operations

V-200-11 Interruption of Service by Labor Dispute

Section 1 – General Provisions

V-200-1.10 – Declaration of Policy

It is hereby declared to be in the public interest and in the interest of all the residents of the City of Milpitas that the accumulation, preparation, storage, collection, transportation and disposal or processing of Solid Waste, ~~recyclables and yard trimmings~~Recyclable Materials, Organic Materials, and Construction & Demolition Debris in the City of Milpitas be handled in such a manner so as to:

(a) Prohibit the harboring and breeding of rodents and insects;

(b) Reduce pollution of the air caused by burning, fermentation or putrification of such materials;

(c) Prevent the spread of disease;

(d) Reduce the hazards of fire and the prevention of unsightliness resulting in the depreciation of property values and the comfortable enjoyment of life; and

(e) Reduce the amount of ~~solid~~ waste disposed in landfills.

This Chapter is determined and declared to be a health, sanitary and safety measure necessary for the promotion, protection and preservation of the health, safety and general welfare of the people of the City of Milpitas and to establish an integrated waste management system that will enable the City to meet the mandated goals for reduced disposal tonnage ~~of twenty-five percent (25%) by the year 1995 and fifty percent (50%) by the year 2000~~ as required by Public Resources Code Sections 42000 et seq., also known as the Integrated Waste Management Act.

V-200-1.20~~–~~ Declaration of Purpose and Object

The purposes and object of this Chapter are to accomplish the foregoing results, and the provisions thereof shall be liberally construed so as to give full effect to the accomplishment of such purposes and object.

V-200-1.30~~–~~ Mandatory Service Charge

The charges levied pursuant to this Chapter are for the privilege of having Solid Waste, ~~Recyclables, and Yard Trimmings~~Recyclable Materials, Organic Materials, and Construction & Demolition Debris collected and are mandatory, unless an exemption is granted pursuant to Section 3 of this Chapter.

V-200-1.40~~ Solid~~ Waste Service Design Requirements

The design of any new, substantially remodeled or expanded building or other facility shall provide for proper storage or handling which shall accommodate the Solid Waste, Recyclable Material, and Organic Material loading anticipated and which shall allow for efficient and safe waste removal or collection. Solid waste~~ and recycling~~, Recyclable Material, and Organic Material collection shall be accommodated on-site. The design shall comply with City requirements.

Section 2 ~~–~~Definitions

V-200-2.10~~–~~ Definitions

The definitions contained in this Section shall govern the construction of this Chapter, unless the context otherwise requires.

(a) Administrator. The "Administrator" means the City Manager or his or her designee.

(b) Agent. The word "agent" means a person, designated by the owner, as responsible for procuring and maintaining Solid Waste, ~~recyclables and yard trimmings~~Recyclable Materials, Organic Materials, and Construction & Demolition Debris Collection services.

(c) Authorized Contractor. The words "Authorized Contractor" means any person or persons, or the agents or employees thereof, with whom CITY shall have duly contracted as hereinafter provided, or to whom CITY shall have issued a permit, to collect, remove, transport, recycle, or dispose of any or all Solid Waste, ~~recyclables, or yard trimmings produced~~Recyclable Materials, Organic Materials, and Construction & Demolition Debris generated, kept, or accumulated in the City.

(d) Bin. "Bin" means a Container with ~~the~~ capacity of approximately one (1) to eight (8) cubic yards, with a hinged lid, and with wheels (where appropriate), that is serviced by a ~~front end loading~~front-end loading Collection vehicle.

(e) Bulky Item. The phrase “Bulky Item(s)" means discarded appliances, furniture, tires, carpets, mattresses, and similar large items that require special Collection due to their size or nature, but can be Collected without the assistance of special loading equipment (such as forklifts or cranes) and without violating vehicle load limits. It does not include abandoned automobiles, large auto parts, or trees.

(~~e~~f) Cart(s): "Cart(s)" means a plastic Container with a hinged lid and wheels that is serviced by an automated or semi-automated Collection vehicle. A Cart has a capacity of ~~32~~38, 45, 64, or 96 gallons~~.~~ (or similar volumes). A “split-Cart” refers to Carts with vertical dividers designed to provide for separate placement in the Cart of two types of materials.

(~~f~~g) City. The word "City" means and includes all the territory lying within the municipal boundaries of the City of Milpitas as presently existing together with all territory, which may be added thereto by annexation or otherwise. When capitalized, "CITY" means the City of Milpitas, a municipal corporation organized under the laws of the State of California, and its divisions, departments and agencies.

(~~g~~h) Centralized Collection Service. The phrase "centralized collection service" means the level of service provided to a multiple family development that provides a designated collection point for ~~garbage and recycling services~~Solid Waste, Recyclable Materials, Organic Materials, and Construction & Demolition Debris in roll-off compactors. It is the responsibility of the Property Management of the development to provide move-in and semi-annual recycling program information to multi-family residents.

~~(h) Container(s). The word "Container(s)" means Front-end Loader Bins, Carts, Compactors, and Roll-off Containers.~~

(i) Collect or Collection (or any variation thereof). The words “Collect”, “Collection”, or any variation thereof, mean the act of collecting Solid Waste, Recyclable Materials, Organic Materials, C&D, Bulky Items, and other material at the place of generation in City.

(~~i~~j) Compactor. The word "Compactor" means a mechanical apparatus that compresses materials ~~and/~~together with the Container that holds the compressed materials or the Container that holds the compressed materials if it is detached from the mechanical compaction apparatus. Compactors include two ~~to four~~(2) to eight (8) cubic yard Bin Compactors serviced by front-end loader Collection vehicles and ~~6~~ten (10) to fifty (50) cubic yard ~~Debris~~Drop Box Compactors serviced by roll-off Collection vehicles.

(k) Composting or Compost (or any variation thereof). The words “Composting" or “Compost” include a controlled biological decomposition of Organic Materials yielding a safe and nuisance free compost product.

(l) Construction and Demolition Debris, C&D Debris, or C&D. The terms "Construction and Demolition Debris”, “C&D Debris”, or “C&D” include discarded building materials, packaging, debris, and rubble resulting from construction, alteration, remodeling, repair or demolition operations on any pavements, excavation projects, houses, Commercial buildings, or other structures, excluding Excluded Waste. Source Separated Recyclable C&D is a subset of C&D. Mixed C&D is C&D that is not Source Separated.

(m) Container(s). The word "Container(s)" means Bins, Carts, Compactors, and Drop Boxes.

(~~j~~n) Curbside Service. The phrase "Curbside Service" means individual collection services for ~~garbage, recycling and yard trimmings recycling~~Solid Waste, Recyclable Materials, Organic Materials, and C&D as typically provided to single-family homes, duplexes, townhomes and mobile homes. See Section V-200-4.20 for specific set-out requirements for customers receiving Curbside Service.

(o) Discarded Materials. The phrase "Discarded Materials" means Solid Waste, Recyclable Materials, Organic Materials, and C&D placed by a Generator in a receptacle and/or at a location for the purposes of Collection by Authorized Contractor, excluding Excluded Waste.

(p) Disposal or Dispose (or any variation thereof). The words "Disposal" or “Dispose” mean the final disposition of Solid Waste at a disposal facility.

(~~k~~q) ~~Debris~~ Drop Box. The phrase "~~debris~~Drop Box" means an open-top Container with a capacity of ~~5~~ten (10) to fifty (50) cubic yards ~~and~~that is serviced by a roll-off Collection vehicle.

~~(l) Front-end Loader Bin. The phrase "Front-end Loader Bin" means a container with the capacity of approximately one to eight cubic yards and with a hinged lid that is serviced by a front-end loading vehicle.~~

(r) Excluded Waste. The phrase "Excluded Waste" means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Authorized Contractor reasonably believes would, as a result of or upon Disposal, be a violation of local, State or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in Authorized Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Authorized Contractor or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.

(s) Food Scraps. The phrase "Food Scraps" means those discarded materials that will decompose and/or putrefy including: (i) all kitchen and table food waste; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking, or handling of food stuffs; (iii) discarded paper that is contaminated with Food Scraps; (iv) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (v) non-Recyclable paper or contaminated paper. Food Scraps are a subset of Organic Materials.

(t) Generator. The word "Generator" means any Person whose act or process produces Solid Waste, Recyclable Materials, Organic Materials, or C&D as defined in the Public Resources Code, or whose act first causes waste to become subject to regulation.

(~~m~~u) Hazardous Waste. The phrase "hazardous waste" means hazardous materials, as defined by Title V, Chapter 3 of the Milpitas Municipal Code, Hazardous Substances, as defined in 42 U.S.C. Section 9601 (14), Designated Wastes, as defined in Title 23, Chapter 15, Section 2522 of the California Code of Regulations, biohazardous and any other wastes which are not nonhazardous solid waste, as defined in Title 23, Chapter 15, Section 2523(a) of the California Code of Regulations. It also means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

(~~n~~v) Health Officer. The phrase "Health Officer" means the Santa Clara County Health Officer, or his or her designee(s) acting as the Health Officer of the CITY.

(~~o~~w) Medium and High Density Developments. "Medium and High Density Developments" are defined in the City's General Plan as follows:

(1) Medium Density—"Medium Density" housing may include single-family attached and semi-attached houses and duplexes.

(2) High Density—"High Density" housing may include attached row houses to triplexes and four-plexes, stacked townhomes, and walk-up garden apartments.

(3) Very High Density—"Very High Density" housing may include ~~attached~~ row houses ~~and~~to townhouses to lofts and stacked flats with structured parking.

(4) Mixed Use—Mixed-use may include commercial offices, retail and services, ~~High Density~~high-density residential, and public~~, and~~/quasi-public uses. Mixed use buildings can contain a combination of residential and commercial uses.

(~~p~~x) Non-putrescible Waste. The phrase "Non-putrescible Waste" means the component of the ~~solid~~ waste stream, which is not capable of being decomposed by micro-organisms with sufficient rapidity as to cause odors, gases, attraction of vectors or other offensive conditions.

(~~q~~y) Occupant. The word "occupant" means ~~individual(s) occupying any premise, business establishment, industry, or other property for the purpose of residing at that location~~the Person who occupies a Premises.

(z) Organic Materials. The phrase "Organic Materials" means those Yard Trimmings and Food Scraps that are specifically accepted at the applicable Approved Facilities (as defined in the contract between Authorized Contractor and CITY). No discarded material shall be considered to be Organic Materials, however, unless it is separated from Solid Waste, Recyclable Material, and C&D.

(raa) Person. The word "person" includesPerson(s)" means any individual, firm, association, organization, partnership, businesscorporation, trust, joint venture, corporation, company, state, county, city, or entity, whether acting as principal, agent or officer, servant or employee, for himself, herself, itself or for any other person. The word "person" includes the masculine, feminine, and plural forms.or public entity.

(sab) Premises. The word "Premises" means and includes any land, or building or structure in the City where any Solid Waste, recyclables, or yard trimmings are produced, kept, deposited, placed or accumulated. The word "premises" extends to and includes, but is not limited to, any agricultural, industrial, commercial or residential land, building or structure and without regard to ownership or use by a profit or nonprofit organization or institution.Recyclable Materials, Organic Materials, or C&D are generated or accumulated.

(t) Producer. The word "producer" means any person, firm or entity that creates or owns solid waste, recyclables, or yard trimmings or the materials from which they are derived, prior to collection or sale.

(ac) Processing. The word "Processing" means to prepare, treat, or convert through some special method.

(uad) Putrescible Waste. "Putrescible Waste" means the component of the solid waste stream that is likely to become putrid. It includes but is not limited to wastes that contain Organic Materials such as food wastes or wastes from animal or vegetable origin.

(v) Recyclables. The word "recyclables" or the phrase "recyclable materials" means materials which through collection, processing, sorting, cleansing, treating, reconstituting, resale or non-landfill disposition, may be returned to the economic mainstream in the form of raw material for new, reused or reconstituted products, including but not limited to material types such as newspapers, white paper, mixed paper, corrugated cardboard, glass, polyethylene terephthalate ("PET"), high density polyethylene ("HDPE"), polystyrene foam, wood, bi-metal cans, aluminum cans, ferrous metals, non-ferrous metals, motor oil, or other materials as may be identified from time to time by CITY.

(ae) Recyclable Materials. The phrase "Recyclable Materials" means those discarded materials that Generators set out in Recyclables Containers for Collection for the purpose of Recycling by the Authorized Contractor, and that are at least ninety percent (90%) Recyclable and that exclude Excluded Waste. No Discarded Materials shall be considered Recyclable Materials unless such material is separated from Solid Waste, Organic Materials, and C&D. Recyclable Materials to be Collected from Single-Family and Multi-Family Premises include, at a minimum, magazines, catalogs, phone books, shredded paper (placed in paper bags for collection), envelopes, junk mail, corrugated cardboard, brown paper grocery bags, mixed or colored paper, paperboard, paper egg cartons, office ledger paper, white plastic grocery bags, glass bottles and jars, food (bimetal) and aluminum cans, newspaper, and plastic containers #1-7 excluding #6, polystyrene in all forms. Recycle Materials to be Collected from Commercial Generators, includes at a minimum, white paper, computer paper, copy paper, fax paper, carbonless forms, envelopes (with or without windows), colored, white, and manila file folders, laser-printed paper, junk mail, newspapers, magazines, phone books, glossy paper, corrugated cardboard, chipboard, shredded paper, bi-metal cans, aluminum, tin, glass bottles and jars, and plastic containers #1-7 excluding polystyrene (#6) in all forms. For Residential and Commercial Customers with Cart service, Recyclable Materials are Collected using a split-Cart that segragates fibers and containers.

(waf) Recycle or Recycling. The phrasewords "Recycle" or "Recycling" meansmean the process of collecting, sorting, cleansing, treating or, and reconstituting solidat a Processing Facility waste materials, and that would otherwise be Disposed of at a landfill for the purpose of returning themsuch materials to the economic mainstreameconomy in the form of raw materialmaterials for new, reused, or reconstituted products.

(ag) Reusable Materials. The phrase "Reusable Materials" means items that are capable of being used again with no or minimal Processing.

(x) Recycling Container. The phrase "recycling container" means the container provided by an authorized contractor which shall only be used for the purpose of collecting recyclables and presenting them for collection to an authorized contractor.

(y) Roll-Off Container. "Roll-Off Container" means an open top debris box for disposal of solid waste or recyclable materials serviced by a roll-off vehicle.

(zah) Scrap Wood. The phrase "Scrap Wood" means clean, unvarnished, unpainted, used wood.

(~~aa~~ai) Solid Waste. The phrase "Solid Waste" means ~~all putrescible and nonputrescible nonhazardous solid, semi-solid and liquid discarded material, including garbage, refuse, trash, paper, rubbish, ashes and other discarded solid and semi-solid material, which are:~~

~~(1) Not hazardous wastes or biohazardous wastes;~~

~~(2) Fall within~~solid waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated hereunder. Excluded from the definition of ~~nonhazardous~~ Solid Waste~~, as that term is defined in Title 23, Chapter 15, Section 2523(a) of the California Code of Regulations;~~ are Excluded Waste, C&D, Source Separated Recyclable Materials, Source Separated Organic Materials, and radioactive waste.

~~(3) Are produced, generated or accumulated in the City or by CITY; and~~

~~(4) Are not designated as recyclable materials in an agreement between City and an authorized contractor or are not designated yard trimmings.~~

Notwithstanding any provision to the contrary, Solid Waste may include de minimis volumes or concentrations of ~~hazardous substances (as that term is defined in 42 U.S.C. Section 9601(14)) remaining in the waste stream following~~waste of a type and amount normally found in Residential Solid Waste after implementation of ~~a program~~programs for the safe Collection, Recycling, treatment, and Disposal of Household Hazardous Waste ~~generated in households, in accordance with Sections~~in compliance with Section 41500 and 41802 of the California Public Resources Code~~.~~ as may be amended from time to time. For the purposes of this Ordinance, Solid Waste means the portion of the waste stream commonly referred to as "garbage" or "trash" and which is generally disposed of in landfills. When the term "waste" is used in this Ordinance, it means all types of waste including Solid Waste, Recyclable Materials, Organics Materials, and/or C&D.

~~(ab) Solid Waste Containers. The phrase "solid waste containers" means all solid waste containers described in Section V-200-3.30.~~

(aj) Source Separated. The phrase "Source Separated" means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Composting, recovery, or reuse.

(ak) Source Separated Recyclable C&D. The phrase "Source Separated Recyclable C&D" means C&D materials which are Source Separated by the Customer or Generator and which have a Processing residue level of less than ten percent (10%) by weight.

(~~ac~~al) Stable Matter. The phrase "stable matter" means and includes all manure and other waste matter normally accumulated in and about a stable or any animal, livestock or poultry enclosure and resulting from the keeping of any animal, poultry or livestock.

(~~ad~~am) Yard Trimmings. The phrase "yard trimmings" means ~~all materials, containing not less than ninety-five percent (95%) by weight per load plant debris, including grass clippings,~~those Discarded Materials that will decompose and/or putrefy, including, but not limited to, green trimmings, grass, weeds, leaves, prunings, ~~weeds, branches, brush and tree trunks, as well as other forms~~branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic waste ~~generated from landscapes and gardens.~~ . ~~(ae)~~ Yard Trimmings ~~Container. The phrase "yard trimmings container" means an authorized contractor-supplied or approved wheeled cart with a capacity of up to ninety-six (96) gallons and used for the collection of yard trimmings.~~are a subset of Organic Materials. Yard Trimmings placed for Collection may not exceed six (6) inches in diameter and three (3) feet in length and must fit within the Authorized Contractor-provided Container.

Section 3 – Keeping or Accumulating ~~Solid~~ Waste

V-200-3.10 – General Requirement

No Person shall keep or accumulate, or permit to be kept or accumulated, within or upon any premises in the City, owned, leased or rented by, or in the possession or under the control of such Person, any ~~solid~~ waste of any kind, except in accordance and compliance with and as authorized by the provisions of this Chapter.

The responsibility for proper keeping, accumulating and delivery of Solid Waste, ~~recyclables and/or yard trimmings~~Recyclable Materials, Organic Materials, and/or C&D to an Authorized Contractor in accordance and

compliance with the provisions of this Chapter shall be on the ~~producer~~Generator thereof and the owner and occupant of the Premises within or upon which the same has been ~~produced~~generated.

V-200-3.20~~–~~ Owner Responsible for Solid Waste, ~~Recyclables, and Yard Trimmings~~Recyclable Materials, Organic Materials, and C&D Collection Service

The owner, agent, and/or occupant of any Premises shall subscribe to and pay for Solid Waste, ~~recyclables, and yard trimmings~~Recyclable Materials, and Organic Materials Collection service rendered to such Premises by an Authorized Contractor and shall maintain at a location in accordance with the provisions of this Chapter, ~~a~~Containers for Solid Waste, ~~recycling and/or yard trimmings container(s)~~Recyclable Materials and/or Organic Materials, where applicable, in accordance with the provisions of this Chapter.

Without limitation to the provisions of Section V-200-9 of this Chapter, the owner, agent and/or occupant of the Premises has an obligation to pay for Solid Waste, ~~recyclables, and yard trimmings~~Recyclable Materials, and Organic Materials Collection services. In the case of those Premises receiving service at the single-unit service level, ~~as defined in the agreement for the collection and disposal of solid waste between City and Browning Ferris Industries of California, Inc., dated September 2, 1986 and as amended thereafter,~~ such obligation runs directly to City, and thus the owner, agent, and/or occupant shall be liable to City for Solid Waste, ~~recyclables, and yard trimmings~~Recyclable Materials, and Organic Materials Collection service charges.

A residential Premises is occupied when a Person takes or holds possession of the Premises for use as a permanent or temporary dwelling. For the purpose of determining whether a residential Premises was occupied during periods when Solid Waste, Recyclable Materials, and Organic Materials Collection service was provided to such Premises, a residential Premises shall be presumed to have been so occupied unless evidence is presented that water utility service was not being provided to such Premises during such periods. Such presumption shall be rebutted only by water utility records showing that the premises was then unoccupied.

An industrial or commercial Premises is occupied when a building occupancy permit is issued. An agricultural Premises is occupied when a person takes or holds possession of the Premises for agricultural purposes.

For utility accounts opened on or after June 2, 2006 serving residential Premises with single-family curbside services connected to a common water meter installed to provide water to two or more residential units, the owners shall designate an agent who shall be responsible for payment to the City for water and curbside services on behalf of the owners. Nothing in this section is intended to prevent an arrangement, or the continuance of an existing arrangement, under which payments for collection service are made by a tenant or tenants, or any agent, on behalf of the owner. Any such arrangement, however, will not affect the owner's obligation as provided herein.

V-200-3.30~~–~~ Solid Waste, Recyclable Materials, Food Scraps, and Yard Trimmings Containers Required, Description

Any and all Solid Waste, Recyclable Materials, Food Scraps, and Yard Trimmings produced, kept or accumulated within or upon any Premises in the City shall be placed without delay in ~~solid waste~~ Containers ~~described in this Section~~ and shall be kept and maintained within such Containers and upon such Premises, until the contents thereof are ~~disposed of~~Collected or otherwise handled in accordance with the provisions of this Chapter. ~~Solid~~ Waste cans, plastic or polyethylene disposal bags, or Authorized Contractor-supplied or approved Containers shall be authorized ~~solid~~ waste containers for use in the City and shall meet the standards for each such container as established in this Section.

Each container shall:

(a) Be constructed of metal, plastic or other substantial materials;

(b) Be of sufficient strength or rigidity to hold without collapsing all ~~solid~~ waste deposited and kept therein;

(c) Be of sufficient strength and rigidity to prevent it from being broken or crushed under ordinary conditions of use;

(d) Be ~~leakproof~~leak-proof and ~~flyproof~~fly-proof;

(e) Be free of sharp, rough or jagged surfaces or edges likely to cause injury to persons lifting or handling the container;

(f) Have a close-fitting cover.

In addition to the foregoing, ~~containers~~Carts supplied by the Authorized Contractor shall be of approximately ninety-six (96), sixty-four (64), ~~or thirty-two~~forty-five (45), or thirty-eight (~~32~~38) gallons in capacity and not weigh

more than two hundred (200), one hundred fifty (150), one hundred (100), and seventy-five (75) pounds, respectively, when fully loaded.

(g) Be graffiti-free. Containers supplied by the Authorized Contractor shall be free of graffiti and all graffiti shall be removed promptly.

(h) Be in good condition. Containers supplied by the Authorized Contractor shall:

(1) Be maintained by the same at a minimum level of good condition.

(2) Include identification as the property of the Authorized Contractor that includes a serial number, instruction for use and telephone number of the Authorized Contractor.

~~Containers of thirty-two (32) gallon capacity, whether supplied by the authorized contractor or not, shall, in addition to the requirements of subsections (a) through (h) above:~~

~~(a) Be equipped with two attached handles or bales, one on each side of the container, of sufficient strength and size and so located to facilitate the lifting and handling of the container;~~

~~(b) Be of such shape that it can be lifted and handled without unreasonable strain by one person; and~~

~~(c) Not weigh more than seventy-five (75) pounds when fully loaded.~~

Plastic or polyethylene disposal bags with wire or plastic tie closure shall meet the requirements of paragraphs (a) through (e) of this subsection, and the National Sanitation Foundation standards for polyethylene refuse disposal bags as follows:

(a) Dimensions. The bags shall have a minimum circumference of sixty (60) inches and a minimum inner dimension of thirty-seven (37) inches.

(b) Strength. The bags, exclusive of packaging and ties, shall have a minimum weight of one hundred five (105) pounds per one thousand (1,000) bags.

~~Authorized contractor-supplied or approved solid waste containers with a capacity in excess of ninety (90) gallons and dimensions providing not less than one (1) cubic yard capacity shall meet the requirements of paragraphs (a) through (h) of this subsection.~~

V-200-3.31~~–~~ Location of Solid Waste, ~~Recycling and/or Yard Trimmings~~Recyclable Materials and/or Organic Materials Containers and ~~Debris~~Drop Boxes

Each and every Solid Waste, ~~recycling, and yard trimmings~~Recyclable Materials, and Organic Materials Container(s) shall be placed, kept and maintained at all times in a side, or back yard, in an enclosure or elsewhere on the premises so as not to be visible from the street or accessible to animals and may not protrude past the front of any building for multi-unit Premises. This requirement does not apply during the twelve (12) hour period before or after a scheduled collection day. To comply with the Americans With Disabilities Act ("ADA"), customers requesting an exception to this provision will be considered on a case by case basis by the City Manager or his or her designee.

Except for those Premises receiving service at the single unit curbside service level, ~~as defined in the Agreement for the Collection and Disposal of Solid Waste between City and Allied Waste Services, dated September 2, 1986 and as amended thereafter,~~ Containers shall not be placed, kept, maintained or serviced in a public street, sidewalk or public easement of any kind or in the front yard setback without prior written consent of CITY.

V-200-3.32~~–~~ Solid Waste, ~~Recycling and Yard Trimmings~~Recyclable Materials, and Organic Materials Containers: Use and Maintenance

Each and every Solid Waste, ~~recycling or yard trimmings~~Recyclable Materials, or Organic Materials Container~~,~~ shall be kept tightly sealed so as to prevent the escape or leakage from the Container of any Solid Waste, ~~recyclables, or yard trimmings~~Recyclable Materials, or Organic Materials or of any offensive vapors, gases or odors. No such container shall be so filled as to cause matter to overflow therefrom; and the gross weight of Solid Waste, ~~recyclables or yard trimmings~~Recyclable Materials or Organic Materials placed or kept therein, including the weight of the Container, shall meet the requirements of Section V-200-3.30. Such Container shall at all times be kept clean and sanitary, and shall be sprayed and otherwise treated in such manner and to such extent and with such substance as may be necessary to repel and keep away insects and rodents, and render the container odor-proof.

No Solid Waste, ~~recyclables, or yard trimmings~~Recyclable Materials, or Organic Materials shall be so compacted or otherwise placed or kept or accumulated in any Container in a manner which does not allow the contents of the

container to fall out, by its own weight, upon the container being lifted and turned upside down. No residential Solid Waste, Recyclable Materials, or Organic Materials containers shall be set out for weekly curbside collection containing dirt, soil, concrete, masonry or asphalt.

After reasonable notice and opportunity to be heard, CITY may determine that any Person occupying, owning, controlling or maintaining any Premises within the City has inadequate containers ~~or~~, facilities ~~for solid waste, recyclables, or yard trimmings or inadequate~~, or frequency of Collection service for Solid Waste ~~collection~~, Recyclable Materials, or Organic Materials and may order that additional containers or facilities or increased frequency of Collection service be provided by said Person.

It shall be unlawful for any Person occupying, owning, controlling or maintaining any Premises within the City where Solid Waste ~~is~~, Recyclable Materials, Organic Materials, and/or C&D are created, ~~produced~~generated, or accumulated, to fail or neglect to procure sufficient number of containers for receiving and holding all Solid Waste ~~which is~~, Recyclable Materials, Organic Materials, and C&D which are produced, ~~created~~generated, or accumulated upon such Premises or to fail or neglect to deposit Solid Waste, Recyclable Materials, Organic Materials, and C&D in containers or to fail or neglect to use and keep containers in good, usable, and sanitary condition. Provided, certain branches, trimmings, and wood may be securely bundled and set out for collection in accordance with regulations which are approved from time to time by the CITY.

Each unit of duplex ~~or~~, triplex, or four-plex shall be deemed to be a single unit for the purpose of this Chapter. Multiple dwelling units with ~~four~~five or more dwelling units on one parcel of property ~~and subject to the multi-unit service level pursuant to the Agreement for the Collection and Disposal of Solid Waste between the City of Milpitas and Allied Waste Services, dated September 2, 1986 and as amended thereafter,~~ shall be required to subscribe to Solid Waste ~~container~~, Recyclable Materials, and Organic Materials Collection service.

The CITY may prescribe mandatory ~~garbage~~waste cart rental service for curbside services provided to Medium and High Density Development residences with limited setout space.

V-200-3.40~~–~~ Minimum Allowable Collection Frequencies Disposal

Weekly Collection: No more than one week's accumulation of putrescible Solid Waste and Organic Materials shall be kept or be permitted to remain upon any Premises in the City. At least once each week all putrescible Solid Waste ~~produced~~and Organic Materials generated, kept or accumulated within any Premises in the City shall be disposed of in accordance with the provisions of this Chapter.

No more than one week's accumulation of non-putrescible Solid Waste and Organic Materials shall be kept in front-end loader Bins. At least once each week all Solid Waste or Organic Materials kept or accumulated in front-end loader Bins within any Premises in the City shall be disposed of in accordance with the provisions of this Chapter.

30-Day Collection: No more than thirty (30) day's accumulation of non-putrescible Solid Waste~~, except recyclables,~~ or Organic Materials shall be kept or be permitted in Compactors and ~~debris~~Drop Boxes. At least once each thirty (30) days all such wastes kept or accumulated in Compactors and ~~debris~~Drop Boxes within any Premises in the City shall be disposed of in accordance with the provisions of this Chapter.

No more than thirty (30) day's accumulation of non-putrescible ~~recyclables~~Recyclable Materials shall be kept or be permitted in front-end loader Bins and ~~debris~~Drop Boxes. At least once each thirty (30) days non-putrescible ~~recyclables~~ Recyclable Materials kept or accumulated in front-end loader Bins and ~~debris~~Drop Boxes within any Premises in the City shall be disposed of in accordance with the provisions of this Chapter.

60-Day Collection: No more than sixty (60) day's accumulation of non-putrescible ~~recyclables~~Recyclable Materials shall be kept or be permitted in Compactors only. At least once each sixty (60) day's non-putrescible ~~recyclables~~Recyclable Materials kept or accumulated in Compactors within any Premises in the City shall be disposed of in accordance with the provisions of this Chapter.

V-200-3.50~~–~~ Hazardous Waste, Biohazardous Waste, Ashes

No Hazardous Waste, biohazardous waste, hot ashes, hot cinders or burning matter shall be placed or kept in any Solid Waste, ~~recycling or yard trimmings~~Recyclable Materials, Organic Materials, or C&D Containers or ~~debris~~Drop Box. No other ashes, cinders or stable matter shall be placed or kept in any Solid Waste, ~~recycling or yard trimmings~~Recyclable Materials, Organic Materials, or C&D Container or ~~debris~~Drop Box unless first wrapped in paper or other material.

V-200-3.60~~–~~ Exemptions: Authorized Contractor

The provisions of this Section relating to the keeping or accumulation of any Solid Waste or Organic Materials Collected shall apply to an Authorized Contractor making such Collection, provided CITY may exempt the Authorized Contractor from the provisions hereof.

V-200-3.61– Exemptions: Employees of Authorized Contractor; Hardship Variance

Employees of an Authorized Contractor Collecting Solid Waste, ~~recyclables, or yard trimmings~~Recyclable Materials, or Organic Materials within the City, are exempt from the charges applicable for Collection of Solid Waste, ~~recyclables, or yard trimmings~~Recyclable Materials, or Organic Materials at the employee's primary place of residence, provided that this residence is located within the City, such employee provides proof of employment with the Authorized Contractor ~~to the City~~ on an annual basis, and employee receives curbside service.

The City Council may grant a variance from the provisions of Section V-200-3.20 or V-200-3.31 when the strict application of the Section creates an undue hardship. The following standards shall guide the City Council in the decision to grant or deny a variance request:

(a) A variance is intended to alleviate a hardship imposed by the strict application of Section V-200-3.20 or V-200-3.31 and arising from the particular size, shape, topography, location, surrounding, or other condition of the property, not including economic hardship; and

(b) An acceptable alternative method of disposal of Solid Waste, Recyclable Materials, Organic Materials, and C&D must be used by the Person owning, controlling, or maintaining the Premises for which the variance is requested. Acceptable alternative methods of disposal shall not include disposal of Solid Waste, Recyclable Materials, Organic Materials, and C&D at another Premises or any disposal facility, whether or not such Premises or disposal facility is located within the City.

Section 4 –Collection and Disposal

V-200-4.10– In General

No Person, other than an Authorized Contractor shall collect, remove, transport, process or dispose of any Solid Waste, ~~recyclables, or yard trimmings~~Recyclable Materials, Organic Materials, or C&D of any kind ~~produced~~generated, kept or accumulated within or upon any Premises within the CITY except as hereafter provided. No Person shall permit the collection, removal, transportation, processing or disposal of any Solid Waste, ~~recyclables, or yard trimmings~~Recyclable Materials, Organic Materials, or C&D of any kind ~~produced~~generated, kept or accumulated within or upon any Premises within the CITY, owned, leased, or rented by or under the control of or in the possession of such Person except by an Authorized Contractor pursuant to the provisions of this Chapter or except as hereinafter provided.

V-200-4.20– Delivery to the Authorized Contractor

Additional Services Allowed for Disabled Customers: Solid Waste, ~~recyclables~~Recyclable Materials, and/or ~~yard trimmings~~Organic Materials are to be delivered to an Authorized Contractor authorized to collect, ~~dispose~~process, and/or ~~recycle~~dispose same. The Authorized Contractor shall provide additional services as necessary to accommodate the needs of disabled residents, as defined in the Americans with Disabilities Act (ADA), at the same level of service provided and rate charged to nondisabled residents, including, but not limited to, collecting Solid Waste, ~~Recyclables and Yard Trimmings~~Recyclable Materials, and Organic Materials from Containers stored in side or back yards, replacing empty Containers in side or back yards, and maintaining a TDD telephone line. The Authorized Contractor shall not be required to enter upon a private driveway or upon a private yard or enclosure for the purpose of Collecting Solid Waste, ~~recyclables, or yard trimmings~~Recyclable Materials, or Organic Materials, except to accommodate disabled residents as defined by the ADA or unless a customer receives backyard service.

Curbside Service: Solid Waste ~~accumulated in 32-gallon plastic or metal cans, or in 32-gallon plastic bags that are tied at the top, at residential premises with curbside services, shall be delivered to the authorized contractor by placing cans and/or bags alongside the street curb, but not in the street, in front of the premises wherein solid waste is produced and accumulated. Solid waste or recyclables~~, Recyclable Materials, and/or Organic Materials (including Food Waste and Yard Trimmings) accumulated in carts at residential Premises with curbside services shall be delivered to the Authorized Contractor by placing the carts in the street with the wheels against the curb, two (2) feet from parked cars and mail boxes in front of the Premises wherein Solid Waste ~~and/or recyclables are produced~~, Recyclable Materials, and/or Organic Materials are generated and accumulated. In the event any ~~Producer~~Generator fails to return containers to their approved locations in a timely manner, ~~Producer~~Generator may be cited. After two citations within one year, the City may require the ~~Producer~~Generator to contract for a minimum of 12 months subscription to push and return services as provided by Authorized Contractor.

~~Yard trimmings shall be delivered to an authorized contractor in an authorized yard trimmings container by placing the cart in the roadway with the wheels adjacent to the curb. Tree prunings and branches shall be bundled with twine and cut in lengths no longer than three (3) feet long. Bundles shall be placed on the ground alongside the street curb adjacent to the yard trimmings container. Excess yard trimmings shall be placed in a clean thirty-two (32) gallon plastic or metal can provided by the resident alongside the street curb. Resident shall obtain a yard trimmings sticker from the authorized contractor and attach it to the container.~~

Single-family curbside service weekly set out of used motor oil and/or used cooking oil shall use only containers approved ~~one-gallon jugs available at City of Milpitas fire stations and from~~and provided by the Authorized ~~Contractors office~~Contractor.

Non-Curbside Service: Solid Waste~~ or recyclables accumulated in containers of thirty-two (32) gallons or larger capacity~~, Recyclable Materials, and/or Organic Materials shall be delivered to the Authorized Contractor in a location on private property, consistent with the provisions of Section V-200-3.31, so as not to require the driver of the Collection vehicle to dismount from the vehicle in order to service the Containers. In the event that the driver is required to dismount due to the location of the ~~bin~~Container(s), travel more than twenty-five (25) feet to the ~~recycling bin~~Container(s), or because the ~~producer~~Generator does not want the Collection vehicle on the ~~producer's~~Generator's property, ~~or if site conditions require the use of a scout truck, the producer~~the Generator shall be liable to the Authorized Contractor for ~~an additional charge (called a "push and return charge")~~a backyard service rate for pushing, collecting and returning the Container(s). This ~~charge~~rate shall also apply if the Authorized Contractor must use non-standard equipment ~~(scout truck)~~.

The Authorized Contractor shall not be liable for any damage to private property in the course of Collecting Solid Waste, ~~recyclables, or yard trimmings~~Recyclable Materials, Organic Materials, or C&D or for delivery, maintenance, or removal of any Container or ~~debris~~Drop Box, except for the negligence of the Authorized Contractor, its agents, servants and employees.

V-200-4.30~~–~~ Ownership of Solid Waste~~ and Recyclables~~, Recyclable Materials, Organic Materials, and C&D

It is expressly understood that all Solid Waste~~ and yard trimmings~~, Recyclable Materials, Organic Materials, and C&D Collected become the property of the Authorized Contractor at the time of Collection. It is expressly understood that title to all ~~recyclables~~Solid Waste, Recyclable Materials, Organic Materials, and C&D passes to the Authorized Contractor upon being set out at the usual place of Collection.

V-200-4.40~~–~~ Landfilling of ~~Recyclables~~Recyclable Materials Prohibited

No Authorized Contractor shall permit the landfilling of ~~recyclables~~Recyclable Materials except where not prohibited by contract.

Section 5 ~~–~~Authorized Contractors

V-200-5.10~~–~~ Authority

The CITY is empowered to enter into a contract or contracts with, or authorize staff to issue permits, in accordance with an approved permit system, to any Person for the right to engage in the business of Collecting, removing, transporting, processing or disposing of any or all Solid Waste, ~~recyclables~~Recyclable Materials, Organic Materials, and/or ~~yard trimmings produced~~C&D generated, kept or accumulated within the City. The CITY may grant an exclusive contract to any single Person to engage in the business of Collecting, removing, transporting, processing or disposing of any or all Solid Waste, ~~recyclables~~Recyclable Materials, Organic Materials, and/or ~~yard trimmings~~C&D if CITY deems an exclusive contract necessary or convenient for the efficient Collection and removal of Solid Waste, ~~recyclables~~Recyclable Materials, Organic Materials, and/or ~~yard trimmings~~C&D and the preservation and protection of the public health, safety and general welfare.

V-200-5.11~~–~~ Contract Provisions

Each Authorized Contractor(s) providing residential and non-residential Solid Waste, Recyclable Materials, Organic Materials, and C&D Collection services shall comply with all licenses, permits, or written approval requirements of the CITY. Such written approval shall be contingent upon the Authorized Contractor's demonstrated capability to comply with these standards and use of equipment, which is safe and sanitary.

Any contract executed hereunder may provide that the Authorized Contractor(s) shall have the right to Collect and receive the Collection charges and fees established therein for the Collection, transportation, removal, processing and/or disposal of Solid Waste, ~~recyclables~~Recyclable Materials, Organic Materials , and/or ~~yard trimmings~~C&D ; provided, however, City may elect to Collect and receive said Collection charges and fees subject to the contract provisions

concerning the remittance thereof to the Authorized Contractor. Said contract shall also provide for the compensation to be paid to CITY by the Authorized Contractor for the granting of the right to engage in said business. Nothing herein contained shall be deemed to limit the authority of the CITY to renew or extend a contract upon the expiration of any term thereof. The contract may contain such other terms, covenants and conditions as the CITY shall deem necessary or convenient for the efficient Collection, transportation, removal, processing and/or disposal of Solid Waste, ~~recyclables~~Recyclable Materials, Organic Materials, and/or ~~yard trimmings~~C&D and the preservation and protection of the public health, safety, peace and welfare.

V-200-5.20~~–~~ General Compliance

No Authorized Contractor shall Collect, remove, transport, process or dispose of any Solid Waste, ~~recyclables~~Recyclable Materials, Organic Materials, and/or ~~yard trimmings~~C&D except in full accordance and compliance with the provisions of the contract existing between the Authorized Contractor and CITY and the provisions of this Chapter and all rules and regulations issued hereunder. Any license, privilege or authorization granted in any such contract to any Person to engage in the business of Collecting, removing, transporting, processing or disposing of any Solid Waste, ~~recyclables, or yard trimmings, produced~~Recyclable Materials, Organic Materials, and/or C&D generated, kept or accumulated in the City shall be conditioned upon the faithful performance by such Person or authorized subcontractors, if any, of any and all terms, covenants, conditions and provisions in or of said contract, the provisions of this Chapter, and all rules or regulations issued thereunder.

V-200-5.21~~–~~ Forfeiture of Contract for Noncompliance

Any violation of this Chapter or any rule or regulation promulgated hereunder shall entitle CITY to cancel and terminate its contract with or revoke the permit of the Authorized Contractor and to relet said contract or issue new permits.

V-200-5.30~~–~~ Statements, Payments, Records

Each and every Authorized Contractor shall ~~file with the City,~~ maintain all records and submit to CITY all reports, statements, and payments in full accordance and compliance with the provisions of the contract existing between Authorized Contractor and CITY. Unless otherwise provided in the contract between the Authorized Contractor and CITY, Authorized Contractor shall submit monthly and quarterly reports within thirty (30) calendar days after the end of the calendar month or quarter, as applicable, and Authorized Contractor shall submit annual reports no later than forty-five (45) calendar days after the end of each calendar year. Monthly, quarterly, and annual reports shall, at a minimum, include all data and information as described in the contract between the Authorized Contractor and CITY. For each calendar month during which the Authorized Contractor engages in such business and for each calendar month during which the Authorized Contractor or authorized subcontractor(s) collect any receipts, revenues or compensation for the Collection, transportation, processing and/or disposal of Solid Waste, ~~recyclables, or yard trimmings produced~~Recyclable Materials, Organic Materials, and/or C&D generated, kept or accumulated in the City, Authorized Contractor shall submit to CITY a written statement of the total gross receipts collected or received by the Authorized Contractor and any authorized subcontractor(s) during the calendar month for which such statement is rendered and filed. Each such statement shall also separately state the total gross receipts collected or received by the Authorized Contractor and those received by each of any authorized subcontractors during said calendar month. Such statement shall be certified as true and correct by such Authorized Contractor and by each of any authorized subcontractors.

No statement filed hereunder shall be conclusive as to the matters set forth therein, nor shall the filing of the same preclude CITY from collecting by appropriate action such sum as is actually due and payable hereunder. The statement and each of the several items therein contained shall be subject to audit and verification by the CITY, and CITY may examine, audit and inspect such books and records of any Person who engages in the business of Collecting, transporting, processing and/or ~~processing or~~ disposing of any Solid Waste, ~~recyclables, or yard trimmings produced~~Recyclable Materials, Organic Materials, or C&D generated, kept or accumulated in the City, and of any authorized subcontractors, as may be necessary to ascertain the correct amount of the sums due CITY. Authorized Contractors and any authorized subcontractors are hereby required to permit an examination of such books and records for the purposes aforesaid.

~~Each of the above mentioned written statements shall be filed within sixty (60) days after the calendar month for which such statement is rendered. The above mentioned~~Unless otherwise provided in the contract between the Authorized Contractor and CITY, the above-mentioned sums due CITY shall be due and payable, for each calendar month for which a written statement is required, within sixty (60) days from and after each such calendar month; and said sum for each of said calendar months shall be overdue on the sixty-first day after each such calendar month. If the sixtieth (60) day following the end of the month falls on a weekend or a City-recognized holiday, said payment shall be due on the next regular business day.

Unless otherwise provided in the contract between the Authorized Contractor and CITY, each Authorized Contractor shall keep and maintain full and complete books of account and other records showing all business transacted in the City by such Person, and by each and every authorized subcontractor(s), if any, including, but not by way of limitation, records of all monthly collections and receipts, expenses, profits, supporting statements and vouchers, balance sheets and profit and loss statements and other documents accurately reflecting all such business. All such books and records shall be subject to audit and inspection at any and all times by CITY and its authorized officers, agents and employees, and shall be made available at said office for such inspection or audit at any and all reasonable times upon request of the CITY.

Unless otherwise provided in the contract between Authorized Contractor and CITY, the Authorized Contractor shall file, for each year during which the Authorized Contractor engages in such business, an annual report with the CITY showing, at a minimum:

(a) The total gross receipts actually collected or received by the Authorized Contractor and any authorized subcontractor(s) during said year, which shall be examined by the Authorized Contractor's independent certified public accountants, and shall include the opinion of such accountants as to whether such statement is a fair representation of the data included therein; and

(b) A breakdown of such total gross receipts by programs and service level types showing the amounts received or collected by the Authorized Contractor and by each of any authorized subcontractor(s).

~~Such reports shall be filed within ninety (90) days after the end of the year for which such report is made.~~

V-200-5.31~~–~~ Interest

Delinquent sums due CITY by Authorized Contractor(s) shall ~~bear interest from the date of delinquency to date of payment at the rate of ten percent (10%) per annum.~~be subject to a delinquency penalty of two percent (2%), which attaches on the first day of delinquency. The delinquency penalty shall be increased an additional two percent (2%) for each additional month the payment remains delinquent.

V-200-5.40~~–~~ Place and Manner of Disposal

No Authorized Contractor shall dispose of any Solid Waste, Recyclable Materials, Organic Materials, or C&D anywhere in the City unless and until the manner and place of disposal within the City has been authorized or approved by the City Council (either by contract, resolution or ordinance). Except as otherwise provided in an exclusive contract between an Authorized Contractor and CITY or in an exclusive disposal agreement between CITY and the owners of ~~Newby Island~~the disposal facility, the fees for disposal at ~~Newby Island~~the disposal facility shall be charged directly to the Authorized Contractors at the same rate charged to the general public at that disposal facility.

V-200-5.50~~–~~ Faithful Performance Bond

When the CITY authorizes or designates a Person or firm to provide Solid Waste, Recyclable Materials, Organic Materials, and C&D Collection services for its jurisdiction through contract, franchise, permit, or license such Person or firm shall submit proof of adequate financial resources and experience to properly conduct the operation authorized.

Each and every Authorized Contractor shall, ~~at the time of execution of the~~within seven (7) calendar days of the City's notification to Authorized Contractor that the CITY has executed the contract or ~~issuance of~~issued the permit authorizing Authorized Contractor to engage in business, furnish to CITY and file with the City Clerk a corporate surety bond, payable to the CITY, in a penal sum required by the CITY (and approved as to form by the City Attorney), executed by the Authorized Contractor as principal and by a corporate surety as surety, ~~conditioned upon~~securing the faithful performance by the Authorized Contractor and any authorized subcontractor(s) of its obligations under said contract and of all provisions of this Chapter. Such bond shall be renewed annually if necessary so that the performance bond is maintained at all times during the term of said contract. The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California that has a rating of A or better in the most recent edition of Best's Key Rating Guide, and that has a record of service and financial condition satisfactory to the CITY.

As an alternative to the performance bond required above, at CITY's option, the Authorized Contractor may deposit with CITY a fully prepaid irrevocable letter of credit for at least the duration of the contract year for which the letter of credit is deposited. The amount, form, and issuer of such letter of credit shall be subject to the approval of CITY's Risk Manager and the City Attorney.

CITY shall have the right to draw against the faithful performance bond or the letter of credit in the event of a breach or default of Authorized Contractor or the failure of Authorized Contractor to perform fully any obligation under

the contract or permit authorizing Authorized Contractor to engage in business. Within five (5) calendar days of receipt of notice from CITY, Authorized Contractor shall renew or replace such sums of money as needed to bring the faithful performance bond or letter of credit current.

V-200-5.60 Interference with Authorized Contractors

No Person shall interfere with or obstruct the authorized activities of an Authorized Contractor in the Collection, transportation, removal, processing and/or disposal of Solid Waste, recyclables, or yard trimmingsRecyclable Materials, Organic Materials, and/or C&D.

V-200-5.70 Identification and Lettering of Vehicles and Containers

The Authorized Contractor shall letter each vehicle used in Collection activities to include a vehicle identification number, the name of the Authorized Contractor, and the local business telephone number of the Authorized Contractor. The lettering size shall be not less than two and one halffour inches (2 ½4″) high. Any Authorized contractor suppliedContractor-supplied Solid Waste, recycling and/or yard trimmingsRecyclable Materials, Organic Materials, and/or C&D Container shall be lettered with the Authorized Contractor's name and local business telephone number with letters not less than two and one-half inches (2½″) highin a form approved by CITY.

Section 6 Authorized Contractors' Rates, Charges and Fees

V-200-6.10 Fees and Charges in General

All charges for the Collection and removal of Solid Waste, recyclablesRecyclable Materials, Organic Materials, and/or yard trimmingsC&D shall be due and payable on the first of the month following such collection and removalin accordance with the payment terms set by Authorized Contractor and approved by CITY.

The Authorized Contractor shall not demand any fees from the producersGenerators of Solid Waste, recyclables, or yard trimmingsRecyclable Materials, Organic Materials, and/or C&D except as provided in the contract between the Authorized Contractor and CITY.

Disputes over charges made or as to the character of the services performed shall be decided by the City Manager or his or her designee.

V-200-6.11 Senior Citizen Rate

Rates for residential Premises with curbside collection for persons sixty-two (62) years or older and who are responsible for paying the water bill of the dwelling, upon application, shall be reduced upon such terms and conditions as are agreed to between City and Authorized Contractor. Authorized Contractor shall verify eligibility for the senior rate using driver's license or birth certificate and proof of residency.

Section 7 Manner of Collection, Removal and Transportation

V-200-7.10 Sorting Solid Waste on Streets

No Person shall sort, separate, or segregate any Solid Waste, recyclables, or yard trimmingsRecyclable Materials, Organic Materials, or C&D of any kind within or upon any public street or place except as expressly authorized by CITY.

V-200-7.20 Collection and Transportation

No Person shall Collect, transport or receive any Solid Waste, recyclables, or yard trimmingsRecyclable Materials, Organic Materials, or C&D within or upon any public streets in the City, or anywhere in the City, except in leak proofleak-proof vehicles so constructed that no Solid Waste, recyclables, or yard trimmingsRecyclable Materials, Organic Materials, or C&D can leak or sift through or fall out, or be blown from, such vehicle. Vehicles used to Collect or transport Solid Waste, recyclables, or yard trimmingsRecyclable Materials, or Organic Materials shall be completely covered, and shall be kept covered at all times except when Solid Waste, recyclables, or yard trimmingsRecyclable Materials, Organic Materials, or C&D is/are being actually loaded or unloaded, and except when said vehicles are moving along a Collection route in the course of Collection. Collection and transportation of any and all Solid Waste, recyclables, or yard trimmingsRecyclable Materials, Organic Materials, or C&D shall be so conducted that no Solid Waste, recyclables, or yard trimmingsRecyclable Materials, or Organic Materials will fall, drain or spill out of the Collecting or transporting vehicle. Any Person Collecting or transporting any Solid Waste, recyclables, or yard trimmingsRecyclable Materials, Organic Materials, or C&D shall immediately pick up all Solid Waste or recyclables which drops, spills, leaks or is, Recyclable Materials, Organic Materials, or C&D which drop, spill, leak or are blown from the Collecting or transporting vehicle, and shall otherwise clean the place onto which any such Solid Waste, recyclables, or yard trimmingsRecyclable Materials, Organic Materials, or C&D was/were so dropped, spilled, blown

or leaked. The Authorized Contractor shall limit its contents to twenty thousand (20,000) pounds per axle. The Authorized Contractor shall provide personnel and equipment necessary to provide push and return service in confined areas or other locations that have Collection and transport vehicle access limitations.

Authorized Contractor shall replace lids or covers on Containers if appropriate, immediately after emptying the same and shall repair or replace at its expense any Container(s) damaged as a result of its handling thereof, normal wear and tear excepted.

Authorized Contractor may refuse service and Collection if any Container fails to meet the requirements of Section V-200-3.30 of this Chapter provided Authorized Contractor shall give written notice (by leaving a copy thereof attached to said Container) of its reasons for refusing service and Collection.

V-200-7.30 ~~Solid~~ Waste from Outside City

No Person other than CITY shall transport or permit to be transported into the City any ~~solid~~ waste of any kind ~~produced~~generated, kept or accumulated outside the City, for the purpose of keeping, accumulating, or disposing of it in the City unless authorized by CITY and no Person other than CITY shall keep, accumulate or dispose of in the City any ~~solid~~ waste transported or brought into the City from outside the City unless authorized by CITY.

V-200-7.40 Missed Collections

Unless otherwise provided in the contract between Authorized Contractor and CITY, Authorized Contractor shall Collect and remove from any and all Premises, ~~within twenty-four (24) hours after~~by the end of the business day following the demand, notice or request, any and all Solid Waste, ~~recyclables~~Recyclable Materials, and/or ~~yard trimmings~~Organic Materials which Authorized Contractor shall have failed to Collect ~~and remove~~a properly placed Container as required at the regular scheduled time. Authorized Contractor shall not refuse Collection service because of a violation of the rules unless Authorized Contractor has, in a reasonable manner, notified the customer in question of the rule.

V-200-7.50 Areawide Cleanup Service

Where provided by contract, Authorized Contractor shall provide such labor, supervision and equipment at its cost; and at times and dates agreed upon between the parties, sufficient to conduct an areawide cleanup collection of accumulated seasonal and extraordinary Solid Waste, Recyclable Materials, and/or Organic Materials. Authorized Contractor shall cooperate in any and every way with CITY to effectively provide such cleanup services, including accepting wastes collected by CITY personnel and permitting CITY personnel to inspect cleanup operations.

~~V-200-7.51 Household Dump Day~~

~~Pursuant to the terms of a contract between authorized contractor and City, Authorized Contractor shall provide at its solid waste disposal and compost facility site(s) nearest the City (or at such other site as may be agreed to between Authorized Contractor and the City) the privilege to any resident of the City to dispose of any nonputrescible waste free of charge subject to program criteria. Yard trimmings shall not be accepted on Household Dump Day after December 31, 1996 except as provided by City authorized permit. It is the intent of this section to allow free disposal and recycling of nonputrescible waste produced from residences within the City; it is not intended to authorize the free disposal of such materials generated from commercial or industrial sources or from sources outside the City.~~

~~Motor vehicle tires, auto batteries, mattresses and box springs, computer monitors and televisions, and appliances which contain refrigerants, including but not limited to refrigerators, chillers, freezers, ice makers and air conditioning units will be accepted provided the resident bringing the item shall pay a charge to be determined by the City for removal of the refrigerant from the appliance and for the disposal and/or recycling of both the refrigerant and the appliance or for disposal or processing of the tires, auto batteries, mattresses and box springs, computer monitors and televisions.~~

~~Nothing herein contained, however, shall prohibit any person from collecting or transporting solid waste (in excess of the minimum collection for which City service is provided) produced, kept or accumulated at a residential premises owned or leased by such person in the City and disposing of the same outside City limits at a site approved by the Health Officer.~~

V-200-7.60 Unauthorized Collection Prohibited

During the twenty-four (24) hour period commencing at 6:00 p.m. on any day preceding a day designated for Collection of ~~recyclables~~Solid Waste, Recyclable Materials, Organic Materials, and/or C&D, no Person, other than an Authorized Contractor, shall remove ~~recyclables~~Solid Waste, Recyclable Materials, Organic Materials, and/or C&D which have been placed at a designated ~~recycling~~ Collection location. Any and each such Collection in violation hereof from one or more designated ~~recycling~~ Collection locations during said twenty-four (24) hour period shall constitute a separate and distinct offense punishable as provided in this Code.

V-200-7.61– Right of Individual to Dispose of Recyclable ~~Waste Material~~Materials and/or Organic Materials

Nothing in this Chapter shall limit the right of a person to donate, sell or otherwise dispose of ~~recyclables or yard trimmings~~Recyclable Materials and/or Organic Materials, provided that any such disposal is in accordance with the provisions of this Chapter.

V-200-7.62– Civil Action by Authorized Contractor

Nothing in this chapter shall be deemed to limit the right of an Authorized Contractor to bring a civil action against any Person who violates Section V-200-7.60 of this chapter, nor shall a conviction for such violation exempt any Person from a civil action brought by an Authorized Contractor.

Section 8 - ~~Solid~~ Waste Disposal

V-200-8.10– Public Property

No Person shall throw, drop, leave, dump, place, keep, accumulate or otherwise dispose of any ~~solid~~ waste upon any street, way, sidewalk, gutter, stream, or creek or the banks thereof, or any public place or public property, or sweep, gather or take any ~~solid~~ waste from any such place or property or portion thereof or throw, place, deposit, dump, drop, leave, keep or accumulate it in any other such place or property or portion thereof, either with or without intent to later remove the same, except with the written prior permission of the Health Officer. The burden of proving such consent shall be on the Person doing any such thing.

V-200-8.20– No ~~Solid~~ Waste on Premises, Except that ~~Produced~~Generated Thereon

Except as otherwise expressly authorized by the provisions of this Chapter, no Person other than CITY shall place, keep, accumulate or dispose of any ~~solid~~ waste of any kind in or upon any Premises, land or place in the City other than the Premises wherein such ~~solid~~ waste is ~~produced~~generated unless so authorized by resolution or ordinance of the CITY; and no Person other than CITY shall establish, maintain or operate any dump or disposal grounds in the City for the keeping, accumulation or disposal of any ~~solid~~ waste of any kind unless so authorized by permit of the CITY; and no Person shall permit any Premises, land or place in the City owned, leased, rented or in the possession or under the control of such Person to be used for the keeping, accumulation or disposal of any ~~solid~~ waste of any kind other than ~~solid~~ waste ~~produced~~generated thereon, unless so authorized by permit of the CITY.

V-200-8.21– Burying ~~Solid~~ Waste

Except as otherwise expressly authorized by the provisions of this Chapter, no Solid Waste ~~of any kind~~, Recyclable Materials, or Organic Materials shall be buried anywhere in the City.

V-200-8.22– Burning ~~Solid~~ Waste

Burning of Solid Waste, ~~recyclables, yard trimmings or scrap wood~~Recyclable Materials, or Organic Materials is prohibited.

V-200-8.23– Fertilization of Land

Stable matter and processed ~~yard trimmings~~Organic Materials or compost may be used to fertilize lands subject to such regulations as the Health Officer may impose to protect the public health and safety.

Section 9 –Enforcement and Penalties

V-200-9.10– Remedies Not Exclusive

This Section provides for issuance of a Notice ~~of violation~~ and/or an administrative hearing process which is in addition to any and all legal remedies, criminal or civil, which may be pursued by the CITY to address any violation of this Chapter.

V-200-9.20 ~~Notice of Violation~~ Enforcement Process

(a) Declaration of Public Nuisance: Any private property, or use of private and/or public property found to be maintained in violation of the foregoing sections is hereby declared to be a public nuisance and shall be abated by rehabilitation, removal, or repair pursuant to the procedures set forth herein. The procedures for abatement set forth herein shall not be exclusive and shall not in any manner limit or restrict the City from enforcing other City ordinances or abating public nuisances in any other manner provided by law including, but not limited to, Civil Code Section 3480. Any other City ordinance that provides that a violation of the ordinance may be declared a nuisance or a public nuisance may be abated pursuant to the procedures set forth herein, and be subject to those provisions allowing for cost recovery, at the discretion of the City Manager or his or her designee.

(b) Notice of Abatement: Any violation of this chapter may be abated through the abatement process identified in Section V-500-3.01.

(c) Administrative Citation: In addition, any violation of this chapter may be prosecuted through the issuance of an administrative citation under Chapter 21 of Title I.

~~The City may issue a notice of violation for any and all violations of any and all provisions of this Chapter. The recipient of such notice of violation may either: (a) pay the fee for that violation, if applicable and, by not requesting an administrative hearing, waive any right to such hearing and all other appeals provided under this Chapter; (b) pay the fee for that violation, if applicable, and appeal the notice of violation by requesting an administrative hearing within ten (10) days of issuance of the notice of violation; or (c) if no fee is set for that violation, may appeal the notice of violation by appearing at an administrative hearing pursuant to this Section. The notice of violation shall include the violation, the fee for that violation, if applicable, and the procedure for appeal of the notice of violation.~~

~~V-200-9.21 - Notice of Violation Fees~~

~~Violations of Chapter 200 Solid Waste Management shall be administered as infractions pursuant to Section I-1-4.09, Penalty Provisions.~~

~~V-200-9.22 - Fee to be Paid as a Deposit~~

~~If the recipient of a notice of violation is successful in appealing the notice, the fee shall be refunded to the recipient of the notice. If the appeal is not successful, the fee shall be forfeited.~~

~~V-200-9.23 - Additional Reports~~

~~If any additional written reports concerning the notice of violation are submitted to the administrator for consideration, a copy of the report shall be served on the person requesting the administrative hearing at least three (3) days prior to the date of the hearing.~~

~~V-200.9.30 - Notification~~

~~Any and all notifications under this Chapter shall be served by certified mail or by personal service, or by regular mail if service by certified mail or personal service is not possible. Service shall be deemed complete upon mailing or upon receipt if made by personal service.~~

~~V-200-9.40 - Administrative Hearing Procedure~~

~~The following procedures shall be followed for an administrative hearing:~~

~~(a) Deposit of Fee, if Applicable. No administrative hearing to contest a notice of violation given pursuant to this Chapter shall be held unless the fee for that violation, if applicable, has been deposited in advance in accordance with this Section.~~

~~(b) Date of Hearing. Any administrative hearing shall be set for a date no later than fourteen (14) days from receipt of the request for such a hearing.~~

~~(c) Notification of the Hearing. Notice of the date, time, and place of the administrative hearing shall be served on the accused or the party requesting the Hearing at least seven (7) days prior to the Hearing date.~~

~~(d) Appearance at Hearing Required. The failure of any recipient of a notice of violation issued pursuant to this Chapter or party requesting an administrative hearing to appear at the hearing shall constitute a forfeiture of the fee, if applicable, and/or, if no fee is set for the violation, shall serve as an admission of the violation and shall subject the recipient to any and all other legal remedies available.~~

~~(e) Presentation of Evidence by the Accused or Requestor. At the administrative hearing, the party contesting the notice of violation or the party requesting the hearing shall be given the opportunity to testify and to present evidence concerning the violation or subject of the hearing. Any other persons having relevant evidence shall be allowed to present testimony at the hearing.~~

~~(f) Presentation of Evidence by the City. The notice of violation along with any incident reports attached to the notice shall constitute prima facie evidence of the respective facts contained in those documents.~~

~~V-200-9.41 - Administrator's Decision~~

~~After considering all of the testimony and evidence submitted at the administrative hearing, the administrator shall issue a written decision to uphold or dismiss the allegations contained in the notice of violation or other decision and shall list in the decision the reasons for that decision. The decision of the administrator shall be served on the applicable party pursuant to this Section. The decision of the administrator is final.~~

V-200-9.21 through V-200-9.50 ~~Late Payment Charges~~ Reserved

~~Any person who fails to pay any notice of violation fee imposed pursuant to the provisions of this Chapter, on or before the date that fee is due, shall also be liable for the payment of late payment charges. A late payment charge of ten percent (10%) of the original fee shall be imposed every seven (7) days from the date the fee was due, with the total late payment charges not to exceed one hundred percent (100%) of the amount of the fee.~~

~~V-200-9.51 Collection of Fees and Late Payment Charges~~

~~Any and all notice of violation fees charged for violations of this Chapter and any and all late payment charges assessed for failure to pay the fee within the prescribed time limit shall be a personal obligation of the individual charged and may be collected by any and all legal means available.~~

~~V-200-9.60 Multiple Offenses~~

~~Any violation which would otherwise be an infraction may be a misdemeanor if a defendant has been convicted of three (3) or more violations of this Chapter within the twelve (12) month period immediately preceding the commission of the offense, and such prior convictions are admitted by the defendant or are alleged in the accusatory pleading. For purposes of this Section, a bail forfeiture, payment of notice of violation fee and waiver of right to an administrative hearing at an administrative hearing shall be deemed to be a conviction of the offense charged.~~

V-200-~~9.70~~ 9.60 Violation an Infraction

It shall be unlawful to violate any provision of this Chapter. Violation thereof shall constitute an infraction pursuant to the provisions of Section Title I, Chapter 1 of the Milpitas Municipal Code and shall be punishable as therein provided.

~~V-200-9.80 Debt~~

~~In addition to any other penalties herein provided, unpaid charges for the removal of solid waste, recyclables, or yard trimmings are a joint and several obligation of the producer thereof and the owner of the premises within which or upon which the same has been produced, and may be recovered in a civil action or a lien process, together with interest and costs.~~

V-200-~~9.90~~ 9.70 Nuisance Summary Abatement

Any nuisance maintained in violation of the provisions of this Chapter may be summarily abated by CITY. The expense of such abatement may be made a special assessment lien against the land upon which said nuisance is committed or maintained in accordance with the provisions of the Milpitas Municipal Code or applicable abatement procedures established by the laws of the State of California, and shall also constitute a personal obligation of the Persons causing the nuisance or allowing the same to exist.

For the purposes hereof, the City Manager is hereby designated as the public officer to perform the duties of Superintendent imposed by Title 4, Division 3, Part 2, Chapter 13, Article 3 of the Government Code of the State of California.

~~**V-200-9.91 Termination of Water Service for Nonpayment of Collection Charges and Fees**~~

~~(a) Single Family. The CITY shall be empowered to discontinue water service to any person receiving water service from CITY's water system for the nonpayment of any collection charges and fees established herein for the collection, transportation, removal, processing, or disposal of Solid Waste, recyclables or yard trimmings produced by said person or upon premises occupied by said person. In disconnecting such service, the CITY shall follow the procedures set forth in section VIII-1-6.10. Users shall be subject to the terms of section VIII-1-6.10. Service may be restored pursuant to the terms of section VIII-1-6.11. If payment is not received by 5:00 p.m. of the due date, a late fee equal to 5% of the amount due shall be imposed.~~

~~(b) All Other Customers. All accounts are due and payable within forty-five (45) days of the date of the bill. Accounts shall become delinquent and a late fee of five percent of the amount due shall be imposed if payment has not been received by 5:00 p.m. on the due date. Prior to discontinuing service for delinquent accounts, a final notice shall be issued to the delinquent account stating that payment shall be due within fifteen (15) days of the date of the~~

~~final notice and that service may be terminated after sixteen (16) of final notice if payment is not received. If payment has not been received by 5:00 p.m. of the due date of the final notice, an additional late fee equal to five percent of the amount then due shall be imposed. AUTHORIZED CONTRACTOR shall notify CITY ten (10) working days prior to service termination.~~

Section 10 –Disaster Operations

V-200-10.10– Company Availability of Personnel and Equipment

In event of wartime, natural, physical or other disaster in or proximate to the City limits resulting in the declaration of a State of Emergency by the City Manager or City Council, Authorized Contractor shall make available to the CITY, at no additional cost to the CITY, all trucks, equipment and personnel normally performing services under the contract with CITY, for emergency operations conducted or directed by CITY emergency organization.

V-200-10.11– Temporary Possession and Employment

CITY shall have the right to take possession of all such equipment provided by Authorized Contractor, and to temporarily employ all Authorized Contractor personnel so provided as emergency operations forces of CITY, under the direction and control of CITY's Director of Emergency Services.

V-200-10.12– Use of Additional Equipment

In addition to the equipment and personnel above, Authorized Contractor shall make available such equipment and personnel as is reasonably practicable from those Authorized Contractor operations and resources not serving CITY; to the extent necessary to conduct effective Solid Waste, Recyclable Materials, Organic Materials, and C&D removal during any declared State of Emergency to the specifications of the CITY's Director of Emergency Services.

Section 11– Interruption of Service by Labor Dispute

V-200-11.10– Temporary Possession by CITY

In the event the Solid Waste, Recyclable Materials, Organic Materials, and/or C&D Collection or disposal services of Authorized Contractor are interrupted by a labor dispute and scheduled Collection or disposal services are discontinued for more than seventy-two (72) hours, CITY shall have the right to forthwith take temporary possession of all facilities and equipment of Authorized Contractor for the purpose of continuing the service which Authorized Contractor has agreed to provide to preserve and protect the public health and safety. CITY shall have the right to retain possession of said facilities and equipment and to render the required service until Authorized Contractor can demonstrate to the satisfaction of the CITY that required services can be resumed by Authorized Contractor; provided, however, that such temporary assumption of Authorized Contractor's obligations under the contract with CITY shall not be continued by CITY for more than one hundred twenty (120) days from the date such operations were undertaken. Should Authorized Contractor fail to demonstrate to the satisfaction of the CITY that required services can be resumed by Authorized Contractor prior to the expiration of the aforementioned one hundred twenty (120) days, and unless otherwise provided in the contract, the contract may be terminated at the option of CITY and the rights and privileges granted in such contract canceled.

V-200-11.11– Gross Revenue to CITY

During any period in which CITY has temporarily assumed the obligations of Authorized Contractor under a franchise agreement, CITY shall be entitled to the gross revenue attributable to operations during such period and shall pay therefrom only those costs and expenses applicable or allocable to said period. The excess, if any, of revenue over applicable or allocable costs and expenses during such period shall be deposited in the treasury of CITY to the credit of the General Fund. The loss, if any, during such period shall be borne by CITY. Final adjustment and allocation of gross revenue, costs and expenses to the period during which CITY temporarily assumed the obligations of Authorized Contractor shall be determined by an audit by a certified public accountant and prepared in report form with his or her opinion annexed thereto. The cost of the audit shall be paid by Authorized Contractor.

V-200-11.12– Temporary Employment by CITY

Employees of Authorized Contractor may be employed by CITY during any period in which CITY temporarily assumes the obligations of Authorized Contractor under the contract. Provided, however, that the rate of compensation to be paid such employees, or any other employees, shall be the rate or rates in effect at the time Authorized Contractor's service was interrupted by the labor dispute.

SECTION 3. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 4. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

CITY OF MILPITAS
Facilities Naming Subcommittee
Wednesday, November 8, 2017
Community Center Auditorium
457 E. Calaveras Blvd.

D R A F T M I N U T E S

I. Call to Order Councilmember Phan called the meeting to order at 1.30 pm.

II. Flag Salute Councilmember Phan led the Pledge of Allegiance.

III. Roll Call Subcommittee Members Present:
- Councilmember Phan
- Councilmember Barbadillo

City Staff Present:
- Renee Lorentzen, Director of Recreation and Community Services

IV. Approval of Agenda Motion to approve agenda for November 8, 2017 as submitted
M/S: Barbadillo/Phan Ayes: All

V. Public Forum None

VI. Announcements None

VII. New Business

1. Park Naming – Traverse Park
The subcommittee is requested to consider approval for a name for a new Park, currently referred to as "Traverse Park." The Parks, Recreation and Cultural Resources Commission had reviewed this park and made a recommendation on the potential name.

1) Augustus Rathbone (First Storekeeper, 19th Century)

Motion to recommend naming a new City Park for Augustus Rathbone, for final City Council approval.
M/S: Grilli/Montano Ayes: All

VIII. Future Agenda Items
Subcommittee requested that a discussion on updating the SOP's and review of submitted names to be added to the naming list be added to the next agenda.

IX. Adjournment
a. 1:38 PM

X. Next Meeting Date
a. TBD

City of Milpitas
Facilities, Streets & Park Naming Subcommittee
Naming List – Milpitas Historical Names
Approved for: Streets, Parks, Facilities

NAME	SUGGESTED BY	DEDICATION LOCATION
19th CENTURY		
1. Charles Beverson Milpitas Cattle Rancher/Dairy Farmer	Commission: PRCRC	
2. Alfred Doten Milpitas literary figure/author	Commission: PRCRC	
3. Alfred French Ran first hotel that brought tourism to Milpitas	Commission: PRCRC	
4. JW Johnson First Town Constable	Commission: PRCRC	
5. Augustus Rathbone First Storekeeper	Commission: PRCRC	
20th CENTURY		
6. Chew Family Part of Milpitas' early agricultural history, the Chew's had 15 acres where they ran their Flower Farm business	Naming Subcommittee	
7. Albert Currlin One of the first Doctors in Milpitas	Commission: PRCRC	**Dedication Plaque: Valley Health Center**

10B

NAME	SUGGESTED BY	DEDICATION LOCATION
8. Sal Cracolice Ran Milpitas' first Pharmacy, started first Youth Center	Naming Subcommittee	**Sal Cracolice Building (through June 2016)**
9. Ernestina Garcia Civil Rights Activist	Commission: PRCRC	
10. Joe House Mayor (1974 – 1976)	Commission: PRCRC	
11. Bob McGuire First Parks and Recreation Director	Commission: PRCRC	**Dedication Plaque: Comm. Center Amphitheater**
12. Ray Madruga Early Ironworker, invented "Milpitas Plow"	Commission: PRCRC	
13. Mabel Mattos	NA	**Street: Mattos Dr./Edsel** **Bench/Farm Equipment: Alviso Adobe**
14. Ford	Naming Subcommittee	
15. Dick Delong	Commission: PRCRC	Street: Delong Dr./Tradezone Blvd.
16. Joe Smith	Commission: PRCRC	Street: Smith Ln./Pimentel Cir.
17. Rogers Family (Ben, Jim)	NA	Ben Rogers Park
18. Weller Family (Joseph, Abraham)	NA	Street: Weller Ln./N. Main St. & J. Weller Elementary

21st CENTURY

19. Larry Voellger Started Milpitas' first Public art Program (Art in Your Park)/ Long Serving Arts Commissioner	Naming Subcommittee	

FAQ

What is the Healthy Cities Initiative?

To celebrate, acknowledge and more easily communicate the important work cities and towns within Santa Clara County are doing to promote health, the Santa Clara County Public Health Department (SCCPHD) has developed this Healthy Cities Initiative and an accompanying Dashboard.

What is in the "Dashboard"?

The Dashboard indicates policies and strategies that have been adopted or achieved in a given city or town within the County. Policies and strategies have been adapted from published resources, peer-reviewed research, and other promising or evidence-based best practices established by leading health experts like the Centers for Disease Control and Prevention, and reflect priority areas for the SCCPHD. The various policies and strategies included promote health via one of four broad themes or categories:

1) Active & Safe Communities
2) Healthy Food & Beverage Environments
3) Tobacco-Free Communities
4) Cross-Cutting Strategies

What do the symbols on the Dashboard mean?

- An "empty circle" indicates that a city or town has not yet adopted or achieved the policy or strategy
- A "gray star" indicates that a city or town has not adopted or achieved a "model-level" policy or strategy
- A "check" indicates that a city or town has adopted or achieved the policy or strategy
- A "blue check in white circle" indicates a city or town achieved a policy/strategy but not a "model-level" strategy available
- A "yellow star" indicates that a city or town has adopted or achieved a "model-level" policy or strategy
- **NA** "NA" indicates a strategy is not possible for a certain city or town

What is a "model" policy or strategy?

A "model" policy or strategy is one that goes above and beyond "checking the box" and demonstrates best practices in a given area. For example, a city or town may adopt a policy prohibiting the sale of some flavored tobacco products and achieve a "check," while another city may adopt a policy prohibiting all flavored tobacco products (including menthol cigarettes) and receive a "star" for having adopted a model policy.

Where can I find an example of a "model" policy or strategy?

SCCPHD regularly updates a catalog of model policies/strategies from within and outside of Santa Clara County that will be featured on our website. Materials are also available upon request.

Will the policies or strategies listed on this Dashboard ever change?

Periodic revisions to the Dashboard and criteria will occur in order to ensure strategies remain up-to-date with public health research and reflect new and innovative best practices and policies. Changes to the Dashboard will occur no more frequently than on an annual basis.

How does my city or town compare to other cities and towns in Santa Clara County?

You can compare your city's Healthy Cities Campaign Dashboard to the dashboards of other cities and towns in the County when they are released annually.

What if I want my city or town to earn more "checks" or "stars" next year?

SCCPHD can provide technical assistance and recommendations to help you begin or continue work in your city or town related to these areas. Specifically, we can provide: example policies, legal expertise, data, outreach support to affected groups, implementation strategies and, when possible, funding.

What is the "City Spotlight"?

The City Spotlight highlights strategies adopted by cities and towns to promote the health and well-being of its residents, employees, and visitors. These strategies are typically "in progress" or different than those listed under the four broad categories in the Dashboard.

Santa Clara County PUBLIC HEALTH

For more information, contact us at the Center for Chronic Disease and Injury Prevention:
1400 Parkmoor Avenue, Suite 120 B
San Jose, CA 95126
Phone: 408-793-2700

Santa Clara County Healthy Cities Campaign, 2016

11B

Milpitas

Active & Safe Communities

Total Strategies	Total Achieved
15	8

Active Transportation & Recreation Initiatives

- ☐ Adopt Vision Zero Initiative
- ✓ Adopt Complete Streets Guidelines for Transportation and Land Use Planning
- ✓ Adopt Bicycle, Pedestrian, and/or Trails Master Plans
- ✓ Adopt Parks and Recreation Master Plans
- ☐ Bike-Friendly Designation by the League of American Bicyclists
- ☐ Walk-Friendly Designation from UNC Highway Safety Research Center
- ✓ Bike Parking Near Public Facilities

Workplace Commute Planning for Employees

- ✓ Incentives for Use of Public Transit and/or Ridesharing to Work
- ✓ Incentives for Walking and/or Biking to Work
- ✓ Shower Facilities for Employees who Walk or Bike to Work*
- ☐ Transportation Demand Management including Transit, Bike, and/or Parking (Including Fees) Policies
- ☐ Pedestrian, Bike, and/or Transit-Oriented Facilities

Safe Routes to School

- ✓ Safe Routes to School Resolution*
- ☐ Multi-Disciplinary Collaborative/Task Force*
- ☐ Dedicated Bike and Pedestrian Coordinator*

Healthy Food & Beverage Environments

Total Strategies	Total Achieved
11	5

Healthy Food & Beverage Procurement Standards

- ★ Standards for Meetings, Events, and Celebrations*
- ★ Standards for Vending Machines*
- ★ Standards for City-Run Adult and Youth-Based Programming*
- ★ Standards for City-Run Cafes, Cafeterias, Snack Shacks, and Kiosks*

Water Access

- ☐ Water Access Policy
- ☐ Water-Filling Stations

Reduced Exposure to Sugar-Sweetened Beverages

- ☐ Eliminate Sugar-Sweetened Beverages as a Default Option for Kids' Meals in Restaurants
- ☐ Require Health Warnings on Advertisements for Sugar-Sweetened Beverages
- ☐ Resolution to Refuse Funds from Sugar-Sweetened Beverage Industry
- ☐ Propose Sugar-Sweetened Beverage Tax

Healthy Food Access

- ✓ Community Gardens on City Property/Parks

Tobacco-Free Communities

Total Strategies	Total Achieved
14	1

Reduced Exposure to Secondhand Smoke

- ✓ Parks, Trails, and Recreation Areas
- ☐ Outdoor Dining Areas
- ☐ Entryways
- ☐ Service Lines and Areas (e.g. Ticket Lines, ATM lines, etc.)
- ☐ Multi-Unit Housing (Must Include Units)*
- ☐ Public Events

Reduced Youth Access through a Tobacco Retail License

- ☐ Tobacco Retail Permit*
- ☐ Reduce Density of Tobacco Outlets
- ☐ Limit Sales Near Schools
- ☐ Flavored Tobacco Restrictions*
- ☐ Prohibit Sale of Tobacco in Pharmacies
- ☐ Price-Discounting Restrictions
- ☐ Tobacco Products Sold Only in Adult Tobacco Stores
- ☐ Enforcement of Tobacco Sales to Minors in 2016

Cross-Cutting Strategies

Total Strategies	Total Achieved
3	0

Inclusive & Comprehensive Health Planning & Programs

- ☐ Health Language in General Plan
- ☐ Age-Friendly City Designation by the World Health Organization
- ☐ Employee Wellness Program/Committee

City Spotlight

In 2016, the City of Milpitas created new youth program healthy eating standards, a map of biking and hiking trails, Safe Routes to School program enhancements and added a Healthy Living Section to its "My Milpitas" app. The City is also applying for designation as an Age-Friendly City!

Key

- ☐ Strategy Not Achieved
- ✓ Strategy Achieved (Not Model)
- ★ Model Strategy Achieved
- * Model Strategy Available
- NA Strategy Not Applicable for Specific Jurisdiction

Santa Clara County PUBLIC HEALTH

Santa Clara County Healthy Cities Initiative, 2017

Milpitas

Active & Safe Communities

Total Strategies	Total Achieved
16	9

Active Transportation & Recreation Initiatives

- ◌ Adopt Vision Zero Initiative
- ✓ Adopt Complete Streets Guidelines
- ✓ Adopt Bicycle, Pedestrian, and/or Trails Master Plans
- ✓ Adopt Parks and Recreation Master Plans
- ◌ Bike-Friendly Designation
- ◌ Walk-Friendly Designation
- ✓ Bike Parking Near Public Facilities
- ✓ Pedestrian, Bike, and/or Transit-Oriented Facilities

Workplace Commute Planning for Employees

- ✓ Incentives for Use of Public Transit and/or Ridesharing to Work
- ✓ Incentives for Walking and/or Biking to Work
- ★ Shower Facilities for Employees who Walk or Bike to Work
- ◌ Transportation Demand Management Policies

Safe Routes to School

- ★ Safe Routes to School (SRTS) Resolution
- ☆ Multi-Disciplinary SRTS Collaborative/Task Force
- ☆ Dedicated SRTS and/or Bike/Ped Coordinator
- ◌ Annual Assessment of Student Travel Mode

Healthy Food & Beverage Environments

Total Strategies	Total Achieved
11	7

Healthy Food & Beverage Procurement Standards

- ★ Standards for Meetings and Celebrations
- ★ Standards for Events
- ★ Standards for Vending Machines
- ★ Standards for City-Run Adult- and Youth-Based Programming
- ★ Standards for City-Run Cafes, Cafeterias, Snack Shacks, and Kiosks

Water Access

- ◌ Water Access Policy
- ✓ Water-Filling Stations

Reduced Exposure to Sugary Drinks

- ◌ Eliminate Sugary Drinks as a Default Option for Kids' Meals in Restaurants
- ◌ Resolution to Refuse Funds from the Beverage Industry
- ◌ Propose Tax on Sugary Drinks

Healthy Food Access

- ✓ Community Gardens on City Property/Parks

Tobacco-Free Communities

Total Strategies	Total Achieved
14	2

Reduced Exposure to Secondhand Smoke

- ✓ Parks, Trails, and Recreation Areas
- ✓ Outdoor Dining Areas
- ◌ Entryways
- ◌ Service Lines and Areas (e.g. Ticket Lines, ATM lines, etc.)
- ☆ Multi-Unit Housing (Must Include Units)
- ◌ Public Events

Reduced Youth Access through a Tobacco Retail License

- ☆ Tobacco Retail Permit
- ◌ Reduce Density of Tobacco Outlets
- ◌ Limit Sales Near Schools
- ☆ Flavored Tobacco Restrictions
- ◌ Prohibit Sale of Tobacco in Pharmacies
- ◌ Price-Discounting Restrictions
- ◌ Tobacco Products Sold Only in Adult Tobacco Stores
- ◌ Enforcement of Tobacco Sales to Minors in 2017

Cross-Cutting Strategies

Total Strategies	Total Achieved
3	2

Inclusive & Comprehensive Health Planning & Programs

- ◌ Health Language in General Plan
- ✓ Age-Friendly City Designation
- ✓ Employee Wellness Program/Committee

City Spotlight

The City of Milpitas joined several cities in Santa Clara County and became part of a network to promote vitality and vibrancy for seniors. Milpitas, its Senior Center, and programs, provide a valuable resource for seniors to gather, socialize, and participate in a diversity of recreation-based activities. The City of Milpitas is committed to promoting the health and well-being of seniors in our community. We endeavor to create and provide services to meet their needs.

Key

- ◌ Strategy Not Achieved
- ☆ Strategy Not Achieved (Model Available)
- ✓ Strategy Achieved
- ✓ Strategy Achieved (Model Available)
- ★ Model Strategy Achieved
- NA Strategy Not Applicable for Specific Jurisdiction

Santa Clara County PUBLIC HEALTH

REGULAR

NUMBER: 296

TITLE: AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ELECTING TO IMPLEMENT A COMMUNITY CHOICE AGGREGATION PROGRAM

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of November 7, 2017, upon motion by Councilmember Phan and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the Silicon Valley Clean Energy Authority ("SVCEA") is a joint powers authority established on March 31, 2016, for the purpose of studying, promoting, developing, conducting, operating and managing energy and energy-related climate change programs, including but not limited to implementing a community choice aggregation program under Public Utilities Code Section 366.2; and

WHEREAS, the existing members of SVCEA include the Cities of Campbell, Cupertino, Gilroy, Los Altos, Monte Sereno, Morgan Hill, Mountain View, Saratoga and Sunnyvale, the Towns of Los Altos Hills and Los Gatos and the County of Santa Clara; and

WHEREAS, SVCEA has established a community choice aggregation ("CCA") program for its existing members pursuant to its Joint Powers Agreement and has successfully commenced electricity service to customers within its jurisdiction; and

WHEREAS, the City of Milpitas desires to join SVCEA and participate in its CCA program and has requested that it be approved as a member of SVCEA pursuant to Council Resolution No. 8711; and

WHEREAS, the City Council has approved Resolution No. 8712 approving the SVCEA Joint Powers Agreement and authorizing the Mayor to execute such Agreement after the membership of the City of Milpitas is approved by the SVCEA Board of Directors; and

WHEREAS, the City Council desires to adopt this Ordinance required by Public Utilities Code Section 366.2(c)(12), which will enable the City of Milpitas to implement a CCA program within the jurisdiction of the City by participating in the CCA program conducted by SVCEA; and

WHEREAS, this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to the State CEQA Guidelines, as it is not a "project" and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment (14 Cal. Code Regs. Section 15378(a)). Further, this Ordinance is exempt from CEQA as there is no possibility that the Ordinance or its implementation would have a significant negative effect on the environment (14 Cal. Code Regs. Section 15061(b)(3)). The Ordinance also is categorically exempt because it is an action taken by a regulatory agency to assure the maintenance, restoration, enhancement or protection of the environment (14 Cal. Code Regs. Section 15308).

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff reports, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AUTHORIZATION TO IMPLEMENT A COMMUNITY CHOICE AGGREGATION PROGRAM

Based upon the foregoing, and in order to provide businesses and residents within the City of Milpitas with a choice of power providers, the City of Milpitas hereby elects to implement a community choice aggregation program within the jurisdiction of the City by participating in the community choice

PACE COMPARISON MATRIX
DATA PROVIDED BY PACE PROVIDERS. LAST UPDATED OCTOBER 31, 2017

			CSCDA Open PACE					
PACE Program Names	HERO	Ygrene Works	Spruce Finance	Clean Fund - PACEDirect	California FIRST	Alliance NRG	PACE Funding Group	Figtree
General Information								
Service Areas	Click to View	Click to View	Click to View	Click to View	Click to View	Click to View	Click to View	Click to View
Participating Contractors	Click to View	Click to View	Each certified contractor must meet minimum licensure and insurance requirements, have verifiable work references, receive mandatory program orientation, and have direct access to program forms, guidebooks and collateral.	All contractors with a license and adequate insurance may work with CleanFund.	Click to View	Click to View	Click to View	Click to View
Contractor Certification Process	Contractors must be licensed, bonded, and carry workers' compensation insurance. In-home salespeople undergo background checks.	Contractors must be licensed, bonded, insured, and in good standing with CSLB. Property owners may select a non-certified contractor, but contractor must become certified prior to commencement of project.	Ongoing in-field training and support.	At a minimum, each contractor has a valid and current contractor's license and adequate insurance.	Pre-screening and trained by the program. Commercial owners may use licensed contractors that are not certified by the program.	Each certified contractor must meet minimum licensure and insurance requirements, have verifiable work references, receive mandatory program orientation, and have direct access to program forms, guidebooks and collateral.	At a minimum, each contractor has a valid and current contractor's license and adequate insurance.	Contractors must meet Contractor State License Board requirements for licensure, insurance, and bonding and are required 3 years direct experience in their field.
Contractor Training and Support	Sales & software training, product eligibility, document processing, completion certification, payment options, co-marketing policies, and brand usage guidelines.	Sales & software training, product eligibility, document processing, completion certification, payment options, co-marketing policies, and brand usage guidelines.	Not Provided.	Frequent contact with contractors regarding retraining for new features, new web functionality, etc.	Frequent contact with contractors regarding retraining for new features, new web functionality, etc.	Contractor training, logistics, and support, including one-on-one training, call centers, advisors, and consultants.	Formalized contractor vetting and on-boarding process. Includes web based and in field training necessary to offer financing. Probationary period for new contractors and on-going quality assurance. Call center to support contractors and property owners.	Software training, required online PACE training, ongoing in-house training and support, online learning portal where contractors can self-study.
Number of Defaults	Zero.	Zero.	Zero.	Zero.	Zero.	Zero.	Zero.	Zero.

			CSCDA Open PACE					
PACE Program Names	HERO	Ygrene Works	Spruce Finance	Clean Fund - PACEDirect	California FIRST	Alliance NRG	PACE Funding Group	Figtree
Projects Financed								
Residential	108,000+ completed for more than $2.66+ billion	32,519; $688 million.	Program has just begun accepting applications for residential projects.	N/A	>12K projects; >$300 million.	Program has just begun accepting applications for residential projects.	Program has just begun processing residential applications.	Program pilot October 2016, fully launched March 2017, 52 projects, $1.2M.
Commercial	20 funded for $2.1 million, 31 in process for $8.4 million.	610; $63 million.	N/A	30+ projects, > $100 million financed.	>20 projects, >$30 million financed.	150 applications and approximately $50 million approved; funding will begin in early June 2015.	N/A	60+, 16 million+
Dispute Resolution	Comprehensive Formalized Consumer Protection Policy.	In-house dispute resolution process.	Formal dispute resolution process, customer service team via call center.	Customer Service Team.	In-house dispute resolution services; contractor probation.	Formal dispute resolution process; contractor probation.	Formalized Dispute Resolution Process.	Formalized Dispute Resolution Process, up to and including contractor expulsion.
Action(s) Required for Local Governments to Join	City Council, or Board of Supervisors, must pass a resolution and become an associate member of JPA	City Council or Board of Supervisors must pass authorizing resolutions and opt-in to JPA (unless already a member	City Council or Board of Supervisors must adopt CSCDA Open PACE resolution.	Must join the JPA, then pass an opt-in resolution.	Must join the JPA, then pass an opt-in resolution.	City Council must pass an opt-in resolution	City Council / BOS must pass an opt-in resolution	City Council or Board of Supervisors must pass authorizing resolutions and opt-in to JPA (unless already a member
Local Government Liabilities Associated with Allowing a PACE Program to Operate within their Jurisdiction	No liability, no cost, and no commitment.	No liability, no cost, and no commitment.	None. See CSCDA JPA structure, which explicitly shields local governments from liability risks.	None. See CSCDA JPA structure, which explicitly shields local governments from liability risks.	None. See CSCDA JPA structure, which explicitly shields local governments from liability risks.	None.	None.	None; indemnification agreement offered.
Data Reporting								
Frequency	Real-time access provided via web or mobile app.	Monthly or Quarterly.	Not Provided.	Real-time and Quarterly.	Quarterly.	Real-time and Quarterly.	Quarterly and as requested.	Quarterly or as requested.
Representative Metrics	Project types, active contractors, CO2 reduction, energy savings, economic impact & more.	Number of projects, total amount financed, CO2 reduction, energy savings, job creation & more.	Not Provided.	Project types, active contractors, CO2 reduction, energy savings, economic impact & more.	Number of projects, total amount financed, annual CO2 reductions, job creation, water savings, and active contractors.	Program participants, status and lien amounts.	Program participants, benefits, status, and lien amounts.	Applications, loan approvals, and completed projects.
Participation in ABAG's Regional Collaborative Services Agreement (RCSA)	Yes.	Yes.	Not Provided.	Yes.	Yes.	Yes.	Yes.	Yes.
Finance & Management Structure								
Financing Organization Residential	Renovate America	Ygrene Energy Fund	Not Provided.	N/A.	Renew Financial	Service Finance Corporation	PACE Funding Group	Figtree PACE Program
Financing Organization Commercial			Not Provided.	CleanFund Commercial PACE Capital.	Preferred capital provider, but offers an option for property owners to source their own capital		N/A	

			CSCDA Open PACE					
PACE Program Names	HERO	Ygrene Works	Spruce Finance	Clean Fund - PACEDirect	California FIRST	Alliance NRG	PACE Funding Group	Figtree
Administrator	Renovate America	Ygrene Energy Fund	Not Provided.	CleanFund Commercial PACE Capital.	Renew Financial	Counter Pointe Energy Solutions	PACE Funding Group	Dividend Finance
JPA Sponsor	Western Riverside Council of Governments (WRCOG)	Golden State Finance Authority (formerly known as CA Home Finance Authority)	California Statewide Communities Development Authority (CSCDA)					California Enterprise Development Authority (CEDA)
Governance Structure	17 Member Cities and County that make up WRCOG JPA	JPA organized in 1993 and is comprised of 35 Member Counties. Sponsored by the Rural County Representatives of California.	Not Provided.	CSCDA was created by and for local governments in California, and is sponsored by the California State Association of Counties (CSAC) and the League of California Cities. Currently, more than 500 cities, counties and special districts have become Program Participants to CSCDA. CSCDA is governed by a seven-member commission that are appointed by CSAC and the League.				California Association for Local Development (CALED)
Enrolled in CAEATFA's PACE Loan Loss Reserve Program	Yes.	Yes.	Not Provided.	No.	Yes.	Yes.	Yes.	Yes.
Legislative Origin	AB 811	SB 555 and AB 811	Not Provided.	AB 811	AB 811	AB 811	AB 811	AB 811
Year Started	2011	2010	Not Provided.	2008	2014	2015	2015	2010
Services Offered & Associated Fees								
Single Family Properties	Yes	Yes	Yes	N/A.	Yes	Yes	Yes	Yes
Multifamily Properties	4+ units	4+ units	No	5+ units.	5+ units	5+ units	3 units or less	Yes
Commercial Properties	Yes	Yes	No	Yes.	Yes	Yes	No	Yes
Additional Services Offered								
Seismic	No	Yes	No	Yes	Yes, except for residential 1-3 units	Yes	Yes	Yes
Electric Vehicle Charging	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
Program Admin / Underwriting Fees								
Residential	Closing Fee 4.99% of principal	$664 flat fee (includes underwriting, recording, title and escrow) plus 4% of contract amount	Not Provided.	N/A.	Closing fee not to exceed 6.4%	Closing fee of 6.5% of assessment	Closing fee of 5.95% of assessment	5% of contract amount
Commercial	Not to exceed greater than $250 or 1% of financing amount, closing fee 5%	$1490 flat fee (includes application, underwriting, recording, energy audit, title and escrow) plus 4% of contract amount <$500k; 3% for contract amounts >$500k	N/A.	Cost of Issuance (COI) Fee included in financed amount at closing: 2% to 6%, based on the project's cost. Owner will be required to pay for Appraisal as well, and this cost is outside of the COI.	Closing fee depends on source of capital, ranges 2.5% - 4%, capped at 3% for projects > $500k	Closing fee not to exceed 5% of assessment	N/A	Cost of Issuance Fee included in financed amount at closing: 2% to 4% (based on project size)

			CSCDA Open PACE					
PACE Program Names	HERO	Ygrene Works	Spruce Finance	Clean Fund - PACEDirect	California FIRST	Alliance NRG	PACE Funding Group	Figtree
Rate Determination Factors	Rate is determined by length of term. Maximum term available is determined by project's useful life. A property owner may choose a shorter term	Rates are based upon term of financing. Maximum term available is determined by project's useful life. A property owner may choose a shorter term.	Rate is determined by length of term. Maximum term available is determined by project's useful life. A property owner may choose a shorter term.	Rate is determined by length of term and project size. Maximum term available is determined by project's useful life. A property owner may choose a shorter term.	Rate is determined by length of term. Maximum term available is determined by a project's useful life. A property owner may choose a shorter term.	Rates determined by combination of: market rates, credit spreads, PACE is a new asset class and a relatively immature market, FHFA perceived risk.	Rate is determined by length of term. Maximum term available is determined by project's useful life. A property owner may choose a shorter term.	Length of term determines rate
Prepayment Penalty								
Residential	None	None	None	N/A.	None for full prepayment payoff. No fees for partial prepayment option (minimum of $2,500 per prepayment), which lowers principal, providing a re-amortized, lower annual payment amount.	None	No fees for partial prepayment option (minimum of $2,500 per prepayment), which lowers principal, providing a re-amortized, lower annual payment amount.	None
Commercial			N/A	Various prepayment options are available. A Prepayment Premium may apply. Please contact for more information.		Some prepayment penalties may apply	N/A	Various prepayment options are available
Recording/Title Fee								
Residential	$55 (one-time per assessment)	Included Above	Not Provided.	N/A.	$100	$95	$100	None
Commercial		Included Above	Not Provided.	Included in the Program Administration costs.			N/A	None
Application Fee								
Residential	None	None Included Above	Not Provided.	N/A.	None	None	None	None
Commercial			Not Provided.	None.				$695 only upon closing
Reserve Deposit	None	None	Not Provided.	Case-by-case.	Unknown	None	$105	None
Credit Check	Yes, FICO not part of decision	Yes, FICO not part of decision	Not Provided.	No.	No	No	Yes, FICO not part of decision	Yes
Financing Term Options (Years)								
Residential	5, 10, 15, 20, 25	5, 10, 15, 20, 30	5, 10, 15, 20, 30	N/A.	5, 10, 15, 20, 25, 30	5, 10, 15, 20, 25, 30	5, 10, 15, 20, 25	5, 12, 20
Commercial	5, 10, 15, 20, 25		N/A.	10, 15, 20, 25, 30			N/A	5, 10, 15, 20, 25

			CSCDA Open PACE					
PACE Program Names	HERO	Ygrene Works	Spruce Finance	Clean Fund - PACEDirect	California FIRST	Alliance NRG	PACE Funding Group	Figtree
Min/Max Financing Amounts								
Residential	Minimum: $5,000 Maximum: Less than 15% of the value of the property on the first $700,000 value, and less than 10% of any value of the property thereafter	Minimum: $2,500 Maximum: 15% of appraised value up to $700,000 or 10% thereafter, not to exceed 100% LTV of property value. Minimum: $5,000 Maximum: 15% of FMV inclusive of cap interest & fees.	Not Provided.	N/A.	Minimum: $5,000 Maximum: 15% of estimated home value or $200,000, whichever is smaller	Minimum: $2,500 Maximum: 15% of appraised value up to $700,000 or 10% thereafter, not to exceed 100% LTV of property value	Minimum: $5,000 Maximum: 15% of appraised value up to $700,000 or 10% thereafter, not to exceed 100% LTV of property value.	Minimum: $2,500 Maximum: 15% of property value up to $700,000 plus 10% of value thereafter
Commercial			Not Provided.	"Minimum: $100,000 Maximum: 20% of property value".		Minimum: $50,000 Maximum: 15% of appraised value	N/A	Minimum: $5,000 Maximum: 20% of property value
Interest Rates								
Residential	5 year: 2.99-6.75% 10 year: 2.99-7.69% 15 year: 3.99-8.15% 20 year: 4.99-8.35% 25 year: 5.99-8.35%	5 year: 6.75% 10 year: 7.49% 15 year: 7.85% 20 year: 7.99% 30 year: 7.99%	5 year: 6.50% 10 year: 7.49% 15 year: 7.99% 20 year: 8.25% 25 year: 8.35% 30 year: 8.49%	N/A.	5 year: 4.99-6.48% 10- 15 year: 5.99-7.48% 20-30 year: 6.99-8.48%	5 year: 6.75% 10 year: 7.59% 15 year: 7.99% 20 year: 8.29% 25 year: 8.39% 30 year: 8.49%	5.99%	5 Year: 5.49% 12 Year: 6.49% 20 Year: 6.99%
Commercial		5 year: 5.99% 10 year: 6.49% 15 year: 6.99% 20 year: 6.99% 30 year: 7.25%	N/A.	Depends on financing term and project size; interest rates generally range from 5% - 8%.	N/A	Depends on capital source, 6.0% or less fixed for 20 years is prevailing.	5.95% to 7.50%	5.50% - 7.50%
Mortgage Lender Consent								
Residential	None.	None; lender notice provided.	None.	N/A.	None.	None.	None.	None.
Commercial	Lender consent / acknowledgement required.	Lender notice provided; consent/acknowledgement may be required.	N/A.	Lender consent / acknowledgement required.	Lender consent / acknowledgement required.	Not required but recommended.	N/A.	Lender consent / acknowledgement required.
Energy Audit								
Residential	Not required but recommended.	Not required but recommended.	Not Provided.	N/A.	Not required but recommended.	Not required but recommended.	Not required but recommended.	Not required but recommended.
Commercial	Not required but recommended.	Required.	Not Provided.	Generally required, depending on scope of improvements.	Required.	Not required but recommended.	N/A.	Not required but recommended.

			CSCDA Open PACE					
PACE Program Names	HERO	Ygrene Works	Spruce Finance	Clean Fund - PACEDirect	California FIRST	Alliance NRG	PACE Funding Group	Figtree
Annual Admin Fee								
Residential	$25 Annual County Collection Fee.	$50 on average; varies per jurisdiction.	Not Provided.	N/A.	$30 Annual County Collection Fee.	$35 Annual County Collection Fee.	$45 Annual Fee.	$35.
Commercial			Not Provided.	$30 Annual County Collection Fee.			N/A.	1.00% to 3.00% of annual assessment payment.

PACE COMPARISON MATRIX

DATA PROVIDED BY PACE PROVIDERS. LAST UPDATED OCTOBER 31, 2017

FOR QUESTIONS OR UPDATES REGARDING THIS MATRIX, PLEASE EMAIL: ECONDEV@CI.MILPITAS.CA.GOV

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS CONSENTING TO INCLUSION OF PROPERTIES WITHIN THE CITY'S JURISDICTION IN THE GOLDEN STATE FINANCE AUTHORITY COMMUNITY FACILITIES DISTRICT NO. 2014-1 (CLEAN ENERGY) TO FINANCE RENEWABLE ENERGY IMPROVEMENTS, ENERGY EFFICIENCY AND WATER CONSERVATION IMPROVEMENTS, ELECTRIC VEHICLE CHARGING INFRASTRUCTURE AND OTHER IMPROVEMENTS AND APPROVING ASSOCIATE MEMBERSHIP IN THE JOINT EXERCISE OF POWERS AUTHORITY RELATED THERETO

WHEREAS, the Golden State Finance Authority, a California joint powers authority formerly known as California Home Finance Authority (the "Authority"), has established the Community Facilities District No. 2014-1(Clean Energy) in accordance with the Mello-Roos Community Facilities Act, set forth in sections 53311 through 53368.3 of the California Government Code (the "Act") and particularly in accordance with sections 53313.5(l) and 53328.1(a) (the "District"); and

WHEREAS, the purpose of the District is to finance or refinance (including the payment of interest) the acquisition, installation, and improvement of energy efficiency, water conservation, renewable energy and electric vehicle charging infrastructure improvements permanently affixed to private or publicly-owned real property (the "Authorized Improvements"); and

WHEREAS, the City of Milpitas (the "City") is committed to development of renewable energy generation and energy efficiency improvements, reduction of greenhouse gases, and protection of the environment; and

WHEREAS, in the Act, the Legislature has authorized a parcel within the territory of the District to annex to the District and be subject to the special tax levy of the District only (i) if the city or county within which the parcel is located has consented, by the adoption of a resolution by the applicable city council or county board of supervisors, to the inclusion of parcels within its boundaries in the District and (ii) with the unanimous written approval of the owner or owners of the parcel when it is annexed (the "Unanimous Approval Agreement"), which, as provided in section 53329.6 of the Act, shall constitute the election required by the California Constitution; and

WHEREAS, the City wishes to provide innovative solutions to its property owners to achieve energy efficiency and water conservation and in doing so cooperate with Authority in order to efficiently and economically assist property owners the City in financing such Authorized Improvements; and

WHEREAS, the Authority has established the District, as permitted by the Act, the Authority JPA, originally made and entered into July 1, 1993, as amended to date, and the City desires to become an Associate Member of the JPA by acknowledgement of the JPA Agreement, a copy of which is attached as **Exhibit "A"** hereto, to participate in the programs of the JPA and, to assist property owners within the incorporated area of the City in financing the cost of installing Authorized Improvements; and

WHEREAS, the City will not be responsible for the conduct of any special tax proceedings; the levy and collection of special taxes or any required remedial action in the case of delinquencies in the payment of any special taxes in connection with the District.

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 Council finds and declares that properties in the City's incorporated area will be benefited by the availability of the Authority CFD No. 2014-1 (Clean Energy) to finance the installation of the Authorized Improvements.

3. The City Council consents to inclusion in the Authority CFD No. 2014-1 (Clean Energy) of all of the properties in the incorporated area within the City and to the Authorized Improvements, upon the request of and execution

of the Unanimous Approval Agreement by the owners of such properties when such properties are annexed, in compliance with the laws, rules and regulations applicable to such program; and to the assumption of jurisdiction thereover by the Authority for the purposes thereof; provided however, that as a condition of the City's consent, any PACE program administrator utilized by the Authority shall be required to sign and agree to the Letter of Agreement Regarding Operational Requirements for Property Assessed Clean Energy (PACE) Programs in the City of Milpitas attached hereto as **Exhibit "B"** and the Association of Bay Area Governments' Agreement for Collaborative Services attached hereto as **Exhibit "C"**, each with such changes as may be approved by the City Attorney.

4. The consent of the City Council constitutes assent to the assumption of jurisdiction by the Authority for all purposes of the Authority CFD No. 2014-1 (Clean Energy) and authorizes the Authority, upon satisfaction of the conditions imposed in this Resolution, to take each and every step required for or suitable for financing the Authorized Improvements.

5. The City Council hereby approves joining the JPA as an Associate Member and authorizes the execution by the City Manager or his designee of any necessary documents to effectuate such membership.

6. City staff is authorized and directed to coordinate with Authority staff to facilitate operation of the Authority CFD No. 2014-1 (Clean Energy) within the City, and report back periodically to the City Council on the success of such program.

7. The City Council finds this action to be exempt from environmental review pursuant to California Environmental Quality Act Guidelines, Section 15378(b)(4) because it involves the creation of a funding mechanism that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

8. This Resolution shall take effect immediately upon its adoption. The City Clerk is directed to send a certified copy of this Resolution to the Secretary of the Authority.

PASSED AND ADOPTED this _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

EXHIBIT A

GOLDEN STATE FINANCE AUTHORITY

AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT

(Original date July 1, 1993 and as last amended and restated May 5, 2015)

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT ("Agreement") is entered into by and among the counties listed on Attachment 1 hereof and incorporated herein by reference. All such counties are referred to herein as "Members" with the respective powers, privileges and restrictions provided herein.

RECITALS

A. WHEREAS, the California Rural Home Mortgage Finance Authority ("CRHMFA") was created by a Joint Exercise of Powers Agreement dated July 1, 1993 pursuant to the Joint Exercise of Powers Act (commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"). By Resolution 2003-02, adopted on January 15, 2003, the name of the authority was changed to CRHMFA Homebuyers Fund. On December 10, 2014, the name of the authority was changed to California Home Finance Authority. The most recent amendment to the Joint Exercise of Powers Agreement was on December 10, 2014..

B. WHEREAS, the Members of California Home Finance Authority desire to update, reaffirm, clarify and revise certain provisions of the joint powers agreement, including the renaming of the joint powers authority, as set forth herein.

C. WHEREAS, the Members are each empowered by law to finance the construction, acquisition, improvement and rehabilitation of real property.

D. WHEREAS, by this Agreement, the Members desire to create and establish a joint powers authority to exercise their respective powers for the purpose of financing the construction, acquisition, improvement and rehabilitation of real property within the jurisdiction of the Authority as authorized by the Act.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Members individually and collectively agree as follows:

1. Definitions

Unless the context otherwise requires, the following terms shall for purposes of this Agreement have the meanings specified below:

"Act" means the Joint Exercise of Powers Act, commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, including the Marks-Roos Local Bond Pooling Act of 1985, as amended.

"Agreement" means this Joint Exercise of Powers Agreement, as the same now exists or as it may from time to time be amended as provided herein.

"Associate Member" means a county, city or other public agency which is not a voting member of the Rural County Representatives of California, a California nonprofit corporation ("RCRC"), with legal power and authority similar to that of the Members, admitted pursuant to paragraph 4.d. below to associate membership herein by vote of the Board.

"Audit Committee" means a committee made up of the Executive Committee.

"Authority" means Golden State Finance Authority (GSFA) formerly known as California Home Finance Authority ("CHF"), or CRHMFA Homebuyers Fund or California Rural Home Mortgage Finance Authority.

"Board" means the governing board of the Authority as described in Section 7 below.

"Bonds" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other obligation within the meaning of the term "Bonds" under the Act.

"Delegate" means the Supervisor designated by the governing board of each Member to serve on the Board of the Authority.

"Executive Committee" means the Executive Committee of the Board established pursuant to Section 10 hereof.

"Member" means any county which is a member of RCRC, has executed this Agreement and has become a member of the Authority.

"Obligations" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other financial or legal obligation of the Authority under the Act.

"Program" or "Project" means any work, improvement, program, project or service undertaken by the Authority.

"Rural County Representatives of California" or **"RCRC"** means the nonprofit entity incorporated under that name in the State of California.

"Supervisor" means an elected County Supervisor from an RCRC member county.

2. Purpose

The purpose of the Authority is to provide financing for the acquisition, construction, improvement and rehabilitation of real property in accordance with applicable provisions of law for the benefit of residents and communities. In pursuit of this purpose, this Agreement provides for the joint exercise of powers common to any of its Members and Associate Members as provided herein, or otherwise authorized by the Act and other applicable laws, including assisting in financing as authorized herein, jointly exercised in the manner set forth herein.

3. Principal Place of Business

The principal office of the Authority shall be 1215 K Street, Suite 1650, Sacramento, California 95814.

4. Creation of Authority; Addition of Members or Associate Members

a. The Authority is hereby created pursuant to the Act. As provided in the Act, the Authority shall be a public entity separate and distinct from the Members or Associate Members.

b. The Authority will cause a notice of this Agreement or any amendment hereto to be prepared and filed with the office of the Secretary of State of California in a timely fashion in the manner set forth in Section 6503.3 of the Act.

c. A county that is a member of RCRC may petition to become a member of the Authority by submitting to the Board a resolution or evidence of other formal action taken by its governing body adopting this Agreement. The Board shall review the petition for membership and shall vote to approve or disapprove the petition. If the petition is approved by a majority of the Board, such county shall immediately become a Member of the Authority.

d. An Associate Member may be added to the Authority upon the affirmative approval of its respective governing board and pursuant to action by the Authority Board upon such terms and conditions, and with such rights, privileges and responsibilities, as may be established from time to time by the Board. Such terms and conditions, and rights, privileges and responsibilities may vary among the Associate Members. Associate Members shall be entitled to participate in one or more programs of the Authority as determined by the Board, but shall not be voting members of the Board. The Executive Director of the Authority shall enforce the terms and conditions for prospective Associate Members to the Authority as provided by resolution of the Board and as amended from time to time by the Board. Changes in the terms and conditions for Associate Membership by the Board will not constitute an amendment of this Agreement.

5. Term and Termination of Powers

This Agreement shall become effective from the date hereof until the earlier of the time when all Bonds and any interest thereon shall have been paid in full, or provision for such payment shall have been made, or when the Authority shall no longer own or hold any interest in a

public capital improvement or program. The Authority shall continue to exercise the powers herein conferred upon it until termination of this Agreement, except that if any Bonds are issued and delivered, in no event shall the exercise of the powers herein granted be terminated until all Bonds so issued and delivered and the interest thereon shall have been paid or provision for such payment shall have been made and any other debt incurred with respect to any other financing program established or administered by the Authority has been repaid in full and is no longer outstanding.

6. Powers; Restriction upon Exercise

a. To effectuate its purpose, the Authority shall have the power to exercise any and all powers of the Members or of a joint powers authority under the Act and other applicable provisions of law, subject, however, to the conditions and restrictions herein contained. Each Member or Associate Member may also separately exercise any and all such powers. The powers of the Authority are limited to those of a general law county.

b. The Authority may adopt, from time to time, such resolutions, guidelines, rules and regulations for the conduct of its meetings and the activities of the Authority as it deems necessary or desirable to accomplish its purpose.

c. The Authority shall have the power to finance the construction, acquisition, improvement and rehabilitation of real property, including the power to purchase, with the amounts received or to be received by it pursuant to a bond purchase agreement, bonds issued by any of its Members or Associate Members and other local agencies at public or negotiated sale, for the purpose set forth herein and in accordance with the Act. All or any part of such bonds so purchased may be held by the Authority or resold to public or private purchasers at public or negotiated sale. The Authority shall set any other terms and conditions of any purchase or sale contemplated herein as it deems necessary or convenient and in furtherance of the Act. The Authority may issue or cause to be issued Bonds or other indebtedness, and pledge any of its property or revenues as security to the extent permitted by resolution of the Board under any applicable provision of law. The Authority may issue Bonds in accordance with the Act in order to raise funds necessary to effectuate its purpose hereunder and may enter into agreements to secure such Bonds. The Authority may issue other forms of indebtedness authorized by the Act, and to secure such debt, to further such purpose. The Authority may utilize other forms of capital, including, but not limited to, the Authority's internal resources, capital markets and other forms of private capital investment authorized by the Act.

d. The Authority is hereby authorized to do all acts necessary for the exercise of its powers, including, but not limited to:

(1) executing contracts,
(2) employing agents, consultants and employees,
(3) acquiring, constructing or providing for maintenance and operation of any building, work or improvement,
(4) acquiring, holding or disposing of real or personal property wherever

located, including property subject to mortgage,

(5) incurring debts, liabilities or obligations,

(6) receiving gifts, contributions and donations of property, funds, services and any other forms of assistance from persons, firms, corporations or governmental entities,

(7) suing and being sued in its own name, and litigating or settling any suits or claims,

(8) doing any and all things necessary or convenient to the exercise of its specific powers and to accomplishing its purpose

(9) establishing and/or administering districts to finance and refinance the acquisition, installation and improvement of energy efficiency, water conservation and renewable energy improvements to or on real property and in buildings. The Authority may enter into one or more agreements, including without limitation, participation agreements and implementation agreements to implement such programs.

e. Subject to the applicable provisions of any indenture or resolution providing for the investment of monies held thereunder, the Authority shall have the power to invest any of its funds as the Board deems advisable, in the same manner and upon the same conditions as local agencies pursuant to Section 53601 of the Government Code of the State of California.

f. All property, equipment, supplies, funds and records of the Authority shall be owned by the Authority, except as may be provided otherwise herein or by resolution of the Board.

g. Pursuant to the provisions of Section 6508.1 of the Act, the debts, liabilities and obligations of the Authority shall not be debts, liabilities and obligations of the Members or Associate Members. Any Bonds, together with any interest and premium thereon, shall not constitute debts, liabilities or obligations of any Member. The Members or Associate Members hereby agree that any such Bonds issued by the Authority shall not constitute general obligations of the Authority but shall be payable solely from the moneys pledged to the repayment of principal or interest on such Bonds under the terms of the resolution, indenture, trust, agreement or other instrument pursuant to which such Bonds are issued. Neither the Members or Associate Members nor the Authority shall be obligated to pay the principal of or premium, if any, or interest on the Bonds, or other costs incidental thereto, except from the revenues and funds pledged therefor, and neither the faith and credit nor the taxing power of the Members or Associate Members or the Authority shall be pledged to the payment of the principal of or premium, if any, or interest on the Bonds, nor shall the Members or Associate Members of the Authority be obligated in any manner to make any appropriation for such payment. No covenant or agreement contained in any Bond shall be deemed to be a covenant or agreement of any Delegate, or any officer, agent or employee of the Authority in an individual capacity, and neither the Board nor any officer thereof executing the Bonds or any document related thereto shall be liable personally on any Bond or be subject to any personal liability or accountability by reason of the issuance of any Bonds.

7. Governing Board

a. The Board shall consist of the number of Delegates equal to one representative from each Member.

b. The governing body of each Member shall appoint one of its Supervisors to serve as a Delegate on the Board. A Member's appointment of its Delegate shall be delivered in writing (which may be by electronic mail) to the Authority and shall be effective until he or she is replaced by such governing body or no longer a Supervisor; any vacancy shall be filled by the governing body of the Member in the same manner provided in this paragraph b..

c. The governing body of each Member of the Board shall appoint a Supervisor as an alternate to serve on the Board in the absence of the Delegate; the alternate may exercise all the rights and privileges of the Delegate, including the right to be counted in constituting a quorum, to participate in the proceedings of the Board, and to vote upon any and all matters. No alternate may have more than one vote at any meeting of the Board, and any Member's designation of an alternate shall be delivered in writing (which may be by electronic mail) to the Authority and shall be effective until such alternate is replaced by his or her governing body or is no longer a Supervisor, unless otherwise specified in such appointment. Any vacancy shall be filled by the governing body of the Member in the same manner provided in this paragraph c..

d. Any person who is not a member of the governing body of a Member and who attends a meeting on behalf of such Member may not vote or be counted toward a quorum but may, at the discretion of the Chair, participate in open meetings he or she attends.

e. Each Associate Member may designate a non-voting representative to the Board who may not be counted toward a quorum but who may attend open meetings, propose agenda items and otherwise participate in Board Meetings.

f. Delegates shall not receive compensation for serving as Delegates, but may claim and receive reimbursement for expenses actually incurred in connection with such service pursuant to rules approved by the Board and subject to the availability of funds.

g. The Board shall have the power, by resolution, to the extent permitted by the Act or any other applicable law, to exercise any powers of the Authority and to delegate any of its functions to the Executive Committee or one or more Delegates, officers or agents of the Authority, and to cause any authorized Delegate, officer or agent to take any actions and execute any documents for and in the name and on behalf of the Board or the Authority.

h. The Board may establish other committees as it deems necessary for any lawful purpose; such committees are advisory only and may not act or purport to act on behalf of the Board or the Authority.

i. The Board shall develop, or cause to be developed, and review, modify as necessary, and adopt each Program.

8. Meetings of the Board

a. The Board shall meet at least once annually, but may meet more frequently upon call of any officer or as provided by resolution of the Board.

b. Meetings of the Board shall be called, noticed, held and conducted pursuant to the provisions of the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code of the State of California.

c. The Secretary of the Authority shall cause minutes of all meetings of the Board to be taken and distributed to each Member as soon as possible after each meeting.

d. The lesser of twelve (12) Delegates or a majority of the number of current Delegates shall constitute a quorum for transacting business at any meeting of the Board, except that less than a quorum may act to adjourn a meeting. Each Delegate shall have one vote.

e. Meetings may be held at any location designated in notice properly given for a meeting and may be conducted by telephonic or similar means in any manner otherwise allowed by law.

9. Officers; Duties; Official Bonds

a. The Board shall elect a chair and vice chair from among the Delegates at the Board's annual meeting who shall serve a term of one (1) year or until their respective successor is elected. The chair shall conduct the meetings of the Board and perform such other duties as may be specified by resolution of the Board. The vice chair shall perform such duties in the absence or in the event of the unavailability of the chair.

b. The Board shall contract annually with RCRC to administer the Agreement and to provide administrative services to the Authority, and the President and Chief Executive Officer of RCRC shall serve *ex officio* as Executive Director, Secretary, Treasurer, and Auditor of the Authority. As chief executive of the Authority, the Executive Director is authorized to execute contracts and other obligations of the Authority, unless prior Board approval is required by a third party, by law or by Board specification, and to perform other duties specified by the Board. The Executive Director may appoint such other officers as may be required for the orderly conduct of the Authority's business and affairs who shall serve at the pleasure of the Executive Director. Subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent, the Executive Director, as Treasurer, is designated as the custodian of the Authority's funds, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act. The Executive Director, as Auditor, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act.

c. The Legislative Advocate for the Authority shall be the Rural County Representatives of California.

d. The Treasurer and Auditor are public officers who have charge of, handle, or have access to all property of the Authority, and a bond for such officer in the amount of at least one hundred thousand dollars ($100,000.00) shall be obtained at the expense of the Authority and filed with the Executive Director. Such bond may secure the faithful performance of such officer's duties with respect to another public office if such bond in at least the same amount specifically mentions the office of the Authority as required herein. The Treasurer and Auditor shall cause periodic independent audits to be made of the Authority's books by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act.

e. The business of the Authority shall be conducted under the supervision of the Executive Director by RCRC personnel.

10. Executive Committee of the Authority

a. Composition

The Authority shall appoint no fewer than nine (9) and no more than eleven (11) members of its Board to serve on an Executive Committee. The Chair and Vice Chair of the Authority shall serve on the Executive Committee.

b. Powers and Limitations

The Executive Committee shall act in an advisory capacity and make recommendations to the Authority Board. Duties will include, but not be limited to, review of the quarterly and annual budgets, service as the Audit Committee for the Authority, periodically review this Agreement; and complete any other tasks as may be assigned by the Board. The Executive Committee shall be subject to all limitations imposed by this Agreement, other applicable law, and resolutions of the Board.

c. Quorum

A majority of the Executive Committee shall constitute a quorum for transacting business of the Executive Committee.

11. Disposition of Assets

Upon termination of this Agreement, all remaining assets and liabilities of the Authority shall be distributed to the respective Members in such manner as shall be determined by the Board and in accordance with the law.

12. Agreement Not Exclusive; Operation in Jurisdiction of Member

This Agreement shall not be exclusive, and each Member expressly reserves its rights to carry out other public capital improvements and programs as provided for by law and to issue other obligations for those purposes. This Agreement shall not be deemed to amend or alter the

terms of other agreements among the Members or Associate Members.

13. Conflict of Interest Code

The Authority shall by resolution adopt a Conflict of Interest Code as required by law.

14. Contributions and Advances

Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by any Member, Associate Member or any other public agency to further the purpose of this Agreement. Payment of public funds may be made to defray the cost of any contribution. Any advance may be made subject to repayment, and in that case shall be repaid in the manner agreed upon by the advancing Member, Associate Member or other public agency and the Authority at the time of making the advance.

15. Fiscal Year; Accounts; Reports; Annual Budget; Administrative Expenses

a. The fiscal year of the Authority shall be the period from January 1 of each year to and including the following December 31, except for any partial fiscal year resulting from a change in accounting based on a different fiscal year previously.

b. Prior to the beginning of each fiscal year, the Board shall adopt a budget for the succeeding fiscal year.

c. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles. The books and records of the Authority are public records and shall be open to inspection at all reasonable times by each Member and its representatives.

d. The Auditor shall either make, or contract with a certified public accountant or public accountant to make, an annual audit of the accounts and records of the Authority. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California, and shall conform to generally accepted auditing standards. When an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with each Member (and also with the auditor of Sacramento County as the county in which the Authority's office is located) within 12 months after the end of the fiscal year.

e. In any year in which the annual budget of the Authority does not exceed five thousand dollars ($5,000.00), the Board may, upon unanimous approval of the Board, replace the annual audit with an ensuing one-year period, but in no event for a period longer than two fiscal years.

16. Duties of Members or Associate Members; Breach

If any Member or Associate Member shall default in performing any covenant contained herein, such default shall not excuse that Member or Associate Member from fulfilling its other obligations hereunder, and such defaulting Member or Associate Member shall remain liable for the performance of all covenants hereof. Each Member or Associate Member hereby declares that this Agreement is entered into for the benefit of the Authority created hereby, and each Member or Associate Member hereby grants to the Authority the right to enforce, by whatever lawful means the Authority deems appropriate, all of the obligations of each of the parties hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative, and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

17. Indemnification

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a Board Delegate, alternate, officer, consultant, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a Delegate, alternate, officer, consultant, employee or other agent of the Authority. Such indemnification may be made against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful and, in the case of an action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

18. Immunities

All of the privileges and immunities from liabilities, exemptions from law, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activity of officers, agents or employees of any of the Members or Associate Members when performing their respective functions, shall apply to them to the same degree and extent while engaged as Delegates or otherwise as an officer, agent or other representative of the Authority or while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

19. Amendment

This Agreement may be amended by the adoption of the amendment by the governing bodies of a majority of the Members. The amendment shall become effective on the first day of the month following the last required member agency approval. An amendment may be initiated by the Board, upon approval by a majority of the Board. Any proposed amendment, including the text of the proposed change, shall be given by the Board to each Member's Delegate for presentation and action by each Member's board within 60 days, which time may be extended by

the Board.

The list of Members, Attachment 1, may be updated to reflect new and/or withdrawn Members without requiring formal amendment of the Agreement by the Authority Board of Directors.

20. Withdrawal of Member or Associate Member

If a Member withdraws as member of RCRC, its membership in the Authority shall automatically terminate. A Member or Associate Member may withdraw from this Agreement upon written notice to the Board; provided however, that no such withdrawal shall result in the dissolution of the Authority as long as any Bonds or other obligations of the Authority remain outstanding. Any such withdrawal shall become effective thirty (30) days after a resolution adopted by the Member's governing body which authorizes withdrawal is received by the Authority. Notwithstanding the foregoing, any termination of membership or withdrawal from the Authority shall not operate to relieve any terminated or withdrawing Member or Associate Member from Obligations incurred by such terminated or withdrawing Member or Associate Member prior to the time of its termination or withdrawal.

21. Miscellaneous

a. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

b. **Construction.** The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

c. **Approvals.** Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

d. **Jurisdiction; Venue.** This Agreement is made in the State of California, under the Constitution and laws of such State and is to be so construed; any action to enforce or interpret its terms shall be brought in Sacramento County, California.

e. **Integration.** This Agreement is the complete and exclusive statement of the agreement among the parties hereto, and it supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the parties relating to the subject matter of this Agreement.

f. **Successors; Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no Member may assign any right or obligation hereunder without the consent of the Board.

g. **Severability.** Should any part, term or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be

rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

The parties hereto have caused this Agreement to be executed and attested by their properly authorized officers.

AS ADOPTED BY THE MEMBERS:

Originally dated July 1, 1993
Amended and restated December 10, 1998
Amended and restated February 18, 1999
Amended and restated September 18, 2002
Amended and restated January 28, 2004
Amended and restated December 10, 2014
Amended and restated May 5, 2015

[*SIGNATURES ON FOLLOWING PAGES*]

ATTACHMENT 1
GOLDEN STATE FINANCE AUTHORITY MEMBERS

As of May 5, 2015

Alpine County
Amador County
Butte County
Calaveras County
Colusa County
Del Norte County
El Dorado County
Glenn County
Humboldt County
Imperial County
Inyo County
Lake County
Lassen County
Madera County
Mariposa County
Mendocino County
Merced County
Modoc County
Mono County
Napa County
Nevada County
Placer County
Plumas County
San Benito County
Shasta County
Sierra County
Siskiyou County
Sutter County
Tehama County
Trinity County
Tuolumne County
Yolo County
Yuba County

SIGNATURE PAGE FOR NEW ASSOCIATE MEMBERS

NAME OF COUNTY OR CITY:

_____ Dated:_____

By:_____

Name:_____

Title:_____

Attest:

By _____
[Clerk of the Board Supervisors or City Clerk]

EXHIBIT B

LETTER OF AGREEMENT REGARDING OPERATIONAL REQUIREMENTS FOR PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAMS IN THE CITY OF MILPITAS

The City of Milpitas evaluated PACE Program operations within the City jurisdiction and has established several operating conditions to better protect the interest of our community. [Name of Program Administrator] has established the [Name of PACE Program], a Property Assessed Clean Energy (PACE) financing program and agrees to meet the provisions stated below in order to operate its program within the City.

Provisions

1. **Early Pay-off.** [Name of PACE Program] and [Name of Program Administrator] will not charge differential interest rates or pre-payment penalties to property owner for early pay off of the full outstanding balance of the PACE assessments.

2. **Regional Agreement.** [Name of PACE Program] and [Name of Program Administrator] has signed the Association of Bay Area Governments' (ABAG) Regional Collaborative Services Agreement (RCSA) and will continue to implement the requirements of the RCSA.

3. **Contractor Solicitation.** [Name of PACE Program] and [Name of Program Administrator] will provide to each Registered Contractor the City's requirement to obtain a business license, pay the applicable business license tax and on fingerprinting[1] and will continue to provide the requirements on a yearly basis to ensure contractor oversight.

[Name of Program Administrator] is aware of the additional operating provisions established by the City of Milpitas above and agrees to conform with these requirements so long as it offers its program within the City's jurisdiction and agrees that failure to abide by these requirements may result in City's termination of PACE Program's authorization to operate within the City.

PACE PROVIDER:
[Name of Program Administrator]

By: _____

Name: _____

Title: _____

Date: _____

[1] Milpitas Municipal Code, Title III, Chapter 1

DRAFT

EXHIBIT C

ADOPTION OF AGREEMENT
FOR COLLABORATIVE SERVICES

The City of Milpitas hereby adopts the Agreement for Collaborative Services ("Agreement") attached hereto as **Exhibit 1** and incorporated herein, establishing operating procedures for the _____ [PACE Program] within the jurisdiction of the City of Milpitas.

_____ [PACE Program] acknowledges and agrees that City of Milpitas is a "Participating Entity" as defined by Section 1.3 of the Agreement and shall be entitled to all the rights and benefits under the Agreement and may enforce the provisions thereof.

_____ [PACE Program] further acknowledges and agrees that it shall defend, indemnify, hold harmless, and waive subrogation against the City of Milpitas and its elected and appointed officials, officers and employees, to the extent set forth in Section 6 of the Agreement, and City of Milpitas shall be covered as an additional insured pursuant to Attachment 2, Section (d)(i) of the Agreement.

City of Milpitas:

By: _____ Date: _____
Steve J. Pangelinan
Acting City Manager

_____ [PACE Program]:

By: _____ Date: _____

Method and Place of Giving Notice. All notices to the Participating Entity shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices shall be addressed as follows:

Edesa Bitbadal, Economic Development Director
455 E Calaveras Blvd
Milpitas, CA 95035
ebitbadal@ci.milpitas.ca.gov

EXHIBIT 1

AGREEMENT FOR COLLABORATIVE SERVICES

FOR PROPERTY ASSESSED CLEAN ENERGY FINANCING

This Agreement for Collaborative Services ("Agreement"), dated as of , 2016 (“Effective Date”) is by and among the Association of Bay Area Governments (hereinafter "ABAG"), ***[insert PACE program provider name]***, (hereinafter "PACE Provider"), as an entity administering a Property Assessed Clean Energy (PACE) financing program utilizing either the California Assembly Bill 811 and/or California Senate Bill 555 model and any Participating Entity, as defined in Section 1.3 below, that adopts this Agreement.

R E C I T A L S

WHEREAS, ABAG is committed to mitigating and adapting to the causes and impacts of climate change and supporting energy independence from fossil fuels to safeguard the environment, human health and the economy; and

WHEREAS, ABAG as Program Administrator for the Bay Area Regional Energy Network (BayREN), works closely with 101 cities in the nine county Bay Area region (ABAG territory) to develop and implement innovative energy efficiency programs, including supporting commercial and residential Property Assessed Clean Energy (PACE) programs; and

WHEREAS, the BayREN offers programs, technical resources and education for energy upgrades and retrofits; and

WHEREAS, the objective of the BayREN is to help property owners save energy, save money, and live comfortably; and

WHEREAS, the BayREN seeks to assist local governments to understand all aspects of partnering with PACE Providers in order to minimize customer confusion, provide access to education and information to property owners and assist with making informed decisions on rebates and incentives, contractor programs, and financing options; and

WHEREAS, the PACE Provider is willing to participate to support community climate goals and minimize consumer and contractor confusion; and

WHEREAS, the PACE Provider will provide support and resources to any Participating Entity as requested related to education, outreach and development of the energy upgrade industry and trades; and

WHEREAS, the PACE Provider will support, align and integrate its efforts with the community-wide goals for job creation, resource demand reduction, and renewable energy generation; and

WHEREAS, the PACE Provider will establish its own interest rates, repayment terms, and fees as state and federal laws and the market defines and allows; and

WHEREAS, the PACE Provider will arrange for the collection of Property Assessed Clean Energy assessments it has financed directly with the Participating Entity's County Tax Collector's Office; and

WHEREAS, this Agreement does not include any financial arrangements between the PACE Provider, ABAG and the Participating Entity adopting this Agreement, nor does it preclude any separate contracts, contract terms for services or support; and

WHEREAS, the purpose of this Agreement is to set forth the mutual understandings between ABAG and the PACE Provider and to establish basic operating procedures for any PACE provider operating within the ABAG territory, and any Participating Entity that adopts this agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

A G R E E M E N T

1 Definitions.

1.1 "**Eligible improvement**" is a technology, product or tool officially approved by the PACE provider. The improvements may include distributed generation renewable energy sources, energy and water efficiency improvements, and electric vehicle charging infrastructure improvements that will be permanently affixed to real property, and any additional improvements deemed eligible in the future by the California Legislature and/or the California Judiciary.

1.2 "**PACE Provider**" is an entity participating in ABAG territory administering a program providing Property Assessed Clean Energy (PACE) financing.

1.3 **"Participating Entity"** is any city, town, county or the City and County of San Francisco located within ABAG's geographical boundaries that adopt this Agreement.

1.4 **"Participating Contractor"** is any contractor that has agreed to, and abides, by the terms and conditions of the PACE Provider's contractor standards.

1.5 "**Property Assessed Clean Energy (PACE) Financing**" is a means of financing distributed generation, renewable energy sources, energy and water efficiency improvements, electric vehicle charging infrastructure and other improvements deemed eligible by the California legislature that will be permanently affixed to real property, whereby the funds provided to pay for the improvements are repaid through contractual assessments and/or special taxes, utilizing either California Assembly Bill 811 (Levine, 2008) ("AB 811"), which amended §§5898.10-5899.3 of the California Streets and Highways Code; or California Senate Bill 555 (Hancock, 2011) ("SB 555"), which amended certain portions of §§53311-53368.3 of the California Government Code and each as subsequently amended.

1.6 "**Work"** as defined throughout this Agreement is the collaborative, non-competitive, effort between the PACE Provider and ABAG to support the citizens of ABAG member jurisdictions in completing water, energy efficiency upgrades, and the installation of renewable energy generating improvements.

2 Scope of Work / Collaboration.

2.1 PACE Provider's Specified Services. The PACE Provider will offer and provide Property Assessed Clean Energy Financing under the requirements of AB 811 and/or SB 555.

2.2 Performance Standard. PACE Provider shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by an organization administering a Property Assessed Clean Energy financing program pursuant to California Assembly Bill 811 and/or California Senate Bill 555. ABAG has relied upon the professional ability and expertise of PACE Provider as a material inducement to enter into this Agreement. PACE Provider hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws. If ABAG is concerned that any of PACE Provider's work is not in accordance with the level of competency and standard of care described herein, ABAG shall have the right to do any or all of the following: (a) require PACE Provider to

discuss with Participating Entity and/or to review the quality of the work and resolve matters of concern; (b) terminate this Agreement pursuant to the provisions of Section 5, Termination; or (c) pursue any and all other remedies available to ABAG at law or in equity.

Financing Provision Requirements.

The PACE Provider will:

2.3.1 Include a process to receive acknowledgement and confirmation of satisfaction with work completed from the applicant before project payment is disbursed and have a published dispute resolution process available for customers.

2.3.2 Provide summary of financing details (including assessment or special tax amount and terms, financing installments and estimated administrative expenses) to the applicant specific to the requested amount of the financing.

2.3.3 For residential properties, require an applicant's acknowledgment of the Federal Housing Finance Agency position on PACE by a separate signature/initial acknowledgement, in a Residential Disclosure Signature Form that is substantially similar in content to Attachment 1(a) or 1(b), as approved by ABAG.

2.3.4 Provide training to contractors and information to property owners on the availability of rebates (for all utility and generation types), including and not limited to city and county rebate programs, BayREN programs, PG&E programs, and other such offerings. (For information about local programs, the contractor and/or home owner may be directed to the BayREN Home Upgrade Advisor at 866-878-6008.)

2.3.5 Require that applicable building permits are obtained for all improvements in Participating Entities.

2.3.6 Verify that all property taxes for the assessed property are current for the previous three years or since the current owner acquired the property, whichever is shorter.

2.3.7 Recommend that property owners consult with a tax professional prior to claiming any tax deductions associated with the project and not recommend that homeowners take any particular filing position regarding their annual or semi-annual PACE assessment payments.

2.3.8 Not represent that the full assessment is tax deductible.

2.3.9 Have a consistent plan for removal of assessments at end of repayment term, prepayment and/or in the event of program closure.

2.4 Financial Policies.

The PACE Provider will:

2.4.1 For programs offering residential PACE financing, be an active participant in the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) PACE Loan Loss Reserve Program or comparable loan loss reserve program which includes at minimum the parameters outlined in Attachment 2.

2.4.2 Notify ABAG six months in advance if funding capacity available from the PACE Provider to prospective PACE customers in the Participating Entity will fall below the amount dispersed in the previous six months of operation.

2.4.3 Notify ABAG of any foreclosure action as a result of a default in the payment of a PACE assessment on property within ABAG's geographical boundaries, where the PACE assessment was originated by the PACE Provider.

2.5 Documents, Data, and Information Policies.

The PACE Provider will:

2.5.1 Provide to Participating Entity (for internal evaluation purposes only and not for distribution to any third party or for marketing purposes, other than as required by law, by request of Participating Entity, electronic access to the name, business name, and California State Contractors license number of participating contractors of the PACE Provider's program whose business address is located in the requesting Participating Entity or who conduct business in the requesting Participating Entity.

2.5.2 Retain completed Residential Disclosure (hardcopy or electronic) on file for duration of assessment, and furnish to Participating Entity upon request.

2.5.3 Provide upon request either direct real time access to data or quarterly reports in an open electronic file format (such as Microsoft Excel) to Participating Entity by request for internal evaluation purposes only (and not for distribution to any third party, including, without limitation, utility companies, services providers and equipment manufacturers or for marketing purposes) that includes the following information for each assessment:

a. Required data:

i. Assessor's Parcel Number (APN) of the property

ii. Dollar amount financed (the amount of the assessment and/or special tax)
iii. Listing of all energy efficiency and water conservation eligible improvements installed by virtue of the financing, including the unit of measure for the improvement and the quantity installed as captured by Participating Contractor
iv. Listing of all renewable generation improvements installed and the solar STC-DC rating in watts or kilowatts as captured by Participating Contractor
v. Estimated energy and water savings (in appropriate units) associated with the project

b. If available (in the aggregate):

i. Amount of rebate or incentive dollars associated with the project (not financed) and the name of the program
ii. How the customer heard about PACE financing
iii. Why the customer selected PACE over other financing instruments available
iv. Why the customer selected their final PACE Provider over the other members

The Participating Entity will:
Maintain the privacy and security of data received from PACE Provider. Participating Entity shall comply with all applicable state and federal laws, regulations and applicable California Public Utilities Commission regulations. Participating Entity may only provide reports relating to Section 2.5.3(a)(ii)-(v) for public distribution that aggregate the data such that individual customer information cannot be identified, unless such customer has authorized written release of individual customer information. A Participating Entity shall not share with any third party the data and reports provided by a PACE Provider pursuant to Section 2.5.3(b) (if any).

2.5.4 Provide the documents required for participation in the PACE Providers' PACE Financing program to Participating Entity officials.
2.5.5 Provide support to Participating Entity's staff to facilitate adoption of required participation documents.

2.6 ABAG will encourage Participating Entity to offer staff resources and support to bring forward to their respective boards or councils the documents

provided by the PACE Provider required for participation in the PACE Provider's PACE financing product.

2.7 Branding / Marketing Requirements.

The Parties will:

2.7.1 Collaborate on any local and/or regional efforts that may impact PACE financing participation to achieve the best possible outcome for property owners.

2.7.2 Represent the role of ABAG as the local neutral third party, not-for-profit, public service agency supporting the public through the upgrade process, with the following message to consumers: Among the financing products available, competition is encouraged to the benefit of the consumer, with the common goal of successful completion of projects.

The PACE Provider will:

2.7.3 Provide assistance to ABAG and any Participating Entity signing this Agreement for: (1) coordinating and implementing the integration of the PACE Provider into applicable BayREN and other relevant energy efficiency programs; and (2) support of contractor training.

2.7.4 Provide specific training for participating contractors engaged with local PACE programs using the PACE Provider's financing product, materials, collateral, tools, and associated software, through training offered directly from the PACE Provider.

2.7.5 Provide professional services, template documents, and other services reasonably necessary to staff for integrating the PACE Provider's financing option into the websites of any Participating Entity requesting such assistance.

2.7.6 Provide training and resources to any Participating Entity as needed to build understanding and support for use of the PACE financing product

ABAG will encourage ABAG members to:

2.7.7 Present with impartiality the financing products of the PACE Providers in all venues to the public.

2.7.8 Present marketing collateral of all financing products (where applicable) with impartiality in education and outreach materials and events

2.8 PACE Providers Responsibilities Regarding Participating Contractor.

PACE Providers will:

2.8.1 Require that contractors have the appropriate California State License Board (CSLB) license in good standing

2.8.2 Require, in accordance with California State License Board requirements, that contractors' bonding is in good standing

2.8.3 Require, in accordance with California State License Board requirements, that contractors have appropriate Workers' Compensation coverage

2.8.4 Require that contractors have a minimum of $1M of commercial general liability insurance

2.8.5 NOT endorse, recommend, or refer any specific contractor other than contractors who are to PACE Provider's knowledge, in good standing with CSLB, are insured and meet material program eligibility requirements

2.8.6 NOT make any representation or warranty regarding the qualifications, licensing, products, or workmanship of any contractor

2.8.7 NOT make any warranty regarding the contractor's work or products purchased from contractors provided

2.8.8 NOT accept any liability that may be alleged to arise from the work of any listed contractor on a customer project or from any reliance on any claims, statements, or other descriptions regarding a contractor's certifications, licenses, qualifications or products

2.8.9 Comply with provisions of Section 2.3.7 of this Agreement.

2.8.10 Via trainings and customer complaint system, require that contractors and their representatives, employees, and agents do not represent themselves as agents, representatives, contractors, subcontractors, or employees of ABAG or any Participating Entity, or claim association or affiliation with ABAG or any Participating Entity.

2.8.11 Independently engages the Participating Entity's Tax Collector for administration of property tax assessments placed through its financing product.

3 **Payment.** This Agreement does not include any financial arrangements between the PACE Provider and ABAG, nor does it preclude any separate contracts for services or support.

4 **Term of Agreement.** The term of this Agreement shall be from the Effective Date until termination in accordance with the provisions of Section 5, Termination below.

5 Termination.

5.1 Termination without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, ABAG, PACE Provider, or any Participating Entity shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to the other Party to this Agreement; provided that a party's termination of this Agreement under this section shall not automatically terminate any other agreement or contract between the other parties.

5.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should the PACE Provider fail to uphold any of its obligations under this Agreement in a material way, within the time and in the manner herein provided, or otherwise materially violate any of the terms of this Agreement, ABAG or a Participating Entity may, after providing the PACE Provider with a thirty (30) day cure period, immediately terminate this Agreement by giving PACE Provider written notice of such termination, stating the reason for termination; provided that the termination of this Agreement shall not automatically terminate any other agreement or contract between or among the parties.

5.3 Delivery of Data and Information upon Termination. In the event of termination, PACE Provider, within 14 days following the date of termination, shall deliver to the extent legally permitted to Participating Entity all raw data and information in an editable electronic format as outlined in and subject to the terms of Section 2.5, Document, Data, and Information Policies.

5.4 Authority to Terminate. The Executive Director of ABAG has the authority to terminate this Agreement on behalf of ABAG

5.5 Effect of Termination. Termination of this Agreement by ABAG or Participating Entity shall not affect the ability to levy and collect assessments and the PACE Provider's ability to issue bonds for assessment contracts located within the jurisdiction of such entity which have been entered into prior to the date of termination.

In the event of termination pursuant to this Section 5 by ABAG, ABAG may notify all Participating Entities of said termination.

6 Hold Harmless, Indemnity and Waiver of Subrogation.

To the fullest extent allowed by law, PACE Provider shall defend, indemnify, save harmless and waive subrogation against the ABAG, and its members, elected and appointed officials, officers and employees (Indemnitees) against any and all liability, claims, losses, damages, or expenses, including reasonable attorneys' fees, arising from

all acts or omissions to act of PACE Provider or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages or expenses resulting from an intentional act or the gross negligence of an Indemnitee.

This section shall in no event be construed to require indemnification by PACE Provider to a greater extent than permitted under the public policy or laws of the State of California. These defense and indemnification obligations are undertaken in addition to, and shall not in any way be limited by, the insurance obligations set forth in this Agreement. These defense and indemnification obligations shall survive the termination or expiration of the contract for the full period of time permitted by law.

7 **Insurance Requirements.** PACE provider shall obtain and maintain insurance as required in Attachment 2.

8 Prosecution of Work. The execution of this Agreement shall constitute PACE Provider's authority to proceed immediately with the performance of this Agreement.

9 Representations of PACE Provider.

9.1 Standard of Care. ABAG and Participating Entity have relied upon the professional ability and training of PACE Provider as a material inducement to entering into this Agreement. PACE Provider hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws.

9.2 Status of PACE Provider. The parties intend that PACE Provider, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. PACE Provider is not to be considered an agent or employee of ABAG or of any Participating Entity and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, employment protection, or similar benefits that ABAG or the Participating Entity provides its employees.

9.3 Conflict of Interest. PACE Provider covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in

any manner or degree with the performance of its services hereunder. PACE Provider further covenants that in the performance of this Agreement no person having any such interests shall be employed.

9.4 Statutory Compliance. PACE Provider agrees to comply with all federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement.

9.5 Nondiscrimination. Without limiting any other provision hereunder, PACE Provider shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, gender identity, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.6 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of PACE Provider.

10 Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, conduct, or service does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits the parties' right to terminate this Agreement pursuant to Section 5, Termination.

11 Assignment and Delegation. No party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented; provided however, that

PACE Provider may assign this Agreement in connection with a merger or the sale of all or substantially all of its assets or equity ownership without the prior written consent of any other party provided that the successor expressly assumes all of the obligations, including this Agreement, and confirms all of the representations, warranties and covenants of PACE Provider hereunder.

12 Method and Place of Giving Notice. All notices shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service to:

TO: ABAG: Address
Email address: _____

TO: PACE PROVIDER: _____
_____
_____

Email address: _____

When a notice is given by a generally recognized overnight courier service, the notice shall be deemed received on the next business day. When a copy of a notice is sent by facsimile or email, the notice shall be deemed received upon transmission as long as (1) the original copy of the notice is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email, (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13 Miscellaneous Provisions.

13.1 No Waiver of Breach. The waiver by a party of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and

agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. PACE Provider and ABAG acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Each party hereto acknowledges that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Alameda.

13.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Counterparts. This Agreement may be executed in two or more counterparts, a complete set of which shall be deemed an original, constituting one and the same instrument. The delivery by facsimile or electronic mail of an executed copy of this Amendment shall be deemed valid as if an original signature was delivered

Continued on next page:

IN WITNESS WHEREOF, the ABAG and the PACE Provider hereto have executed this Agreement as of the Effective Date.

PACE PROVIDER: _____	ABAG: _____
By: _____	By:_____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPROVED AS TO FORM FOR ABAG

Date: _____ By: _____
Kenneth Moy, ABAG Counsel

ATTACHMENT 1(a)

ALERT: Fannie Mae/Freddie Mac Instructions for Lenders

SINGLE FAMILY HOME OWNERS: In May, 2010, Fannie Mae and Freddie Mac, government sponsored enterprises that purchase a large segment of conforming single family home mortgages, issued new instructions to lending institutions on how to treat properties with assessments under Property Assessed Clean Energy (PACE) programs such as _____. These letters, and additional statements issued by the Federal Housing Finance Agency, the agency that regulates single family home lenders, instruct lenders to treat energy assessments as "loans" instead of "assessments."

On August 31, 2010, the agencies issued additional instructions to lenders that Fannie Mae and Freddie Mac "will not purchase mortgage loans secured by properties with an outstanding PACE obligation."

These letters and statements may lead lenders to conclude the PACE assessment should be paid off before a property transfers or is refinanced. In addition, it may lead some lenders to conclude that participating in PACE program is a violation of typical mortgage terms prohibiting prior liens without lender consent. If you are selling your property, a buyer's lender may refuse to finance the buyer's first mortgage loan unless the assessment is paid off. We urge you to carefully read the disclosure information in the Program application, review your mortgage documents, evaluate the risks of proceeding with an application at this time, and contact your lender if you have any concerns or for information regarding any other financing options that may be available to you.

I/We have read the above statement. All property owners on title must initial below:

_____	_____	_____	_____
Initials	*Date*	*Initials*	*Date*
_____	_____	_____	_____
Initials	*Date*	*Initials*	*Date*

Continued on next page:

Electronic links to the copies of letters from the Federal Financing Housing Authority re: PACE programs:

- https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/ll1006.pdf
- http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/iltr050510.pdf
- http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx
- http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Acting-Director-Edward-J-DeMarco-on-PACE-Programs.aspx
- https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/sel1012.pdf
- http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1020.pdf

ATTACHMENT 1(b)

BEFORE COMPLETING A PROGRAM APPLICATION, YOU SHOULD CAREFULLY REVIEW ANY MORTGAGE AGREEMENT(S) OR OTHER SECURITY INSTRUMENT(S) WHICH AFFECT THE PROPERTY OR TO WHICH YOU AS THE PROPERTY OWNER ARE A PARTY. ENTERING INTO A PROGRAM ASSESSMENT CONTRACT WITHOUT THE CONSENT OF YOUR EXISTING LENDER(S) COULD CONSTITUTE AN EVENT OF DEFAULT UNDER SUCH AGREEMENTS OR SECURITY INSTRUMENTS. DEFAULTING UNDER AN EXISTING MORTGAGE AGREEMENT OR SECURITY INSTRUMENT COULD HAVE SERIOUS CONSEQUENCES TO YOU, WHICH COULD INCLUDE THE ACCELERATION OF THE REPAYMENT OBLIGATIONS DUE UNDER SUCH AGREEMENT OR SECURITY INSTRUMENT. IN ADDITION, FANNIE MAE AND FREDDIE MAC, THE OWNER OF A SIGNIFICANT PORTION OF ALL HOME MORTGAGES, STATED THAT THEY WOULD NOT PURCHASE HOME LOANS WITH ASSESSMENTS SUCH AS THOSE OFFERED BY THE AUTHORITY. THIS MAY MEAN THAT PROPERTY OWNERS WHO SELL OR REFINANCE THEIR PROPERTY MAY BE REQUIRED TO PREPAY SUCH ASSESSMENTS AT THE TIME THEY CLOSE THEIR SALE OR REFINANCING.

I/We have read the above statement. All property owners on title must initial below:

Initials	*Date*	*Initials*	*Date*
Initials	*Date*	*Initials*	*Date*

ATTACHMENT 2

Insurance Requirements. PACE Provider shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a period of five (5) years following the completion of this project. PACE Provider shall provide a copy of section 21 of this contract and these insurance requirements to its insurance broker or insurer to confirm compliance. In the event PACE Provider fails to obtain or maintain completed operations coverage as required by this agreement, ABAG, at its sole discretion, may purchase the coverage required and the cost will be paid by PACE Provider. The limits of insurance required in hereunder may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the Indemnitees (if agreed to in a written contract or agreement) before the any Indemnitee's own Insurance or self-insurance shall be called upon to protect it as a named insured.

(a) Minimum Scope of Insurance. Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage
(occurrence Form CG 0001).

Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Errors and Omissions Liability insurance appropriate to the PACE Provider's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

(b) Minimum Limits of Insurance. PACE Provider shall maintain limits no less than:

General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
Automobile Liability: $1,000,000 per accident for bodily injury and property damage.
Employer's Liability: $1,000,000 per accident for bodily injury or disease.
Errors and Omissions Liability: $1,000,000 per claim/aggregate.

(c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by ABAG. The insurer shall reduce or eliminate such

deductibles or self-insured retentions as respects the Indemnitees; or the PACE Provider shall satisfy any such deductibles or self-insured retentions. In addition, policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or any of the Indemnitees.

(d) Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) The Indemnitees are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of PACE Provider; completed operations; or automobiles owned, leased, hired or borrowed by PACE Provider.

(ii) For any claims related to this project, the PACE Provider's insurance coverage shall be primary insurance as respects the Indemnitees.

(iii) Any insurance or self-insurance maintained by the Indemnitees shall be excess of PACE Provider's insurance and shall not contribute with it.

(iv) Except for General Liability and Automobile Liability, each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty(30) days' prior written notice by certified mail, return receipt requested, has been given to ABAG. For General Liability and Automobile Liability, PACE Provider shall provide ABAG with thirty (30) day's prior notice of cancellation by either the insurer or PACE Provider.

(v) Coverage shall not extend to any defense or indemnity coverage for the active negligence of the Indemnitees in any case where an agreement to defend and indemnify the Indemnitees would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

(e) Other Insurance Provisions – Workers Compensation. The Workers Compensation insurance shall be endorsed to waive subrogation against the Indemnitees.

(f) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to ABAG.

(g) Verification of Coverage. PACE Provider shall furnish the ABAG with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by ABAG before work commences. ABAG reserves the right to require complete, certified

copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

RESOLUTION NO. ___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS CONSENTING TO INCLUSION OF PROPERTIES WITHIN THE CITY'S JURISDICTION IN THE GOLDEN STATE FINANCE AUTHORITY PROGRAM TO FINANCE RENEWABLE ENERGY GENERATION, ENERGY AND WATER EFFICIENCY IMPROVEMENTS, ELECTRIC VEHICLE CHARGING INFRASTRUCTURE, AND OTHER IMPROVEMENTS AND APPROVING ASSOCIATE MEMBERSHIP IN THE JOINT EXERCISE OF POWERS AUTHORITY RELATED THERETO

WHEREAS, the Golden State Finance Authority (the "Authority") is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following) (the "Act") and the Joint Power Agreement entered into on July 1, 1993, as amended from time to time (the "Authority JPA"); and

WHEREAS, the Authority has established a property-assessed clean energy ("PACE") Program (the "Authority PACE Program") to provide for the financing of renewable energy generation, energy and water efficiency improvements, electric vehicle charging infrastructure, and other improvements (the "Improvements") pursuant to Chapter 29 of the Improvement Bond Act of 1911, being Division 7 of the California Streets and Highways Code ("Chapter 29") within counties and cities throughout the State of California that elect to participate in such program; and

WHEREAS, the City of Milpitas (the "City") is committed to development of renewable energy generation and energy and water efficiency improvements, reduction of greenhouse gases, and protection of the environment; and

WHEREAS, in Chapter 29, the Legislature has authorized cities and counties to assist property owners in financing the cost of installing Improvements through a voluntary contractual assessment program; and

WHEREAS, installation of such Improvements by property owners within the jurisdictional boundaries of the counties and cities that are participating in the Authority PACE Program would promote the purposes cited above; and

WHEREAS, the City wishes to provide innovative solutions to its property owners to achieve energy and water efficiency, and in doing so cooperate with the Authority in order to efficiently and economically assist property owners within the City in financing such Improvements; and

WHEREAS, the Authority has established the Authority PACE Program, which is such a voluntary contractual assessment program, as permitted by the Act, the Authority JPA, originally made and entered into July 1, 1993, as amended to date, and the City desires to become an Associate Member of the JPA by acknowledgment of the JPA Agreement, a copy of which is attached as **Exhibit "A"** hereto, to participate in the programs of the JPA and to assist property owners within the jurisdiction of the City in financing the cost of installing Improvements; and

WHEREAS, the City will not be responsible for the conduct of any assessment proceedings, the levy and collection of assessments or any required remedial action in the case of delinquencies in the payment of any assessments or the issuance, sale or administration of any bonds issued in connection with the Authority PACE Program.

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 Council finds and declares that properties in the City's incorporated area will be benefited by the availability of the Authority PACE Program to finance the installation of the Improvements.

3. The City Council consents to inclusion in the Authority PACE Program of all of the properties in the jurisdictional boundaries of the City and to the Improvements, upon the request by and voluntary agreement of owners of such properties, in compliance with the laws, rules and regulations applicable to such program; and to the assumption of jurisdiction thereover by the Authority for the purposes thereof; provided however, that as a condition of the City's consent, any PACE program administrator utilized by the Authority shall be required to sign and agree to the Letter of Agreement

Regarding Operational Requirements for Property Assessed Clean Energy (PACE) Programs in the City of Milpitas attached hereto as **Exhibit "B"** and the Association of Bay Area Governments' Agreement for Collaborative Services attached hereto as **Exhibit "C"**, each with such changes as may be approved by the City Attorney.

4. The consent of the City Council constitutes assent to the assumption of jurisdiction by Authority for all purposes of the Authority PACE Program and authorizes the Authority, upon satisfaction of the conditions imposed in this Resolution, to take each and every step required for or suitable for financing the Improvements, including the levying, collecting and enforcement of the contractual assessments to finance the Improvements and the issuance and enforcement of bonds to represent such contractual assessments.

5. The City Council hereby approves joining the JPA as an Associate Member and authorizes the execution by the City Manager or his designee of any necessary documents to effectuate such membership.

6. City staff is authorized and directed to coordinate with Authority staff to facilitate operation of the Authority PACE Program within the City, and report back periodically to the City Council on the success of such program.

7. The City Council finds this action to be exempt from environmental review pursuant to California Environmental Quality Act Guidelines, Section 15378(b)(4) because it involves the creation of a funding mechanism that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

8. This Resolution shall take effect immediately upon its adoption. The City Clerk is directed to send a certified copy of this Resolution to the Secretary of the Authority.

PASSED AND ADOPTED this _____ day of _____ 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

EXHIBIT A

GOLDEN STATE FINANCE AUTHORITY

AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT

(Original date July 1, 1993 and as last amended and restated May 5, 2015)

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT ("Agreement") is entered into by and among the counties listed on Attachment 1 hereof and incorporated herein by reference. All such counties are referred to herein as "Members" with the respective powers, privileges and restrictions provided herein.

RECITALS

A. WHEREAS, the California Rural Home Mortgage Finance Authority ("CRHMFA") was created by a Joint Exercise of Powers Agreement dated July 1, 1993 pursuant to the Joint Exercise of Powers Act (commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"). By Resolution 2003-02, adopted on January 15, 2003, the name of the authority was changed to CRHMFA Homebuyers Fund. On December 10, 2014, the name of the authority was changed to California Home Finance Authority. The most recent amendment to the Joint Exercise of Powers Agreement was on December 10, 2014..

B. WHEREAS, the Members of California Home Finance Authority desire to update, reaffirm, clarify and revise certain provisions of the joint powers agreement, including the renaming of the joint powers authority, as set forth herein.

C. WHEREAS, the Members are each empowered by law to finance the construction, acquisition, improvement and rehabilitation of real property.

D. WHEREAS, by this Agreement, the Members desire to create and establish a joint powers authority to exercise their respective powers for the purpose of financing the construction, acquisition, improvement and rehabilitation of real property within the jurisdiction of the Authority as authorized by the Act.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Members individually and collectively agree as follows:

1. Definitions

Unless the context otherwise requires, the following terms shall for purposes of this Agreement have the meanings specified below:

"Act" means the Joint Exercise of Powers Act, commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, including the Marks-Roos Local Bond Pooling Act of 1985, as amended.

"Agreement" means this Joint Exercise of Powers Agreement, as the same now exists or as it may from time to time be amended as provided herein.

"Associate Member" means a county, city or other public agency which is not a voting member of the Rural County Representatives of California, a California nonprofit corporation ("RCRC"), with legal power and authority similar to that of the Members, admitted pursuant to paragraph 4.d. below to associate membership herein by vote of the Board.

"Audit Committee" means a committee made up of the Executive Committee.

"Authority" means Golden State Finance Authority (GSFA) formerly known as California Home Finance Authority ("CHF"), or CRHMFA Homebuyers Fund or California Rural Home Mortgage Finance Authority.

"Board" means the governing board of the Authority as described in Section 7 below.

"Bonds" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other obligation within the meaning of the term "Bonds" under the Act.

"Delegate" means the Supervisor designated by the governing board of each Member to serve on the Board of the Authority.

"Executive Committee" means the Executive Committee of the Board established pursuant to Section 10 hereof.

"Member" means any county which is a member of RCRC, has executed this Agreement and has become a member of the Authority.

"Obligations" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other financial or legal obligation of the Authority under the Act.

"Program" or "Project" means any work, improvement, program, project or service undertaken by the Authority.

"Rural County Representatives of California" or **"RCRC"** means the nonprofit entity incorporated under that name in the State of California.

"Supervisor" means an elected County Supervisor from an RCRC member county.

2. Purpose

The purpose of the Authority is to provide financing for the acquisition, construction, improvement and rehabilitation of real property in accordance with applicable provisions of law for the benefit of residents and communities. In pursuit of this purpose, this Agreement provides for the joint exercise of powers common to any of its Members and Associate Members as provided herein, or otherwise authorized by the Act and other applicable laws, including assisting in financing as authorized herein, jointly exercised in the manner set forth herein.

3. Principal Place of Business

The principal office of the Authority shall be 1215 K Street, Suite 1650, Sacramento, California 95814.

4. Creation of Authority; Addition of Members or Associate Members

a. The Authority is hereby created pursuant to the Act. As provided in the Act, the Authority shall be a public entity separate and distinct from the Members or Associate Members.

b. The Authority will cause a notice of this Agreement or any amendment hereto to be prepared and filed with the office of the Secretary of State of California in a timely fashion in the manner set forth in Section 6503.3 of the Act.

c. A county that is a member of RCRC may petition to become a member of the Authority by submitting to the Board a resolution or evidence of other formal action taken by its governing body adopting this Agreement. The Board shall review the petition for membership and shall vote to approve or disapprove the petition. If the petition is approved by a majority of the Board, such county shall immediately become a Member of the Authority.

d. An Associate Member may be added to the Authority upon the affirmative approval of its respective governing board and pursuant to action by the Authority Board upon such terms and conditions, and with such rights, privileges and responsibilities, as may be established from time to time by the Board. Such terms and conditions, and rights, privileges and responsibilities may vary among the Associate Members. Associate Members shall be entitled to participate in one or more programs of the Authority as determined by the Board, but shall not be voting members of the Board. The Executive Director of the Authority shall enforce the terms and conditions for prospective Associate Members to the Authority as provided by resolution of the Board and as amended from time to time by the Board. Changes in the terms and conditions for Associate Membership by the Board will not constitute an amendment of this Agreement.

5. Term and Termination of Powers

This Agreement shall become effective from the date hereof until the earlier of the time when all Bonds and any interest thereon shall have been paid in full, or provision for such payment shall have been made, or when the Authority shall no longer own or hold any interest in a

public capital improvement or program. The Authority shall continue to exercise the powers herein conferred upon it until termination of this Agreement, except that if any Bonds are issued and delivered, in no event shall the exercise of the powers herein granted be terminated until all Bonds so issued and delivered and the interest thereon shall have been paid or provision for such payment shall have been made and any other debt incurred with respect to any other financing program established or administered by the Authority has been repaid in full and is no longer outstanding.

6. Powers; Restriction upon Exercise

a. To effectuate its purpose, the Authority shall have the power to exercise any and all powers of the Members or of a joint powers authority under the Act and other applicable provisions of law, subject, however, to the conditions and restrictions herein contained. Each Member or Associate Member may also separately exercise any and all such powers. The powers of the Authority are limited to those of a general law county.

b. The Authority may adopt, from time to time, such resolutions, guidelines, rules and regulations for the conduct of its meetings and the activities of the Authority as it deems necessary or desirable to accomplish its purpose.

c. The Authority shall have the power to finance the construction, acquisition, improvement and rehabilitation of real property, including the power to purchase, with the amounts received or to be received by it pursuant to a bond purchase agreement, bonds issued by any of its Members or Associate Members and other local agencies at public or negotiated sale, for the purpose set forth herein and in accordance with the Act. All or any part of such bonds so purchased may be held by the Authority or resold to public or private purchasers at public or negotiated sale. The Authority shall set any other terms and conditions of any purchase or sale contemplated herein as it deems necessary or convenient and in furtherance of the Act. The Authority may issue or cause to be issued Bonds or other indebtedness, and pledge any of its property or revenues as security to the extent permitted by resolution of the Board under any applicable provision of law. The Authority may issue Bonds in accordance with the Act in order to raise funds necessary to effectuate its purpose hereunder and may enter into agreements to secure such Bonds. The Authority may issue other forms of indebtedness authorized by the Act, and to secure such debt, to further such purpose. The Authority may utilize other forms of capital, including, but not limited to, the Authority's internal resources, capital markets and other forms of private capital investment authorized by the Act.

d. The Authority is hereby authorized to do all acts necessary for the exercise of its powers, including, but not limited to:

(1) executing contracts,
(2) employing agents, consultants and employees,
(3) acquiring, constructing or providing for maintenance and operation of any building, work or improvement,
(4) acquiring, holding or disposing of real or personal property wherever

located, including property subject to mortgage,

(5) incurring debts, liabilities or obligations,

(6) receiving gifts, contributions and donations of property, funds, services and any other forms of assistance from persons, firms, corporations or governmental entities,

(7) suing and being sued in its own name, and litigating or settling any suits or claims,

(8) doing any and all things necessary or convenient to the exercise of its specific powers and to accomplishing its purpose

(9) establishing and/or administering districts to finance and refinance the acquisition, installation and improvement of energy efficiency, water conservation and renewable energy improvements to or on real property and in buildings. The Authority may enter into one or more agreements, including without limitation, participation agreements and implementation agreements to implement such programs.

e. Subject to the applicable provisions of any indenture or resolution providing for the investment of monies held thereunder, the Authority shall have the power to invest any of its funds as the Board deems advisable, in the same manner and upon the same conditions as local agencies pursuant to Section 53601 of the Government Code of the State of California.

f. All property, equipment, supplies, funds and records of the Authority shall be owned by the Authority, except as may be provided otherwise herein or by resolution of the Board.

g. Pursuant to the provisions of Section 6508.1 of the Act, the debts, liabilities and obligations of the Authority shall not be debts, liabilities and obligations of the Members or Associate Members. Any Bonds, together with any interest and premium thereon, shall not constitute debts, liabilities or obligations of any Member. The Members or Associate Members hereby agree that any such Bonds issued by the Authority shall not constitute general obligations of the Authority but shall be payable solely from the moneys pledged to the repayment of principal or interest on such Bonds under the terms of the resolution, indenture, trust, agreement or other instrument pursuant to which such Bonds are issued. Neither the Members or Associate Members nor the Authority shall be obligated to pay the principal of or premium, if any, or interest on the Bonds, or other costs incidental thereto, except from the revenues and funds pledged therefor, and neither the faith and credit nor the taxing power of the Members or Associate Members or the Authority shall be pledged to the payment of the principal of or premium, if any, or interest on the Bonds, nor shall the Members or Associate Members of the Authority be obligated in any manner to make any appropriation for such payment. No covenant or agreement contained in any Bond shall be deemed to be a covenant or agreement of any Delegate, or any officer, agent or employee of the Authority in an individual capacity, and neither the Board nor any officer thereof executing the Bonds or any document related thereto shall be liable personally on any Bond or be subject to any personal liability or accountability by reason of the issuance of any Bonds.

7. Governing Board

a. The Board shall consist of the number of Delegates equal to one representative from each Member.

b. The governing body of each Member shall appoint one of its Supervisors to serve as a Delegate on the Board. A Member's appointment of its Delegate shall be delivered in writing (which may be by electronic mail) to the Authority and shall be effective until he or she is replaced by such governing body or no longer a Supervisor; any vacancy shall be filled by the governing body of the Member in the same manner provided in this paragraph b..

c. The governing body of each Member of the Board shall appoint a Supervisor as an alternate to serve on the Board in the absence of the Delegate; the alternate may exercise all the rights and privileges of the Delegate, including the right to be counted in constituting a quorum, to participate in the proceedings of the Board, and to vote upon any and all matters. No alternate may have more than one vote at any meeting of the Board, and any Member's designation of an alternate shall be delivered in writing (which may be by electronic mail) to the Authority and shall be effective until such alternate is replaced by his or her governing body or is no longer a Supervisor, unless otherwise specified in such appointment. Any vacancy shall be filled by the governing body of the Member in the same manner provided in this paragraph c..

d. Any person who is not a member of the governing body of a Member and who attends a meeting on behalf of such Member may not vote or be counted toward a quorum but may, at the discretion of the Chair, participate in open meetings he or she attends.

e. Each Associate Member may designate a non-voting representative to the Board who may not be counted toward a quorum but who may attend open meetings, propose agenda items and otherwise participate in Board Meetings.

f. Delegates shall not receive compensation for serving as Delegates, but may claim and receive reimbursement for expenses actually incurred in connection with such service pursuant to rules approved by the Board and subject to the availability of funds.

g. The Board shall have the power, by resolution, to the extent permitted by the Act or any other applicable law, to exercise any powers of the Authority and to delegate any of its functions to the Executive Committee or one or more Delegates, officers or agents of the Authority, and to cause any authorized Delegate, officer or agent to take any actions and execute any documents for and in the name and on behalf of the Board or the Authority.

h. The Board may establish other committees as it deems necessary for any lawful purpose; such committees are advisory only and may not act or purport to act on behalf of the Board or the Authority.

i. The Board shall develop, or cause to be developed, and review, modify as necessary, and adopt each Program.

8. Meetings of the Board

a. The Board shall meet at least once annually, but may meet more frequently upon call of any officer or as provided by resolution of the Board.

b. Meetings of the Board shall be called, noticed, held and conducted pursuant to the provisions of the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code of the State of California.

c. The Secretary of the Authority shall cause minutes of all meetings of the Board to be taken and distributed to each Member as soon as possible after each meeting.

d. The lesser of twelve (12) Delegates or a majority of the number of current Delegates shall constitute a quorum for transacting business at any meeting of the Board, except that less than a quorum may act to adjourn a meeting. Each Delegate shall have one vote.

e. Meetings may be held at any location designated in notice properly given for a meeting and may be conducted by telephonic or similar means in any manner otherwise allowed by law.

9. Officers; Duties; Official Bonds

a. The Board shall elect a chair and vice chair from among the Delegates at the Board's annual meeting who shall serve a term of one (1) year or until their respective successor is elected. The chair shall conduct the meetings of the Board and perform such other duties as may be specified by resolution of the Board. The vice chair shall perform such duties in the absence or in the event of the unavailability of the chair.

b. The Board shall contract annually with RCRC to administer the Agreement and to provide administrative services to the Authority, and the President and Chief Executive Officer of RCRC shall serve *ex officio* as Executive Director, Secretary, Treasurer, and Auditor of the Authority. As chief executive of the Authority, the Executive Director is authorized to execute contracts and other obligations of the Authority, unless prior Board approval is required by a third party, by law or by Board specification, and to perform other duties specified by the Board. The Executive Director may appoint such other officers as may be required for the orderly conduct of the Authority's business and affairs who shall serve at the pleasure of the Executive Director. Subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent, the Executive Director, as Treasurer, is designated as the custodian of the Authority's funds, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act. The Executive Director, as Auditor, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act.

c. The Legislative Advocate for the Authority shall be the Rural County Representatives of California.

d. The Treasurer and Auditor are public officers who have charge of, handle, or have access to all property of the Authority, and a bond for such officer in the amount of at least one hundred thousand dollars ($100,000.00) shall be obtained at the expense of the Authority and filed with the Executive Director. Such bond may secure the faithful performance of such officer's duties with respect to another public office if such bond in at least the same amount specifically mentions the office of the Authority as required herein. The Treasurer and Auditor shall cause periodic independent audits to be made of the Authority's books by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act.

e. The business of the Authority shall be conducted under the supervision of the Executive Director by RCRC personnel.

10. Executive Committee of the Authority

a. Composition

The Authority shall appoint no fewer than nine (9) and no more than eleven (11) members of its Board to serve on an Executive Committee. The Chair and Vice Chair of the Authority shall serve on the Executive Committee.

b. Powers and Limitations

The Executive Committee shall act in an advisory capacity and make recommendations to the Authority Board. Duties will include, but not be limited to, review of the quarterly and annual budgets, service as the Audit Committee for the Authority, periodically review this Agreement; and complete any other tasks as may be assigned by the Board. The Executive Committee shall be subject to all limitations imposed by this Agreement, other applicable law, and resolutions of the Board.

c. Quorum

A majority of the Executive Committee shall constitute a quorum for transacting business of the Executive Committee.

11. Disposition of Assets

Upon termination of this Agreement, all remaining assets and liabilities of the Authority shall be distributed to the respective Members in such manner as shall be determined by the Board and in accordance with the law.

12. Agreement Not Exclusive; Operation in Jurisdiction of Member

This Agreement shall not be exclusive, and each Member expressly reserves its rights to carry out other public capital improvements and programs as provided for by law and to issue other obligations for those purposes. This Agreement shall not be deemed to amend or alter the

terms of other agreements among the Members or Associate Members.

13. Conflict of Interest Code

The Authority shall by resolution adopt a Conflict of Interest Code as required by law.

14. Contributions and Advances

Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by any Member, Associate Member or any other public agency to further the purpose of this Agreement. Payment of public funds may be made to defray the cost of any contribution. Any advance may be made subject to repayment, and in that case shall be repaid in the manner agreed upon by the advancing Member, Associate Member or other public agency and the Authority at the time of making the advance.

15. Fiscal Year; Accounts; Reports; Annual Budget; Administrative Expenses

a. The fiscal year of the Authority shall be the period from January 1 of each year to and including the following December 31, except for any partial fiscal year resulting from a change in accounting based on a different fiscal year previously.

b. Prior to the beginning of each fiscal year, the Board shall adopt a budget for the succeeding fiscal year.

c. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles. The books and records of the Authority are public records and shall be open to inspection at all reasonable times by each Member and its representatives.

d. The Auditor shall either make, or contract with a certified public accountant or public accountant to make, an annual audit of the accounts and records of the Authority. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California, and shall conform to generally accepted auditing standards. When an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with each Member (and also with the auditor of Sacramento County as the county in which the Authority's office is located) within 12 months after the end of the fiscal year.

e. In any year in which the annual budget of the Authority does not exceed five thousand dollars ($5,000.00), the Board may, upon unanimous approval of the Board, replace the annual audit with an ensuing one-year period, but in no event for a period longer than two fiscal years.

16. Duties of Members or Associate Members; Breach

If any Member or Associate Member shall default in performing any covenant contained herein, such default shall not excuse that Member or Associate Member from fulfilling its other obligations hereunder, and such defaulting Member or Associate Member shall remain liable for the performance of all covenants hereof. Each Member or Associate Member hereby declares that this Agreement is entered into for the benefit of the Authority created hereby, and each Member or Associate Member hereby grants to the Authority the right to enforce, by whatever lawful means the Authority deems appropriate, all of the obligations of each of the parties hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative, and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

17. Indemnification

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a Board Delegate, alternate, officer, consultant, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a Delegate, alternate, officer, consultant, employee or other agent of the Authority. Such indemnification may be made against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful and, in the case of an action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

18. Immunities

All of the privileges and immunities from liabilities, exemptions from law, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activity of officers, agents or employees of any of the Members or Associate Members when performing their respective functions, shall apply to them to the same degree and extent while engaged as Delegates or otherwise as an officer, agent or other representative of the Authority or while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

19. Amendment

This Agreement may be amended by the adoption of the amendment by the governing bodies of a majority of the Members. The amendment shall become effective on the first day of the month following the last required member agency approval. An amendment may be initiated by the Board, upon approval by a majority of the Board. Any proposed amendment, including the text of the proposed change, shall be given by the Board to each Member's Delegate for presentation and action by each Member's board within 60 days, which time may be extended by

the Board.

The list of Members, Attachment 1, may be updated to reflect new and/or withdrawn Members without requiring formal amendment of the Agreement by the Authority Board of Directors.

20. Withdrawal of Member or Associate Member

If a Member withdraws as member of RCRC, its membership in the Authority shall automatically terminate. A Member or Associate Member may withdraw from this Agreement upon written notice to the Board; provided however, that no such withdrawal shall result in the dissolution of the Authority as long as any Bonds or other obligations of the Authority remain outstanding. Any such withdrawal shall become effective thirty (30) days after a resolution adopted by the Member's governing body which authorizes withdrawal is received by the Authority. Notwithstanding the foregoing, any termination of membership or withdrawal from the Authority shall not operate to relieve any terminated or withdrawing Member or Associate Member from Obligations incurred by such terminated or withdrawing Member or Associate Member prior to the time of its termination or withdrawal.

21. Miscellaneous

a. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

b. **Construction.** The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

c. **Approvals.** Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

d. **Jurisdiction; Venue.** This Agreement is made in the State of California, under the Constitution and laws of such State and is to be so construed; any action to enforce or interpret its terms shall be brought in Sacramento County, California.

e. **Integration.** This Agreement is the complete and exclusive statement of the agreement among the parties hereto, and it supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the parties relating to the subject matter of this Agreement.

f. **Successors; Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no Member may assign any right or obligation hereunder without the consent of the Board.

g. **Severability.** Should any part, term or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be

rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

The parties hereto have caused this Agreement to be executed and attested by their properly authorized officers.

AS ADOPTED BY THE MEMBERS:

Originally dated July 1, 1993
Amended and restated December 10, 1998
Amended and restated February 18, 1999
Amended and restated September 18, 2002
Amended and restated January 28, 2004
Amended and restated December 10, 2014
Amended and restated May 5, 2015

[*SIGNATURES ON FOLLOWING PAGES*]

ATTACHMENT 1
GOLDEN STATE FINANCE AUTHORITY MEMBERS

As of May 5, 2015

Alpine County
Amador County
Butte County
Calaveras County
Colusa County
Del Norte County
El Dorado County
Glenn County
Humboldt County
Imperial County
Inyo County
Lake County
Lassen County
Madera County
Mariposa County
Mendocino County
Merced County
Modoc County
Mono County
Napa County
Nevada County
Placer County
Plumas County
San Benito County
Shasta County
Sierra County
Siskiyou County
Sutter County
Tehama County
Trinity County
Tuolumne County
Yolo County
Yuba County

SIGNATURE PAGE FOR NEW ASSOCIATE MEMBERS

NAME OF COUNTY OR CITY:

_____ Dated:_____

By:_____

Name:_____

Title:_____

Attest:

By _____
[Clerk of the Board Supervisors or City Clerk]

EXHIBIT B

LETTER OF AGREEMENT REGARDING OPERATIONAL REQUIREMENTS FOR PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAMS IN THE CITY OF MILPITAS

The City of Milpitas evaluated PACE Program operations within the City jurisdiction and has established several operating conditions to better protect the interest of our community. [Name of Program Administrator] has established the [Name of PACE Program], a Property Assessed Clean Energy (PACE) financing program and agrees to meet the provisions stated below in order to operate its program within the City.

Provisions

1. **Early Pay-off.** [Name of PACE Program] and [Name of Program Administrator] will not charge differential interest rates or pre-payment penalties to property owner for early pay off of the full outstanding balance of the PACE assessments.

2. **Regional Agreement.** [Name of PACE Program] and [Name of Program Administrator] has signed the Association of Bay Area Governments' (ABAG) Regional Collaborative Services Agreement (RCSA) and will continue to implement the requirements of the RCSA.

3. **Contractor Solicitation.** [Name of PACE Program] and [Name of Program Administrator] will provide to each Registered Contractor the City's requirement to obtain a business license, pay the applicable business license tax and on fingerprinting[1] and will continue to provide the requirements on a yearly basis to ensure contractor oversight.

[Name of Program Administrator] is aware of the additional operating provisions established by the City of Milpitas above and agrees to conform with these requirements so long as it offers its program within the City's jurisdiction and agrees that failure to abide by these requirements may result in City's termination of PACE Program's authorization to operate within the City.

PACE PROVIDER:
[Name of Program Administrator]

By: _____

Name: _____

Title: _____

Date: _____

[1] Milpitas Municipal Code, Title III, Chapter 1

DRAFT

EXHIBIT C

ADOPTION OF AGREEMENT
FOR COLLABORATIVE SERVICES

The City of Milpitas hereby adopts the Agreement for Collaborative Services ("Agreement") attached hereto as **Exhibit 1** and incorporated herein, establishing operating procedures for the _____ [PACE Program] within the jurisdiction of the City of Milpitas.

_____ [PACE Program] acknowledges and agrees that City of Milpitas is a "Participating Entity" as defined by Section 1.3 of the Agreement and shall be entitled to all the rights and benefits under the Agreement and may enforce the provisions thereof.

_____ [PACE Program] further acknowledges and agrees that it shall defend, indemnify, hold harmless, and waive subrogation against the City of Milpitas and its elected and appointed officials, officers and employees, to the extent set forth in Section 6 of the Agreement, and City of Milpitas shall be covered as an additional insured pursuant to Attachment 2, Section (d)(i) of the Agreement.

City of Milpitas:

By: _____ Date: _____
Steve J. Pangelinan
Acting City Manager

_____ [PACE Program]:

By: _____ Date: _____

Method and Place of Giving Notice. All notices to the Participating Entity shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices shall be addressed as follows:

Edesa Bitbadal, Economic Development Director
455 E Calaveras Blvd
Milpitas, CA 95035
ebitbadal@ci.milpitas.ca.gov

EXHIBIT 1

AGREEMENT FOR COLLABORATIVE SERVICES

FOR PROPERTY ASSESSED CLEAN ENERGY FINANCING

This Agreement for Collaborative Services ("Agreement"), dated as of , 2016 (“Effective Date”) is by and among the Association of Bay Area Governments (hereinafter "ABAG"), ***[insert PACE program provider name]***, (hereinafter "PACE Provider"), as an entity administering a Property Assessed Clean Energy (PACE) financing program utilizing either the California Assembly Bill 811 and/or California Senate Bill 555 model and any Participating Entity, as defined in Section 1.3 below, that adopts this Agreement.

R E C I T A L S

WHEREAS, ABAG is committed to mitigating and adapting to the causes and impacts of climate change and supporting energy independence from fossil fuels to safeguard the environment, human health and the economy; and

WHEREAS, ABAG as Program Administrator for the Bay Area Regional Energy Network (BayREN), works closely with 101 cities in the nine county Bay Area region (ABAG territory) to develop and implement innovative energy efficiency programs, including supporting commercial and residential Property Assessed Clean Energy (PACE) programs; and

WHEREAS, the BayREN offers programs, technical resources and education for energy upgrades and retrofits; and

WHEREAS, the objective of the BayREN is to help property owners save energy, save money, and live comfortably; and

WHEREAS, the BayREN seeks to assist local governments to understand all aspects of partnering with PACE Providers in order to minimize customer confusion, provide access to education and information to property owners and assist with making informed decisions on rebates and incentives, contractor programs, and financing options; and

WHEREAS, the PACE Provider is willing to participate to support community climate goals and minimize consumer and contractor confusion; and

WHEREAS, the PACE Provider will provide support and resources to any Participating Entity as requested related to education, outreach and development of the energy upgrade industry and trades; and

WHEREAS, the PACE Provider will support, align and integrate its efforts with the community-wide goals for job creation, resource demand reduction, and renewable energy generation; and

WHEREAS, the PACE Provider will establish its own interest rates, repayment terms, and fees as state and federal laws and the market defines and allows; and

WHEREAS, the PACE Provider will arrange for the collection of Property Assessed Clean Energy assessments it has financed directly with the Participating Entity's County Tax Collector's Office; and

WHEREAS, this Agreement does not include any financial arrangements between the PACE Provider, ABAG and the Participating Entity adopting this Agreement, nor does it preclude any separate contracts, contract terms for services or support; and

WHEREAS, the purpose of this Agreement is to set forth the mutual understandings between ABAG and the PACE Provider and to establish basic operating procedures for any PACE provider operating within the ABAG territory, and any Participating Entity that adopts this agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

A G R E E M E N T

1 Definitions.

1.1 "**Eligible improvement**" is a technology, product or tool officially approved by the PACE provider. The improvements may include distributed generation renewable energy sources, energy and water efficiency improvements, and electric vehicle charging infrastructure improvements that will be permanently affixed to real property, and any additional improvements deemed eligible in the future by the California Legislature and/or the California Judiciary.

1.2 "**PACE Provider**" is an entity participating in ABAG territory administering a program providing Property Assessed Clean Energy (PACE) financing.

1.3 **"Participating Entity"** is any city, town, county or the City and County of San Francisco located within ABAG's geographical boundaries that adopt this Agreement.

1.4 **"Participating Contractor"** is any contractor that has agreed to, and abides, by the terms and conditions of the PACE Provider's contractor standards.

1.5 "**Property Assessed Clean Energy (PACE) Financing**" is a means of financing distributed generation, renewable energy sources, energy and water efficiency improvements, electric vehicle charging infrastructure and other improvements deemed eligible by the California legislature that will be permanently affixed to real property, whereby the funds provided to pay for the improvements are repaid through contractual assessments and/or special taxes, utilizing either California Assembly Bill 811 (Levine, 2008) ("AB 811"), which amended §§5898.10-5899.3 of the California Streets and Highways Code; or California Senate Bill 555 (Hancock, 2011) ("SB 555"), which amended certain portions of §§53311-53368.3 of the California Government Code and each as subsequently amended.

1.6 "**Work"** as defined throughout this Agreement is the collaborative, non-competitive, effort between the PACE Provider and ABAG to support the citizens of ABAG member jurisdictions in completing water, energy efficiency upgrades, and the installation of renewable energy generating improvements.

2 Scope of Work / Collaboration.

2.1 PACE Provider's Specified Services. The PACE Provider will offer and provide Property Assessed Clean Energy Financing under the requirements of AB 811 and/or SB 555.

2.2 Performance Standard. PACE Provider shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by an organization administering a Property Assessed Clean Energy financing program pursuant to California Assembly Bill 811 and/or California Senate Bill 555. ABAG has relied upon the professional ability and expertise of PACE Provider as a material inducement to enter into this Agreement. PACE Provider hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws. If ABAG is concerned that any of PACE Provider's work is not in accordance with the level of competency and standard of care described herein, ABAG shall have the right to do any or all of the following: (a) require PACE Provider to

discuss with Participating Entity and/or to review the quality of the work and resolve matters of concern; (b) terminate this Agreement pursuant to the provisions of Section 5, Termination; or (c) pursue any and all other remedies available to ABAG at law or in equity.

Financing Provision Requirements.

The PACE Provider will:

2.3.1 Include a process to receive acknowledgement and confirmation of satisfaction with work completed from the applicant before project payment is disbursed and have a published dispute resolution process available for customers.

2.3.2 Provide summary of financing details (including assessment or special tax amount and terms, financing installments and estimated administrative expenses) to the applicant specific to the requested amount of the financing.

2.3.3 For residential properties, require an applicant's acknowledgment of the Federal Housing Finance Agency position on PACE by a separate signature/initial acknowledgement, in a Residential Disclosure Signature Form that is substantially similar in content to Attachment 1(a) or 1(b), as approved by ABAG.

2.3.4 Provide training to contractors and information to property owners on the availability of rebates (for all utility and generation types), including and not limited to city and county rebate programs, BayREN programs, PG&E programs, and other such offerings. (For information about local programs, the contractor and/or home owner may be directed to the BayREN Home Upgrade Advisor at 866-878-6008.)

2.3.5 Require that applicable building permits are obtained for all improvements in Participating Entities.

2.3.6 Verify that all property taxes for the assessed property are current for the previous three years or since the current owner acquired the property, whichever is shorter.

2.3.7 Recommend that property owners consult with a tax professional prior to claiming any tax deductions associated with the project and not recommend that homeowners take any particular filing position regarding their annual or semi-annual PACE assessment payments.

2.3.8 Not represent that the full assessment is tax deductible.

2.3.9 Have a consistent plan for removal of assessments at end of repayment term, prepayment and/or in the event of program closure.

2.4 Financial Policies.

The PACE Provider will:

2.4.1 For programs offering residential PACE financing, be an active participant in the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) PACE Loan Loss Reserve Program or comparable loan loss reserve program which includes at minimum the parameters outlined in Attachment 2.

2.4.2 Notify ABAG six months in advance if funding capacity available from the PACE Provider to prospective PACE customers in the Participating Entity will fall below the amount dispersed in the previous six months of operation.

2.4.3 Notify ABAG of any foreclosure action as a result of a default in the payment of a PACE assessment on property within ABAG's geographical boundaries, where the PACE assessment was originated by the PACE Provider.

2.5 Documents, Data, and Information Policies.

The PACE Provider will:

2.5.1 Provide to Participating Entity (for internal evaluation purposes only and not for distribution to any third party or for marketing purposes, other than as required by law, by request of Participating Entity, electronic access to the name, business name, and California State Contractors license number of participating contractors of the PACE Provider's program whose business address is located in the requesting Participating Entity or who conduct business in the requesting Participating Entity.

2.5.2 Retain completed Residential Disclosure (hardcopy or electronic) on file for duration of assessment, and furnish to Participating Entity upon request.

2.5.3 Provide upon request either direct real time access to data or quarterly reports in an open electronic file format (such as Microsoft Excel) to Participating Entity by request for internal evaluation purposes only (and not for distribution to any third party, including, without limitation, utility companies, services providers and equipment manufacturers or for marketing purposes) that includes the following information for each assessment:

a. Required data:

i. Assessor's Parcel Number (APN) of the property

ii. Dollar amount financed (the amount of the assessment and/or special tax)
iii. Listing of all energy efficiency and water conservation eligible improvements installed by virtue of the financing, including the unit of measure for the improvement and the quantity installed as captured by Participating Contractor
iv. Listing of all renewable generation improvements installed and the solar STC-DC rating in watts or kilowatts as captured by Participating Contractor
v. Estimated energy and water savings (in appropriate units) associated with the project

b. If available (in the aggregate):

i. Amount of rebate or incentive dollars associated with the project (not financed) and the name of the program
ii. How the customer heard about PACE financing
iii. Why the customer selected PACE over other financing instruments available
iv. Why the customer selected their final PACE Provider over the other members

The Participating Entity will:
Maintain the privacy and security of data received from PACE Provider. Participating Entity shall comply with all applicable state and federal laws, regulations and applicable California Public Utilities Commission regulations. Participating Entity may only provide reports relating to Section 2.5.3(a)(ii)-(v) for public distribution that aggregate the data such that individual customer information cannot be identified, unless such customer has authorized written release of individual customer information. A Participating Entity shall not share with any third party the data and reports provided by a PACE Provider pursuant to Section 2.5.3(b) (if any).

2.5.4 Provide the documents required for participation in the PACE Providers' PACE Financing program to Participating Entity officials.
2.5.5 Provide support to Participating Entity's staff to facilitate adoption of required participation documents.

2.6 ABAG will encourage Participating Entity to offer staff resources and support to bring forward to their respective boards or councils the documents

provided by the PACE Provider required for participation in the PACE Provider's PACE financing product.

2.7 Branding / Marketing Requirements.

The Parties will:

2.7.1 Collaborate on any local and/or regional efforts that may impact PACE financing participation to achieve the best possible outcome for property owners.

2.7.2 Represent the role of ABAG as the local neutral third party, not-for-profit, public service agency supporting the public through the upgrade process, with the following message to consumers: Among the financing products available, competition is encouraged to the benefit of the consumer, with the common goal of successful completion of projects.

The PACE Provider will:

2.7.3 Provide assistance to ABAG and any Participating Entity signing this Agreement for: (1) coordinating and implementing the integration of the PACE Provider into applicable BayREN and other relevant energy efficiency programs; and (2) support of contractor training.

2.7.4 Provide specific training for participating contractors engaged with local PACE programs using the PACE Provider's financing product, materials, collateral, tools, and associated software, through training offered directly from the PACE Provider.

2.7.5 Provide professional services, template documents, and other services reasonably necessary to staff for integrating the PACE Provider's financing option into the websites of any Participating Entity requesting such assistance.

2.7.6 Provide training and resources to any Participating Entity as needed to build understanding and support for use of the PACE financing product

ABAG will encourage ABAG members to:

2.7.7 Present with impartiality the financing products of the PACE Providers in all venues to the public.

2.7.8 Present marketing collateral of all financing products (where applicable) with impartiality in education and outreach materials and events

2.8 PACE Providers Responsibilities Regarding Participating Contractor.

PACE Providers will:

2.8.1 Require that contractors have the appropriate California State License Board (CSLB) license in good standing

2.8.2 Require, in accordance with California State License Board requirements, that contractors' bonding is in good standing

2.8.3 Require, in accordance with California State License Board requirements, that contractors have appropriate Workers' Compensation coverage

2.8.4 Require that contractors have a minimum of $1M of commercial general liability insurance

2.8.5 NOT endorse, recommend, or refer any specific contractor other than contractors who are to PACE Provider's knowledge, in good standing with CSLB, are insured and meet material program eligibility requirements

2.8.6 NOT make any representation or warranty regarding the qualifications, licensing, products, or workmanship of any contractor

2.8.7 NOT make any warranty regarding the contractor's work or products purchased from contractors provided

2.8.8 NOT accept any liability that may be alleged to arise from the work of any listed contractor on a customer project or from any reliance on any claims, statements, or other descriptions regarding a contractor's certifications, licenses, qualifications or products

2.8.9 Comply with provisions of Section 2.3.7 of this Agreement.

2.8.10 Via trainings and customer complaint system, require that contractors and their representatives, employees, and agents do not represent themselves as agents, representatives, contractors, subcontractors, or employees of ABAG or any Participating Entity, or claim association or affiliation with ABAG or any Participating Entity.

2.8.11 Independently engages the Participating Entity's Tax Collector for administration of property tax assessments placed through its financing product.

3 **Payment.** This Agreement does not include any financial arrangements between the PACE Provider and ABAG, nor does it preclude any separate contracts for services or support.

4 **Term of Agreement.** The term of this Agreement shall be from the Effective Date until termination in accordance with the provisions of Section 5, Termination below.

5 Termination.

5.1 Termination without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, ABAG, PACE Provider, or any Participating Entity shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to the other Party to this Agreement; provided that a party's termination of this Agreement under this section shall not automatically terminate any other agreement or contract between the other parties.

5.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should the PACE Provider fail to uphold any of its obligations under this Agreement in a material way, within the time and in the manner herein provided, or otherwise materially violate any of the terms of this Agreement, ABAG or a Participating Entity may, after providing the PACE Provider with a thirty (30) day cure period, immediately terminate this Agreement by giving PACE Provider written notice of such termination, stating the reason for termination; provided that the termination of this Agreement shall not automatically terminate any other agreement or contract between or among the parties.

5.3 Delivery of Data and Information upon Termination. In the event of termination, PACE Provider, within 14 days following the date of termination, shall deliver to the extent legally permitted to Participating Entity all raw data and information in an editable electronic format as outlined in and subject to the terms of Section 2.5, Document, Data, and Information Policies.

5.4 Authority to Terminate. The Executive Director of ABAG has the authority to terminate this Agreement on behalf of ABAG

5.5 Effect of Termination. Termination of this Agreement by ABAG or Participating Entity shall not affect the ability to levy and collect assessments and the PACE Provider's ability to issue bonds for assessment contracts located within the jurisdiction of such entity which have been entered into prior to the date of termination.

In the event of termination pursuant to this Section 5 by ABAG, ABAG may notify all Participating Entities of said termination.

6 Hold Harmless, Indemnity and Waiver of Subrogation.

To the fullest extent allowed by law, PACE Provider shall defend, indemnify, save harmless and waive subrogation against the ABAG, and its members, elected and appointed officials, officers and employees (Indemnitees) against any and all liability, claims, losses, damages, or expenses, including reasonable attorneys' fees, arising from

all acts or omissions to act of PACE Provider or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages or expenses resulting from an intentional act or the gross negligence of an Indemnitee.

This section shall in no event be construed to require indemnification by PACE Provider to a greater extent than permitted under the public policy or laws of the State of California. These defense and indemnification obligations are undertaken in addition to, and shall not in any way be limited by, the insurance obligations set forth in this Agreement. These defense and indemnification obligations shall survive the termination or expiration of the contract for the full period of time permitted by law.

7 **Insurance Requirements.** PACE provider shall obtain and maintain insurance as required in Attachment 2.

8 Prosecution of Work. The execution of this Agreement shall constitute PACE Provider's authority to proceed immediately with the performance of this Agreement.

9 Representations of PACE Provider.

9.1 Standard of Care. ABAG and Participating Entity have relied upon the professional ability and training of PACE Provider as a material inducement to entering into this Agreement. PACE Provider hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws.

9.2 Status of PACE Provider. The parties intend that PACE Provider, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. PACE Provider is not to be considered an agent or employee of ABAG or of any Participating Entity and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, employment protection, or similar benefits that ABAG or the Participating Entity provides its employees.

9.3 Conflict of Interest. PACE Provider covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in

any manner or degree with the performance of its services hereunder. PACE Provider further covenants that in the performance of this Agreement no person having any such interests shall be employed.

9.4 Statutory Compliance. PACE Provider agrees to comply with all federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement.

9.5 Nondiscrimination. Without limiting any other provision hereunder, PACE Provider shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, gender identity, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.6 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of PACE Provider.

10 Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, conduct, or service does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits the parties' right to terminate this Agreement pursuant to Section 5, Termination.

11 Assignment and Delegation. No party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented; provided however, that

PACE Provider may assign this Agreement in connection with a merger or the sale of all or substantially all of its assets or equity ownership without the prior written consent of any other party provided that the successor expressly assumes all of the obligations, including this Agreement, and confirms all of the representations, warranties and covenants of PACE Provider hereunder.

12 Method and Place of Giving Notice. All notices shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service to:

TO: ABAG: Address
Email address: _____

TO: PACE PROVIDER: _____
_____
_____

Email address: _____

When a notice is given by a generally recognized overnight courier service, the notice shall be deemed received on the next business day. When a copy of a notice is sent by facsimile or email, the notice shall be deemed received upon transmission as long as (1) the original copy of the notice is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email, (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13 Miscellaneous Provisions.

13.1 No Waiver of Breach. The waiver by a party of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and

agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. PACE Provider and ABAG acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Each party hereto acknowledges that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Alameda.

13.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Counterparts. This Agreement may be executed in two or more counterparts, a complete set of which shall be deemed an original, constituting one and the same instrument. The delivery by facsimile or electronic mail of an executed copy of this Amendment shall be deemed valid as if an original signature was delivered

Continued on next page:

IN WITNESS WHEREOF, the ABAG and the PACE Provider hereto have executed this Agreement as of the Effective Date.

PACE PROVIDER: _____	ABAG: _____
By: _____	By:_____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPROVED AS TO FORM FOR ABAG

Date: _____ By: _____
Kenneth Moy, ABAG Counsel

ATTACHMENT 1(a)

ALERT: Fannie Mae/Freddie Mac Instructions for Lenders

SINGLE FAMILY HOME OWNERS: In May, 2010, Fannie Mae and Freddie Mac, government sponsored enterprises that purchase a large segment of conforming single family home mortgages, issued new instructions to lending institutions on how to treat properties with assessments under Property Assessed Clean Energy (PACE) programs such as _____. These letters, and additional statements issued by the Federal Housing Finance Agency, the agency that regulates single family home lenders, instruct lenders to treat energy assessments as "loans" instead of "assessments."

On August 31, 2010, the agencies issued additional instructions to lenders that Fannie Mae and Freddie Mac "will not purchase mortgage loans secured by properties with an outstanding PACE obligation."

These letters and statements may lead lenders to conclude the PACE assessment should be paid off before a property transfers or is refinanced. In addition, it may lead some lenders to conclude that participating in PACE program is a violation of typical mortgage terms prohibiting prior liens without lender consent. If you are selling your property, a buyer's lender may refuse to finance the buyer's first mortgage loan unless the assessment is paid off. We urge you to carefully read the disclosure information in the Program application, review your mortgage documents, evaluate the risks of proceeding with an application at this time, and contact your lender if you have any concerns or for information regarding any other financing options that may be available to you.

I/We have read the above statement. All property owners on title must initial below:

_____	_____	_____	_____
Initials	*Date*	*Initials*	*Date*
_____	_____	_____	_____
Initials	*Date*	*Initials*	*Date*

Continued on next page:

Electronic links to the copies of letters from the Federal Financing Housing Authority re: PACE programs:

- https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/ll1006.pdf
- http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/iltr050510.pdf
- http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx
- http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Acting-Director-Edward-J-DeMarco-on-PACE-Programs.aspx
- https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/sel1012.pdf
- http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1020.pdf

ATTACHMENT 1(b)

BEFORE COMPLETING A PROGRAM APPLICATION, YOU SHOULD CAREFULLY REVIEW ANY MORTGAGE AGREEMENT(S) OR OTHER SECURITY INSTRUMENT(S) WHICH AFFECT THE PROPERTY OR TO WHICH YOU AS THE PROPERTY OWNER ARE A PARTY. ENTERING INTO A PROGRAM ASSESSMENT CONTRACT WITHOUT THE CONSENT OF YOUR EXISTING LENDER(S) COULD CONSTITUTE AN EVENT OF DEFAULT UNDER SUCH AGREEMENTS OR SECURITY INSTRUMENTS. DEFAULTING UNDER AN EXISTING MORTGAGE AGREEMENT OR SECURITY INSTRUMENT COULD HAVE SERIOUS CONSEQUENCES TO YOU, WHICH COULD INCLUDE THE ACCELERATION OF THE REPAYMENT OBLIGATIONS DUE UNDER SUCH AGREEMENT OR SECURITY INSTRUMENT. IN ADDITION, FANNIE MAE AND FREDDIE MAC, THE OWNER OF A SIGNIFICANT PORTION OF ALL HOME MORTGAGES, STATED THAT THEY WOULD NOT PURCHASE HOME LOANS WITH ASSESSMENTS SUCH AS THOSE OFFERED BY THE AUTHORITY. THIS MAY MEAN THAT PROPERTY OWNERS WHO SELL OR REFINANCE THEIR PROPERTY MAY BE REQUIRED TO PREPAY SUCH ASSESSMENTS AT THE TIME THEY CLOSE THEIR SALE OR REFINANCING.

I/We have read the above statement. All property owners on title must initial below:

Initials	*Date*	*Initials*	*Date*
Initials	*Date*	*Initials*	*Date*

ATTACHMENT 2

Insurance Requirements. PACE Provider shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a period of five (5) years following the completion of this project. PACE Provider shall provide a copy of section 21 of this contract and these insurance requirements to its insurance broker or insurer to confirm compliance. In the event PACE Provider fails to obtain or maintain completed operations coverage as required by this agreement, ABAG, at its sole discretion, may purchase the coverage required and the cost will be paid by PACE Provider. The limits of insurance required in hereunder may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the Indemnitees (if agreed to in a written contract or agreement) before the any Indemnitee's own Insurance or self-insurance shall be called upon to protect it as a named insured.

(a) Minimum Scope of Insurance. Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage
(occurrence Form CG 0001).

Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Errors and Omissions Liability insurance appropriate to the PACE Provider's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

(b) Minimum Limits of Insurance. PACE Provider shall maintain limits no less than:

General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
Automobile Liability: $1,000,000 per accident for bodily injury and property damage.
Employer's Liability: $1,000,000 per accident for bodily injury or disease.
Errors and Omissions Liability: $1,000,000 per claim/aggregate.

(c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by ABAG. The insurer shall reduce or eliminate such

deductibles or self-insured retentions as respects the Indemnitees; or the PACE Provider shall satisfy any such deductibles or self-insured retentions. In addition, policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or any of the Indemnitees.

(d) Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) The Indemnitees are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of PACE Provider; completed operations; or automobiles owned, leased, hired or borrowed by PACE Provider.

(ii) For any claims related to this project, the PACE Provider's insurance coverage shall be primary insurance as respects the Indemnitees.

(iii) Any insurance or self-insurance maintained by the Indemnitees shall be excess of PACE Provider's insurance and shall not contribute with it.

(iv) Except for General Liability and Automobile Liability, each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty(30) days' prior written notice by certified mail, return receipt requested, has been given to ABAG. For General Liability and Automobile Liability, PACE Provider shall provide ABAG with thirty (30) day's prior notice of cancellation by either the insurer or PACE Provider.

(v) Coverage shall not extend to any defense or indemnity coverage for the active negligence of the Indemnitees in any case where an agreement to defend and indemnify the Indemnitees would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

(e) Other Insurance Provisions – Workers Compensation. The Workers Compensation insurance shall be endorsed to waive subrogation against the Indemnitees.

(f) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to ABAG.

(g) Verification of Coverage. PACE Provider shall furnish the ABAG with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by ABAG before work commences. ABAG reserves the right to require complete, certified

copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS CONSENTING TO INCLUSION OF PROPERTIES WITHIN THE CITY'S JURISDICTION IN THE CALIFORNIA HERO PROGRAM TO FINANCE DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES, ENERGY AND WATER EFFICIENCY IMPROVEMENTS AND ELECTRIC VEHICLE CHARGING INFRASTRUCTURE, AND APPROVING THE AMENDMENT TO A CERTAIN JOINT POWERS AGREEMENT RELATED THERETO

WHEREAS, the Western Riverside Council of Governments (the "Authority") is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following) (the "Act") and the Joint Powers Agreement entered into on April 1, 1991, as amended from time to time (the "Authority JPA"); and

WHEREAS, the Authority has established the California HERO Program to provide for the financing of renewable energy distributed generation sources, energy and water efficiency improvements and electric vehicle charging infrastructure (the "Improvements") pursuant to Chapter 29 of the Improvement Bond Act of 1911, being Division 7 of the California Streets and Highways Code ("Chapter 29") within counties and cities throughout the State of California that elect to participate in such program; and

WHEREAS, the City of Milpitas (the "City") is committed to development of renewable energy sources and energy efficiency improvements, reduction of greenhouse gases, protection of our environment, and reversal of climate change; and

WHEREAS, in Chapter 29, the Legislature has authorized cities and counties to assist property owners in financing the cost of installing Improvements through a voluntary contractual assessment program; and

WHEREAS, installation of such Improvements by property owners within the jurisdictional boundaries of the counties and cities that are participating in the California HERO Program would promote the purposes cited above; and

WHEREAS, the City wishes to provide innovative solutions to its property owners to achieve energy and water efficiency and independence, and in doing so cooperate with the Authority in order to efficiently and economically assist property owners the City in financing such Improvements; and

WHEREAS, the Authority has established the California HERO Program, which is such a voluntary contractual assessment program, as permitted by the Act, the Authority JPA, originally made and entered into April 1, 1991, as amended to date, and the Amendment to Joint Powers Agreement Adding the City of Milpitas as an Associate Member of the Western Riverside Council of Governments to Permit the Provision of Property Assessed Clean Energy (PACE) Program Services within the City (the "JPA Amendment"), by and between Authority and the City, a copy of which is attached as **Exhibit "A"** hereto, to assist property owners within the jurisdiction of the City in financing the cost of installing Improvements; and

WHEREAS, the City will not be responsible for the conduct of any assessment proceedings; the levy and collection of assessments or any required remedial action in the case of delinquencies in the payment of any assessments or the issuance, sale or administration of any bonds issued in connection with the California HERO Program.

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 Council finds and declares that properties in the City's incorporated area will be benefited by the availability of the California HERO Program to finance the installation of the Improvements.

3. The City Council consents to inclusion in the California HERO Program of all of the properties in the jurisdictional boundaries of the City and to the Improvements, upon the request by and voluntary agreement of owners of

such properties, in compliance with the laws, rules and regulations applicable to such program; and to the assumption of jurisdiction thereover by the Authority for the purposes thereof; provided however, that as a condition of the City's consent, any PACE program administrator utilized by the Authority shall be required to sign and agree to the Letter of Agreement Regarding Operational Requirements for Property Assessed Clean Energy (PACE) Programs in the City of Milpitas attached hereto as **Exhibit "B"** and the Association of Bay Area Governments' Agreement for Collaborative Services attached hereto as **Exhibit "C"**, each with such changes as may be approved by the City Attorney.

4. The consent of the City Council constitutes assent to the assumption of jurisdiction by the Authority for all purposes of the California HERO Program and authorizes the Authority, upon satisfaction of the conditions imposed in this Resolution, to take each and every step required for or suitable for financing the Improvements, including the levying, collecting and enforcement of the contractual assessments to finance the Improvements and the issuance and enforcement of bonds to represent such contractual assessments.

5. The City Council hereby approves the JPA Amendment and authorizes the execution thereof by the City Manager or his designee.

6. City staff is authorized and directed to coordinate with Authority staff to facilitate operation of the California HERO Program within the City, and report back periodically to this City Council on the success of such program.

7. The City Council finds this action to be exempt from environmental review pursuant to California Environmental Quality Act Guidelines, Section 15378(b)(4) because it involves the creation of a funding mechanism that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

8. This Resolution shall take effect immediately upon its adoption. The City Clerk is directed to send a certified copy of this Resolution to the Secretary of the Authority Executive Committee.

PASSED AND ADOPTED this _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

EXHIBIT A

AMENDMENT TO THE JOINT POWERS AGREEMENT ADDING CITY OF MILPITAS AS AN ASSOCIATE MEMBER OF THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS TO PERMIT THE PROVISION OF PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM SERVICES WITHIN SUCH CITY

This Amendment to the Joint Powers Agreement ("JPA Amendment") is made and entered into on the ___ day of _____, 2017, by the City of Milpitas ("City") and the Western Riverside Council of Governments ("Authority") (collectively the "Parties").

RECITALS

WHEREAS, Authority is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following) (the "Joint Exercise of Powers Act") and the Joint Power Agreement entered into on April 1, 1991, as amended from time to time (the "Authority JPA"); and

WHEREAS, as of October 1, 2012, Authority had 18 member entities (the "Regular Members").

WHEREAS, Chapter 29 of the Improvement Act of 1911, being Division 7 of the California Streets and Highways Code ("Chapter 29") authorizes cities, counties, and cities and counties to establish voluntary contractual assessment programs, commonly referred to as a Property Assessed Clean Energy ("PACE") program, to fund certain renewable energy sources, energy and water efficiency improvements, and electric vehicle charging infrastructure (the "Improvements") that are permanently fixed to residential, commercial, industrial, agricultural or other real property; and

WHEREAS, Authority has established a PACE program designated as the "California HERO Program" pursuant to Chapter 29 which authorizes the implementation of such PACE financing program for cities and counties throughout the state; and

WHEREAS, City desires to allow owners of property within its jurisdiction to participate in the California HERO Program and to allow Authority under Chapter 29, as it is now enacted or may be amended hereafter, to finance Improvements to be installed on such properties; and

WHEREAS, this JPA Amendment will permit City to become an Associate Member of Authority and to participate in California HERO Program for the purpose of facilitating the implementation of such program within the jurisdiction of City; and

WHEREAS, pursuant to the Joint Exercise of Powers Act, the Parties are approving this JPA Agreement to allow for the provision of PACE services through the California HERO Program, including the operation of such PACE financing program, within the incorporated territory of City; and

WHEREAS, the JPA Amendment sets forth the rights, obligations and duties of City and Authority with respect to the implementation of the California HERO Program within the incorporated territory of City.

MUTUAL UNDERSTANDINGS

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter stated, the Parties hereto agree as follows:

A. **JPA Amendment.**

1. The Authority JPA. City agrees to the terms and conditions of the Authority JPA, attached.

2. Associate Membership. By adoption of this JPA Amendment, City shall become an Associate Member of Authority on the terms and conditions set forth herein and the Authority JPA and consistent with the requirements of the Joint Exercise of Powers Act. The rights and obligations of City as an Associate Member are limited solely to those terms

and conditions expressly set forth in this JPA Amendment for the purposes of implementing the California HERO Program within the incorporated territory of City. Except as expressly provided for by the this JPA Amendment, City shall not have any rights otherwise granted to Authority's Regular Members by the Authority JPA, including but not limited to the right to vote on matters before the Executive Committee or the General Assembly, the right to amend or vote on amendments to the Authority JPA, and the right to sit on committees or boards established under the Authority JPA or by action of the Executive Committee or the General Assembly, including, without limitation, the General Assembly and the Executive Committee. City shall not be considered a member for purposes of Section 9.1 of the Authority JPA.

3. Rights of Authority. This JPA Amendment shall not be interpreted as limiting or restricting the rights of Authority under the Authority JPA. Nothing in this JPA Amendment is intended to alter or modify Authority Transportation Uniform Mitigation Fee (TUMF) Program, the PACE Program administered by Authority within the jurisdictions of its Regular Members, or any other programs administered now or in the future by Authority, all as currently structured or subsequently amended.

B. **Implementation of California HERO Program within City Jurisdiction.**

1. Boundaries of the California HERO Program within City Jurisdiction. The boundaries within which contractual assessments may be entered into under the California HERO Program (the "Program Boundaries") shall include the entire incorporated territory of City.

2. Determination of Eligible Improvements. Authority shall determine the types of distributed generation renewable energy sources, energy efficiency or water conservation improvements, electric vehicle charging infrastructure or such other improvements as may be authorized pursuant to Chapter 29 (the "Eligible Improvements") that will be eligible to be financed under the California HERO Program.

3. Implementation of California HERO Program Within the Program Boundaries. Authority will undertake such proceedings pursuant to Chapter 29 as shall be legally necessary to enable Authority to make contractual financing of Eligible Improvements available to eligible property owners within the Program Boundaries.

4. Financing the Installation of Eligible Improvements. Authority shall implement its plan for the financing of the purchase and installation of the Eligible Improvements under the California HERO Program within the Program Boundaries.

5. Ongoing Administration. Authority shall be responsible for the ongoing administration of the California HERO Program, including but not limited to producing education plans to raise public awareness of the California HERO Program, soliciting, reviewing and approving applications from residential and commercial property owners participating in the California HERO Program, establishing contracts for residential, commercial and other property owners participating in such program, levying and collecting assessments due under the California HERO Program, taking any required remedial action in the case of delinquencies in such assessment payments, adopting and implementing any rules or regulations for the California HERO Program, and providing reports as required by Chapter 29.

City will not be responsible for the conduct of any proceedings required to be taken under Chapter 29; the levy or collection of assessments or any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of any bonds issued in connection with the California HERO Program.

6. Phased Implementation. The Parties recognize and agree that implementation of the California HERO Program as a whole can and may be phased as additional other cities and counties execute similar agreements. City entering into this JPA Amendment will obtain the benefits of and incur the obligations imposed by this JPA Amendment in its jurisdictional area, irrespective of whether cities or counties enter into similar agreements.

C. **Miscellaneous Provisions.**

1. Withdrawal. Authority may withdraw from this JPA Amendment upon six (6) months written notice to the other party; provided, however, there is no outstanding indebtedness of Authority within City. The provisions of

Section 6.2 of the Authority JPA shall not apply to City under this JPA Amendment. Notwithstanding the foregoing, City may withdraw, either temporarily or permanently, from its participation in the California HERO Program or either the residential or commercial component of the California HERO Program upon thirty (30) written notice to WRCOG without liability to the Authority or any affiliated entity. City withdrawal from such participation shall not affect the validity of any voluntary assessment contracts (a) entered prior to the date of such withdrawal or (b) entered into after the date of such withdrawal so long as the applications for such voluntary assessment contracts were submitted to and approved by WRCOG prior to the date of City's notice of withdrawal.

2. Mutual Indemnification and Liability. Authority and City shall mutually defend, indemnify and hold the other party and its directors, officials, officers, employees and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries of any kind, in law or equity, to property or persons, including wrongful death, to the extent arising out of the willful misconduct or negligent acts, errors or omissions of the indemnifying party or its directors, officials, officers, employees and agents in connection with the California HERO Program administered under this JPA Amendment, including without limitation the payment of expert witness fees and attorneys fees and other related costs and expenses, but excluding payment of consequential damages. Without limiting the foregoing, Section 5.2 of the Authority JPA shall not apply to this JPA Amendment. In no event shall any of Authority's Regular Members or their officials, officers or employees be held directly liable for any damages or liability resulting out of this JPA Amendment.

3. Environmental Review. Authority shall be the lead agency under the California Environmental Quality Act for any environmental review that may required in implementing or administering the California HERO Program under this JPA Amendment.

4. Cooperative Effort. City shall cooperate with Authority by providing information and other assistance in order for Authority to meet its obligations hereunder. City recognizes that one of its responsibilities related to the California HERO Program will include any permitting or inspection requirements as established by City.

5. Notice. Any and all communications and/or notices in connection with this JPA Amendment shall be either hand-delivered or sent by United States first class mail, postage prepaid, and addressed as follows:

Authority:

Western Riverside Council of Governments
4080 Lemon Street, 3rd Floor. MS1032
Riverside, CA 92501-3609
Att: Executive Director

City:

City of Milpitas
455 E. Calaveras Blvd
Milpitas, CA 95035

6. Entire Agreement. This JPA Amendment, together with the Authority JPA, constitutes the entire agreement among the Parties pertaining to the subject matter hereof. This JPA Amendment supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise of agreement, oral or otherwise, has been made by the other Party or anyone acting on behalf of the other Party that is not embodied herein.

7. Successors and Assigns. This JPA Amendment and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. A Party may only assign or

transfer its rights and obligations under this JPA Amendment with prior written approval of the other Party, which approval shall not be unreasonably withheld.

8. Attorney's Fees. If any action at law or equity, including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorney's fees and costs.

9. Governing Law. This JPA Amendment shall be governed by and construed in accordance with the laws of the State of California, as applicable.

10. No Third Party Beneficiaries. This JPA Amendment shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, nor shall it authorize anyone not a Party to this JPA Amendment to maintain a suit for personal injuries or property damages under the provisions of this JPA Amendment. The duties, obligations, and responsibilities of the Parties to this JPA Amendment with respect to third party beneficiaries shall remain as imposed under existing state and federal law.

11. Severability. In the event one or more of the provisions contained in this JPA Amendment is held invalid, illegal or unenforceable by any court of competent jurisdiction, such portion shall be deemed severed from this JPA Amendment and the remaining parts of this JPA Amendment shall remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this JPA Amendment.

12. Headings. The paragraph headings used in this JPA Amendment are for the convenience of the Parties and are not intended to be used as an aid to interpretation.

13. Amendment. This JPA Amendment may be modified or amended by the Parties at any time. Such modifications or amendments must be mutually agreed upon and executed in writing by both Parties. Verbal modifications or amendments to this JPA Amendment shall be of no effect.

14. Effective Date. This JPA Amendment shall become effective upon the execution thereof by the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this JPA Amendment to be executed and attested by their officers thereunto duly authorized as of the date first above written.

WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS

By: _____ Date: _____
Name: _____
Title: _____

CITY OF MILPITAS

By: _____ Date: _____
Name: _____
Title: _____

Updated through June 22, 2017
Revised

JOINT POWERS AGREEMENT OF

THE WESTERN RIVERSIDE

COUNCIL OF GOVERNMENTS

This Agreement is made and entered into on the 1st day of April, 1991, pursuant to Government Code Section 6500 et. seq. and other pertinent provisions of law, by and between six or more of the cities located within Western Riverside County and the County of Riverside.

RECITALS

A. Each member and party to this Agreement is a governmental entity established by law with full powers of government in legislative, administrative, financial, and other related fields.

B. The purpose of the formation is to provide an agency to conduct studies and projects designed to improve and coordinate the common governmental responsibilities and services on an area-wide and regional basis through the establishment of an association of governments. The Council will explore areas of inter-governmental cooperation and coordination of government programs and provide recommendations and solutions to problems of common and general concern.

C. When authorized pursuant to an Implementation Agreement, the Council shall manage and administer thereunder.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

I.

PURPOSE AND POWERS

1.1 Agency Created.

There is hereby created a public entity to be known as the "Western Riverside Council of Governments" ("WRCOG"). WRCOG is formed by this Agreement pursuant to the provision of Government Code Section 6500 et. seq. and other pertinent provision of law. WRCOG shall be a public entity separate from the parties hereto.

1.2 Powers.

1.2.1. WRCOG established hereunder shall perform all necessary functions to fulfill the purposes of this Agreement. Among other functions, WRCOG shall:

a. Serve as a forum for consideration, study and recommendation on area-wide and regional problems;

b. Assemble information helpful in the consideration of problems peculiar to Western Riverside County;

c. Explore practical avenues for intergovernmental cooperation, coordination and action in the interest of local public welfare and means of improvements in the administration of governmental services; and

d. Serve as the clearinghouse review body for Federally-funded projects in accordance with Circular A-95 in conjunction with the Southern California Association of Governments.

1.2.2. The Council shall have the power in its own name to do any of the following;

a. When necessary for the day to day operation of the Council, to make and enter into contracts;

b. To contract for the services of engineers, attorneys, planners, financial consultants and separate and apart therefrom to employ such other persons, as it deems necessary;

c. To apply for an appropriate grant or grants under any federal, state, or local programs.

d. To receive gifts, contributions and donations of property, funds, services and other forms of financial assistance from persons, firms, corporations and any governmental entity;

e. To lease, acquire, construct, manage, maintain, and operate any buildings, works, or improvements;

f. To delegate some or all of its powers to the Executive Committee and the Executive Director of the Council as hereinafter provided.

1.2.3 The association shall have the power in its own name, only with the approval of all affected member agencies to;

a. Acquire, hold and dispose of property by eminent domain, lease, lease purchase or sale.

b. To incur debts, liabilities, obligations, and issue bonds;

II.

ORGANIZATION OF COUNCIL

2.1 Parties.

The parties to WRCOG shall be the County of Riverside and each city located within Western Riverside County which has executed or hereafter executes this Agreement, or any addenda, amendment, or supplement thereto and agrees to such become a member upon such terms and conditions as established by the general council or executive committee, and which has not, pursuant to provisions hereof, withdrawn therefrom. Only the parties identified in this section and Associate Members approved under section 8.2 of this Agreement, if any, shall be considered contracting parties to this Agreement under Government Code section 6502, provided that the rights of any Associate Member under this Agreement shall be limited solely those rights expressly set forth in a PACE Agreement authorized in section 8.2 of this Agreement.

2.2 Names.

The names, particular capacities and addresses of the parties at any time shall be shown on Exhibit "A" attached hereto, as amended or supplemented from time to time.

2.3 Duties.

WRCOG shall do whatever is necessary and required to carry out the purposes of this agreement and when authorized by an Implementation Agreement pursuant to section 1.2.3 as appropriate, to make and enter into such contracts, incur such debts and obligations, assess contributions from the members, and perform such other acts as are necessary to the accomplishment of the purposes of such agreement, within the provisions of Government Code Section 6500 et seq. and as prescribed by the laws of the State of California.

2.4 Governing Body.

2.4.1. WRCOG shall be governed by a General Assembly with membership consisting of the appropriate representatives from the County of Riverside, each city which is a signatory to this Agreement, the Western Municipal Water District, the Eastern Municipal Water District, and the Morongo Band of Mission Indians ("Morongo"), the number of which shall be determined as hereinafter set forth. The General Assembly shall meet at least once annually, preferably scheduled in the evening. Each member agency of the General Assembly shall have one vote for each mayor, council member, county supervisor, water district board member, and tribal council member present at the General Assembly. The General Assembly shall act only upon a majority of a quorum. A quorum shall consist of a majority of the total authorized representatives, provided that members representing a majority of the member agencies are present. The General Assembly shall adopt and amend by-laws for the administration and management of this Agreement, which when adopted and approved shall be an integral part of this Agreement. Such by-laws may provide for the management and administration of this Agreement.

2.4.2. There shall be an Executive Committee which exercises the powers of this Agreement between sessions of the General Assembly. Members of the Executive Committee shall be the Mayor from each of the member cities, four members of the Riverside County Board of Supervisors, the President of each Water District, and the Tribal Chairman of Morongo; the remaining member of the Board of Supervisors shall serve as an alternate, except any City Council, at its discretion, can appoint a Mayor Pro Tem or other City Council member in place of the Mayor, each water district board, at its discretion, can appoint another Board member in place of the President, and the Tribal Council of

Morongo, at its discretion, can appoint another Tribal Council member in place of the Tribal Chairman. The Executive Committee shall act only upon a majority of a quorum. A quorum shall consist of a majority of the member agencies. Membership of Morongo on the General Assembly and Executive Committee of WRCOG shall be conditioned on Morongo entering into a separate Memorandum of Understanding with WRCOG.

2.4.3. Each member of the General Assembly and the Executive Committee shall be a current member of the legislative body such member represents.

2.4.4. Each participating member on the Executive Committee shall also have an alternate, who must also be a current member of the legislative body of the party such alternate represents. The name of the alternate members shall be on file with the Executive Committee. In the absence of the regular member from an agency, the alternate member from such agency shall assume all rights and duties of the absent regular member.

2.5 Executive Director.

The Executive Director shall be the chief administrative officer of the Council. He shall receive such compensation as may be fixed by the Executive Committee. The powers and duties of the Executive Director shall be subject to the authority of the Executive Committee and include the following:

a. To appoint, direct and remove employees of the Council.

b. Annually to prepare and present a proposed budget to the Executive Committee and General Assembly.

c. Serve as Secretary of the Council and of the Executive Committee.

d. To attend meetings of the Executive Committee.

e. To perform such other and additional duties as the Executive Committee may require.

2.6 Principal Office.

The principal office of WRCOG shall be established by the Executive Committee and shall be located within Western Riverside County. The Executive Committee is hereby granted full power and authority to change said principal office from one location to another within Western Riverside County. Any change shall be noted by the Secretary under this section but shall not be considered an amendment to this Agreement.

2.7 Meetings.

The Executive Committee shall meet at the principal office of the agency or at such other place as may be designated by the Executive Committee. The time and place of regular meetings of the Executive Committee shall be determined by resolution adopted by the Executive Committee; a copy of such resolution shall be furnished to each party hereto. Regular, adjourned and special meetings shall be called and conducted in accordance with the provisions of the Ralph M. Brown Act, Government Code Section 54950 et. seq., as it may be amended.

2.8 Powers and Limitations of the Executive Committee.

Unless otherwise provided herein, each member or participating alternate of the Executive Committee shall be entitled to one vote, and a vote of the majority of those present and qualified to vote constituting a quorum may adopt any motion, resolution, or order and take any other action they deem appropriate to carry forward the objectives of the Council.

2.9 Minutes.

The secretary of the Council shall cause to be kept minutes of regular adjourned regular and special meetings of the General Assembly and Executive Committee, and shall cause a copy of the minutes to be forwarded to each member and to each of the members hereto.

2.10 Rules.

The Executive Committee may adopt from time to time such rules and regulations for the conduct of its affairs consistent with this agreement or any Implementation Agreement.

2.11 Vote or Assent of Members.

The vote, assent or approval of the members in any manner as may be required, hereunder shall be evidenced by a certified copy of the action of the governing body of such party filed with the Council. It shall be the responsibility of the Executive Director to obtain certified copies of said actions.

2.12 Officers.

There shall be selected from the membership of the Executive Committee, a chairperson and a vice chairperson. The Executive Director shall be the secretary. The Treasurer of the County of Riverside shall be the Treasurer of the Council and the Controller or Auditor of the County of Riverside shall be the Auditor of the Council. Such persons shall possess the powers of, and shall perform the treasurer and auditor functions respectively, for WRCOG and perform those functions required of them by Government Code Sections 6505, 6505.5 and 6505.6, and by all other applicable laws and regulations, including any subsequent amendments thereto.

The chairperson and vice chairperson, shall hold office for a period of one year commencing July 1st of each and every fiscal year; provided, however, the first chairperson and vice chairperson appointed shall hold office from the date of appointment to June 30th of the ensuing fiscal year. Except for the Executive Director, any officer, employee, or agent of the Executive Committee may also be an officer, employee, or agent of any of the members. The appointment by the Executive Committee of such a person shall be evidence that the two positions are compatible.

2.13 Committees.

The Executive Committee may, as it deems appropriate, appoint committees to accomplish the purposes set forth herein. All committee meetings of WRCOG, including those of the Executive Committee, shall be open to all members.

2.14 Additional Officers and Employees.

The Executive Committee shall have the power to authorize such additional officers and assistants as may be appropriate. Such officers and employees may also be, but are not required to be, officers and employees of the individual members.

2.15 Bonding Requirement.

The officers or persons who have charge of, handle, or have access to any property of WRCOG shall be the members of the Executive Committee, the treasurer, the Executive Director, and any other officers or persons to be designated or empowered by the Executive Committee. Each such officer or person shall be required to file an official bond with the Executive Committee in an amount which shall be established by the Executive Committee. Should the existing bond or bonds of any such officer be extended to cover the obligations provided herein, said bond shall be the official bond required

herein. The premiums on any such bonds attributable to the coverage required herein shall be appropriate expenses of WRCOG.

2.16 Status of Officers and Employees.

All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, worker's compensation, and other benefits which apply to the activity of officers, agents, or employees of any of the members when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement. None of the officers, agents, or employees appointed by the Executive Committee shall be deemed, by reason of their employment by the Executive Committee, to be employed by any of the members or, by reason of their employment by the Executive Committee, to be subject to any of the requirements of such members.

2.17 Restrictions.

Pursuant to Government Code Section 6509, for the purposes of determining the restrictions to be imposed by the Council in its exercise of the above-described joint powers, reference shall be made to, and the Council shall observe, the restrictions imposed upon the County of Riverside.

2.18 TUMF Matters – Water Districts and Morongo.

Pursuant to this Joint Powers Agreement, WRCOG administers the Transportation Mitigation Fee ("TUMF") for cities in Western Riverside County. The fee was established prior to the Water District's and Morongo's involvement with WRCOG and will fund transportation improvements for the benefit of the County of Riverside and the cities in Western Riverside County. As such, the Western Municipal Water District, the Eastern

Municipal Water District, and Morongo General Assembly and Executive Committee Members shall not vote on any matter related to the administration of the TUMF program or the expenditure of TUMF revenues.

III

FUNDS AND PROPERTY

3.1 Treasurer.

The Treasury of the member agency whose Treasurer is the Treasurer for WRCOG shall be the depository for WRCOG. The Treasurer of the Council shall have custody of all funds and shall provide for strict accountability thereof in accordance with Government Code Section 6505.5 and other applicable laws of the State of California. He or she shall perform all of the duties required in Government Code Section 6505 and following, such other duties as may be prescribed by the Executive Committee.

3.2. Expenditure of Funds.

The funds under this Agreement shall be expended only in furtherance of the purposes hereof and in accordance with the laws of the State of California and standard accounting practices shall be used to account for all funds received and disbursed.

3.3. Fiscal Year.

WRCOG shall be operated on a fiscal year basis, beginning on July 1 of each year and continuing until June 30 of the succeeding year. Prior to July 1 of each year, the General Assembly shall adopt a final budget for the expenditures of WRCOG during the following fiscal Year.

3.4. Contributions/Public Funds.

In preparing the budget, the General Assembly by majority vote of a quorum shall determine the amount of funds which will be required from its members for the purposes of this Agreement. The funds required from its members after approval of the final budget shall be raised by contributions 50% of which will be assessed on a per capita basis and 50% on an assessed valuation basis, each city paying on the basis of its population and assessed valuation and the County paying on the basis of the population and assessed valuation within the unincorporated area of Western Riverside County as defined in the by-laws. The parties, when informed of their respective contributions, shall pay the same before August lst of the fiscal year for which they are assessed or within sixty days of being informed of the assessment, whichever occurs later. In addition to the contributions provided, advances of public funds from the parties may be made for the purposes of this Agreement. When such advances are made, they shall be repaid from the first available funds of WRCOG.

The General Assembly shall have the power to determine that personnel, equipment or property of one or more of the parties to the Agreement may be used in lieu of fund contributions or advances.

All contributions and funds shall be paid to WRCOG and shall be disbursed by a majority vote of a quorum of the Executive Committee, as authorized by the approved budget.

3.5 Contributions from Water Districts and the Morongo Band of Mission Indians.

The provision of section 3.4 above shall be inapplicable to the Western Municipal Water District, the Eastern Municipal Water District, and Morongo. The amount of

contributions from these water districts and Morongo shall be through the WRCOG budget process.

IV

BUDGETS AND DISBURSEMENTS

4.1 Annual Budget.

The Executive Committee may at any time amend the budget to incorporate additional income and disbursements that might become available to WRCOG for its purposes during a fiscal year.

4.2 Disbursements.

The Executive Director shall request warrants from the Auditor in accordance with budgets approved by the General Assembly or Executive Committee subject to quarterly review by the Executive Committee. The Treasurer shall pay such claims or disbursements and such requisitions for payment in accordance with rules, regulations, policies, procedures and bylaws adopted by the Executive Committee.

4.3 Accounts.

All funds will be placed in appropriate accounts and the receipt, transfer, or disbursement of such funds during the term of this Agreement shall be accounted for in accordance with generally accepted accounting principles applicable to governmental entities and pursuant to Government Code Sections 6505 et seq. and any other applicable laws of the State of California. There shall be strict accountability of all funds. All revenues and expenditures shall be reported to the Executive Committee.

4.4 Expenditures Within Approved Annual Budget.

All expenditures shall be made within the approved annual budget. No expenditures in excess of those budgeted shall be made without the approval of a majority of a quorum of the Executive Committee.

4.5 Audit.

The records and accounts of WRCOG shall be audited annually by an independent certified public accountant and copies of such audit report shall be filed with the County Auditor, State Controller and each party to WRCOG no later than fifteen (15) days after receipt of said audit by the Executive Committee.

4.6 Reimbursement of Funds.

Grant funds received by WRCOG from any federal, state, or local agency to pay for budgeted expenditures for which WRCOG has received all or a portion of said funds from the parties hereto shall be used as determined by WRCOG's Executive Committee.

V

LIABILITIES

5.1 Liabilities.

The debts, liabilities, and obligation of WRCOG shall be the debts, liabilities, or obligations of WRCOG alone and not of the parties to this Agreement.

5.2 Hold Harmless and Indemnity.

Each party hereto agrees to indemnify and hold the other parties harmless from all liability for damage, actual or alleged, to persons or property arising out of or resulting from negligent acts or omissions of the indemnifying party or its employees. Where the General Assembly or Executive Committee itself or its agents or employees are

held liable for injuries to persons or property, each party's liability for contribution or indemnity for such injuries shall be based proportionately upon the contributions (less voluntary contributions) of each member. In the event of liability imposed upon any of the parties to this Agreement, or upon the General Assembly or Executive Committee created by this Agreement, for injury which is caused by the negligent or wrongful act or omission of any of the parties in the performance of this Agreement, the contribution of the party or parties not directly responsible for the negligent or wrongful act or omission shall be limited to One Hundred Dollars ($100.00). The party or parties directly responsible for the negligent or wrongful acts or omissions shall indemnify, defend, and hold all other parties harmless from any liability for personal injury or property damage arising out of the performance of this Agreement. The voting for or against a matter being considered by the General Assembly or executive or other committee or WRCOG, or abstention from voting on such matter, shall not be construed to constitute a wrongful act or omission within the meaning of this Subsection.

VI

ADMISSION AND WITHDRAWAL OF PARTIES

6.1 Admission of New Parties.

It is recognized that additional cities other than the original parties, may wish to participate in WRCOG. Any Western Riverside County city may become a party to WRCOG upon such terms and conditions as established by the General Assembly or Executive Committee. Any Western Riverside County city shall become a party to WRCOG by the adoption by the city council of this agreement and the execution of a written addendum thereto agreeing to the terms of this Agreement and agreeing to any

additional terms and conditions that may be established by the general assembly or Executive Committee. Special districts which are significantly involved in regional problems and the boundaries of which include territory within the collective area of the membership shall be eligible for advisory membership in the Council. The representative of any such advisory member may participate in the work of committees of the Council.

6.2 Withdrawal from WRCOG.

It is fully anticipated that each party hereto shall participate in WRCOG until the purposes set forth in this Agreement are accomplished. The withdrawal of any party, either voluntary or involuntary, unless otherwise provided by the General Assembly or Executive Committee, shall be conditioned as follows:

a. In the case of a voluntary withdrawal following a properly noticed public hearing, written notice shall be given to WRCOG, six months prior to the effective date of withdrawal;

b. Withdrawal shall not relieve the party of its proportionate share of any debts or other liabilities incurred by WRCOG prior to the effective date of the parties' notice of withdrawal;

c. Unless otherwise provided by a unanimous vote of the Executive Committee, withdrawal shall result in the forfeiture of that party's rights and claims relating to distribution of property and funds upon termination of WRCOG as set forth in Section VII below;

d. Withdrawal from any Implementation Agreement shall not be deemed withdrawal from membership in WRCOG.

VII

TERMINATION AND DISPOSITION OF ASSETS

7.1 Termination of this Agreement.

WRCOG shall continue to exercise the joint powers herein until the termination of this Agreement and any extension thereof or until the parties shall have mutually rescinded this Agreement; providing, however, that WRCOG and this Agreement shall continue to exist for the purposes of disposing of all claims, distribution of assets and all other functions necessary to conclude the affairs of WRCOG.

Termination shall be accomplished by written consent of all of the parties, or shall occur upon the withdrawal from WRCOG of a sufficient number of the agencies enumerated herein so as to leave less than five of the enumerated agencies remaining in WRCOG.

7.2 Distribution of Property and Funds.

In the event of the termination of this Agreement, any property interest remaining in WRCOG following the discharge of all obligations shall be disposed of as the Executive Committee shall determine with the objective of distributing to each remaining party a proportionate return on the contributions made to such properties by such parties, less previous returns, if any.

VIII

PACE IMPLEMENTATION AND PARTICIPATION AGREEMENTS;

ASSOCIATE MEMBERSHIP

8.1 Execution of Agreement.

When authorized by the Executive Committee, any affected member agency or agencies enumerated herein, may execute an Implementation Agreement for the purpose of authorizing WRCOG to implement, manage and administer area-wide and regional programs in the interest of the local public welfare. The costs incurred by WRCOG in implementing a program including indirect costs, shall be assessed only to those public agencies who are parties to that Implementation Agreement.

8.2 PACE Agreements; Associate Membership.

WRCOG shall be empowered to establish and operate one or more Property Assessed Clean Energy ("PACE") programs pursuant to Chapter 29 of the Improvement Bond Act of 1911, being Division 7 of the California Streets and Highways Code, and to enter into one or more agreements, including without limitation, participation agreements, implementation agreements and joint powers agreements and amendments thereto to fulfill such programs both within and outside the jurisdictional boundaries of WRCOG.

WRCOG, acting through its Executive Committee, shall be empowered to establish an "Associate Member" status that provides membership in WRCOG to local jurisdictions that are outside WRCOG's jurisdictional boundaries but within whose boundaries a PACE program will be established and implemented by WRCOG. Said local jurisdictions shall become Associate Members of WRCOG by adopting one or more agreements (the "PACE Agreement") on the terms and conditions established by the Executive Committee and consistent with the requirements of the Joint Exercise of Powers Act, being 5 of Division 7, Title 1 of the California Government Code (Sections 6500 et seq.). The rights of Associate Members shall be limited solely to those terms and conditions expressly set forth in the PACE Agreement for the purposes of implementing the PACE program within their

jurisdictional boundaries. Except as expressly provided for by the PACE Agreement, Associate Members shall not have any rights otherwise granted to WRCOG's members by this Agreement, including but not limited to the right to vote, right to amend this Agreement, and right to sit on committees or boards established under this Agreement or by action of the Executive Committee or the General Assembly, including, without limitation, the General Assembly and the Executive Committee.

IX

MISCELLANEOUS

9.1 Amendments.

This Agreement may be amended with the approval of not less than two-thirds (2/3) of all member agencies.

9.2 Notice.

Any notice or instrument required to be given or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to the addresses of the parties as shown on Exhibit "A", shall be deemed to have been received by the party to whom the same is addressed at the expiration of seventy-two (72) hours after deposit of the same in the United States Post Office for transmission by registered or certified mail as aforesaid.

9.3 Effective Date.

This Agreement shall be effective and WRCOG shall exist from and after such date as this Agreement has been executed by any seven or more of the public agencies, including the County of Riverside, as listed on page 1 hereof.

9.4 Arbitration.

Any controversy or claim between any two or more parties to this Agreement, or between any such party or parties and WRCOG, with respect to disputes, demands, differences, controversies, or misunderstandings arising in relation to interpretation of this Agreement, or any breach thereof, shall be submitted to and determined by arbitration. The party desiring to initiate arbitration shall give notice of its intention to arbitrate to every other party to this Agreement and to the Executive Director of the Council. Such notice shall designate as "respondents" such other parties as the initiating party intends to have bound by any award made therein. Any party not so designated but which desires to join in the arbitration may, within ten (10) days of service upon it of such notice, file with all other parties and with the Executive Director of the Council a response indicating its intention to join in and to be bound by the results of the arbitration, and further designating any other parties it wishes to name as a respondent. Within twenty (20) days of the service of the initial demand for arbitration, the initiating party and the respondent or respondents shall each designate a person to act as an arbitrator. The designated arbitrators shall mutually designate the minimal number of additional persons as arbitrators as may be necessary to create an odd total number of arbitrators but not less than three to serve as arbitrator(s).

The arbitrators shall proceed to arbitrate the matter in accordance with the provisions of Title 9 of Part 3 of the Code of Civil Procedure, Section 1280 et. seq. The parties to this Agreement agree that the decision of the arbitrators will be binding and will not be subject to judicial review except on the ground that the arbitrators have exceeded the scope of their authority.

9.5 Partial Invalidity.

If any one or more of the terms, provisions, sections, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, sections, promises, covenants and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

9.6 Successors.

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto.

9.7 Assignment.

The parties hereto shall not assign any rights or obligations under this Agreement without written consent of all other parties.

9.8 Execution.

The Board of Supervisors of the County of Riverside and the city councils of the cities enumerated herein have each authorized execution of this Agreement as evidenced by the authorized signatures below, respectively.

Original Members Agencies

1. City of Banning
2. City of Beaumont (rejoined June 22, 2017)
3. City of Calimesa
4. City of Canyon Lake
5. City of Corona
6. City of Hemet
7. City of Lake Elsinore
8. City of Moreno Valley
9. City of Murrieta
10. City of Norco
11. City of Perris
12. City of Riverside
13. City of San Jacinto
14. City of Temecula
15. County of Riverside

Additional City Members

1. City of Eastvale (added on 08/02/2010, Resolution 01-11)
2. City of Jurupa Valley (added on 07/29/2011, Resolution 02-12)
3. City of Menifee (added on 10/06/2008, Resolution 03-09)
4. City of Wildomar (added on 08/04/2008, Resolution 01-09)

THE WESTERN RIVERSIDE

COUNCIL OF GOVERNMENTS

Participating Agencies

5. Eastern Municipal Water District (membership on the Governing Board of WRCOG, 05/11/2009)
6. Western Municipal Water District (membership on the Governing Board of WRCOG, 05/11/2009)
7. Riverside County Superintendent of Schools (membership as an ex-officio, advisory member of WRCOG, 11/07/2011)
8. Morongo Band of Mission Indians (membership on the Governing Board of WRCOG, 7/6/2015)

EXHIBIT B

LETTER OF AGREEMENT REGARDING OPERATIONAL REQUIREMENTS FOR PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAMS IN THE CITY OF MILPITAS

The City of Milpitas evaluated PACE Program operations within the City jurisdiction and has established several operating conditions to better protect the interest of our community. [Name of Program Administrator] has established the [Name of PACE Program], a Property Assessed Clean Energy (PACE) financing program and agrees to meet the provisions stated below in order to operate its program within the City.

Provisions

1. **Early Pay-off.** [Name of PACE Program] and [Name of Program Administrator] will not charge differential interest rates or pre-payment penalties to property owner for early pay off of the full outstanding balance of the PACE assessments.

2. **Regional Agreement.** [Name of PACE Program] and [Name of Program Administrator] has signed the Association of Bay Area Governments' (ABAG) Regional Collaborative Services Agreement (RCSA) and will continue to implement the requirements of the RCSA.

3. **Contractor Solicitation.** [Name of PACE Program] and [Name of Program Administrator] will provide to each Registered Contractor the City's requirement to obtain a business license, pay the applicable business license tax and on fingerprinting[1] and will continue to provide the requirements on a yearly basis to ensure contractor oversight.

[Name of Program Administrator] is aware of the additional operating provisions established by the City of Milpitas above and agrees to conform with these requirements so long as it offers its program within the City's jurisdiction and agrees that failure to abide by these requirements may result in City's termination of PACE Program's authorization to operate within the City.

PACE PROVIDER:
[Name of Program Administrator]

By: _____

Name: _____

Title: _____

Date: _____

[1] Milpitas Municipal Code, Title III, Chapter 1

DRAFT

EXHIBIT C

ADOPTION OF AGREEMENT
FOR COLLABORATIVE SERVICES

The City of Milpitas hereby adopts the Agreement for Collaborative Services ("Agreement") attached hereto as **Exhibit 1** and incorporated herein, establishing operating procedures for the _____ [PACE Program] within the jurisdiction of the City of Milpitas.

_____ [PACE Program] acknowledges and agrees that City of Milpitas is a "Participating Entity" as defined by Section 1.3 of the Agreement and shall be entitled to all the rights and benefits under the Agreement and may enforce the provisions thereof.

_____ [PACE Program] further acknowledges and agrees that it shall defend, indemnify, hold harmless, and waive subrogation against the City of Milpitas and its elected and appointed officials, officers and employees, to the extent set forth in Section 6 of the Agreement, and City of Milpitas shall be covered as an additional insured pursuant to Attachment 2, Section (d)(i) of the Agreement.

City of Milpitas:

By: _____ Date: _____
Steve J. Pangelinan
Acting City Manager

_____ [PACE Program]:

By: _____ Date: _____

Method and Place of Giving Notice. All notices to the Participating Entity shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices shall be addressed as follows:

Edesa Bitbadal, Economic Development Director
455 E Calaveras Blvd
Milpitas, CA 95035
ebitbadal@ci.milpitas.ca.gov

EXHIBIT 1

AGREEMENT FOR COLLABORATIVE SERVICES

FOR PROPERTY ASSESSED CLEAN ENERGY FINANCING

This Agreement for Collaborative Services ("Agreement"), dated as of , 2016 (“Effective Date”) is by and among the Association of Bay Area Governments (hereinafter "ABAG"), ***[insert PACE program provider name]***, (hereinafter "PACE Provider"), as an entity administering a Property Assessed Clean Energy (PACE) financing program utilizing either the California Assembly Bill 811 and/or California Senate Bill 555 model and any Participating Entity, as defined in Section 1.3 below, that adopts this Agreement.

R E C I T A L S

WHEREAS, ABAG is committed to mitigating and adapting to the causes and impacts of climate change and supporting energy independence from fossil fuels to safeguard the environment, human health and the economy; and

WHEREAS, ABAG as Program Administrator for the Bay Area Regional Energy Network (BayREN), works closely with 101 cities in the nine county Bay Area region (ABAG territory) to develop and implement innovative energy efficiency programs, including supporting commercial and residential Property Assessed Clean Energy (PACE) programs; and

WHEREAS, the BayREN offers programs, technical resources and education for energy upgrades and retrofits; and

WHEREAS, the objective of the BayREN is to help property owners save energy, save money, and live comfortably; and

WHEREAS, the BayREN seeks to assist local governments to understand all aspects of partnering with PACE Providers in order to minimize customer confusion, provide access to education and information to property owners and assist with making informed decisions on rebates and incentives, contractor programs, and financing options; and

WHEREAS, the PACE Provider is willing to participate to support community climate goals and minimize consumer and contractor confusion; and

WHEREAS, the PACE Provider will provide support and resources to any Participating Entity as requested related to education, outreach and development of the energy upgrade industry and trades; and

WHEREAS, the PACE Provider will support, align and integrate its efforts with the community-wide goals for job creation, resource demand reduction, and renewable energy generation; and

WHEREAS, the PACE Provider will establish its own interest rates, repayment terms, and fees as state and federal laws and the market defines and allows; and

WHEREAS, the PACE Provider will arrange for the collection of Property Assessed Clean Energy assessments it has financed directly with the Participating Entity's County Tax Collector's Office; and

WHEREAS, this Agreement does not include any financial arrangements between the PACE Provider, ABAG and the Participating Entity adopting this Agreement, nor does it preclude any separate contracts, contract terms for services or support; and

WHEREAS, the purpose of this Agreement is to set forth the mutual understandings between ABAG and the PACE Provider and to establish basic operating procedures for any PACE provider operating within the ABAG territory, and any Participating Entity that adopts this agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

A G R E E M E N T

1 Definitions.

1.1 "**Eligible improvement**" is a technology, product or tool officially approved by the PACE provider. The improvements may include distributed generation renewable energy sources, energy and water efficiency improvements, and electric vehicle charging infrastructure improvements that will be permanently affixed to real property, and any additional improvements deemed eligible in the future by the California Legislature and/or the California Judiciary.

1.2 "**PACE Provider**" is an entity participating in ABAG territory administering a program providing Property Assessed Clean Energy (PACE) financing.

1.3 **"Participating Entity"** is any city, town, county or the City and County of San Francisco located within ABAG's geographical boundaries that adopt this Agreement.

1.4 **"Participating Contractor"** is any contractor that has agreed to, and abides, by the terms and conditions of the PACE Provider's contractor standards.

1.5 "**Property Assessed Clean Energy (PACE) Financing**" is a means of financing distributed generation, renewable energy sources, energy and water efficiency improvements, electric vehicle charging infrastructure and other improvements deemed eligible by the California legislature that will be permanently affixed to real property, whereby the funds provided to pay for the improvements are repaid through contractual assessments and/or special taxes, utilizing either California Assembly Bill 811 (Levine, 2008) ("AB 811"), which amended §§5898.10-5899.3 of the California Streets and Highways Code; or California Senate Bill 555 (Hancock, 2011) ("SB 555"), which amended certain portions of §§53311-53368.3 of the California Government Code and each as subsequently amended.

1.6 "**Work"** as defined throughout this Agreement is the collaborative, non-competitive, effort between the PACE Provider and ABAG to support the citizens of ABAG member jurisdictions in completing water, energy efficiency upgrades, and the installation of renewable energy generating improvements.

2 Scope of Work / Collaboration.

2.1 PACE Provider's Specified Services. The PACE Provider will offer and provide Property Assessed Clean Energy Financing under the requirements of AB 811 and/or SB 555.

2.2 Performance Standard. PACE Provider shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by an organization administering a Property Assessed Clean Energy financing program pursuant to California Assembly Bill 811 and/or California Senate Bill 555. ABAG has relied upon the professional ability and expertise of PACE Provider as a material inducement to enter into this Agreement. PACE Provider hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws. If ABAG is concerned that any of PACE Provider's work is not in accordance with the level of competency and standard of care described herein, ABAG shall have the right to do any or all of the following: (a) require PACE Provider to

discuss with Participating Entity and/or to review the quality of the work and resolve matters of concern; (b) terminate this Agreement pursuant to the provisions of Section 5, Termination; or (c) pursue any and all other remedies available to ABAG at law or in equity.

Financing Provision Requirements.

The PACE Provider will:

2.3.1 Include a process to receive acknowledgement and confirmation of satisfaction with work completed from the applicant before project payment is disbursed and have a published dispute resolution process available for customers.

2.3.2 Provide summary of financing details (including assessment or special tax amount and terms, financing installments and estimated administrative expenses) to the applicant specific to the requested amount of the financing.

2.3.3 For residential properties, require an applicant's acknowledgment of the Federal Housing Finance Agency position on PACE by a separate signature/initial acknowledgement, in a Residential Disclosure Signature Form that is substantially similar in content to Attachment 1(a) or 1(b), as approved by ABAG.

2.3.4 Provide training to contractors and information to property owners on the availability of rebates (for all utility and generation types), including and not limited to city and county rebate programs, BayREN programs, PG&E programs, and other such offerings. (For information about local programs, the contractor and/or home owner may be directed to the BayREN Home Upgrade Advisor at 866-878-6008.)

2.3.5 Require that applicable building permits are obtained for all improvements in Participating Entities.

2.3.6 Verify that all property taxes for the assessed property are current for the previous three years or since the current owner acquired the property, whichever is shorter.

2.3.7 Recommend that property owners consult with a tax professional prior to claiming any tax deductions associated with the project and not recommend that homeowners take any particular filing position regarding their annual or semi-annual PACE assessment payments.

2.3.8 Not represent that the full assessment is tax deductible.

2.3.9 Have a consistent plan for removal of assessments at end of repayment term, prepayment and/or in the event of program closure.

2.4 Financial Policies.

The PACE Provider will:

2.4.1 For programs offering residential PACE financing, be an active participant in the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) PACE Loan Loss Reserve Program or comparable loan loss reserve program which includes at minimum the parameters outlined in Attachment 2.

2.4.2 Notify ABAG six months in advance if funding capacity available from the PACE Provider to prospective PACE customers in the Participating Entity will fall below the amount dispersed in the previous six months of operation.

2.4.3 Notify ABAG of any foreclosure action as a result of a default in the payment of a PACE assessment on property within ABAG's geographical boundaries, where the PACE assessment was originated by the PACE Provider.

2.5 Documents, Data, and Information Policies.

The PACE Provider will:

2.5.1 Provide to Participating Entity (for internal evaluation purposes only and not for distribution to any third party or for marketing purposes, other than as required by law, by request of Participating Entity, electronic access to the name, business name, and California State Contractors license number of participating contractors of the PACE Provider's program whose business address is located in the requesting Participating Entity or who conduct business in the requesting Participating Entity.

2.5.2 Retain completed Residential Disclosure (hardcopy or electronic) on file for duration of assessment, and furnish to Participating Entity upon request.

2.5.3 Provide upon request either direct real time access to data or quarterly reports in an open electronic file format (such as Microsoft Excel) to Participating Entity by request for internal evaluation purposes only (and not for distribution to any third party, including, without limitation, utility companies, services providers and equipment manufacturers or for marketing purposes) that includes the following information for each assessment:

a. Required data:

i. Assessor's Parcel Number (APN) of the property

ii. Dollar amount financed (the amount of the assessment and/or special tax)
iii. Listing of all energy efficiency and water conservation eligible improvements installed by virtue of the financing, including the unit of measure for the improvement and the quantity installed as captured by Participating Contractor
iv. Listing of all renewable generation improvements installed and the solar STC-DC rating in watts or kilowatts as captured by Participating Contractor
v. Estimated energy and water savings (in appropriate units) associated with the project

b. If available (in the aggregate):

i. Amount of rebate or incentive dollars associated with the project (not financed) and the name of the program
ii. How the customer heard about PACE financing
iii. Why the customer selected PACE over other financing instruments available
iv. Why the customer selected their final PACE Provider over the other members

The Participating Entity will:
Maintain the privacy and security of data received from PACE Provider. Participating Entity shall comply with all applicable state and federal laws, regulations and applicable California Public Utilities Commission regulations. Participating Entity may only provide reports relating to Section 2.5.3(a)(ii)-(v) for public distribution that aggregate the data such that individual customer information cannot be identified, unless such customer has authorized written release of individual customer information. A Participating Entity shall not share with any third party the data and reports provided by a PACE Provider pursuant to Section 2.5.3(b) (if any).

2.5.4 Provide the documents required for participation in the PACE Providers' PACE Financing program to Participating Entity officials.
2.5.5 Provide support to Participating Entity's staff to facilitate adoption of required participation documents.

2.6 ABAG will encourage Participating Entity to offer staff resources and support to bring forward to their respective boards or councils the documents

provided by the PACE Provider required for participation in the PACE Provider's PACE financing product.

2.7 Branding / Marketing Requirements.

The Parties will:

2.7.1 Collaborate on any local and/or regional efforts that may impact PACE financing participation to achieve the best possible outcome for property owners.

2.7.2 Represent the role of ABAG as the local neutral third party, not-for-profit, public service agency supporting the public through the upgrade process, with the following message to consumers: Among the financing products available, competition is encouraged to the benefit of the consumer, with the common goal of successful completion of projects.

The PACE Provider will:

2.7.3 Provide assistance to ABAG and any Participating Entity signing this Agreement for: (1) coordinating and implementing the integration of the PACE Provider into applicable BayREN and other relevant energy efficiency programs; and (2) support of contractor training.

2.7.4 Provide specific training for participating contractors engaged with local PACE programs using the PACE Provider's financing product, materials, collateral, tools, and associated software, through training offered directly from the PACE Provider.

2.7.5 Provide professional services, template documents, and other services reasonably necessary to staff for integrating the PACE Provider's financing option into the websites of any Participating Entity requesting such assistance.

2.7.6 Provide training and resources to any Participating Entity as needed to build understanding and support for use of the PACE financing product

ABAG will encourage ABAG members to:

2.7.7 Present with impartiality the financing products of the PACE Providers in all venues to the public.

2.7.8 Present marketing collateral of all financing products (where applicable) with impartiality in education and outreach materials and events

2.8 PACE Providers Responsibilities Regarding Participating Contractor.

PACE Providers will:

2.8.1 Require that contractors have the appropriate California State License Board (CSLB) license in good standing

2.8.2 Require, in accordance with California State License Board requirements, that contractors' bonding is in good standing

2.8.3 Require, in accordance with California State License Board requirements, that contractors have appropriate Workers' Compensation coverage

2.8.4 Require that contractors have a minimum of $1M of commercial general liability insurance

2.8.5 NOT endorse, recommend, or refer any specific contractor other than contractors who are to PACE Provider's knowledge, in good standing with CSLB, are insured and meet material program eligibility requirements

2.8.6 NOT make any representation or warranty regarding the qualifications, licensing, products, or workmanship of any contractor

2.8.7 NOT make any warranty regarding the contractor's work or products purchased from contractors provided

2.8.8 NOT accept any liability that may be alleged to arise from the work of any listed contractor on a customer project or from any reliance on any claims, statements, or other descriptions regarding a contractor's certifications, licenses, qualifications or products

2.8.9 Comply with provisions of Section 2.3.7 of this Agreement.

2.8.10 Via trainings and customer complaint system, require that contractors and their representatives, employees, and agents do not represent themselves as agents, representatives, contractors, subcontractors, or employees of ABAG or any Participating Entity, or claim association or affiliation with ABAG or any Participating Entity.

2.8.11 Independently engages the Participating Entity's Tax Collector for administration of property tax assessments placed through its financing product.

3 **Payment.** This Agreement does not include any financial arrangements between the PACE Provider and ABAG, nor does it preclude any separate contracts for services or support.

4 **Term of Agreement.** The term of this Agreement shall be from the Effective Date until termination in accordance with the provisions of Section 5, Termination below.

5 Termination.

5.1 Termination without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, ABAG, PACE Provider, or any Participating Entity shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to the other Party to this Agreement; provided that a party's termination of this Agreement under this section shall not automatically terminate any other agreement or contract between the other parties.

5.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should the PACE Provider fail to uphold any of its obligations under this Agreement in a material way, within the time and in the manner herein provided, or otherwise materially violate any of the terms of this Agreement, ABAG or a Participating Entity may, after providing the PACE Provider with a thirty (30) day cure period, immediately terminate this Agreement by giving PACE Provider written notice of such termination, stating the reason for termination; provided that the termination of this Agreement shall not automatically terminate any other agreement or contract between or among the parties.

5.3 Delivery of Data and Information upon Termination. In the event of termination, PACE Provider, within 14 days following the date of termination, shall deliver to the extent legally permitted to Participating Entity all raw data and information in an editable electronic format as outlined in and subject to the terms of Section 2.5, Document, Data, and Information Policies.

5.4 Authority to Terminate. The Executive Director of ABAG has the authority to terminate this Agreement on behalf of ABAG

5.5 Effect of Termination. Termination of this Agreement by ABAG or Participating Entity shall not affect the ability to levy and collect assessments and the PACE Provider's ability to issue bonds for assessment contracts located within the jurisdiction of such entity which have been entered into prior to the date of termination.

In the event of termination pursuant to this Section 5 by ABAG, ABAG may notify all Participating Entities of said termination.

6 Hold Harmless, Indemnity and Waiver of Subrogation.

To the fullest extent allowed by law, PACE Provider shall defend, indemnify, save harmless and waive subrogation against the ABAG, and its members, elected and appointed officials, officers and employees (Indemnitees) against any and all liability, claims, losses, damages, or expenses, including reasonable attorneys' fees, arising from

all acts or omissions to act of PACE Provider or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages or expenses resulting from an intentional act or the gross negligence of an Indemnitee.

This section shall in no event be construed to require indemnification by PACE Provider to a greater extent than permitted under the public policy or laws of the State of California. These defense and indemnification obligations are undertaken in addition to, and shall not in any way be limited by, the insurance obligations set forth in this Agreement. These defense and indemnification obligations shall survive the termination or expiration of the contract for the full period of time permitted by law.

7 **Insurance Requirements.** PACE provider shall obtain and maintain insurance as required in Attachment 2.

8 Prosecution of Work. The execution of this Agreement shall constitute PACE Provider's authority to proceed immediately with the performance of this Agreement.

9 Representations of PACE Provider.

9.1 Standard of Care. ABAG and Participating Entity have relied upon the professional ability and training of PACE Provider as a material inducement to entering into this Agreement. PACE Provider hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws.

9.2 Status of PACE Provider. The parties intend that PACE Provider, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. PACE Provider is not to be considered an agent or employee of ABAG or of any Participating Entity and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, employment protection, or similar benefits that ABAG or the Participating Entity provides its employees.

9.3 Conflict of Interest. PACE Provider covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in

any manner or degree with the performance of its services hereunder. PACE Provider further covenants that in the performance of this Agreement no person having any such interests shall be employed.

9.4 Statutory Compliance. PACE Provider agrees to comply with all federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement.

9.5 Nondiscrimination. Without limiting any other provision hereunder, PACE Provider shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, gender identity, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.6 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of PACE Provider.

10 Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, conduct, or service does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits the parties' right to terminate this Agreement pursuant to Section 5, Termination.

11 Assignment and Delegation. No party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented; provided however, that

PACE Provider may assign this Agreement in connection with a merger or the sale of all or substantially all of its assets or equity ownership without the prior written consent of any other party provided that the successor expressly assumes all of the obligations, including this Agreement, and confirms all of the representations, warranties and covenants of PACE Provider hereunder.

12 Method and Place of Giving Notice. All notices shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service to:

TO: ABAG: Address
Email address: _____

TO: PACE PROVIDER: _____
_____
_____

Email address: _____

When a notice is given by a generally recognized overnight courier service, the notice shall be deemed received on the next business day. When a copy of a notice is sent by facsimile or email, the notice shall be deemed received upon transmission as long as (1) the original copy of the notice is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email, (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13 Miscellaneous Provisions.

13.1 No Waiver of Breach. The waiver by a party of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and

agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. PACE Provider and ABAG acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Each party hereto acknowledges that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Alameda.

13.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Counterparts. This Agreement may be executed in two or more counterparts, a complete set of which shall be deemed an original, constituting one and the same instrument. The delivery by facsimile or electronic mail of an executed copy of this Amendment shall be deemed valid as if an original signature was delivered

Continued on next page:

IN WITNESS WHEREOF, the ABAG and the PACE Provider hereto have executed this Agreement as of the Effective Date.

PACE PROVIDER: _____	ABAG: _____
By: _____	By:_____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPROVED AS TO FORM FOR ABAG

Date: _____ By: _____
Kenneth Moy, ABAG Counsel

ATTACHMENT 1(a)

ALERT: Fannie Mae/Freddie Mac Instructions for Lenders

SINGLE FAMILY HOME OWNERS: In May, 2010, Fannie Mae and Freddie Mac, government sponsored enterprises that purchase a large segment of conforming single family home mortgages, issued new instructions to lending institutions on how to treat properties with assessments under Property Assessed Clean Energy (PACE) programs such as _____. These letters, and additional statements issued by the Federal Housing Finance Agency, the agency that regulates single family home lenders, instruct lenders to treat energy assessments as "loans" instead of "assessments."

On August 31, 2010, the agencies issued additional instructions to lenders that Fannie Mae and Freddie Mac "will not purchase mortgage loans secured by properties with an outstanding PACE obligation."

These letters and statements may lead lenders to conclude the PACE assessment should be paid off before a property transfers or is refinanced. In addition, it may lead some lenders to conclude that participating in PACE program is a violation of typical mortgage terms prohibiting prior liens without lender consent. If you are selling your property, a buyer's lender may refuse to finance the buyer's first mortgage loan unless the assessment is paid off. We urge you to carefully read the disclosure information in the Program application, review your mortgage documents, evaluate the risks of proceeding with an application at this time, and contact your lender if you have any concerns or for information regarding any other financing options that may be available to you.

I/We have read the above statement. All property owners on title must initial below:

_____	_____	_____	_____
Initials	*Date*	*Initials*	*Date*
_____	_____	_____	_____
Initials	*Date*	*Initials*	*Date*

Continued on next page:

Electronic links to the copies of letters from the Federal Financing Housing Authority re: PACE programs:

- https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/ll1006.pdf
- http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/iltr050510.pdf
- http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx
- http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Acting-Director-Edward-J-DeMarco-on-PACE-Programs.aspx
- https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/sel1012.pdf
- http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1020.pdf

ATTACHMENT 1(b)

BEFORE COMPLETING A PROGRAM APPLICATION, YOU SHOULD CAREFULLY REVIEW ANY MORTGAGE AGREEMENT(S) OR OTHER SECURITY INSTRUMENT(S) WHICH AFFECT THE PROPERTY OR TO WHICH YOU AS THE PROPERTY OWNER ARE A PARTY. ENTERING INTO A PROGRAM ASSESSMENT CONTRACT WITHOUT THE CONSENT OF YOUR EXISTING LENDER(S) COULD CONSTITUTE AN EVENT OF DEFAULT UNDER SUCH AGREEMENTS OR SECURITY INSTRUMENTS. DEFAULTING UNDER AN EXISTING MORTGAGE AGREEMENT OR SECURITY INSTRUMENT COULD HAVE SERIOUS CONSEQUENCES TO YOU, WHICH COULD INCLUDE THE ACCELERATION OF THE REPAYMENT OBLIGATIONS DUE UNDER SUCH AGREEMENT OR SECURITY INSTRUMENT. IN ADDITION, FANNIE MAE AND FREDDIE MAC, THE OWNER OF A SIGNIFICANT PORTION OF ALL HOME MORTGAGES, STATED THAT THEY WOULD NOT PURCHASE HOME LOANS WITH ASSESSMENTS SUCH AS THOSE OFFERED BY THE AUTHORITY. THIS MAY MEAN THAT PROPERTY OWNERS WHO SELL OR REFINANCE THEIR PROPERTY MAY BE REQUIRED TO PREPAY SUCH ASSESSMENTS AT THE TIME THEY CLOSE THEIR SALE OR REFINANCING.

I/We have read the above statement. All property owners on title must initial below:

Initials	*Date*	*Initials*	*Date*
Initials	*Date*	*Initials*	*Date*

ATTACHMENT 2

Insurance Requirements. PACE Provider shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a period of five (5) years following the completion of this project. PACE Provider shall provide a copy of section 21 of this contract and these insurance requirements to its insurance broker or insurer to confirm compliance. In the event PACE Provider fails to obtain or maintain completed operations coverage as required by this agreement, ABAG, at its sole discretion, may purchase the coverage required and the cost will be paid by PACE Provider. The limits of insurance required in hereunder may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the Indemnitees (if agreed to in a written contract or agreement) before the any Indemnitee's own Insurance or self-insurance shall be called upon to protect it as a named insured.

(a) Minimum Scope of Insurance. Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage
(occurrence Form CG 0001).

Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Errors and Omissions Liability insurance appropriate to the PACE Provider's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

(b) Minimum Limits of Insurance. PACE Provider shall maintain limits no less than:

General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
Automobile Liability: $1,000,000 per accident for bodily injury and property damage.
Employer's Liability: $1,000,000 per accident for bodily injury or disease.
Errors and Omissions Liability: $1,000,000 per claim/aggregate.

(c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by ABAG. The insurer shall reduce or eliminate such

deductibles or self-insured retentions as respects the Indemnitees; or the PACE Provider shall satisfy any such deductibles or self-insured retentions. In addition, policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or any of the Indemnitees.

(d) Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) The Indemnitees are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of PACE Provider; completed operations; or automobiles owned, leased, hired or borrowed by PACE Provider.

(ii) For any claims related to this project, the PACE Provider's insurance coverage shall be primary insurance as respects the Indemnitees.

(iii) Any insurance or self-insurance maintained by the Indemnitees shall be excess of PACE Provider's insurance and shall not contribute with it.

(iv) Except for General Liability and Automobile Liability, each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty(30) days' prior written notice by certified mail, return receipt requested, has been given to ABAG. For General Liability and Automobile Liability, PACE Provider shall provide ABAG with thirty (30) day's prior notice of cancellation by either the insurer or PACE Provider.

(v) Coverage shall not extend to any defense or indemnity coverage for the active negligence of the Indemnitees in any case where an agreement to defend and indemnify the Indemnitees would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

(e) Other Insurance Provisions – Workers Compensation. The Workers Compensation insurance shall be endorsed to waive subrogation against the Indemnitees.

(f) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to ABAG.

(g) Verification of Coverage. PACE Provider shall furnish the ABAG with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by ABAG before work commences. ABAG reserves the right to require complete, certified

copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

RESOLUTION NO. _____

A RESOLUTION APPROVING, AUTHORIZING AND DIRECTING EXECUTION OF AN AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT RELATING TO THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY

WHEREAS, the City of Milpitas, California (the "City"), has expressed an interest in participating in the economic development financing programs (the "Programs") in conjunction with the parties to that certain Amended and Restated Joint Exercise of Powers Agreement Relating to the California Statewide Communities Development Authority, dated as of June 1, 1988 (the "Agreement"); and

WHEREAS, there is now before this City Council the form of the Agreement, attached hereto as **Exhibit "A"**; and

WHEREAS, the City proposes to participate in the Programs and desires that certain projects to be located within the City be financed pursuant to the Programs and it is in the public interest and for the public benefit that the City do so; and

WHEREAS, the Agreement has been filed with the City, and the members of the City Council of the City, with the assistance of its staff, have reviewed said document;

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The Agreement is hereby approved and the City Manager or designee thereof is hereby authorized and directed to execute said document, with such changes, insertions and omissions as may be approved by the City Attorney, and the City Clerk or such Clerk's designee is hereby authorized and directed to affix the City's seal to said document and to attest thereto.

2. The City Manager or designee thereof is hereby authorized and directed to execute such other agreements, documents and certificates, and to perform such other acts and deeds, as may be necessary or convenient to effect the purposes of this Resolution and the transactions herein authorized.

3. The City Clerk of the City shall forward a certified copy of this Resolution and an originally executed Agreement to:

Kathleen Jacobe
Orrick, Herrington & Sutcliffe LLP
400 Capital Mall, Suite 3000
Sacramento, California 95814

4. This Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED this _____ day of _____ 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

EXHIBIT A

AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT RELATING TO THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY

THIS AGREEMENT, dated as of June 1, 1988, by and among the parties executing this Agreement (all such parties, except those which have withdrawn in accordance with Section 13 hereof, being herein referred to as the "Program Participants"):

WITNESSETH

WHEREAS, pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State of California (the "Joint Exercise of Powers Act"), two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, each of the Program Participants is a "public agency" as that term is defined in Section 6500 of the Government Code of the State of California, and

WHEREAS, each of the Program Participants is empowered to promote economic development, including, without limitation, the promotion of opportunities for the creation or retention of employment, the stimulation of economic activity, and the increase of the tax base, within its boundaries; and

WHEREAS, a public entity established pursuant to the Joint Exercise of Powers Act is empowered to issue industrial development bonds pursuant to the California Industrial Development Financing Act (Title 10 (commencing with Section 91500 of the Government Code of the State of California)) (the "Act") and to otherwise undertake financing programs under the Joint Exercise of Powers Act or other applicable provisions of law to promote economic development through the issuance of bonds, notes, or other evidences of indebtedness, or certificates of participation in leases or other agreements (all such instruments being herein collectively referred to as "Bonds"); and

WHEREAS, in order to promote economic development within the State of California, the County Supervisors Association of California ("CSAC"), together with the California Manufacturers Association, has established the Bonds for Industry program (the "Program").

WHEREAS, in furtherance of the Program, certain California counties (collectively, the "Initial Participants") have entered into that certain Joint Exercise of Powers Agreement dated as of November 18, 1987 (the "Initial Agreement"), pursuant to which the California Counties Industrial Development Authority has been established as a separate entity under the Joint Exercise of Powers Act for the purposes and with the powers specified in the Initial Agreement; and

WHEREAS, the League of California Cities ("LCC") has determined to join as a sponsor of the Program and to actively participate in the administration of the Authority; and

WHEREAS, the Initial Participants have determined to specifically authorize the Authority to issue Bonds pursuant to Article 2 of the Joint Exercise of Powers Act ("Article 2") and Article 4 of the Joint Exercise of Powers Act ("Article 4"), as well as may be authorized by the Act or other applicable law; and

WHEREAS, the Initial Participants desire to rename the California Counties Industrial Development Authority to better reflect the additional sponsorship of the Program; and

WHEREAS, each of the Initial Participants has determined that it is in the public interest of the citizens within its boundaries, and to the benefit of such Initial Participant and the area and persons served by such Initial Participant, to amend and restate in its entirety the Initial Agreement in order to implement the provisions set forth above; and

WHEREAS, it is the desire of the Program Participants to use a public entity established pursuant to the Joint Exercise of Powers Act to undertake projects within their respective jurisdictions that may be financed with Bonds issued pursuant to the Act, Article 2, Article 4, or other applicable provisions of law; and

WHEREAS, the projects undertaken will result in significant public benefits, including those public benefits set forth in Section 91502.1 of the Act, an increased level of economic activity, or an increased tax base, and will therefore serve and be of benefit to the inhabitants of the jurisdictions of the Program Participants;

NOW, THEREFORE, the Program Participants, for and in consideration of the mutual promises and agreements herein contained, do agree to restate and amend the Initial Agreement in its entirety to provide as follows:

Section 1. Purpose.

This Agreement is made pursuant to the provisions of the Joint Exercise of Powers Act, relating to the joint exercise of powers common to public agencies, in this case being the Program Participants. The Program Participants each possess the powers referred to in the recitals hereof. The purpose of this Agreement is to establish an agency for, and with the purpose of, issuing Bonds to finance projects within the territorial limits of the Program Participants pursuant to the Act, Article 2, Article 4, or other appliable provisions of law; provided, however that nothing in this Agreement shall be construed as a limitation on the rights of the Program Participants to pursue economic development outside of this Agreement, including the rights to issue Bonds through industrial development authorities under the Act, or as otherwise permitted by law.

Within the various jurisdictions of the Program Participants such purpose will be accomplished and said powers exercised in the manner hereinafter set forth.

Section 2. Term.

This Agreement shall become effective as of the date hereof and shall continue in full force and effect for a period of forty (40) years from the date hereof, or until such time as it is terminated in writing by all the Program Participants; provided, however, that this Agreement shall not terminate or be terminated until the date on which all Bonds or other indebtedness issued or caused to be issued by the Authority shall have been retired, or full provision shall have been made for their retirement, including interest until their retirement date.

Section 3. Authority.

A. CREATION AND POWERS OF AUTHORITY.

(1) Pursuant to the Joint Exercise of Powers Act, there is hereby created a public entity to be known as the "California Statewide Communities Development Authority" (the "Authority"), and said Authority shall be a public entity separate and apart from the Program Participants. Its debts, liabilities and obligations do not constitute debts, liabilities or obligations of any party to this Agreement.

B. COMMISSION.

The Authority shall be administered by a Commission (the "Commission") which shall consist of seven members, each

serving in his or her individual capacity as a member of the Commission. The Commission shall be the administering agency of this Agreement, and, as such, shall be vested with the powers set forth herein, and shall execute and administer this Agreement in accordance with the purposes and functions provided herein.

Four members of the Commission shall be appointed by the governing body of CSAC and three members of the Commission shall be appointed by the governing body of LCC. Initial members of the Commission shall serve a term ending June 1, 1991. Successors to such members shall be selected in the manner in which the respective initial member was selected and shall serve a term of three years. Any appointment to fill an unexpired term, however, shall be for such unexpired term. The term of office specified above shall be applicable unless the term of office of the respective member is terminated as hereinafter provided, and provided that the term of any member shall not expire until a successor thereto has been appointed as provided herein.

Each of CSAC and LCC may appoint an alternate member of the Commission for each member of the Commission which it appoints. Such alternate member may act as a member of the Commission in place of and during the absence or disability of such regularly appointed member. All references in this Agreement to any member of the Commission shall be deemed to refer to and include the applicable alternate member when so acting in place of a regularly appointed member.

Each member or alternate member of the Commission may be removed and replaced at any time by the governing body by which such member was appointed. Any individual, including any member of the governing body or staff of CSAC or LCC, shall be eligible to serve as a member or alternate member of the Commission.

Members and alternate members of the Commission shall not receive any compensation for serving as such but shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a member or alternate member, if the Commission shall determine that such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

C. OFFICERS; DUTIES; OFFICIAL BONDS.

The Commission shall elect a Chair, a Vice-Chair, and a Secretary of the Authority from among its members to serve for such term as shall be determined by the Commission. The Commission shall appoint one or more of its officers or

employees to serve as treasurer, auditor, and controller of the Authority (the "Treasurer") pursuant to Section 6505.6 of the Joint Exercise of Powers Act to serve for such term as shall be determined by the Commission.

Subject to the applicable provisions of any resolution, indenture or other instrument or proceeding authorizing or securing Bonds (each such resolution, indenture, instrument and proceeding being herein referred to as an "Indenture") providing for a trustee or other fiscal agent, the Treasurer is designated as the depositary of the Authority to have custody of all money of the Authority, from whatever source derived.

The Treasurer of the Authority shall have the powers, duties and responsibilities specified in Section 6505.5 of the Joint Exercise of Powers Act.

The Treasurer of the Authority is designated as the public officer or person who has charge of, handles, or has access to any property of the Authority, and such officer shall file an official bond with the Secretary of the Authority in the amount specified by resolution of the Commission but in no event less than $1,000. If and to the extent permitted by law, any such officer may satisfy this requirement by filing an official bond in at least said amount obtained in connection with another public office.

The Commission shall have the power to appoint such other officers and employees as it may deem necessary and to retain independent counsel, consultants and accountants.

The Commission shall have the power, by resolution, to the extent permitted by the Joint Exercise of Powers Act or any other applicable law, to delegate any of its functions to one or more of the members of the Commission or officers or agents of the Authority and to cause any of said members, officers or agents to take any actions and execute .any documents or instruments for and in the name and on behalf of the Commission or the Authority.

D. MEETINGS OF THE COMMISSION.

(1) Regular Meetings.

The Commission shall provide for its regular meetings; provided, however, it shall hold at least one regular meeting each year. The date, hour and place of the holding of the regular meetings shall be fixed by resolution of the Commission and a copy of such resolution shall be filed with each party hereto.

(2) Special Meetings.

Special meetings of the Commission may be called in accordance with the provisions of Section 54956 of the Government Code of the State of California.

(3) Ralph M. Brown Act.

All meetings of the Commission, including, without limitation, regular, adjourned regular, special, and adjourned special meetings shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the Government Code of the State of California).

(4) Minutes.

The Secretary of the Authority shall cause to be kept minutes of the regular, adjourned regular, special, and adjourned special meetings of the Commission and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Commission.

(5) Quorum.

A majority of the members of the Commission which includes at least one member appointed by the governing body of each of CSAC and LCC shall constitute a quorum for the transaction of business. No action may be taken by the Commission except upon the affirmative vote of a majority of the members of the Commission which includes at least one member appointed by the governing body of each of CSAC and LCC, except that less than a quorum may adjourn a meeting to another time and place.

E. RULES AND REGULATIONS.

The Authority may adopt, from time to time, by resolution of the Commission such rules and regulations for the conduct of its meetings and affairs as may be required.

Section 4. Powers.

The Authority shall have any and all powers relating to economic development authorized by law to each of the parties hereto and separately to the public entity herein created, including, without limitation, the promotion of opportunities for the creation and retention of employment, the stimulation of economic activity, and the increase of the tax base, within the jurisdictions of such parties. Such powers shall include the common powers specified in this

Agreement and may be exercised in the manner and according to the method provided in this Agreement. All such powers common to the parties are specified as powers of the Authority. The Authority is hereby authorized to do all acts necessary for the exercise of such powers, including, but not limited to, any or all of the following: to make and enter into contracts; to employ agents and employees; to acquire, construct, provide for maintenance and operation of, or maintain and operate, any buildings, works or improvements; to acquire, hold or dispose of property wherever located; to incur debts, liabilities or obligations; to receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and any governmental entity; to sue and be sued in its own name; and generally to do any and all things necessary or convenient to the promotion of economic development, including without limitation the promotion of opportunities for the creation or retention of employment, the stimulation of economic activity, and the increase of the tax base, all as herein contemplated. Without limiting the generality of the foregoing, the Authority may issue or cause to be issued bonded and other indebtedness, and pledge any property or revenues as security to the extent permitted under the Joint Exercise of Powers Act, including Article 2 and Article 4, the Act or any other applicable provision of law.

The manner in which the Authority shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which a California county could exercise such powers and perform such duties until a California general law city shall become a Program Participant, at which time it shall be subject to the restrictions upon the manner in which a California general law city could exercise such powers and perform such duties. The manner in which the Authority shall exercise its powers and perform its duties shall not be subject to any restrictions applicable to the manner in which any other public agency could exercise such powers or perform such duties, whether such agency is a party to this Agreement or not.

Section 5. Fiscal Year.

For the purposes of this Agreement, the term "Fiscal Year" shall mean the fiscal year as established from time to time by the Authority, being, at the date of this Agreement, the period from July 1 to and including the following June 30, except for the first Fiscal Year which shall be the period from the date of this Agreement to June 30, 1988.

Section 6. Disposition of Assets.

At the end of the term hereof or upon the earlier termination of this Agreement as set forth in Section 2 hereof, after payment of all expenses and liabilities of the Authority, all property of the Authority both real and personal shall automatically vest in the Program Participants and shall thereafter remain the sole property of the Program Participants; provided, however, that any surplus money on hand shall be returned in proportion to the contributions made by the Program Participants.

Section 7. Bonds.

The Authority shall issue Bonds for the purpose of exercising its powers and raising the funds necessary to carry out its purposes under this Agreement. Said Bonds may, at the discretion of Authority, be issued in series.

The services of bond counsel, financing consultants and other consultants and advisors working on the projects and/or their financing shall be used by the Authority. The fees and expenses of such counsel, consultants, advisors, and the expenses of CSAC, LCC, and the Commission shall be paid from the proceeds of the Bonds or any other unencumbered funds of the Authority available for such purpose.

Section 9. Local Approval.

A copy of the application for financing of a project shall be filed by the Authority with the Program Participant in whose jurisdiction the project is to be located. The Authority shall not issue Bonds with respect to any project unless the governing body of the Program Participant in whose jurisdiction the project is to be located, or its duly authorized designee, shall approve, conditionally or unconditionally, the project, including the issuance of Bonds therefor. Action to approve or disapprove a project shall be taken within 45 days of the filing with the Program Participant. Certification of approval or disapproval shall be made by the clerk of the governing body of the Program Participant, or by such other officer as may be designated by the applicable Program Participant, to the Authority.

Section 8. Bonds Only Limited and Special Obligations of Authority.

The Bonds, together with the interest and premium, if any, thereon, shall not be deemed to constitute a debt of any Program Participant, CSAC, or LCC or pledge of the faith and credit of the Program Participants, CSAC, LCC, or the

Authority. The Bonds shall be only special obligations of the Authority, and the Authority shall under no circumstances be obligated to pay the Bonds or the respective project costs except from revenues and other funds pledged therefor. Neither the Program Participants, CSAC, LCC, nor the Authority shall be obligated to pay the principal of, premium, if any, or interest on the Bonds, or other costs incidental thereto, except from the revenues and funds pledged therefor, and neither the faith and credit nor the taxing power of the Program Participants nor the faith and credit of CSAC, LCC, or the Authority shall be pledged to the payment of the principal of, premium, if any, or interest on the Bonds nor shall the Program Participants, CSAC, LCC, or the Authority in any manner be obligated to make any appropriation for such payment.

No covenant or agreement contained in any Bond or Indenture shall be deemed to be a covenant or agreement of any member of the Commission, or any officer, agent or employee of the Authority in his individual capacity and neither the Commission of the Authority nor any officer thereof executing the Bonds shall be liable personally on any Bond or be subject to any personal liability or accountability by reason of the issuance of any Bonds.

Section 10. Accounts and Reports.

All funds of the Authority shall be strictly accounted for. The Authority shall establish and maintain such funds and accounts as may be required by good accounting practice and by any provision of any Indenture (to the extent such duties are not assigned to a trustee of Bonds). The books and records of the Authority shall be open to inspection at all reasonable times by each Program Participant.

The Treasurer of the Authority shall cause an independent audit to be made of the books of accounts and financial records of the Agency by a certified public accountant or public accountant in compliance with the provisions of Section 6505 of the Joint Exercise of Powers Act. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California and shall conform to generally accepted auditing standards. When such an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as public records with each Program Participant and also with the county auditor of each county in which a Program Participant is located. Such report shall be filed within 12 months of the end of the Fiscal Year or Years under examination.

Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants in making an audit pursuant to this Section, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for that purpose.

In any Fiscal Year the Commission may, by resolution adopted by unanimous vote, replace the annual special audit with an audit covering a two-year period.

The Treasurer of the Authority, within 120 days after the close of each Fiscal Year, shall give a complete written report of all financial activities for such Fiscal Year to each of the Program Participants to the extent such activities are not covered by the reports of the trustees for the Bonds. The trustee appointed under each Indenture shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of said Indenture. Said trustee may be given such duties in said Indenture as may be desirable to carry out this Agreement.

Section 11. Funds.

Subject to the applicable provisions of each Indenture, which may provide for a trustee to receive, have custody of and disburse Authority funds, the Treasurer of the Authority shall receive, have the custody of and disburse Authority funds pursuant to the accounting procedures developed under Section 10 hereof, and shall make the disbursements required by this Agreement or otherwise necessary to carry out any of the provisions or purposes of this Agreement.

Section 12. Notices.

Notices and other communications hereunder to the Program Participants shall be sufficient if delivered to the clerk of the governing body of each Program Participant.

Section 13. Withdrawal and Addition of Parties.

A Program Participant may withdraw from this Agreement upon written notice to the Commission; provided, however, that no such withdrawal shall result in the dissolution of the Authority so long as any Bonds remain outstanding under an Indenture. Any such withdrawal shall be effective only upon receipt of the notice of withdrawal by the Commission which shall acknowledge receipt of such notice of withdrawal in writing and shall file such notice as an amendment to this Agreement effective upon such filing.

Qualifying public agencies may be added as parties to this Agreement and become Program Participants upon: (i) the filing by such public agency of an executed counterpart of this Agreement, together with a certified copy of the resolution of the governing body of such public agency approving this Agreement and the execution and delivery hereof; and (ii) adoption of a resolution of the Commission approving the addition of such public agency as a Program Participant. Upon satisfaction of such conditions, the Commission shall file such executed counterpart of this Agreement as an amendment hereto, effective upon such filing.

Section 14. Indemnification.

To the full extent permitted by law, the Commission may authorize indemnification by the Authority of any person who is or was a member or alternate member of the Commission, or an officer, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a member or alternate member of the Commission, or an officer, employee or other agent of the Authority, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful and, in the case of an action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Section 15. Contributions and Advances.

Contributions or advances of public funds and of the use of personnel, equipment or property may be made to the Authority by the parties hereto for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution. Any such advance may be made subject to repayment, and in such case shall be repaid, in the manner agreed upon by the Authority and the party making such advance at the time of such advance.

Section 16. Immunities.

All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents or employees of Program Participants when performing their

respective functions within the territorial limits of their respective public agencies, shall apply to them to the same degree and extent while engaged as members of the Commission or otherwise as an officer, agent or other representative of the Authority or while engaged in the performance of any of their functions or duties extraterritorially under the provisions of this Agreement.

Section 17. Amendments.

Except as provided in Section 13 above, this Agreement shall not be amended, modified, or altered except by a written instrument duly executed by each of the Program Participants.

Section 18. Effectiveness.

This Agreement shall become effective and be in full force and effect and a legal, valid and binding obligation of each of the Program Participants at 9:00 a.m., California time, on the date that the Commission shall have received from each of the Initial Participants an executed counterpart of this Agreement, together with a certified copy of a resolution of the governing body of each such Initial Participant approving this Agreement and the execution and delivery hereof.

Section 19. Partial Invalidity.

If anyone or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

Section 20. Successors.

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no party may assign any right or obligation hereunder without the consent of the other parties.

Section 21. Miscellaneous.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

This Agreement is made in the State of California, under the Constitution and laws of such state and is to be so construed.

This Agreement is the complete and exclusive statement of the agreement among the parties hereto, which supercedes and merges all prior proposals, understandings, and other agreements, including, without limitation, the Initial Agreement, whether oral, written, or implied in conduct, between and among the parties relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

Program Participant:

_____

[SEAL]

By _____

Name:

Title:

ATTEST:

By _____

Name:

Title:

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS CONSENTING TO THE INCLUSION OF PROPERTIES WITHIN THE TERRITORY OF THE CITY IN THE CSCDA OPEN PACE PROGRAMS; AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE CITY; AND AUTHORIZING RELATED ACTIONS

WHEREAS, the California Statewide Communities Development Authority (the "Authority") is a joint exercise of powers authority, the members of which include numerous cities and counties in the State of California, including the City of Milpitas (the "City"); and

WHEREAS, the Authority is implementing Property Assessed Clean Energy ("PACE") programs, which it has designated CSCDA Open PACE, consisting of CSCDA Open PACE programs each administered by a separate program administrator (collectively with any successors, assigns, replacements or additions, the "Programs"), to allow the financing or refinancing of renewable energy, energy efficiency, water efficiency and seismic strengthening improvements, electric vehicle charging infrastructure and such other improvements, infrastructure or other work as may be authorized by law from time to time (collectively, the "Improvements") through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29") within counties and cities throughout the State of California that consent to the inclusion of properties within their respective territories in the Programs and the issuance of bonds from time to time; and

WHEREAS, the program administrators currently active in administering Programs are the AllianceNRG Program (CounterPointe Energy Solutions (CA) LLC), PACE Funding Group LLC, CaliforniaFirst (Renew Financial Group LLC), CleanFund Commercial PACE Capital and Spruce Pace LLC and the Authority will notify the City in advance of any additions or changes; and

WHEREAS, Chapter 29 provides that assessments may be levied under its provisions only with the free and willing consent of the owner or owners of each lot or parcel on which an assessment is levied at the time the assessment is levied; and

WHEREAS, the City desires to allow the owners of property ("Participating Property Owners") within its territory to participate in the Programs and to allow the Authority to conduct assessment proceedings under Chapter 29 within its territory and to issue bonds to finance or refinance Improvements; and

WHEREAS, the territory within which assessments may be levied for the Programs shall include all of the territory within the City's official boundaries; and

WHEREAS, the Authority will conduct all assessment proceedings under Chapter 29 for the Programs and issue any bonds issued in connection with the Programs; and

WHEREAS, the City will not be responsible for the conduct of any assessment proceedings; the levy of assessments; any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of any bonds issued in connection with the Programs;

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council hereby finds and declares that properties in the territory of the City will benefit from the availability of the Programs within the territory of the City and, pursuant thereto, the conduct of special assessment proceedings by the Authority pursuant to Chapter 29 and the issuance of bonds to finance or refinance Improvements.

2. In connection with the Programs, the City hereby consents to the conduct of special assessment proceedings by the Authority pursuant to Chapter 29 on any property within the territory of the City and the issuance of bonds to finance or refinance Improvements; provided, that

(A) The Participating Property Owners, who shall be the legal owners of such property, execute a contract pursuant to Chapter 29 and comply with other applicable provisions of California law in order to accomplish the valid levy of assessments; and

(B) The City will not be responsible for the conduct of any assessment proceedings; the levy of assessments; any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of any bonds issued in connection with the Programs.

(C) The PACE program administrator utilized by the Authority shall be required to sign and agree to the Letter of Agreement Regarding Operational Requirements for Property Assessed Clean Energy (PACE) Programs in the City of Milpitas attached hereto as **Exhibit "A"** and the Association of Bay Area Governments' Agreement for Collaborative Services attached hereto as **Exhibit "B,"** each with such changes as may be approved by the City Attorney.

3. The appropriate officials and staff of the City are hereby authorized and directed to make applications for the Programs available to all property owners who wish to finance or refinance Improvements; provided, that the Authority shall be responsible for providing such applications and related materials at its own expense. The following staff persons, together with any other staff persons chosen by the City Manager of the City from time to time, are hereby designated as the contact persons for the Authority in connection with the Programs: Economic Development Director, City of Milpitas, 455 E Calaveras Blvd, Milpitas, CA 95035.

4. The City Manager or his designee is hereby authorized and directed to execute and deliver such certificates, requisitions, agreements and related documents as are reasonably required by the Authority to implement the Programs.

5. The City Council hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act, because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4).

6. This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this Resolution to the Secretary of the Authority at: Secretary of the Board, California Statewide Communities Development Authority, 1400 K Street, Sacramento, CA 95814.

PASSED AND ADOPTED this _____ day of _____ 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: APPROVED:

_____ _____

Mary Lavelle, City Clerk Rich Tran, Mayor

APPROVED AS TO FORM:

_____

Christopher J. Diaz, City Attorney

EXHIBIT A

LETTER OF AGREEMENT REGARDING OPERATIONAL REQUIREMENTS FOR PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAMS IN THE CITY OF MILPITAS

The City of Milpitas evaluated PACE Program operations within the City jurisdiction and has established several operating conditions to better protect the interest of our community. [Name of Program Administrator] has established the [Name of PACE Program], a Property Assessed Clean Energy (PACE) financing program and agrees to meet the provisions stated below in order to operate its program within the City.

Provisions

1. **Early Pay-off.** [Name of PACE Program] and [Name of Program Administrator] will not charge differential interest rates or pre-payment penalties to property owner for early pay off of the full outstanding balance of the PACE assessments.

2. **Regional Agreement.** [Name of PACE Program] and [Name of Program Administrator] has signed the Association of Bay Area Governments' (ABAG) Regional Collaborative Services Agreement (RCSA) and will continue to implement the requirements of the RCSA.

3. **Contractor Solicitation.** [Name of PACE Program] and [Name of Program Administrator] will provide to each Registered Contractor the City's requirement to obtain a business license, pay the applicable business license tax and on fingerprinting[1] and will continue to provide the requirements on a yearly basis to ensure contractor oversight.

[Name of Program Administrator] is aware of the additional operating provisions established by the City of Milpitas above and agrees to conform with these requirements so long as it offers its program within the City's jurisdiction and agrees that failure to abide by these requirements may result in City's termination of PACE Program's authorization to operate within the City.

PACE PROVIDER:
[Name of Program Administrator]

By: _____

Name: _____

Title: _____

Date: _____

[1] Milpitas Municipal Code, Title III, Chapter 1

DRAFT

EXHIBIT B

ADOPTION OF AGREEMENT
FOR COLLABORATIVE SERVICES

The City of Milpitas hereby adopts the Agreement for Collaborative Services ("Agreement") attached hereto as **Exhibit 1** and incorporated herein, establishing operating procedures for the _____ [PACE Program] within the jurisdiction of the City of Milpitas.

_____ [PACE Program] acknowledges and agrees that City of Milpitas is a "Participating Entity" as defined by Section 1.3 of the Agreement and shall be entitled to all the rights and benefits under the Agreement and may enforce the provisions thereof.

_____ [PACE Program] further acknowledges and agrees that it shall defend, indemnify, hold harmless, and waive subrogation against the City of Milpitas and its elected and appointed officials, officers and employees, to the extent set forth in Section 6 of the Agreement, and City of Milpitas shall be covered as an additional insured pursuant to Attachment 2, Section (d)(i) of the Agreement.

City of Milpitas:

By: _____ Date: _____
Steve J. Pangelinan
Acting City Manager

_____ [PACE Program]:

By: _____ Date: _____

Method and Place of Giving Notice. All notices to the Participating Entity shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices shall be addressed as follows:

Edesa Bitbadal, Economic Development Director
455 E Calaveras Blvd
Milpitas, CA 95035
ebitbadal@ci.milpitas.ca.gov

EXHIBIT 1

AGREEMENT FOR COLLABORATIVE SERVICES

FOR PROPERTY ASSESSED CLEAN ENERGY FINANCING

This Agreement for Collaborative Services ("Agreement"), dated as of , 2016 (“Effective Date”) is by and among the Association of Bay Area Governments (hereinafter "ABAG"), ***[insert PACE program provider name]***, (hereinafter "PACE Provider"), as an entity administering a Property Assessed Clean Energy (PACE) financing program utilizing either the California Assembly Bill 811 and/or California Senate Bill 555 model and any Participating Entity, as defined in Section 1.3 below, that adopts this Agreement.

R E C I T A L S

WHEREAS, ABAG is committed to mitigating and adapting to the causes and impacts of climate change and supporting energy independence from fossil fuels to safeguard the environment, human health and the economy; and

WHEREAS, ABAG as Program Administrator for the Bay Area Regional Energy Network (BayREN), works closely with 101 cities in the nine county Bay Area region (ABAG territory) to develop and implement innovative energy efficiency programs, including supporting commercial and residential Property Assessed Clean Energy (PACE) programs; and

WHEREAS, the BayREN offers programs, technical resources and education for energy upgrades and retrofits; and

WHEREAS, the objective of the BayREN is to help property owners save energy, save money, and live comfortably; and

WHEREAS, the BayREN seeks to assist local governments to understand all aspects of partnering with PACE Providers in order to minimize customer confusion, provide access to education and information to property owners and assist with making informed decisions on rebates and incentives, contractor programs, and financing options; and

WHEREAS, the PACE Provider is willing to participate to support community climate goals and minimize consumer and contractor confusion; and

WHEREAS, the PACE Provider will provide support and resources to any Participating Entity as requested related to education, outreach and development of the energy upgrade industry and trades; and

WHEREAS, the PACE Provider will support, align and integrate its efforts with the community-wide goals for job creation, resource demand reduction, and renewable energy generation; and

WHEREAS, the PACE Provider will establish its own interest rates, repayment terms, and fees as state and federal laws and the market defines and allows; and

WHEREAS, the PACE Provider will arrange for the collection of Property Assessed Clean Energy assessments it has financed directly with the Participating Entity's County Tax Collector's Office; and

WHEREAS, this Agreement does not include any financial arrangements between the PACE Provider, ABAG and the Participating Entity adopting this Agreement, nor does it preclude any separate contracts, contract terms for services or support; and

WHEREAS, the purpose of this Agreement is to set forth the mutual understandings between ABAG and the PACE Provider and to establish basic operating procedures for any PACE provider operating within the ABAG territory, and any Participating Entity that adopts this agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

A G R E E M E N T

1 Definitions.

1.1 "**Eligible improvement**" is a technology, product or tool officially approved by the PACE provider. The improvements may include distributed generation renewable energy sources, energy and water efficiency improvements, and electric vehicle charging infrastructure improvements that will be permanently affixed to real property, and any additional improvements deemed eligible in the future by the California Legislature and/or the California Judiciary.

1.2 "**PACE Provider**" is an entity participating in ABAG territory administering a program providing Property Assessed Clean Energy (PACE) financing.

1.3 **"Participating Entity"** is any city, town, county or the City and County of San Francisco located within ABAG's geographical boundaries that adopt this Agreement.

1.4 **"Participating Contractor"** is any contractor that has agreed to, and abides, by the terms and conditions of the PACE Provider's contractor standards.

1.5 "**Property Assessed Clean Energy (PACE) Financing**" is a means of financing distributed generation, renewable energy sources, energy and water efficiency improvements, electric vehicle charging infrastructure and other improvements deemed eligible by the California legislature that will be permanently affixed to real property, whereby the funds provided to pay for the improvements are repaid through contractual assessments and/or special taxes, utilizing either California Assembly Bill 811 (Levine, 2008) ("AB 811"), which amended §§5898.10-5899.3 of the California Streets and Highways Code; or California Senate Bill 555 (Hancock, 2011) ("SB 555"), which amended certain portions of §§53311-53368.3 of the California Government Code and each as subsequently amended.

1.6 "**Work"** as defined throughout this Agreement is the collaborative, non-competitive, effort between the PACE Provider and ABAG to support the citizens of ABAG member jurisdictions in completing water, energy efficiency upgrades, and the installation of renewable energy generating improvements.

2 Scope of Work / Collaboration.

2.1 PACE Provider's Specified Services. The PACE Provider will offer and provide Property Assessed Clean Energy Financing under the requirements of AB 811 and/or SB 555.

2.2 Performance Standard. PACE Provider shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by an organization administering a Property Assessed Clean Energy financing program pursuant to California Assembly Bill 811 and/or California Senate Bill 555. ABAG has relied upon the professional ability and expertise of PACE Provider as a material inducement to enter into this Agreement. PACE Provider hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws. If ABAG is concerned that any of PACE Provider's work is not in accordance with the level of competency and standard of care described herein, ABAG shall have the right to do any or all of the following: (a) require PACE Provider to

discuss with Participating Entity and/or to review the quality of the work and resolve matters of concern; (b) terminate this Agreement pursuant to the provisions of Section 5, Termination; or (c) pursue any and all other remedies available to ABAG at law or in equity.

Financing Provision Requirements.

The PACE Provider will:

2.3.1 Include a process to receive acknowledgement and confirmation of satisfaction with work completed from the applicant before project payment is disbursed and have a published dispute resolution process available for customers.

2.3.2 Provide summary of financing details (including assessment or special tax amount and terms, financing installments and estimated administrative expenses) to the applicant specific to the requested amount of the financing.

2.3.3 For residential properties, require an applicant's acknowledgment of the Federal Housing Finance Agency position on PACE by a separate signature/initial acknowledgement, in a Residential Disclosure Signature Form that is substantially similar in content to Attachment 1(a) or 1(b), as approved by ABAG.

2.3.4 Provide training to contractors and information to property owners on the availability of rebates (for all utility and generation types), including and not limited to city and county rebate programs, BayREN programs, PG&E programs, and other such offerings. (For information about local programs, the contractor and/or home owner may be directed to the BayREN Home Upgrade Advisor at 866-878-6008.)

2.3.5 Require that applicable building permits are obtained for all improvements in Participating Entities.

2.3.6 Verify that all property taxes for the assessed property are current for the previous three years or since the current owner acquired the property, whichever is shorter.

2.3.7 Recommend that property owners consult with a tax professional prior to claiming any tax deductions associated with the project and not recommend that homeowners take any particular filing position regarding their annual or semi-annual PACE assessment payments.

2.3.8 Not represent that the full assessment is tax deductible.

2.3.9 Have a consistent plan for removal of assessments at end of repayment term, prepayment and/or in the event of program closure.

2.4 Financial Policies.

The PACE Provider will:

2.4.1 For programs offering residential PACE financing, be an active participant in the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) PACE Loan Loss Reserve Program or comparable loan loss reserve program which includes at minimum the parameters outlined in Attachment 2.

2.4.2 Notify ABAG six months in advance if funding capacity available from the PACE Provider to prospective PACE customers in the Participating Entity will fall below the amount dispersed in the previous six months of operation.

2.4.3 Notify ABAG of any foreclosure action as a result of a default in the payment of a PACE assessment on property within ABAG's geographical boundaries, where the PACE assessment was originated by the PACE Provider.

2.5 Documents, Data, and Information Policies.

The PACE Provider will:

2.5.1 Provide to Participating Entity (for internal evaluation purposes only and not for distribution to any third party or for marketing purposes, other than as required by law, by request of Participating Entity, electronic access to the name, business name, and California State Contractors license number of participating contractors of the PACE Provider's program whose business address is located in the requesting Participating Entity or who conduct business in the requesting Participating Entity.

2.5.2 Retain completed Residential Disclosure (hardcopy or electronic) on file for duration of assessment, and furnish to Participating Entity upon request.

2.5.3 Provide upon request either direct real time access to data or quarterly reports in an open electronic file format (such as Microsoft Excel) to Participating Entity by request for internal evaluation purposes only (and not for distribution to any third party, including, without limitation, utility companies, services providers and equipment manufacturers or for marketing purposes) that includes the following information for each assessment:

a. Required data:

i. Assessor's Parcel Number (APN) of the property

ii. Dollar amount financed (the amount of the assessment and/or special tax)
iii. Listing of all energy efficiency and water conservation eligible improvements installed by virtue of the financing, including the unit of measure for the improvement and the quantity installed as captured by Participating Contractor
iv. Listing of all renewable generation improvements installed and the solar STC-DC rating in watts or kilowatts as captured by Participating Contractor
v. Estimated energy and water savings (in appropriate units) associated with the project

b. If available (in the aggregate):

i. Amount of rebate or incentive dollars associated with the project (not financed) and the name of the program
ii. How the customer heard about PACE financing
iii. Why the customer selected PACE over other financing instruments available
iv. Why the customer selected their final PACE Provider over the other members

The Participating Entity will:
Maintain the privacy and security of data received from PACE Provider. Participating Entity shall comply with all applicable state and federal laws, regulations and applicable California Public Utilities Commission regulations. Participating Entity may only provide reports relating to Section 2.5.3(a)(ii)-(v) for public distribution that aggregate the data such that individual customer information cannot be identified, unless such customer has authorized written release of individual customer information. A Participating Entity shall not share with any third party the data and reports provided by a PACE Provider pursuant to Section 2.5.3(b) (if any).

2.5.4 Provide the documents required for participation in the PACE Providers' PACE Financing program to Participating Entity officials.
2.5.5 Provide support to Participating Entity's staff to facilitate adoption of required participation documents.

2.6 ABAG will encourage Participating Entity to offer staff resources and support to bring forward to their respective boards or councils the documents

provided by the PACE Provider required for participation in the PACE Provider's PACE financing product.

2.7 Branding / Marketing Requirements.

The Parties will:

2.7.1 Collaborate on any local and/or regional efforts that may impact PACE financing participation to achieve the best possible outcome for property owners.

2.7.2 Represent the role of ABAG as the local neutral third party, not-for-profit, public service agency supporting the public through the upgrade process, with the following message to consumers: Among the financing products available, competition is encouraged to the benefit of the consumer, with the common goal of successful completion of projects.

The PACE Provider will:

2.7.3 Provide assistance to ABAG and any Participating Entity signing this Agreement for: (1) coordinating and implementing the integration of the PACE Provider into applicable BayREN and other relevant energy efficiency programs; and (2) support of contractor training.

2.7.4 Provide specific training for participating contractors engaged with local PACE programs using the PACE Provider's financing product, materials, collateral, tools, and associated software, through training offered directly from the PACE Provider.

2.7.5 Provide professional services, template documents, and other services reasonably necessary to staff for integrating the PACE Provider's financing option into the websites of any Participating Entity requesting such assistance.

2.7.6 Provide training and resources to any Participating Entity as needed to build understanding and support for use of the PACE financing product

ABAG will encourage ABAG members to:

2.7.7 Present with impartiality the financing products of the PACE Providers in all venues to the public.

2.7.8 Present marketing collateral of all financing products (where applicable) with impartiality in education and outreach materials and events

2.8 PACE Providers Responsibilities Regarding Participating Contractor.

PACE Providers will:

2.8.1 Require that contractors have the appropriate California State License Board (CSLB) license in good standing

2.8.2 Require, in accordance with California State License Board requirements, that contractors' bonding is in good standing

2.8.3 Require, in accordance with California State License Board requirements, that contractors have appropriate Workers' Compensation coverage

2.8.4 Require that contractors have a minimum of $1M of commercial general liability insurance

2.8.5 NOT endorse, recommend, or refer any specific contractor other than contractors who are to PACE Provider's knowledge, in good standing with CSLB, are insured and meet material program eligibility requirements

2.8.6 NOT make any representation or warranty regarding the qualifications, licensing, products, or workmanship of any contractor

2.8.7 NOT make any warranty regarding the contractor's work or products purchased from contractors provided

2.8.8 NOT accept any liability that may be alleged to arise from the work of any listed contractor on a customer project or from any reliance on any claims, statements, or other descriptions regarding a contractor's certifications, licenses, qualifications or products

2.8.9 Comply with provisions of Section 2.3.7 of this Agreement.

2.8.10 Via trainings and customer complaint system, require that contractors and their representatives, employees, and agents do not represent themselves as agents, representatives, contractors, subcontractors, or employees of ABAG or any Participating Entity, or claim association or affiliation with ABAG or any Participating Entity.

2.8.11 Independently engages the Participating Entity's Tax Collector for administration of property tax assessments placed through its financing product.

3 **Payment.** This Agreement does not include any financial arrangements between the PACE Provider and ABAG, nor does it preclude any separate contracts for services or support.

4 **Term of Agreement.** The term of this Agreement shall be from the Effective Date until termination in accordance with the provisions of Section 5, Termination below.

5 Termination.

5.1 Termination without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, ABAG, PACE Provider, or any Participating Entity shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to the other Party to this Agreement; provided that a party's termination of this Agreement under this section shall not automatically terminate any other agreement or contract between the other parties.

5.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should the PACE Provider fail to uphold any of its obligations under this Agreement in a material way, within the time and in the manner herein provided, or otherwise materially violate any of the terms of this Agreement, ABAG or a Participating Entity may, after providing the PACE Provider with a thirty (30) day cure period, immediately terminate this Agreement by giving PACE Provider written notice of such termination, stating the reason for termination; provided that the termination of this Agreement shall not automatically terminate any other agreement or contract between or among the parties.

5.3 Delivery of Data and Information upon Termination. In the event of termination, PACE Provider, within 14 days following the date of termination, shall deliver to the extent legally permitted to Participating Entity all raw data and information in an editable electronic format as outlined in and subject to the terms of Section 2.5, Document, Data, and Information Policies.

5.4 Authority to Terminate. The Executive Director of ABAG has the authority to terminate this Agreement on behalf of ABAG

5.5 Effect of Termination. Termination of this Agreement by ABAG or Participating Entity shall not affect the ability to levy and collect assessments and the PACE Provider's ability to issue bonds for assessment contracts located within the jurisdiction of such entity which have been entered into prior to the date of termination.

In the event of termination pursuant to this Section 5 by ABAG, ABAG may notify all Participating Entities of said termination.

6 Hold Harmless, Indemnity and Waiver of Subrogation.

To the fullest extent allowed by law, PACE Provider shall defend, indemnify, save harmless and waive subrogation against the ABAG, and its members, elected and appointed officials, officers and employees (Indemnitees) against any and all liability, claims, losses, damages, or expenses, including reasonable attorneys' fees, arising from

all acts or omissions to act of PACE Provider or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages or expenses resulting from an intentional act or the gross negligence of an Indemnitee.

This section shall in no event be construed to require indemnification by PACE Provider to a greater extent than permitted under the public policy or laws of the State of California. These defense and indemnification obligations are undertaken in addition to, and shall not in any way be limited by, the insurance obligations set forth in this Agreement. These defense and indemnification obligations shall survive the termination or expiration of the contract for the full period of time permitted by law.

7 **Insurance Requirements.** PACE provider shall obtain and maintain insurance as required in Attachment 2.

8 Prosecution of Work. The execution of this Agreement shall constitute PACE Provider's authority to proceed immediately with the performance of this Agreement.

9 Representations of PACE Provider.

9.1 Standard of Care. ABAG and Participating Entity have relied upon the professional ability and training of PACE Provider as a material inducement to entering into this Agreement. PACE Provider hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws.

9.2 Status of PACE Provider. The parties intend that PACE Provider, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. PACE Provider is not to be considered an agent or employee of ABAG or of any Participating Entity and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, employment protection, or similar benefits that ABAG or the Participating Entity provides its employees.

9.3 Conflict of Interest. PACE Provider covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in

any manner or degree with the performance of its services hereunder. PACE Provider further covenants that in the performance of this Agreement no person having any such interests shall be employed.

9.4 Statutory Compliance. PACE Provider agrees to comply with all federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement.

9.5 Nondiscrimination. Without limiting any other provision hereunder, PACE Provider shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, gender identity, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.6 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of PACE Provider.

10 Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, conduct, or service does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits the parties' right to terminate this Agreement pursuant to Section 5, Termination.

11 Assignment and Delegation. No party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented; provided however, that

PACE Provider may assign this Agreement in connection with a merger or the sale of all or substantially all of its assets or equity ownership without the prior written consent of any other party provided that the successor expressly assumes all of the obligations, including this Agreement, and confirms all of the representations, warranties and covenants of PACE Provider hereunder.

12 Method and Place of Giving Notice. All notices shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service to:

TO: ABAG: Address
Email address: _____

TO: PACE PROVIDER: _____
_____
_____

Email address: _____

When a notice is given by a generally recognized overnight courier service, the notice shall be deemed received on the next business day. When a copy of a notice is sent by facsimile or email, the notice shall be deemed received upon transmission as long as (1) the original copy of the notice is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email, (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13 Miscellaneous Provisions.

13.1 No Waiver of Breach. The waiver by a party of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and

agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. PACE Provider and ABAG acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Each party hereto acknowledges that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Alameda.

13.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Counterparts. This Agreement may be executed in two or more counterparts, a complete set of which shall be deemed an original, constituting one and the same instrument. The delivery by facsimile or electronic mail of an executed copy of this Amendment shall be deemed valid as if an original signature was delivered

Continued on next page:

IN WITNESS WHEREOF, the ABAG and the PACE Provider hereto have executed this Agreement as of the Effective Date.

PACE PROVIDER: _____	ABAG: _____
By: _____	By:_____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPROVED AS TO FORM FOR ABAG

Date: _____ By: _____
Kenneth Moy, ABAG Counsel

ATTACHMENT 1(a)

ALERT: Fannie Mae/Freddie Mac Instructions for Lenders

SINGLE FAMILY HOME OWNERS: In May, 2010, Fannie Mae and Freddie Mac, government sponsored enterprises that purchase a large segment of conforming single family home mortgages, issued new instructions to lending institutions on how to treat properties with assessments under Property Assessed Clean Energy (PACE) programs such as _____. These letters, and additional statements issued by the Federal Housing Finance Agency, the agency that regulates single family home lenders, instruct lenders to treat energy assessments as "loans" instead of "assessments."

On August 31, 2010, the agencies issued additional instructions to lenders that Fannie Mae and Freddie Mac "will not purchase mortgage loans secured by properties with an outstanding PACE obligation."

These letters and statements may lead lenders to conclude the PACE assessment should be paid off before a property transfers or is refinanced. In addition, it may lead some lenders to conclude that participating in PACE program is a violation of typical mortgage terms prohibiting prior liens without lender consent. If you are selling your property, a buyer's lender may refuse to finance the buyer's first mortgage loan unless the assessment is paid off. We urge you to carefully read the disclosure information in the Program application, review your mortgage documents, evaluate the risks of proceeding with an application at this time, and contact your lender if you have any concerns or for information regarding any other financing options that may be available to you.

I/We have read the above statement. All property owners on title must initial below:

_____	_____	_____	_____
Initials	*Date*	*Initials*	*Date*
_____	_____	_____	_____
Initials	*Date*	*Initials*	*Date*

Continued on next page:

Electronic links to the copies of letters from the Federal Financing Housing Authority re: PACE programs:

- https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/ll1006.pdf
- http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/iltr050510.pdf
- http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx
- http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Acting-Director-Edward-J-DeMarco-on-PACE-Programs.aspx
- https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/sel1012.pdf
- http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1020.pdf

ATTACHMENT 1(b)

BEFORE COMPLETING A PROGRAM APPLICATION, YOU SHOULD CAREFULLY REVIEW ANY MORTGAGE AGREEMENT(S) OR OTHER SECURITY INSTRUMENT(S) WHICH AFFECT THE PROPERTY OR TO WHICH YOU AS THE PROPERTY OWNER ARE A PARTY. ENTERING INTO A PROGRAM ASSESSMENT CONTRACT WITHOUT THE CONSENT OF YOUR EXISTING LENDER(S) COULD CONSTITUTE AN EVENT OF DEFAULT UNDER SUCH AGREEMENTS OR SECURITY INSTRUMENTS. DEFAULTING UNDER AN EXISTING MORTGAGE AGREEMENT OR SECURITY INSTRUMENT COULD HAVE SERIOUS CONSEQUENCES TO YOU, WHICH COULD INCLUDE THE ACCELERATION OF THE REPAYMENT OBLIGATIONS DUE UNDER SUCH AGREEMENT OR SECURITY INSTRUMENT. IN ADDITION, FANNIE MAE AND FREDDIE MAC, THE OWNER OF A SIGNIFICANT PORTION OF ALL HOME MORTGAGES, STATED THAT THEY WOULD NOT PURCHASE HOME LOANS WITH ASSESSMENTS SUCH AS THOSE OFFERED BY THE AUTHORITY. THIS MAY MEAN THAT PROPERTY OWNERS WHO SELL OR REFINANCE THEIR PROPERTY MAY BE REQUIRED TO PREPAY SUCH ASSESSMENTS AT THE TIME THEY CLOSE THEIR SALE OR REFINANCING.

I/We have read the above statement. All property owners on title must initial below:

Initials	*Date*	*Initials*	*Date*
Initials	*Date*	*Initials*	*Date*

ATTACHMENT 2

Insurance Requirements. PACE Provider shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a period of five (5) years following the completion of this project. PACE Provider shall provide a copy of section 21 of this contract and these insurance requirements to its insurance broker or insurer to confirm compliance. In the event PACE Provider fails to obtain or maintain completed operations coverage as required by this agreement, ABAG, at its sole discretion, may purchase the coverage required and the cost will be paid by PACE Provider. The limits of insurance required in hereunder may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the Indemnitees (if agreed to in a written contract or agreement) before the any Indemnitee's own Insurance or self-insurance shall be called upon to protect it as a named insured.

(a) Minimum Scope of Insurance. Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage
(occurrence Form CG 0001).

Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Errors and Omissions Liability insurance appropriate to the PACE Provider's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

(b) Minimum Limits of Insurance. PACE Provider shall maintain limits no less than:

General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
Automobile Liability: $1,000,000 per accident for bodily injury and property damage.
Employer's Liability: $1,000,000 per accident for bodily injury or disease.
Errors and Omissions Liability: $1,000,000 per claim/aggregate.

(c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by ABAG. The insurer shall reduce or eliminate such

deductibles or self-insured retentions as respects the Indemnitees; or the PACE Provider shall satisfy any such deductibles or self-insured retentions. In addition, policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or any of the Indemnitees.

(d) Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) The Indemnitees are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of PACE Provider; completed operations; or automobiles owned, leased, hired or borrowed by PACE Provider.

(ii) For any claims related to this project, the PACE Provider's insurance coverage shall be primary insurance as respects the Indemnitees.

(iii) Any insurance or self-insurance maintained by the Indemnitees shall be excess of PACE Provider's insurance and shall not contribute with it.

(iv) Except for General Liability and Automobile Liability, each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty(30) days' prior written notice by certified mail, return receipt requested, has been given to ABAG. For General Liability and Automobile Liability, PACE Provider shall provide ABAG with thirty (30) day's prior notice of cancellation by either the insurer or PACE Provider.

(v) Coverage shall not extend to any defense or indemnity coverage for the active negligence of the Indemnitees in any case where an agreement to defend and indemnify the Indemnitees would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

(e) Other Insurance Provisions – Workers Compensation. The Workers Compensation insurance shall be endorsed to waive subrogation against the Indemnitees.

(f) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to ABAG.

(g) Verification of Coverage. PACE Provider shall furnish the ABAG with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by ABAG before work commences. ABAG reserves the right to require complete, certified

copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE CITY OF MILPITAS TO JOIN THE FIGTREE PACE PROGRAM; AUTHORIZING THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY TO CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF MILPITAS; AND AUTHORIZING RELATED ACTIONS

WHEREAS, the California Enterprise Development Authority ("CEDA") has adopted the Figtree Property Assessed Clean Energy ("PACE") and Job Creation Program (the "Program" or "Figtree PACE"), to allow the financing of certain renewable energy, energy efficiency, seismic retrofits, electric vehicle charging infrastructure, and water efficiency improvements (the "Improvements") through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29"), and the issuance of improvement bonds or other evidences of indebtedness (the "Bonds") under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 et seq.) (the "1915 Act") upon the security of the unpaid contractual assessments; and

WHEREAS, Chapter 29 provides that assessments may be levied under its provisions only with the free and willing consent of the owner of each lot or parcel on which an assessment is levied at the time the assessment is levied; and

WHEREAS, the City of Milpitas (the "City") desires to allow the owners of property ("Participating Parcel") within its jurisdiction ("Participating Property Owners") to participate in Figtree PACE, and to allow CEDA to conduct assessment proceedings under Chapter 29 and to issue Bonds under the 1915 Act to finance the Improvements; and

WHEREAS, CEDA will conduct assessment proceedings under Chapter 29 to establish an assessment district (the "District") and issue Bonds under the 1915 Act to finance Improvements; and

WHEREAS, there has been presented to this meeting a proposed form of Resolution of Intention to be adopted by CEDA in connection with such assessment proceedings (the "ROI"), a copy of which is attached hereto as **Exhibit A**; and

WHEREAS, said ROI sets forth the territory within which assessments may be levied for Figtree PACE, which territory shall be coterminous with the City's official boundaries of record at the time of adoption of the ROI (the "Boundaries"); and

WHEREAS, pursuant to Chapter 29, the City authorizes CEDA to conduct assessment proceedings, levy assessments, pursue remedies in the event of delinquencies, and issue bonds or other forms of indebtedness to finance the Improvements in connection with Figtree PACE; and

WHEREAS, to protect the City in connection with operation of the Figtree PACE program, Figtree Energy Financing, the program administrator, has agreed to defend and indemnify the City; and

WHEREAS, the City will not be responsible for the conduct of any assessment proceedings, the levy of assessments, any required remedial action in the case of delinquencies, the issuance, sale or administration of the bonds or other indebtedness issued in connection with Figtree PACE.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. Good Standing. The City is either a municipal corporation or other public body and a member of CEDA in good standing.

2. Public Benefits. On the date hereof, the City Council hereby finds and determines that the Program and issuance of Bonds by CEDA in connection with Figtree PACE will provide significant public benefits, including without limitation, savings in effective interest rates, bond preparation, bond underwriting and bond issuance costs and reductions in effective user charges levied by water and electricity providers within the boundaries of the City.

3. Appointment of CEDA. The City hereby appoints CEDA as its representative to (i) record the assessment against the Participating Parcels, (ii) administer the District in accordance with the Improvement Act of 1915 (Chapter 29 Part 1 of Division 10 of the California Streets and Highways Code (commencing with Section 8500 et seq.) (the "Law"), (iii) prepare program guidelines for the operations of the Program and (iv) proceed with any claims, proceedings or legal actions as shall be necessary to collect past due assessments on the properties within the District in accordance with the Law and Section 6509.6 of the California Government Code. The City is not and will not be deemed to be an agent of Figtree or CEDA as a result of this Resolution.

4. Assessment Proceedings. In connection with Figtree PACE, the City hereby consents to the special assessment proceedings by CEDA pursuant to Chapter 29 on any property within the Boundaries and the issuance of Bonds under the 1915 Act, provided that:

(A) Such proceedings are conducted pursuant to one or more Resolutions of Intention in substantially the form of the ROI;
(B) The Participating Property Owners, who shall be the legal owners of such property, voluntarily execute a contract pursuant to Chapter 29 and comply with other applicable provisions of California law in order to accomplish the valid levy of assessments; and
(C) The City will not be responsible for the conduct of any assessment proceedings, the levy of assessments, any required remedial action in the case of delinquencies in such assessment payments, or the issuance, sale or administration of the Bonds in connection with Figtree PACE; and
(D) The PACE program administrator utilized by CEDA shall be required to sign and agree to the Letter of Agreement Regarding Operational Requirements for Property Assessed Clean Energy (PACE) Programs in the City of Milpitas attached hereto as **Exhibit "C"** and the Association of Bay Area Governments' Agreement for Collaborative Services attached hereto as **Exhibit "D"**, each with such changes as may be approved by the City Attorney.

5. Program Report. The City Council hereby acknowledges that pursuant to the requirements of Chapter 29, CEDA has prepared and will update from time to time the "Program Report" for Figtree PACE (the "Program Report") and associated documents, and CEDA will undertake assessment proceedings and the financing of Improvements as set forth in the Program Report.

6. Foreclosure. The City Council hereby acknowledges that the Law permits foreclosure in the event that there is a default in the payment of assessments due on a property. The City Council hereby designates CEDA as its representative to proceed with collection and foreclosure of the liens on the defaulting properties within the District, including accelerated foreclosure pursuant to the Program Report.

7. Indemnification. The City Council acknowledges that Figtree has provided the City with an indemnification agreement, as shown in **Exhibit B**, for negligence or malfeasance of any type as a result of the acts or omissions of Figtree, its officers, employees, subcontractors and agents. The City Council hereby

authorizes the City Manager or his designee to execute and deliver the Indemnification Agreement to Figtree.

8. City Contact Designation. The appropriate officials and staff of the City are hereby authorized and directed to make applications for Figtree PACE available to all property owners who wish to finance Improvements. The following staff persons, together with any other staff designated by the City Manager from time to time, are hereby designated as the contact persons for CEDA in connection with Figtree PACE: Economic Development Director, City of Milpitas, 455 East Calaveras Blvd., Milpitas, CA 95035.

9. City Execution of Documents. The City Manager or his designee are hereby authorized and directed to execute and deliver such closing certificates, requisitions, agreements and related documents as are reasonably required by CEDA in accordance with the Program Report to implement Figtree PACE for Participating Property Owners.

10. CEQA. The City Council hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act ("CEQA"), because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4)).

11. Effective Date. This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to Figtree Energy Financing.

12. Costs. Services related to the formation and administration of the assessment district will be provided by CEDA at no cost to the City.

PASSED AND ADOPTED this _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

_____

Mary Lavelle, City Clerk

_____

Rich Tran, Mayor

APPROVED AS TO FORM:

_____

Christopher J. Diaz, City Attorney

EXHIBIT A

CEDA Resolution of Intention

(For Council reference only, will be passed by CEDA)

RESOLUTION NO. _____

RESOLUTION OF THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY DECLARING INTENTION TO FINANCE INSTALLATION OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES, ENERGY EFFICIENCY, SEISMIC RETROFITS, ELECTRIC VEHICLE CHARING INFRASTRUCTURE, AND WATER EFFICIENCY IMPROVEMENTS IN THE CITY OF _____

WHEREAS, the California Enterprise Development Authority ("CEDA") is a joint powers authority organized and existing pursuant to the Joint Powers Act (Government Code Section 6500 et seq.) and that certain Joint Exercise of Powers Agreement (the "Agreement") dated as of June 1, 2006, among the cities of Eureka, Lancaster and Selma; and

WHEREAS, CEDA is authorized under the Agreement and Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California and in accordance with Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California ("Chapter 29") to authorize assessments to finance the installation of distributed generation renewable energy sources, energy efficiency, seismic retrofits, electric vehicle charging infrastructure, and water efficiency improvements that are permanently fixed to real property ("Authorized Improvements"); and

WHEREAS, CEDA has obtained authorization from the City of _____ (the "City") located in the County of _____ (the "County") to conduct assessment proceedings and to enter into contractual assessments to finance the installation of Authorized Improvements within the jurisdictional boundaries of the City pursuant to Chapter 29; and

WHEREAS, CEDA desires to declare its intention to establish a Figtree PACE program ("Figtree PACE") in the City, pursuant to which CEDA, subject to certain conditions set forth below, would enter into contractual assessments to finance the installation of Authorized Improvements in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY, AS FOLLOWS:

Section 1. Findings. The Board of Directors hereby finds and determines the following:

(a) The above recitals are true and correct and are incorporated herein by this reference.

(b) Energy and water conservation efforts, including the promotion of Authorized Improvements to residential, commercial, industrial, or other real property, are necessary to address the issue of global climate change and the reduction of greenhouse gas emissions in the City.

(c) The upfront cost of making residential, commercial, industrial, or other real property more energy and water efficient, along with the fact that most commercial loans for that purpose

are due on the sale of the property, prevents many property owners from installing Authorized Improvements.

(d) A public purpose will be served by establishing a contractual assessment program, to be known as Figtree PACE, pursuant to which CEDA will finance the installation of Authorized Improvements to residential, commercial, industrial, or other real property in the City.

Section 2. Determination of Public Interest. The Board of Directors hereby determines that (a) it would be convenient, advantageous, and in the public interest to designate an area, which shall encompass the entire geographic territory within the boundaries of the City, within which CEDA and property owners within the City may enter into contractual assessments to finance the installation of Authorized Improvements pursuant to Chapter 29 and (b) it is in the public interest for CEDA to finance the installation of Authorized Improvements in the City pursuant to Chapter 29.

Section 3. Identification of Authorized Improvements. CEDA hereby declares its intention to make contractual assessment financing available to property owners to finance installation of Authorized Improvements, including but not limited to those improvements detailed in the Report described in Section 8 hereof (the "Report"), as that Report may be amended from time to time.

Section 4. Identification of Boundaries. Contractual assessments may be entered into by property owners located within the entire geographic territory of the City.

Section 5. Proposed Financing Arrangements. Under Chapter 29, CEDA may issue bonds, notes or other forms of indebtedness (the "Bonds") pursuant to Chapter 29 that are payable by contractual assessments. Division 10 (commencing with Section 8500) of the Streets & Highways Code of the State (the "Improvement Bond Act of 1915") shall apply to any indebtedness issued pursuant to Chapter 29, insofar as the Improvement Bond Act of 1915 is not in conflict with Chapter 29. The creditworthiness of a property owner to participate in the financing of Authorized Improvements will be based on the criteria developed by Figtree Energy Financing (the "Program Administrator") upon consultation with Figtree PACE Program underwriters or other financial representatives, CEDA general counsel and bond counsel, and as shall be approved by the Board of Directors of CEDA. In connection with indebtedness issued under the Improvement Bond Act of 1915 that is payable from contractual assessments, serial and/or term improvement bonds or other indebtedness shall be issued in such series and shall mature in such principal amounts and at such times (not to exceed 20 years from the second day of September next following their date), and at such rate or rates of interest (not to exceed the maximum rate permitted by applicable law) as shall be determined by Board of Directors at the time of the issuance and sale of the indebtedness. The provisions of Part 11.1 of the Improvement Bond Act of 1915 shall apply to the calling of the bonds. It is the intention of CEDA to create a special reserve fund for the bonds under Part 16 of the Improvement Bond Act of 1915. Neither CEDA, nor any of its members participating in the Figtree PACE Program, shall advance available surplus funds from its treasury to cure any deficiency in the redemption fund to be created with respect to the indebtedness; provided, however, that this determination shall not prevent CEDA or any of its members from, in their sole discretion, so advancing funds. The Bonds may be refunded under Division 11.5 of the California Streets and Highways Code or other applicable laws permitting refunding, upon the conditions specified by and upon determination of CEDA.

CEDA hereby authorizes the Program Administrator, upon consultation with CEDA general counsel, bond counsel and the Figtree PACE underwriter, to commence preparation of documents and take necessary steps to prepare for the issuance of bonds, notes or other forms of indebtedness as authorized by Chapter 29.

In connection with the issuance of bonds payable from contractual assessments, CEDA expects to obligate itself, through a covenant with the owners of the bonds, to exercise its foreclosure rights with respect to delinquent contractual assessment installments under specified circumstances.

Section 6. Public Hearing. Pursuant to the Act, CEDA hereby orders that a public hearing be held before CEDA Board (the "Board"), at 550 Bercut Drive, Suite G, Sacramento, CA 95811, on _____, _____, at ____ A_, for the purposes of allowing interested persons to object to, or inquire about, the proposed Figtree PACE Program. The public hearing may be continued from time to time as determined by the Board for a time not exceeding a total of 180 days.

At the time of the hearing, the Report described in Section 8 hereof shall be summarized, and the Board shall afford all persons who are present an opportunity to comment upon, object to, or present evidence with regard to the proposed Figtree PACE Program, the extent of the area proposed to be included within the boundaries of the assessment district, the terms and conditions of the draft assessment contract described in Section 8 hereof (the "Contract"), or the proposed financing provisions. Following the public hearing, CEDA may adopt a resolution confirming the Report (the "Resolution Confirming Report") or may direct the Report's modification in any respect, or may abandon the proceedings.

The Board hereby orders the publication of a notice of public hearing once a week for two successive weeks. Two publications in a newspaper published once a week or more often, with at least five days intervening between the respective publication dates not counting such publication dates, are sufficient. The period of notice will commence upon the first day of publication and terminate at the end of the fourteenth day. The first publication shall occur not later than 20 days before the date of the public hearing.

Section 7. Notice to Water and Electric Providers. Pursuant to Section 5898.24 of the Streets & Highways Code, written notice of the proposed contractual assessment program within the City to all water and electric providers within the boundaries of the City has been provided.

Section 8. Report. The Board hereby directs the Program Administrator to prepare the Report and file said Report with the Board at or before the time of the public hearing described in Section 6 hereof containing all of the following:

a) A map showing the boundaries of the territory within which contractual assessments are proposed to be offered, as set forth in Section 4 hereof.

b) A draft contractual assessment contract (the "Contract") specifying the terms and conditions of the agreement between CEDA and a property owner within the City.

c) A statement of CEDA's policies concerning contractual assessments including all of the following:
   (1) Identification of types of Authorized Improvements that may be financed through the use of contractual assessments.
   (2) Identification of the CEDA official authorized to enter into contractual assessments on behalf of CEDA.
   (3) A maximum aggregate dollar amount of contractual assessments.
   (4) A method for setting requests from property owners for financing through contractual assessments in priority order in the event that requests appear likely to exceed the authorization amount.

d) A plan for raising a capital amount required to pay for work performed in connection with contractual assessments. The plan may include the sale of a bond or bonds or other financing relationship pursuant to Section 5898.28 of Chapter 29. The plan (i) shall include

a statement of, or method for determining, the interest rate and time period during which contracting property owners would pay any assessment, (ii) shall provide for any reserve fund or funds, and (iii) shall provide for the apportionment of all or any portion of the costs incidental to financing, administration and collection of the contractual assessment program among the consenting property owners and CEDA.

e) A report on the results of the discussions with the County Auditor-Controller described in Section 10 hereof, concerning the additional fees, if any, that will be charged to CEDA for inclusion of the proposed contractual assessments on the general property tax roll of the County, and a plan for financing the payment of those fees.

Section 9. Nature of Assessments. Assessments levied pursuant to Chapter 29, and the interest and any penalties thereon, will constitute a lien against the lots and parcels of land on which they are made, until they are paid. Unless otherwise directed by CEDA, the assessments shall be collected in the same manner and at the same time as the general taxes of the County on real property are payable, and subject to the same penalties and remedies and lien priorities in the event of delinquency and default.

Section 10. Consultations with County Auditor-Controller. CEDA hereby directs the Program Administrator to enter into discussions with the County Auditor-Controller in order to reach agreement on what additional fees, if any, will be charged to CEDA for incorporating the proposed contractual assessments into the assessments of the general taxes of the County on real property.

Section 11. Preparation of Current Roll of Assessment. Pursuant to Section 5898.24(c), CEDA hereby designates the Program Administrator as the responsible party for annually preparing the current roll of assessment obligations by assessor's parcel number on property subject to a voluntary contractual assessment.

Section 12. Procedures for Responding to Inquiries. The Program Administrator shall establish procedures to promptly respond to inquiries concerning current and future estimated liability for a voluntary contractual assessment.

Section 13. Effective Date. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this _____ day of _____, 201_.

CALIFORNIA ENTERPRISE
DEVELOPMENT AUTHORITY

By:_____
Gurbax Sahota, Chair

ATTEST:

_____
Helen Schaubmayer, Assistant Secretary

EXHIBIT B

INDEMNIFICATION AGREEMENT

BY AND BETWEEN THE CITY OF MILPITAS AND FIGTREE COMPANY, INC.

This Indemnification Agreement (the "Agreement") is entered into by and between the City of Milpitas, a municipal corporation or political subdivision, duly organized and existing under the laws of the State of California (the "Public Entity") and Figtree Company, Inc., a California corporation, the administrator of the Figtree Property Assessed Clean Energy and Job Creation Program (the "Administrator"), which is a program of the California Enterprise Development Authority, a California joint exercise of powers authority (the "Authority").

RECITALS

WHEREAS, the Authority is a joint exercise of powers authority whose members include the Public Entity in addition to other cities and counties in the State of California; and

WHEREAS, the Authority established the Figtree Property Assessed Clean Energy and Job Creation Program (the "Figtree PACE Program") to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements that are permanently affixed to real property through the levy of assessments voluntarily agreed to by the participating property owners pursuant to Chapter 29 of Division 7 of the Streets and Highways Code ("Chapter 29") and the issuance of improvement bonds, or other forms of indebtedness, under the Improvement Bond Act of 1915 upon the security of the unpaid assessments; and

WHEREAS, the Authority has conducted or will conduct proceedings required by Chapter 29 with respect to the territory within the boundaries of the Public Entity; and

WHEREAS, the legislative body of the Public Entity adopted or will adopt a resolution authorizing the Public Entity to join the Figtree PACE Program; and

WHEREAS, the Public Entity will not be responsible for the formation, operation and administration of the Figtree PACE Program as well as the sale and issuance of any bonds or other forms of indebtedness in connection therewith, including the conducting of assessment proceedings, the levy and collection of assessments and any remedial action in the case of such assessment payments, and the offer, sale and administration of any bonds issued by the Authority on behalf of the Figtree PACE Program; and

WHEREAS, the Administrator is the administrator of the Figtree PACE Program and agrees to indemnify the Public Entity in connection with the operations of the Figtree PACE Program as set forth herein;

NOW, THERFORE, in consideration of the above premises and of the Public Entity's agreement to join the Figtree PACE Program, the parties agree as follows:

1 . Indemnification. Figtree has provided the CEDA with an indemnification for negligence or malfeasance of any type as a result of the acts or omissions of Figtree, its officers, employees, subcontractors and agents, arising from or related to the Figtree PACE Program, the assessments, the assessment districts, the improvements or the financing and marketing thereof. Figtree agrees to defend, indemnify and hold harmless the Public Entity, its officers, elected or appointed officials, employees,

agents and volunteers from and against any and all actions, suits, proceedings, claims, demands, losses, costs and expenses, including legal costs and attorneys' fees, for injury or damage due to negligence or malfeasance of any type claims as a result of the acts or omissions of Figtree, except for such loss or damage which was caused by the sole negligence or willful misconduct of the Public Entity. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by Figtree.

2. Amendment/Interpretation of this 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. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. This Agreement 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.

3. Section Headings. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

4. Waiver. No waiver of any of the provisions of this Agreement shall be binding unless in the form of writing signed by the party against whom enforcement is sought, and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

5. Severability and Governing Law. If any provision or portion thereof of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California applicable to contracts made and to be performed in California.

6. Notices. All notices, demands and other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered by hand, against receipt, or mailed certified or registered mail and addressed as follows:

If to the Administrator:	**Dividend Finance / Figtree PACE Program** **9330 Scranton Road, Suite 600** **San Diego, CA 92121** **Attn: Chief Executive Officer**
If to the Public Entity:	**City of Milpitas** **455 East Calaveras Blvd.** **Milpitas, CA 95035** **Attn: City Manager**

7. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, which together shall constitute the same instrument.

8. Effective Date. This Agreement will be effective as of the date of the signature of Public Entity's representative as indicated below in the signature block.

IN WITNESS HEREOF, the parties hereto duly executed this Agreement as of the date below.

APPROVED AS TO FORM:

_____

Christopher J. Diaz, City Attorney

CITY OF MILPITAS

By_____

Name: Steve J. Pangelinan

Title: Interim City Manager

Date: _____

Figtree PACE Program

By_____

Name: Peter Grabell

Title: Senior Vice President

Date: _____

EXHIBIT C

LETTER OF AGREEMENT REGARDING OPERATIONAL REQUIREMENTS FOR PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAMS IN THE CITY OF MILPITAS

The City of Milpitas evaluated PACE Program operations within the City jurisdiction and has established several operating conditions to better protect the interest of our community. [Name of Program Administrator] has established the [Name of PACE Program], a Property Assessed Clean Energy (PACE) financing program and agrees to meet the provisions stated below in order to operate its program within the City.

Provisions

1. **Early Pay-off.** [Name of PACE Program] and [Name of Program Administrator] will not charge differential interest rates or pre-payment penalties to property owner for early pay off of the full outstanding balance of the PACE assessments.

2. **Regional Agreement.** [Name of PACE Program] and [Name of Program Administrator] has signed the Association of Bay Area Governments' (ABAG) Regional Collaborative Services Agreement (RCSA) and will continue to implement the requirements of the RCSA.

3. **Contractor Solicitation.** [Name of PACE Program] and [Name of Program Administrator] will provide to each Registered Contractor the City's requirement to obtain a business license, pay the applicable business license tax and on fingerprinting[1] and will continue to provide the requirements on a yearly basis to ensure contractor oversight.

[Name of Program Administrator] is aware of the additional operating provisions established by the City of Milpitas above and agrees to conform with these requirements so long as it offers its program within the City's jurisdiction and agrees that failure to abide by these requirements may result in City's termination of PACE Program's authorization to operate within the City.

PACE PROVIDER:
[Name of Program Administrator]

By: _____

Name: _____

Title: _____

Date: _____

[1] Milpitas Municipal Code, Title III, Chapter 1

DRAFT

EXHIBIT D

ADOPTION OF AGREEMENT
FOR COLLABORATIVE SERVICES

The City of Milpitas hereby adopts the Agreement for Collaborative Services ("Agreement") attached hereto as **Exhibit 1** and incorporated herein, establishing operating procedures for the _____ [PACE Program] within the jurisdiction of the City of Milpitas.

_____ [PACE Program] acknowledges and agrees that City of Milpitas is a "Participating Entity" as defined by Section 1.3 of the Agreement and shall be entitled to all the rights and benefits under the Agreement and may enforce the provisions thereof.

_____ [PACE Program] further acknowledges and agrees that it shall defend, indemnify, hold harmless, and waive subrogation against the City of Milpitas and its elected and appointed officials, officers and employees, to the extent set forth in Section 6 of the Agreement, and City of Milpitas shall be covered as an additional insured pursuant to Attachment 2, Section (d)(i) of the Agreement.

City of Milpitas:

By: _____ Date: _____
Steve J. Pangelinan
Acting City Manager

_____ [PACE Program]:

By: _____ Date: _____

Method and Place of Giving Notice. All notices to the Participating Entity shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices shall be addressed as follows:

Edesa Bitbadal, Economic Development Director
455 E Calaveras Blvd
Milpitas, CA 95035
ebitbadal@ci.milpitas.ca.gov

EXHIBIT 1

AGREEMENT FOR COLLABORATIVE SERVICES

FOR PROPERTY ASSESSED CLEAN ENERGY FINANCING

This Agreement for Collaborative Services ("Agreement"), dated as of , 2016 (“Effective Date”) is by and among the Association of Bay Area Governments (hereinafter "ABAG"), ***[insert PACE program provider name]***, (hereinafter "PACE Provider"), as an entity administering a Property Assessed Clean Energy (PACE) financing program utilizing either the California Assembly Bill 811 and/or California Senate Bill 555 model and any Participating Entity, as defined in Section 1.3 below, that adopts this Agreement.

R E C I T A L S

WHEREAS, ABAG is committed to mitigating and adapting to the causes and impacts of climate change and supporting energy independence from fossil fuels to safeguard the environment, human health and the economy; and

WHEREAS, ABAG as Program Administrator for the Bay Area Regional Energy Network (BayREN), works closely with 101 cities in the nine county Bay Area region (ABAG territory) to develop and implement innovative energy efficiency programs, including supporting commercial and residential Property Assessed Clean Energy (PACE) programs; and

WHEREAS, the BayREN offers programs, technical resources and education for energy upgrades and retrofits; and

WHEREAS, the objective of the BayREN is to help property owners save energy, save money, and live comfortably; and

WHEREAS, the BayREN seeks to assist local governments to understand all aspects of partnering with PACE Providers in order to minimize customer confusion, provide access to education and information to property owners and assist with making informed decisions on rebates and incentives, contractor programs, and financing options; and

WHEREAS, the PACE Provider is willing to participate to support community climate goals and minimize consumer and contractor confusion; and

WHEREAS, the PACE Provider will provide support and resources to any Participating Entity as requested related to education, outreach and development of the energy upgrade industry and trades; and

WHEREAS, the PACE Provider will support, align and integrate its efforts with the community-wide goals for job creation, resource demand reduction, and renewable energy generation; and

WHEREAS, the PACE Provider will establish its own interest rates, repayment terms, and fees as state and federal laws and the market defines and allows; and

WHEREAS, the PACE Provider will arrange for the collection of Property Assessed Clean Energy assessments it has financed directly with the Participating Entity's County Tax Collector's Office; and

WHEREAS, this Agreement does not include any financial arrangements between the PACE Provider, ABAG and the Participating Entity adopting this Agreement, nor does it preclude any separate contracts, contract terms for services or support; and

WHEREAS, the purpose of this Agreement is to set forth the mutual understandings between ABAG and the PACE Provider and to establish basic operating procedures for any PACE provider operating within the ABAG territory, and any Participating Entity that adopts this agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

A G R E E M E N T

1 Definitions.

1.1 "**Eligible improvement**" is a technology, product or tool officially approved by the PACE provider. The improvements may include distributed generation renewable energy sources, energy and water efficiency improvements, and electric vehicle charging infrastructure improvements that will be permanently affixed to real property, and any additional improvements deemed eligible in the future by the California Legislature and/or the California Judiciary.

1.2 "**PACE Provider**" is an entity participating in ABAG territory administering a program providing Property Assessed Clean Energy (PACE) financing.

1.3 **"Participating Entity"** is any city, town, county or the City and County of San Francisco located within ABAG's geographical boundaries that adopt this Agreement.

1.4 **"Participating Contractor"** is any contractor that has agreed to, and abides, by the terms and conditions of the PACE Provider's contractor standards.

1.5 "**Property Assessed Clean Energy (PACE) Financing**" is a means of financing distributed generation, renewable energy sources, energy and water efficiency improvements, electric vehicle charging infrastructure and other improvements deemed eligible by the California legislature that will be permanently affixed to real property, whereby the funds provided to pay for the improvements are repaid through contractual assessments and/or special taxes, utilizing either California Assembly Bill 811 (Levine, 2008) ("AB 811"), which amended §§5898.10-5899.3 of the California Streets and Highways Code; or California Senate Bill 555 (Hancock, 2011) ("SB 555"), which amended certain portions of §§53311-53368.3 of the California Government Code and each as subsequently amended.

1.6 "**Work"** as defined throughout this Agreement is the collaborative, non-competitive, effort between the PACE Provider and ABAG to support the citizens of ABAG member jurisdictions in completing water, energy efficiency upgrades, and the installation of renewable energy generating improvements.

2 Scope of Work / Collaboration.

2.1 PACE Provider's Specified Services. The PACE Provider will offer and provide Property Assessed Clean Energy Financing under the requirements of AB 811 and/or SB 555.

2.2 Performance Standard. PACE Provider shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by an organization administering a Property Assessed Clean Energy financing program pursuant to California Assembly Bill 811 and/or California Senate Bill 555. ABAG has relied upon the professional ability and expertise of PACE Provider as a material inducement to enter into this Agreement. PACE Provider hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws. If ABAG is concerned that any of PACE Provider's work is not in accordance with the level of competency and standard of care described herein, ABAG shall have the right to do any or all of the following: (a) require PACE Provider to

discuss with Participating Entity and/or to review the quality of the work and resolve matters of concern; (b) terminate this Agreement pursuant to the provisions of Section 5, Termination; or (c) pursue any and all other remedies available to ABAG at law or in equity.

Financing Provision Requirements.

The PACE Provider will:

2.3.1 Include a process to receive acknowledgement and confirmation of satisfaction with work completed from the applicant before project payment is disbursed and have a published dispute resolution process available for customers.

2.3.2 Provide summary of financing details (including assessment or special tax amount and terms, financing installments and estimated administrative expenses) to the applicant specific to the requested amount of the financing.

2.3.3 For residential properties, require an applicant's acknowledgment of the Federal Housing Finance Agency position on PACE by a separate signature/initial acknowledgement, in a Residential Disclosure Signature Form that is substantially similar in content to Attachment 1(a) or 1(b), as approved by ABAG.

2.3.4 Provide training to contractors and information to property owners on the availability of rebates (for all utility and generation types), including and not limited to city and county rebate programs, BayREN programs, PG&E programs, and other such offerings. (For information about local programs, the contractor and/or home owner may be directed to the BayREN Home Upgrade Advisor at 866-878-6008.)

2.3.5 Require that applicable building permits are obtained for all improvements in Participating Entities.

2.3.6 Verify that all property taxes for the assessed property are current for the previous three years or since the current owner acquired the property, whichever is shorter.

2.3.7 Recommend that property owners consult with a tax professional prior to claiming any tax deductions associated with the project and not recommend that homeowners take any particular filing position regarding their annual or semi-annual PACE assessment payments.

2.3.8 Not represent that the full assessment is tax deductible.

2.3.9 Have a consistent plan for removal of assessments at end of repayment term, prepayment and/or in the event of program closure.

2.4 Financial Policies.

The PACE Provider will:

2.4.1 For programs offering residential PACE financing, be an active participant in the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) PACE Loan Loss Reserve Program or comparable loan loss reserve program which includes at minimum the parameters outlined in Attachment 2.

2.4.2 Notify ABAG six months in advance if funding capacity available from the PACE Provider to prospective PACE customers in the Participating Entity will fall below the amount dispersed in the previous six months of operation.

2.4.3 Notify ABAG of any foreclosure action as a result of a default in the payment of a PACE assessment on property within ABAG's geographical boundaries, where the PACE assessment was originated by the PACE Provider.

2.5 Documents, Data, and Information Policies.

The PACE Provider will:

2.5.1 Provide to Participating Entity (for internal evaluation purposes only and not for distribution to any third party or for marketing purposes, other than as required by law, by request of Participating Entity, electronic access to the name, business name, and California State Contractors license number of participating contractors of the PACE Provider's program whose business address is located in the requesting Participating Entity or who conduct business in the requesting Participating Entity.

2.5.2 Retain completed Residential Disclosure (hardcopy or electronic) on file for duration of assessment, and furnish to Participating Entity upon request.

2.5.3 Provide upon request either direct real time access to data or quarterly reports in an open electronic file format (such as Microsoft Excel) to Participating Entity by request for internal evaluation purposes only (and not for distribution to any third party, including, without limitation, utility companies, services providers and equipment manufacturers or for marketing purposes) that includes the following information for each assessment:

a. Required data:

i. Assessor's Parcel Number (APN) of the property

ii. Dollar amount financed (the amount of the assessment and/or special tax)
iii. Listing of all energy efficiency and water conservation eligible improvements installed by virtue of the financing, including the unit of measure for the improvement and the quantity installed as captured by Participating Contractor
iv. Listing of all renewable generation improvements installed and the solar STC-DC rating in watts or kilowatts as captured by Participating Contractor
v. Estimated energy and water savings (in appropriate units) associated with the project

b. If available (in the aggregate):

i. Amount of rebate or incentive dollars associated with the project (not financed) and the name of the program
ii. How the customer heard about PACE financing
iii. Why the customer selected PACE over other financing instruments available
iv. Why the customer selected their final PACE Provider over the other members

The Participating Entity will:
Maintain the privacy and security of data received from PACE Provider. Participating Entity shall comply with all applicable state and federal laws, regulations and applicable California Public Utilities Commission regulations. Participating Entity may only provide reports relating to Section 2.5.3(a)(ii)-(v) for public distribution that aggregate the data such that individual customer information cannot be identified, unless such customer has authorized written release of individual customer information. A Participating Entity shall not share with any third party the data and reports provided by a PACE Provider pursuant to Section 2.5.3(b) (if any).

2.5.4 Provide the documents required for participation in the PACE Providers' PACE Financing program to Participating Entity officials.
2.5.5 Provide support to Participating Entity's staff to facilitate adoption of required participation documents.

2.6 ABAG will encourage Participating Entity to offer staff resources and support to bring forward to their respective boards or councils the documents

provided by the PACE Provider required for participation in the PACE Provider's PACE financing product.

2.7 Branding / Marketing Requirements.

The Parties will:

2.7.1 Collaborate on any local and/or regional efforts that may impact PACE financing participation to achieve the best possible outcome for property owners.

2.7.2 Represent the role of ABAG as the local neutral third party, not-for-profit, public service agency supporting the public through the upgrade process, with the following message to consumers: Among the financing products available, competition is encouraged to the benefit of the consumer, with the common goal of successful completion of projects.

The PACE Provider will:

2.7.3 Provide assistance to ABAG and any Participating Entity signing this Agreement for: (1) coordinating and implementing the integration of the PACE Provider into applicable BayREN and other relevant energy efficiency programs; and (2) support of contractor training.

2.7.4 Provide specific training for participating contractors engaged with local PACE programs using the PACE Provider's financing product, materials, collateral, tools, and associated software, through training offered directly from the PACE Provider.

2.7.5 Provide professional services, template documents, and other services reasonably necessary to staff for integrating the PACE Provider's financing option into the websites of any Participating Entity requesting such assistance.

2.7.6 Provide training and resources to any Participating Entity as needed to build understanding and support for use of the PACE financing product

ABAG will encourage ABAG members to:

2.7.7 Present with impartiality the financing products of the PACE Providers in all venues to the public.

2.7.8 Present marketing collateral of all financing products (where applicable) with impartiality in education and outreach materials and events

2.8 PACE Providers Responsibilities Regarding Participating Contractor.

PACE Providers will:

2.8.1 Require that contractors have the appropriate California State License Board (CSLB) license in good standing

2.8.2 Require, in accordance with California State License Board requirements, that contractors' bonding is in good standing

2.8.3 Require, in accordance with California State License Board requirements, that contractors have appropriate Workers' Compensation coverage

2.8.4 Require that contractors have a minimum of $1M of commercial general liability insurance

2.8.5 NOT endorse, recommend, or refer any specific contractor other than contractors who are to PACE Provider's knowledge, in good standing with CSLB, are insured and meet material program eligibility requirements

2.8.6 NOT make any representation or warranty regarding the qualifications, licensing, products, or workmanship of any contractor

2.8.7 NOT make any warranty regarding the contractor's work or products purchased from contractors provided

2.8.8 NOT accept any liability that may be alleged to arise from the work of any listed contractor on a customer project or from any reliance on any claims, statements, or other descriptions regarding a contractor's certifications, licenses, qualifications or products

2.8.9 Comply with provisions of Section 2.3.7 of this Agreement.

2.8.10 Via trainings and customer complaint system, require that contractors and their representatives, employees, and agents do not represent themselves as agents, representatives, contractors, subcontractors, or employees of ABAG or any Participating Entity, or claim association or affiliation with ABAG or any Participating Entity.

2.8.11 Independently engages the Participating Entity's Tax Collector for administration of property tax assessments placed through its financing product.

3 **Payment.** This Agreement does not include any financial arrangements between the PACE Provider and ABAG, nor does it preclude any separate contracts for services or support.

4 **Term of Agreement.** The term of this Agreement shall be from the Effective Date until termination in accordance with the provisions of Section 5, Termination below.

5 Termination.

5.1 Termination without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, ABAG, PACE Provider, or any Participating Entity shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to the other Party to this Agreement; provided that a party's termination of this Agreement under this section shall not automatically terminate any other agreement or contract between the other parties.

5.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should the PACE Provider fail to uphold any of its obligations under this Agreement in a material way, within the time and in the manner herein provided, or otherwise materially violate any of the terms of this Agreement, ABAG or a Participating Entity may, after providing the PACE Provider with a thirty (30) day cure period, immediately terminate this Agreement by giving PACE Provider written notice of such termination, stating the reason for termination; provided that the termination of this Agreement shall not automatically terminate any other agreement or contract between or among the parties.

5.3 Delivery of Data and Information upon Termination. In the event of termination, PACE Provider, within 14 days following the date of termination, shall deliver to the extent legally permitted to Participating Entity all raw data and information in an editable electronic format as outlined in and subject to the terms of Section 2.5, Document, Data, and Information Policies.

5.4 Authority to Terminate. The Executive Director of ABAG has the authority to terminate this Agreement on behalf of ABAG

5.5 Effect of Termination. Termination of this Agreement by ABAG or Participating Entity shall not affect the ability to levy and collect assessments and the PACE Provider's ability to issue bonds for assessment contracts located within the jurisdiction of such entity which have been entered into prior to the date of termination.

In the event of termination pursuant to this Section 5 by ABAG, ABAG may notify all Participating Entities of said termination.

6 Hold Harmless, Indemnity and Waiver of Subrogation.

To the fullest extent allowed by law, PACE Provider shall defend, indemnify, save harmless and waive subrogation against the ABAG, and its members, elected and appointed officials, officers and employees (Indemnitees) against any and all liability, claims, losses, damages, or expenses, including reasonable attorneys' fees, arising from

all acts or omissions to act of PACE Provider or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages or expenses resulting from an intentional act or the gross negligence of an Indemnitee.

This section shall in no event be construed to require indemnification by PACE Provider to a greater extent than permitted under the public policy or laws of the State of California. These defense and indemnification obligations are undertaken in addition to, and shall not in any way be limited by, the insurance obligations set forth in this Agreement. These defense and indemnification obligations shall survive the termination or expiration of the contract for the full period of time permitted by law.

7 **Insurance Requirements.** PACE provider shall obtain and maintain insurance as required in Attachment 2.

8 Prosecution of Work. The execution of this Agreement shall constitute PACE Provider's authority to proceed immediately with the performance of this Agreement.

9 Representations of PACE Provider.

9.1 Standard of Care. ABAG and Participating Entity have relied upon the professional ability and training of PACE Provider as a material inducement to entering into this Agreement. PACE Provider hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws.

9.2 Status of PACE Provider. The parties intend that PACE Provider, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. PACE Provider is not to be considered an agent or employee of ABAG or of any Participating Entity and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, employment protection, or similar benefits that ABAG or the Participating Entity provides its employees.

9.3 Conflict of Interest. PACE Provider covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in

any manner or degree with the performance of its services hereunder. PACE Provider further covenants that in the performance of this Agreement no person having any such interests shall be employed.

9.4 Statutory Compliance. PACE Provider agrees to comply with all federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement.

9.5 Nondiscrimination. Without limiting any other provision hereunder, PACE Provider shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, gender identity, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.6 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of PACE Provider.

10 Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, conduct, or service does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits the parties' right to terminate this Agreement pursuant to Section 5, Termination.

11 Assignment and Delegation. No party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented; provided however, that

PACE Provider may assign this Agreement in connection with a merger or the sale of all or substantially all of its assets or equity ownership without the prior written consent of any other party provided that the successor expressly assumes all of the obligations, including this Agreement, and confirms all of the representations, warranties and covenants of PACE Provider hereunder.

12 Method and Place of Giving Notice. All notices shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service to:

TO: ABAG: Address
Email address: _____

TO: PACE PROVIDER: _____
_____
_____

Email address: _____

When a notice is given by a generally recognized overnight courier service, the notice shall be deemed received on the next business day. When a copy of a notice is sent by facsimile or email, the notice shall be deemed received upon transmission as long as (1) the original copy of the notice is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email, (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13 Miscellaneous Provisions.

13.1 No Waiver of Breach. The waiver by a party of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and

agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. PACE Provider and ABAG acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Each party hereto acknowledges that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Alameda.

13.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Counterparts. This Agreement may be executed in two or more counterparts, a complete set of which shall be deemed an original, constituting one and the same instrument. The delivery by facsimile or electronic mail of an executed copy of this Amendment shall be deemed valid as if an original signature was delivered

Continued on next page:

IN WITNESS WHEREOF, the ABAG and the PACE Provider hereto have executed this Agreement as of the Effective Date.

PACE PROVIDER: _____	ABAG: _____
By: _____	By:_____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPROVED AS TO FORM FOR ABAG

Date: _____ By: _____
Kenneth Moy, ABAG Counsel

ATTACHMENT 1(a)

ALERT: Fannie Mae/Freddie Mac Instructions for Lenders

SINGLE FAMILY HOME OWNERS: In May, 2010, Fannie Mae and Freddie Mac, government sponsored enterprises that purchase a large segment of conforming single family home mortgages, issued new instructions to lending institutions on how to treat properties with assessments under Property Assessed Clean Energy (PACE) programs such as _____. These letters, and additional statements issued by the Federal Housing Finance Agency, the agency that regulates single family home lenders, instruct lenders to treat energy assessments as "loans" instead of "assessments."

On August 31, 2010, the agencies issued additional instructions to lenders that Fannie Mae and Freddie Mac "will not purchase mortgage loans secured by properties with an outstanding PACE obligation."

These letters and statements may lead lenders to conclude the PACE assessment should be paid off before a property transfers or is refinanced. In addition, it may lead some lenders to conclude that participating in PACE program is a violation of typical mortgage terms prohibiting prior liens without lender consent. If you are selling your property, a buyer's lender may refuse to finance the buyer's first mortgage loan unless the assessment is paid off. We urge you to carefully read the disclosure information in the Program application, review your mortgage documents, evaluate the risks of proceeding with an application at this time, and contact your lender if you have any concerns or for information regarding any other financing options that may be available to you.

I/We have read the above statement. All property owners on title must initial below:

_____	_____	_____	_____
Initials	*Date*	*Initials*	*Date*
_____	_____	_____	_____
Initials	*Date*	*Initials*	*Date*

Continued on next page:

Electronic links to the copies of letters from the Federal Financing Housing Authority re: PACE programs:

- https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/ll1006.pdf
- http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/iltr050510.pdf
- http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx
- http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Acting-Director-Edward-J-DeMarco-on-PACE-Programs.aspx
- https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/sel1012.pdf
- http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1020.pdf

ATTACHMENT 1(b)

BEFORE COMPLETING A PROGRAM APPLICATION, YOU SHOULD CAREFULLY REVIEW ANY MORTGAGE AGREEMENT(S) OR OTHER SECURITY INSTRUMENT(S) WHICH AFFECT THE PROPERTY OR TO WHICH YOU AS THE PROPERTY OWNER ARE A PARTY. ENTERING INTO A PROGRAM ASSESSMENT CONTRACT WITHOUT THE CONSENT OF YOUR EXISTING LENDER(S) COULD CONSTITUTE AN EVENT OF DEFAULT UNDER SUCH AGREEMENTS OR SECURITY INSTRUMENTS. DEFAULTING UNDER AN EXISTING MORTGAGE AGREEMENT OR SECURITY INSTRUMENT COULD HAVE SERIOUS CONSEQUENCES TO YOU, WHICH COULD INCLUDE THE ACCELERATION OF THE REPAYMENT OBLIGATIONS DUE UNDER SUCH AGREEMENT OR SECURITY INSTRUMENT. IN ADDITION, FANNIE MAE AND FREDDIE MAC, THE OWNER OF A SIGNIFICANT PORTION OF ALL HOME MORTGAGES, STATED THAT THEY WOULD NOT PURCHASE HOME LOANS WITH ASSESSMENTS SUCH AS THOSE OFFERED BY THE AUTHORITY. THIS MAY MEAN THAT PROPERTY OWNERS WHO SELL OR REFINANCE THEIR PROPERTY MAY BE REQUIRED TO PREPAY SUCH ASSESSMENTS AT THE TIME THEY CLOSE THEIR SALE OR REFINANCING.

I/We have read the above statement. All property owners on title must initial below:

Initials	*Date*	*Initials*	*Date*
Initials	*Date*	*Initials*	*Date*

ATTACHMENT 2

Insurance Requirements. PACE Provider shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a period of five (5) years following the completion of this project. PACE Provider shall provide a copy of section 21 of this contract and these insurance requirements to its insurance broker or insurer to confirm compliance. In the event PACE Provider fails to obtain or maintain completed operations coverage as required by this agreement, ABAG, at its sole discretion, may purchase the coverage required and the cost will be paid by PACE Provider. The limits of insurance required in hereunder may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the Indemnitees (if agreed to in a written contract or agreement) before the any Indemnitee's own Insurance or self-insurance shall be called upon to protect it as a named insured.

(a) Minimum Scope of Insurance. Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage
(occurrence Form CG 0001).

Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Errors and Omissions Liability insurance appropriate to the PACE Provider's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

(b) Minimum Limits of Insurance. PACE Provider shall maintain limits no less than:

General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
Automobile Liability: $1,000,000 per accident for bodily injury and property damage.
Employer's Liability: $1,000,000 per accident for bodily injury or disease.
Errors and Omissions Liability: $1,000,000 per claim/aggregate.

(c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by ABAG. The insurer shall reduce or eliminate such

deductibles or self-insured retentions as respects the Indemnitees; or the PACE Provider shall satisfy any such deductibles or self-insured retentions. In addition, policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or any of the Indemnitees.

(d) Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) The Indemnitees are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of PACE Provider; completed operations; or automobiles owned, leased, hired or borrowed by PACE Provider.

(ii) For any claims related to this project, the PACE Provider's insurance coverage shall be primary insurance as respects the Indemnitees.

(iii) Any insurance or self-insurance maintained by the Indemnitees shall be excess of PACE Provider's insurance and shall not contribute with it.

(iv) Except for General Liability and Automobile Liability, each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty(30) days' prior written notice by certified mail, return receipt requested, has been given to ABAG. For General Liability and Automobile Liability, PACE Provider shall provide ABAG with thirty (30) day's prior notice of cancellation by either the insurer or PACE Provider.

(v) Coverage shall not extend to any defense or indemnity coverage for the active negligence of the Indemnitees in any case where an agreement to defend and indemnify the Indemnitees would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

(e) Other Insurance Provisions – Workers Compensation. The Workers Compensation insurance shall be endorsed to waive subrogation against the Indemnitees.

(f) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to ABAG.

(g) Verification of Coverage. PACE Provider shall furnish the ABAG with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by ABAG before work commences. ABAG reserves the right to require complete, certified

copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

aggregation program of the Silicon Valley Clean Energy Authority, as described in its Joint Powers Agreement.

SECTION 3. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 4. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF WASTEWATER REVENUE REFUNDING BONDS FOR THE PURPOSE OF REFINANCING THE COSTS OF ACQUIRING AND CONSTRUCTING WASTEWATER SYSTEM IMPROVEMENT PROJECTS, APPROVING AN OFFICIAL STATEMENT, AND RELATED MATTERS

WHEREAS, the City of Milpitas (the "City") owns and operates facilities and property for the collection, treatment and disposal of wastewater within the service area of the City (the "Wastewater System"); and

WHEREAS, the City previously entered into an Installment Sale Agreement, dated as of December 1, 2006, between the Milpitas Public Financing Authority (the "Authority") and the City (the "2006 Agreement") for the purpose of financing certain capital projects that are part of the Wastewater System; and

WHEREAS, in connection with the execution of the 2006 Agreement, the Authority caused to be executed and delivered Certificates of Participation 2006 Series A (City of Milpitas Sewer Financing), in the initial principal amount of $9,535,000, of which $5,125,000 remains outstanding (the "2006 Certificates"); and

WHEREAS, the City, after due investigation and deliberation, has determined that it is in the interests of the City at this time to provide for the issuance of its Wastewater Revenue Refunding Bonds, Series 2017 (the "Bonds") pursuant to this Resolution and the Indenture (as defined in Section 5) for the purpose of refinancing the 2006 Agreement, thereby refunding the 2006 Certificates, funding a reserve fund for the Bonds (if necessary), and paying the costs of issuing and selling the Bonds; and

WHEREAS, the City has determined to sell the Bonds to Stifel, Nicolaus & Company, Incorporated (the "Underwriter") pursuant to the terms of a Bond Purchase Agreement (the "Bond Purchase Agreement") to be entered into by the City and the Underwriter with respect to the Bonds; and

WHEREAS, in connection with the sale of the Bonds to the Underwriter, the City has caused to be prepared, with the assistance of Fieldman, Rolapp & Associates, Inc., its municipal advisor (the "Municipal Advisor"), and Jones Hall, A Professional Law Corporation, its disclosure counsel, an Official Statement describing the Bonds and containing material information relating to the City, the Wastewater System and the Bonds, the preliminary form of which will be distributed by the Underwriter, as underwriter of the Bonds, to persons and institutions interested in purchasing the Bonds; and

WHEREAS, the City Council of the City wishes at this time to authorize all proceedings relating to the issuance of the Bonds, and to approve the execution and delivery of all agreements and documents relating thereto.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. Adoption of Authorizing Procedures. The City Council hereby authorizes the Bonds to be issued pursuant to Articles 10 (commencing with Section 53570) and 11 (commencing with Section 53580) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California.

2. Issuance of Bonds. The City Council hereby authorizes and approves the issuance of the Bonds, to be denominated "City of Milpitas Wastewater Revenue Refunding Bonds, Series 2017" or such other similar designation, so long as the principal amount of the Bonds does not exceed $5,500,000 and there are net present value savings equal to at least 3.00% of the debt service with respect to the 2006 Certificates being refunded.

3. Purposes. The Bonds will be issued to provide funds to prepay the 2006 Agreement and refund and redeem the 2006 Certificates, fund a reserve fund for the Bonds (if necessary) and pay the costs of issuing and selling the Bonds.

4. Revenue Bonds. The Bonds are to be revenue bonds, payable exclusively from the net revenues of the Wastewater System as and to the extent set forth in the Indenture. Such revenues constitute a trust fund for the security and payment of the principal of and interest on the Bonds. The general fund of the City is not liable and the credit or taxing power of the City is not pledged for the payment of the principal of and interest on the Bonds. The owners of the Bonds may not compel the exercise of the taxing power by the City or the forfeiture of its property, and the principal of and interest on the Bonds are not a debt of the City, nor a legal or equitable pledge, charge, lien or encumbrance, upon any of its property, or upon any of its income, receipts, or revenues except the net revenues of the Wastewater System of the City as and to the extent set forth in the Indenture.

5. Approval of Indenture of Trust. The Bonds shall be issued pursuant to and secured by the Indenture of Trust (the "Indenture"), between the City and U.S. Bank National Association, which is hereby appointed to act as trustee on the Bonds (the "Trustee"), which is hereby referred to and incorporated herein by reference. The Indenture, in the form on file with the City Clerk, is hereby approved by the City Council. The City Manager, the Director of Financial Services or the designee of either (each, an "Authorized Officer"), each acting alone, are hereby authorized and directed, for and in the name of the City, to execute and deliver the Indenture in such form, together with such changes, insertions and deletions as may be approved by an Authorized Officer, such execution to be conclusive evidence of such approval; and the City Clerk is hereby authorized and directed to attest such Indenture. The City Council hereby authorizes the delivery and performance of the Indenture.

6. Terms of the Bonds. The Bonds shall be dated, shall bear interest at the rates, shall mature on the dates, shall be issued in the form, shall be subject to redemption, and shall otherwise be issued on the terms and conditions, all as set forth in the Indenture and in accordance with this Resolution.

7. Sale of Bonds. The City Council hereby authorizes the sale of the Bonds to the Underwriter pursuant to the Bond Purchase Agreement. The Bond Purchase Agreement, in the form on file with the City Clerk, is hereby approved by the City Council. The Authorized Officers, each acting alone, are hereby authorized and directed to execute and deliver the Bond Purchase Agreement for and in the name and on behalf of the City in such form, together with such changes, insertions, and deletions as the Authorized Officer executing the same shall approve, such approval to be conclusively evidenced by the execution and delivery of the Bond Purchase Agreement, provided that the discount of the Underwriter, not including any net original issue discount, shall not exceed 0.60%.

8. Approval of Refunding Instructions. The 2006 Certificates shall be prepaid pursuant to Irrevocable Refunding Instructions (the "Refunding Instructions"). The Refunding Instructions, in the form on file with the City Clerk, are hereby approved by the City Council. The Authorized Officers, each acting alone, are hereby authorized and directed to execute and deliver the Refunding Instructions in such form, together with such changes, insertions, and deletions as the Authorized Officer executing the same shall approve, such approval to be conclusively evidenced by the execution and delivery of the Refunding

Instructions. The City Council hereby authorizes the delivery and performance of its obligations under the Refunding Instructions.

9. Official Statement. Staff has caused a draft of the Preliminary Official Statement to be distributed to the members of the City Council and to be placed on file with the City Clerk. The Preliminary Official Statement is still in draft form and staff is continuing to work with the City's Municipal Advisor and the City's bond counsel and disclosure counsel to finalize the Preliminary Official Statement. The City Council hereby authorizes and directs each Authorized Officer on behalf of the City to deem the Preliminary Official Statement "final" pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule") prior to its distribution to prospective purchasers of the Bonds. The City Council hereby approves and authorizes the distribution of the Preliminary Official Statement to prospective purchasers of the Bonds.

The Authorized Officers are authorized and directed to cause the Preliminary Official Statement to be brought into the form of a final Official Statement and to execute said final Official Statement, dated as of the date of the sale of the Bonds, and a statement that the facts contained in the final Official Statement, and any supplement or amendment thereto (which shall be deemed an original part thereof for the purpose of such statement) were, at the time of sale of the Bonds, true and correct in all material respects and that the final Official Statement did not, on the date of sale of the Bonds, and does not, as of the date of delivery of the Bonds, contain any untrue statement of a material fact with respect to the City or omit to state material facts with respect to the City required to be stated where necessary to make any statement made therein not misleading in the light of the circumstances under which it was made. The Authorized Officers shall take such further actions prior to the signing of the final Official Statement as are deemed necessary or appropriate to verify the accuracy thereof. The execution of the final Official Statement, which shall be in substantially the form of the Preliminary Official Statement and which shall include such changes and additions thereto deemed advisable by the Authorized Officers and such information permitted to be excluded from the Preliminary Official Statement pursuant to the Rule, shall be conclusive evidence of the approval of the final Official Statement by the City.

The final Official Statement, when prepared, is approved for distribution in connection with the offering and sale of the Bonds.

10. Continuing Disclosure. The City Council hereby approves the Continuing Disclosure Certificate, in the form attached to the Preliminary Official Statement together with any changes therein or additions thereto deemed advisable by the Authorized Officers, such approval to be conclusively evidenced by the execution and delivery thereof. The Authorized Officers, each acting alone, are hereby authorized and directed to execute and deliver the Continuing Disclosure Certificate in such form, together with such changes, insertions, and deletions as the Authorized Officer executing the same shall approve, such approval to be conclusively evidenced by the execution and delivery of the Continuing Disclosure Certificate. The City Council hereby authorizes the delivery and performance of the Continuing Disclosure Certificate.

11. Documents in Substantially Final Form; Further Authority. The documents on file with the City Clerk and herein approved are in substantially final form; that is, they are final as to important business terms such as the rate covenant undertaken by the City as to the wastewater rates the City will enact so long as the Bonds are outstanding, and parity bond restrictions, governing limitations on future issues of bonds secured by net revenues of the Wastewater System, but do not contain the numbers resulting from the sale of the Bonds, which numbers will be inserted once the Bonds are sold, or the provisions for a reserve account for the Bonds, which will be inserted into the Indenture if the Authorized Officers determine, upon consultation with the Municipal Advisor and the Underwriter, that it is in the best interest of the City to utilize a reserve account in connection with the Bonds. This Resolution is intended to be a "parameters

resolution," in which the City Council approves a refunding wastewater revenue bond issue at a not to exceed principal amount and interest rate, payable solely from net revenues of the Wastewater System.

The officers of this City are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Resolution, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

12. Municipal Bond Insurance and Surety Bond. The Authorized Officers, each acting alone, are hereby authorized and directed to take all actions necessary to obtain a municipal bond insurance policy for the Bonds and a reserve account surety bond for the Bonds from a municipal bond insurance company if it is determined, upon consultation with the Municipal Advisor and the Underwriter, that such municipal bond insurance policy and/or surety bond will reduce the true interest costs or increase savings with respect to the Bonds

13. Effective Date. This Resolution shall take effect from and after the date of approval and adoption thereof.

PASSED AND ADOPTED this _____ day of _____ 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Mary Lavelle, City Clerk

APPROVED:

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

INDENTURE OF TRUST

by and between the

CITY OF MILPITAS

and

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

Dated as of December 1, 2017

Relating to

$_____
City of Milpitas
Wastewater Revenue Refunding Bonds, Series 2017
(Bank Qualified)

TABLE OF CONTENTS

ARTICLE I
DEFINITIONS; AUTHORIZATION AND PURPOSE OF BONDS;
EQUAL SECURITY:

Section 1.01. Definitions 3
Section 1.02. Rules of Construction....11
Section 1.03. Authorization and Purpose of Series 2017 Bonds 11
Section 1.04. Equal Security 11

ARTICLE II
ISSUANCE OF SERIES 2017 BONDS

Section 2.01. Terms of Series 2017 Bonds 13
Section 2.02. Redemption of Series 2017 Bonds 14
Section 2.03. Form of Series 2017 Bonds 16
Section 2.04. Execution of Series 2017 Bonds....16
Section 2.05. Transfer of Series 2017 Bonds 16
Section 2.06. Exchange of Series 2017 Bonds....16
Section 2.07. Temporary Bonds....16
Section 2.08. Bond Registration Books 17
Section 2.09. Bonds Mutilated, Lost, Destroyed or Stolen 17
Section 2.10. Book Entry System....17

ARTICLE III
ISSUE OF SERIES 2017 BONDS; PARITY DEBT

Section 3.01. Issuance of Series 2017 Bonds 20
Section 3.02. Application of Proceeds of Sale of Series 2017 Bonds 20
Section 3.03. [Reserved]....20
Section 3.04. Cost of Issuance Fund 20
Section 3.05. Issuance of Parity Debt....20
Section 3.06. [Reserved]....22
Section 3.07. Subordinate Bonds....22
Section 3.08. Validity of Bonds 22

ARTICLE IV
PLEDGE OF NET REVENUES; FUNDS AND ACCOUNTS:

Section 4.01. Pledge of Net Revenues 23
Section 4.02. Receipt and Deposit of Revenues 23
Section 4.03. Establishment of Funds and Accounts and Allocation of Revenues Thereto 23
Section 4.04. Application of Debt Service Fund....25
Section 4.05. Reserved....25
Section 4.06. Application of Redemption Account....25
Section 4.07. Establishment of Rate Stabilization Fund 25
Section 4.08. Investments....26
Section 4.09. Valuation; Investments....26

ARTICLE V
COVENANTS OF THE CITY; SPECIAL TAX COVENANTS:

Section 5.01. Punctual Payment; Compliance With Documents 27
Section 5.02. Against Encumbrances 27
Section 5.03. Discharge of Claims....27
Section 5.04. Acquisition, Construction or Financing of any Project and Improvements to the Wastewater System. 27
Section 5.05. Maintenance and Operation of Wastewater System in Efficient and Economical Manner. 27
Section 5.06. Against Sale, Eminent Domain. 27
Section 5.07. Insurance 28
Section 5.08. Records and Accounts....28
Section 5.09. Protection of Security and Rights of Owners....28

Section 5.10. Against Competitive Facilities 28
Section 5.11. Payment of Taxes, Etc. 28
Section 5.12. Rates and Charges 29
Section 5.13. No Priority for Additional Obligations 29
Section 5.14. No Arbitrage 29
Section 5.15. Information Report 29
Section 5.16. Private Activity Bond Limitation 29
Section 5.17. Federal Guarantee Prohibition 30
Section 5.18. Further Assurances 30
Section 5.19. Continuing Disclosure 30
Section 5.20. Rebate Requirement 30
Section 5.21. Maintenance of Tax-Exemption 30

ARTICLE VI
THE TRUSTEE

Section 6.01. Appointment of Trustee 31
Section 6.02. Acceptance of Trusts 31
Section 6.03. Fees, Charges and Expenses of Trustee 33
Section 6.04. Notice to Bond Owners of Default 33
Section 6.05. Intervention by Trustee 33
Section 6.06. Removal of Trustee 34
Section 6.07. Resignation by Trustee 34
Section 6.08. Appointment of Successor Trustee 34
Section 6.09. Merger or Consolidation 34
Section 6.10. Concerning any Successor Trustee 34
Section 6.11. Appointment of Co-Trustee 35
Section 6.12. Indemnification; Limited Liability of Trustee 35

ARTICLE VII
MODIFICATION AND AMENDMENT OF THE INDENTURE

Section 7.01. Amendment by Consent of Bond Owners 36
Section 7.02. Amendment Without Consent of Bondholders 36
Section 7.03. Disqualified Bonds 36
Section 7.04. Endorsement or Replacement of Bonds After Amendment 36
Section 7.05. Amendment by Mutual Consent 37

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES OF BOND OWNERS

Section 8.01 Events of Default and Acceleration of Maturities 38
Section 8.02. Application of Funds Upon Acceleration 38
Section 8.03. Other Remedies; Rights of Bond Owners 39
Section 8.04. Power of Trustee to Control Proceedings 39
Section 8.05. Appointment of Receivers 40
Section 8.06. Non-Waiver 40
Section 8.07. Rights and Remedies of Bond Owners 40
Section 8.08. Termination of Proceedings 41

ARTICLE IX
MISCELLANEOUS

Section 9.01. Limited Liability of City 42
Section 9.02. Parties Interested Herein 42
Section 9.03. Discharge of Indenture 42
Section 9.04. Content of Certificates 43
Section 9.05. Execution of Documents by Bond Owners 43
Section 9.06. Waiver of Personal Liability 44
Section 9.07. Partial Invalidity 44
Section 9.08. Destruction of Cancelled Bonds 44
Section 9.09. Funds and Accounts 44
Section 9.10. Notices 45

Section 9.11. Unclaimed Moneys.....45

EXHIBIT A: Form of Series 2017 Bond
EXHIBIT B: Form of Cost of Issuance Fund Requisition

INDENTURE OF TRUST

THIS INDENTURE OF TRUST, made and entered into as of December 1, 2017, by and between the CITY OF MILPITAS, a municipal corporation organized and existing under the constitution and laws of the State of California (the "City"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United State of America, and being qualified to accept and administer the trusts hereby created, as trustee (the "Trustee");

WITNESSETH:

WHEREAS, the City owns and operates facilities and property for the collection, treatment and disposal of wastewater within the service area of the City (the "Wastewater System");

WHEREAS, the City previously entered into an Installment Sale Agreement, dated as of December 1, 2006, between the Milpitas Public Financing Authority (the "Authority") and the City (the "2006 Agreement") for the purpose of financing certain capital projects that are part of the Wastewater System; and

WHEREAS, in connection with the execution of the 2006 Agreement, the Authority caused to be executed and delivered Certificates of Participation 2006 Series A (City of Milpitas Sewer Financing), in the initial principal amount of $9,535,000, of which $5,125,000 remains outstanding (the "2006 Certificates"); and

WHEREAS, the City, after due investigation and deliberation, has determined that it is in the interests of the City at this time to provide for the issuance of its Wastewater Revenue Refunding Bonds, Series 2017 (the "Series 2017 Bonds") pursuant to this Indenture for the purpose of refinancing the 2006 Agreement, thereby refunding the 2006 Certificates, and paying the costs of issuing, selling and delivering the Series 2017 Bonds; and

WHEREAS, in order to provide for the authentication and delivery of the Series 2017 Bonds, to establish and declare the terms and conditions upon which the Series 2017 Bonds are to be issued and secured and to secure the payment of the principal and interest thereon, the City Council has authorized the execution and delivery of this Indenture;

WHEREAS, all of the Series 2017 Bonds will be secured by a pledge of the Net Revenues, as defined herein, and certain other amounts held by the City and the Trustee hereunder; and

WHEREAS, all acts and proceedings required by law necessary to make the Series 2017 Bonds, when executed by the City, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal special obligations of the City, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth, in accordance with its terms, have been done and taken; and the execution and delivery of this Indenture have been in all respects duly authorized;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the principal of and the interest and premium (if any) on all Series 2017 Bonds at any time issued and Outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Series 2017 Bonds are to be

issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Series 2017 Bonds by the Owners thereof, and for other valuable considerations, the receipt whereof is hereby acknowledged, the City does hereby covenant and agree with the Trustee, for the benefit of the respective Owners from time to time of the Series 2017 Bonds, as follows:

ARTICLE I

DEFINITIONS; AUTHORIZATION AND PURPOSE OF BONDS; EQUAL SECURITY

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined in this Section shall for all purposes of this Indenture and of any Parity Debt Instrument and of the Series 2017 Bonds and of any certificate, opinion, request or other documents herein mentioned have the meanings herein specified.

"Authority" means the Milpitas Public Financing Authority, a joint exercise of powers authority organized and existing under the laws of the State of California.

"Authorized Investments" means any of the following, but only to the extent that the same are acquired at Fair Market Value, which at the time of investment are legal investments under the laws of the State of California for the moneys proposed to be invested therein:

(a) Federal Securities;

(b) (i) obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America, including: Export-Import Bank, Farm Credit System Financial Assistance Corporation, Rural Economic Community Development Administration (formerly Farmers Home Administration), General Services Administration, U.S. Maritime Administration, Small Business Administration, Government National Mortgage Association, U.S. Department of Housing & Urban Development, Federal Housing Administration and Federal Financing Bank. and (ii) direct obligations for any of the following federal agencies which obligations are not fully guaranteed by the full faith and credit of the United States of America: senior debt obligations rated "Aaa" by Moody's and "AAA" by S&P issued by Fannie Mae or Federal Home Loan Mortgage Corporation (FHLMC); obligations of the Resolution Funding Corporation (REFCORP); senior debt obligations of the Federal Home Loan Bank System; and senior debt obligations of other Government Sponsored Agencies;

(c) U.S. dollar denominated deposit accounts federal funds and banker's acceptances with domestic commercial banks, which may include the Trustee, its parent holding company, if any, and their affiliates, which have a rating on their short term certificates of deposit on the date of purchase of "P-1" by Moody's and "A-1" or "A-1+" by S&P or are collateralized by Federal Securities and maturing no more than 360 days after the date of purchase, provided that ratings on holding companies are not considered as the rating of the bank;

(d) commercial paper which is rated at the time of purchase in the single highest classification, "P-1" by Moody's and "A-1+" by S&P, and which matures not more than 270 calendar days after the date of purchase;

(e) investments in a money market fund, including those of an affiliate of the Trustee, rated "AAAm" or "AAAm-G" or better by S&P, including funds for which the Trustee, its parent holding company, if any, or any affiliates or subsidiaries of the Trustee or such holding company provide investment advisory or other management services;

(f) pre-refunded municipal obligations defined as follows: any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local

governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (i) which are rated, based upon an irrevocable escrow account or fund, in the highest rating category of Moody's and S&P or any successors thereto; or (ii)(A) subject to the approval of S&P, which are fully secured as to principal and interest and prepayment premium, if any, by an escrow consisting only of Federal Securities, which escrow may be applied only to the payment of such principal of and interest and prepayment premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified prepayment date or dates pursuant to such irrevocable instructions, as appropriate, and (B) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and prepayment premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates thereof or on the prepayment date or dates specified in the irrevocable instructions referred to above, as appropriate; and

(g) the Local Agency Investment Fund of the State of California, created pursuant to Section 16429.1 of the California Government Code, to the extent the Trustee is authorized to register such investment in its name.

"Authorized Official" means the City Manager, the Director of Financial Services, or the designee of the City Manager or the Director of Financial Services.

"Average Annual Debt Service" means the total aggregate Debt Service for the entire period during which the Bonds are Outstanding divided by the number of Fiscal Years or portions thereof during which the Bonds are Outstanding.

"Bond Counsel" means any attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on bonds issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America.

"Bond Law" means Articles 10 (commencing with Section 53570) and 11 (commencing with Section 53580) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California.

"Bond Registration Books" means the books maintained by the Trustee pursuant to Section 2.08 for the registration and transfer of ownership of the Series 2017 Bonds.

"Bond Proceeds Fund" means the fund established and held by the Trustee pursuant to Section 3.02.

"Bonds" means, collectively, the Series 2017 Bonds and any Parity Debt issued and at any time Outstanding hereunder or under a Parity Debt Instrument.

"Bond Year" means the twelve-month period beginning on November 2 in each year and ending on November 1 in the following year except that (i) the first Bond Year with respect to the Series 2017 Bonds shall begin on the Closing Date, and (ii) the last Bond Year with respect to the Series 2017 Bonds may end on a redemption date prior to maturity of the Series 2017 Bonds or the final maturity date of the Series 2017 Bonds.

"Business Day" means any day other than a Saturday, Sunday or a day on which the Trustee is authorized by law to remain closed.

"Certificate of the City" means a certificate in writing signed by the Authorized Official or by any other officer of the City duly authorized by the Council for that purpose.

"Charges" means fees, tolls, assessments, rates and charges prescribed by the Council for the services and facilities of the Wastewater System furnished by the City.

"City" means the City of Milpitas, a municipal corporation organized and existing under the Constitution and laws of the State, and any successor thereto.

"Closing Date" means, with respect to the Series 2017 Bonds, the date upon which there is an exchange of the Series 2017 Bonds for the proceeds representing the purchase of such Series by the Original Purchaser thereof.

"Continuing Disclosure Certificate" means that certain Continuing Disclosure Certificate executed by the City and dated the date of original execution and delivery of the Series 2017 Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

"Cost of Issuance Fund" means the Account by that name established pursuant to Section 3.04.

"Costs of Issuance" means all expenses incurred in connection with the authorization, issuance, sale and delivery of the Series 2017 Bonds, including but not limited to compensation, fees and expenses of the City and the Trustee and their respective counsel, compensation to any financial consultants and underwriters, legal fees and expenses, municipal bond insurance or surety bond premiums, filing and recording costs, rating agency fees, costs of preparation and reproduction of documents and costs of printing.

"Council" means the Council of the City or any other legislative body of the City hereafter provided for pursuant to law.

"Debt Service" means, during any period of computation, the amount obtained for such period by totaling the following amounts:

(a) The principal amount of all Outstanding Serial Bonds payable by their terms in such period;

(b) The principal amount of all Outstanding Term Bonds scheduled to be paid or redeemed by operation of mandatory Sinking Fund Installments in such period; and

(c) The interest which would be due during such period on the aggregate principal amount of Bonds which would be Outstanding in such period if the Bonds are paid or redeemed as scheduled.

"Debt Service Fund" means the fund by that name established and held by the Trustee pursuant to Section 4.03.

"Defeasance Obligations" means the Federal Securities listed in clause (a) of the definition thereof.

"Depository" means (a) initially, DTC, and (b) any other Securities Depositories acting as Depository pursuant to Section 2.10.

"Depository System Participant" means any participant in the Depository's book-entry system.

"DTC" means The Depository Trust Company, and its successors and assigns.

"Event of Default" means any of the events described in Section 8.01.

"Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Tax Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, (iii) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the City and related parties do not own more than a 10% beneficial interest therein if the return paid by the fund is without regard to the source of the investment.

"Federal Securities" means, with respect to the Bonds: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged; or (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are directly or indirectly secured or guaranteed by the full faith and credit of the United States of America; specifically:

U.S. treasury Obligations,
all direct or fully guaranteed obligations,
Farmers Home Administration,
General Services Administration,
Guaranteed Title IX financing,
Government National Mortgage Association (GNMA), and
State and Local Government Series.

"Fiscal Year" means the period commencing on July 1 of each year and terminating on the next succeeding June 30.

"Gross Revenues" means all Charges (excluding surcharges, if any) received for, and all other gross income and receipts derived by the City from, the ownership and operation of the Wastewater System or otherwise arising from the Wastewater System, including but not limited to (a) any amounts transferred to the Wastewater Fund from a Rate Stabilization Fund, and (b) investment earnings on amounts held in the Wastewater Fund or in any other fund established

with respect to the Wastewater System. Gross Revenues do not include (i) refundable deposits made to establish credit, (ii) the proceeds of any *ad valorem* property taxes, (iii) the proceeds of any special assessments or special taxes levied upon real property within any improvement district served by the City for the purpose of paying special assessment bonds or special tax obligations of the City relating to the Wastewater System and (iv) connection charges.

"Improvement" means any addition, extension, improvement, equipment, machinery or other facilities to or for the Wastewater System.

"Indenture" means this Indenture of Trust, as originally executed or as it may from time to time be supplemented, modified or amended pursuant to the provisions hereof.

"Independent Certified Public Accountant" means any certified public accountant or firm of such accountants appointed and paid by the City, and who, or each of whom-

(a) is in fact independent and not under domination of the City;

(b) does not have any substantial identity of interest, direct or indirect, with the City; and

(c) is not and no member of which is connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or other audits of the books of or reports to the City.

"Independent Consultant" means any financial or engineering consultant (including without limitation any Independent Certified Public Accountant) with an established reputation in the field of municipal finance or firm of such consultants appointed and paid by the City, and who, or each of whom-

(a) is in fact independent and not under domination of the City;

(b) does not have any substantial identity of interest, direct or indirect, with the City; and

(c) is not and no member of which is connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or other audits of the books of or reports to the City.

"Information Services" means in accordance with then-current guidelines of the Securities and Exchange Commission, the Electronic Municipal Market Access System (referred to as "EMMA"), a facility of the Municipal Securities Rulemaking Board (at http://emma.msrb.org), or such service or services as the City may designate in a certificate delivered to the Trustee.

"Interest Payment Date" means, with respect to the Series 2017 Bonds, May 1 and November 1 in each year, commencing May 1, 2018, and with respect to any Parity Debt, any date on which interest is due and payable thereon, and continuing so long as any Bonds or Parity Debt remain Outstanding.

"Interest Requirement" means, as of any particular date of calculation, the amount equal to any unpaid interest then due and payable, plus an amount that will on the next succeeding

Interest Payment Date be equal to the interest to become due and payable on the Bonds on such next succeeding Interest Payment Date.

"Maintenance and Operation Costs" means the reasonable and necessary costs and expenses paid by the City to maintain and operate the Wastewater System, including but not limited to (a) costs of electricity and other forms of energy supplied to the Wastewater System, (b) the reasonable expenses of management and repair and other costs and expenses necessary to maintain and preserve the Wastewater System in good repair and working order, (c) payments under any contracts, notes or leases executed in connection with the City's acquisition of the Wastewater System or any part thereof, and (d) payment of maintenance and operation expenses for wastewater treatment. Maintenance and Operation Costs does not include (i) debt service payable on obligations incurred by the City, or for which the City is responsible in whole or in part, including but not limited to the Bonds, (ii) capital costs in excess of those, if any, required in (b) above, including payment of capital costs by the City in connection with wastewater treatment, (iii) depreciation, replacement and obsolescence charges or reserves therefor, (iv) amortization of intangibles or other bookkeeping entries of a similar nature, and (v) any overhead costs of the City to be repaid through annual transfers to the City's General Fund.

"Maximum Annual Debt Service" means, as of the date of calculation, the maximum amount of Debt Service for the current or any future Fiscal Year.

"Moody's" means Moody's Investors Service, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors or assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency selected by the City.

"Net Revenues" means, for any period of computation, the amount of the Gross Revenues during such period, less the amount of Maintenance and Operation Costs during such period.

"Original Purchaser" means, in the case of the Series 2017 Bonds, Stifel, Nicolaus & Company, Incorporated.

"Outstanding", when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 7.03) all Bonds theretofore executed, issued and delivered by the City under this Indenture except -

(a) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation;

(b) Bonds paid or deemed to have been paid within the meaning of Section 9.03; and

(c) Bonds in lieu of or in substitution for which other Bonds have been executed, issued and delivered by the City pursuant to this Indenture or any Parity Debt Instrument.

"Owner" or "Bond Owner" or "Bondowner", when used with respect to any Bond, means the person in whose name the ownership of such Bond shall be registered on the Bond Registration Books.

"Parity Debt" means all bonds, notes or other obligations (including without limitation long-term installment sale contracts or other contracts, loans, sub-leases or other legal financing arrangements) of the City payable from and secured by a pledge of and lien upon any of the Net Revenues issued or incurred pursuant to Section 3.05.

"Parity Debt Instrument" means the resolution, trust indenture or installment sale agreement adopted, entered into or executed and delivered by the City, and under which Parity Debt are issued.

"Participating Underwriter" has the meaning ascribed thereto in the Continuing Disclosure Certificate.

"Principal Corporate Trust Office" means such corporate trust office of the Trustee as may be designated from time to time by written notice from the Trustee to the City. Except that with respect to presentation of Bonds for payment or for registration of transfer and exchange such term shall mean the corporate trust office of U.S. Bank National Association in St. Paul, Minnesota or such other office or agency of the Trustee at which at any particular time, its corporate trust agency or operations shall be conducted.

"Principal Payment" means with respect to any particular Principal Payment Date, an amount equal to the sum of (i) the aggregate principal amount of Outstanding Serial Bonds payable on such Principal Payment Date as determined by the applicable Parity Debt Instrument (but not including Sinking Fund Installments) and (ii) the aggregate of Sinking Fund Installments with respect to all Outstanding Term Bonds payable on such Principal Payment Date as determined hereby and by the applicable Parity Debt Instrument.

"Principal Payment Date" means the date on which Principal Payments are required to be made pursuant to Section 2.01.

"Rate Stabilization Fund" means the fund by that name established and held by the City pursuant to Section 4.07.

"Record Date" means, with respect to the Series 2017 Bonds, the fifteenth (15th) calendar day of the month immediately preceding an Interest Payment Date or, with respect to any Parity Debt, any other date established in the applicable Parity Debt Instrument.

"Redemption Account" means the Account by that name established and held by the Trustee pursuant to Section 4.03.

"Redemption Price" means, with respect to any Bond, the principal amount thereof, plus the applicable premium, if any, payable upon redemption thereof pursuant to this Indenture or the Parity Debt Instrument pursuant to which the same was issued or incurred.

"Request of the City" means a request in writing signed by an Authorized Official, or by any other officer of the City duly authorized by the Council for that purpose.

"S&P" means S&P Global Ratings, a division of Standard & Poor's Financial Services LLC, and its successors or assigns, except that if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "S&P" shall be deemed to refer to any other nationally recognized securities rating agency selected by the City.

"Securities Depositories" means The Depository Trust Company; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the City may designate in writing to the Trustee.

"Serial Bonds" means all Bonds other than Term Bonds.

"Series" when used with respect to less than all of the Bonds, means and refers to all of the Bonds delivered on original issuance in a simultaneous transaction, regardless of variations in maturity, interest rate or other provisions, and any Bond thereafter delivered in lieu of or substitution for any of such Bonds pursuant to Sections 2.02, 2.05, 2.06, 2.07, 2.09 and 7.04.

"Series 2017 Bonds" means the $_____ City of Milpitas Wastewater Revenue Refunding Bonds, Series 2017, issued and at any time Outstanding hereunder.

"Sinking Fund Installment" means, with respect to any particular date, the amount of money required hereby or by or pursuant to a Parity Debt Instrument to be paid by the City on such date toward the retirement of any particular Term Bonds prior to their respective stated maturities.

"State" means the State of California.

"Subordinate Bonds" means all bonds, notes or other obligations (including without limitation long-term contracts, loans, sub-leases or other legal financing arrangements) of the City payable from and secured by a pledge of and lien upon any of the Net Revenues issued or incurred pursuant to Section 3.07.

"Subordinate Bonds Instrument" means the resolution, trust indenture or installment sale agreement adopted, entered into or executed and delivered by the City, and under which Subordinate Bonds are issued.

"Supplemental Indenture" means any supplement or amendment to this Indenture which complies with the provisions of Section 7.01 or 7.02.

"Tax Code" means the Internal Revenue Code of 1986 as in effect on the date of issuance of the Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the Bonds, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the Tax Code.

"Tax Regulations" means temporary and permanent regulations promulgated under the Tax Code.

"Term Bonds" means, with respect to any Parity Debt, the Parity Debt which is payable prior to their stated maturity by operation of Sinking Fund Installments.

"Trustee" means U.S. Bank National Association, appointed by the City to act as trustee hereunder pursuant to Section 6.01, and its assigns or any other corporation or association which may at any time be substituted in its place, as provided in Section 6.01.

"2006 Agreement" means the Installment Sale Agreement, dated as of December 1, 2006, between the Authority and the City.

"2006 Certificates" means the Certificates of Participation 2006 Series A (City of Milpitas Sewer Financing), executed and delivered by the 2006 Trustee in the initial principal amount of $9,535,000.

"2006 Irrevocable Refunding Instructions" means the Irrevocable Refunding Instructions, dated as of December 1, 2017, from the Authority and the City to the 2006 Trustee.

"2006 Trust Agreement" means the Trust Agreement dated as of December 1, 2006, among the 2006 Trustee, the Authority and the City.

"2006 Trustee" means U.S. Bank National Association, as trustee for the 2006 Certificates.

"Wastewater Fund" means the fund previously established (denominated the "Sewer Fund") and held by the City pursuant to Section 4.02 hereof.

"Wastewater System" means the entire system of the City for the collection, treatment and disposal of wastewater within the service area of the City, including but not limited to all facilities, properties, lands, rights, entitlements and other property useful in connection therewith, together with all extensions thereof and improvements thereto at any time acquired, constructed or installed by the City.

Section 1.02. Rules of Construction. All references in this Indenture to "Articles," "Sections," and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; and the words "herein," "hereof," "hereunder," and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

Section 1.03. Authorization and Purpose of Series 2017 Bonds. The City has reviewed all proceedings heretofore taken relative to the authorization of the Series 2017 Bonds and has found, as a result of such review, and hereby finds and determines that all things, conditions, and acts required by law to exist, happen and/or be performed precedent to and in the issuance of the Series 2017 Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the City is now authorized, as an exercise of the municipal affairs power of the City as a municipal corporation under the constitution and laws of the State and pursuant to the Bond Law and each and every requirement of law, to issue the Series 2017 Bonds in the manner and form provided in this Indenture. Accordingly, the City hereby authorizes the issuance of the Series 2017 Bonds pursuant to the Bond Law and this Indenture for the purposes specified in this Indenture.

Section 1.04. Equal Security. In consideration of the acceptance of the Series 2017 Bonds by the Owners thereof, this Indenture shall be deemed to be and shall constitute a contract among the City, the Trustee and the Owners from time to time of the Series 2017 Bonds; and the covenants and agreements herein set forth to be performed on behalf of the City shall be for the equal and proportionate benefit, security and protection of all Owners of the Series 2017 Bonds without preference, priority or distinction as to security or otherwise of any of the Series 2017

Bonds over any of the others by reason of the number or date thereof or the time of sale, execution or delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.

ARTICLE II

ISSUANCE OF SERIES 2017 BONDS

Section 2.01. Terms of Series 2017 Bonds. The Series 2017 Bonds authorized to be issued by the City under and subject to the Bond Law and the terms of this Indenture shall be designated the "City of Milpitas Wastewater Revenue Refunding Bonds, Series 2017", and shall be issued in the original principal amount of _____ Dollars ($_____).

The Series 2017 Bonds shall be issued in fully registered form without coupons in denominations of $5,000 or any integral multiple thereof, so long as no Series 2017 Bond shall have more than one maturity date. The Series 2017 Bonds shall mature on November 1 in each of the years and in the amounts, and shall bear interest at the rates, as follows:

Maturity Date (November 1)	Principal Amount	Interest Rate Per Annum

Interest on the Series 2017 Bonds shall be payable on each Interest Payment Date, commencing May 1, 2018, to the person whose name appears on the Bond Registration Books as the Owner thereof as of the Record Date immediately preceding each such Interest Payment Date, such interest to be paid by check or draft of the Trustee mailed by first class mail to the Owner or, at the option of any Owner of at least $1,000,000 aggregate principal amount of the Bonds with respect to which written instructions have been filed with the Trustee prior to the Record Date, by wire transfer, at the address of such Owner as it appears on the Bond Registration Books. If there exists a default in payment of interest due on such Interest Payment Date, such interest shall be payable on a payment date established by the Trustee to the persons in whose names the Bonds are registered at the close of business on a special record date for the payment of such defaulted interest established by notice mailed by the Trustee to the registered Owners of the Bonds not less than 15 days preceding such special record date.

Principal of and premium (if any) on any Series 2017 Bond shall be paid upon presentation and surrender thereof at the Principal Corporate Trust Office of the Trustee. Both the principal of and interest and premium (if any) on the Series 2017 Bonds shall be payable in lawful money of the United States of America.

The Series 2017 Bonds shall be dated the Closing Date and bear interest based on a 360-day year comprised of twelve 30-day months from the Interest Payment Date next preceding the date of authentication thereof, unless said date of authentication is an Interest Payment Date, in which event such interest is payable from such date of authentication, and unless said date of authentication is prior to April 15, 2018, in which event such interest is payable from the Closing Date; provided, however, that if, as of the date of authentication of any Series 2017 Bond, interest thereon is in default, such Series 2017 Bond shall bear interest from the date to which interest has previously been paid or made available for payment thereon in full.

Section 2.02. Redemption of Series 2017 Bonds.

(a) No Optional Redemption. The Series 2017 Bonds are not subject to optional redemption prior to maturity..

(b) [Reserved].

(c) Special Mandatory Redemption From Insurance and Sale Proceeds. The Series 2017 Bonds are also subject to redemption as a whole or in part, on any date, from and to the extent of the proceeds of disposition of Wastewater System properties or the proceeds of hazard insurance not used to repair or rebuild the Wastewater System, which proceeds are required to be used for such purpose hereunder, at a Redemption Price equal to the principal amount of the Bonds plus interest accrued thereon to the date fixed for redemption, without premium.

The Authority shall give the Trustee written notice of its intention to redeem Bonds under this subsection (c), and the manner of selecting such Bonds for redemption from among the maturities and series thereof, in sufficient time to enable the Trustee to give notice of such redemption in accordance with Section 4.03.

(d) Additional Bonds. Any Parity Debt issued pursuant to Section 3.05 of this Indenture may be made subject to redemption prior to maturity, as a whole or in part, at such time or times, and upon payment of the principal amount thereof and accrued interest thereon plus such premium or premiums, if any, as may be determined by the City in the applicable Parity Debt Instrument.

(e) Notice of Redemption. Unless waived by any Owner of Bonds to be redeemed, notice of any redemption of Bonds shall be given, at the expense of the City, by the Trustee by mailing a copy of a redemption notice by first class mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Registration Books; provided, that neither the failure to receive such notice nor any immaterial defect in any notice shall affect the sufficiency of the proceedings for the redemption of the Bonds. Any such notice also shall be given to the Securities Depositories and the Information Services on the same date that it is given to the Owner of the Bonds.

(f) Contents of Notice. All notices of redemption shall be dated and shall state:

(i) the CUSIP numbers of all Outstanding Bonds being redeemed;

(ii) the stated interest rate with respect to each Bond being redeemed;

(iii) the maturity date of each Bond being redeemed;

(iv) the Redemption Price;

(v) that on the redemption date the Redemption Price will become due and payable with respect to each such Bond or portion thereof called for redemption, and that interest with respect thereto shall cease to accrue from and after said date; and

(vi) the place or places where such Bonds are to be surrendered for payment of the Redemption Price, which places of payment may include the Principal Corporate Trust Office of the Trustee.

The City shall have the right to rescind any redemption by written notice to the Trustee on or prior to the date fixed for redemption. Any such notice of redemption shall be canceled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Outstanding Bonds then called for redemption, and such cancellation shall not constitute an Event of Default under this Indenture. The City and the Trustee shall have no liability to the Owners or any other party related to or arising from such rescission of redemption. The Trustee shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent.

(g) Consequences of Notice. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the City shall default in the payment of the Redemption Price) such Bonds or portions of Bonds shall cease to have interest accrue thereon. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Trustee at the Redemption Price. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the Owner a new Bond or Bonds of the same maturity in the amount of the unredeemed principal. All Bonds which have been redeemed shall be cancelled and destroyed by the Trustee and shall not be redelivered. Neither the failure of any Bond Owner to receive any notice so mailed nor any defect therein shall affect the sufficiency of the proceedings for redemption of any Bonds nor the cessation of accrual of interest thereon.

(h) Partial Redemption of Bonds. In the event only a portion of any Bond is called for redemption, then upon surrender of such Bond redeemed in part only, the City shall execute and the Trustee shall authenticate and deliver to the Owner, at the expense of the City, a new Bond or Bonds, of the same maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond or Bonds.

(i) Selection of Bonds for Redemption. With respect to the Series 2017 Bonds, whenever less than all of the Series 2017 Bonds of a maturity are to be selected for redemption, the Trustee shall determine, by lot, the numbers of the Series 2017 Bonds of such maturity to be redeemed, and shall notify the City thereof.

All Series 2017 Bonds redeemed pursuant to this Section and all Series 2017 Bonds purchased by the City pursuant to this subsection shall be cancelled and destroyed pursuant to Section 9.08.

Section 2.03. Form of Series 2017 Bonds. The Series 2017 Bonds, the Trustee's certificate of authentication, and the assignment to appear thereon, shall be substantially in the respective forms set forth in Exhibit A attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

Section 2.04. Execution of Series 2017 Bonds. The Series 2017 Bonds shall be signed in the name and on behalf of the City with the manual or facsimile signatures of an Authorized Official and attested by the manual or facsimile signature of its City Clerk under the seal of the City. Such seal may be in the form of a facsimile of the City's seal and shall be imprinted or impressed upon the Series 2017 Bonds. The Series 2017 Bonds shall then be delivered to the Trustee for authentication by it. In case any officer who has signed any of the Series 2017 Bonds ceases to be such officer before the Series 2017 Bonds so signed shall have been authenticated or delivered by the Trustee or issued by the City, such Series 2017 Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the City as though the individual who signed the same had continued to be such officer of the City. Also, any Series 2017 Bond may be signed on behalf of the City by any individual who on the actual date of the execution of such Series 2017 Bond shall be the proper officer although on the nominal date of such Series 2017 Bond such individual shall not have been such officer.

Only such of the Series 2017 Bonds as shall bear thereon a certificate of authentication in substantially the form set forth in Exhibit A, manually executed by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee shall be conclusive evidence that the Series 2017 Bonds so authenticated have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

Section 2.05. Transfer of Series 2017 Bonds. Any Series 2017 Bond may, in accordance with its terms, be transferred upon the Bond Registration Books by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Series 2017 Bond for cancellation, accompanied by delivery of a written instrument of transfer in a form approved by the Trustee, duly executed. Whenever any Series 2017 Bond shall be surrendered for transfer, the City shall execute and the Trustee shall thereupon authenticate and deliver to the transferee a new Bond or Bonds of like series, tenor, maturity and aggregate principal amount. No Series 2017 Bonds the notice of redemption of which has been mailed pursuant to Section 2.02(d) shall be subject to transfer pursuant to this Section.

Section 2.06. Exchange of Series 2017 Bonds. Series 2017 Bonds may be exchanged at the Principal Corporate Trust Office of the Trustee, for Series 2017 Bonds of the same series, tenor and maturity and of other authorized denominations. No Series 2017 Bonds the notice of redemption of which has been mailed pursuant to Section 2.02(d) shall be subject to exchange pursuant to this Section.

Section 2.07. Temporary Bonds. The Series 2017 Bonds may be issued initially in temporary form exchangeable for definitive Series 2017 Bonds when ready for delivery. The temporary Series 2017 Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the City and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Series 2017 Bond shall be executed by the City and be registered and authenticated by the Trustee upon the same conditions and in substantially the same manner as the definitive Series 2017 Bonds. If the City

issues temporary Series 2017 Bonds, it will execute and furnish definitive Bonds without delay, and thereupon the temporary Series 2017 Bonds may be surrendered, for cancellation, in exchange therefor at the Principal Corporate Trust Office of the Trustee, and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Series 2017 Bonds of authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds authenticated and delivered hereunder.

Section 2.08. Bond Registration Books. The Trustee will keep or cause to be kept at its trust office sufficient Bond Registration Books for the registration and transfer of the Bonds, which shall at all times during regular business hours, and upon reasonable notice, be open to inspection by the City; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, Bonds as hereinbefore provided.

Section 2.09. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the City, at the expense of the Owner of said Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like maturity and principal amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be cancelled by it and delivered to, or upon the order of, the City. If any Bond issued hereunder shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the City and the Trustee and, if such evidence be satisfactory to them and indemnity satisfactory to them shall be given, the City, at the expense of the Bond Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like maturity and principal amount in lieu of and in substitution for the Bond so lost, destroyed or stolen (or if any such Bond has matured or has been called for redemption, instead of issuing a substitute Bond the Trustee may pay the same without surrender thereof upon receipt of indemnity satisfactory to the Trustee). The City may require payment of a reasonable fee for each new Bond issued under this Section and of the expenses that may be incurred by the City and the Trustee. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original contractual obligation on the part of the City whether or not the Bond alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds secured by this Indenture.

Section 2.10. Book Entry System.

(a) Original Delivery. The Bonds shall be initially delivered in the form of a separate single fully registered Bond (which may be typewritten) for each maturity of the Bonds. Upon initial delivery, the ownership of each such Bond shall be registered on the Bond Registration Books maintained by the Trustee pursuant to Section 2.08 hereof in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Bonds shall be registered in the name of the Nominee on such Bond Registration Books.

With respect to Bonds the ownership of which shall be registered in the name of the Nominee, the City and the Trustee shall have no responsibility or obligation to any Depository System Participant or to any person on behalf of which the City holds an interest in the Bonds. Without limiting the generality of the immediately preceding sentence, the City and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any Depository System Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Depository System Participant or any other person,

other than a Bond Owner as shown in the Registration Books, of any notice with respect to the Bonds, including any notice of redemption, (iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed in the event the City elects to redeem the Bonds in part, (iv) the payment to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any amount with respect to principal, premium, if any, or interest represented by the Bonds or (v) any consent given or other action taken by the Depository as Owner of the Bonds. The City and the Trustee may treat and consider the person in whose name each Bond is registered as the absolute owner of such Bond for the purpose of payment of principal, premium, if any, and interest represented by such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers of ownership of such Bond, and for all other purposes whatsoever. The Trustee shall pay the principal, interest and premium, if any, represented by the Bonds only to the respective Owners or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to payment of principal, interest and premium, if any, represented by the Bonds to the extent of the sum or sums so paid. No person other than a Bond Owner shall receive a Bond evidencing the obligation of the City to make payments of principal, interest and premium, if any, pursuant to this Indenture. Upon delivery by the Depository to the Nominee of written notice to the effect that the Depository has determined to substitute a new Nominee in its place, such new nominee shall become the Nominee hereunder for all purposes; and upon receipt of such a notice the City shall promptly deliver a copy of the same to the Trustee.

(b) Representation Letter. In order to qualify the Bonds for the Depository's book-entry system, the City shall execute and deliver to such Depository a letter representing such matters as shall be necessary to so qualify the Bonds. The execution and delivery of such letter shall not in any way limit the provisions of subsection (a) above or in any other way impose upon the City or the Trustee any obligation whatsoever with respect to persons having interests in the Bonds other than the Bond Owners. Upon the written acceptance by the Trustee, the Trustee shall agree to take all action reasonably necessary for all representations of the Trustee in such letter with respect to the Trustee to at all times be complied with. In addition to the execution and delivery of such letter, the City may take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository's book-entry program.

(c) Transfers Outside Book-Entry System. In the event that either (i) the Depository determines not to continue to act as Depository for the Bonds, or (ii) the City determines to terminate the Depository as such, then the City shall thereupon discontinue the book-entry system with such Depository. In such event, the Depository shall cooperate with the City and the Trustee in the execution of replacement Bonds by providing the Trustee with a list showing the interests of the Depository System Participants in the Bonds, and by surrendering the Bonds, registered in the name of the Nominee, to the Trustee on or before the date such replacement Bonds are to be issued. The Depository, by accepting delivery of the Bonds, agrees to be bound by the provisions of this subsection (c). If, prior to the termination of the Depository acting as such, the City fails to identify another Securities Depository to replace the Depository, then the Bonds shall no longer be required to be registered in the Registration Books in the name of the Nominee, but shall be registered in whatever name or names the Owners transferring or exchanging Bonds shall designate, in accordance with the provisions hereof.

In the event the City determines that it is in the best interests of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the City may notify the Depository System Participants of the availability of such certificated Bonds through the Depository. In such event, the Trustee will authenticate, transfer and exchange Bonds as required by the Depository and

others in appropriate amounts; and whenever the Depository requests, the Trustee and the City shall cooperate with the Depository in taking appropriate action (y) to make available one or more separate certificates evidencing the Bonds to any Depository System Participant having Bonds credited to its account with the Depository, or (z) to arrange for another Securities Depository to maintain custody of a single certificate evidencing such Bonds, all at the City's expense.

(d) Payments to the Nominee. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments with respect to principal, interest and premium, if any, represented by such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the letter described in subsection (b) of this Section or as otherwise instructed by the Depository.

ARTICLE III

ISSUE OF SERIES 2017 BONDS; PARITY DEBT

Section 3.01. Issuance of Series 2017 Bonds. Upon the execution and delivery of this Indenture, the City shall execute and deliver Series 2017 Bonds in the aggregate principal amounts set forth in Section 2.01 to the Trustee for authentication and delivery to the Original Purchaser thereof upon the Request of the City.

Section 3.02. Application of Proceeds of Sale of Series 2017 Bonds.

(a) Receipt of Bond Proceeds. On the Closing Date, the original purchaser of the Series 2017 Bonds will wire the amount of $_____ to the Trustee, which is equal to (A) the purchase price of the Series 2017 Bonds ($_____), which is calculated as equal to the original principal amount of the Series 2017 Bonds ($_____), plus a [net] original issue premium in the amount of $_____, less an underwriter's discount in the amount of $_____, *less* (B) the amount paid directly to 2006 Trustee, for deposit under the 2006 Irrevocable Refunding Instructions ($_____).

(b) Deposits into Cost of Issuance Fund. On the Closing Date, the Trustee shall deposit the proceeds of the Series 2017 Bonds described in Section 3.02(a) into the Cost of Issuance Fund, which is hereby established as a separate account and a separate fund to be held by the Trustee in trust. The Trustee shall apply moneys in the Cost of Issuance Fund as set forth in Section 3.04:

Section 3.03. [Reserved].

Section 3.04. Cost of Issuance Fund. There is hereby created a fund to be known as the "City of Milpitas Wastewater Revenue Refunding Bonds, Series 2017, Cost of Issuance Fund," which the City hereby covenants and agrees to cause to be maintained and which shall be held in trust by the Trustee. The moneys in the Cost of Issuance Fund shall be used in the manner provided by law solely for the purpose of the payment of Costs of Issuance upon receipt by the Trustee of one or more Requests of the City therefor, on or after the Closing Date, in the form of Exhibit B. Any funds remaining in the Cost of Issuance Fund on April 1, 2018, shall be transferred by the Trustee to the Debt Service Fund and used to pay interest on the Series 2017 Bonds. Following such transfer, the Cost of Issuance Fund shall be closed.

Section 3.05. Issuance of Parity Debt. In addition to the Series 2017 Bonds, the City may, by a Parity Debt Instrument, issue or incur other loans, advances or indebtedness payable from Net Revenues to be derived from the Water System, to provide financing for the Wastewater System, in such principal amount as shall be determined by the City. The City may issue or incur any such Parity Debt subject to the following specific conditions that are hereby made conditions precedent to the issuance and delivery of such Parity Debt:

(a) The City shall be in compliance with all covenants set forth in this Indenture.

(b) The Net Revenues of the Wastewater System, calculated on generally accepted accounting principles, as shown by the books of the City for the latest Fiscal Year or any more recent 12-month period selected by the City ending not more than 60 days prior to the adoption of the Parity Debt Instrument pursuant to which such Parity Debt

are issued, as shown by the books of the City, plus, at the option of the City, any or all of the items hereinafter in this paragraph designated (i) and (ii), shall at least equal 115% of Maximum Annual Debt Service, with Maximum Annual Debt Service calculated on all Bonds to be Outstanding immediately subsequent to the issuance of such Parity Debt which have a lien on Net Revenues of the Wastewater System. The items any or all of which may be added to such Net Revenues for the purpose of issuing or incurring Parity Debt hereunder are the following:

(i) An allowance for Net Revenues from any additions to or improvements or extensions of the System to be made with the proceeds of such Parity Debt, and also for Net Revenues from any such additions, improvements or extensions which have been made from moneys from any source but in any case which, during all or any part of such Fiscal Year or such 12-month period, were not in service, all in an amount equal to 90% of the estimated additional average annual Net Revenues to be derived from such additions, improvements and extensions for the first 36-month period in which each addition, improvement or extension is respectively to be in operation, all as shown in the written report of an Independent Consultant engaged by the City; and

(ii) An allowance for revenues projected to arise from any increase in the Charges which has been approved by the City Council prior to the incurring of such additional indebtedness but which, during all or any part of such Fiscal Year or such 12-month period, was not in effect, in an amount equal to the amount by which the Net Revenues would have been increased if such increase in Charges had been in effect during the whole of such Fiscal Year or such 12-month period, all as shown in the written report of an Independent Consultant engaged by the City. For the avoidance of doubt, a Charge shall be considered to have been approved by the City Council and may be considered in the calculation of the allowance described in the previous sentence if the Charge is part of a multi-year rate increase that has been approved by the City Council, even if the specific Charge will not take effect until a subsequent Fiscal Year.

(c) The Parity Debt Instrument providing for the issuance of such Parity Debt under this Section 3.05 shall:

(i) Provide that the proceeds of such Parity Debt shall be applied to the acquisition, construction, improvement, financing or refinancing of additional facilities, improvements or extensions of existing facilities within the Wastewater System, or otherwise for facilities, improvements or property which the City determines are of benefit to the Wastewater System, or for the purpose of refunding any Parity Debt in whole or in part, including all costs (including costs of issuing such Parity Debt and including capitalized interest on such Parity Debt during any period which the City deems necessary or advisable) relating thereto;

(ii) specify the date on which interest on such Parity Debt will be payable; and

(iii) specify the date on which principal on such Parity Debt will be payable.

(d) Notwithstanding the foregoing, Parity Debt proposed to be issued for the purpose of refunding any Parity Debt may be issued without compliance with subsection (b) and (c)(i), so long as such refunding results in lower Debt Service in each Fiscal Year after such refunding and the final maturity (or termination) date of the refunding Parity Debt is no later than the final maturity (or termination) date of the refunded Parity Debt.

Section 3.06. [Reserved]

Section 3.07. Subordinate Bonds. Nothing in this Indenture shall prohibit or impair the authority of the City to issue bonds or other obligations secured by a lien on Gross Revenues or Net Revenues which is subordinate to the lien established hereunder, upon such terms and in such principal amounts as the City may determine.

Section 3.08. Validity of Bonds. The validity of the authorization and issuance of the Bonds shall not be affected in any way by any proceedings taken by the City in connection with the Wastewater System, and the recital contained in the Bonds that the same are issued pursuant to the Bond Law shall be conclusive evidence of their validity and of the regularity of their issuance.

ARTICLE IV

PLEDGE OF NET REVENUES; FUNDS AND ACCOUNTS

Section 4.01. Pledge of Net Revenues.

(a) The City hereby transfers, places a charge upon, assigns and sets over to the Trustee (or other recipient set forth in a Parity Debt Instrument), for the benefit of the Owners, that portion of the Net Revenues which is necessary to pay the principal or Redemption Price of and interest on the Bonds in any Fiscal Year, together with all moneys on deposit in the Debt Service Fund and in the Wastewater Fund, and such amounts are hereby irrevocably pledged to the punctual payment of the principal or Redemption Price of and interest on the Bonds. The Net Revenues shall not be used for any other purpose while any of the Bonds remain Outstanding, except that out of Net Revenues there may be apportioned and paid such sums for such purposes, as are expressly permitted by this Indenture and the Parity Debt Instruments. Said pledge shall constitute a first, direct and exclusive charge and lien on the Net Revenues and all amounts in the Debt Service Fund and Wastewater Fund for the payment of the principal or Redemption Price of and interest on the Bonds in accordance with the terms of this Indenture and the Parity Debt Instruments.

(b) The Net Revenues constitute a trust fund for the security and payment of the principal or Redemption Price of and interest on the Bonds. The general fund of the City is not liable and the credit or taxing power of the City is not pledged for the payment of the principal or Redemption Price of and interest on the Bonds. The Owner of the Bonds shall not compel the exercise of the taxing power by the City or the forfeiture of its property. The principal or Redemption Price of and interest on the Bonds are not a debt of the City, nor a legal or equitable pledge, charge, lien or encumbrance, upon any of its property, or upon any of its income, receipts, or revenues except the Net Revenues of the Wastewater System as and to the extent set forth in this Indenture and the Parity Debt Instruments.

Section 4.02. Receipt and Deposit of Revenues. The City covenants and agrees that all Gross Revenues, when and as received, will be received and held by the City in trust hereunder and will be deposited by the City in its Wastewater Fund held by the City, and will be accounted for through and held in trust in the Wastewater Fund, and the City shall only have such beneficial right or interest in any of such money as provided in this Indenture, and the Parity Debt Instruments. All such Gross Revenues shall be transferred, disbursed, allocated and applied solely to the uses and purposes hereinafter set forth in this Indenture, and the Parity Debt Instruments, and shall be accounted for separately and apart from all other money, funds, accounts or other resources of the City.

Section 4.03. Establishment of Funds and Accounts and Allocation of Revenues Thereto. The Debt Service Fund, as a special fund, and the Redemption Account, as a special account therein, are hereby created.

The Debt Service Fund and the Redemption Account therein shall be held and maintained by the Trustee.

All Gross Revenues shall be held in trust by the City in the Wastewater Fund and shall be applied, transferred, used and withdrawn only for the purposes hereinafter authorized in this Article.

(a) Operating Costs. The City shall first pay from the moneys in the Wastewater Fund all Maintenance and Operation Costs (including amounts reasonably required to be set aside in contingency reserves for Maintenance and Operation Costs) as such Maintenance and Operation Costs become due and payable.

(b) Debt Service Fund(s). On or before the second Business Day prior to each Interest Payment Date (or such other day established by the applicable Parity Debt Instrument), the City shall transfer from the Wastewater Fund to the Trustee (or other recipient set forth in a Parity Debt Instrument) for deposit in the Debt Service Fund (or other location set forth in a Parity Debt Instrument) for the Outstanding Series 2017 Bonds and each issue of Parity Debt (i) an amount equal to the aggregate amount of interest to become due and payable on the Outstanding Series 2017 Bonds and such Outstanding Parity Debt on such Interest Payment Date, plus (ii) if the applicable Interest Payment Date is also a Principal Payment Date, an amount equal to the aggregate amount of Principal Payments (including any Sinking Fund Installments) becoming due and payable on the Outstanding Series 2017 Bonds and such Outstanding Parity Debt on such Principal Payment Date. All interest earnings and profits or losses on the investment of amounts in the Debt Service Fund shall be deposited in or charged to the Debt Service Fund and applied to the purposes thereof. All interest earnings and profits or losses on the investment of amounts in the debt service funds created for each issue of Parity Debt, if any, shall be deposited in or charged to the debt service funds created for each issue of Parity Debt and applied to the purposes thereof. No transfer and deposit need be made into the Debt Service Fund if the amount contained therein, taking into account investment earnings and profits, is at least equal to the Interest Requirement or Principal Payments to become due on the next Interest Payment Date or Principal Payment Date upon all Outstanding Series 2017 Bonds. No transfer and deposit need be made into the debt service funds created for each issue of Parity Debt if the amount contained therein, taking into account investment earnings and profits, is at least equal to the Interest Requirement or Principal Payments to become due on the applicable Interest Payment Date or Principal Payment Date upon all Outstanding Parity Debt.

(c) Reserve Accounts. After making the payments, allocations and transfers provided for in subsections (a) and (b) above, if the balance on hand in the reserve account for any issue of Parity Debt is less than the reserve requirement therefor, such deficiency shall be restored by transfers from the first moneys which become available as Net Revenues, following the application of amounts to cure any deficiency pursuant to clause (e), if any, to replenish the reserve account for any issue of Parity Debt, on a pro rata basis.

(d) Surplus. As long as all of the foregoing payments, allocations and transfers are made at the times and in the manner set forth above in subsections (a) to (c) above, inclusive, any moneys remaining in the Wastewater Fund may at any time be treated as surplus and applied for any lawful purpose.

(e) Deficiency. If amounts in the Wastewater Fund are insufficient to make the transfers described in (b) above, in full, the City shall transfer amounts in the Wastewater Fund: (i) to the Trustee for deposit in the Debt Service Fund for the Outstanding Series 2017 Bonds, and (ii) to the Trustee (or other recipient set forth in a Parity Debt Instrument) for deposit in the debt service funds created (or other location set forth in a Parity Debt Instrument) for each issue of Parity Debt, on a pro rata basis. Such deficiency shall be corrected by transfers from the first moneys which become available as Net Revenues, on a pro rata basis.

Section 4.04. Application of Debt Service Fund.

(a) The Trustee shall withdraw from the Debt Service Fund, prior to each Interest Payment Date, an amount equal to the Interest Requirement payable on such Interest Payment Date, and shall cause the same to be applied to the payment of said interest when due.

(b) The Trustee shall withdraw from the Debt Service Fund, prior to each Principal Payment Date, an amount equal to the Principal Payments due on said Principal Payment Date, and shall cause the same to be applied to the payment of said principal when due.

(c) All withdrawals and transfers under the provisions of subsection (a) or subsection (b) of this Section shall be made not earlier than one (1) day prior to the Interest Payment Date or Principal Payment Date to which they relate, and the amount so withdrawn or transferred shall, for the purposes of this Indenture, be deemed to remain in and be part of the appropriate Account until such Interest Payment Date or Principal Payment Date.

Section 4.05. Reserved.

Section 4.06. Application of Redemption Account. On or before the date which is at least one day prior to any Interest Payment Date on which Series 2017 Bonds are subject to redemption pursuant to Section 2.02(a), the City shall transfer from the Wastewater Fund to the Trustee for deposit in the Redemption Account an amount at least equal to the Redemption Price (excluding accrued interest, which is payable from the Debt Service Fund) of such Series 2017 Bonds to be redeemed on such date. In addition, the City shall transfer to the Trustee for deposit in the Redemption Account all amounts required to redeem any Series 2017 Bonds which are subject to redemption pursuant to Section 2.02(c), when and as such amounts become available. Amounts in the Redemption Account shall be applied by the Trustee solely for the purpose of paying the Redemption Price of Series 2017 Bonds to be redeemed pursuant to Sections 2.02(a) or (c) and to pay the purchase price in the same manner and subject to the same limitation as purchasers of Series 2017 Bonds under Section 2.02(l). If after all of the Series 2017 Bonds have been paid or deemed to have been paid, there are moneys remaining in the Redemption Account, such moneys shall be transferred by the Trustee to the City for deposit in the Wastewater Fund.

Section 4.07. Establishment of Rate Stabilization Fund. The City has the right at any time to establish a rate stabilization fund (the "Rate Stabilization Fund") to be held by it and administered in accordance with this Section 4.07, for the purpose of stabilizing the rates and charges imposed by the City with respect to the Wastewater System. From time to time the City may deposit amounts in the Rate Stabilization Fund, from any source of legally available funds, including but not limited to Net Revenues that are released from the pledge and lien which secures the Bonds and any Parity Debt, as the City may determine.

The City may, but is not required to, withdraw from any amounts on deposit in a Rate Stabilization Fund and deposit such amounts in the Wastewater Fund in any Fiscal Year for the purpose of paying Debt Service coming due and payable in such Fiscal Year. Amounts so transferred from a Rate Stabilization Fund to the Wastewater Fund shall constitute Gross Revenues for such Fiscal Year (except to the extent of amounts transferred into the Rate Stabilization Fund from Gross Revenues received by the City in such Fiscal Year), and shall be applied for the purposes of the Wastewater Fund. Amounts on deposit in a Rate Stabilization Fund shall not be pledged to or otherwise secure the Bonds or any Parity Debt. All interest or other earnings on deposits in a Rate Stabilization Fund shall be withdrawn therefrom at least annually and accounted for as Gross Revenues in the Wastewater Fund. The City has the right

at any time to withdraw any or all amounts on deposit in a Rate Stabilization Fund and apply such amounts for any lawful purposes of the City.

Section 4.08. Investments. All moneys in the Wastewater Fund and the Rate Stabilization Fund may be invested by the City from time to time in any investments authorized by law, consistent with the City's investment policy.

All moneys in the Debt Service Fund and Cost of Issuance Fund shall be invested by the Trustee solely in Authorized Investments, as directed pursuant to a Request of the City. In the absence of any such Request of the City, the Trustee will invest any such moneys in money market funds whose investments are restricted to Federal Securities, provided, however, that any such investment shall be made by the Trustee only if, prior to the date on which such investment is to be made, the Trustee has received a written direction from the City specifying a specific money market fund and, if no such written direction is so received, the Trustee shall hold such moneys uninvested. Obligations purchased as an investment of moneys in any Fund or Account shall be deemed to be part of such Fund or Account, and all interest or gain derived from the investment of amounts in any of the Funds or Accounts established hereunder shall be deposited in the Fund or Account from which such investment was made; and shall be accounted for and applied as provided in Section 4.04(c) (with respect to the Debt Service Fund). For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder with the written approval of the City. The Trustee or an affiliate may act as principal or agent in the acquisition or disposition of any investment, and shall be entitled to its customary fees therefor. The Trustee shall incur no liability for losses arising from any investments made pursuant to this Section.

The Trustee shall furnish the City periodic cash transaction statements which include detail for all investment transactions effected by the Trustee or brokers selected by the City. Upon the City's election, such statements will be delivered via the Trustee's online service and upon electing such service, paper statements will be provided only upon request. The City waives the right to receive brokerage confirmations of security transactions effected by the Trustee as they occur, to the extent permitted by law. The City further understands that trade confirmations for securities transactions effected by the Trustee will be available upon request and at no additional cost and other trade confirmations may be obtained from the applicable broker.

Section 4.09. Valuation; Investments.

In computing the amount in any Fund or Account, Authorized Investments shall be valued at Fair Market Value. With respect to all Funds and Accounts, valuation shall occur annually.

Except as otherwise provided in the following sentence, the City covenants that all investments of amounts deposited in any fund or account created by or pursuant to this Indenture, or otherwise containing gross proceeds of the Series 2017 Bonds (within the meaning of section 148 of the Tax Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Indenture or the Tax Code) at Fair Market Value. Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code shall be valued at their present value (within the meaning of section 148 of the Tax Code).

ARTICLE V

COVENANTS OF THE CITY; SPECIAL TAX COVENANTS

Section 5.01. Punctual Payment; Compliance With Documents. The City shall punctually pay or cause to be paid the interest and principal to become due with respect to all of the Bonds in strict conformity with the terms of the Bonds and of this Indenture, and will faithfully observe and perform all of the conditions, covenants and requirements of this Indenture and all Parity Debt Instruments.

Section 5.02. Against Encumbrances. The City will not mortgage or otherwise encumber, pledge or place any charge upon the Wastewater System or any part thereof, or upon any of the Net Revenues, except as provided in the Indenture.

Section 5.03. Discharge of Claims. The City covenants that in order to fully preserve and protect the priority and security of the Bonds the City shall pay from the Net Revenues and discharge all lawful claims for labor, materials and supplies furnished for or in connection with the Wastewater System which, if unpaid, may become a lien or charge upon the Net Revenues prior or superior to the lien of the Bonds and impair the security of the Bonds. The City shall also pay from the Net Revenues all taxes and assessments or other governmental charges lawfully levied or assessed upon or in respect of the Wastewater System or upon any part thereof or upon any of the Net Revenues therefrom.

Section 5.04. Acquisition, Construction or Financing of Improvements to the Wastewater System. The City will acquire, construct, or finance Improvements to the Wastewater System to be financed with the proceeds of any Parity Debt with all practicable dispatch, and such Improvements will be made in an expeditious manner and in conformity with laws so as to complete the same as soon as possible.

Section 5.05. Maintenance and Operation of Wastewater System in Efficient and Economical Manner. The City covenants and agrees to maintain and operate the Wastewater System in an efficient and economical manner and to operate, maintain and preserve the Wastewater System in good repair and working order.

Section 5.06. Against Sale, Eminent Domain.

(a) The City will not sell, lease or otherwise dispose of the Wastewater System or any part thereof essential to the proper operation of the Wastewater System or to the maintenance of the Net Revenues except as herein expressly permitted. The City will not enter into any lease or agreement which impairs the operation of the Wastewater System or any part thereof necessary to secure adequate Net Revenues for the payment of the interest on and principal or Redemption Price, if any, on the Bonds, or which would otherwise impair the rights of the Holders with respect to the Net Revenues or the operation of the Wastewater System. Any real or personal property which has become non-operative or which is not needed for the efficient and proper operation of the Wastewater System, or any material or equipment which has worn out, may be sold at not less than the market value thereof without the consent of the Holders if such sale will not reduce Net Revenues and if all of the Net Proceeds of such sale are deposited in the Wastewater Fund.

(b) If all or any part of the Wastewater System shall be taken by eminent domain proceedings, the Net Proceeds realized by the City therefrom shall be deposited by the City with

the Trustee in a special fund in trust and applied by the City [[(a)]] to the cost of acquiring or constructing or financing Improvements to the Wastewater System, [[or (b) to redeem the Bonds and/or any Parity Debt in accordance with the applicable Parity Debt Instruments]].

Section 5.07. Insurance. The City covenants that it shall at all times maintain such insurance on the Wastewater System as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to such works or properties.

Any such insurance shall be in the form of policies or contracts for insurance with insurers of good standing and shall be payable to the City, or may be in the form of self-insurance by the City. The City shall establish such fund or funds or reserves as it determines, in its sole judgment, are necessary to provide for its share of any such self-insurance.

[[All amounts collected from insurance against accident to or destruction of any portion of the Wastewater System shall be used to repair or rebuild such damaged or destroyed portion of the Wastewater System, and to the extent not so applied, shall be applied to redeem the Bonds and/or any Parity Debt in accordance with the applicable Parity Debt Instruments.]]

Section 5.08. Records and Accounts. The City covenants that it shall keep proper books of record and accounts of the Wastewater System, separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the Wastewater System. Said books shall, upon reasonable request, be subject to the inspection of the Owners of not less than 10% of the Outstanding Bonds or their representatives authorized in writing.

The City covenants that it will cause the books and accounts of the Wastewater System to be audited annually by an Independent Certified Public Accountant and will make available for inspection by the Bond Owners at the Principal Corporate Trust Office of the Trustee, upon reasonable request, a copy of the report of such Independent Certified Public Accountant.

The City covenants that it will cause to be prepared annually, not more than one hundred eighty (180) days after the close of each Fiscal Year, as a part of its regular annual financial report, a summary statement showing the amount of Gross Revenues and the amount of all other funds collected which are required to be pledged or otherwise made available as security for payment of principal of and interest on the Bonds, the disbursements from the Gross Revenues and other funds in reasonable detail. The City shall furnish a copy of the statement to the Trustee, and upon written request, to any Bond Owner.

Section 5.09. Protection of Security and Rights of Owners. The City will preserve and protect the security of the Bonds and the rights of the Owners, and will warrant and defend their rights against all claims and demands of all persons. From and after the sale and delivery of any Parity Debt by the City, such Parity Debt shall be incontestable by the City.

Section 5.10. Against Competitive Facilities. The City will not acquire, construct, operate or maintain the Wastewater System or utility within the service area of the City that would be competitive with the Wastewater System.

Section 5.11. Payment of Taxes, Etc.. The City will pay and discharge all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Wastewater System or any part thereof or upon any Revenues when the same shall become due. The City will duly observe and conform with all valid requirements of any governmental authority

relative to the Wastewater System or any part thereof, and will comply with all requirements with respect to any state or federal grants received to assist in paying for the costs of the acquisition, construction or financing of any Improvements to the Wastewater System.

Section 5.12. Rates and Charges.

(a) The City shall fix, prescribe, revise and collect Charges for the Wastewater System during each Fiscal Year which are at least sufficient, after making allowances for contingencies and error in the estimates, to produce Gross Revenues (excluding connection fees and transfers to the Wastewater Fund from the Rate Stabilization Fund) which will be sufficient to pay the following amounts:

(i) all Maintenance and Operation Costs of the Wastewater System estimated by the City to become due and payable in such Fiscal Year;

(ii) the Debt Service on the Bonds;

(iii) all other payments required for compliance with the Indenture and the Parity Debt Instruments (if any); and

(iv) all payments required to meet any other obligations of the City which are charges, liens, encumbrances upon or payable from the Gross Revenues of the Wastewater System or the Net Revenues of the Wastewater System.

(b) In addition, the City shall fix, prescribe, revise and collect Charges for the Wastewater System during each Fiscal Year which are sufficient to yield Net Revenues (including, for clarity, connection fees and transfers into the Wastewater Fund from the Rate Stabilization Fund in such Fiscal Year (after deducting amounts transferred into the Rate Stabilization Fund from Gross Revenues received by the City in such Fiscal Year)) at least equal to 115% of the amounts payable under the preceding clause (a)(ii) in such Fiscal Year. For purposes of this paragraph, the amount of Net Revenues for a Fiscal Year will be computed on the basis that any transfers into the Wastewater Fund in such Fiscal Year from the Rate Stabilization Fund are included in the calculation of Net Revenues (except to the extent of amounts transferred into the Rate Stabilization Fund from Gross Revenues received by the City in such Fiscal Year), as provided in Section 4.07.

Section 5.13. No Priority for Additional Obligations. The City covenants that no additional bonds or other obligations shall be issued or incurred having any priority in payment of principal or interest out of the Net Revenues over the Bonds.

Section 5.14. No Arbitrage. The City shall not take, nor permit nor suffer to be taken any action with respect to the proceeds of any of the Series 2017 Bonds which would cause any of the Series 2017 Bonds to be "arbitrage bonds" within the meaning of the Tax Code.

Section 5.15. Information Report. The City shall assure the filing of an information report for the Series 2017 Bonds in compliance with Section 149 (e) of the Tax Code.

Section 5.16. Private Activity Bond Limitation. The City shall assure that the proceeds of the Series 2017 Bonds are not so used as to cause the Series 2017 Bonds to satisfy the private business tests of section 141(b) of the Tax Code or the private loan financing test of section 141(c) of the Tax Code.

Section 5.17. Federal Guarantee Prohibition. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Series 2017 Bonds to be "federally guaranteed" within the meaning of section 149(b) of the Tax Code.

Section 5.18. Further Assurances. The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture, and for the better assuring and confirming unto the Owners of the Bonds the rights and benefits provided in this Indenture.

Section 5.19. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Indenture, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default; however, any holder or beneficial owner of the Bonds may, take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.

Section 5.20. Rebate Requirement. The City shall take any and all actions necessary to assure compliance with section 148(f) of the Tax Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Series 2017 Bonds.

Section 5.21. Maintenance of Tax-Exemption. The City shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Series 2017 Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the date of issuance of the Bonds.

Section 5.22. Small Issuer Exemption from Bank Nondeductibility Restriction . The City hereby designates the Series 2017 Bonds for purposes of paragraph (3) of section 265(b) of the Tax Code and covenants that none of the Series 2017 Bonds constitute private activity bonds as defined in section 141 of the Tax Code, and that not more than $10,000,000 aggregate principal amount of obligations the interest on which is excludable (under section 103(a) of the Tax Code) from gross income for federal income taxes (excluding, however, private activity bonds, as defined in section 141 of the Tax Code, other than qualified 501(c)(3) bonds as defined in section 145 of the Tax Code), including the Series 2017 Bonds, have been or shall be issued by the City, including all subordinate entities of the City, during the calendar year 2017.

ARTICLE VI

THE TRUSTEE

Section 6.01. Appointment of Trustee. U.S. Bank National Association, a national banking association organized and existing under and by virtue of the laws of the United States of America, is hereby appointed Trustee by the City for the purpose of receiving all moneys required to be deposited with the Trustee hereunder and to allocate, use and apply the same as provided in this Indenture. The City agrees that it will maintain a Trustee having a corporate trust office in San Francisco or Los Angeles, California, with a combined capital and surplus of at least Fifty Million Dollars ($50,000,000), and subject to supervision or examination by federal or State authority, so long as any Bonds are Outstanding. If such bank or trust company publishes a report of condition at least annually pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this Section 5.01 the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Trustee is hereby authorized to pay the Bonds when duly presented for payment at maturity, or on redemption or purchase prior to maturity, and to cancel all Bonds upon payment thereof. The Trustee shall keep accurate records of all funds administered by it and of all Bonds paid and discharged.

Section 6.02. Acceptance of Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee, prior to the occurrence of an Event of Default and after curing all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default hereunder has occurred (which has not been cured or waived) the Trustee may exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill in their exercise, as a prudent and reasonable man would exercise or use under the circumstances in the conduct of his own affairs.

(b) The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers but shall be answerable for the selection of the same in accordance with the standard specified above, and shall be entitled to rely conclusively on advice of counsel of its choice concerning all matters of trust and its duty hereunder.

(c) The Trustee shall not be responsible for any recital herein, or in the Bonds, or for the validity of this Indenture or any of the supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby and the Trustee shall not be bound to ascertain or inquire as to the observance or performance of any covenants, conditions or agreements on the part of the City hereunder. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with Section 4.08.

(d) The Trustee shall not be accountable for the use of any proceeds of sale of the Bonds delivered hereunder. The Trustee may become the Owner of Bonds secured hereby with the same rights which it would have if not the Trustee; may acquire and dispose of other bonds or evidence of indebtedness of the City with the same rights it would have if it were not the Trustee; and may act as a depositary for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners of Bonds, whether or not such committee shall represent the Owners of the majority in principal amount of the Bonds then Outstanding.

(e) In the absence of bad faith on its part, the Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken or omitted to be taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Owner of any Bond, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof. The Trustee shall not be bound to recognize any person as an Owner of any Bond or to take any action at his request unless the ownership of such Bond by such person shall be reflected on the Bond Registration Books.

(f) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a Certificate of the City as sufficient evidence of the facts therein contained and prior to the occurrence of an Event of Default hereunder of which the Trustee has been given notice or is deemed to have notice, as provided in Section 6.02(h) hereof, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed by it to be necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a Certificate of the City to the effect that an authorization in the form therein set forth has been adopted by the City, as conclusive evidence that such authorization has been duly adopted and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and it shall not be answerable for other than its negligence or willful default. The immunities and exceptions from liability of the Trustee shall extend to its officers, directors, employees and agents.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any Event of Default hereunder except failure by the City to make any of the payments to the Trustee required to be made by the City pursuant hereto or failure by the City to file with the Trustee any document required by this Indenture to be so filed subsequent to the issuance of the Bonds, unless the Trustee shall be specifically notified in writing of such default by the City or by the Owners of at least 25% in aggregate principal amount of the Bonds then Outstanding and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the Principal Corporate Trust Office of the Trustee, and in the absence of such notice so delivered the Trustee may conclusively assume there is no Event of Default hereunder except as aforesaid.

(i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect the Wastewater System, including all books, papers and records of the City pertaining to the Wastewater System and the Bonds, and to take such memoranda from and with regard thereto as may be desired but which is not privileged by statute or by law.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Indenture with respect to the execution of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, the Trustee shall have the right, but shall not be required, to demand any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, as may be deemed desirable for the purpose of establishing the right of the City to the execution of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) Before taking the action referred to in Section 8.03 the Trustee may require that an indemnity bond satisfactory in terms and amount be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is finally adjudicated by a count of law to have resulted from its negligence or willful default in connection with any such action.

(m) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law. The Trustee shall not be under any liability for interest on any moneys received hereunder except such as it may agree to in writing.

Section 6.03. Fees, Charges and Expenses of Trustee. The Trustee shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees (including expenses) and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services. Upon the occurrence of an Event of Default hereunder, but only upon an Event of Default, the Trustee shall have a first lien with right of payment prior to payment of any Bond upon the amounts held hereunder for the foregoing fees, charges and expenses incurred by it respectively.

Section 6.04. Notice to Bond Owners of Default. If an Event of Default hereunder occurs with respect to any Bonds, of which the Trustee has been given or is deemed to have notice, as provided in Section 6.02(h) hereof, then the Trustee shall promptly give written notice thereof by first-class mail to the Owner of each such Bond, unless such Event of Default has been cured before the giving of such notice; provided, however, that unless such Event of Default consists of the failure by the City to make any payment when due, the Trustee may elect not to give such notice if and so long as the Trustee in good faith determines that it is in the best interests of the Bond Owners not to give such notice.

Section 6.05. Intervention by Trustee. In any judicial proceeding to which the City is a party which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Owners of any of the Bonds, the Trustee may intervene on behalf of such Bond Owners, and subject to Section 6.02 hereof, shall do so if requested in writing by the Owners of at least 25% in aggregate principal amount of such Bonds then Outstanding.

Section 6.06. Removal of Trustee. The Owners of a majority in aggregate principal amount of the Outstanding Bonds may at any time, and the City may so long as no Event of Default has occurred and then continues, remove the Trustee initially appointed, and any successor thereto, by an instrument or concurrent instruments in writing delivered to the Trustee (where applicable), whereupon the City or such Owners, as the case may be, shall appoint a successor or successors thereto; provided that any such successor shall be a bank or trust company meeting the requirements set forth in Section 6.01 hereof.

Section 6.07. Resignation by Trustee. The Trustee and any successor Trustee may at any time resign by giving thirty (30) days' written notice by registered or certified mail to the City. Upon receiving such notice of resignation, the City shall promptly appoint a successor Trustee. Any resignation or removal of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. Upon such acceptance, the City shall cause notice thereof to be given by first class mail to the Bond Owners at their respective addresses set forth on the Bond Registration Books. No resignation of the Trustee shall take effect until a successor is appointed and has accepted.

Section 6.08. Appointment of Successor Trustee. In the event of the removal or resignation of the Trustee pursuant to Sections 6.06 or 6.07, respectively, the City shall promptly appoint a successor Trustee. In the event the City shall for any reason whatsoever fail to appoint a successor Trustee within forty-five (45) days following the delivery to the Trustee of the instrument described in Section 6.06 or within forty-five (45) days following the receipt of notice by the City pursuant to Section 6.07, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee meeting the requirements of Section 6.01 hereof. Any such successor Trustee appointed by such court shall become the successor Trustee hereunder notwithstanding any action by the City purporting to appoint a successor Trustee following the expiration of such forty-five-day period.

Notwithstanding any other provision of this Indenture, no removal, resignation or termination of the Trustee shall take effect until a successor shall be appointed; provided, however, that if for any reason whatsoever no successor Trustee is appointed within 45 days following receipt of notice by the City pursuant to Section 6.07 above, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee which meets the requirements of Section 6.01 hereof.

Section 6.09. Merger or Consolidation. Any company into which the Trustee may be merged or converted or with which it may be consolidated, or any company resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business (provided that such company shall be eligible under Section 6.01), shall be the successor to the Trustee and vested with all of the title to the trust estate and all of the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

Section 6.10. Concerning any Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the City an instrument in writing accepting such appointment hereunder and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors; but such predecessor shall, nevertheless, on the Request of the City, or of its successor, execute and

deliver an instrument transferring to such successor all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as the Trustee hereunder to its successor. Should any instrument in writing from the City be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

Section 6.11. Appointment of Co-Trustee. It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of the State) denying or restricting the right of banking corporations or associations to transact business as Trustee in such jurisdiction. It is recognized that in the case of litigation under this Indenture, and in particular in case of the enforcement of the rights of the Trustee on default, or in the case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate or co-trustee. The following provisions of this Section 6.11 are adopted to these ends.

In the event that the Trustee appoints an additional individual or institution as a separate or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee but only to the extent necessary to enable such separate or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them.

Should any instrument in writing from the City be required by the separate trustee or co-trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the City. In case any separate trustee or co-trustee, or a successor to either, shall become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate trustee or co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new trustee or successor to such separate trustee or co-trustee.

Section 6.12. Indemnification; Limited Liability of Trustee. The City shall indemnify and hold the Trustee harmless from and against all claims, losses, costs, expenses, liabilities and damages including legal fees and expenses arising from the exercise and performance of its duties hereunder and the termination of this Indenture. Such indemnity shall survive the resignation or removal of the Trustee hereunder. No provision in this Indenture shall require the Trustee to risk or expend its own funds or otherwise incur any financial liability hereunder if it has reasonable grounds for believing repayment of such funds or adequate indemnity against such liability or risk is not assured to it. The Trustee shall not be liable for any action taken or omitted to be taken by it in accordance with the direction of a majority of the Owners of the principal amount of Bonds Outstanding relating to the time, method and place of conducting any proceeding or remedy available to the Trustee under this Indenture.

ARTICLE VII

MODIFICATION AND AMENDMENT OF THE INDENTURE

Section 7.01. Amendment by Consent of Bond Owners. This Indenture and the rights and obligations of the City and of the Owners of the Bonds may be modified or amended at any time by a Supplemental Indenture which shall become binding when the written consent of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 7.03 hereof, are filed with the Trustee. No such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the City to pay the principal, interest or redemption premiums at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of the Owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification, or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee.

Section 7.02. Amendment Without Consent of Bondholders. This Indenture and the rights and obligations of the City and of the Owners of the Bonds may also be modified or amended at any time by a Supplemental Indenture which shall become binding upon execution and delivery, without consent of any Bond Owners, but only to the extent permitted by law and only for any one or more of the following purposes-

(a) to add to the covenants and agreements of the City in this Indenture contained, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the City; or

(b) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Indenture, or in any other respect whatsoever as the City may deem necessary or desirable, provided under any circumstances that such modifications or amendments shall not adversely affect the interests of the Owners of the Bonds; or

(c) to make such additions, deletions or modifications as may be necessary or desirable to assure exemption from federal income taxation of interest on the Bonds.

Section 7.03. Disqualified Bonds. Bonds owned or held by or for the account of the City (but excluding Bonds held in any employees' retirement fund) shall not be deemed Outstanding for the purpose of any consent or other action or any calculation of Outstanding Bonds in this article provided for, and shall not be entitled to consent to, or take any other action in this article provided for.

Section 7.04. Endorsement or Replacement of Bonds After Amendment. After the effective date of any action taken as hereinabove provided, the City may determine that the Bonds shall bear a notation, by endorsement in form approved by the City, as to such action, and in that case upon demand of the Owner of any Bond Outstanding at such effective date and presentation of his Bond for that purpose at the Principal Corporate Trust Office of the Trustee, a suitable notation as to such action shall be made on such Bond. If the City shall so determine, new Bonds so modified as, in the opinion of the City, shall be necessary to conform to such Bond Owners' action shall be prepared and executed, and in that case upon demand of the Owner of any Bond Outstanding at such effective date such new Bonds shall be exchanged at the Principal Corporate

Trust Office of the Trustee, without cost to each Bond Owner, for Bonds then Outstanding, upon surrender of such Outstanding Bonds.

Section 7.05. Amendment by Mutual Consent. The provisions of this Article VII shall not prevent any Bond Owner from accepting any amendment as to the particular Bond held by him, provided that due notation thereof is made on such Bond.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES OF BOND OWNERS

Section 8.01 Events of Default and Acceleration of Maturities. The following events shall be Events of Default hereunder:

(a) Default in the due and punctual payment of the principal of any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, by declaration or otherwise;

(b) Default in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable;

(c) Default by the City in the observance of any of the covenants, agreements or conditions on its part in this Indenture or in any Parity Debt Instrument or in the Bonds contained, and such default has continued for a period of 60 days after the City has been given notice in writing of such default by the Trustee; or

(d) The filing by the City of a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the City, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property.

Upon the occurrence of an Event of Default, the Trustee may, and shall at the direction of the owners of a majority of the principal amount of the Bonds, by written notice to the City, declare the principal of the Bonds to be immediately due and payable, whereupon that portion of the principal of the Bonds thereby coming due and there interest thereon accrued to the date of payment shall, without further action, become and be immediately due and payable, anything in this Indenture or in the Bonds to the contrary notwithstanding. This provision, however, is subject to the condition that if, at any time after the principal of the Bonds has been so declared due and payable, and before any judgment or decree for the payment of the moneys due has been obtained or entered, the City shall deposit with the Trustee a sum sufficient to pay all of the principal of and interest on the Bonds having come due prior to such declaration, with interest on such overdue principal and interest calculated at the rate of interest per annum then borne by the Outstanding Bonds, and the reasonable fees and expenses of the Trustee and those of its attorneys, and any and all other defaults known to the Trustee (other than in the payment of the principal of and interest on the Bonds having come due and payable solely by reason of such declaration) have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate has been made therefor, then, and in every such case, the Owners of a majority in aggregate principal amount of the Bonds at the time Outstanding may, by written notice to the City and to the Trustee, on behalf of the Owners of all of the Outstanding Bonds, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

Section 8.02. Application of Funds Upon Acceleration. All amounts received by the Trustee pursuant to any right given or action taken by the Trustee under the provisions of this

Indenture shall be applied by the Trustee in the following order upon presentation of the several Bonds, and the stamping thereon of the amount of the payment if only partially paid, or upon the surrender thereof if fully paid -

First, to the payment of the costs and expenses of the Trustee and of Bond Owners in declaring such Event of Default, including reasonable compensation to their agents, attorneys and counsel, and to the payment of the costs and expenses of the Trustee, if any, in carrying out the provisions of this Article VIII, including reasonable compensation to its agents, attorneys and counsel; and

Second, to the payment of the whole amount then owing and unpaid upon the Bonds for interest and principal, with interest on such overdue amounts to the extent permitted by law at the rate of interest then borne by the Outstanding Bonds, and in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid upon the Bonds, then to the payment of such interest, principal and interest on overdue amounts without preference or priority among such interest, principal and interest on overdue amounts ratably in proportion to the aggregate of such interest, principal and interest on overdue amounts.

Section 8.03. Other Remedies; Rights of Bond Owners. Upon the occurrence of an Event of Default, the Trustee may pursue any available remedy, in addition to the remedy specified in Section 8.01, at law or in equity to enforce the payment of the principal of, premium, if any, and interest on the Outstanding Bonds, and to enforce any rights of the Trustee under or with respect to this Indenture.

If an Event of Default occurs and continues and if requested so to do by the Owners of at least 25% in aggregate principal amount of Outstanding Bonds and indemnified as provided in Section 6.02 (l), the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article VIII, as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bond Owners.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bond Owners) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bond Owners hereunder or now or hereafter existing at law or in equity.

No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein; such right or power may be exercised from time to time as often as may be deemed expedient.

Section 8.04. Power of Trustee to Control Proceedings. In the event that the Trustee, upon the happening of an Event of Default, has taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the request of the Owners of a majority in principal amount of the Bonds then Outstanding, it shall have full power, in the exercise of its discretion for the best interests of the Owners of the Bonds, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; provided, however, that the Trustee shall not, unless there no longer continues an Event of Default, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Owners of a majority in principal amount of the Outstanding Bonds hereunder

opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation. Any suit, action or proceeding which any Owner of Bonds shall have the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Owners of Bonds similarly situated and the Trustee is hereby appointed (and the successive respective Owners of the Bonds issued hereunder, by taking and holding the same, shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the respective Owners of the Bonds for the purpose of bringing any such suit, action or proceeding and to do and perform any and all acts and things for and on behalf of the respective Owners of the Bonds as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact.

Section 8.05. Appointment of Receivers. Upon the occurrence of an Event of Default hereunder, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Bond Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Net Revenues and other amounts pledged hereunder, pending such proceedings, with such powers as the court making such appointment shall confer.

Section 8.06. Non-Waiver. Nothing in this Article VIII or in any other provision of this Indenture, or in the Bonds, shall affect or impair the obligation of the City, which is absolute and unconditional, to pay the interest on and principal of the Bonds to the respective Owners of the Bonds at the respective dates of maturity, as herein provided, out of the Net Revenues and other moneys herein pledged for such payment.

A waiver of any default or breach of duty or contract by the Trustee or any Bond Owners shall not affect any subsequent default or breach of duty or contract, or impair any rights or remedies on any such subsequent default or breach. No delay or omission of any Owner of any of the Bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy conferred upon the Trustee or Bond Owners by the Bond Law or by this Article VIII may be enforced and exercised from time to time and as often as shall be deemed expedient by the Trustee or the Bond Owners, as the case may be.

If a suit, action or proceeding to enforce any right or exercise any remedy is abandoned or determined adversely to the Bond Owners, the City and the Bond Owners shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

Section 8.07. Rights and Remedies of Bond Owners. No Owner of any Bond issued hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture, unless (a) such Owner has previously given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of all the Bonds then Outstanding have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said Owners have tendered to the Trustee indemnity reasonably acceptable to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request; and (d) the Trustee has refused or omitted to comply with such request for a period of 60 days after such written request has been received by, and said tender of indemnity has been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Bonds of any remedy hereunder; it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by his or their action to enforce any right under this Indenture, except in the manner herein provided, and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Bonds.

The right of any Owner of any Bond to receive payment of the principal of and interest and premium (if any) on such Bond as herein provided or to institute suit for the enforcement of any such payment, shall not be impaired or affected without the written consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision of this Indenture.

Section 8.08. Termination of Proceedings. If the Trustee has proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings have been discontinued or abandoned for any reason, or have been determined adversely, then and in every such case, the City, the Trustee and the Bond Owners shall be restored to their former positions and rights hereunder, respectively, with regard to the property subject to this Indenture, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Limited Liability of City. Notwithstanding anything in this Indenture contained, the City shall not be required to advance any moneys derived from any source of income other than the Net Revenues for the payment of the principal of or interest on the Bonds, or any premiums upon the redemption thereof, or for the performance of any covenants herein contained (except to the extent any such covenants are expressly payable hereunder from the Gross Revenues). The City may, however, advance funds for any such purpose, provided that such funds are derived from a source legally available for such purpose and may be used by the City for such purpose without incurring indebtedness.

Section 9.02. Parties Interested Herein. Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the City, the Trustee and the Owners any right, remedy or claim under or by reason of this Indenture, or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Trustee and the Owners.

Section 9.03. Discharge of Indenture. If the City shall pay and discharge any or all of the Outstanding Bonds in any one or more of the following ways:

(a) by well and truly paying or causing to be paid the principal of and interest and premium (if any) on such Bonds, as and when the same become due and payable;

(b) by depositing with the Trustee, in trust, at or before maturity, money which, together with the available amounts then on deposit in the funds and accounts established pursuant to this Indenture, is fully sufficient to pay such Bonds, including all principal, interest and redemption premiums; or

(c) by depositing with a qualified escrow holder, in trust, Defeasance Obligations in such amount as the City (verified by an Independent Certified Public Accountant) shall determine will, together with the interest to accrue thereon and available moneys then on deposit in the Funds and Accounts established pursuant to this Indenture, be fully sufficient to pay and discharge the indebtedness on such Bonds (including all principal, interest and redemption premiums, if any) at or before their respective maturity dates;

and if such Bonds are to be redeemed prior to the maturity thereof notice of such redemption has been mailed pursuant to Section 2.02(d) or provision satisfactory to the Trustee has been made for the mailing of such notice, then, at the election of the City, and notwithstanding that any of such Bonds have not been surrendered for payment, the pledge of the Net Revenues and other funds provided for in this Indenture with respect to such Bonds, and all other pecuniary obligations of the City under this Indenture with respect to all such Bonds, shall cease and terminate, except only the obligation of the City to pay or cause to be paid to the Owners of such Bonds not so surrendered and paid all sums due thereon from amounts set aside for such purpose as aforesaid, and all expenses and costs of the Trustee. Notice of such election shall be filed with the Trustee.

Any funds thereafter held by the Trustee, which are not required for said purposes, shall be paid over to the City.

Refunding bonds may be issued at any time without regard to whether an Event of Default exists.

To accomplish defeasance the City shall cause to be delivered (i) a report of an Independent Certified Public Accountant verifying the sufficiency of the escrow established to pay the Bonds in full on the maturity or earlier redemption date ("Verification"), (ii) an escrow deposit agreement, and (iii) an opinion of nationally recognized bond counsel to the effect that the Bonds are no longer "Outstanding" under this Indenture; each Verification and defeasance opinion shall be acceptable in form and substance, and addressed, to the City and the Trustee.

Section 9.04. Content of Certificates. Every certificate with respect to compliance with a condition or covenant provided for in this Indenture shall include (a) a statement that the person or persons making or giving such certificate have read such covenant or condition and the definitions herein relating thereto; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate are based; (c) a statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such covenant or condition has been complied with; and (d) a statement as to whether, in the opinion of the signers, such condition or covenant has been complied with.

Any such certificate made or given by an officer of the City may be based, insofar as it relates to legal matters, upon a certificate or opinion of or representations by counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate may be based, as aforesaid, are erroneous, or in the exercise of reasonable care should have known that the same were erroneous. Any such certificate or opinion or representation made or given by counsel may be based, insofar as it relates to factual matters, on information with respect to which is in the possession of the City, upon the certificate or opinion of or representations by an officer or officers of the City, unless such counsel knows that the certificate or opinion or representations with respect to the matters upon which his certificate, opinion or representation may be based, as aforesaid, are erroneous, or in the exercise of reasonable care should have known that the same were erroneous.

Section 9.05. Execution of Documents by Bond Owners. Any request, consent or other instrument required by this Indenture to be signed and executed by Bond Owners may be in any number of concurrent writings of substantially similar tenor and may be signed or executed by such Bond Owners in person or by agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and of the City if made in the manner provided in this Section 9.05.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument or writing acknowledged to him the execution thereof.

The ownership of Bonds shall be provided by the Bond Registration Books.

Any request, consent or vote of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of any Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the City in pursuance of such request, consent or vote.

In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned or held by or for the account of the City (but excluding Bonds held in any employees' retirement fund) shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, provided, however, that for the purpose of determining whether the Trustee shall be protected in relying on any such demand, request, direction, consent or waiver, only Bonds which the Trustee knows to be so owned or held shall be disregarded.

In lieu of obtaining any demand, request, direction, consent or waiver in writing, the Trustee may call and hold a meeting of the Bond Owners upon such notice and in accordance with such rules and obligations as the Trustee considers fair and reasonable for the purpose of obtaining any such action.

Section 9.06. Waiver of Personal Liability. No officer, agent or employee of the City shall be individually or personally liable for the payment of the interest on or principal of the Bonds; but nothing herein contained shall relieve any such officer, agent or employee from the performance of any official duty provided by law.

Section 9.07. Partial Invalidity. If any one or more of the covenants or agreements, or portions thereof, provided in this Indenture on the part of the City (or of the Trustee) to be performed should be contrary to law, then such covenant or covenants, such agreement or agreements, or such portions thereof, shall be null and void and shall be deemed separable from the remaining covenants and agreements or portions thereof and shall in no way affect the validity of this Indenture or of the Bonds; but the Bond Owners shall retain all rights and benefits accorded to them under the Bond Law or any other applicable provisions of law. The City hereby declares that it would have entered into this Indenture and each and every other section, paragraph, subdivision, sentence, clause and phrase hereof and would have authorized the issuance of the Bonds pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this Indenture or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

Section 9.08. Destruction of Cancelled Bonds. Whenever in this Indenture provision is made for the surrender to the City of any Bonds which have been paid or cancelled pursuant to the provisions of this Indenture, the Trustee shall destroy such Bonds and furnish to the City a certificate of such destruction.

Section 9.09. Funds and Accounts. Any Fund or Account required by this Indenture to be established and maintained by the City or the Trustee may be established and maintained in the accounting records of the City or the Trustee, as the case may be, either as a Fund or an Account, and may, for the purpose of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a Fund or as an Account. All such records with respect to all such Funds and Accounts held by the City shall at all times be maintained in accordance with generally accepted accounting principles and all such records with respect to all such Funds and Accounts held by the Trustee shall be at all times maintained in accordance with

industry practices; in each case with due regard for the protection of the security of the Bonds and the rights of every Owner thereof.

Section 9.10. Notices. Any notice, request, complaint, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered or mailed by fax or other electronic transmission, addressed as follows:

(a) if to the City, to City of Milpitas, City Hall, 455 East Calaveras Boulevard, Milpitas, California 95035, Attention: Director of Financial Services, Fax: 408-_____; and

(b) if to the Trustee, at U.S. Bank National Association, One California Street, Suite 1000, San Francisco, California 94111 Attention: Global Corporate Trust Services, Fax: 415-677-3768.

The City and the Trustee may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 9.11. Unclaimed Moneys. Anything in this Indenture to the contrary notwithstanding, any moneys held by the Trustee in trust for the payment and discharge of any of the Bonds which remain unclaimed for two (2) years after the date when such Bonds have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such moneys were held by the Trustee at such date, or for two (2) years after the date of deposit of such moneys if deposited with the Trustee after said date when such Bonds become due and payable, shall, at the Request of the City, be repaid by the Trustee to the City, as its absolute property and free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Bond Owners shall look only to the City for the payment of such Bonds.

IN WITNESS WHEREOF, the CITY OF MILPITAS has caused this Indenture to be signed in its name by its City Manager and attested by its City Clerk, and U.S. BANK NATIONAL ASSOCIATION, in token of its acceptance of the trust created hereunder, has caused this Indenture to be signed in its corporate name by its officer identified below, all as of the day and year first above written.

CITY OF MILPITAS

By _____
City Manager

Attest:

_____
City Clerk

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By _____
Authorized Officer

EXHIBIT A

FORM OF SERIES 2017 BOND

UNITED STATES OF AMERICA
STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

CITY OF MILPITAS
WASTEWATER REVENUE REFUNDING BONDS
SERIES 2017
(BANK QUALIFIED)

NO. R-__ $ _____

INTEREST RATE	MATURITY DATE	DATED DATE	CUSIP
	November 1, ____	_____ __, 2017	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: ***_____ DOLLARS***

The City of Milpitas, a municipal corporation organized and existing under the laws of the State of California (the "City"), for value received, will (subject to any right of prior redemption hereinafter provided for), on the Maturity Date specified above, pay to the Registered Owner named above, or registered assigns (the "Owner"), the Principal Amount stated above, in lawful money of the United States of America, and pay interest thereon in like lawful money from the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Series 2017 Bond (unless (i) this Series 2017 Bond is authenticated on an Interest Payment Date, in which event it shall bear interest from such date of authentication, or (ii) this Series 2017 Bond is authenticated prior to April 15, 2018, in which event it shall bear interest from the Dated Date stated above; provided, however, that if at the time of authentication of this Series 2017 Bond, interest is in default on this Series 2017 Bond, this Series 2017 Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment on this Series 207 Bond) until payment of such Principal Amount in full, at the Interest Rate per annum stated above, payable on May 1 and November 1 in each year (each an "Interest Payment Date"), commencing May 1, 2018, calculated on the basis of a 360-day year comprised of twelve 30-day months.

Principal hereof, whether at maturity or upon early redemption hereof, are payable at the corporate trust office of U.S. Bank, National Association (the "Trustee"), in St. Paul, Minnesota, or at such other place as designated by the Trustee (the "Principal Corporate Trust Office"). Interest hereon (including the final interest payment upon maturity or earlier redemption) is payable by check or draft of the Trustee mailed by first class mail to the Owner at the Owner's address as it appears on the registration books maintained by the Trustee as of the close of

business on the fifteenth (15th) day of the month next preceding such Interest Payment Date (the "Record Date"); provided, that at the option of any Owner of at least $1,000,000 aggregate principal amount of the Bonds with respect to which written instructions have been filed with the Trustee prior to the Record Date, such interest may be paid by wire transfer.

This Series 2017 Bond is one of a duly authorized issue of bonds of the City designated as its "Wastewater Revenue Refunding Bonds, Series 2017 (the "Series 2017 Bonds") issued under and pursuant to (i) Articles 10 (commencing with Section 53570) and 11 (commencing with Section 53580) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (the "Bond Law") and (ii) an Indenture of Trust (the "Indenture") by and between the City and the Trustee, dated as of December 1, 2017, and approved by the City by a Resolution, adopted by the City Council of the City on _____, 2017 (the "Resolution"). Copies of the Indenture are on file at the office of the City Clerk and at the Principal Corporate Trust Office of the Trustee, and reference to the Indenture and any and all supplements thereto and modifications and amendments thereof and to the Bond Law is made for a description of the terms on which the Series 2017 Bonds are issued, the provisions with regard to the nature and extent of the Net Revenues, as that term is defined in the Indenture, and the rights of the Owners of the Series 2017 Bonds. All the terms of the Indenture and the Bond Law are hereby incorporated herein and constitute a contract between the City and the Owner from time to time of this Series 2017 Bond, and to all the provisions thereof the Owner of this Series 2017 Bond, by acceptance hereof, consents and agrees. Each taker and subsequent Owner hereof shall have recourse to all of the provisions of the Bond Law and the Indenture and shall be bound by all of the terms and conditions thereof.

The Series 2017 Bonds are special obligations of the City and are secured by amounts held from time to time in the Debt Service Fund established and held by the Trustee under the Indenture and, subject to certain restrictions set forth in the Indenture, a pledge of and lien on certain Net Revenues (as defined in the Indenture) generated by the City's wastewater system (as further defined in the Indenture, the "Wastewater System").

Neither the general fund, the full faith and credit, nor the taxing power of the City, the State of California or any other political subdivision thereof is pledged to the payment of the Series 2017 Bonds. The Series 2017 Bonds are not secured by a legal or equitable pledge of or charge, lien or encumbrance upon any property of the City or any of its income or receipts except the Net Revenues.

The City covenants in the Indenture that it will fix, prescribe, revise and collect Charges (as defined in the Indenture) for the Wastewater System in each Fiscal Year which are sufficient to pay 115% of principal of and interest payable in that fiscal year on all outstanding Bonds (the Series 2017 Bonds and any Parity Debt) payable from Net Revenues of the Water System.

The Series 2017 Bonds are not subject to optional redemption prior to maturity..

The Bonds are subject to redemption as a whole or in part, on any date, from and to the extent of the proceeds of disposition of Wastewater System properties or the proceeds of hazard insurance not used to repair or rebuild the Wastewater System, which proceeds are required to be used for such purpose hereunder, at a redemption price equal to the principal amount of the Bonds plus interest accrued thereon to the date fixed for redemption, without premium.

Unless waived by any Owner of Bonds to be redeemed, notice of any redemption of Bonds shall be given, at the expense of the City, by the Trustee by mailing a copy of a redemption notice by first class mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Registration Books; provided, that neither the failure to receive such notice nor any immaterial defect in any notice shall affect the sufficiency of the proceedings for the redemption of the Bonds. Any notice of an redemption may be rescinded as set forth in the Indenture.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

Any Parity Debt issued pursuant to the Indenture may be made subject to redemption prior to maturity, as a whole or in part, at such time or times, and upon payment of the principal amount thereof and accrued interest thereon plus such premium or premiums, if any, as may be determined by the City in the applicable Parity Debt Instrument.

The Series 2017 Bonds are issuable as fully registered Bonds, without coupons, in denominations of $5,000 or any integral multiple thereof. Subject to the limitations and conditions and upon payment of the charges, if any, as provided in the Indenture, Bonds may be exchanged for a like aggregate principal amount of Series 2017 Bonds of other authorized denominations and of the same maturity, as provided in the Indenture.

This Bond is transferable by the Owner hereof, in person, or by his attorney duly authorized in writing, at said the Principal Corporate Trust Office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture, and upon surrender and cancellation of this Bond. Upon registration of such transfer a new Bond or Bonds, of any authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor.

The City and the Trustee may treat the Owner hereof as the absolute Owner hereof for all purposes, and the City and the Trustee shall not be affected by any notice to the contrary.

The Indenture may be amended without the consent of the Owners of the Bonds to the extent set forth in the Indenture.

It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time and manner as required by the laws of the State of California and that the amount of this Bond, together with all other indebtedness of the City, does not exceed any limit prescribed by any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not become valid or obligatory for any purpose or be entitled to the benefits of the Indenture until the certificate of authentication and registration hereon have been manually signed by an authorized officer or signatory of the Trustee.

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of

DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

IN WITNESS WHEREOF, the City of Milpitas has caused this Series 2017 Bond to be executed in its name and on its behalf with the facsimile signatures of its City Manager and its seal to be reproduced hereon and attested by the facsimile signature of its City Clerk, all as of the ___ day of ____, 2017.

CITY OF MILPITAS

By _____
_____
City Manager

ATTEST:

By _____
_____
City Clerk

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture.

Dated: _____, 2017

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto _____ whose address and social security or other tax identifying number is _____, the within-mentioned Bond and hereby irrevocably constitute(s) and appoint(s) _____ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

Note: Signature(s) must be guaranteed by an eligible guarantor institution (banks, stockbrokers, saving and loan associations and credit unions with membership in an approved signature medallion program) pursuant to Securities and Exchange Agency Rule 17Ad-15.		Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Certificate in every particular without alteration or enlargement or any change whatsoever.

EXHIBIT B
FORM OF COST OF ISSUANCE FUND REQUISITION

$_____
CITY OF MILPITAS
Wastewater Revenue Refunding Bonds
Series 2017

REQUISITION NO. 1 FOR
DISBURSEMENT FROM COST OF ISSUANCE FUND

The undersigned hereby states and certifies:

(i) that the undersigned is the duly appointed, qualified and acting _____ of the City of Milpitas, a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of California (the "City"), and as such, is familiar with the facts herein certified and is authorized to certify the same;

(ii) that the undersigned is an "Authorized Official" of the City, as such term is defined in that certain Indenture of Trust, dated as of December 1, 2017 (the "Indenture"), by and between the City and U.S. Bank National Association, as trustee (the "Trustee");

(iii) that pursuant to Section 3.04 of the Indenture, the Trustee is hereby requested to disburse this date, from the Cost of Issuance Fund established under the Indenture, upon receipt of an invoice from each of the payees designated on Exhibit A attached hereto and by this reference incorporated herein, the amount set forth in such invoice but no more than the amount set forth opposite each such payee, in payment of Costs of Issuance described on said Exhibit A, and all such payments shall be made by check or wire transfer in accordance with payment instructions contained in Exhibit A or the invoice submitted in accordance therewith and the Trustee shall have no duty or obligation to authenticate such payment instructions or the authorization thereof;

(iv) that each obligation identified on the attached Exhibit A has been properly incurred, is a proper charge against the Cost of Issuance Fund and has not been the basis of any previous disbursement; and

(v) that attached hereto is an invoice or other evidence supporting the amounts due as identified on Exhibit A.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Indenture.

Dated: ____, 2017

CITY OF MILPITAS

By: _____
Authorized Official

ATTACHMENT 1

REQUISITION NO. 1 FOR
DISBURSEMENTS FROM COST OF ISSUANCE FUND

Payee Name and Address	Purpose of Obligation	Amount*

_____
*: Represents a not-to-exceed amount

$_____
CITY OF MILPITAS
Wastewater Revenue Refunding Bonds, Series 2017

BOND PURCHASE AGREEMENT

_____, 2017

City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Ladies and Gentlemen:

Stifel, Nicolaus & Company, Incorporated (the "Underwriter"), hereby offers to enter into this Bond Purchase Agreement (this "Bond Purchase Agreement") with the City of Milpitas (the "City"), which upon acceptance of this offer by the City, will be binding upon the City and the Underwriter. This offer is made subject to its acceptance by the City by execution and delivery of this Bond Purchase Agreement to the Underwriter by 11:59 P.M., Pacific Daylight time, on the date hereof, and, if not so accepted, will be subject to withdrawal by the Underwriter upon written notice to the City at any time prior to acceptance hereof by the City.

Section 1. Purchase and Sale of Bonds.

(a) Subject to the conditions, and upon the basis of the representations, warranties and covenants hereinafter set forth, the Underwriter hereby agrees to purchase from the City, and the City hereby agrees to sell to the Underwriter, all but not less than all) of the $_____.00 aggregate principal amount of City of Milpitas Wastewater Revenue Refunding Bonds, Series 2017 (the "Bonds"), at a price of $_____ (which price is equal to the aggregate principal amount of the Bonds of $_____.00, plus an original issue premium of $_____, and less an Underwriter's discount of $_____). As an accommodation to the City, the Underwriter will pay, from the purchase price, the sum of $_____ to _____ (the "Municipal Bond Insurer") as the premium for its municipal bond insurance policy (the "Municipal Bond Insurance Policy") issued for the Bonds and the sum of $_____ to the Municipal Bond Insurer as the premium for its reserve fund municipal bond insurance policy (the "Reserve Policy") issued for the Bonds.

The City acknowledges and agrees that: (i) the primary role of the Underwriter, as an underwriter, is to purchase securities, for resale to investors, in an arm's length commercial transaction between the City and the Underwriter and the Underwriter has financial and other interests that differ from those of the City; (ii) the Underwriter is acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary to the City and has not assumed any advisory or fiduciary responsibility to the City with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto

(irrespective of whether the Underwriter has provided other services or is currently providing other services to the City on other matters; (iii) the only obligations the Underwriter has to the City with respect to the transaction contemplated hereby expressly are set forth in this Bond Purchase Agreement; and (iv) the City has consulted its own financial and/or municipal, legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

The City hereby acknowledges receipt from the Underwriter of disclosures required by the Municipal Securities Rulemaking Board ("MSRB") Rule G-17 (as set forth in MSRB Notice 2012-25 (May 7, 2012), relating to disclosures concerning the Underwriter's role in the transaction, disclosures concerning the Underwriter's compensation, conflict disclosures, if any, and disclosures concerning complex municipal securities financing, if any.

The Bonds are authorized pursuant to the provisions of section 53570 *et seq.* of the California Government Code (the "Law"), an Indenture of Trust, dated as of December 1, 2017 (the "Indenture"), by and between the City and U.S. Bank National Association, as trustee (the "Trustee"), and a resolution adopted by the City Council of the City on _____, 2017 (the "Resolution").

The Bonds are being issued to (a) refund, on a current basis, the outstanding City of Milpitas Certificates of Participation, 2006 Series A (City of Milpitas Sewer Financing) (the "2006 Certificates"), and therefore, to provide for the prepayment of an installment sale agreement, dated as of December 1, 2016, by and between the Milpitas Public Financing Authority (the "Authority") and the City, pursuant to which the City makes installment payments payable from net revenues (the "Net Revenues") of City's wastewater system (the "Wastewater System") which secure the 2006 Certificates, and (b) pay the costs of issuance of the Bonds.

As provided in the Indenture, the Bonds shall be special obligations of the City payable solely from the Net Revenues of the Wastewater System and amounts on deposit in certain funds and accounts held under the Indenture, as provided therein. The Bonds will not be, and shall not represent or constitute, a debt of the City within the meaning of any constitutional limitation on indebtedness and neither the full faith and credit nor the taxing power of the City will be pledged to the payment of the principal of or interest on the Bonds.

The payment of the principal of and interest on the Bonds when due will be insured by the Municipal Bond Insurance Policy issued by the Municipal Bond Insurer.

(b) The Bonds shall be as described in the preliminary official statement, dated _____, 2017 (the "Preliminary Official Statement"). The Bonds shall be dated as of their date of delivery and shall mature on the dates and bear interest at the rates per annum set forth in Appendix A hereto. The Bonds shall be subject to redemption as provided in Appendix B hereto.

A final official statement, dated the date hereof and in the form of the Preliminary Official Statement with such additions and changes as shall be accepted by the Underwriter and the City (the "Official Statement"), signed on behalf of the City by the Mayor, the City Manager or the Finance Director, shall be delivered by the City to the Underwriter on the Closing Date. The Preliminary Official Statement and the Official Statement shall each be deemed to include their respective cover pages, and all summary statements, appendices, other materials included with or attached to each of them and any amendments or supplements thereto.

The Indenture, the Continuing Disclosure Certificate (hereinafter defined) and this Bond Purchase Agreement are referred to herein collectively as the "Financing Agreements." All

capitalized terms used and not defined herein shall have the meanings assigned to such terms in the Indenture.

(c) The City authorizes the Underwriter to use copies of the Preliminary Official Statement and the Official Statement and copies of the Financing Agreements in connection with the public offering and sale of the Bonds. The City further agrees not to supplement or amend, cause to be supplemented or amended or agree to any supplement or amendment of the Preliminary Official Statement (except as contemplated by the Official Statement) or the Official Statement at any time prior to the Closing Date without the prior written consent of the Underwriter. The City ratifies and consents to the distribution and use of the Preliminary Official Statement by the Underwriter prior to the date hereof, and hereby represents that the Preliminary Official Statement was "deemed final" by the City as of the date thereof within the meaning of paragraph Rule 15c2-12 of the Securities and Exchange Act of 1934, as amended ("Rule 15c2-12"), except for the omission of such information as may be permitted by Rule 15c2-12.

(d) The City agrees that there shall be delivered to the Underwriter, within seven (7) business days of the date hereof, sufficient copies of the Official Statement, as requested by the Underwriter, to comply with the requirements of Rule 15c2-12, and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

(e) If, at any time prior to the date twenty-five (25) days following the later of the Closing Date or the date the Underwriter no longer retains, directly or as a member of an underwriting syndicate, an unsold balance of the Bonds for sale to the public, which date shall be provided to the City by written notice of the Underwriter (the "End of the Underwriting Period"), any event of which the City has knowledge shall occur which might or would cause the Official Statement to contain an untrue statement of a material fact or to omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the City will promptly notify the Underwriter in writing of the circumstances and details of such event. If, as a result of such event or any other event, it is necessary, in the opinion of the Underwriter or the City or their respective counsel, to amend or supplement the Official Statement in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, the City will forthwith cooperate with the Underwriter in the prompt preparation and furnishing to the Underwriter of a reasonable number of copies of an amendment of or a supplement to the Official Statement, in form and substance reasonably satisfactory to the Underwriter, which will so amend or supplement the Official Statement so that, as amended or supplemented, it will not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(f) The City hereby covenants and agrees that it will, on or prior to the Closing Date (as hereinafter defined), enter into an agreement or contract for the benefit of the owners of the Bonds in which the City will undertake to provide financial information, operating data and notices of material events as required by paragraph (d)(2)(ii) of Rule 15c2-12, substantially in the form of Appendix E to the Official Statement (the "Continuing Disclosure Certificate").

Section 2. Bona Fide Public Offering. The Underwriter agrees to make a bona fide public offering of all of the Bonds, at prices not in excess of the initial public offering yields or prices set forth on the cover page of the Official Statement (defined below). Subject to Section 3(c), the Bonds may be offered and sold to certain dealers at prices lower than such initial public offering prices; provided, however, that the Underwriter may offer a portion of the Bonds for sale to selected dealers who are members of the Financial Industry Regulatory Authority, and the

Underwriter reserves the right to change such offering prices or yields as the Underwriter shall deem necessary in connection with the marketing of the Bonds and to offer and sell the Bonds to certain dealers (including dealers depositing the Bonds into investment trusts) and others at prices lower than the initial offering prices or at yields higher than the initial yields set forth on Exhibit A attached hereto. The Underwriter also reserves the right to over-allot or effect transactions that stabilize or maintain the market price of the Bonds at a level above that which might otherwise prevail in the open market and to discontinue such stabilizing, if commenced, at any time. None of such activities shall affect the principal amounts, maturity dates, interest rates, redemption or other provision of the Bonds or the amount to be paid by the Underwriter to the City for the Bonds.

Section 3. Establishment of Issue Price.

(a) The Underwriter agrees to assist the City in establishing the issue price of the Bonds and shall execute and deliver to the City at Closing an "issue price" or similar certificate, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit B, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter, the City and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Bonds. All actions to be taken by the City under this section to establish the issue price of the Bonds may be taken on behalf of the City by the City's municipal advisor identified herein and any notice or report to be provided to the City may be provided to the City's municipal advisor.

(b) The City will treat the first price at which 10% of each maturity of the Bonds (the "10% test") is sold to the public as the issue price of that maturity (if different interest rates apply within a maturity, each separate CUSIP number within that maturity will be subject to the 10% test). At or promptly after the execution of this Bond Purchase Agreement, the Underwriter shall report to the City the price or prices at which it has sold to the public each maturity of Bonds. If at that time the 10% test has not been satisfied as to any maturity of the Bonds, the Underwriter agrees to promptly report to the City the prices at which it sells the unsold Bonds of that maturity to the public. That reporting obligation shall continue, whether or not the Closing Date has occurred, until the 10% test has been satisfied as to the Bonds of that maturity or until all Bonds of that maturity have been sold to the public.

(c) The Underwriter confirms that any selling group agreement and any retail distribution agreement relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each dealer who is a member of the selling group and each broker-dealer that is a party to such retail distribution agreement, as applicable, to (A) report the prices at which it sells to the public the unsold Bonds of each maturity allotted to it until it is notified by the Underwriter that either the 10% test has been satisfied as to the Bonds of that maturity or all Bonds of that maturity have been sold to the public and (B) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Underwriter. The City acknowledges that, in making the representation set forth in this subsection, the Underwriter will rely on (i) in the event a selling group has been created in connection with the initial sale of the Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the hold-the-offering-price rule, if applicable, as set forth in a selling group agreement and the related pricing wires, and (ii) in the event that a retail distribution agreement was employed in connection with the initial sale of the Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the hold-the-offering-price rule, if applicable, as set forth in the retail distribution agreement and the related pricing wires. The City further acknowledges that the Underwriter shall not be liable for the failure of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a retail distribution

agreement, to comply with its corresponding agreement regarding the hold-the-offering-price rule as applicable to the Bonds.

(d) The Underwriter acknowledges that sales of any Bonds to any person that is a related party to the Underwriter shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

(i) "public" means any person other than an underwriter or a related party,

(ii) "underwriter" means (A) any person that agrees pursuant to a written contract with the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Bonds to the public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the public),

(iii) a purchaser of any of the Bonds is a "related party" to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) at least 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and

(iv) "sale date" means the date of execution of this Bond Purchase Agreement by all parties.

Section 4. Closing. At 8:00 A.M., California time, December 19, 2017, or at such other time on such earlier or later date as shall have been mutually agreed upon by the City and the Underwriter, the City will deliver or cause to be delivered to the Underwriter the Bonds duly authenticated by the Trustee, together with the other documents hereinafter mentioned, and the Underwriter will accept such delivery and pay the purchase price of the Bonds as set forth in Section 1 hereof by federal funds wire. The consummation of the purchase and delivery of such Bonds as aforesaid shall be made at the offices of Jones Hall, A Professional Law Corporation, San Francisco, California ("Bond Counsel"), or at such other place as shall be agreed upon by the City and the Underwriter; provided, the Bonds will be delivered through the facilities of The Depository Trust Company. Such purchase and delivery is herein called the "Closing" and the date and time of the Closing is herein called the "Closing Date."

The Bonds shall be executed, authenticated and delivered under and in accordance with the provisions of this Bond Purchase Agreement and the Indenture. The Bonds shall be in definitive form, shall bear CUSIP numbers, and shall be fully-registered bonds, registered in the name of Cede & Co., as nominee for The Depository Trust Company, with one bond for each maturity of the Bonds in the principal amount of such maturity.

Section 5. Representations and Warranties.

(a) The Underwriter hereby represents that the Underwriter has full power and authority to enter into this Bond Purchase Agreement, that the execution, delivery and

performance of this Bond Purchase Agreement and the purchase of the Bonds contemplated herein have been duly authorized by the Underwriter, and that this Bond Purchase Agreement, upon due authorization, execution and delivery by the City, will be a valid and binding obligation of the Underwriter.

(b) The City, by its acceptance hereof, represents, warrants, covenants and agrees with the Underwriter as follows:

(i) The City is a municipal corporation and general law city duly organized and existing under the laws of the State of California and the City Council of the City has, by adoption of the Resolution, duly approved the issuance of the Bonds by the City.

(ii) The Resolution has been duly adopted by the City, is in full force and effect and has not been amended, modified or revised as of the date hereof.

(iii) The City has, pursuant to the laws of the State of California, including the Bond Law, and the Indenture, all necessary power and authority to enter into and perform its duties under the Financing Agreements.

(iv) The City has, on or before the date hereof, taken all action necessary to be taken by it prior to such date for (A) the issuance, sale and delivery of the Bonds upon the terms and conditions and for the purposes described herein, in the Indenture and in the Official Statement, (B) the execution and delivery of the Financing Agreements and performance of its obligations thereunder, (C) the authorization of the distribution of the Preliminary Official Statement and the approval, execution, delivery and distribution of the Official Statement, and (D) the carrying out of, giving effect to, consummating and performing the transactions and obligations contemplated to be performed by it by the Financing Agreements and by the Official Statement, provided that no representation is made with respect to compliance with the securities or "Blue Sky" laws of the various states of the United States, and such resolution has not been amended, modified or repealed and is in full force and effect on the date hereof;

(v) The delivery of the Preliminary Official Statement and the execution and delivery by the City of the Financing Agreements and the Official Statement, the compliance by it with the terms, conditions or provisions hereof and thereof, and the consummation on its part of the transactions herein and therein contemplated do not and will not, in any respect material for the performance by the City of its obligations under the Financing Agreements, conflict with or constitute a breach of or a default under nor contravene any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the City is a party or is otherwise subject, nor does any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the City under any such law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, deed of trust, resolution, agreement or other instrument in any respect material to the performance by the City of its obligations under the Financing Agreements, except as provided in the Financing Agreements;

(vi) Except as may be required under Blue Sky or other securities laws of any state, there is no consent, approval, authorization or other order of, or filing with, or certification by, any regulatory authority having jurisdiction over the City required for the execution, delivery and sale of the Bonds or the consummation by the City of the

transactions contemplated by the Financing Agreements or the Official Statement, which has not been duly obtained or made on or prior to the date hereof;

(vii) Except as described in the Official Statement, there is no action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending against or, to the best knowledge of the City, threatened against or affecting the City wherein an unfavorable decision, ruling or finding would adversely affect (A) the validity or enforceability of, or the authority or ability of the City to perform its obligations under, the Financing Agreements, or (B) the transactions contemplated to be performed by it under the Financing Agreements or by the Official Statement;

(viii) The City is not in default as to the payment of principal or interest with respect to an obligation issued or incurred by the City;

(ix) The City will cooperate with the Underwriter in the qualification of the Bonds for offering and sale and the determination of the eligibility of the Bonds for investment under the laws of such jurisdictions as the Underwriter shall designate, and will use its best efforts to continue such qualification in effect so long as required for the distribution of the Bonds by the Underwriter, provided that the City shall not be required to take any action which would subject it to service of process or to register as a foreign corporation in any jurisdiction where it is not now so subject (and it is understood that the City is not responsible for compliance with or the consequences of failure to comply with applicable "Blue Sky" laws);

(x) The information contained in the Preliminary Official Statement and Official Statement (except with respect to the Municipal Bond Insurer, the Municipal Bond Insurance Policy, the Reserve Policy, DTC and the book-entry system), as of its date and the date hereof, did not, does not and will not, as of the Closing Date, contain any untrue statement of a material fact and did not, does not and will not, as of the Closing Date, omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(xi) After the Closing and prior to the End of the Underwriting Period, the City will not participate in the issuance of any amendment of or supplement to the Official Statement which, after being furnished with a copy, the Underwriter shall object in writing or which shall be reasonably disapproved of by counsel for the Underwriter;

(xii) The proceeds from the sale to the Underwriter of the Bonds will be applied in the manner and for the purposes specified in the Financing Agreements, including the defeasance of the 2006 Certificates;

(xiii) The City covenants that it will not take any action which would cause interest payable with respect to the Bonds to become includable in gross income for federal income tax purposes or subject to State of California personal income taxes; and

(xiv) Any certificate of the City delivered to the Underwriter in connection with the transactions contemplated by the Official Statement and this Bond Purchase Agreement shall be deemed a representation by the City to the Underwriter as to the statements made therein.

Section 6. Conditions to the Obligations of the Underwriter. The obligations of the Underwriter under this Bond Purchase Agreement have been undertaken in reliance on, and shall be subject to, the due performance by the parties hereto of their respective obligations and

agreements to be performed hereunder, and on and as of the date of delivery of this Bond Purchase Agreement and on and as of the Closing Date. The obligations of the Underwriter hereunder to accept delivery of and pay for the Bonds at the Closing are also subject, in the discretion of the Underwriter, to the following further conditions:

(a) at the time of the Closing, (i) the Resolution and the Financing Agreements shall be in full force and effect and shall not have been rescinded, amended, modified or supplemented, except as may have been agreed to by the Underwriter, and the City shall have adopted or executed and delivered, as the case may be, and there shall be in full force and effect such additional resolutions, agreements, opinions and certificates (including such certificates as may be required by regulations of the Internal Revenue Service in order to establish the tax-exempt character of interest evidenced by the Bonds), which resolutions, agreements, opinions and certificates shall be reasonably satisfactory in form and substance to the Underwriter, and there shall have been taken in connection therewith and in connection with the issuance of the Bonds all such action as shall, in the opinion of the Underwriter, be necessary in connection with the transactions contemplated hereby, (ii) the Bonds shall have been duly issued, authenticated and delivered, (iii) the Preliminary Official Statement and Official Statement shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Underwriter, and (iv) the City shall perform or have performed all of its obligations under or specified in the Financing Agreements to be performed by the City at or prior to the Closing;

(b) on the Closing Date, there shall be delivered to the Underwriter in form satisfactory to the Underwriter:

(i) executed counterparts of the Financing Agreements, a certified copy of the Resolution and such other documents and certificates as the Underwriter may reasonably require in order to evidence the accuracy or satisfaction of any of the representations, warranties or conditions herein contained;

(ii) an approving opinion of Bond Counsel, substantially in the form attached as Appendix D to the Official Statement, and a letter from Bond Counsel addressed to the Underwriter expressly permitting the Underwriter to rely on such final approving opinion as if the Underwriter was an addressee thereof;

(iii) a supplemental opinion of Bond Counsel dated the Closing Date, addressed to the Underwriter, to the effect that:

(A) the City has full right and lawful authority to enter into and perform its obligations under the Financing Agreements, and the Financing Agreements have been duly authorized, executed and delivered by the City and constitute legally valid and binding obligations of the City, enforceable in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights and by the application of equitable principles if equitable remedies are sought;

(B) the Bonds are exempt from registration under the Securities Act of 1933, as amended (the "Securities Act"), and the Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"); and

(C) the statements contained in the Official Statement under the captions "INTRODUCTION," "THE 2017 BONDS," "THE REFUNDING PLAN,"

"SECURITY FOR THE 2017 BONDS," "TAX MATTERS," "CERTAIN LEGAL MATTERS," "CONTINUING DISCLOSURE," "APPENDIX C—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS," "APPENDIX D—FORM OF BOND COUNSEL OPINION" and "APPENDIX E—FORM OF CONTINUING DISCLOSURE CERTIFICATE" are accurate insofar as such statements purport to summarize certain provisions of the Bonds, the Indenture, the Continuing Disclosure Certificate and the exclusion of the interest on the Bonds from gross income for federal income tax purposes and the tax exemption of such interest for State of California personal income tax purposes;

(iv) An opinion, dated the Closing Date and addressed to the City and the Underwriter of Bond Counsel, to the effect that the 2006 Certificates have been defeased and are no longer deemed outstanding;

(v) an opinion of Jones Hall, A Professional Law Corporation, San Francisco, California as disclosure counsel ("Disclosure Counsel"), addressed to the City and the Underwriter and dated the Closing Date, to the effect that although such counsel is not passing upon and does not assume any responsibility for the accuracy, completeness or fairness of any of the statements contained in the Official Statement and makes no representation that such counsel has independently verified the accuracy, completeness or fairness of any such statements, during the course of serving as Disclosure Counsel in connection with the issuance of the Bonds, no information came to the attention of the attorneys in such firm rendering legal services in connection with such issuance which caused such firm to believe that the Official Statement as of its date (except for any financial or statistical or engineering data or forecasts, numbers, charts, estimates, projections, assumptions or expressions of opinion, information regarding the Municipal Bond Insurer, the Municipal Bond Insurance Policy and the Reserve Policy, or any information about book-entry or The Depository Trust Company included therein, as to which no opinion or view need be expressed) contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(vi) an opinion of Quint & Thimmig LLP, counsel to the Underwriter ("Underwriter's Counsel"), addressed to the Underwriter and dated the Closing Date, in form and substance satisfactory to the Underwriter;

(vii) a certificate, dated the Closing Date, signed by an authorized official of the City, and in form and substance satisfactory to the Underwriter, to the effect that:

(A) except as described in the Official Statement, there is no action, suit, proceeding, inquiry or investigation before or by any court, public agency or body pending or, to the best knowledge of the City, threatened against or affecting the City wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of, or the authority or ability of the City to perform its obligations under, any of the Financing Agreements or the transactions contemplated to be performed by it as described in the Official Statement, or which would restrain or enjoin the sale, execution or delivery of the Bonds or in any way contest or affect the validity of the Bonds, the proceedings of the City taken with respect to the issuance, delivery or sale thereof, the pledge or application of any moneys or securities provided for the payment of the Bonds and the existence or powers of the City or the title of any officers of the City to their respective positions;

(B) the representations and warranties of the City contained in this Bond Purchase Agreement are true and correct in all material respects on and as of the Closing Date;

(C) the City has complied, or is presently in compliance, with all agreements and has satisfied all conditions on its part to be observed or satisfied under the Financing Agreements at or prior to the Closing; and

(D) the information and statements in the Official Statement (except with respect to the Municipal Bond Insurer, the Municipal Bond Insurance Policy, the Reserve Policy, DTC and the book-entry system) do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(viii) an opinion of the City Attorney, dated the Closing Date, to the effect that:

(A) the City is a municipal corporation and general law city duly organized and existing under the laws of the State of California and has the full legal right, power and authority to adopt the Resolution;

(B) the Resolution has been duly adopted by the Board and is in full force and effect on the Closing Date and has not been amended, modified or revised.

(C) except as described in the Official Statement, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public agency or body pending with respect to which the City has been served with process or, to the best of such counsel's knowledge, threatened against or affecting the City in which an unfavorable decision, ruling or finding would adversely affect the City's participation in or consummation of the transactions contemplated by the Official Statement, the Bonds, the Indenture or this Bond Purchase Agreement, or in any way contesting the existence of the City or the powers of the City with respect thereto, or the ability of the City to collect or receive the revenues that are the source of the payment of the Bonds or to apply such revenues to the payment of the Bonds;

(D) no consent, approval, permit, authorization, order, filing, registration, qualification, election or referendum of or by any person, organization, court, regulatory body, administrative agency or other governmental agency or public body whatsoever is required to be filed, made or obtained by the City (except such as have been filed, made or obtained and as are in full force and effect) in connection with the execution, delivery or sale of the Bonds or the valid execution and delivery by the City and the observance and performance of its obligations under, the Financing Agreements, except that no opinion need be given relating to any federal or state securities or tax laws;

(E) to the actual knowledge of such counsel, the execution and delivery of the Financing Agreements by the City do not, and compliance with the terms thereof by the City will not, result in a material breach of any of the terms or provisions of, or constitute a material violation of or default under, any resolution, indenture, mortgage, deed of trust or other agreement or instrument to which the City is now a party or by which it or any of its properties is now

bound, or any judgment, order, rule or regulation applicable to the City of any court or of any regulatory body or administrative agency or other governmental body having jurisdiction over the City or over any of its properties, or the Constitution of the State of California or any statute, ordinance or resolution of any jurisdiction applicable to the City, which would be material in the context of the execution and delivery of the Bonds; and

(F) without having undertaken to determine independently the accuracy or completeness of the statements therein, nothing has come to his attention which would lead the counsel to the City to believe that the information contained in the Official Statement relating to the City is inaccurate;

(ix) an executed copy of a non-arbitrage certificate in form and substance satisfactory to Bond Counsel, together with a copy of the completed and executed IRS Form 8038-G;

(x) a certificate dated the Closing Date and signed by an authorized officer of the Trustee, in form and substance satisfactory to the Underwriter to the effect that:

(A) the Trustee is a national banking association duly organized and existing under the laws of the United States of America authorized to carry out corporate trust powers and has all necessary power and authority to enter into and is qualified to perform its duties under the Indenture;

(B) the representations and agreements of the Trustee in the Indenture are true and correct in all material respects as of the Closing Date;

(C) the Bonds have been validly authenticated and delivered in accordance with the Indenture;

(D) the Indenture is valid and binding on the Trustee which has accepted all trusts and duties thereunder; and

(E) the execution and delivery of the Indenture, and compliance by the Trustee with the provisions thereof, does not and will not in any material respect conflict with or constitute on the part of the Trustee a breach of or default under any agreement or other instrument to which the Trustee is a party or by which it is bound or any existing law, regulation, court order or consent decree to which the Trustee is subject;

(xi) an opinion of counsel to the Trustee, dated the Closing Date, to the effect that:

(A) the Trustee has been duly organized and is validly existing in good standing as a national banking association duly organized and existing under and by virtue of the laws of the United States of America with the full corporate power to undertake the trust of the Indenture;

(B) the Trustee has duly authorized, executed and delivered the Indenture, and by all proper corporate action has authorized the acceptance of the trusts of the Indenture;

(C) assuming the due authorization, execution and delivery by the City, the Indenture constitutes the valid and binding agreement of the Trustee, enforceable against the Trustee in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting creditors' rights generally and by the principles of equity if equitable remedies are sought; and

(D) no authorization, approval, consent or order of any governmental entity or, to the best of such counsel's knowledge, of any other person, association or corporation is required for the valid authorization, execution and delivery of the Indenture by the Trustee or the authentication and delivery of the Bonds;

(xii) written evidence satisfactory to the Underwriter that Standard & Poor's Credit Ratings Services ("S&P") has issued the underlying rating of "__"and that S&P has issued the insured rating of "AA" to the Bonds and such ratings shall be in effect on and as of the Closing Date;

(xiii) The Municipal Bond Insurance Policy issued by the Municipal Bond Insurer;

(xiv) The Reserve Policy issued by the Municipal Bond Insurer;

(xv) A certificate of the Municipal Bond Insurer or an opinion of counsel to the Municipal Bond Insurer, dated the date of the Closing, to the effect that the information in the Official Statement regarding the Municipal Bond Insurer, the Municipal Bond Insurance Policy and the Reserve Policy under the caption "MUNICIPAL BOND INSURANCE" and contained in APPENDIX G—"SPECIMEN MUNICIPAL BOND INSURANCE POLICY" is accurate in all material respects;

(xvi) An opinion of counsel to the Municipal Bond Insurer as to the validity and enforceability of the Municipal Bond Insurance Policy and the Reserve Policy, in form and content satisfactory to Bond Counsel and Underwriter's Counsel; and

(xvii) such additional legal opinions, certificates, proceedings, instruments or other documents as Bond Counsel and counsel to the Underwriter may reasonably request to evidence compliance by the City with legal requirements, the truth and accuracy, as of the Closing Date, of the representations and warranties of the City contained herein, and the due performance or satisfaction by the City at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the City.

If the conditions to the obligations of the Underwriter contained in this Bond Purchase Agreement shall not be satisfied, unless otherwise waived by the Underwriter, this Bond Purchase Agreement shall terminate with the effect stated in paragraph (c) of Section 5 hereof.

Section 7. Termination of Agreement.

(a) The Underwriter may terminate this Bond Purchase Agreement, with the effect stated in paragraph (c) of this Section 5, at any time subsequent to the date of this Bond Purchase Agreement and at or prior to the Closing by notifying the City by email of its election so to do, if:

(i) A tentative decision with respect to legislation shall be reached by a committee of the House of Representatives or the Senate of the Congress of the United States or legislation shall be favorably reported by such a committee or be introduced, after the date of this Bond Purchase Agreement and prior to the Closing, by amendment or otherwise, in, or be enacted by, the House of Representatives or the Senate, or be recommended to the Congress of the United States for passage by the President of the United States, or a decision by a court established under Article III of the Constitution of the United States, or the Tax Court of the United States, shall be rendered or a ruling, regulation or order of the Treasury Department of the United States or the Internal Revenue Service shall be made or proposed having the purpose or effect of imposing federal income taxation, or any other event shall have occurred which results in the imposition of federal income taxation, upon revenues or other income of the general character to be derived by the City (or by any similar body) or upon interest received on obligations of the general character of the Bonds; or

(ii) Legislation shall be introduced, by amendment or otherwise, in, or be enacted by, the House of Representatives or the Senate of the Congress of the United States, or a decision by a court of the United States shall be rendered, or a stop order, ruling, regulation or official statement by, or on behalf of, the United States Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter shall be made or proposed, to the effect that the issuance, offering or sale of obligations of the general character of the Bonds, as contemplated hereby, is or would be in violation of any provision of the Securities Act, the Securities Exchange Act of 1934 (the "Securities Exchange Act") or the Trust Indenture Act, as any of the foregoing Acts are amended, or with the purpose or effect of otherwise prohibiting the issuance, offering or sale of obligations of the general character of the Bonds, or the Bonds, as contemplated hereby.

(b) In addition, the Underwriter may terminate this Bond Purchase Agreement with the effect stated in paragraph (c) of this Section 5 at any time subsequent to the date of this Bond Purchase Agreement and at or prior to the Closing by notifying the City in writing or by telegram of its election to do so, if:

(i) Any event shall have occurred, or information shall have become known, which, in the Underwriter's reasonable opinion, makes untrue, incorrect or misleading in any material respect any statement or information contained in the Preliminary Official Statement or Official Statement or has the effect that the Preliminary Official Statement or Official Statement contains an untrue, incorrect or misleading statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(ii) Any legislation, resolution, ordinance, rule or regulation shall be introduced in, or be enacted by, any governmental body, department or agency of the United States, of the State of New York or of the State of California, or a decision by any court of competent jurisdiction within the United States, of the State of New York or of the State of California shall be rendered which, in the Underwriter's reasonable opinion, materially adversely affects the marketability of the Bonds or the sale, at the contemplated offering prices, by the Underwriter;

(iii) Additional restrictions not in force as of the date hereof having a material adverse effect on the transactions contemplated hereby shall have been imposed upon

trading in securities generally by any governmental authority or by any national securities exchange;

(iv) A general banking moratorium shall have been established by federal, New York or California authorities or trading in securities shall generally have been suspended on the New York Stock Exchange;

(v) Any rating on the Bonds shall have been downgraded or withdrawn by a national rating service, which, in the Underwriter's reasonable opinion, materially adversely affects the marketability of the Bonds or the sale, at the contemplated offering prices, by the Underwriter; or

(vi) A war involving the United States shall have been declared, or any existing conflict involving the armed forces of the United States shall have escalated, or any other national emergency relating to the financial community shall have occurred, which, in the Underwriter's reasonable opinion, materially adversely affects the marketability of the Bonds or the sale, at the contemplated offering prices, by the Underwriter.

(c) If this Bond Purchase Agreement is terminated as herein provided, the parties hereto shall have no obligations one to the other except as provided in Sections 6 hereof.

Section 8. Expenses.

(a) Except as specifically provided in paragraph (b) of this Section 6, the Underwriter shall be under no obligation to pay and the City shall pay any expenses incident to, or in connection with, the offering, issuance and sale of the Bonds, including, but not limited to, (i) the cost of the preparation, printing or other reproduction (for distribution prior to, on or after the date of acceptance of this Bond Purchase Agreement) of the Financing Agreements, the Preliminary Official Statement and the Official Statement in reasonable quantities for distribution, (ii) charges made by rating agencies for the rating of the Bonds, (iii) the cost of printing the Bonds, (iv) the fees and expenses of the personnel and staff of the City designated to facilitate the execution and delivery of the Bonds, (v) the fees and expenses of the Trustee, (vi) the fees and expenses of the City's accountants and other consultants, legal counsel, Bond Counsel and Disclosure Counsel, (vii) reimbursement to the Underwriter for City meals and travel paid by the Underwriter, and (viii) all other expenses relating to the sale and delivery of the Bonds, except those expressly provided for in subsection (b) of this Section 6. The aforesaid costs and expenses shall be paid out of the proceeds of the sale of Bonds or by the City.

(b) The Underwriter shall pay (i) the cost of qualifying the Bonds for sale in various states chosen by the Underwriter, (ii) the fees of the California Debt and Investment Advisory Commission, (iii) fees and expenses of Underwriter's Counsel, and (iv) all other expenses incurred by it in connection with its offering and distribution of the Bonds, including travel and advertising expenses.

(c) In the event that either the City or the Underwriter shall have paid obligations of the other as set forth in this Section 6, adjustment shall be made at the Closing or as soon thereafter as practicable.

Section 9. Miscellaneous.

(a) Except as otherwise specifically provided in this Bond Purchase Agreement, all notices, demands and formal actions under this Bond Purchase Agreement shall be in writing and mailed, telegraphed or personally delivered to:

For the Underwriter:	Stifel, Nicolaus & Company, Incorporated One Montgomery Street, 37th Floor San Francisco, CA 94104 Attention: Ms. Eileen Gallagher, Managing Director
For the City:	City of Milpitas 455 East Calaveras Boulevard Milpitas, CA 95035 Attention: City Manager

(b) This Bond Purchase Agreement will inure to the benefit of and be binding upon the City and the Underwriter and their respective successors and assigns, and will not confer any rights upon any other person, partnership, association or corporation other than the City and persons, if any, controlling the Underwriter within the meaning of the Securities Act or the Securities Exchange Act. The terms "successors" and "assigns" shall not include any purchaser or holder of any of the Bonds.

(c) All of the representations, warranties and covenants of the City in this Bond Purchase Agreement shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of the Underwriter, (ii) delivery of and any payment for the Bonds hereunder or (iii) termination of the Underwriter's obligation to accept delivery of the Bonds pursuant to this Bond Purchase Agreement.

(d) Section headings have been inserted in this Bond Purchase Agreement as a matter of convenience or for reference only, and it is agreed that such section headings are not a part of this Bond Purchase Agreement and will not be used in the interpretation of any provisions of this Bond Purchase Agreement.

(e) If any provision of this Bond Purchase Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any constitution, statute, rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Bond Purchase Agreement invalid, inoperative or unenforceable to any extent whatever.

(f) This Bond Purchase Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

(g) This Bond Purchase Agreement shall be governed by and construed in accordance with the laws of the State of California.

STIFEL, NICOLAUS & COMPANY, INCORPORATED

By _____
Managing Director

This Bond Purchase Agreement is accepted and agreed to as of the date first above written:

CITY OF MILPITAS

By _____
City Manager

Time _____

APPENDIX A

MATURITY SCHEDULE

MATURITIES, PRINCIPAL AMOUNTS, INTEREST RATES, YIELDS AND PRICES

Maturity November 1	Principal Amount	Interest Rate	Yield	Price
2018				
2019				
2020				
2021				
2022				
2023				
2024				
2025				
2026				

APPENDIX B

REDEMPTION TERMS

The Bonds are not subject to redemption prior to maturity.

APPENDIX C

ISSUE PRICE CERTIFICATE

$_____
CITY OF MILPITAS
Wastewater Revenue Refunding Bonds, Series 2017

The undersigned, on behalf of Stifel, Nicolaus & Company, Incorporated ("Stifel"), based on the information available to it, hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the "Bonds").

I. General

1. Stifel and the City of Milpitas (the *"Issuer"*) have executed a bond purchase agreement in connection with the Bonds on the Sale Date. Stifel has not modified the bond purchase agreement since its execution on the Sale Date.

II. Price

1. As of the date of this certificate, for each Maturity of the Bonds, the first price at which at least 10% of such Maturity of the Bonds was sold to the Public is the respective price listed in *Schedule A*.

III. Defined Terms

1. *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

2. *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a Related Party to an Underwriter.

3. A person is a *"Related Party"* to an Underwriter if the Underwriter and the person are subject, directly or indirectly, to (i) at least 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).

4. *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is July 27, 2017.

5. *Underwriter* means (i) any person that agrees pursuant to a written contract with the Issuer (or with Stifel to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

IV. Credit

Stifel has calculated that the present value of the amounts paid to obtain the _____ municipal bond insurance and reserve fund municipal bond insurance policies (the "Policies") is less

than the present value of the debt service reasonably expected to be saved as a result of having the Policies, using as the discount factor for this purpose the expected Yield with respect to the Bonds treating the fees paid as interest with respect to the Bonds.

All terms not defined herein shall have the same meanings as in the Tax Exemption Certificate and Agreement with respect to the Bonds, to which this Certificate is attached. The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents Stifel's interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in its documents and with respect to compliance with the federal income tax rules affecting the Bonds, and by Jones Hall, A Professional Law Corporation in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of Internal Revenue Service Form 8038-G, and other federal income tax advice it may give to the Issuer from time to time relating to the Bonds.

Dated: _____, 2017

STIFEL, NICOLAUS & COMPANY,
INCORPORATED, as Underwriter

By _____
Managing Director

$_____
CITY OF MILPITAS
Wastewater Revenue Refunding Bonds, Series 2017

SCHEDULE A TO ISSUE PRICE CERTIFICATE

Maturity November 1	Principal Amount	Interest Rate	Price
2018			
2019			
2020			
2021			
2022			
2023			
2024			
2025			
2026			

IRREVOCABLE REFUNDING INSTRUCTIONS

Relating to:

$9,535,000 Original Principal Amount
Certificates of Participation 2006 Series A
(City of Milpitas Sewer Financing)

These IRREVOCABLE REFUNDING INSTRUCTIONS (these "Instructions") are dated as of December 1, 2017 and are given by the MILPITAS PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California (the "Authority"), and the CITY OF MILPITAS, a municipal corporation duly organized and existing under the laws of the State of California (the "City") to U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee for the 2006 Certificates described below (the "2006 Trustee").

BACKGROUND

1. The City is issuing $_____ aggregate principal amount of its City of Milpitas Wastewater Revenue Refunding Bonds, Series 2017 (the "2017 Bonds") pursuant to an Indenture of Trust, dated as of December 1, 2017 (the "Indenture"), between the City and U.S. Bank National Association, as trustee for the 2017 Bonds (the "2017 Trustee").

3. The 2017 Bonds are being issued for the purpose, among others, of providing moneys sufficient to prepay all of the outstanding Certificates of Participation 2006 Series A (City of Milpitas Sewer Financing) (the "2006 Certificates"), which were previously executed and delivered by the 2006 Trustee.

4. The 2006 Certificates are subject to optional prepayment on any date at a prepayment price equal to 100% of the amount of 2006 Certificates prepaid, together with accrued interest represented thereby to the prepayment date, and the Authority and the City have determined to prepay the 2006 Certificates in full on January 2, 2018 (the "Prepayment Date").

5. In order to accomplish the prepayment of the outstanding 2006 Certificates, the City will deposit, or cause to be deposited, a portion of the proceeds of the 2017 Bonds with the 2006 Trustee[[, together with amounts on deposit with the 2006 Trustee related to the 2006 Certificates,]] in accordance with these Instructions.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

Section 1. Creation of Escrow Fund. The 2006 Trustee is directed to establish a special and irrevocable escrow fund (the "Escrow Fund") to be held in the custody of the 2006 Trustee in trust for the benefit of the owners of the 2006 Certificates. The Escrow Fund will be held in trust solely for the benefit of the owners of the 2006 Certificates and the moneys held in the Escrow Fund will be irrevocably set aside for the payment of the 2006 Certificates as provided herein. Neither the Authority nor the City will have any interest in the funds held in the Escrow Fund. The Escrow Fund shall constitute an escrow deposit and trust agreement for purposes of the Trust Agreement dated as of December 1, 2006 (the "2006 Trust Agreement") among the 2006 Trustee, the Authority and the City.

Section 2. Deposit to the Escrow Fund; Investment. The 2006 Trustee will deposit the amount of $_____ in the Escrow Fund, with $_____ to be derived from the proceeds of the 2017 Bonds[[, and $_____ to be derived from a release of cash on deposit in the 2006 Trust Agreement]]. The 2006 Trustee will retain all of such amounts uninvested in cash in the Escrow Fund, as necessary to make the transfers described in Section 3 hereof.

Section 3. Instructions as to Payment of 2006 Certificates. The 2006 Trustee will apply the amounts held in the Escrow Fund for the sole purposes of prepayment of the 2006 Certificates set forth in Schedule A hereto on the Prepayment Date, at a price equal to 100% of the principal amount of the 2006 Certificates prepaid, plus accrued interest to the Prepayment Date (the "Prepayment Price").

The 2017 Trustee has no lien upon or right of set off against the cash at any time on deposit in the Escrow Fund. Any moneys remaining in the Escrow Fund following prepayment of the 2006 Certificates as described above will be transferred to the 2017 Trustee for deposit in the Debt Service Fund relating to the 2017 Bonds.

Section 4. Notice of Prepayment; Irrevocable Election to Prepay.

(a) The City has previously instructed the 2006 Trustee to give a revocable notice of optional prepayment, and the 2006 Trustee has so given notice, of the prepayment of the 2006 Certificates identified in Schedule A hereto on the Prepayment Date at the Prepayment Price in accordance with the requirements of Section 4.03 of the 2006 Trust Agreement.

(b) In accordance with Section 12.01 of the 2006 Trust Agreement and Section 7.1 of the Installment Sale Agreement dated as of December 1, 2006 (the "2006 Agreement") between the Authority and the City, the Authority and the City hereby signify that, by making the deposits in the Escrow Fund described in Section 2 above, it is discharging the 2006 Certificates identified in Schedule A. The Authority and the City further acknowledge that such deposit constitutes a full prepayment of the outstanding installment payments due under the 2006 Agreement.

Section 5. Compensation of 2006 Trustee. For acting under these Instructions, the 2006 Trustee will be entitled to payment of fees for its services and reimbursement of advances, counsel fees and other expenses reasonably and necessarily made or incurred by the 2006 Trustee in connection with its services under these Instructions; however, such amount will never be payable from or become a lien upon the Escrow Fund.

Section 6. Application of Certain Terms of 2006 Trust Agreement. All of the terms of the 2006 Trust Agreement relating to the payment and prepayment of principal and interest with respect to the 2006 Certificates, and the protections, immunities and limitations from liability afforded the 2006 Trustee, are incorporated in these Instructions as if set forth in full herein.

Section 7. Counterparts. These Instructions may be signed in several counterparts, each of which will constitute an original, but all of which will constitute one and the same instrument.

MILPITAS PUBLIC FINANCING AUTHORITY

By: _____
Director

CITY OF MILPITAS

By _____
City Manager

Accepted:

U.S. BANK NATIONAL ASSOCIATION,
as 2006 Trustee

By: _____
Authorized Officer

SCHEDULE A

Certificates of Participation 2006 Series A
(City of Milpitas Sewer Financing)

Amount	Maturity Date	Interest Rate	CUSIP
$485,000	11/1/2018	3.800%	601638 BC2
505,000	11/1/2019	3.875	601638 BD0
525,000	11/1/2020	3.900	601638 BE8
545,000	11/1/2021	4.000	601638 BF5
565,000	11/1/2022	4.000	601638 BG3
590,000	11/1/2023	4.100	601638 BH1
615,000	11/1/2024	4.125	601638 BJ7
640,000	11/1/2025	4.200	601638 BK4
665,000	11/1/2026	4.200	601638 BL2

This Preliminary Official Statement and the information contained herein are subject to completion or amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or a solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.

PRELIMINARY OFFICIAL STATEMENT DATED _____, 2017

NEW ISSUE - FULL BOOK-ENTRY **S&P RATING: _____**
See "Rating"

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to certain qualifications described herein, under existing law, the interest on the 2017 Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, although for the purpose of computing the alternative minimum tax imposed on certain corporations, such interest is taken into account in determining certain income and earnings. In the further opinion of Bond Counsel, interest on the 2017 Bonds is exempt from California personal income taxes. See "TAX MATTERS."

$_____*
City of Milpitas
Wastewater Revenue Refunding Bonds, Series 2017
(Bank Qualified)

Dated: Date of Delivery Due: November 1, as shown on inside cover

Authority for Issuance. The bonds captioned above (the "2017 Bonds") are being issued by the City of Milpitas (the "City") under a resolution adopted by the City Council of the City, Articles 10 (commencing with Section 53570) and 11 (commencing with Section 53580) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, and an Indenture of Trust dated as of December 1, 2017 (the "Indenture"), by and between the City and U.S. Bank National Association, as trustee. See "THE 2017 BONDS – Authority for Issuance."

Use of Proceeds. The 2017 Bonds are being issued to provide funds to (i) prepay an Installment Sale Agreement dated as of December 1, 2006 (the "2006 Agreement") between the City and the Milpitas Public Financing Authority (the "Authority"), thereby defeasing and prepaying, on a current basis, all of the Certificates of Participation 2006 Series A (City of Milpitas Sewer Financing) (the "2006 Certificates"), and (ii) pay the costs of issuing the 2017 Bonds. See "FINANCING PLAN."

Security for the 2017 Bonds. The 2017 Bonds are special obligations of the City, payable solely from "Net Revenues" of the City's facilities for the collection, treatment and disposal of wastewater within the service area of the City (the "Wastewater System"), and amounts on deposit in certain funds and accounts established under the Indenture as and to the extent provided in the Indenture. The City will not fund a debt service reserve fund for the 2017 Bonds. See "SECURITY FOR THE 2017 BONDS."

Parity Debt. After the Closing Date, following the defeasance and refunding of the 2006 Agreement and 2006 Certificates on the with the net proceeds of the 2017 Bonds, there will be no obligations of the Wastewater System payable from Net Revenues on a parity basis with the 2017 Bonds. However, additional series of bonds or other debt may be issued in the future that are payable from Net Revenues on a parity with the 2017 Bonds, subject to the conditions contained in the Indenture. See "SECURITY FOR THE 2017 BONDS – Parity Debt."

Bond Terms; Book-Entry Only. The 2017 Bonds will bear interest at the rates shown on the inside cover, payable semiannually on May 1 and November 1 of each year, commencing on May 1, 2018, and will be issued in fully registered form without coupons in the denomination of $5,000 or any integral multiple of $5,000. The 2017 Bonds will be issued in book-entry only form, initially registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"). Purchasers of the 2017 Bonds will not receive certificates representing their interests in the 2017 Bonds. Payments of the principal of, premium, if any, and interest on the 2017 Bonds will be made to DTC, which is obligated in turn to remit such principal, premium, if any, and interest to its DTC Participants for subsequent disbursement to the beneficial owners of the 2017 Bonds. See "THE 2017 BONDS – General Bond Terms."

Redemption. **The 2017 Bonds are subject to special mandatory redemption from insurance and sale proceeds prior to maturity. See "THE 2017 BONDS – Redemption."**

NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY IS PLEDGED TO THE PAYMENT OF THE 2017 BONDS OR INTEREST THEREON. THE 2017 BONDS ARE NOT SECURED BY A LEGAL OR EQUITABLE PLEDGE OF, OR CHARGE, OR LIEN, OR ENCUMBRANCE UPON, ANY OF THE PROPERTY OF THE CITY OR ANY OF ITS INCOME OR RECEIPTS, EXCEPT THE NET REVENUES OF THE WASTEWATER SYSTEM AND AMOUNTS ON DEPOSIT IN CERTAIN FUNDS AND ACCOUNTS ESTABLISHED UNDER THE INDENTURE AS AND TO THE EXTENT PROVIDED IN THE INDENTURE.

MATURITY SCHEDULE
(see inside cover)

THIS COVER PAGE CONTAINS CERTAIN INFORMATION FOR QUICK REFERENCE ONLY. IT IS NOT A SUMMARY OF THIS ISSUE OF BONDS. INVESTORS MUST READ THE ENTIRE OFFICIAL STATEMENT TO OBTAIN INFORMATION ESSENTIAL TO THE MAKING OF AN INFORMED INVESTMENT DECISION WITH RESPECT TO THE PURCHASE OF THE 2017 BONDS. INVESTMENT IN THE BONDS INVOLVES RISKS THAT MAY NOT BE APPROPRIATE FOR SOME INVESTORS. SEE "BOND OWNERS' RISKS."

The 2017 Bonds are offered when, as and if issued and accepted by the Underwriter, subject to approval as to their legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel. Certain legal matters will also be passed upon for the City by Jones Hall, A Professional Law Corporation, as Disclosure Counsel, and by the City Attorney. Certain legal matters will be passed upon for the Underwriter by its counsel, Quint & Thimmig LLP, Larkspur, California. It is anticipated that the 2017 Bonds, in book-entry only form, will be available through the facilities of DTC on or about _____, 2017.

STIFEL

The date of this Official Statement is: _____, 2017.

_____

* Preliminary; subject to change.

MATURITY SCHEDULE*

$_____ Serial Bonds
(Base CUSIP†: _____)

Maturity (November 1)	Principal Amount	Interest Rate	Yield	Price	CUSIP†

* Preliminary; subject to change.

† *Copyright S&P Global Services, managed by Standard & Poor's Capital IQ. CUSIP® numbers are provided for convenience of reference only. Neither the City nor the Underwriter takes any responsibility for the accuracy of such CUSIP® numbers.*

CITY OF MILPITAS
(Santa Clara County, California)

CITY COUNCIL

Richard Tran, Mayor
Marsha Grilli, Vice Mayor
Garry Barbadillo, Councilmember
Bob Nunez, Councilmember
Anthony Phan, Councilmember

CITY OFFICIALS

Steve Pangelinan, Interim City Manager
Will Fuentes, Director of Financial Services
Steve Erickson, Acting Director of Engineering
Tony Ndah, Acting Public Works Director
Christopher J. Diaz, City Attorney
Mary Lavelle, CMC, City Clerk

SPECIAL SERVICES

Bond Counsel and Disclosure Counsel

Jones Hall, A Professional Law Corporation
San Francisco, California

Municipal Advisor

Fieldman, Rolapp & Associates, Inc.
Irvine, California

Trustee

U.S. Bank National Association
San Francisco, California

GENERAL INFORMATION ABOUT THIS OFFICIAL STATEMENT

No Offering May Be Made Except by this Official Statement. No dealer, broker, salesperson or other person has been authorized to give any information or to make any representations with respect to the 2017 Bonds other than as contained in this Official Statement, and if given or made, such other information or representation must not be relied upon as having been authorized.

No Unlawful Offers or Solicitations. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy in any state in which such offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation.

Effective Date. This Official Statement speaks only as of its date, and the information and expressions of opinion contained in this Official Statement are subject to change without notice. Neither the delivery of this Official Statement nor any sale of the 2017 Bonds will, under any circumstances, create any implication that there has been no change in the affairs of the City or the Wastewater System since the date of this Official Statement.

Use of this Official Statement. This Official Statement is submitted in connection with the sale of the 2017 Bonds referred to herein and may not be reproduced or used, in whole or in part, for any other purpose. This Official Statement is not a contract with the purchasers of the 2017 Bonds.

Preparation of this Official Statement. The information contained in this Official Statement has been obtained from sources that are believed to be reliable, but this information is not guaranteed as to accuracy or completeness.

The Underwriter has provided the following sentence for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

Document References and Summaries. All references to and summaries of the Indenture or other documents contained in this Official Statement are subject to the provisions of those documents and do not purport to be complete statements of those documents.

Stabilization of and Changes to Offering Prices. The Underwriter may over allot or take other steps that stabilize or maintain the market price of the 2017 Bonds at a level above that which might otherwise prevail in the open market. If commenced, the Underwriter may discontinue such market stabilization at any time. The Underwriter may offer and sell the 2017 Bonds to certain dealers, dealer banks and banks acting as agent at prices lower than the public offering prices stated on the cover page of this Official Statement, and those public offering prices may be changed from time to time by the Underwriter.

Bonds are Exempt from Securities Laws Registration. The issuance and sale of the 2017 Bonds have not been registered under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, in reliance upon exemptions for the issuance and sale of municipal securities provided under Section 3(a)(2) of the Securities Act of 1933 and Section 3(a)(12) of the Securities Exchange Act of 1934.

Estimates and Projections. Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21E of the United States Securities Exchange Act of 1934, as amended, and Section 27A of the United States Securities Act of 1933, as amended. Such statements are generally identifiable by the terminology used such as "plan," "expect," "estimate," "budget" or other similar words.

THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS WHICH MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS. THE CITY DOES NOT PLAN TO ISSUE ANY UPDATES OR REVISIONS TO THOSE FORWARD-LOOKING STATEMENTS IF OR WHEN ITS EXPECTATIONS, OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS ARE BASED OCCUR.

Internet Site. The City maintains an internet site; however, none of the information contained on that internet site is incorporated by reference in this Official Statement.

[REGIONAL MAP]

TABLE OF CONTENTS

Page

INTRODUCTION....1
FINANCING PLAN....3
- Prepayment of 2006 Agreement and Refunding of 2006 Certificates....3
- Estimated Sources and Uses of Funds....3

THE 2017 BONDS....4
- Authority for Issuance....4
- General Bond Terms....4
- Redemption....5
- Registration, Transfer and Exchange....6

DEBT SERVICE SCHEDULE....8
SECURITY FOR THE 2017 BONDS....9
- General; Pledge of Net Revenues....9
- No Reserve Fund....10
- Receipt and Deposit of Revenues....10
- Allocation of Gross Revenues....11
- Application of Debt Service Fund....12
- Rate Stabilization Fund....12
- Rate Covenants under Indenture....13
- Parity Debt....13
- Subordinate Obligations....15
- Casualty Insurance and Eminent Domain Proceeds....15

THE WASTEWATER SYSTEM....17
- History....17
- Service Area....17
- Physical Assets....17
- Management....18
- San Jose/Santa Clara Water Pollution Control Plant....18
- Regulatory Requirements....21
- Historical Wastewater Flow....23
- Customer Base....24
- Capital Improvement Programs....25

REVENUES AND DEBT SERVICE COVERAGE....28
- Wastewater Rates and Revenues....28
- Historical Sewer Service Charges....30
- Rate Setting Process....32
- Billing and Collection....32
- Funds and Reserves....32
- Historical Revenues and Expenses....34
- Outstanding Indebtedness....35
- Historical Debt Service Coverage....35
- Pro Forma Statement of Debt Service Coverage....36

BOND OWNERS' RISKS....38
- Net Revenues; Rate Covenant....38
- No Debt Service Reserve Fund....38
- City Expenses....38
- Limitations on Remedies Available to Bond Owners....38
- Seismic and Environmental Considerations 39
- California Drought Conditions....39
- Loss of Tax-Exemption....39
- Proposition 218....39
- Environmental Regulation....41
- Secondary Market for Bonds....41
- Future Parity Obligations....41

TAX MATTERS....42
CERTAIN LEGAL MATTERS....43
LITIGATION....43
RATING....44
CONTINUING DISCLOSURE....44
UNDERWRITING....44
MUNICIPAL ADVISOR....45
EXECUTION....45

APPENDIX A: SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE
APPENDIX B: AUDITED FINANCIAL STATEMENTS OF THE CITY FOR THE FISCAL YEAR ENDED JUNE 30, 2016
APPENDIX C: FORM OF CONTINUING DISCLOSURE CERTIFICATE
APPENDIX D: GENERAL INFORMATION ABOUT THE CITY OF MILPITAS AND THE COUNTY OF SANTA CLARA
APPENDIX E: FORM OF OPINION OF BOND COUNSEL
APPENDIX F: DTC AND THE BOOK-ENTRY ONLY SYSTEM

OFFICIAL STATEMENT

**$_____*
City of Milpitas
Wastewater Revenue Refunding Bonds, Series 2017**

INTRODUCTION

This introduction is not a summary of this Official Statement. It is only a brief description of and guide to, and is qualified by, more complete and detailed information contained in the entire Official Statement, including the cover page and appendices hereto, and the documents summarized or described herein. A full review should be made of the entire Official Statement. Capitalized terms used but not defined in this Official Statement have the meanings given in the Indenture (as defined below). See "APPENDIX A – Summary of Certain Provisions of the Indenture."

Authority for Issuance. The bonds captioned above (the "**2017 Bonds**") are being issued by the City of Milpitas (the "**City**") under a resolution adopted by the City Council of the City, Articles 10 (commencing with Section 53570) and 11 (commencing with Section 53580) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, and an Indenture of Trust dated as of December 1, 2017 (the "**Indenture**"), by and between the City and U.S. Bank National Association, as trustee (the "**Trustee**"). See "THE 2017 BONDS – Authority for Issuance."

The City. The City is a general law city located in the County of Santa Clara (the "**County**"). For background, demographic and economic information regarding the City and the County, see APPENDIX D.

Purpose of the 2017 Bonds. The 2017 Bonds are being issued to provide funds to (i) prepay an Installment Sale Agreement dated as of December 1, 2006 (the "**2006 Agreement**") between the City and the Milpitas Public Financing Authority (the "**Authority**"), thereby defeasing and prepaying, on a current basis, all of the Certificates of Participation 2006 Series A (City of Milpitas Sewer Financing) (the "**2006 Certificates**"), which are currently outstanding in the principal amount of $5,135,000, and (ii) pay the costs of issuing the 2017 Bonds. See "FINANCING PLAN."

Security for the 2017 Bonds. The 2017 Bonds are special obligations of the City, payable solely from "Net Revenues" of the City's facilities for the collection, treatment and disposal of wastewater within the service area of the City (as defined more herein, the "**Wastewater System**"), and amounts on deposit in certain funds and accounts established under the Indenture as and to the extent provided in the Indenture. "**Net Revenues**" are generally defined in the Indenture as the "Gross Revenues" received from the Wastewater System, less the amount of "Maintenance and Operation Costs" of the Wastewater System (as those terms are defined in the Indenture). See "SECURITY FOR THE 2017 BONDS."

Parity Debt. After the Closing Date, following the defeasance and refunding of the 2006 Agreement and 2006 Certificates on the with the net proceeds of the 2017 Bonds, there will be no obligations of the Wastewater System payable from Net Revenues on a parity basis with the 2017 Bonds. However, additional series of bonds or other debt may be issued in the future that are payable from Net Revenues on a parity with the 2017 Bonds, subject to the conditions contained in the Indenture. See "SECURITY FOR THE 2017 BONDS – Parity Debt."

Rate Covenants. Under the Indenture, the City is obligated to fix, prescribe, revise, and collect charges for the Wastewater System during each Fiscal Year that are sufficient to yield Net Revenues of at least 115% of Debt Service on the Bonds in that Fiscal Year (as such capitalized terms are defined in the Indenture).

Under the Indenture, the City must also fix, prescribe, revise, and collect charges for the Wastewater System during each Fiscal Year to pay all Maintenance and Operation Costs of the Wastewater System estimated by the City to become due and payable in such Fiscal Year, the Debt Service on the Bonds, all other payments required for compliance with the Indenture and the Parity Debt Instruments (if any), and all payments required to meet any other obligations of the City which are charges, liens, encumbrances upon or payable from the Gross Revenues of the Wastewater System or the Net Revenues of the Wastewater System on a senior or parity basis to the Bonds (as such capitalized terms are defined in the Indenture).

See "SECURITY FOR THE 2017 BONDS – Rate Covenants."

No Reserve Fund. The City will not fund a debt service reserve fund for the 2017 Bonds.

Risks of Investment. The 2017 Bonds are repayable only from certain money available to the City from the Wastewater System. For a discussion of some of the risks associated with the purchase of the 2017 Bonds, see "BOND OWNERS' RISKS."

THE 2017 BONDS ARE NOT SECURED BY A LEGAL OR EQUITABLE PLEDGE OF, OR CHARGE, OR LIEN, OR ENCUMBRANCE UPON, ANY OF THE PROPERTY OF THE CITY OR ANY OF ITS INCOME OR RECEIPTS, EXCEPT THE NET REVENUES OF THE WASTEWATER SYSTEM AND AMOUNTS ON DEPOSIT IN CERTAIN FUNDS AND ACCOUNTS ESTABLISHED UNDER THE INDENTURE AS AND TO THE EXTENT PROVIDED IN THE INDENTURE.

FINANCING PLAN

The 2017 Bonds are being issued to provide funds to (i) prepay amounts owed by the City under the 2006 Agreement in full, thereby defeasing and refunding, on a current basis, all of the outstanding 2006 Certificates, and (ii) pay the costs of issuing the 2017 Bonds.

Prepayment of 2006 Agreement and Refunding of 2006 Certificates

The City previously entered into the 2006 Agreement with the Authority. In connection with the execution of the 2006 Agreement, the Authority issued the 2006 Certificates in the initial principal amount of $9,535,000, the proceeds of which were used to finance capital improvements to the Wastewater System. The 2006 Certificates are currently outstanding in the principal amount of $5,135,000, which will be prepaid in full, on a current basis, on January 2, 2018, (the "**Prepayment Date**"), using amounts prepaid by the City under the 2006 Agreement, at a prepayment price equal to the principal amount of the 2006 Certificates to be prepaid, plus accrued interest to the prepayment date, without premium.

In order to prepay the 2006 Agreement and defease and prepay the 2006 Certificates on the Prepayment Date, a portion of the net proceeds of the 2017 Bonds, together with certain other funds on hand with respect to the 2006 Certificates, will be deposited with The Bank of New York Mellon Trust Company, N.A., as trustee for the 2006 Certificates (the "**2006 Trustee**"), pursuant to Irrevocable Refunding Instructions given by the City and the Authority to the 2006 Trustee. The 2006 Trustee will hold amounts deposited under the Irrevocable Refunding Instructions in cash, uninvested, for the payment of the 2006 Certificates on the Prepayment Date.

Amounts prepaid by the City with respect to the 2006 Agreement and deposited with the 2006 Trustee pursuant to the Irrevocable Refunding Instructions are not available to pay debt service on the 2017 Bonds.

Estimated Sources and Uses of Funds

The estimated sources and uses of funds relating to the 2017 Bonds are as follows:

Sources:	
Principal Amount of 2017 Bonds	$
Plus Net Original Issue Premium	
Plus Funds Related to 2006 Certificates	
TOTAL SOURCES	$
Uses:	
Prepayment of 2006 Agreement and 2006 Certificates	
Costs of Issuance [1]	
TOTAL USES	$

[1] Costs of Issuance include legal fees, Municipal Advisor's fee, Underwriter's discount, printing costs, rating agency fees, and other expenses related to the issuance of the 2017 Bonds.

THE 2017 BONDS

This section provides summaries of the 2017 Bonds and certain provisions of the Indenture. See APPENDIX A for a more complete summary of the Indenture. Capitalized terms used but not defined in this section have the meanings given in APPENDIX A.

Authority for Issuance

The 2017 Bonds are being issued by the City under a Resolution adopted by the City Council of the City on _____, 2017; Articles 10 (commencing with Section 53570) and 11 (commencing with Section 53580) of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code; and the Indenture.

General Bond Terms

Bond Terms. The 2017 Bonds will be dated their date of delivery and issued issued in fully registered form without coupons in denominations of $5,000 or any integral multiple of $5,000, so long as no 2017 Bond has more than one maturity date. The 2017 Bonds will mature in the amounts and on the dates, and bear interest at the rates per annum, set forth on the inside cover page of this Official Statement.

Payments. Interest on the 2017 Bonds will be payable on May 1 and November 1 of each year to maturity (each an "**Interest Payment Date**"), commencing May 1, 2018.

Interest on the 2017 Bonds will be payable on each Interest Payment Date to the person whose name appears on the Bond Registration Books as the Owner thereof as of the Record Date immediately preceding each such Interest Payment Date, such interest to be paid by check or draft of the Trustee mailed by first class mail to the Owner or, at the option of any Owner of at least $1,000,000 aggregate principal amount of the 2017 Bonds with respect to which written instructions have been filed with the Trustee prior to the applicable Record Date, by wire transfer, at the address of such Owner as it appears on the Bond Registration Books.

If there exists a default in payment of interest due on such Interest Payment Date, such interest will be payable on a payment date established by the Trustee to the persons in whose names the 2017 Bonds are registered at the close of business on a special record date for the payment of such defaulted interest established by notice mailed by the Trustee to the registered Owners of the 2017 Bonds not less than 15 days preceding such special record date.

Principal of and premium (if any) on any 2017 Bond will be paid upon presentation and surrender thereof at the Principal Corporate Trust Office of the Trustee. Both the principal of and interest and premium (if any) on the 2017 Bonds will be payable in lawful money of the United States of America.

However, as long as Cede & Co. is the registered owner of the 2017 Bonds, as described below, payments of the principal of, premium, if any, and interest on the 2017 Bonds will be made directly to DTC, or its nominee, Cede & Co.

Calculation of Interest. The 2017 Bonds will be dated the Closing Date and bear interest based on a 360-day year comprised of twelve 30-day months from the Interest Payment Date next preceding the date of authentication thereof, unless said date of authentication is an Interest Payment Date, in which event such interest is payable from such date of authentication, and

unless said date of authentication is prior to April 15, 2018, in which event such interest is payable from the Closing Date; provided, however, that if, as of the date of authentication of any 2017 Bond, interest thereon is in default, such 2017 Bond will bear interest from the date to which interest has previously been paid or made available for payment thereon in full.

Record Date. The Indenture defines the "**Record Date**" for the 2017 Bonds as the 15th calendar day of the month immediately preceding an Interest Payment Date.

Book-Entry Only System. The 2017 Bonds will be registered in the name of Cede & Co., as nominee of the Depository Trust Company ("DTC"), New York, New York, as the initial securities depository for the 2017 Bonds. Ownership interests in the 2017 Bonds may be purchased in book-entry form only. Purchasers of the 2017 Bonds will not receive physical bonds representing their ownership interests in the 2017 Bonds purchased.

Principal and interest payments with respect to the 2017 Bonds are payable directly to DTC by the Trustee. Upon receipt of payments of principal and interest, DTC will in turn distribute such payments to the beneficial owners of the 2017 Bonds. See "APPENDIX F – DTC and the Book-Entry Only System."

So long as the 2017 Bonds are registered in the name of Cede & Co., as nominee of DTC, references in this Official Statement to the "owners" mean Cede & Co., and not the purchasers or Beneficial Owners of the 2017 Bonds. See "APPENDIX F – DTC and the Book-Entry Only System."

Redemption1

No Optional Redemption. The 2017 Bonds are not subject to optional redemption prior to maturity.

Special Mandatory Redemption from Insurance and Sale Proceeds. The 2017 Bonds are subject to redemption as a whole or in part, on any date, from and to the extent of the proceeds of disposition of Wastewater System properties or the proceeds of hazard insurance not used to repair or rebuild the Wastewater System, which are required to be used for such purpose under the Indenture, at a redemption price equal to the principal amount of the Bonds plus interest accrued thereon to the date fixed for redemption, without premium.

Notice of Redemption. Unless waived by the Owner of any 2017 Bonds to be redeemed, notice of any redemption of 2017 Bonds will be given, at the expense of the City, by the Trustee by mailing a copy of a redemption notice by first class mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Owner of the 2017 Bond or 2017 Bonds to be redeemed at the address shown on the Bond Registration Books; provided, that neither the failure to receive such notice nor any immaterial defect in any notice will affect the sufficiency of the proceedings for the redemption of the 2017 Bonds. Any such notice also will be given to the Securities Depositories and the Information Services on the same date that it is given to the Owner of the 2017 Bonds.

Notwithstanding the foregoing, while the 2017 Bonds are subject to DTC's book-entry system, the Trustee will be required to give notice of redemption only to DTC as provided in the letter of representations executed by the City and received and accepted by DTC. DTC and the Participants will have sole responsibility for providing any such notice of redemption to the

[1] *Preliminary; subject to change.*

beneficial owners of the 2017 Bonds to be redeemed. Any failure of DTC to notify any Participant, or any failure of Participants to notify the Beneficial Owner of any 2017 Bonds to be redeemed, of a notice of redemption or its content or effect will not affect the validity of the notice of redemption, or alter the effect of redemption set forth in the Indenture.

Rescission of Redemption and Cancellation of Redemption Notice. The City has the right to rescind any redemption by written notice to the Trustee on or prior to the date fixed for redemption. Any such notice of redemption shall be canceled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Outstanding Bonds then called for redemption, and such cancellation shall not constitute an Event of Default under the Indenture. The City and the Trustee shall have no liability to the Owners or any other party related to or arising from such rescission of redemption.

Selection of 2017 Bonds for Redemption. With respect to the 2017 Bonds, whenever less than all of the 2017 Bonds of a maturity are to be selected for redemption, the Trustee shall determine, by lot, the numbers of the 2017 Bonds of such maturity to be redeemed, and shall notify the City thereof.

Partial Redemption of 2017 Bonds. If only a portion of any 2017 Bond is called for redemption, then upon surrender of such Bond redeemed in part only, the City will execute and the Trustee shall authenticate and deliver to the Owner, at the expense of the City, a new 2017 Bond or Bonds, of the same maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the 2017 Bond or Bonds.

Consequences of Notice. Notice of redemption having been given as described above, the 2017 Bonds or portions of 2017 Bonds so to be redeemed will, on the redemption date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the City defaults in the payment of the Redemption Price) such 2017 Bonds or portions of 2017 Bonds will cease to have interest accrue thereon.

Upon surrender of such 2017 Bonds for redemption in accordance with said notice, such 2017 Bonds will be paid by the Trustee at the Redemption Price. Installments of interest due on or prior to the redemption date will be payable as provided in the Indenture for payment of interest.

Upon surrender for any partial redemption of any 2017 Bond, there will be prepared for the Owner a new 2017 Bond or 2017 Bonds of the same maturity in the amount of the unredeemed principal. All 2017 Bonds which have been redeemed will be cancelled and destroyed by the Trustee and will not be redelivered.

Neither the failure of any 2017 Bond Owner to receive any notice so mailed nor any defect therein will affect the sufficiency of the proceedings for redemption of any 2017 Bonds nor the cessation of accrual of interest thereon.

Registration, Transfer and Exchange

Bond Registration Books. The Trustee will keep or cause to be kept at its trust office sufficient Bond Registration Books for the registration and transfer of the Bonds, which will at all times during regular business hours, and upon reasonable notice, be open to inspection by the City; and, upon presentation for such purpose, the Trustee will, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, Bonds as provided in the Indenture.

Transfer of 2017 Bonds. Any 2017 Bond may, in accordance with its terms, be transferred upon the Bond Registration Books by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such 2017 Bond for cancellation, accompanied by delivery of a written instrument of transfer in a form approved by the Trustee, duly executed.

Whenever any 2017 Bond is surrendered for transfer, the City will execute and the Trustee will thereupon authenticate and deliver to the transferee a new Bond or Bonds of like tenor, series, maturity and aggregate principal amount. No 2017 Bonds the notice of redemption of which has been mailed pursuant to the Indenture will be subject to transfer under this provision of the Indenture.

Exchange of 2017 Bonds. 2017 Bonds may be exchanged at the Principal Corporate Trust Office of the Trustee, for 2017 Bonds of the same tenor, series and maturity and of other authorized denominations. No 2017 Bonds the notice of redemption of which has been mailed pursuant to the Indenture will be subject to exchange under this provision of the Indenture.

DEBT SERVICE SCHEDULE

Annual debt service on the 2017 Bonds is presented below.

Period Ending November 1	Principal	Interest	Annual Debt Service
2018			
2019			
2020			
2021			
2022			
2023			
2024			
2025			
2026			
Total:			

SECURITY FOR THE 2017 BONDS

This section provides summaries of the security for the 2017 Bonds, and certain provisions of the Indenture. Unless the context otherwise requires, "Bonds" refers to the 2017 Bonds and any Parity Debt outstanding under the Indenture. See APPENDIX A for a more complete summary of the Indenture. Capitalized terms used but not defined in this section have the meanings given in APPENDIX A.

General; Pledge of Net Revenues

Transfer and Pledge of Net Revenues. Under the Indenture, the City will transfer, place a charge upon, assign and set over to the Trustee (or other recipient set forth in a Parity Debt Instrument), for the benefit of the Owners, that portion of the Net Revenues which is necessary to pay the principal or Redemption Price of and interest on the 2017 Bonds and any Parity Bonds (collectively, the "**Bonds**") in any Fiscal Year, together with all moneys on deposit in the Debt Service Fund and in the Wastewater Fund, and such amounts are irrevocably pledged to the punctual payment of the principal or Redemption Price of and interest on the Bonds.

The Net Revenues shall not be used for any other purpose while any of the Bonds remain Outstanding, except that out of Net Revenues there may be apportioned and paid such sums for such purposes, as are expressly permitted by the Indenture and the Parity Debt Instruments. Said pledge will constitute a first, direct and exclusive charge and lien on the Net Revenues and all amounts in the Debt Service Fund and Wastewater Fund for the payment of the principal or Redemption Price of and interest on the Bonds in accordance with the terms of the Indenture and the Parity Debt Instruments.

Limited Obligation of the City. The Net Revenues constitute a trust fund for the security and payment of the principal or Redemption Price of and interest on the Bonds. The general fund of the City is not liable and the credit or taxing power of the City is not pledged for the payment of the principal or Redemption Price of and interest on the Bonds. The Owner of the Bonds shall not compel the exercise of the taxing power by the City or the forfeiture of its property. The principal or Redemption Price of and interest on the Bonds are not a debt of the City, nor a legal or equitable pledge, charge, lien or encumbrance, upon any of its property, or upon any of its income, receipts, or revenues except the Net Revenues of the Wastewater System as and to the extent set forth in the Indenture and the Parity Debt Instruments.

Net Revenues. The Indenture defines "**Net Revenues**" with respect to the Wastewater System as, for any period of computation, the amount of the Gross Revenues during such period, less the amount of Maintenance and Operation Costs of the Wastewater System during such period.

Gross Revenues. The Indenture defines "**Gross Revenues**" as all Charges received for, and all other gross income and receipts derived by the City from, the ownership and operation of the Wastewater System or otherwise arising from the Wastewater System, including but not limited to,

(a) any amounts transferred to the Wastewater Fund from a Rate Stabilization Fund, and

(b) investment earnings on amounts held in the Wastewater Fund or in any other fund established with respect to the Wastewater System.

Gross Revenues do not include (i) refundable deposits made to establish credit, (ii) the proceeds of any ad valorem property taxes, (iii) the proceeds of any special assessments or special taxes levied upon real property within any improvement district served by the City for the purpose of paying special assessment bonds or special tax obligations of the City relating to the Wastewater System and (iv) connection charges.

Maintenance and Operation Costs. The Indenture defines "**Maintenance and Operation Costs**," as the reasonable and necessary costs and expenses paid by the City to maintain and operate the Wastewater System, including but not limited to

(a) costs of electricity and other forms of energy supplied to the Wastewater System,

(b) the reasonable expenses of management and repair and other costs and expenses necessary to maintain and preserve the Wastewater System in good repair and working order,

(c) payments under any contracts, notes or leases executed in connection with the City's acquisition of the Wastewater System or any part thereof, and

(d) payment of maintenance and operation expenses for wastewater treatment.

The term Maintenance and Operation Costs does not include (i) debt service payable on obligations incurred by the City, or for which the City is responsible in whole or in part, including but not limited to the 2017 Bonds, (ii) capital costs in excess of those, if any, required in (b) above, including payment of capital costs by the City in connection with wastewater treatment, (iii) depreciation, replacement and obsolescence charges or reserves therefor, (iv) amortization of intangibles or other bookkeeping entries of a similar nature, and (v) any overhead costs of the City to be repaid through annual transfers to the City's General Fund.

No Reserve Fund

The City will not fund a debt service reserve fund for the 2017 Bonds.

Receipt and Deposit of Revenues

Under the Indenture, the City covenants and agrees that all Gross Revenues, when and as received, will be received and held by the City in trust and will be deposited by the City in a Wastewater Fund held by the City, and will be accounted for through and held in trust in the Wastewater Fund, and the City will only have such beneficial right or interest in any of such money as provided in the Indenture and the Parity Debt Instruments.

All such Gross Revenues will be transferred, disbursed, allocated and applied solely to the uses and purposes set forth in the Indenture and the Parity Debt Instruments, and will be accounted for separately and apart from all other money, funds, accounts or other resources of the City.

Allocation of Gross Revenues

Under the Indenture, all Gross Revenues will be held in trust by the City in the Wastewater Fund and will be applied, transferred, used and withdrawn only for the purposes set forth below.

(a) *Operating Costs*. The City will first pay from the moneys in the Wastewater Fund all Maintenance and Operation Costs (including amounts reasonably required to be set aside in contingency reserves for Maintenance and Operation Costs) as such Maintenance and Operation Costs become due and payable.

(b) *Debt Service Funds*. On or before the second Business Day prior to each Interest Payment Date (or such other day established by the applicable Parity Debt Instrument), the City will transfer from the Wastewater Fund to the Trustee (or other recipient set forth in a Parity Debt Instrument) for deposit in the Debt Service Fund (or other location set forth in a Parity Debt Instrument) for the Outstanding 2017 Bonds and each issue of Parity Debt:

(i) an amount equal to the aggregate amount of interest to become due and payable on the Outstanding 2017 Bonds and such Outstanding Parity Debt on such Interest Payment Date, plus

(ii) if the applicable Interest Payment Date is also a Principal Payment Date, an amount equal to the aggregate amount of Principal Payments becoming due and payable on the Outstanding 2017 Bonds and such Outstanding Parity Debt on such Principal Payment Date.

All interest earnings and profits or losses on the investment of amounts in the Debt Service Fund will be deposited in or charged to the Debt Service Fund and applied to the purposes thereof. All interest earnings and profits or losses on the investment of amounts in the debt service funds created for each issue of Parity Debt, if any, will be deposited in or charged to the debt service funds created for each issue of Parity Debt and applied to the purposes thereof. No transfer and deposit need be made into the Debt Service Fund if the amount contained therein, taking into account investment earnings and profits, is at least equal to the Interest Requirement or Principal Payments to become due on the next Interest Payment Date or Principal Payment Date upon all Outstanding Parity Debt.

(c) *Reserve Accounts*. After making the payments, allocations and transfers provided for in subsections (a) and (b) above, if the balance on hand in the reserve account for any issue of Parity Debt is less than the reserve requirement therefor, such deficiency shall be restored by transfers from the first moneys which become available as Net Revenues, following the application of amounts to cure any deficiency pursuant to clause (e), if any, to replenish the reserve account for any issue of Parity Debt, on a pro rata basis.

(d) *Surplus*. As long as all of the foregoing payments, allocations and transfers are made at the times and in the manner set forth above in subsections (a) to (c) above, inclusive, any moneys remaining in the Wastewater Fund may at any time be treated as surplus and applied for any lawful purpose.

(e) *Deficiency*. If amounts in the Wastewater Fund are insufficient to make the transfers described in (b) above, in full, the City shall transfer amounts in the Wastewater

Fund: (i) to the Trustee for deposit in the Debt Service Fund for the Outstanding 2017 Bonds, and (ii) to the Trustee (or other recipient set forth in a Parity Debt Instrument) for deposit in the debt service funds created (or other location set forth in a Parity Debt Instrument) for each issue of Parity Debt, on a pro rata basis. Such deficiency shall be corrected by transfers from the first moneys which become available as Net Revenues, on a pro rata basis.

Application of Debt Service Fund

Under the Indenture, the Trustee will allocate amounts in the Debt Service Fund as follows:

(a) The Trustee will withdraw from the Debt Service Fund, prior to each Interest Payment Date, an amount equal to the Interest Requirement payable on such Interest Payment Date, and will cause the same to be applied to the payment of said interest when due.

(b) The Trustee will withdraw from the Debt Service Fund, prior to each Principal Payment Date, an amount equal to the Principal Payments due on said Principal Payment Date, and will cause the same to be applied to the payment of said principal when due.

(c) All withdrawals and transfers described under subsection (a) or (b) above will be made not earlier than 1 day prior to the Interest Payment Date or Principal Payment Date to which they relate, and the amount so withdrawn or transferred will, for the purposes of the Indenture, be deemed to remain in and be part of the appropriate Account until such Interest Payment Date or Principal Payment Date.

Rate Stabilization Fund

Under the Indenture, the City has the right at any time to establish a rate stabilization fund (the "**Rate Stabilization Fund**") to be held by it and administered in accordance with the Indenture, for the purpose of stabilizing the rates and charges imposed by the City with respect to the Wastewater System. From time to time the City may deposit amounts in the Rate Stabilization Fund, from any source of legally available funds, including but not limited to Net Revenues that are released from the pledge and lien, which secures the Bonds and any Parity Debt, as the City may determine.

The City may, but is not required to, withdraw from any amounts on deposit in a Rate Stabilization Fund and deposit such amounts in the Wastewater Fund in any Fiscal Year for the purpose of paying Debt Service coming due and payable in such Fiscal Year. Amounts so transferred from a Rate Stabilization Fund to the Wastewater Fund will constitute Gross Revenues for such Fiscal Year (except to the extent of amounts transferred into the Rate Stabilization Fund from Gross Revenues received by the City in such Fiscal Year), and will be applied for the purposes of the Wastewater Fund. Amounts on deposit in a Rate Stabilization Fund will not be pledged to or otherwise secure the Bonds or any Parity Debt. All interest or other earnings on deposits in a Rate Stabilization Fund will be withdrawn therefrom at least annually and accounted for as Gross Revenues in the Wastewater Fund. The City has the right at any time to withdraw any or all amounts on deposit in a Rate Stabilization Fund and apply such amounts for any lawful purposes of the City.

The City does not currently have any amounts set aside in a rate stabilization fund.

Rate Covenants under Indenture

Sum Sufficient. Under the Indenture, the City will fix, prescribe, revise and collect Charges for the Wastewater System during each Fiscal Year that are at least sufficient, after making allowances for contingencies and error in the estimates, to produce Gross Revenues (excluding connection fees and transfers to the Wastewater Fund from the Rate Stabilization Fund) which will be sufficient to pay the following amounts:

(i) all Maintenance and Operation Costs of the Wastewater System estimated by the City to become due and payable in such Fiscal Year;

(ii) the Debt Service on the Bonds;

(iii) all other payments required for compliance with the Indenture and the Parity Debt Instruments; and

(iv) all payments required to meet any other obligations of the City which are charges, liens, encumbrances upon or payable from the Gross Revenues of the Wastewater System or the Net Revenues of the Wastewater System on a senior or parity basis to the Bonds.

Debt Service Coverage. In addition, under the Indenture the City will fix, prescribe, revise and collect Charges for the Wastewater System during each Fiscal Year which are sufficient to yield Net Revenues at least equal to 115% of Debt Service on the Bonds in such Fiscal Year for Bonds which have a lien on such Net Revenues. For purposes of this paragraph, the amount of Net Revenues for a Fiscal Year will be computed on the basis that any transfers into the Wastewater Fund in such Fiscal Year from the Rate Stabilization Fund are included in the calculation of Net Revenues (except to the extent of amounts transferred into the Rate Stabilization Fund from Gross Revenues received by the City in such Fiscal Year).

Parity Debt

In addition to the 2017 Bonds, the City may, by a Parity Debt Instrument, issue or incur other loans, advances or indebtedness payable from Net Revenues to be derived from the Wastewater System, to provide financing for the Wastewater System, in such principal amount as may be determined by the City. The City may issue or incur any such Parity Debt subject to the following specific conditions that are made conditions precedent to the issuance and delivery of such Parity Debt:

(a) The City will be in compliance with all covenants set forth in the Indenture.

(b) The Net Revenues of the Wastewater System, calculated on generally accepted accounting principles, as shown by the books of the City for the latest Fiscal Year or any more recent 12-month period selected by the City ending not more than 60 days prior to the adoption of the Parity Debt Instrument pursuant to which such Parity Debt are issued, as shown by the books of the City, plus, at the option of the City, any or all of the items hereinafter in this paragraph designated (i) and (ii), must at least equal 115% of Maximum Annual Debt Service, with Maximum Annual Debt Service calculated on all Bonds to be Outstanding immediately subsequent to the issuance of such Parity Debt which have a lien on Net Revenues of the Wastewater System. The items any or all of

which may be added to such Net Revenues for the purpose of issuing or incurring Parity Debt under the Indenture are the following:

(i) An allowance for Net Revenues from any additions to or improvements or extensions of the Wastewater System to be made with the proceeds of such Parity Debt, and also for Net Revenues from any such additions, improvements or extensions which have been made from moneys from any source but in any case which, during all or any part of such Fiscal Year or such 12-month period, were not in service, all in an amount equal to 90% of the estimated additional average annual Net Revenues to be derived from such additions, improvements and extensions for the first 36-month period in which each addition, improvement or extension is respectively to be in operation, all as shown in the written report of an Independent Consultant engaged by the City.

(ii) An allowance for revenues projected to arise from any increase in the Charges which has been approved by the City Council prior to the incurring of such additional indebtedness but which, during all or any part of such Fiscal Year or such 12-month period, was not in effect, in an amount equal to the amount by which the Net Revenues would have been increased if such increase in Charges had been in effect during the whole of such Fiscal Year or such 12-month period, all as shown in the written report of an Independent Consultant engaged by the City. For the avoidance of doubt, a Charge shall be considered to have been approved by the City Council and may be considered in the calculation of the allowance described in the previous sentence if the Charge is part of a multi-year rate increase that has been approved by the City Council, even if the specific Charge will not take effect until a subsequent Fiscal Year.

(c) The Parity Debt Instrument providing for the issuance of such Parity Debt under the Indenture shall:

(i) Provide that the proceeds of such Parity Debt will be applied to the acquisition, construction, improvement, financing or refinancing of additional facilities, improvements or extensions of existing facilities within the Wastewater System, or otherwise for facilities, improvements or property which the City determines are of benefit to the Wastewater System, or for the purpose of refunding any Parity Debt in whole or in part, including all costs (including costs of issuing such Parity Debt and including capitalized interest on such Parity Debt during any period which the City deems necessary or advisable) relating thereto;

(ii) Specify the date on which interest on such Parity Debt will be payable; and

(iii) Specify the date on which principal on such Parity Debt will be payable.

(d) Notwithstanding the foregoing, Parity Debt proposed to be issued for the purpose of refunding any Parity Debt may be issued without compliance with subsection (b) and (c)(i), so long as such refunding results in lower Debt Service in each Fiscal Year after such refunding and the final maturity (or termination) date of the refunding Parity Debt is no later than the final maturity (or termination) date of the refunded Parity Debt.

As used in the Indenture, "**Maximum Annual Debt Service**" means, as of the date of calculation, the maximum amount of Debt Service for the current or any future Fiscal Year.

Subordinate Obligations

The Indenture does not prohibit or impair the authority of the City to issue bonds or other obligations secured by a lien on Gross Revenues or Net Revenues which is subordinate to the lien established under the Indenture ("**Subordinate Bonds**"), upon such terms and in such principal amounts as the City may determine.

Casualty Insurance and Eminent Domain Proceeds

Covenant to Maintain Insurance. The City covenants in the Indenture that it will at all times maintain such insurance on the Wastewater System as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to such works or properties.

Insurance Proceeds under the Indenture. All amounts collected from insurance against accident to or destruction of any portion of the Wastewater System shall be used to repair or rebuild such damaged or destroyed portion of the Wastewater System, and to the extent not so applied, shall be applied to redeem the Bonds and/or any Parity Debt in accordance with the applicable Parity Debt Instruments.

Eminent Domain Proceeds under the Indenture. If all or any part of the Wastewater System is taken by eminent domain proceedings, the Net Proceeds realized by the City therefrom will be deposited by the City with the Trustee in a special fund in trust and applied by the City (a) to the cost of acquiring or constructing or financing Improvements to the Wastewater System, or (b) to redeem the Bonds and/or any Parity Debt in accordance with the applicable Parity Debt Instruments.

[Insert Service Area Map]

THE WASTEWATER SYSTEM

History

When the City was incorporated in 1954, the Milpitas Sanitary District was formed, with original facilities consisting of a collection system and sewer treatment plant. In 1964, several new facilities were installed, including a trunk sewer upstream of the plant, lift station, settling basins, activated sludge basins, chlorine contact basins, digester, and a blower building. Most of these facilities have since been removed.

In the 1960's, a small lift station serving the Pines subdivision was constructed. The system's main pumping station (the "**Main Pump**"), initially constructed in 1965, originally served as the pumping station into the Milpitas Wastewater Treatment Plant.

The Milpitas Wastewater Treatment Plant was abandoned in 1972, and the Main Pump was converted into a pumping station that pumps all wastewater generated in the City (the "**Main Lift Station**") to the San Jose/Santa Clara Water Pollution Control Plant (the "**WPCP**") via a forcemain for treatment. In 1980, the Milpitas Sanitary District was dissolved and the City took over operations. A second forcemain to the WPCP was constructed in 2002. The Main Lift Station was upgraded by the end of 2009 to include a new grinder structure, pump control building, and storage garage.

Service Area

The City can be divided into two distinct areas: (i) roughly 10.1 square miles on the relatively flat "**Valley Floor**" to the west and (ii) 3.5 square miles on the steep "**Hillside**" to the east. The Valley Floor areas are zoned for industrial, commercial, and residential uses. The Hillside areas are zoned for residential use only. Park and recreational open spaces are distributed throughout the residential areas.

The City's urban service area is defined based on the General Plan and General Plan amendments, most importantly Resolution No. 6796 of the City Council. This 1998 resolution established a new urban service area boundary by prohibiting City services (including sewer service) in areas outside of the urban growth boundary and outside of the City limits. This resolution is applicable until December 2018 (it could be amended under specific circumstances through a General Plan amendment).

The Wastewater System's service area includes areas inside the City limits and the easterly hillside area outside the City limits. The Wastewater System collects wastewater flows from approximately 13 square miles within the City planning area, serving a population of approximately 77,000 through 945,120 linear feet ("**LF**") of sewers.

Physical Assets

The City's wastewater flows are conveyed mostly by gravity to the Main Lift Station, which pumps the wastewater flow to the WPCP through two force mains. A second pump station, located on Venus Way (the "**Venus Lift Station**"), connects a low-elevation portion of the City to the gravity sewer system. The Wastewater System includes a number of siphons under the San Francisco Public Utility Commission water supply pipeline, creeks and highways.

Physical assets of the Wastewater System include:

- 179 miles of sewer mains
- 10 air-vac valves
- 2,022 flushing inlets
- 2,604 manhole covers
- 2 pump stations (the Main Lift Station and the Venus Lift Station)

In 2005, the City retained Kennedy/Jenks Consultants to conduct an evaluation of the Main Lift Station, develop a hydraulic model of the lift station, and recommend improvements to the Main Lift Station. The report recommended that the Main Lift Station be abandoned and a new pumping facility be constructed. The recommended upgrades to the Main Lift Station were completed in 2009.

Management

Brief biographies of key members of City staff involved in management of the Wastewater System are set forth below:

Public Works Director (Acting) - Tony Ndah was appointed as the City's Acting Public Works Director in October 2017. Tony was previously the City's Deputy Public Works Director. Prior to joining the City in July 2017, he worked for the Santa Clara Valley Water District. He has over 18 years of experience in civil engineering. He holds a bachelor's degree in civil engineering and a master's degree in Public Administration from San Jose State University. Tony is also a licensed Professional Civil Engineer.

Finance Director - Will Fuentes was appointed as the City's Finance Director in May 2017. Prior to joining the City, he was Assistant Finance Director for the City of San Leandro and Revenue and Budget Manager for the City of Union City. He has over 19 years of experience in governmental finance. He holds a bachelor's degree in Finance and an MBA degree from the University of Notre Dame (IN). He is also a Certified Public Finance Officer (CPFO) with the Government Finance Officers Association (GFOA).

San Jose/Santa Clara Water Pollution Control Plant

The WPCP. Currently, all wastewater collected from the City is pumped via the Main Pump to the WPCP. Operating on a 24-hour schedule, 365 days per year, the WPCP treats an average of 167 MGD[2] of wastewater and serves 8 south bay cities and two unincorporated districts.

The WPCP is jointly owned by the cities of San José and Santa Clara and is administered and operated by the City of San José's Environmental Services Department ("**ESD**"), which is also responsible for planning, designing and constructing new wastewater treatment and water reuse facilities. The WPCP is one of the largest advanced wastewater treatment facilities in the State and serves over 1.5 million people in a 300-square mile area located around the southern part of the San Francisco Bay.

Capital costs are estimated annually by ESD staff and are reviewed and recommended as a budget by the Treatment Plant Advisory Committee to the San José City Council for appropriation. The costs are allocated to each member agency ("**Member Agency**") based on its contracted-for capacity in the WPCP. Each Member Agency is responsible for its allocated share

[2] Million gallons per day.

of WPCP costs, as well as its own sewage collection system maintenance, operation, and capital costs; debt service on its bonds issued for sewer purposes; and any other sewer service related costs. Each Member Agency is also responsible for establishing and collecting its respective sewer service and use charges, connection fees or other charges for sewer service.

A revenue program is prepared annually by each Member Agency to establish its sewer service and use charge rates. Rates are adopted by ordinance or resolution of the governing body of each Member Agency. The Member Agencies' revenue programs, ordinances and resolutions are submitted to the City of San José, as the administering agency, for review to determine conformance with State Water Resources Control Board ("**SWRCB**") revenue program guidelines, and are then submitted to the SWRCB for review and certification.

The WPCP's treatment capacity is allocated to each discharger on the basis of the peak five-day dry weather flow, also referred to as the peak week flow. Due to the way the peak week is determined (WPCP looks at influent data to determine the five-day period of interest during the months of June through October and requests each discharger to provide their average contribution for that identified peak week), it may or may not match with the City's highest dry weather flows. The City's current entitlement for flow and wastewater strength parameters is set forth below:

Flow (MGD)	BOD (k lbs/day)	SS (k lbs/day)	NH3 (k lbs/day)
14.25	27.249	25.990	2.847

The WPCP Agreement. The Master Agreement for Wastewater Treatment Between City of San José, City of Santa Clara and City of Milpitas, dated as of March 1, 1983 (the "**Master Agreement**"), is the agreement that gives the City rights to a percentage of the capacity of the sewage treatment facilities. The Master Agreement terminates on January 1, 2031 and requires the City to pay its share of debt service related to the WPCP. The City also pays costs based on (i) allocated flow capacity rights of 14.25 MGD or approximately 8.553% of the total WPCP capacity and (ii) a share of operation and maintenance costs based upon actual sewage flow and strengths. In fiscal year 2016-17, the City's share of operation and maintenance costs was approximately [6]% of the total cost, and it was [6.4]% in fiscal year 2017-18.

The Master Agreement provides that if, for any reason, the Master Agreement is not renewed in the year 2031, the City shall have the right to continue discharging to the WPCP, provided all payments of the City's share of WPCP costs are made, and all other rights of the City under the Master Agreement will cease.

The Master Agreement:

- grants the City a right to discharge wastewater into the WPCP;
- obligates the City to adopt and enforce ordinances, resolutions, rules and regulations to conform to the industrial waste ordinance of the City of San José concerning the type and condition of discharge that would be detrimental to the WPCP;
- restricts the City's discharge to wastewater produced within the City's service area, as mapped in the Master Agreement;

- sets up a mechanism for the City to acquire or dispose of "excess pooled capacity" and to acquire additional capacity rights if the WPCP expands;

- establishes the City's participation and rights in the WPCP;

- creates a nine-member advisory committee, with a Milpitas City Councilmember as one member, to aid in the operations and administration of the WPCP;

- specifies that the City may sell, grant, assign or otherwise transfer the Master Agreement to any corporation, district or governmental organization; and

- obligates the City to make payments associated with future improvements at the WPCP.

The Master Agreement has been amended four times to date:

• The First Amendment, dated December 4, 1985, (i) reallocated the treatment capacities of each Agency, (ii) reallocated the distribution of rights to the WPCP and (iii) established ratios for each Member Agency's participation in the Intermediate-Term (restoration of the WPCP capacity to 143 MGD, which have been completed; the City has paid all amounts due for its capacity in this project) and First Stage Expansion Projects (expansion of the WPCP capacity from 143 to 167 MGD, which have been completed; the City has paid all amounts due for its capacity in this project).

• The Second Amendment, dated November 21, 1995, further reallocated costs among the Member Agencies in connection with the Intermediate-Term and First Stage Expansion Projects and water recycling program of the WPCP (two-phase program to reclaim a portion of the WPCP's effluent as an alternative to discharging to the San Francisco South Bay, which was incorporated into the WPCP's National Pollutant Discharge Elimination System ("**NPDES**") permit in October 1993, phase 1 of which is underway).

• In early 2006, the City entered into an agreement with the West Valley Sanitation District (the "**WVSD**") to purchase excess wastewater treatment capacity (1 million gallons per day ("**MGD**")) from the WVSD. In connection with this agreement, a Third Amendment dated July 1, 2006 was executed, which established the new capacity right allocation and capital cost share for the City as a result of the transfer.

• The Fourth Amendment, dated August 5, 2009, allowed the City to be able to purchase additional wastewater capacity at the WPCP from the City of Cupertino.

Additional Capacity. The City prepared the Milpitas Transit Area Specific Plan, which was projected to include 7,185 r*e*sidential units and actually includes 7,109 units at total buildout. The City expects that development consistent with the Transit Area Specific Plan will create demand for approximately 1.0 MGD of additional capacity at the WPCP.

Disputes Regarding the WPCP. In 2005, the City filed suit against the City of San José claiming the North San Jose Environmental Impact Report, which addresses the environmental impacts of projected development of the area adjacent to the territory encompassed in the Transit Area Specific Plan, was inadequate. The lawsuit has been settled, and the settlement agreement between the City and the City of San José committed both parties to negotiate in good faith with

respect to a lease of additional capacity in the WPCP by the City of San José to the City of Milpitas. In connection with this settlement, the Fourth Amendment to the Master Agreement was executed, which allowed the City to be able to purchase additional wastewater capacity at the WPCP from Cupertino.

On September 11, 2017, the City Council of the City voted to initiate litigation against the City of San José, the operator of the WPCP, after the City claims to have tried for several years to resolve a major dispute with San José over its mismanagement and lack of transparency and accountability in the operation of the wastewater treatment plant. The main goal with any lawsuit that may be filed is to obtain revisions and an update to the Master Agreements as the City believes the Master Agreement does not adequately address large-scale improvements that the WPCP requires for on-going operation. To date, no litigation has yet been filed. *No assurance can be made as to the ultimate resolution of this dispute.*

Regulatory Requirements

WPCP- Related Requirements. Because the City discharges wastewater to the WPCP for treatment and disposal, the City's wastewater operations are subject to many of the same regulatory requirements as the Cities of Santa Clara and San José. These requirements are contained in the Federal Water Pollution Control Act, as amended, (the "**Clean Water Act**"), and in the State of California Porter Cologne Water Quality Control Act of 1969, as amended. Both federal and State regulations are administered through the San Francisco Regional Water Quality Control Board (Regional Water Board), and generally deal with the quality of effluent discharged from the WPCP, the disposal of biosolids from the WPCP, the discharge of pollutants into the groundwater and the nature of waste material (particularly industrial waste) discharged into the collection system.

Wastewater discharge criteria are established for the WPCP under a five-year NPDES permit that expires in June 2019. These limits are included in the Milpitas Sanitary Code and are listed in industrial wastewater permits issued to industries within the Sewer System's service area. There have been no violations of effluent limitation in the past three years. The NPDES permit includes a pretreatment program element, pursuant to which City of San José must implement and enforce an approved pretreatment program. The pretreatment program was last audited by the United States Environmental Protection Agency (the "**EPA**") in 2016, and no major program deficiencies were noted.

The NPDES Permit also includes a pollution prevention program element that requires the SJ-SC RWF to continuously conduct and improve an existing pollution prevention program. The City submits Pollution Prevention ("**P2**") Annual Reports to the San Francisco Bay Area Regional Water Quality Control Board (the "**RWQCB**"). The RWQCB has deemed the pollution prevention program in compliance each of the past several years. In 2016, the SJ-SC RWF won RWQCB's annual P2 award for best program in the Bay Area.

The WPCP discharges into the lower Southern portion of the San Francisco Bay (the "**South Bay**"), which is a unique hydrogeologic environment where site-specific water quality objectives and protection of endangered species habitat are considered essential. Metals along with organics and pesticides, often referred to as emerging pollutants, have been of concern to the health of the entire San Francisco Bay. Examples of both current and future pollutants of concern include copper, nickel, mercury, and cyanide. The five organics and pesticides limits currently in the WPCP's NPDES Permit are there due to background levels in the South Bay, but they are not detected in the WPCP's effluent. The WPCP's advanced treatment capabilities along

with the pollution prevention and pretreatment programs described above make the WPCP's effluent amongst the highest quality in the Bay Area and the nation. Pollution prevention and the pretreatment program will be the mechanisms to maintain or reduce influent pollutant levels. The City does not believe that future WPCP NPDES permit is likely to include more stringent wastewater treatment requirements.

Most of the treated effluent from the WPCP is discharged as fresh water into the South Bay. This effluent has a lower salinity content than the brackish water of the South Bay and can adversely affect the ecological balance of the area. Because of this ecological risk, the Regional Water Quality Control Board set a target limit on the amount of effluent that the WPCP can discharge into the Bay between May and October, the dry-weather months. The target limit is currently set as 120 mgd of average dry weather effluent or to levels that protect endangered species habitat. Currently, the year-round and average dry weather influent flow is 101 MGD.

The WPCP's Title V Air Permit, No. A0778, issued by the Bay Area Air Quality Management District was issued in March 2017 and will be up for renewal in March 2022.

The South Bay Water Recycling Project ("**SBWR**") was established as a means of diverting effluent for non-potable uses such as landscaping, agricultural irrigation, and some industrial uses. Approximately 15 MGD of recycled water is produced through the South Bay Water Recycling Project. The South Bay Action Plan includes a number of projects to help reduce WPCP effluent. The projects include expansion of the recycled water system, industrial water recycling and reuse, inflow infiltration reduction, and residential/commercial water conservation. The City of San José has issued a document titled Clean Bay Strategy Report, which identifies several methods for reducing flow volumes and pollutants to the Bay. These reports can be found on the City of San Jose's website http://www.sanjoseca.gov/index.aspx?NID=815 . South Bay Water Recycling Permit No. 95-117 was issued by the San Francisco Bay Regional Water Quality Control Board and does not have an expiration date. There have been no violations in the past three years.

Wastewater System-Related Requirements. In August 2009, the City approved and certified its first ever Sanitary Sewer Management Plan ("**SSMP**"). The City last updated its SSMP in 2016, and is scheduled to update and recertify its SSMP in 2019.

Historical Wastewater Flow

The following table sets forth the volume of wastewater collected by the Wastewater System and pumped to the WPCP in the preceding ten calendar years. Although wastewater flow remains fairly stable throughout the year, there is typically a slight increase in flows sent to the WPCP during wet weather months due to infiltration and inflow.

Table 1
Peak Week to Average Dry Weather Flow Ratio

Calendar Year	Reported Peak Week Flow (MGD)	Estimated Avg. Dry Weather Flow (MGD) [1]	Estimated Peak Week to Avg. Dry Weather Flow Ratio
2007	10.67	109.23	0.10
2008	9.15	109.23	0.08
2009	16.76	121.00	0.14
2010	7.97	111.60	0.07
2011	8.14	113.00	0.07
2012	7.90	111.40	0.07
2013	7.61	110.30	0.07
2014	7.03	108.00	0.07
2015	7.10	96.20	0.07
2016	7.125	101.10	0.07

(1) Average flow between June and October based on 2007-2016 flow data at main pump station.
Source: City of Milpitas.

Customer Base

The following tables show the number of sewer customers by class of customer for fiscal year 2016-17, followed by a table of historical sewer accounts by customer for fiscal years 2011-12 through 2016-17. In fiscal year 2016-17, residential customers comprised approximately 95% of total accounts with single-family residences alone accounting for approximately 82% of total accounts.

Table 2
Sewer Accounts by Customer Class
Fiscal Year 2016-17

User Groups	Accounts	Dwelling Units/ Number of Locations
RESIDENTIAL		
Single Family Home	12,510	12,483
Multiple Family	1,882	9,015
Mobile Home	3	521
Subtotal – Residential Accounts	14,395	22,019
NON-RESIDENTIAL		
Commercial		
Hotels, motels, senior housing	20	25
General offices, retail, shopping	312	362
City of Milpitas accounts	36	36
Service stations, repair shops, car washes	31	34
Eating and drinking establishments	167	172
Personal services (laundry, barber/beauty shops, cleaner	60	60
Subtotal – Commercial Accounts	626	689
Industrial		
West Rock	1	1
T. Marzetti	1	2
Prudential Overall Supply	1	2
BAE Systems	1	4
Evoquo	1	2
Lucky Pure Water	1	1
DS W	1	2
Milpitas Material	1	1
Union Pacific Railroad	1	1
Electrical/Electronics	95	140
Machinery Manufacture	14	16
Linear Technology	2	6
Cisco	1	5
Lifescan/CTC	1	1
Magic Tech & Headway Tech	1	2
Subtotal – Industrial Accounts	123	186
Institutional		
Schools/colleges	56	65
Convalescent homes/day care	20	22
Elmwood Rehabilitation	5	5
Subtotal – Institutional Accounts	81	92
Total	15,225	22,986

Source: City of Milpitas.

Table 3
Historical Number of Sewer Accounts
by Customer Class
Fiscal Years 2011-12 through 2016-17

Fiscal Year	Industrial	Commercial	Institutional	Single-Family	Multifamily	Mobile Homes	Total
2011-12	210	720	80	12,264	1,848	3	15,125
2012-13	199	710	81	12,269	1,848	3	15,110
2013-14	199	704	83	12,229	1,844	3	15,062
2014-15	195	704	88	12,412	1,855	3	15,257
2015-16	197	690	90	12,482	1,874	3	15,336
2016-17	123	626	81	12,510	1,882	3	15,225

Source: City of Milpitas.

The following table sets forth the Wastewater System's major users and their revenues for fiscal year 2016-17, based on total revenues of $16,651,740 and a total annual flow of 625,677 HCF[3] (1.2822 MGD).

Table 4
Largest Wastewater System Users

Business Name	Type of Use	FY 2016-17 Flow (MGD)	% of Flow	FY 2016-17 Revenues	% of Revenues
Elmwood Correctional Facility	Government	0.1712	13.3%	$203,621	1.2%
Cisco Systems	Industrial	0.1094	8.5	94,870	0.6
Great Mall of the Bay Area	Commercial	0.0931	7.3	236,099	1.4
Milpitas Square	Commercial	0.0437	3.4	160,434	1.0
AY-GB Milpitas LLC	Commercial	0.0286	2.2	84,425	0.5
Mayflower South Bay Inc	Commercial	0.0260	2.0	95,183	0.6
Coresite Real Estate 1656 McCarthy LLC	Commercial	0.0239	1.9	54,640	0.3
Embassy Suites	Commercial	0.0235	1.8	50,237	0.3
IHG Hotels	Commercial	0.0218	1.7	46,432	0.3
V & Victoria LLC	Commercial	0.0175	1.4	94,374	0.6
Total		0.5587	43.6%	$1,120,314	6.7%

Source: City of Milpitas.

Capital Improvement Programs

Wastewater System. The City engaged Bartle Wells Associates to prepare a Financial Utility Master Plan (the "**Master Plan**"), which was completed in April 2003 and updated in April 2010. The City anticipates that wastewater flows will increase over the next 20 years due to growth. Substantial growth is projected due to the Midtown Milpitas Specific Plan, which is projected to increase the City's population by 6,400 people over the next 20 years. Wastewater flow projections indicate that the City may need additional treatment capacity within the next 10 to 20 years due to growth, and even with slow growth, the City may exceed its 13.5 MGD capacity due to annual variation in sewer flows. The Master Plan proposes the following methods of increasing capacity:

[3] Hundred cubic feet.

- Purchase additional capacity in WPCP by using cash or debt (in both cases, funded by new development with connection fees);

- Purchase rights to use excess capacity held by other tributary agencies;

- Adopt mutual agreements with other tributary agencies for use of excess capacity when needed; and

- Pursue other regional solutions.

The City's 2017-18 Capital Budget and Financial Plan identifies the following projects:

Project	Proposed Amount
SJ/SC Regional Waste Water Facility	$9,815,000
Sanitary Sewer Condition Assessment Program	100,000
Sanitary Sewer Overflow Improvements	75,000
Sewer Pump Station Rehabilitation Program	200,000
Sewer Pump Station Treatment Improvements	400,000
Minor Sewer Projects	50,000
Wastewater System Hydraulic Modeling 17-19	100,000
Sewer Main Replacement Study 2018	115,000
Supervisor Control & Data Acquisition	450,000
Total	$11,305,000

The 2017-18 Capital Budget and Financial Plan also identifies available financing sources for the proposed projects:

Available Financing Source	Proposed Amount
Sewer Fund	$7,855,000
Sewer Treatment Fund	3,250,000
Other – Developer Contributions	200,000
Sanitary Sewer Bonds	0
Total	$11,305,000

The City's 2016-21 Capital Improvement Program (Final Report) (the "**CIP**") identifies a number of capital improvement projects and related capital costs, including those listed above, and assumes that all of the costs (except those financed with proceeds of the Certificates) would be paid from available moneys in the Sewer Fund and the Sewer Treatment Fund. Because these capital costs are not Operation and Maintenance Costs as defined in the Trust Agreement, they will not affect the availability of Net Revenues to make the Installment Payments.

WPCP. The City of San José has adopted a Capital Improvement Program for the WPCP for fiscal years 2018-2022 for a total of $1.51 billion. Revenues are derived from five sources, including the City of Milpitas and other Member Agencies, of which the City of Milpitas is responsible for $68.7 million (4.74%). The $1.51 billion is a $544 million increase (56%) compared to the 2017-2021 adopted Capital Improvement Program; the increase is attributable to additional capital investment plans.

The City has paid approximately $25.2 million in capital improvement costs for the WPCP in previous years. The cost allocation for the City is based on the constituent (flow, BOD, SS, or ammonia) for which the capital improvement would benefit.

The table below shows the City's share of the WPCP capital improvement costs for fiscal years 2017-18 through 2021-22 (from the 2018-2022 Capital Improvement Program). Because the WPCP-related capital costs are not Maintenance and Operation Costs (as defined in the Indenture), they will not affect the availability of Net Revenues.

Table 5
City Share of WPCP
Capital Improvement Program

Fiscal Year	City Share	City Share Amount	Total Projected Expenditures
2017-18	6.77%	$12,171,606	$179,662,588
2018-19	7.15	16,021,249	224,068,662
2019-20	4.44	20,024,541	450,580,088
2020-21	6.53	17,452,897	267,071,199
2021-22	0.93	3,072,033	328,653,001

Source: City of Milpitas.

REVENUES AND DEBT SERVICE COVERAGE

Wastewater Rates and Revenues

General. The City currently recovers the cost of operating, maintaining, repairing, replacing and expanding the Wastewater System through user fees, plus interest earnings. The user fees are:

- Sewer Service Charges
- Sewer Connection Fees
- Treatment Plant Fees
- Miscellaneous Revenues

Revenues derived from Sewer Connection and Treatment Plant Fees, pursuant to the Milpitas Municipal Code and subject to the limitations of California Government Code Sections 66000-66003 ("**AB1600**"), are placed into the Sewer Fund and are expended only for sewer, storm drain, industrial waste or hazardous waste purposes. All interest earnings on moneys held in the Sewer Fund are retained in the Sewer Fund. The methodology for developing the fee schedules for the above outlined charges is governed in part by the Milpitas Municipal Code and the SWRCB, acting on behalf of the EPA.

The Milpitas Municipal Code provides for the collection of Sewer Service Charges that are reasonably necessary for the acquisition, construction, reconstruction, maintenance and operation of the Wastewater System, including payment of the Installment Payments and debt service for the revenue bonds used to finance the City's proportionate share of capital improvements at the WPCP. Additionally, the SWRCB and the EPA require that the City's wastewater income structure be such that users of the system pay according to use of the system and the quality of wastewater discharged into the system.

Rate Study. A Utility Rate Analysis (the "**Rate Analysis**") was prepared by the City in May 2015. The Rate Analysis relied on the City of San Jose preliminary 10-year estimates for operating and capital costs necessary for the regional wastewater treatment facility. The Rate Analysis recommended and the City Council subsequently adopted rate increases for fiscal years 2015-16. Table 6 shows the City's bimonthly sewer charges for FY 2015-16.

Current Sewer Service Charges. The City's current sewer service rates were established by Ordinance 208.50 adopted on August 4, 2015, with current rates effective for September 4, 2015.

The current Sewer Service Charges are summarized below.

Residential. Residential charges are bi-monthly for each dwelling unit.

Category	Bi-Monthly Charge
Single-Family Per Dwelling Unit	$90.27
Multi-Family Per Dwelling Unit	69.32
Mobile Home Parks per Dwelling Unit	56.97

Commercial, Industrial and Miscellaneous Premises.

Flat Rate: For non-residential accounts, there is a flat rate assessed every billing cycle during which normal billing takes place, regardless of the amount of sewage discharged, to defray billing and administration costs. The current bi-monthly flat rate charge is $14.97.

Quantity Charges: For each commercial, industrial, or miscellaneous premises, a charge for each one hundred cubic feet of water used per billing cycle is charged. Charges range from $3.94 per 100cf to $8.34 per 100cf, depending on the business or type of business.

Unmetered Wastes. When metering is not provided, or for newly constructed units, the City makes a reasonable estimate of the volume of water consumed to be used as a basis for sewer service charges.

Connection Fees. The City charges a Sewer Connection Fee for connection to the Wastewater System. All development must be designed and installed in accordance with the Master Plan. Under the provisions of AB 1600, Sewer Connection Fees are used only for sewer expansion projects.

Revenue from the Sewer Connection Fee was $2,629,078 for Fiscal Year 2016-17. The fees are identified below:

Residential: $1,908 per single family residence; $1,406 per unit for multi-family developments.

Non-Residential: $8.52 per gallon of estimated average daily wastewater discharge.

If the estimated amount of sewage to be discharged exceeds the Master Plan limit, a developer impact fee may be assessed in lieu of off-site improvements.

Treatment Plant Fees. The City collects a Treatment Plant Fee as part of the building permit application. The fee is based on the amount and content of the proposed sewage discharge.

Revenue from the Treatment Plant Fee was $125,078 for Fiscal Year 2016-17. The fees are identified below.

Residential: $880 per single family dwelling unit; $690 per condo / townhouse / multi-family; and $440 per mobile home.

Non-residential: For each commercial, industrial or institutional connection having an estimated consecutive peak five-day dry weather sewage discharge of *less* than 5,000 gallons per day, the Treatment Plant Fee is based upon the type of use and rate described below. The fee is computed by multiplying the following rates by the estimated peak five-day discharge in HCF per day or fraction thereof. The peak five-day discharge is established by the City Engineer (subject to review based on data provided by the connecting party).

Type of Use	Rate/HCF/Day
High strength industrial/commercial; Restaurants, eating and drinking, retail food stores	$4,200
Low strength industrial/commercial: All others	2,600

For each commercial, industrial or institutional connection having a consecutive peak five-day dry weather sewage discharge of 5,000 gallons per day or more, the Treatment Plant Fee is based upon the volume and the quality of the discharge based on the loading parameters of the WPCP. Set forth below are examples of typical fees:

Electronic R&D, Assembly	$0.63/sq. ft.
Electronic Manufacturing	19.00/sq. ft.
Laundromat	14.15/sq. ft.
Motels	0.73/sq. ft.
Office	0.35/sq. ft.
Restaurant (Fast food, deli)	3.37/sq. ft.
Restaurant (Full Service)	5.84/sq. ft.
Retail Commercial	0.25/sq. ft.
Repair Shops, Service stations	1.74/sq. ft.
Warehouse, storage	0.18/sq. ft.

Historical Sewer Service Charges

The following table shows historical levels of the City's Sewer Service Charges:

Table 6
Historical Rates

Fiscal Year	Bi-monthly Single-Family Sewer Service Charge	% Rate Change
2010-11	$70.94	N/A
2011-12	75.92	7.0%
2012-13	81.23	7.0
2013-14	86.93	7.0
2014-15	86.93	0.0
2015-16	90.27	3.8
2016-17	90.27	0.0
2017-18	90.27	0.0

Source: City of Milpitas.

Set forth in the following table are the City's monthly Sewer Service Charges for fiscal year 2017-18 and a comparison to surrounding communities.

Table 7
Fiscal Year 2017-18 Comparative Monthly Charges
(Single-Family Residential)

Agency	Sewer Service Charge
City of San Mateo	$30.78
City of Fremont	32.78
City of Union City	32.78
City of Palo Alto	34.83
City of Mountain View	37.75
City of San Jose (Municipal)	37.91
San Jose Water Co.	37.91
City of Cupertino	40.00
City of Santa Clara	41.65
City of Campbell	43.77
City of Los Gatos	43.77
City of Milpitas	**45.14**
City of Sunnyvale	47.18
City of Santa Cruz	47.20

Source: City of Milpitas.

Table 8
Fiscal Year 2017-18 Comparative Monthly Charges
(Multi-Family Residential)

Agency	Sewer Service Charge
San Jose Water Company	25.40
City of San Jose (Municipal)	25.40
City of Fremont	28.42
City of Union City	28.42
City of Sunnyvale	30.45
City of Campbell	30.55
City of Los Gatos	30.55
City of Milpitas	**34.66**
City of Palo Alto	34.83
City of Mountain View	37.75
City of Santa Cruz	38.60
City of Cupertino	40.00
City of Santa Clara	$41.65

Source: City of Milpitas.

Rate-Setting Process

The City Manager annually reviews the system of rates and charges as part of the budgetary process. In May of each year, the City Manager submits to the City Council a proposed operating budget for the fiscal year commencing the following July 1. The operating budget includes proposed expenditures and expenses and the means of financing them. Separate public hearings for utility rates and the operating budget are conducted by the City Council to obtain citizen comments. The City Council adopts utility rates by ordinance. The budget is adopted, prior to June 30, through passage of appropriate resolutions. The final adopted budget is subject to mid-year revisions to reflect any significant changes in expenditures or revenues due to State or federally mandated programs, emergencies, or other unforeseen occurrences. The City's Revised Budget Guidelines, approved along with the adoption of the fiscal year 2017-18 Budget, states that:

- Sewer customer rates and fees will be reviewed and adjusted annually, if necessary,

- All utility enterprise funds will be operated in a manner similar to private enterprise, and as such, the City will set fees and user charges at a level that fully supports the total direct and indirect cost of the activity, including depreciation of assets, overhead charges, and reserves for unanticipated expenses and capital projects.

- The City will maintain a working capital reserve in the Sewer Fund of approximately 25% of the annual operating and maintenance expenses.

See "RISK FACTORS – Proposition 218" for information about the City's compliance with Proposition 218 in connection with adopting rates for the Wastewater System.

Billing and Collection

Sewer Service Charge. Sewer service charges are collected by the City and billed, together with water service charges, on a bi-monthly basis. Bills are due and payable within 15 days of the date of the bill. If payment is not received, a 5% late fee is assessed; then a final notice is sent, after which the account is sent to a collection agency. The Milpitas Sanitary Code authorizes the City to disconnect water service in the event of a failure to pay sewer service charges.

For Fiscal Year 2016-17, delinquency rates for utility bills were as follows: 9% receive first delinquent notices; 2% received 2nd delinquent notices; and 0.4% accounts were shut off due to non-payment.

Sewer Connection Fees; Treatment Plant Fees. The Sewer Connection Fee and Treatment Plant Fees are collected as part of the building permit and sewer connection permit application procedures. Permits are not granted until payment has been received.

Funds and Reserves

The City maintains five separate funds for the Wastewater System. Each of these funds is treated as a separate accounting entity.

The Sewer Operating Fund is the main operating fund of the Wastewater System. The fund is used to pay for all operating and maintenance costs for wastewater collection and treatment. The fund is also used for ongoing capital and replacement projects as budgeted each year.

The Sewer CIP Fund is used for specific capital improvement projects that were budgeted in past years. Each year, the City sets aside the full cost of capital improvements approved that year by transferring money from the other three funds to the Sewer CIP Fund. The Sewer CIP Fund typically carries a significant balance that is reserved for the remaining costs of projects approved in prior years but still under construction.

The Treatment Plant Construction Fund is generally used to fund capital improvements at the WPCP or within the City's collection system. The main source of revenues for this fund is treatment plant connection fees and Sewer Connection Fees collected from new development. This fund may also be used to finance the acquisition of additional capacity in the WPCP.

The Sewer Infrastructure Fund was established in fiscal year 2000-01 to build reserves from surpluses in the Sewer Fund to offset the future costs of the repair and replacement of facilities reaching the end of their useful lives. The Sewer Infrastructure Fund is funded with transfers from the Sewer Fund.

The Sewer 2006 COPS Fund is used to account for activities associated with the issuance and annual debt service requirements of the 2006 Series A Certificates of Participation. It receives funding from the Sewer Operations Fund.

The City's fiscal policies provide as follows, among other things:

(1) The City will maintain working capital in the Wastewater System funds to provide for future capital projects and unanticipated emergencies, such as pump station repairs. The City will attempt to maintain a working capital reserve of approximately 25% of the annual operating and maintenance expenses for the Sewer Fund.

(2) The City's goal is to accumulate at least $2 million a year in the Sewer Infrastructure Fund for replacement of infrastructure as the infrastructure reaches the end of its useful life.

Historical Revenues and Expenses

The following table presents audited revenues and expenses of the four combined Sewer Funds for Fiscal Year 2012-13 through Fiscal Year 2016-17.

Table 9
Sewer Fund
Historical Revenues and Expenses

	Audited 2012-13	Audited 2013-14	Audited 2014-15	Audited 2015-16	Estimated Actual 2016-17
Operating Revenues:					
Charges for services	$12,564,889	$12,687,777	$14,362,865	$15,770,897	$16,651,740
Developer Contributions			12,068	120,997	82,220
Other operating revenue	66,938	65,438	78,739	72,133	69,384
Total Revenues	12,631,827	12,753,215	14,453,372	15,964,027	16,803,344
Operating Expenses:					
WPCP Sewer treatment services [1]	4,448,512	5,212,154	4,314,289	4,550,915	4,545,616
Personnel services	1,267,161	1,799,701	2,007,388	2,110,671	1,036,796
Services and supplies	602,477	719,541	923,430	853,664	985,505
Depreciation	2,770,707	2,897,547	2,916,520	2,937,802	3,135,669
Repairs and maintenance	38,471	102,824	18,446	172,598	34,872
Total operating expenses	9,127,328	10,731,767	10,180,073	10,625,650	9,738,458
Operating income/(loss)	3,504,499	2,021,448	4,273,299	5,338,377	7,064,886
Nonoperating revenues (expenses):					
Interest income	153,740	482,693	211,387	444,691	(54,968)
Interest expense	(290,632)	(276,559)	(261,998)	(246,655)	(230,336)
Subventions and grants	720	8,564			
Developer Contributions [2]	640,258				
Total nonoperating revenues (expenses)	504,086	214,698	(50,611)	198,036	(285,304)
Income (Loss) before contributions and transfers	4,008,585	2,236,146	4,222,688	5,536,413	6,779,582
Capital Contributions			4,472,066		
Capital Contributions – connection fees	605,862	740,547	408,750	599,756	2,754,156
Transfers in	9,962			278,543	18,207
Transfers out [3]	(1,358,559)	(1,572,651)	(3,491,466)	(1,755,000)	(2,116,000)
Change in net position	3,265,850	1,404,042	5,612,038	4,659,712	7,435,945
Net position - beginning	89,341,419	94,600,027 [4]	93,149,672 [5]	98,761,710	103,421,422
Net Position - ending	$92,607,269	$96,004,069	$98,761,710	$103,421,422	$110,857,367

[1] Sewer treatment services is solely an operating expense for the City's share of operating and maintaining the WPCP. It does not include the cost of purchasing additional capacity rights.

[2] After Fiscal Year 2012-13, Developer Fees are shown under Operating Revenues.

[3] Transfers out consist primarily of reimbursement to the General Fund for the Sewer Fund's share of overhead and centralized costs. The reimbursements ranged from $1.4 million to $2.2 million per year. Remaining transfers represent reimbursement of other City funds for the Sewer Fund's share of capital project costs.

[4] The City determined that sewer developer fees had been recorded in the Street Improvement Capital Projects Fund in prior years. The developer fees should have been recorded in the Sewer Enterprise Fund. Beginning fund balance as of July 1, 2013 has been increased by $1,992,758.

[5] Governmental Accounting Standards Board (GASB) Statements No. 68 and 71 became effective during the year ended June 30, 2015. As a result, the beginning net position of the sewer fund was reduced by $2,854,397.

Source: City of Milpitas.

Outstanding Indebtedness

The 2006 Certificates were executed and delivered on December 1, 2006, in the original principal amount of $9,535,000 to finance certain sewer facilities within the City. The 2006 Certificates are outstanding in the principal amount of $5,135,000, and will be prepaid and defeased upon the issuance of the 2017 Bonds. See "FINANCING PLAN."

Historical Debt Service Coverage

The table below provides a historical statement of debt service coverage developed by the City:

Table 10
Sewer Fund
Historical Debt Service Coverage

	2012-13 [1]	2013-14 [1]	2014-15 [1]	2015-16 [1]	2016-17 [2]
Revenues					
Charges for Services	$12,564,889	$12,687,777	$14,362,865	$15,770,897	$16,651,740
Developer Contributions	--	--	12,068	120,997	82,220
Other Operating Revenue	66,938	65,438	78,439	72,133	69,384
Interest Income	153,740	482,693	211,387	444,691	(54,965)
Total Revenues	$12,785,567	$13,235,908	$14,664,759	$16,408,718	$16,748,379
Maintenance and Operation Costs					
WPCP Sewer treatment services [3]	$4,448,512	$5,212,154	$4,314,289	$4,550,915	$4,545,616
Personnel services	1,267,161	1,799,701	2,007,388	2,110,671	711,132
Services and supplies	602,477	719,541	923,430	853,664	985,505
Repairs and maintenance	38,471	102,824	18,446	172,598	34,872
Total Maintenance and Operation	$6,356,621	$7,834,220	$7,263,553	$7,687,848	$6,277,125
Net Revenues	$6,428,946	$5,401,688	$7,401,206	$8,720,870	$10,471,254
Debt Service					
2006 Certificates of Participation	694,878	691,053	691,878	692,178	691,518
2017 Revenue Refunding Bonds					
Total Debt Service	$694,878	$691,053	$691,878	$692,178	$691,518
Debt Service Coverage Ratio	9.25	7.82	10.70	12.60	15.14

[1] Excludes depreciation and amortization.
[2] Unaudited Information provided by the City
[3] Sewer treatment services is solely an operating expense for the City's share of operating and maintaining the WPCP. It does not include the cost of purchasing additional capacity rights.
Source: City of Milpitas Audited Financial Statements

Pro Forma Statement of Debt Service Coverage

The following table provides a pro forma statement of debt service coverage developed by the City.

Table 11
Sewer Fund
Pro forma Debt Service Coverage

	2017-18	2018-19	2019-20	2020-21	2021-22
Revenues					
Charges for Services	$16,800,000	$16,800,000	$16,800,000	$16,800,000	$16,800,000
Other Operating Revenue	64,000	64,000	64,000	64,000	64,000
Interest Income	167,792	128,917	102,789	93,893	77,452
Subtotal	$17,031,792	$16,992,917	$16,966,789	$16,957,893	$16,941,452
Maintenance and Operation Costs					
WPCP Sewer Treatment Services	$6,117,165	$6,361,852	$6,616,326	$6,880,979	$7,156,218
Personnel Services	2,653,625	2,733,234	2,815,231	2,899,688	2,986,678
Services and Supplies	1,200,651	1,236,671	1,273,771	1,311,984	1,351,344
Subtotal	$9,971,441	$10,331,757	$10,705,328	$11,092,651	$11,494,240
Net Revenues	$7,060,351	$6,661,160	$6,261,461	$5,865,242	$5,447,212
Debt Service					
2017 Bonds*	$633,498	$635,750	$639,250	$636,500	$632,750
Debt Service Coverage Ratio*	11.15	10.48	9.80	9.21	8.61

* Preliminary; subject to change.
Source: City of Milpitas.

The table above reflects a number of assumptions including the following:

Growth in Customers: No growth in customers is assumed during the projection period.

Rate adjustments: No rate increases are assumed during the projection period.

Expenses: WPCP Sewer Treatment Service expenses are projected to increase at 4% per year. Other expenses, consisting of personnel services and services & supplies, are projected to increase at 3% per year.

With respect to capital costs associated with the Sewer System, the City's fiscal year 2018-22 Proposed Capital Improvement Program identifies several projects for planning purposes. Except for fiscal year 2017-18, all future years' projects and their related funding require annual review and approval by the City Council and are therefore subject to change. The City records its infrastructure capital costs, including Sewer System capital costs as capital assets. All capital assets with limited useful lives are required to be depreciated over their estimated useful lives. Depreciation of all capital assets is recorded as an expense on the income statement and reduces the book value of the capital assets on the balance sheet. Because capital costs are not included in the definition of Operation and Maintenance Costs under the Indenture, they will not affect the availability of Net Revenues to make the Installments Payments.

WPCP Sewer treatment services is solely an operating expense for the City's share of operating and maintaining the WPCP. It does not include the cost of purchasing additional capacity rights. Amounts shown exclude the City's share of WPCP capital costs. See Table 5.

BOND OWNERS' RISKS

The following describes certain special considerations and risk factors affecting the payment of and security for the 2017 Bonds. The following discussion is not meant to be an exhaustive list of the risks associated with the purchase of any 2017 Bonds and the order presented does not necessarily reflect the relative importance of the various risks. Potential investors in the 2017 Bonds are advised to consider the following special factors along with all other information in this Official Statement in evaluating the 2017 Bonds. There can be no assurance that other considerations will not materialize in the future.

Net Revenues; Rate Covenant

Net Revenues are dependent upon the demand for wastewater sales, which can be affected by population factors and more stringent wastewater regulations. There can be no assurance that wastewater service demand will be consistent with the levels contemplated in this Official Statement. A decrease in the demand for wastewater could require an increase in rates or charges in order to comply with the rate covenants contained in the Indenture. The City's ability to meet its rate covenants is dependent upon its capacity to increase rates without driving down demand to a level insufficient to meet debt service on the 2017 Bonds and any existing and future Parity Debt.

No Debt Service Reserve Fund

The City will not fund a debt service reserve fund for the 2017 Bonds. If Net Revenues are insufficient for the City to pay debt service on the 2017 Bonds when due, no debt service reserve account funds will be available under the Indenture for the City to make such payments.

City Expenses

There can be no assurance that expenses of the City will be consistent with the levels contemplated in this Official Statement. Changes in technology, changes in quality standards, and increases in the cost of operation or other expenses could require substantial increases in rates or charges in order to comply with the rate covenants in the Indenture. Until such rates can be implemented, Net Revenues may be reduced, increasing the possibility of nonpayment of the 2017 Bonds.

Limitations on Remedies Available to Bond Owners

The ability of the City to comply with its covenants under the Indenture and to generate Net Revenues sufficient to pay principal of and interest on the 2017 Bonds and Parity Bonds may be adversely affected by actions and events outside of the control of the City, and may be adversely affected by actions taken (or not taken) by voters, property owners, taxpayers or payers of assessments, fees and charges. Furthermore, any remedies available to the owners of the Bonds upon the occurrence of an event of default under the Indenture are in many respects dependent upon judicial actions, which are often subject to discretion and delay and could prove both expensive and time consuming to obtain.

In addition to the limitations on Bondholder remedies contained in the Indenture, the rights and obligations under the Bonds and the Indenture may be subject to the following: the United States Bankruptcy Code and applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditors' rights generally, now or hereafter

in effect; usual equity principles which may limit the specific enforcement under State law of certain remedies; the exercise by the United States of America of the powers delegated to it by the Federal Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police power inherent in the sovereignty of the State of California and its governmental bodies in the interest of serving a significant and legitimate public purpose. Bankruptcy proceedings, or the exercise of powers by the federal or state government, if initiated, could subject the Owners of the Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitation or modification of their rights.

Seismic and Environmental Considerations

The City is located in a seismically active area of California. If there were to be an occurrence of severe seismic activity in the area of the City, there could be an interruption in the service provided by the Wastewater System, resulting in a temporary reduction in the amount of Net Revenues available to pay debt service when due on the 2017 Bonds.

Other environmental conditions, such as flooding, landslides or wildfires, could also affect or interrupt the service provided by the Wastewater System, resulting in a temporary reduction in the amount of Net Revenues available to pay debt service when due on the 2017 Bonds.

California Drought Conditions

On April 1, 2015, for the first time in California's history, Governor Edmund G. Brown directed the State Wastewater Resources Control Board to implement mandatory water reductions in cities and towns across California to reduce water usage by 25%, which in many cases led to declines in wastewater usage as well. Following a wet winter in 2016-17, most of the mandatory water reductions have been lifted. However, there can be no assurance that future drought conditions would not re-appear in the future, leading to decreased usage of the Wastewater System, and a potential decline in Net Revenues available to pay debt service on the 2017 Bonds.

Loss of Tax-Exemption

As discussed under the caption "TAX MATTERS," interest on the 2017 Bonds could become includable in gross income for purposes of federal income taxation retroactive to the date the 2017 Bonds were issued, as a result of future acts or omissions of the City in violation of its covenants in the Indenture. Should such an event of taxability occur, the 2017 Bonds are not subject to special redemption and will remain outstanding until maturity or until redeemed under other provisions set forth in the Indenture.

Proposition 218

General. On November 5, 1996, California voters approved Proposition 218, the so-called "Right to Vote on Taxes Act." Proposition 218 added Articles XIIIC and XIIID to the State Constitution, which affect the ability of local governments to levy and collect both existing and future taxes, assessments, and property-related fees and charges. Proposition 218, which generally became effective on November 6, 1996, limited local governments' authority to impose or increase property-related "fee" or "charge," which is defined as "any levy other than an ad valorem tax, a special tax or an assessment, imposed by a local government upon a parcel or

upon a person as an incident of property ownership, including user fees or charges for a property related service" (and referred to in this section as a "property-related fee or charge").

Specifically, under Article XIIID, before a municipality may impose or increase any property-related fee or charge, the entity must give written notice to the record owner of each parcel of land affected by that fee or charge. The municipality must then hold a hearing upon the proposed imposition or increase at least 45 days after the written notice is mailed, and, if a majority of the property owners of the identified parcels present written protests against the proposal, the municipality may not impose or increase the property-related fee or charge.

Further, under Article XIIID, revenues derived from a property-related fee or charge may not exceed the funds required to provide the "property-related service" and the entity may not use such fee or charge for any purpose other than that for which it imposed the fee or charge. The amount of a property-related fee or charge may not exceed the proportional cost of the service attributable to the parcel, and no property-related fee or charge may be imposed for a service unless that service is actually used by, or is immediately available to, the owner of the property in question.

In addition, Article XIIIC states that "the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge. The power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments and neither the Legislature nor any local government charter shall impose a signature requirement higher than that applicable to statewide statutory initiatives."

Judicial Interpretation of Proposition 218. After Proposition 218 was enacted in 1996, appellate court cases and an Attorney General's opinion initially indicated that fees and charges for water and wastewater services, which are based on the amount of services consumed, would not be considered property-related fees and charges, and thus not subject to the requirements of Article XIIID. However, numerous subsequent court cases have held that certain types of water and wastewater charges could be subject to the requirements of Proposition 218. These cases include, for example, *Capistrano Taxpayers Assoc., Inc. v. City of San Juan Capistrano* (186 Cal. Rptr. 3d 362 (Cal. App. 4th Distr. 2015)), *Bighorn-Desert View Water Agency v. Verjil* (46 Cal. Rptr. 3d 73 (Cal. 2006)), and *Howard Jarvis Taxpayers Assoc. v. City of Fresno* (26 Cal. Rptr. 3d 153 (Cal. App. 5th Distr. 2005)).

Under the *Bighorn* case, for example, the court held that under Article XIIIC, local voters could adopt an initiative measure that reduces or repeals the City's rates and charges, though it is not clear whether (and California courts have not decided whether) any such reduction or repeal by initiative would be enforceable in a situation in which such rates and charges are pledged to the repayment of bonds or other indebtedness, as is the case with respect to the 2017 Bonds.

Under the *City of San Juan Capistrano* case, the court held that tiered or inclined rates that go up progressively in relation to usage must correspond to the actual cost of providing water service at each tier (level of usage), and accordingly the pricing for any tier cannot exceed the cost of service to that tier.

City's Current Practice Regarding Rates and Charges. The City's practice in implementing increases in wastewater rates and charges has been to comply with the requirements of Article XIIID, including the practice of providing property owners with a 45-day mailed notice and public hearing before the City Council approves rate increases.

Conclusion. It is not possible to predict how courts will further interpret Article XIIIC and Article XIIID in future judicial decisions, and what, if any, further implementing legislation will be enacted. As noted above, under the *Bighorn* case, local voters could adopt an initiative measure that reduces or repeals the City's rates and charges, though it is not clear whether (and California courts have not decided whether) any such reduction or repeal by initiative would be enforceable in a situation in which such rates and charges are pledged to the repayment of bonds or other indebtedness, as is the case with respect to the 2017 Bonds. ***There can be no assurance that the courts will not further interpret, or the voters will not amend, Article XIIIC and Article XIIID to limit the ability of local agencies to impose, levy, charge and collect increased fees and charges for wastewater, or to call into question previously adopted wastewater rate increases.***

Environmental Regulation

The kind and degree of wastewater treatment is regulated, to a large extent, by the federal government and the State of California. Treatment standards set forth in federal and State law control the operations of the Wastewater System and mandate its use of technology. If the federal government, acting through the Environmental Protection Agency, or the State of California, acting through the Department of Health Services, or additional federal or State legislation, should impose stricter standards upon the Wastewater System, the City's expenses could increase accordingly and rates and charges would have to be increased to offset those expenses. See "– City Expenses above."

It is not possible to predict the direction which federal or State regulation will take with respect to wastewater standards, although it is likely that both will impose more stringent standards with attendant higher costs.

Secondary Market for Bonds

There can be no guarantee that there will be a secondary market for the 2017 Bonds or, if a secondary market exists, that any 2017 Bonds can be sold for any particular price. Occasionally, because of general market conditions or because of adverse history or economic prospects connected with a particular issue, secondary marketing practices in connection with a particular issue are suspended or terminated. Additionally, prices of issues for which a market is being made will depend upon then-prevailing circumstances. Such prices could be substantially different from the original purchase price.

Future Parity Obligations

As described in "SECURITY FOR THE 2017 BONDS – Parity Debt" above, the Indenture permits the City to issue Parity Debt in the future that is payable on a parity with the payment of debt service of the 2017 Bonds. In the event of a decline in Net Revenues available to pay debt service on the 2017 Bonds, the existence of Parity Debt could adversely affect the City's ability to pay debt service on the 2017 Bonds.

TAX MATTERS

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to the qualifications set forth below, under existing law, the interest on the 2017 Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, provided, however, that, for the purpose of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes), such interest is taken into account in determining certain income and earnings.

The opinions set forth in the preceding paragraph are subject to the condition that the City comply with all requirements of the Internal Revenue Code of 1986, as amended (the "**Tax Code**") that must be satisfied subsequent to the issuance of the 2017 Bonds. The City has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of such interest in gross income for federal income tax purposes to be retroactive to the date of issuance of the 2017 Bonds.

If the initial offering price to the public (excluding bond houses and brokers) at which a 2017 Bond is sold is less than the amount payable at maturity thereof, then such difference constitutes "original issue discount" for purposes of federal income taxes and State of California personal income taxes. If the initial offering price to the public (excluding bond houses and brokers) at which a 2017 Bond is sold is greater than the amount payable at maturity thereof, then such difference constitutes "original issue premium" for purposes of federal income taxes and State of California personal income taxes. *De minimis* original issue discount and original issue premium is disregarded.

Under the Tax Code, original issue discount is treated as interest excluded from federal gross income and exempt from State of California personal income taxes to the extent properly allocable to each owner thereof subject to the limitations described in the first paragraph of this section. The original issue discount accrues over the term to maturity of the 2017 Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). The amount of original issue discount accruing during each period is added to the adjusted basis of such 2017 Bonds to determine taxable gain upon disposition (including sale, redemption, or payment on maturity) of such 2017 Bond. The Tax Code contains certain provisions relating to the accrual of original issue discount in the case of purchasers of the 2017 Bonds who purchase the 2017 Bonds after the initial offering of a substantial amount of such maturity. Owners of such 2017 Bonds should consult their own tax advisors with respect to the tax consequences of ownership of 2017 Bonds with original issue discount, including the treatment of purchasers who do not purchase in the original offering, the allowance of a deduction for any loss on a sale or other disposition, and the treatment of accrued original issue discount on such 2017 Bonds under federal individual and corporate alternative minimum taxes.

Under the Tax Code, original issue premium is amortized on an annual basis over the term of the 2017 Bond (said term being the shorter of the 2017 Bond's maturity date or its call date). The amount of original issue premium amortized each year reduces the adjusted basis of the owner of the 2017 Bond for purposes of determining taxable gain or loss upon disposition. The amount of original issue premium on a 2017 Bond is amortized each year over the term to maturity of the 2017 Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). Amortized 2017 Bond premium is not deductible for federal income tax purposes. Owners of

premium 2017 Bonds, including purchasers who do not purchase in the original offering, should consult their own tax advisors with respect to State of California personal income tax and federal income tax consequences of owning such 2017 Bonds.

In the further opinion of Bond Counsel, interest on the 2017 Bonds is exempt from California personal income taxes.

Current and future legislative proposals, if enacted into law, clarification of the Tax Code or court decisions may cause interest on the 2017 Bonds to be subject, directly or indirectly, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent beneficial owners from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such legislative proposals, clarification of the Tax Code or court decisions may also affect the market price for, or marketability of, the 2017 Bonds. Prospective purchasers of the 2017 Bonds should consult their own tax advisors regarding any pending or proposed federal or state tax legislation, regulations or litigation, as to which Bond Counsel expresses no opinion.

Owners of the 2017 Bonds should also be aware that the ownership or disposition of, or the accrual or receipt of interest on, the 2017 Bonds may have federal or state tax consequences other than as described above. Bond Counsel expresses no opinion regarding other federal tax consequences arising with respect to the ownership, sale or disposition of the 2017 Bonds, or the amount, accrual or receipt of interest on the 2017 Bonds, other than as expressly described above.

CERTAIN LEGAL MATTERS

Jones Hall, A Professional Law Corporation, Bond Counsel, will render an opinion with respect to the validity of the 2017 Bonds, the form of which opinion is set forth in APPENDIX E. Certain legal matters will also be passed upon for the City by Jones Hall, as Disclosure Counsel and by the City Attorney. Certain legal matters will be passed upon for the Underwriter by its counsel, Quint & Thimmig LLP, Larkspur, California. The fees of Bond Counsel, Disclosure Counsel and Underwriter's counsel are contingent on the sale and closing of the 2017 Bonds.

LITIGATION

No litigation is pending or threatened concerning the validity of the 2017 Bonds. The City is not aware of any litigation pending or threatened questioning the political existence of the City or contesting the City's power to fix wastewater rates and charges, or the power of the City Council or in any way questioning or affecting: (i) the proceedings under which the 2017 Bonds are to be issued; (ii) the validity of any provision of the 2017 Bonds or the Indenture; (iii) the pledge of Net Revenues under the Indenture; or (iv) the titles to office of the present members of the City Council.

There are a number of suits and claims pending against the City, which may include personal injury, wrongful death and other suits and claims against which the City may self-insure. The aggregate amount of the self-insured liabilities of the City which may result from such suits and claims will not, in the opinion of the City, materially impair the ability of the City to pay principal of or interest on the 2017 Bonds as the same become due.

There is no litigation pending, with service of process having been accomplished, against the City which if determined adversely to the City would, in the opinion of the City, materially

impair the ability of the City to pay principal of and interest on the 2017 Bonds as they become due.

RATING

S&P Global Ratings, a division of Standard & Poor's Financial Services LLC ("**S&P**") has assigned its municipal bond rating of "____" to the 2017 Bonds. This rating reflects only the views of S&P, and an explanation of the significance of this rating, and any outlook assigned to or associated with this rating, should be obtained from S&P. Generally, a rating agency bases its rating on the information and materials furnished to it and on investigations, studies and assumptions of its own. The City has provided certain additional information and materials to S&P (some of which does not appear in this Official Statement). There is no assurance that this rating will continue for any given period of time or that this rating will not be revised downward or withdrawn entirely by S&P, if in the judgment of S&P, circumstances so warrant. Any such downward revision or withdrawal of any rating on the 2017 Bonds may have an adverse effect on the market price or marketability of the 2017 Bonds.

CONTINUING DISCLOSURE

The City will covenant for the benefit of owners of the 2017 Bonds to provide certain financial information and operating data relating to the City and the Wastewater System by not later than nine months after the end of the City's fiscal year, or March 31, of each year (based on the City's current fiscal year-end of June 30), commencing March 31, 2018, with the report for the 2016-17 fiscal year (the "**Annual Report**") and to provide notices of the occurrence of certain listed events.

These covenants have been made in order to assist the Underwriter in complying with Securities Exchange Commission Rule 15c2-12(b)(5) (the "**Rule**"). The specific nature of the information to be contained in the Annual Report or the notices of listed events by the City is set forth in "APPENDIX C – Form of Continuing Disclosure Certificate."

The City and its related governmental entities have previously entered into numerous disclosure undertakings under the Rule in connection with the issuance of long-term obligations. During the past five years, the City and/or its related entities have failed to comply with their undertakings under the Rule as follows: _____.

UNDERWRITING

Stifel, Nicolaus & Company, Incorporated, the Underwriter of the 2017 Bonds, has agreed to purchase the 2017 Bonds from the City at a purchase price of $_____ which represents the aggregate principal amount of the 2017 Bonds, plus net original issue premium of $_____, less underwriter's discount of $_____.

The purchase contract under which the Underwriter is purchasing the 2017 Bonds provides that the Underwriter will purchase all of the 2017 Bonds if any are purchased. The obligation of the Underwriter to make such purchase is subject to certain terms and conditions set forth in the contract of purchase.

The public offering prices of the 2017 Bonds may be changed from time to time by the Underwriter. The Underwriter may offer and sell the 2017 Bonds to certain dealers and others at a price lower than the offering price stated on the cover page of this Official Statement.

MUNICIPAL ADVISOR

The City has retained Fieldman, Rolapp & Associates, Inc., as its municipal advisor (the "**Municipal Advisor**") in connection with the authorization and delivery of the 2017 Bonds. The Municipal Advisor assumes no responsibility for the information, covenants and representations contained in any of the legal documents with respect to the federal income tax status of the 2017 Bonds, or the possible impact of any present, pending or future actions taken by any legislative or judicial bodies.

EXECUTION

The execution of this Official Statement and its delivery have been authorized by the City Council of the City.

CITY OF MILPITAS

By: _____
Director of Financial Services

APPENDIX A

SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

APPENDIX B

AUDITED FINANCIAL STATEMENTS OF THE CITY FOR FISCAL YEAR ENDED JUNE 30, 2016

APPENDIX C

FORM OF CONTINUING DISCLOSURE CERTIFICATE

$_____
City of Milpitas
Wastewater Revenue Refunding Bonds, Series 2017

This Continuing Disclosure Certificate (this "**Disclosure Certificate**") is executed and delivered by the City of Milpitas (the "**City**") in connection with the issuance of the above-captioned bonds (collectively, the "**2017 Bonds**"). The 2017 Bonds are being issued under an Indenture of Trust dated as of December 1, 2017 (the "**Indenture**") by and between the City and U.S. Bank, National Association, as trustee (the "**Trustee**"). The City covenants and agrees as follows:

Section 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the City for the benefit of the holders and beneficial owners of the 2017 Bonds and in order to assist the Participating Underwriter in complying with the Rule (defined herein).

Section 2. Definitions. In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"*Annual Report*" means any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4.

"*Annual Report Date*" means the date that is nine months after the end of the City's fiscal year (currently March 31 based on the City's fiscal year end of June 30).

"*Dissemination Agent*" means initially Willdan Financial Services, or any successor Dissemination Agent designated in writing by the City and which has filed with the City a written acceptance of such designation.

"*Listed Events*" means any of the events listed in Section 5(a).

"*MSRB*" means the Municipal Securities Rulemaking Board, which has been designated by the Securities and Exchange Commission as the sole repository of disclosure information for purposes of the Rule, or any other repository of disclosure information that may be designated by the Securities and Exchange Commission as such for purposes of the Rule in the future.

"*Official Statement*" means the final official statement dated _____, 2017, executed by the City in connection with the issuance of the 2017 Bonds.

"*Participating Underwriter*" means Stifel, Nicolaus & Company, Incorporated, as the original underwriter of the 2017 Bonds required to comply with the Rule in connection with offering of the 2017 Bonds.

"*Rule*" means Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as it may be amended from time to time.

Section 3. Provision of Annual Reports.

(a) The City shall, or shall cause the Dissemination Agent to, not later than the Annual Report Date, commencing March 31, 2018, with the report for the 2016-17 fiscal year, provide to the MSRB, in an electronic format as prescribed by the MSRB, an Annual Report that is consistent with the requirements of Section 4. Not later than 15 Business Days prior to the Annual Report Date, the City shall provide the Annual Report to the Dissemination Agent (if other than the City). If by 15 Business Days prior to the Annual Report Date the Dissemination Agent (if other than the City) has not received a copy of the Annual Report, the Dissemination Agent shall contact the City to determine if the City is in compliance with the previous sentence. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report, and later than the Annual Report Date, if not available by that date. If the City's fiscal year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(c). The City shall provide a written certification with each Annual Report furnished to the Dissemination Agent to the effect that such Annual Report constitutes the Annual Report required to be furnished by the City hereunder.

(b) If the City does not provide (or cause the Dissemination Agent to provide) an Annual Report by the Annual Report Date, the City shall provide (or cause the Dissemination Agent to provide) to the MSRB, in a timely manner as required by the Rule, in an electronic format as prescribed by the MSRB, a notice in substantially the form attached as Exhibit A.

(c) With respect to each Annual Report, the Dissemination Agent shall:

(i) determine each year prior to the Annual Report Date the then-applicable rules and electronic format prescribed by the MSRB for the filing of annual continuing disclosure reports; and

(ii) if the Dissemination Agent is other than the City, file a report with the City certifying that the Annual Report has been provided pursuant to this Disclosure Certificate, and stating the date it was provided.

Section 4. Content of Annual Reports. The City's Annual Report shall contain or incorporate by reference the following:

(a) Audited Financial Statements of the City prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the City's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) To the extent not contained in the audited financial statements filed under the preceding clause (a), the Annual Report shall contain information showing the following:

(i) a schedule of wastewater rates in effect as of the close of the preceding fiscal year, by classification of customer;

(ii) the Wastewater System's revenues and expenses for the most recently-completed fiscal year in the form of Table ____ in the Official Statement;

(iii) Net Revenues received by the City during the preceding fiscal year and the amount by which such Net Revenues provides coverage for the payments of debt service coming due in such fiscal year with respect to the 2017 Bonds and any other Parity Debt, in substantially the form of Table ___ in the Official Statement; and

(iv) a description of any additional indebtedness incurred during the most recently-completed fiscal year that is payable from Net Revenues on a parity or subordinate basis with the 2017 Bonds.

(c) In addition to any of the information expressly required to be provided under this Disclosure Certificate, the City shall provide such further material information, if any, as may be necessary to make the specifically required statements, in the light of the circumstances under which they are made, not misleading.

(d) Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the City or related public entities, which are available to the public on the MSRB's Internet web site or filed with the Securities and Exchange Commission. The City shall clearly identify each such other document so included by reference.

Section 5. Reporting of Significant Events.

(a) The City shall give, or cause to be given, notice of the occurrence of any of the following Listed Events with respect to the 2017 Bonds:

(1) Principal and interest payment delinquencies.

(2) Non-payment related defaults, if material.

(3) Unscheduled draws on debt service reserves reflecting financial difficulties.

(4) Unscheduled draws on credit enhancements reflecting financial difficulties.

(5) Substitution of credit or liquidity providers, or their failure to perform.

(6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security.

(7) Modifications to rights of security holders, if material.

(8) Bond calls, if material, and tender offers.

(9) Defeasances.

(10) Release, substitution, or sale of property securing repayment of the securities, if material.

(11) Rating changes.

(12) Bankruptcy, insolvency, receivership or similar event of the obligated person.

Note: For the purposes of the event identified in subparagraph (12), the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governmental body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.

(13) The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.

(14) Appointment of a successor or additional trustee or the change of name of a trustee, if material.

(b) Whenever the City obtains knowledge of the occurrence of a Listed Event, and, if the Listed Event is described in subsections (a)(2), (a)(6), (a)(7), (a)(8) (if the event is a bond call), (a)(10), (a)(13) or (a)(14) above, the City determines that knowledge of the occurrence of that Listed Event would be material under applicable Federal securities law, the City shall, or shall cause the Dissemination Agent (if not the City) to, file a notice of such occurrence with the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner not in excess of 10 business days after the occurrence of the Listed Event. Notwithstanding the foregoing, notice of Listed Events described in subsections (a)(8) and (9) above need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to holders of affected 2017 Bonds under the Indenture.

Section 6. Identifying Information for Filings with the MSRB. All documents provided to the MSRB under the Disclosure Certificate shall be accompanied by identifying information as prescribed by the MSRB.

Section 7. Termination of Reporting Obligation. The City's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the 2017 Bonds. If such termination occurs prior to the final maturity of the 2017 Bonds, the City shall give notice of such termination in the same manner as for a Listed Event under Section 5(c).

Section 8. Dissemination Agent. The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any Dissemination Agent, with or without appointing a successor

Dissemination Agent. Any Dissemination Agent may resign by providing 30 days' written notice to the City. The initial Dissemination Agent shall be Willdan Financial Services.

Section 9. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the City may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that the following conditions are satisfied:

(a) if the amendment or waiver relates to the provisions of Sections 3(a), 4 or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of an obligated person with respect to the 2017 Bonds, or type of business conducted;

(b) the undertakings herein, as proposed to be amended or waived, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the primary offering of the 2017 Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) the proposed amendment or waiver either (i) is approved by holders of the 2017 Bonds in the manner provided in the Indenture for amendments to the Indenture with the consent of holders, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the holders or beneficial owners of the 2017 Bonds.

If the annual financial information or operating data to be provided in the Annual Report is amended pursuant to the provisions hereof, the first Annual Report filed pursuant hereto containing the amended operating data or financial information shall explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

If an amendment is made to this Disclosure Certificate modifying the accounting principles to be followed in preparing financial statements, the Annual Report for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The comparison shall include a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information, in order to provide information to investors to enable them to evaluate the ability of the City to meet its obligations. To the extent reasonably feasible, the comparison shall be quantitative.

A notice of any amendment made pursuant to this Section 9 shall be filed in the same manner as for a Listed Event under Section 5(c).

Section 10. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the City chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the City shall have no obligation under this Disclosure Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

Section 11. Default. If the City fails to comply with any provision of this Disclosure Certificate, the Participating Underwriter or any holder or beneficial owner of the 2017 Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Certificate in the event of any failure of the City to comply with this Disclosure Certificate shall be an action to compel performance.

Section 12. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the City, the Dissemination Agent (if other than the City), the Participating Underwriter and the holders and beneficial owners from time to time of the 2017 Bonds, and shall create no rights in any other person or entity.

Section 13. Counterparts. This Disclosure Certificate may be executed in several counterparts, each of which shall be regarded as an original, and all of which shall constitute one and the same instrument.

Date: _____, 2017

CITY OF MILPITAS

By_____
_____

ACCEPTED AND AGREED:
Willdan Financial Services,
As Dissemination Agent

By_____
Authorized Representative

EXHIBIT A

NOTICE OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: City of Milpitas

Name of Issue: $_____ City of Milpitas Wastewater Revenue Refunding Bonds, Series 2017

Date of Issuance: _____, 2017

NOTICE IS HEREBY GIVEN that the City of Milpitas has not provided an Annual Report with respect to the above-named bonds as required by the Continuing Disclosure Certificate dated as of _____, 2017, executed by the City of Milpitas. The City anticipates that the Annual Report will be filed by _____.

Dated:_____

DISSEMINATION AGENT

By_____
Name:
Title:

APPENDIX D

GENERAL INFORMATION ABOUT THE CITY OF MILPITAS AND THE COUNTY OF SANTA CLARA

*The following information concerning the County of Santa Clara (the "**County**") and the City of Milpitas (the "**City**") is included only for the purpose of supplying general information regarding the region in which the Wastewater System is located. The 2017 Bonds are not a debt of the County, the City, the State of California (the "**State**") or any of its political subdivisions, and neither the County, the City, the State nor any of its political subdivisions is liable therefor.*

General

The County. The County covers an area of over 1,300 square miles and is located south of the San Francisco Bay in Northern California. There are two distinct valleys in the County, which are referred to as North County and South County. South County primarily features agricultural land and is comprised of only two cities, twenty miles apart from each other. Comprised of 13 adjoining cities, North County is densely populated, heavily industrialized and extensively urbanized. The northwestern portion of North County is commonly referred to as "Silicon Valley," owing to the high concentration of companies involved in the creation of silicon-based semiconductors. Several small lakes and reservoirs are scattered across the County and the highest peak can be found in San José at Mount Hamilton. Several major highways serve the County, including Highway 101 providing access to San Francisco and Los Angeles.

The City. The City was incorporated in January 1954 and encompasses 13.63 square miles. It is located 45 miles south of San Francisco in the northern part of Santa Clara County and is situated in the northeastern side of Silicon Valley. Once a small agricultural town and later a stop-over point for travelers between Oakland and San Jose, Milpitas has grown into one of the world's premier computer and semiconductor producers.

Milpitas is a general law city that operates under a Council-Manager form of government. The City's political and legislative body is the City Council, which is empowered by the general laws of the State of California to formulate citywide policy, including a fiscal program, City services and appointment of City Manager and City Attorney. There are four City Council members who are elected at-large for staggered four–year terms; the Mayor is selected every two years in a separate citywide election.

The City provides a full range of municipal services, including: police, fire, neighborhood services, public improvements, planning, building and public facility inspection, engineering, water and sewer utilities, redevelopment, and general administrative services.

Population

The following table lists population estimates for the City, the County and the State for the last five years, as of January 1 each year.

CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA
Population Estimates
Years 2013 through 2017, as of January 1

Year	City of Milpitas	Santa Clara County	State of California
2013	67,845	1,840,895	37,984,138
2014	69,903	1,868,038	38,357,121
2015	72,606	1,889,638	38,714,725
2016	75,069	1,922,619	39,189,035
2017	75,410	1,938,180	39,523,613

Source: California Department of Finance, Demographic Research Unit.

Industry and Employment

The City is part of the San Jose-Sunnyvale-Santa Clara Metropolitan Statistical Area ("**MSA**"), which is comprised of Santa Clara and San Benito Counties. The unemployment rate in the MSA was 3.3% in September 2017, down from a revised 3.9% in August 2017, and below the year-ago estimate of 3.8%. This compares with an unadjusted unemployment rate of 4.7% for the State and 4.1% for the nation during the same period. The unemployment rate was 5.1% in San Benito County, and 3.3% in the County.

SAN JOSE-SUNNYVALE-SANTA CLARA MSA
Civilian Labor Force, Employment and Unemployment
Calendar Years 2012 through 2016
March 2016 benchmark

	2012	2013	2014	2015	2016
Civilian Labor Force [1]	987,000	1,000,700	1,021,000	1,039,100	1,056,300
Employment	907,900	934,800	967,200	994,900	1,015,700
Unemployment	79,000	65,900	53,800	44,200	40,600
Unemployment Rate	8.0%	6.6%	5.3%	4.3%	3.8%
Wage and Salary Employment:					
Agriculture	4,900	5,000	5,300	5,500	6,000
Mining and Logging	200	300	300	200	300
Construction	34,800	37,500	39,700	43,900	48,900
Manufacturing	156,400	156,300	159,500	162,400	163,600
Wholesale Trade	35,000	36,400	37,200	37,200	37,800
Retail Trade	84,100	84,900	86,400	87,800	87,700
Transportation, Warehousing, Utilities	12,800	13,800	14,400	14,600	15,300
Information	54,200	58,700	65,700	70,500	74,600
Financial Activities	33,200	33,700	34,100	34,600	35,600
Real Estate and Rental and Leasing	12,900	13,000	13,300	13,500	14,000
Professional and Business Services	178,200	191,200	203,000	216,300	225,200
Educational and Health Services	136,800	143,800	150,000	156,300	162,100
Leisure and Hospitality	82,500	87,500	91,900	95,800	98,900
Other Services	24,800	25,400	26,400	26,900	27,400
Federal Government	9,800	9,900	9,900	9,900	10,000
State Government	6,400	6,300	6,400	6,700	6,700
Local Government	75,200	75,600	77,100	76,400	77,400
Total all Industries [2]	942,200	979,300	1,020,600	1,058,500	1,091,500

(1) Industry employment is by place of work; excludes self-employed individuals, unpaid family workers, household domestic workers, and workers on strike.
(2) Totals may not add due to rounding.
Source: State of California Employment Development Department.

Principal Employers

The following table lists the principal employers within the City for the fiscal year 2015-16.

CITY OF MILPITAS
Principal Employers
As of June 30, 2016

Employer Name	No. of Employees	% of City Employment
Cisco Systems, Inc.	3,816	9.81%
KLA-Tencor Corporations	1,922	4.94
San Disk Corporation	1,876	4.82
Flextronics International	1,400	3.60
Linear Technology Corporation	1,200	3.08
Milpitas Unified School District	900	2.31
FireEye, Inc.	778	2.00
Headway Technologies	600	1.54
Kaiser Permanente	375	0.96
Wal-Mart	350	0.90

Source: City of Milpitas Comprehensive Annual Fiscal Report for Fiscal Year Ended June 30, 2016.

The following table lists, in alphabetical order, the largest manufacturing and non-manufacturing employers within the County as of November 2017.

COUNTY OF SANTA CLARA
Major Employers
As of November 2017
(In Alphabetical Order)

Employer Name	Location	Industry
Adobe Systems Inc	San Jose	Publishers-Computer Software (Mfrs)
Advanced Micro Devices Inc	Sunnyvale	Semiconductor Devices (Mfrs)
Apple Inc	Cupertino	Computer & Equipment Dealers
Applied Materials Inc	Santa Clara	Semiconductor Manufacturing Equip (Mfrs)
Avaya Inc	Santa Clara	Telecommunications Services
Christopher Ranch Llc	Gilroy	Garlic (Mfrs)
Cisco Systems Inc	San Jose	Computer Peripherals (Mfrs)
E Bay Inc	San Jose	E-Commerce
Fujitsu Laboratories	Sunnyvale	Venture Capital Companies
Great America Pavilion	Santa Clara	Amusement & Theme Parks
Hcl Technologies Ltd	Sunnyvale	Computer Software
Hp Inc	Palo Alto	Computers-Electronic-Manufactu
Intel Corp	Santa Clara	Semiconductor Devices (Mfrs)
Lockheed Martin Corp	San Jose	Aerospace Industries (Mfrs)
Lockheed Martin Space Systems	Sunnyvale	Satellite Equipment & Systems-Mfrs
Lumileds Lighting Co	San Jose	Lighting Fixtures-Supplies & Parts-Mfrs
Microsoft Corp	Mountain View	Computer Software-Manufacturers
Nasa	Mountain View	Government Offices-Us
Net App Inc	Sunnyvale	Computer Storage Devices (Mfrs)
Prime Materials	San Jose	Semiconductors & Related Devices (Mfrs)
San Jose Convention Ctr	San Jose	Recreation Centers
Sap Center	San Jose	Stadiums Arenas & Athletic Fields
Stanford Children's Health	Palo Alto	Hospitals
Stanford School of Medicine	Stanford	Schools-Medical
US Veterans Medical Ctr	Palo Alto	Hospitals

Source: State of California Employment Development Department, extracted from The America's Labor Market Information System (ALMIS) Employer Database, 2018 1st edition.

Effective Buying Income

"Effective Buying Income" is defined as personal income less personal tax and nontax payments, a number often referred to as "disposable" or "after-tax" income. Personal income is the aggregate of wages and salaries, other labor-related income (such as employer contributions to private pension funds), proprietor's income, rental income (which includes imputed rental income of owner-occupants of non-farm dwellings), dividends paid by corporations, interest income from all sources, and transfer payments (such as pensions and welfare assistance). Deducted from this total are personal taxes (federal, state and local), nontax payments (fines, fees, penalties, etc.) and personal contributions to social insurance. According to U.S. government definitions, the resultant figure is commonly known as "disposable personal income."

The following table summarizes the total effective buying income for the City, the County, the State, and the United States for the period 2012 through 2016.

CITY OF MILPITAS, SANTA CLARA COUNTY,
STATE OF CALIFORNIA AND UNITED STATES
EFFECTIVE BUYING INCOME
As of January 1, 2012 through 2016

Year	Area	Total Effective Buying Income (000's Omitted)	Median Household Effective Buying Income
2012	City of Milpitas	$1,760,820	$73,766
	Santa Clara County	61,464,868	68,852
	California	864,088,828	47,307
	United States	6,737,867,730	41,358
2013	City of Milpitas	$1,881,475	$76,417
	Santa Clara County	61,802,913	70,595
	California	858,676,636	48,340
	United States	6,982,757,379	43,715
2014	City of Milpitas	$2,103,353	$84,091
	Santa Clara County	66,130,110	75,008
	California	901,189,699	50,072
	United States	7,357,153,421	45,448
2015	City of Milpitas	$2,246,958	$84,507
	Santa Clara County	73,637,380	79,345
	California	981,231,666	53,589
	United States	7,757,960,399	46,738
2016	City of Milpitas	$2,461,558	$85,924
	Santa Clara County	77,917,425	81,466
	California	1,036,142,723	55,681
	United States	8,132,748,136	48,043

Source: The Nielsen Company (US), Inc.

Commercial Activity

A summary of historic taxable sales within the City and the County during the past five years in which data is available is shown in the following tables. The total taxable sales during the first three quarters of calendar year 2016 in the City were reported to be $1.45 billion, a 4.06% increase over the total taxable sales of $1.39 billion reported during the first three quarters of calendar year 2015. Annual figures for 2016 are not yet available.

CITY OF MILPITAS
Taxable Retail Sales
Number of Permits and Valuation of Taxable Transactions
Calendar Years 2011 through 2015 (Dollars in Thousands)

	Retail Stores		Total All Outlets	
	Number of Permits	Taxable Transactions	Number of Permits	Taxable Transactions
2011	1,180	$1,095,281	1,905	$1,515,305
2012	1,193	1,204,355	1,914	1,763,290
2013	1,196	1,166,488	1,926	1,658,417
2014	1,225	1,170,696	1,975	1,682,260
2015[(1)]	1,283	1,202,266	2,178	1,903,123

(1) Permit figures for calendar year 2015 are not comparable to that of prior years due to outlet counts in these reports including the number of outlets that were active during the reporting period. Retailers that operate part-time are now tabulated with store retailers.
Source: California State Board of Equalization, Taxable Sales in California (Sales & Use Tax).

Total taxable sales during the first three quarters of calendar year 2016 in the County were reported to be $30.68 billion, a 1.59% increase over the total taxable sales of $30.20 billion reported during the first three quarters of calendar year 2015. Annual figures for 2016 are not yet available.

COUNTY OF SANTA CLARA
Taxable Retail Sales
Number of Permits and Valuation of Taxable Transactions
Calendar Years 2011 through 2015 (Dollars in Thousands)

	Retail Stores		Total All Outlets	
	Number of Permits	Taxable Transactions	Number of Permits	Taxable Transactions
2011	27,252	$19,419,542	43,390	$33,431,217
2012	28,109	21,116,708	43,980	36,220,445
2013	29,535	22,424,642	45,310	37,621,606
2014	30,058	23,271,753	45,852	39,628,655
2015[(1)]	20,057	23,700,907	50,573	41,231,759

(1) Permit figures for calendar year 2015 are not comparable to that of prior years due to outlet counts in these reports including the number of outlets that were active during the reporting period. Retailers that operate part-time are now tabulated with store retailers.
Source: California State Board of Equalization, Taxable Sales in California (Sales & Use Tax).

Construction Activity

Construction activity in the City and the County for the past five years for which data is available is shown in the following tables.

CITY OF MILPITAS
Building Permit Valuation
For Calendar Years 2012 through 2016
(Dollars in Thousands)[1]

	2012	2013	2014	2015	2016
Permit Valuation					
New Single-family	$25,511.6	$88,491.4	$70,570.5	$22,537.4	$38,510.7
New Multi-family	20,383.0	140,604.9	188,133.1	61,894.8	99,729.0
Res. Alterations/Additions	3,873.8	3,932.5	2,896.8	4,963.3	8,225.0
Total Residential	49,768.4	233,028.8	261,600.4	$89,395.50	$146,464.70
New Commercial	10,643.8	8,958.0	9,753.0	409.9	37,529.3
New Industrial	1,835.9	3,310.0	0.0	684.9	0.0
New Other	1,570.0	0.0	26,612.1	3,224.3	1,883.8
Com Alterations/Additions	81,837.6	71,368.6	45,753.7	43,976.0	77,342.4
Total Nonresidential	95,887.3	83,636.7	82,118.8	47,995.0	116,755.6
New Dwelling Units					
Single Family	66	265	170	72	135
Multiple Family	66	577	1,025	175	384
TOTAL	132	842	1,195	247	419

(1) Totals may not foot due to rounding.
Source: Construction Industry Research Board, Building Permit Summary.

SANTA CLARA COUNTY
Building Permit Valuation
For Calendar Years 2012 through 2016
(Dollars in Thousands)[1]

	2012	2013	2014	2015	2016
Permit Valuation					
New Single-family	$678,168.8	$694,884.6	$594,472.7	$653,970.2	$660,301.6
New Multi-family	558,544.1	941,420.4	1,196,127.8	706,781.1	564,761.0
Res. Alterations/Additions	288,105.1	423,739.6	439,747.1	505,844.7	484,820.1
Total Residential	1,524,818.0	2,060,044.6	2,230,347.6	1,866,596.0	$1,709,882.7
New Commercial	745,468.8	1,217,647.4	818,913.3	1,258,808.7	2,327,643.2
New Industrial	22,481.5	72,222.0	10,172.2	100,301.2	44,268.9
New Other	19,197.3	1,749,161.2	292,113.9	533,644.5	282,966.1
Com Alterations/Additions	1,115,633.3	1,293,656.1	1,534,213.1	1,697,046.2	2,072,862.8
Total Nonresidential	1,902,780.9	4,332,686.8	2,655,412.5	3,589,800.6	4,727,741.0
New Dwelling Units					
Single Family	1,432	1,859	1,602	1,710	1,608
Multiple Family	4,245	6,009	8,310	3,906	3,297
TOTAL	5,677	7,868	9,912	5,616	4,905

(1) Totals may not foot due to rounding.
Source: Construction Industry Research Board, Building Permit Summary.

APPENDIX E

FORM OF OPINION OF BOND COUNSEL

APPENDIX F

DTC AND THE BOOK-ENTRY ONLY SYSTEM

The following description of the Depository Trust Company ("DTC"), the procedures and record keeping with respect to beneficial ownership interests in the Bonds, payment of principal, interest and other payments on the Bonds to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interest in the Bonds and other related transactions by and between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC. Accordingly, no representations can be made concerning these matters and neither the DTC Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters, but should instead confirm the same with DTC or the DTC Participants, as the case may be.

Neither the issuer of the Bonds (the "Issuer") nor the trustee, fiscal agent or paying agent appointed with respect to the Bonds (the "Agent") take any responsibility for the information contained in this Appendix.

No assurances can be given that DTC, DTC Participants or Indirect Participants will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Bonds, (b) certificates representing ownership interest in or other confirmation or ownership interest in the Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Bonds, or that they will so do on a timely basis, or that DTC, DTC Participants or DTC Indirect Participants will act in the manner described in this Appendix. The current "Rules" applicable to DTC are on file with the Securities and Exchange Commission and the current "Procedures" of DTC to be followed in dealing with DTC Participants are on file with DTC.

1. The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the securities (the "Securities"). The Securities will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Security certificate will be issued for each issue of the Securities, each in the aggregate principal amount of such issue, and will be deposited with DTC. If, however, the aggregate principal amount of any issue exceeds $500 million, one certificate will be issued with respect to each $500 million of principal amount, and an additional certificate will be issued with respect to any remaining principal amount of such issue.

2. DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned

subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com. *The information contained on this Internet site is not incorporated herein by reference.*

3. Purchases of Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC's records. The ownership interest of each actual purchaser of each Security ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Securities are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Securities is discontinued.

4. To facilitate subsequent transfers, all Securities deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Securities with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC's records reflect only the identity of the Direct Participants to whose accounts such Securities are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

5. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Securities may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Securities, such as redemptions, tenders, defaults, and proposed amendments to the Security documents. For example, Beneficial Owners of Securities may wish to ascertain that the nominee holding the Securities for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

6. Redemption notices shall be sent to DTC. If less than all of the Securities within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

7. Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Securities unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to Issuer as soon as

possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Redemption proceeds, distributions, and dividend payments on the Securities will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from Issuer or Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, Agent, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

9. DTC may discontinue providing its services as depository with respect to the Securities at any time by giving reasonable notice to Issuer or Agent. Under such circumstances, in the event that a successor depository is not obtained, Security certificates are required to be printed and delivered.

10. Issuer may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Security certificates will be printed and delivered to DTC.

11. The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that Issuer believes to be reliable, but Issuer takes no responsibility for the accuracy thereof.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS GRANTING FINAL ACCEPTANCE OF PUBLIC IMPROVEMENTS AND RELEASING PERFORMANCE BOND FOR APEX APARTMENT PROJECT LOCATED AT 1102 SOUTH ABEL STREET BY MILPITAS CENTRIA WEST, LLC, TRACT NO. 9773, PROJECT NO. 2583

WHEREAS, certain public improvements as shown on the Improvement Plan No. 2-1143 ("Improvements") were installed as part of the Apex Apartment Project located at 1102 South Abel Street by Milpitas Centria West, LLC ("Subdivider"), Tract 9773, Project No. 2583, under and pursuant to the provisions of a Subdivision Improvement Agreement ("SIA") between the City of Milpitas, a municipal corporation of the State of California, and the Subdivider; and

WHEREAS, said Subdivider, as principal, and the Arch Insurance Company as surety, executed a certain faithful performance bond conditioned upon the faithful performance of the provisions of said SIA and upon the faithful performance of Improvements required thereunder; and

WHEREAS, said Improvements were completed, finally inspected by the City Engineer of the City of Milpitas, and accepted; and

WHEREAS, a period of one year or more has expired after the date of said acceptance of said Improvements; and

WHEREAS, the City Engineer has advised said City Council that said Subdivider has remedied, restored, repaired, or replaced at its sole expense and to the satisfaction of said City Engineer all defects, damages, or imperfections, if any there were, due to or arising from faulty materials or workmanship and appearing within said period of one year from the date of acceptance; and

WHEREAS, said City Engineer recommends to the City Council that said faithful performance bond be released.

NOW, THEREFORE, the City Council 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. That certain performance bond furnished by the above-named Subdivider, as principal, and the above-named surety in connection with those Improvements for the above-designated project is hereby released and discharged; provided, however, that nothing herein contained shall in any way be deemed to be a waiver, release or relinquishment by City of any obligations imposed upon the Subdivider or its surety, or sureties, by law or by the above-referenced SIA, save and except those obligations specifically mentioned herein.

///

PASSED AND ADOPTED this _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING ACCEPTANCE OF DANIEL COURT WATER MAIN AND SERVICES REPLACEMENT, PROJECT NO. 7110 & NO. 7131

WHEREAS, the City of Milpitas has heretofore entered into a contract with D & D Pipelines, Inc., for the subject project, and the City Engineer of the City of Milpitas has recommended acceptance of said improvement as completed in accordance with plans, specifications and approved change orders and correction lists, and in accordance with the final inspection of said City Engineer.

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 of Milpitas does hereby accept the Project as completed on this 21ST day of November, 2017, and does hereby authorize and direct the City Engineer of the City of Milpitas to file a Notice of Completion in accordance with the provisions of Section 9204 of the Civil Code of the State of California, and does hereby authorize and direct the City Engineer to file a Certificate of Completion in accordance with the provisions of Section 4005 of the Government Code of the State of California, if said work was by day's labor or force account.

PASSED AND ADOPTED this ___ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

Recording Requested by and
When Recorded Mail to:

City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
Attention: City Clerk

Record without fee under
Section 6103 - Government Code
State of California

CITY OF MILPITAS

NOTICE OF COMPLETION
(Civil Code Sections 8182 and 9200-9208)

NOTICE IS HEREBY GIVEN:

1. On or about June 20, 2017, the City of Milpitas, a municipal corporation of the State of California, whose address is City Hall, 455 East Calaveras Boulevard, Milpitas, California, 95035 (as owner) entered into a contract for work of: Daniel Court Water Main and Service Replacement, Project No. 7110 & No. 7131.

2. A description of the site of which the City is co-owner for said work of improvement is: Daniel Court in the City of Milpitas, Santa Clara County, California, more particularly described on the plans.

3. The name and address of the original contractor is: D & D Pipelines, Inc., 24 San Anselmo Ave., Unit #146, San Anselmo, CA 94960.

4. A general statement of the kind of work done or materials furnished to the City is as follows: water system and roadway resurfacing.

5. Said work of improvement was accepted by the Milpitas City Council as completed on November 21, 2017.

****

I, the undersigned, declare that I am the **City Engineer** of the City of Milpitas and am authorized to execute the foregoing Notice of Completion and this Verification thereof. I have read the foregoing Notice of Completion. I declare under penalty of perjury that the foregoing Notice of Completion is true and correct. Executed on November 22, 2017 at Milpitas, California.

_____
Steven Erickson, Acting City Engineer

NOTE: RECORD WITHIN 15 DAYS OF ACCEPTANCE WITH COUNTY RECORDER OF SANTA CLARA COUNTY

CITY OF MILPITAS
PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into as of November 21, 2017 by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City"), and Bartle Wells Associates, a California Corporation with its principal place of business at 1889 Alcatraz Avenue, Berkeley, CA 94703 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

Water Rate and Cost of Service Study (hereinafter referred to as "the Project").

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit "A."

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B."

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of $45,000.00. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall

be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. Time of Performance.

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon receipt of written notice from the City to proceed ("Notice to Proceed"). Consultant shall complete the services required hereunder within 180 days from the Notice to Proceed. The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Consultant

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit "D" (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel reasonably approved by the City), indemnify and hold the City, its officials, officers, employees, agents and volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims') in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents or volunteers.

b. Additional Indemnity Obligations. Consultant shall defend, with counsel of City's choosing and at Consultant's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against the City, its officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the City, its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse City for the cost of any settlement paid by the City, its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for the City's attorney's fees and costs, including expert witness fees. Consultant shall reimburse the

City, its officials, officers, employees, agents and volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents and volunteers.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws, if applicable. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Section 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Sections 1777.1).

b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California.

16. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the

work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

17. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

18. Organization

Consultant shall assign Douglas R. Dove as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

19. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

20. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:	CONSULTANT:
City of Milpitas	Bartle Wells Associates
455 E. Calaveras Boulevard	1889 Alcatraz Avenue
Milpitas, California 95035	Berkeley, CA 94703
Attn: Tony Ndah, Public Works	Douglas R. Dove

and shall be effective upon receipt thereof.

21. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

22. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

23. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

24. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

25. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

26. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

27. Time of Essence

Time is of the essence for each and every provision of this Agreement.

28. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

29. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee,

commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MILPITAS AND BARTLE WELLS ASSOCIATES

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

CITY OF MILPITAS
Approved By:

Steve J. Pangelinan
Acting City Manager

Date

Approved As To Form:

Christopher J. Diaz
City Attorney

Bartle Wells Associates

Signature

Douglas R. Dove

Principal/President

Date

EXHIBIT A

Scope of Services

TASK 1. PROJECT INITIATION & DATA COLLECTION

1.1 Kick-off Meeting

To initiate the work, Consultant will hold a kickoff meeting to accomplish the following:

- Identify members of City staff, Council Members, engineering consultants, and other consultants/advisors who will participate in the project.
- Determine the roles and responsibilities of all project participants.
- Establish a project schedule and key milestone dates.
- Confirm the key goals and expectations of the project team.
- Identify key issues that may impact the results of Consultants work.

1.2 Investigation and Data Collection

In addition to the information Consultant already has from the prior 2015 water rate study, Consultant will update the information as necessary to accurately summarize the City's current water system, finances, customers, usage, rate and fee structures, capital program and projected impacts of conservation. The objectives of the investigation and data collection will be to develop a complete understanding of the City's current water finances, system facilities, operational arrangements, staffing, and capital needs.

Task 1 Deliverables Include:

- Project team contact list
- Information update needs list
- Meeting #1: Kickoff Meeting

TASK 2. REVENUE REQUIREMENT

For Task 2, Consultant will develop the City's water system revenue requirements reflecting the City's proposed operating and capital improvement plans.

2.1 Develop Projections

Based on the evaluation of the data assembled and input provided by the City and other members of the project team, Consultant will prepare forecasts and projections to be used in the development of financial projections for the City.

Consultant will develop projections for the following areas (and others as appropriate):

- **Drought Conditions:** Consultant will determine appropriate water use projections including different conservation targets for each customer group, and evaluate the impacts of short-term vs. long-term drought conditions.

- **Capital Improvements Including Long-Term Capital Repairs and Replacements:** Consultant will identify future capital costs and alternatives to include in the financial analysis and determine a reasonable amount to include for future capital repairs, ongoing capital repairs and capital replacements for the City's water system. Consultant will include recommendations for the City to phase in funding for long-term system rehabilitation.
- **Growth, Development, and Redevelopment:** Consultant will evaluate historical growth trends and use that information to develop appropriate and conservative assumptions for future development and redevelopment that will be incorporated into the financial plan/rate model.
- **Cost Escalation Factors:** Consultant will review historical cost trends and work with the project team to develop reasonable escalation of cost factors for both operating expenditures and capital expenditures, in compliance with applicable laws. Consultant will work with the City to identify future changes in operating costs and maintenance costs, and include this information in the development of financial projections for the City.

Consultant will review all projections and alternatives with City staff for agreements on assumptions, interpretation of data, and completeness of approach.

2.2 Review and Recommend Fund Reserve Policies and Targets

Consultant will evaluate the City's current reserve levels and review fund reserve targets, based on the City's operating and capital funding projections. Consultant will evaluate reserve targets described in the City's debt covenants, explore the City's ability to absorb additional debt via an additional debt test, identify potential changes to fund reserve policies, and recommend prudent minimum fund reserve targets. Consultant will also evaluate replacement funds and recommend an appropriate funding level for the City, and develop a reasonable implementation plan for achieving and maintaining the recommended water fund levels in the long-run.

Task 2 Deliverables Include:

- Identification of key assumptions supporting the revenue requirement
- Budget projection and revenue requirement a "baseline scenario"
- Additional debt test
- Review of fund reserve policies and targets

TASK 3. FINANCIAL PLAN

3.1 Evaluate Financing Alternatives for Capital Improvements

Consultant will evaluate options for financing for proposed capital improvement projects. Consultant's evaluation will:

- Estimate the amount and timing of any debt, if needed, to finance capital projects.
- Recommend type of debt, term and structure, and estimate debt service.
- Evaluate the refinancing of any existing debt.

3.2 Develop a 10-Year Cash Flow

Consultant will develop cash flow projections showing the financial position of the water enterprise over the next 10 years. The cash flows will project fund balances, revenues, expenses, and will incorporate the forecasts that are developed with staff input. After developing a base-case cash flow scenario, Consultant will develop alternatives for additional evaluation such as but not limited to capital project alternatives, project financing alternatives, the impacts of different levels of growth, the impacts of various levels of water demand, conservation, and costs of supply, etc. During this phase, Consultant will work closely with the project team to evaluate financial and rate projections under alternative scenarios and conduct a sensitivity analysis to assess the impacts of changes in key assumptions.

3.3 Evaluate Rate Increase Options

Forecast rate increases and recommend the structure needed to meet operating requirements, capital improvements, regulatory obligations, and reserve funding levels. Evaluate the financial impact of various rate increase alternatives, such as phasing in rate increases over a number of years. For each rate scenario, assess the sensitivity of the projected results to changes in key variables.

Task 3 Deliverables Include:

- Development of 10-year financial projections to evaluate alternatives
- Evaluation of alternative rate increase scenarios

TASK 4. UPDATE GUIDING PRINCIPLES FOR WATER RATES

Consultant will work with the City's project team to identify key principles to guide development of the water rates. Consultant will use these guiding principles to compare rate alternatives to help identify the best options for consideration. Some potential guiding principles may include, but are not limited to, developing rates that are:

- Fair and equitable to all customer classes
- Tailored to each customer class
- Generate adequate revenues
- Promote conservation to support the City's water conservation goals
- Easy and cost-effective to implement and administer
- Compatible with City's utility billing system
- Understandable to ratepayers and convey a conservation message
- Flexible and can easily be adjusted in future years as needed to help the achieve different levels of water supply cutbacks while maintaining financial stability

Task 4 Deliverables Include:

- List of updated guiding principles for water rates

TASK 5. COST OF SERVICE ALLOCATION

5.1 Analyze Utility Billing Data

Consultant will evaluate current and historical utility billing data and usage data obtained from the City to determine reasonable estimates of demand to use in developing rates.

5.2 Allocate Costs to Rate Parameters

Consultant will allocate revenue recovery targets identified in the financial plan to appropriate rate components to determine the underlying unit charges that will be used to calculate rates. Consultant will allocate costs to fixed and variable cost categories and allocate variable costs based on peaking factors, source of supply, and the cost of conservation programs (as appropriate). The variable cost allocation will serve as the basis for the City's volume rate and potential tiered rates. Rates will be designed to ensure equity between different types of customer classes and comply with the substantive requirements of Proposition 218.

Task 5 Deliverables Include:

- Analysis of utility billing data
- Description of each customer type and the benefits received from the City's water system
- Detailed cost allocations supporting development of rates

TASK 6. RATE AND FEE DESIGN

6.1 Conduct Survey of Regional Rates

Consultant will review and summarize water rates and fees of other regional and/or comparable agencies. This will include a comparison of customer classes and rate structures. Consultant will summarize results in easily understandable tables and/or charts.

6.2 Identify and Evaluate Rate Structure Modifications or Alternatives

Consultant will identify potential rate structure modifications or alternatives that could help improve rate equity. Consultant will discuss pros and cons of different rate structure options and their general impacts on different types of customers and work with the City's project team to evaluate and hone rate structure modifications and/or alternatives. Modifications will include, but are not limited to:

- Changes to the overall level of fixed vs. variable revenue recovery
- Potential adjustments to the fixed charges for each meter size
- Potential modifications to improve equity between rates from different customer classes
- Potential development of various tiered water quantity rate alternatives: tier alternatives may include changes to a) the number of water rate tiers, b) tier breakpoints, and c) tier steepness, or the differential in rates between lower and higher tiers

- Modifications based on industry standards such as guidelines from the American Water Works Association
- Revisions to comply with California Urban Water Conservation Council best management practices for retail conservation pricing

6.3 Evaluate Drought Rate Response

Consultant will evaluate the impacts of different levels of required cutbacks in water demand in response to a drought. Consultant will develop rate recommendations to help the City achieve the required cuts to water use while ensuring adequate fixed revenue recovery. Consultant's recommendations will include phased escalating drought rate responses in response to clear trigger points.

6.4 Develop Preliminary and Final Rate Recommendations with City Input

Based on the evaluation of rate structure alternatives and the financial plan update, Consultant will develop draft rate alternatives for City input. Final rate recommendations will be designed to:

- Fund the water utility's long-term costs of providing service
- Be fair and equitable to all customers
- Achieve City objectives
- Be easy to understand and administer
- Comply with the substantive requirements of Proposition 218

6.5 Evaluate Rate Impacts on a Range of City Customers

Consultant will calculate the impacts of rate alternatives on a range of City customers. Consultant will discuss additional rate structure adjustments that may reduce the impact on certain customers, if warranted.

Task 6 Deliverables Include:

- A survey of regional water rates
- Evaluation of rate structure alternatives
- Evaluation of proposed rate changes on customers
- Meeting #2 (Progress Meeting): Meet with City to present findings, discuss alternatives, gain input, and develop preliminary and final rate structure recommendations

TASK 7. DRAFT AND FINAL REPORTS AND FINANCIAL MODEL

7.1 Prepare a Draft and Final Report

Consultant will develop a draft report summarizing key background issues, study objectives, findings, assumptions, draft recommendations, alternatives, impacts on ratepayers, and the rate and fee surveys. The report will clearly explain the rationale for recommendations. Consultant will submit the draft report for City review and feedback. Consultant will incorporate input from the City into a corrected draft and provide the final report to the City with printed and electronic copies.

7.2 Develop User-Friendly Financial Model

Consultant will develop a user-friendly financial model in Excel designed to be used by City staff to update financial projections, evaluate "what if" scenarios and their impacts on finances and rates, and track financial results. Consultant will provide a model that is straightforward and avoids unnecessary complexity. Consultant will work with City staff to ensure the model is easy to update and meets the City's needs and objectives.

Task 7 Deliverables Include:

- Draft report
- Final report
- User-friendly financial model to evaluate financial and rate scenarios and track results

TASK 8. IMPLEMENTATION

8.1 Implementation Strategy

Consultant will work with the City to develop an implementation strategy for approval of the water rates study final recommendations. The implementation strategy will include a timeline and proposed activities to receive input and approval from City staff, the Finance Committee, community members, and City Council. All materials used for workshops with the public will be provided to staff ahead of time.

8.2 Proposition 218 Assistance

Consultant will identify substantive and procedural requirements for Proposition 218 and discuss requirements and options with City staff. As directed by the City, Consultant will draft or assist in drafting the required Proposition 218 notice. Notice will go beyond the minimum legal requirements and provide clear and concise explanation of the reasons for any rate adjustments as well as any actions the City has taken to help reduce costs.

8.3 Presentation of Final Results

Consultant will present findings, key alternatives, and preliminary recommendations to the Finance Committee and the full City Council for input and guidance. Consultant will develop PowerPoint presentations summarizing key study objectives, findings, draft recommendations, financial and rate alternatives, and impacts on a range of customers. Consultant will make up to three presentations, as needed, to the following groups: a presentation to the Finance Committee, a presentation to City Council, and the Proposition 218 hearing presentation.

Task 8 Deliverables Include:

- Implementation strategy
- Proposition 218 assistance
- Meeting #3: Presentation of draft recommendations at a Community Workshop
- Meeting #4: Presentation of draft final recommendations at a Community Workshop
- Meeting #5: Presentation of Final Recommendations to City Council
- Meeting #6: Proposition 218 presentation

EXHIBIT B

Schedule of Charges/Payments

Provided below is a breakdown of Consultant's budget by task.

TASK	Estimated Hours	D. Dove @ $245/hr	M. DeGroot @ $145/hr	Total Cost
TASK 1. PROJECT INITIATION & DATA COLLECTION	9	2	7	$1,505
TASK 2. REVENUE REQUIREMENT	24	8	16	$4,280
TASK 3. FINANCIAL PLAN	30	10	20	$5,350
TASK 4. UPDATE GUIDING PRINCIPLES FOR WATER RATES	12	4	8	$2,140
TASK 5. COST OF SERVICE ALLOCATION	34	10	24	$5,930
TASK 6. RATE AND FEE DESIGN	31	6	25	$5,095
TASK 7. DRAFT AND FINAL REPORTS AND FINANCIAL MODEL	47	12	35	$8,015
TASK 8. IMPLEMENTATION	64	22	42	$11,480
TOTAL ESTIMATED HOURS	251	74	177	$43,795
ESTIMATED DIRECT EXPENSES				
Travel/copies/binding/phone/fax/mail/miscellaneous				$1,000
Subtotal Estimated Expenses				$1,000
TOTAL PROJECT COSTS				$44,795

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detained progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant. This is a time-and-materials contract.

Consultant Billing Rate Schedule - 2017

Professional Services

Financial Analyst I .....$105 per hour
Financial Analyst II .....$125 per hour
Financial Analyst III .....$145 per hour
Senior Financial Analyst .....$175 per hour
Senior Consultant .....$205 per hour
Principal Consultant .....$245 per hour

* The above rates will be in effect through the duration of the Agreement.

Consultant rates include all overhead and indirect costs and Consultant will not charge for administrative support services and internal computer time. Expert witness, legal testimony, or other special limited assignment will be billed to the City at one and one-half times the Consultant's hourly rate.

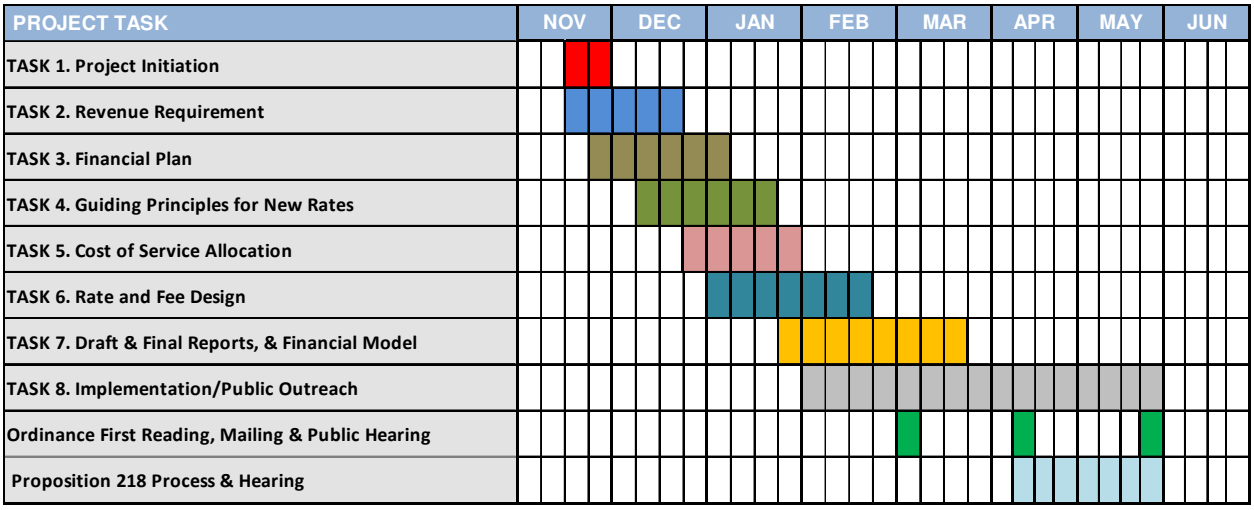
Subconsultants will be billed at cost plus ten (10) percent. Word processing and computer-assisted services related to official statement production will be charged as direct expenses at $60 per hour. Other reimbursable direct expenses incurred on behalf of the City will be billed at cost plus ten (10) percent. These reimbursable costs include, but are not limited to:

- Travel, meals, lodging
- Long distance telephone and fax
- Printing and report binding
- Special statistical analysis
- Outside computer services
- Bond ratings
- Automobile mileage
- Messenger services and mailing costs
- Photocopying
- Graphic design and photography
- Special legal services
- Legal advertisements

EXHIBIT C

Activity Schedule

The schedule of completion for the task involved with this agreement are listed below. Consultant will update the schedule in consultation with the City during project initiation.



Note: Individual project milestones will be established based on consultation with the City.

EXHIBIT D

Insurance Requirements

Please refer to the insurance requirements listed below. Those that have an "X" indicated in the space before the requirement apply to Contractor's or Consultant's Agreement.

Contractor or Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this Exhibit C. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor's or Consultant's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

___ Coverage at least as broad as Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

_X__Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

___ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

_X__ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than **$1,000,000** per accident for bodily injury and property damage.

___ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than **$5,000,000** per accident for bodily injury and property damage.

___ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

_X__ Insurance appropriates to the Contractor or Consultant's profession, with limit no less than **$1,000,000** per occurrence or claim, **$2,000,000** aggregate

___ (If Design/Build), with limits no less than **$1,000,000** per occurrence or claim, and **$2,000,000** policy aggregate.

___ Insurance appropriates to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

__X__ Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Contractor or Consultant makes the following certification, required by section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

_____

Contractor/Consultant Signature

Builder's Risk (Course of Construction):

___ Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

Surety Bonds:

___ Contractor shall provide the following Surety Bonds:
1. Bid Bond
2. Performance Bond
3. Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Contractor's or Consultant's Pollution Legal Liability:

___ Contractor's or Consultant's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than $**1,000,000** per occurrence or claim and **$2,000,000** policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

***Additional Insured Status*:**

The insurance policies are to contain, or be endorsed to contain the following provision:

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor or Consultant or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Contractor's or Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

***Primary Coverage*:**

The insurance policies are to contain, or be endorsed to contain the following provision:

> For any claims related to this contract, the **Contractor's or Consultant's insurance coverage shall be primary insurance** as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Contractor's or Consultant's insurance and shall not contribute with it.

Builder's Risk (Course of Construction Insurance) (applicable to Construction Contracts only)

Contractor or Consultant may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage **shall name the City as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

***Notice of Cancellation, Suspension or Otherwise Voiding Policies*:**

Each insurance policy required above shall contain, or be endorsed to contain **that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice** by certified mail, return receipt requested to the City.

***Waiver of Subrogation*:**

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of

the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation Policy shall be endorsed with a waiver of subrogation** in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

***Deductibles and Self-Insured Retentions ("SIR")*:**

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

***Acceptability of Insurers*:**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

Claims Made Policies*: *(note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of contract of work.**

3. If coverage is canceled or non-renewed, and not replaced **with another claims-made policy form with a Retroactive Date prior to** the contract effective date, the Contractor or Consultant must purchase "extended reporting" coverage for a minimum of **five (5) years** after completion of work.

4. A copy of the claims reporting requirements must be submitted to the City for review.

5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

***Subcontractors*:**

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

***Verification of Coverage*:**

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

***Failure to Comply*:**

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

***Applicability of Coverage*:**

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

CITY OF MILPITAS
PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into as of November 21, 2017 by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City"), and Crocker & Crocker, a California Corporation with its principal place of business at <INSERT ADDRESS> (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

Water Rates Community Engagement Program (hereinafter referred to as "the Project").

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit "A."

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B."

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of $40,000.00. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or

the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. Time of Performance.

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon receipt of written notice from the City to proceed ("Notice to Proceed"). Consultant shall complete the services required hereunder within 180 days from the Notice to Proceed. The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Consultant

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit "D" (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel reasonably approved by the City), indemnify and hold the City, its officials, officers, employees, agents and volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims') in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents or volunteers.

b. Additional Indemnity Obligations. Consultant shall defend, with counsel of City's choosing and at Consultant's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against the City, its officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the City, its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse City for the cost of any settlement paid by the City, its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for the City's attorney's fees and costs, including expert witness fees. Consultant shall reimburse the City, its officials, officers, employees, agents and volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein

provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents and volunteers.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws, if applicable. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Section 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Sections 1777.1).

b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California.

16. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination

occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

17. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

18. Organization

Consultant shall assign Douglas R. Dove as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

19. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

20. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:	CONSULTANT:
City of Milpitas	Crocker & Crocker
455 E. Calaveras Boulevard	
Milpitas, California 95035	
Attn: Tony Ndah, Public Works	

and shall be effective upon receipt thereof.

21. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

22. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

23. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

24. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

25. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

26. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

27. Time of Essence

Time is of the essence for each and every provision of this Agreement.

28. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

29. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall

have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MILPITAS AND CROCKER & CROCKER

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

CITY OF MILPITAS	**CROCKER & CROCKER**
Approved By:	*Approved By:*
_____	_____
Steve J. Pangelinan	Signature
Acting City Manager	<Title>
_____	_____
Date	Date
Approved As To Form:	
_____	
Christopher J. Diaz	
City Attorney	

EXHIBIT A

Scope of Services

TASK 1: INSIGHTS & EVALUATION

Prior to developing the public outreach plan, Consultant will conduct a kick off meeting with the City to gain additional insights to support and validate substantive recommendations within the plan.

Kick Off Meeting *(Team Meetings)* – Consultant will hold a kick off meeting with the City as the first step of this process. Consultant will discuss City challenges and opportunities, learn about the City's communications methods and internal resources and determine goals and desired outcomes. Consultant will integrate learnings from kickoff meeting into the planning process.

Deliverables

- Planning and preparation for one kick off meeting
- Facilitate one kick off meeting
- Recap for integration into public outreach plan

TASK 2: COMMUNICATIONS PLANNING

Consultant will prepare a public outreach plan to guide stakeholder engagement and public outreach based on Consultant's analysis and Prop 218 expertise. The plan will include the following components:

Public Outreach Plan

- **Situation Analysis:** This will be a summary about the City, its mission and situation at hand. It will summarize Consultant's preliminary findings and will address City's challenges and opportunities.
- **Goal:** The goal identifies what City wants to achieve. Goals will be long-term and broad.
- **Objectives:** Objectives will be short-term and measureable. Goals will define the desired attitudes, behaviors and opinions among various audiences.
- **Strategies:** Strategies will describe how Consultant will work with City to meet the objectives.
- **Tactics:** Tactics are the "how-to" activities and/or tools that fall within the strategies.
- **Timeline:** The plan will also include an implementation timeline with measurement milestones to keep activities on track.

Deliverables

- Development of a public outreach plan, which includes up to two rounds of edits.

TASK 3: IMPLEMENTATION & ENGAGEMENT

Consultant will use the public outreach plan to guide the implementation of stakeholder engagement and public outreach. Stakeholder engagement and public outreach will be flexible based on the rate study and public outreach plan, and will include the following components:

1. Stakeholder Outreach
Consultant will use a City provided stakeholder database to conduct outreach and to engage and inform key stakeholder organizations about the community meetings and water rate plan.

Deliverables
- Communications with key stakeholders about community meetings
- Provide stakeholders with materials as needed

2. Outreach Materials
Consultant will develop core communications materials for use in outreach efforts. In addition, the material will help the City team members and City customer service staff share the complex information in a clear, consistent, easy-to understand manner. This approach will help the City communicate the facts, control messaging and mitigate potential sharing of misinformation among community members. City will pay for the printing and postage of outreach materials.

- Rate setting process
- Costs of water service and maintenance and need for rate adjustment.
- City's financial state and consequences should the rate proposal fail.
- City's/customers responsibility to support the maintenance and operations of the water system for its community.

Consultant will work with the City to develop and design the following materials to support the Prop 218 outreach process:

Deliverables
1. Website content (up to three updates)
2. Meeting notification mailer(s) for first community meeting
3. Edit presentation materials for first community meeting (PPT, boards, handouts, etc.)
4. Develop meeting recap of first community meeting
5. Meeting notification mailer(s) for second community meeting
6. Edit presentation materials for second community meeting (PPT, boards, handouts, etc.)
7. Develop meeting recap of second community meeting

3. Prop 218
Consultant will provide strategy and oversight, edit, design and oversee printing and mailing of Prop 218 rate proposal. Material will be distributed 45 days prior to the public hearing.

4. Community Workshops
Consultant will work with City to distribute educational materials and conduct community meetings to inform and engage residents before the rate study and after rate has been set. Consultant will work with City to inform all customers about why it's important to them, why the rate adjustment is necessary and the potential consequences if the Prop 218 proposal fails.

Deliverables
- Includes facilitation/set up of public workshops about rate increases (2)

EXHIBIT B

Schedule of Charges/Payments

Provided below is a breakdown of Consultant's budget for this project.

- Consultant will bill at an hourly rate according to the following fee structure. The scope will not exceed the budget of $40,000 without advance notice and approval from client.

    - President: $195
    - Project Director $160
    - Project Manager $130

- Cost estimate does not include services outside the scope as described. Any items/tasks outside of the budgeted scope will be billed on an hourly basis.
- Copy and design fees based on two rounds of revisions after presentation of first draft.

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detained progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant. This is a time-and-materials contract.

EXHIBIT C

Activity Schedule

The schedule of completion of the tasks for this agreement will be based on a six-month project. Activities extending past that period will be subject to new cost estimates, if applicable.

EXHIBIT D

Insurance Requirements

Please refer to the insurance requirements listed below. Those that have an "X" indicated in the space before the requirement apply to Contractor's or Consultant's Agreement.

Contractor or Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this Exhibit C. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor's or Consultant's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

___ Coverage at least as broad as Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

_X__ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

___ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

_X__ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than **$1,000,000** per accident for bodily injury and property damage.

___ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than **$5,000,000** per accident for bodily injury and property damage.

___ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

_X__ Insurance appropriates to the Contractor or Consultant's profession, with limit no less than **$1,000,000** per occurrence or claim, **$2,000,000** aggregate

___ (If Design/Build), with limits no less than **$1,000,000** per occurrence or claim, and **$2,000,000** policy aggregate.

___ Insurance appropriates to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

__X__ Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Contractor or Consultant makes the following certification, required by section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

_____

Contractor/Consultant Signature

Builder's Risk (Course of Construction):

___ Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

Surety Bonds:

___ Contractor shall provide the following Surety Bonds:
1. Bid Bond
2. Performance Bond
3. Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Contractor's or Consultant's Pollution Legal Liability:

___ Contractor's or Consultant's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than $**1,000,000** per occurrence or claim and **$2,000,000** policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

***Additional Insured Status*:**

The insurance policies are to contain, or be endorsed to contain the following provision:

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor or Consultant or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Contractor's or Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

***Primary Coverage*:**

The insurance policies are to contain, or be endorsed to contain the following provision:

> For any claims related to this contract, the **Contractor's or Consultant's insurance coverage shall be primary insurance** as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Contractor's or Consultant's insurance and shall not contribute with it.

Builder's Risk (Course of Construction Insurance) (applicable to Construction Contracts only)

Contractor or Consultant may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage **shall name the City as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

***Notice of Cancellation, Suspension or Otherwise Voiding Policies*:**

Each insurance policy required above shall contain, or be endorsed to contain **that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice** by certified mail, return receipt requested to the City.

***Waiver of Subrogation*:**

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of

the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation Policy shall be endorsed with a waiver of subrogation** in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

***Deductibles and Self-Insured Retentions ("SIR")*:**

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

***Acceptability of Insurers*:**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

Claims Made Policies*: *(note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of contract of work.**

3. If coverage is canceled or non-renewed, and not replaced **with another claims-made policy form with a Retroactive Date prior to** the contract effective date, the Contractor or Consultant must purchase "extended reporting" coverage for a minimum of **five (5) years** after completion of work.

4. A copy of the claims reporting requirements must be submitted to the City for review.

5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

***Subcontractors*:**

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

***Verification of Coverage*:**

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

***Failure to Comply*:**

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

***Applicability of Coverage*:**

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

RECORDING REQUESTED BY:
WHEN RECORDED RETURN TO:

CITY OF MILPITAS
455 E. Calaveras Boulevard
Milpitas, CA 95035-5411
ATTN: Engineering Department

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Exempt from recording fee, per Government Code Section 6103

CITY OF MILPITAS, CALIFORNIA

SUBDIVISION IMPROVEMENT AGREEMENT

Between

CITY OF MILPITAS

a California municipal corporation

and

Milpitas Phase I, LP,

A Delaware limited partnership

SUBDIVISION IMPROVEMENT AGREEMENT
MILPITAS PHASE I, LP

I. Parties and Date.

This Subdivision Improvement Agreement ("Agreement") is entered into as of this seventh (7th) day of November, 2017 by and between the City of Milpitas, a California municipal corporation ("City") and Milpitas Phase I, LP, a Delaware limited partnership ("Developer"). City and Developer are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties".

II. Recitals.

A. The Milpitas Housing Authority ("Housing Authority") is the owner of certain real property located in the City of Milpitas, County of Santa Clara, State of California, as shown on Exhibit A attached hereto and incorporated herein by reference (the "Property").

B. South Main Senior Lifestyles, LLC, a California limited liability company ("SMSL") and predecessor in interest to Developer with respect to the Phase One Development (as defined below) and City entered into a Disposition and Development Agreement with respect to the Property on August 18, 2009 ("Original DDA"), as amended by those parties by an amendment entered into on October 18, 2011 ("Original Amendment to DDA"). Those parties fully amended and restated that agreement in a First Amended and Restated Disposition and Development Agreement on November 19, 2013, and a Memorandum of the Disposition and Development Agreement was recorded in the Santa Clara County Recorder's Office, as Document No. 22457857 ("First Amended DDA"). Subsequent to entering into the First Amended DDA, City and SMSL entered into a series of Operating Memoranda (pursuant to Section 10.20 of the First Amended DA) to implement the terms thereof. For purposes of this Agreement, the Original DDA, the Original Amendment to DDA, the First Amended DDA and the Operating Memoranda shall be collectively referred to as the "DDA". Capitalized terms used but not defined herein shall have the meaning set forth in the DDA.

C. Among other things, the DDA provides for the development of the following:

1. The first phase of residential development ("Phase One Development") consists of a one hundred ninety-nine (199) unit "continuum of care" senior (62 years of age and older) housing rental development and related amenities, parking, landscaping, and public street, utility and infrastructure improvements. The Phase One Development includes ten (10) residential units available at an affordable housing cost to income-qualified very low-income households. The Phase One Development will be developed on the Phase One Parcel.

2. The second phase of residential development ("Phase Two Development") consists of one hundred ninety (190) apartment units for active, independent seniors (62 years of age and older), and related amenities, parking, landscaping and public street, utility, and infrastructure improvements. The Phase Two Development includes thirty-eight (38) residential

units available at an affordable housing cost to income-qualified very low-income households. The Phase Two Development will be developed on the Phase Two Parcel; provided, however, SMSL (or its successor in interest), as the developer of the Phase Two Development, will be required to obtain all necessary entitlements from City prior to commencement of construction of same.

Collectively, the Phase One Development and the Phase Two Development are referred to herein as the "Project".

D. On April 22, 2014, SMSL submitted to City an application for approval of a Vesting Minor Tentative Map (TP14-0001), Site Development Permit (SD14-0006), and Density Bonus (DB14-0001) for the Phase One Development for the Phase One Parcel, which is located within City as shown on and more particularly described in attached Exhibit B-1 and Exhibit B-2. The Vesting Minor Tentative Map was prepared on behalf of SMSL by Ruggeri-Jensen-Azar Civil Engineer, Planners and Surveyors.

E. SMSL's application for the Vesting Minor Tentative Map for the Phase One Development was deemed complete on October 3, 2014. On November 18, 2014, the Milpitas City Council conditionally approved SMSL's application for the Vesting Minor Tentative Map for the Phase One Development.

F. SMSL subsequently assigned to Developer all of SMSL's right, title, and interest under the DDA with respect to the Phase One Development pursuant to that certain *Assignment and Assumption of Disposition and Development Agreement (Phase One)* dated September 22, 2016, with said assignment and assumption being acknowledged by City in Operating Memorandum #2. SMSL retained all of its right, title and interest under the DDA with respect to the Phase Two Development. In accordance with said assignment and assumption, Developer shall have only those obligations with respect to the public improvements that are necessary to satisfy the conditions of approval imposed on the Phase One Development; and SMSL (or its successor in interest), as the developer for the Phase Two Development, shall have only those obligations with respect to the public improvements that are necessary to satisfy the conditions of approval that will be imposed on the Phase Two Development as part of the anticipated City entitlement process (which will include cost sharing obligations related to those public improvements that are constructed by Developer pursuant to this Agreement that benefit the Phase Two Development).

G. On September 27, 2017, an application for approval of a parcel map for the Phase One Development (Parcel Map) was approved by the City's Planning Commission, which, once recorded, will subdivide the Phase One Parcel to allow for the construction of the Phase One Development. If and at such time as SMSL (or its successor in interest) is ready to proceed with the Phase Two Development and obtains all necessary City entitlements, it is anticipated there will be a separate Subdivision Improvement Agreement for any remaining work and public improvements necessary to build out the Phase Two Development.

H. On November 7, 2017, concurrent with the City Council's approval of this Agreement, the City Council also approved that certain *Public Maintenance Agreement Between*

the City of Milpitas and Milpitas Phase I, LP ("Public Maintenance Agreement"), and that certain *Reimbursement Agreement Between the City of Milpitas and Milpitas Phase I, LP* ("Reimbursement Agreement"). As described more fully therein, the Public Maintenance Agreement sets forth Developer's obligations with respect to ongoing operation and maintenance of certain public improvements to serve the Project, and the Reimbursement Agreement sets forth the Parties' understanding with respect to anticipated reimbursement to Developer for the costs of installing sanitary sewer line improvements that will serve the Project as well as substantially benefit lands located within the broader Project vicinity.

I. Developer has not completed all of the work or made all of the Public Improvements for the Phase One Development (as defined below) as required by Title XI, Chapter 1, Section 7 of City's Municipal Code, the Subdivision Map Act (Gov. Code § 66410 *et seq*.) ("Map Act"), the conditions of approval for the Phase One Development, or other ordinances, resolutions, or policies of City requiring construction of improvements in conjunction with the subdivision of land.

J. Pursuant to Title XI, Chapter 1, Section 17 of City's Municipal Code and the applicable provisions of the Map Act, Developer and City enter into this Agreement for the timely construction and completion of the Public Improvements for the Phase One Development and the furnishing of the Security (as defined below) therefor, acceptable to the City Engineer and City Attorney.

K. Developer's execution of this Agreement and the provision of the Security are made in consideration of City's approval of the Parcel Map.

III. Terms.

1. Effectiveness. This Agreement shall only be effective if all four (4) of the following conditions are satisfied: (a) Developer provides City with Security of the type and in the amounts required by this Agreement; (b) Developer executes and records this Agreement in the Recorder's Office of the County of Santa Clara; (c) the City Planning Commission approves the Parcel Map; and (d) Developer records the Parcel Map in the Recorder's Office of the County of Santa Clara. The Parties acknowledge and agree that the recordation of the above-referenced Parcel Map and this Agreement shall be recorded simultaneously in connection with the contemplated conveyance of the Phase One Parcel as provided for in the DDA, and Developer shall not record the Parcel Map without adhering to the foregoing requirement to simultaneously record this Agreement. For purposes of this Agreement, the "Effective Date" shall be defined to mean the date upon which this Agreement and the Parcel Map are recorded. If the above described conditions are not satisfied, this Agreement shall not be effective, and shall terminate upon written notice by either City or Developer to the other Party that the above four conditions have not been satisfied.

2. Public Improvements. Developer shall construct or have constructed at its own cost, expense, and liability all improvements required by City as part of the conditions of approval for the Phase One Development, including but not limited to, all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic

controls, landscaping, street lights, and all other required facilities as shown in detail on the following plans, profiles, and specifications which have been prepared by or on behalf of Developer for the Phase One Development: Improvement Plan Nos. E-PI16-0002 (Offsite Sanitary Sewer Plans) and E-EN16-0149 (Offsite Improvement Plans) on file with City and as may be amended with City approval (collectively, "Public Improvements"). The estimated cost to construct the Public Improvements are more specifically described in the Engineer's Cost Estimates in Exhibit C, which is attached hereto and incorporated herein by this reference. Construction of the Public Improvements shall be Developer's obligation, and shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary or required by City to fully and adequately complete the Public Improvements.

2.1 Prior Partial Construction of Public Improvements. Where construction of any Public Improvements has been partially completed prior to this Agreement, Developer agrees to complete such Public Improvements or assure their completion in accordance with this Agreement.

2.2 Permits; Notices; Utility Statements. Prior to commencing any work hereunder, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the Public Improvements and performance of Developer's obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer.

2.3 Preapproval of Plans and Specifications. Developer is prohibited from commencing work on any Public Improvements until all plans and specifications for such Public Improvements have been submitted to and approved by the City Engineer, or his or her designee. Approval by the City Engineer shall not relieve Developer from ensuring that all Public Improvements conform with all other requirements and standards set forth in this Agreement.

2.4 Quality of Work; Compliance with Laws and Codes. The construction plans and specifications for the Public Improvements shall be prepared in accordance with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. Said Public Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and special amendments thereto on file with City, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

2.5 Standard of Performance. Developer and its contractors, if any, shall perform all work required to construct the Public Improvements under this Agreement in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they

shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

2.6 Alterations to Improvements. The Public Improvements as described in and as shown on Improvement Plan Nos. E-PI16-0002 and E-EN16-0149 and any subsequent Improvement Plans in connection therewith on file with City are understood to be only a general designation of the work and improvements to be done, and not a binding description thereof. All work shall be done and improvements made and completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation of the Public Improvements, it is determined that the public interest requires alterations in said Public Improvements, Developer shall undertake such design and construction changes as may be reasonably required by City. Any and all alterations in the plans and specifications for the Public Improvements to be completed may be accomplished without giving prior notice thereof to Developer's surety for this Agreement.

3. Maintenance of Public Improvements and Landscaping Prior to City Acceptance. City shall not be responsible or liable for the maintenance or care of the Public Improvements until City approves and accepts them. City shall exercise no control over said Public Improvements until accepted by City. Any use by any person of said Public Improvements, or any portion thereof, shall be at the sole and exclusive risk of Developer at all times prior to City's acceptance of said Public Improvements. Developer shall maintain all said Public Improvements in a state of good repair until they are completed by Developer and approved and accepted by City, and until the Security for the performance of this Agreement is released. Maintenance of the Public Improvements required hereunder shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements. It shall be Developer's responsibility to initiate all maintenance work required hereunder, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Public Improvements or their condition prior to acceptance.

4. Construction Schedule. Unless extended pursuant to Section 4.1 below of this Agreement, Developer shall fully and adequately complete or have completed the Public Improvements within thirty (30) months of the Effective Date of this Agreement.

4.1 Extensions. City may, in its sole and absolute discretion, provide Developer with additional time within which to complete the Public Improvements. It is understood that by providing the Security required under Section 13.0 *et seq*. of this Agreement, Developer and its surety consent in advance to any extension of time as may be given by City to Developer, and waive any and all right to notice of such extension(s). Developer's acceptance of an extension of time granted by City shall constitute a waiver by Developer and its surety of all

defense of laches, estoppel, statutes of limitations, and other limitations of action in any action or proceeding filed by City following the date on which the Public Improvements were to have been completed hereunder. In addition, as consideration for granting such extension to Developer, City reserves the right to review the provisions of this Agreement, including, but not limited to, the construction standards, the cost estimates established by City, and the sufficiency of the improvement Security provided by Developer, and to require adjustments thereto when warranted according to City's reasonable discretion.

4.2 Accrual of Limitations Period. Any limitations period provided by law related to breach of this Agreement or the terms thereof shall not accrue until Developer has provided the City Engineer with written notice of Developer's intent to abandon or otherwise not complete the required or agreed upon Public Improvements.

5. Grading. Developer agrees that any and all grading done or to be done in conjunction with construction of the Public Improvements shall conform to all applicable federal, state, and local laws, ordinances, regulations, and other requirements, including City's grading regulations. In order to prevent damage to the Public Improvements by improper drainage or other hazards, the grading shall be completed in accordance with the time schedule for completion of the Public Improvements established by this Agreement (subject to any approved extensions), and prior to City's approval and acceptance of the Public Improvements and release of the Security as set forth in Section 13.0 *et seq*. of this Agreement.

6. Utilities. Developer shall provide utility services, including water, power, gas, and telephone service to serve each parcel, lot, or unit of land within the Phase One Development in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the regulations, schedules and fees of the utilities or agencies providing such services. Except for commercial or industrial properties, Developer shall also provide cable television facilities to serve each parcel, lot, or unit of land in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the requirements of the cable company possessing a valid franchise with City to provide such service within City's jurisdictional limits. All new utilities shall be installed underground.

7. Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of construction of the Public Improvements, including, but not limited to, all plan check, design review, engineering, inspection, and other service fees, and any impact or connection fees established by City ordinance, resolution, regulation, or policy, or as established by City relative to the Phase One Development.

8. City Inspection of Public Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the Public Improvements, maintain reasonable and safe facilities and provide safe access for inspection by City of the Public Improvements and areas where construction of the Public Improvements is occurring or will occur.

9. Default; Notice; Remedies.

9.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if City determines there is a violation of any applicable federal, state, or local law, ordinance, regulation, code, standard, or other requirement with respect to the work required under this Agreement, City may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to promptly remedy the default or violation ("Notice"). Developer shall substantially commence the work required to remedy the default or violation within ten (10) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon City's issuance of the Notice, Developer and its surety shall be liable to City for all costs of construction and installation of the Public Improvements and all other administrative costs and other expenses as provided for in Section 10.0 of this Agreement.

9.2 Failure to Remedy; City Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to completion acceptable to City within the time frame contained in the Notice, City may complete all remaining work due under this Agreement, arrange for the completion of all remaining work, and/or conduct such remedial activity as, in its sole and absolute discretion, it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. City's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any or none of the required or agreed upon Public Improvements at the time of City's demand for performance. In the event City elects to complete or arrange for completion of the remaining work and improvements, City may require all work by Developer or its surety to cease in order to allow adequate coordination by City. Notwithstanding the foregoing, if conditions precedent for reversion to acreage can be met and if the interests of City will not be prejudiced thereby, City may also process a reversion to acreage and thereafter recover from Developer or its surety the full cost and expense incurred.

9.3 Other Remedies. No action by City pursuant to Section 9.0 *et seq*. of this Agreement shall prohibit City from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. City may exercise its rights and remedies independently or cumulatively, and City may pursue inconsistent remedies. City may institute an action for damages, injunctive relief, or specific performance.

10. Administrative Costs. If Developer fails to construct and install all or any part of the Public Improvements within the time required by this Agreement (subject to any approved extensions), or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to City for all administrative expenses, fees, and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

11. Acceptance of Improvements; As-Built or Record Drawings. If the Public Improvements are properly completed by Developer and approved by the City Engineer, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, the City Council shall be authorized to accept the Public Improvements. Upon the total acceptance of the Public Improvements by City, Developer shall file with the Recorder's Office of the County of Santa Clara a notice of completion for the accepted Public Improvements in accordance with California Civil Code section 3093. Issuance by City of occupancy permits for any buildings or structures located on the Phase One Parcel (as shown on the Parcel Map where the Phase One Development will be built) shall not be construed in any manner to constitute City's acceptance or approval of any Public Improvements. Notwithstanding the foregoing, City may not accept any Public Improvements unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the City Engineer for all such Public Improvements. The drawings shall be certified by the record engineer and shall reflect the condition of the Public Improvements as constructed, with all changes incorporated therein.

12. Warranty and Guarantee. Developer hereby warrants and guarantees all Public Improvements installed by such applicable Developer against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of all landscaping installed in connection with the Public Improvements in a vigorous and thriving condition reasonably acceptable to City, for a period of one (1) year following completion of the work and acceptance by City ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the Public Improvements installed by such Developer, in accordance with the then-current ordinances, resolutions, regulations, codes, standards, or other requirements of City, and to the approval of the City Engineer. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any Public Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following City's acceptance of the repaired, replaced, or reconstructed Public Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any Public Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

13. Security; Surety Bonds. Prior to execution of this Agreement, Developer shall provide City with improvement securities in the amounts and under the terms set forth below for the Public Improvements ("Security"). The amount of the Security shall be based on the City Engineer's approximation of the actual cost to construct the applicable Public Improvements, including the replacement cost for all landscaping, as shown in attached Exhibit C ("Estimated Costs"). If City determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer shall adjust the Security in the amount requested by City. Developer's compliance with this Section 13.0 *et seq*. shall in no way limit or modify Developer's indemnification obligation provided in Section 16.0 of this Agreement. After the original term of the surety bonds ends, the amount of the improvement security shall thereafter be adjusted

annually based on the Engineering News-Record Construction Price Index for the San Francisco-San Jose area in November of each year, with respect to the Phase One Development. Developer shall have an affirmative obligation to provide City with evidence of valid Security no later than November 30 of each year until all Public Improvements have been constructed.

13.1 Performance Improvement Security. To guarantee the faithful performance of the Public Improvements and all the provisions of this Agreement, to protect City if Developer is in default as set forth in Section 8.0 *et seq*. of this Agreement, and to secure Developer's guarantee and warranty of the Public Improvements, including the maintenance of all landscaping in a vigorous and thriving condition, Developer shall provide City a faithful performance improvement security, as part of the Phase One Development in the total amount of One Million Five Hundred and Seventy Five Thousand Dollars ($1,575,000) for those improvements shown in Improvement Plans E-EN16-0149 (Offsite Improvement Plans) and the total amount of One Million One Hundred Sixty Eight Thousand Dollars ($1,168,000) for those improvements shown in Improvement Plans E-PI16-0002 (Offsite Sanitary Sewer Plans), which sums shall be not less than one hundred percent (100%) of the Estimated Costs. The City Council may, in its sole and absolute discretion and upon recommendation of the City Engineer, partially release a portion or portions of the Security provided under this section as the Public Improvements are accepted by City, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Phase One Development. All Security provided under this section shall be reduced to ten percent (10%) based upon the Security's adjusted value for the Warranty period. All Security provided under this section shall be released at the end of the Warranty period, or any extension thereof as provided in Section 12 of this Agreement, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Phase One Development.

13.2 Labor & Material Improvement Security. To secure payment to the contractors, subcontractors, laborers, materialmen, and other persons furnishing labor, materials, or equipment for performance of the Public Improvements and this Agreement, Developer shall provide City a labor and materials improvement security, as part of the Phase One Development, in the total amount of One Million Five Hundred Seventy Five Thousand Dollars ($1,575,000) for those improvements shown in Improvement Plans E-EN16-0149 (Offsite Improvement Plans) and the total amount of One Million One Hundred Sixty Eight Thousand Dollars ($1,168,000) for those improvements shown in Improvement Plans E-PI16-0002 (Offsite Sanitary Sewer Plans), which sums shall be not less than one hundred percent (100%) of the Estimated Costs. The Security provided under this section may be released by written authorization of the City Engineer after six (6) months from the date City accepts the final Public Improvements. The amount of such Security shall be reduced by the total of any stop notice or mechanic's lien claims of which City is aware, plus an amount equal to twenty percent (20%) of any such claims for reimbursement of City's anticipated administrative and legal expenses arising out of such claims.

13.3 Additional Requirements. The surety for any surety bonds provided as Security hereunder shall have a current A.M. Best's rating of no less than A:VIII, shall be licensed to do business in California, and shall be satisfactory to City. As part of the obligation

secured by the Security and in addition to the face amount of the Security, Developer or its surety shall secure the costs and reasonable expenses and fees, including reasonable attorney's fees and costs, incurred by City in enforcing the obligations of this Agreement. Developer and its surety stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the Public Improvements, or the plans and specifications for the Public Improvements shall in any way affect its obligation on the Security.

13.4 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit D unless other forms are deemed acceptable by the City Engineer and the City Attorney, and when such forms are completed to the satisfaction of City, the forms and evidence of the Security shall be attached hereto as Exhibit D and incorporated herein by this reference.

14. Monument Security. Prior to City's execution of this Agreement, to guarantee payment to the engineer or surveyor for the setting of all subdivision boundaries, lot corners, and street centerline monuments for the Phase One Development in compliance with the applicable provisions of City's Municipal and/or Development Code ("Subdivision Monuments"), Developer shall deposit cash with City in the amount of Seven Thousand Five Hundred Dollars ($7,500), which sum shall not be less than one hundred percent (100%) of the costs of setting the Subdivision Monuments as determined by the City Engineer. Said deposit may be released by written authorization of the City Engineer after all required Subdivision Monuments are accepted by the City Engineer, City has received written acknowledgment of payment in full from the engineer or surveyor who set the Subdivision Monuments, and provided Developer is not in default of any provision of this Agreement or condition of approval for the Phase One Development.

15. Reserved.

16. Indemnification. Developer shall defend, indemnify, and hold harmless City, its elected officials, officers, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury, to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of such Developer, its personnel, employees, agents, or contractors in connection with or arising out of construction or maintenance of the Public Improvements, or performance of this Agreement by such Developer (including any such claims arising under the Prevailing Wage Law (as defined below)). This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any claim, demand, cause of action, liability, loss, damage, penalty, fine, or injury, to property or persons, including wrongful death, which is caused solely and exclusively by the negligence or willful misconduct of City and its elected officials, officers, employees, or agents as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or

termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, officers, employees, or agents.

16.1 Public Works Determination. Developer has been alerted to the requirements of California Labor Code Sections 1720 *et seq*. and 1770 *et seq*., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the work to be performed under this Agreement by Developer is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, Developer agrees to fully comply with such Prevailing Wage Laws. Developer shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon Developer and its contractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Section 1776), hours of labor (Labor Code Sections 1813 and 1815), public works contractor registration (Labor Code Sections 1725.5 and 1771.1) and debarment of contractors and subcontractors (Labor Code Sections 1777.1). It shall be the sole responsibility of Developer to determine whether to comply with Prevailing Wage Laws for any or all work required by this Agreement. As a material part of this Agreement, Developer agrees to assume all risk of liability arising from any decision not to comply with Prevailing Wage Laws for work required by this Agreement.

17. Insurance.

17.1 Types; Amounts. Developer shall procure and maintain, and shall require its contractors to procure and maintain, during construction of any Public Improvement by such Developer pursuant to this Agreement, insurance of the types and in the amounts described below ("Required Insurance"). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two (2) times the specified occurrence limit.

17.1.1 General Liability. Developer and its contractors shall procure and maintain occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than One Million Dollars ($1,000,000) per occurrence for bodily injury, personal injury, and property damage.

17.1.2 Business Automobile Liability. Developer and its contractors shall procure and maintain business automobile liability insurance, or equivalent form, with a combined single limit of not less than One Million Dollars ($1,000,000) per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any vehicle owned, leased, hired, or borrowed by the insured or for which the insured is responsible.

17.1.3 Workers' Compensation. Developer and its contractors shall procure and maintain workers' compensation insurance with limits as required by the Labor Code

of the State of California and employers' liability insurance with limits of not less than One Million Dollars ($1,000,000) per occurrence, at all times during which insured retains employees.

17.1.4 Professional Liability. For any consultant or other professional who will engineer or design the Public Improvements, liability insurance for errors and omissions with limits not less than One Million Dollars ($1,000,000) per occurrence, shall be procured and maintained for a period of five (5) years following completion of the Public Improvements. Such insurance shall be endorsed to include contractual liability.

17.2 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

17.3 Additional Insured; Separation of Insureds. The Required Insurance shall name City, its elected officials, officers, employees, agents, and volunteers as additional insureds with respect to work performed by or on behalf of Developer or its contractors, including materials, parts, or equipment furnished in connection therewith. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to City, its elected officials, officers, employees, agents, and volunteers.

17.4 Primary Insurance; Waiver of Subrogation. The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering City, its elected officials, officers, employees, agents, and volunteers. All policies for the Required Insurance shall provide that the insurance company waives all right of recovery by way of subrogation against City in connection with any damage or harm covered by such policy.

17.5 Certificates; Verification. Developer and its contractors shall furnish City with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by City before work pursuant to this Agreement can begin. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

17.6 Term; Cancellation Notice. Developer and its contractors shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on thirty (30) days' prior written notice to City.

17.7 Insurer Rating. Unless approved in writing by City, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least A:VIII.

18. Signs and Advertising. Developer understands and agrees to City's ordinances, regulations, and requirements governing signs and advertising structures. Developer hereby agrees with and consents to the removal by City of all signs or other advertising structures erected, placed, or situated in violation of any applicable City ordinance, regulation, or other requirement. Removal shall be at the expense of Developer and its surety. Developer and its surety shall indemnify and hold City free and harmless from any claim or demand arising out of or incident to signs, advertising structures, or their removal caused by such Developer.

19. Relationship Between the Parties. The Parties hereby mutually agree that neither this Agreement, any map related to the Phase One Development, nor any other related entitlement, permit, or approval issued by City for the Phase One Parcel shall operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of City.

20. General Provisions.

20.1 Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

20.2 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

20.3 Construction; References; Captions. It being agreed by the Parties or their agents having participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Developer include all personnel, employees, agents, and subcontractors of Developer, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

20.4 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

CITY OF MILPITAS	**DEVELOPER**
455 E. Calaveras Boulevard	Milpitas Phase I, LP
Milpitas, CA 92236	111 N. Post, Suite 200
Attn: Greg Chung, PE	Spokane, WA 99201
Interim Director of Engineering/City Engineer	Attn: Ryan Leong

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of seventy two (72) hours after deposit in the U.S. Mail.

20.5 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

20.6 Waiver. City's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or City's waiver of any breach of this Agreement, shall not relieve Developer of any of its obligations under this Agreement, whether of the same or similar type. The foregoing shall be true whether City's actions are intentional or unintentional. Developer agrees to waive, as a defense, counterclaim or set off, any and all defects, irregularities or deficiencies in the authorization, execution or performance of the Public Improvements or this Agreement, as well as the laws, rules, regulations, ordinances or resolutions of City with regards to the authorization, execution or performance of the Public Improvements or this Agreement.

20.7 Assignment or Transfer of Agreement. Developer shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without prior written consent of City. Any attempt to do so shall be null and void, and any assignee, hypothecatee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer. Unless specifically stated to the contrary in City's written consent and as documented in a recorded assignment and assumption agreement, any assignment, hypothecation, or transfer shall not release or discharge Developer from any duty or responsibility under this Agreement.

20.8 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

20.9 No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

20.10 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

20.11 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Santa Clara, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

20.12 Attorneys' Fees and Costs. If any arbitration, lawsuit, or other legal action or proceeding is brought by one Party against the other Party in connection with this Agreement or the Property, the prevailing Party, whether by final judgment or arbitration award, shall be entitled to and recover from the other Party all costs and expenses incurred by the prevailing Party, including actual attorneys' fees ("Costs"). Any judgment, order, or award entered in such legal action or proceeding shall contain a specific provision providing for the recovery of Costs, which shall include, without limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (a) post judgment motions and appeals, (b) contempt proceedings, (c) garnishment, levy, and debtor and third-party examination, (d) discovery, and (e) bankruptcy litigation. This section shall survive the termination or expiration of this Agreement.

20.13 Counterparts. This Agreement may be executed in counterpart originals, which taken together, shall constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, the day and year first above written.

CITY OF MILPITAS

By: _____

(signature)
Steve J. Pangelinan
Acting City Manager
City of MILPITAS

APPROVED AS TO FORM:

By:_____

(signature)
Christopher Diaz
City Attorney
City of MILPITAS

DEVELOPER:

MILPITAS PHASE I, LP,
a Delaware limited partnership

GENERAL PARTNERS:
WESTMONT DEVELOPMENT, LP, a California limited partnership

By: Westmont Manager GP, LLC, a California limited liability company
Its: General Partner

By:

Name: Andrew S. Plant
Its: Manager

By:

Name: Michael G. O'Rourke
Its: Manager

SRMJVV, LP, a Delaware limited partnership

By: Stone Rivard McGonigle Development, L.L.C., a Washington limited liability company
Its: General Partner

By:

Name:
Its: Authorized Member

By:

Name:
Its: Authorized Member

APPROVED AS TO SUFFICIENCY:

By: _____
(signature)
Greg Chung, PE
Interim Director of
Engineering/City Engineer
City of MILPITAS

NOTE: DEVELOPER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of)

On _____, before me, _____ a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT "A"

MAP OF PROPERTY

EXHIBIT "B"

MAP AND LEGAL DESCRIPTION OF PHASE ONE PARCEL

EXHIBIT "C"

ENGINEERING'S COST ESTIMATES

EXHIBIT "D"

IMPROVEMENT SECURITIES (SURETY BONDS)

As evidence of understanding the provisions contained in this Agreement, and of Developer's intent to comply with same, Developer has submitted the below described Security in the amounts required by this Agreement for the Public Improvements, and has affixed the appropriate signatures thereto:

PERFORMANCE BOND PRINCIPAL AMOUNTS FOR:

Off-site Improvements in the amount of $1,578,000 (Improvement Plan Nos. E-PI16-0002), and

Off-site Sanitary Sewer Improvements in the amount of $1,168,000 (Improvement Plan Nos. E-EN16-0149)

Surety: _____
Attorney-in-fact: _____
Address: _____
_____
_____

MATERIAL AND LABOR BOND PRINCIPAL AMOUNTS:

Off-site Improvements in the amount of $1,575,000 (Improvement Plan Nos. E-PI16-0002), and

Off-site Sanitary Sewer Improvements in the amount of $1,168,000 (Improvement Plan Nos. E-EN16-0149)

Surety: _____
Attorney-in-fact: _____
Address: _____
_____

_____

MONUMENT SECURITY (CD): $7,500

EXHIBIT “D”

BOND NO. _____
INITIAL PREMIUM: _____
SUBJECT TO RENEWAL

CITY OF MILPITAS

OFF-SITE IMPROVEMENTS

PERFORMANCE BONDS

(FOR PUBLIC IMPROVEMENTS ($1,575,000 and $1,168,000))

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California ("City") and _____ _____ ("Principal"), have executed an agreement for work consisting of, but not limited to, the furnishing all labor, materials, tools, equipment, services, and incidentals for all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities for Parcel Map No. _____ ("Public Improvements");

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain *Subdivision Improvement Agreement by and between the City of Milpitas and Milpitas Phase I, LP* dated November 7, 2017 ("Subdivision Improvement Agreement" or "SIA");

WHEREAS, the Subdivision Improvement Agreement is hereby referred to and incorporated herein by reference; and

WHEREAS, Principal is required by the Subdivision Improvement Agreement to provide a good and sufficient bond for performance of the Subdivision Improvement Agreement, and to guarantee and warranty the Public Improvements constructed thereunder.

NOW, THEREFORE, Principal and _____ ("Surety"), a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City in the sums of One Million Five Hundred and Seventy Five Thousand Dollars ($1,575,000) and One Million One Hundred Sixty Eight Thousand Dollars ($1,168,000), said sums being not less than one hundred percent (100%) of the total cost of the Public Improvements as set forth in the Subdivision Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such, that if Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, agreements, guarantees, and warranties in the Subdivision Improvement Agreement and any alteration thereof made as therein provided, to be kept and performed at the time and in the manner therein specified and in

all respects according to their intent and meaning, and to indemnify and save harmless City, its officers, employees, and agents, as stipulated in the Subdivision Improvement Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Subdivision Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

This bond is executed and filed to comply with Section 66499 *et seq*. of the Government Code of California as Security for performance of the Subdivision Improvement Agreement and Security for the one-year guarantee and warranty of the Public Improvements.

IN WITNESS WHEREOF, the seal and signature of the Principal is hereto affixed, and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at _____, this _____ day of _____, _____.

_____	
_____	
Principal	Surety
By: _____	By: _____
President	Attorney-in-Fact
_____	_____
(print name)	(print name)

NOTE: APPROPRIATE NOTARIAL ACKNOWLEDGMENTS OF EXECUTION BY PRINCIPAL AND SURETY, AND A COPY OF THE POWER OF ATTORNEY TO LOCAL REPRESENTATIVES OF THE BONDING COMPANY MUST BE ATTACHED TO THIS BOND.

BOND NO. _____
INITIAL PREMIUM: _____
SUBJECT TO RENEWAL

CITY OF MILPITAS

PUBLIC IMPROVEMENTS FOR PHASE ONE DEVELOPMENT

LABOR AND MATERIAL BOND

(FOR PUBLIC IMPROVEMENTS ($1,575,000 and $1,168,000))

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California ("City") and _____ _____ ("Principal"), have executed an agreement for work consisting of, but not limited to, the furnishing all labor, materials, tools, equipment, services, and incidentals for all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities for Parcel/Tract Map No. _____ ("Public Improvements");

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain *Subdivision Improvement Agreement by and between the City of Milpitas and Milpitas Phase I, LP* dated November 7, 2017 ("Subdivision Improvement Agreement" or "SIA");

WHEREAS, the Subdivision Improvement Agreement is hereby referred to and incorporated herein by reference; and

WHEREAS, Principal is required to furnish a bond in connection with the Subdivision Improvement Agreement providing that if Principal or any of its subcontractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for, or about the performance of the Public Improvements, or for any work or labor done thereon of any kind, or for amounts due under the provisions of Title 15 (commencing with section 3082) of Part 4 of Division 3 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney's fee in case suit is brought on the bond.

NOW, THEREFORE, Principal and _____ ("Surety"), a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the Public Improvements, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to the Public Improvements to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the Principal, the sum of One Million Five Hundred Seventy Five Thousand Dollars ($1,575,000) and One Million One Hundred Sixty Eight Thousand

Dollars ($1,168,000), said sums being not less than one hundred percent (100%) of the total cost of the Public Improvements under the terms of the Subdivision Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Public Improvements, or for work or labor thereon of any kind, or fail to pay any of the persons named in California Civil Code Section 3181, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

This bond is executed and filed to comply with Section 66499 *et seq*. of the California Government Code as security for payment to contractors, subcontractors, and persons furnishing labor, materials, or equipment for construction of the Public Improvements or performance of the Subdivision Improvement Agreement. It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Subdivision Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

IN WITNESS WHEREOF, the seal and signature of the Principal is hereto affixed, and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at _____, this _____ day of _____, _____.

_____	_____
Principal	Surety
By: _____	By: _____
President	Attorney-in-Fact
_____	_____
(print name)	(print name)

NOTE: APPROPRIATE NOTARIAL ACKNOWLEDGMENTS OF EXECUTION BY PRINCIPAL AND SURETY, AND A COPY OF THE POWER OF ATTORNEY TO LOCAL REPRESENTATIVES OF THE BONDING COMPANY MUST BE ATTACHED TO THIS BOND.

RECORDING REQUESTED BY:
City of Milpitas

WHEN RECORDED RETURN TO:

CITY OF MILPITAS
455 E. Calaveras Boulevard
MILPITAS, CA 95035-5411
ATTN: Engineering Department

(SPACE ABOVE FOR RECORDER'S USE)

APNs: 086-22-027, 086-22-028, 086-22-046, 086-22-047, and 086-22-048

PUBLIC STREET MAINTENANCE AGREEMENT

THIS PUBLIC STREET MAINTENANCE AGREEMENT ("Agreement") is made and entered into as of November 7, 2017 by and between MILPITAS PHASE I, LP, a Delaware limited partnership ("Developer") and CITY OF MILPITAS, a municipal corporation of the State of California ("City"). Developer and City may collectively be referred to herein as the "Party" or the "Parties".

RECITALS:

A. The Milpitas Housing Authority ("Housing Authority") is the owner of certain real property located in the City of Milpitas, County of Santa Clara, State of California, as shown on and more particularly described in Exhibit A-1 and Exhibit A-2 attached hereto and incorporated herein by reference (the "Property").

B. South Main Senior Lifestyles, LLC, a California limited liability company ("SMSL") and predecessor in interest to Developer with respect to the Phase One Development (as defined below) and City entered into a Disposition and Development Agreement with respect to the Property on August 18, 2009 ("Original DDA"), as amended by those parties by an amendment entered into on October 18, 2011 ("Original Amendment to DDA"), as fully amended and restated by those parties in a First Amended and Restated Disposition and Development Agreement on November 19, 2013, and a Memorandum of the Disposition and Development Agreement was recorded in the Santa Clara County Recorder's Office, as Document No. 22457857 ("First Amended DDA"). Subsequent to entering into the First Amended DDA, City and SMSL entered into a series of Operating Memoranda (pursuant to Section 10.20 of the First Amended DA) to implement the terms thereof. For purposes of this Agreement, the Original DDA, the Original Amendment to DDA, the First Amended DDA and the Operating Memoranda shall be collectively referred to as the "DDA". Capitalized terms used but not defined herein shall have the meaning set forth in the DDA.

C. Among other things, the DDA provides for the development of the following:

1. The first phase of residential development ("Phase One Development") consists of a one hundred ninety-nine (199) unit "continuum of care" senior (62 years of age and older) housing rental development and related amenities, parking, landscaping, and public street, utility and infrastructure improvements. The Phase One Development includes ten (10) residential units available at an affordable housing cost to income-qualified very low-income households. The Phase One Development will be developed on the Phase One Parcel.

2. The second phase of residential development ("Phase Two Development") consists of one hundred ninety (190) apartment units for active, independent seniors (62 years of age and older), and related amenities, parking, landscaping and public street, utility, and infrastructure improvements. The Phase Two Development includes thirty-eight (38) residential units available at an affordable housing cost to income-qualified very low-income households. The Phase Two Development will be developed on the Phase Two Parcel; provided, however, that SMSL (or its successor in interest) will be required to obtain all necessary entitlements from City prior to commencement of construction of the Phase Two Development.

Collectively, the Phase One Development and the Phase Two Development are referred to herein as the "Project".

D Subsequent to the approval of the First Amended DDA, on November 18, 2014 by adoption of Resolution No. 8420, the Milpitas City Council approved Vesting Minor Tentative Map No. TP14-0001, Site Development Permit No. SD14-0006, and Density Bonus No. DB14-0001 for the Phase One Development. On September 27, 2017, an application for approval of a parcel map for the Phase One Development (Parcel Map) was approved by the City's Planning Commission, which, once recorded, will subdivide the Phase One Parcel to allow for the construction of the Phase One Development, in substantial compliance with the Vesting Minor Tentative Map No. TP14-0001. As shown on the Parcel Map, there is land offered for dedication to City for public street purposes ("City Public Streets").

E. SMSL assigned all of its rights, title and interests under the DDA to Developer with respect to the Phase One Development pursuant to the terms of that certain *Assignment and Assumption of Disposition and Development Agreement* dated September 22, 2016, with said assignment and assumption being acknowledged by City in Operating Memorandum #2. . Subject to any further assignment by SMSL with respect to its interest in the Phase Two Development, SMSL remains the developer with respect to any improvements and obligations relating to the Phase Two Development and retains all of its title, rights and interest in the DDA with respect to the Phase Two Development.

F. Pursuant to the terms of the Subdivision Improvement Agreement ("SIA") entered into concurrently herewith by City and Developer, Developer will construct public streets as part of the Phase One Development, and Developer will be required to maintain said public streets as further set forth in the Conditions of Approval for the Phase One Development entitlements described above and more particularly described in this Agreement. As described more fully in the SIA, Developer is providing all necessary infrastructure and improvements to serve the Phase One Development in accordance with the Conditions of Approval, and portions of said infrastructure and improvements will also benefit the Phase Two Development. At such time as

SMSL (or its successor in interest) seeks and obtains the remaining entitlements and commences construction of the Phase Two Development as contemplated in the DDA, SMSL (or its successor in interest) will be obligated to provide all remaining necessary infrastructure and improvements to serve the Phase Two Development as set forth in conditions approved in connection therewith.

G. The Parties desire to enter into this Agreement to set forth the roles and responsibilities of the Parties relating to the maintenance of the City Public Streets depicted in attached Exhibit A-2 for the Phase One Development.

NOW, THEREFORE, for value consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Effectiveness. This Agreement shall only be effective if all three (3) of the following conditions are satisfied: (a) Developer executes and records this Agreement in the Recorder's Office of the County of Santa Clara; (b) the City Planning Commission approves the Parcel Map; and (c) Developer records the Parcel Map in the Recorder's Office of the County of Santa Clara. The Parties acknowledge and agree that the recordation of the above-referenced Parcel Map and this Agreement shall be recorded simultaneously in connection with the contemplated conveyance of the Phase One Parcel as provided for in the DDA, and Developer shall not record the Parcel Map without adhering to the foregoing requirement to simultaneously record this Agreement. For purposes of this Agreement, the "Effective Date" shall be defined to mean the date upon which this Agreement and the Parcel Map are recorded. If the above described conditions are not satisfied, this Agreement shall not be effective, and shall terminate upon written notice by either City or Developer to the other Party that the above three conditions have not been satisfied.

2. Grant of License. City grants Developer a non-exclusive license to maintain, repair, and replace those improvements to be constructed in, on, above, below, or within the City Public Streets as further depicted on Exhibit A-2, attached hereto and incorporated herein by reference (the "Public Street Improvements"). The Parties acknowledge that the Public Street Improvements once completed shall be dedicated to City. To the extent the depiction of the Public Street Improvements set forth in Exhibit A-2 varies from the actual Public Street Improvements constructed and dedicated to City, then Exhibit A-2 shall be modified to reflect the actual Public Street Improvements constructed and dedicated to City.

3. Party Status. For purposes of this Agreement, Developer shall be considered solely as a non-exclusive licensee and not as an agent or subsidiary of City; no possessory interest or right to own, lease, occupy or control the Public Street Improvements or the City Public Streets are granted herein in any way.

4. Developer Defined. For purposes of this Agreement, the term "Developer" shall include any transferee or successor-in-interest.

5. Maintenance Obligations of Public Street Improvements.

(a) Upon completion of the Public Street Improvements and dedication of the Public Street Improvements from Developer to City, Developer shall, at its sole cost and expense, fully and timely perform and satisfy any and all terms, conditions, and maintenance obligations of this Agreement. Developer shall, at its sole cost and expense, provide labor, supervision, supplies, materials, equipment, and any and all other tools and manpower necessary to clean, preserve, maintain and repair and replace the City Public Streets and Public Street Improvements, as further set forth herein. The maintenance services required herein are referred to collectively as the "**Maintenance Services**" (see attached Exhibit C) and shall be subject to City review and approval.

(b) Developer agrees and acknowledges that the City Public Streets, as depicted in Exhibit A-2, will be public streets and open to the public as solely determined by City. Nothing herein gives Developer the right to restrict, exclude, or in any manner prohibit any person from the City Public Streets. If Developer believes that any portion of the City Public Streets needs to be restricted or closed for public safety purposes to perform the Maintenance Services described herein, Developer shall obtain City's prior written approval of any restriction on access and also obtain City's prior written approval of the method of providing notice to the public and traffic handling.

(c) Developer and its employees, contractors, or agents shall have a non-exclusive right to enter into, over, and across the City Public Streets for the limited purpose of performing the Maintenance Services of the City Public Streets and Public Street Improvements subject to the approval requirements outlined in Exhibit C.

(d) Developer shall perform the Maintenance Services in full compliance with the maintenance standards set forth by City for other similar public streets maintained by City and as further set forth in this Agreement (the **"City Street Standards**"). All maintenance performed under this Agreement shall be subject to City review and approval. After completion of the Public Street Improvements and prior to dedication of the City Public Streets, including the Public Street Improvements, City and Developer shall promptly meet to discuss such maintenance obligations. Thereafter, City and Developer shall meet when requested by City to confirm the scope of the maintenance obligations being performed hereunder by Developer is consistent with City Standards. The costs of the Maintenance Services shall be exclusively borne solely by Developer (subject to the provisions of Subsection 5(k) below); provided, however, any costs associated with Capital Improvements for the Public Street Improvements shall be borne and paid by City except as provided in

Section 5(f) below and as further described in Exhibit C. Subject to Section 5(f) below, Capital Improvements is defined for purposes of this Section as any repair or replacement above and beyond the Maintenance Services set forth in this Agreement. In addition, if City elects to change or modify any aspect of the design of the Public Street Improvements or the landscaping of the Public Street Improvements after completion and dedication of the Public Street Improvements, the costs associated with such changes or modifications shall be borne and paid by City. In no way, shape, or form shall Developer receive any payments, tax credits or any form of compensation from City for the performance of the Maintenance Services required hereunder.

(e) Service Requests. Developer shall respond to all special service requests from City within forty-eight (48) hours. Special service requests can include any aspect of duty under the Maintenance Services, including graffiti abatement, the repair of vandalism (e.g., the scattering of broken glass), and pavement damage. All potential safety hazards or dangerous conditions as determined solely by City shall be addressed within the same day as when notice of same is received by Developer; all other repairs shall be worked within the regular maintenance schedule as soon as possible and shall commence within a maximum of forty-eight (48) hours after receipt of said notice.

(f) Scope of Work.

Developer shall furnish all supervision, labor, material, equipment and transportation required to maintain and/or repair the City Public Streets and the Public Street Improvements in a safe, clean, functional, and attractive condition throughout the Term (as defined below). All Maintenance Services shall be performed in accordance with all applicable procedures set forth in operating manuals and warranty documentation for the care and preservation of any Public Street Improvements, applicable maintenance standards of the Public Street Improvements, City Street Standards, and in substantial conformance with Exhibit C, and all applicable laws and regulations relating to maintenance and repairs of the Public Street Improvements. All Maintenance Services performed under this Agreement shall be subject to City review and approval, including repairs and/or replacement of the Public Street Improvements.

(g) Work Force.

i. Developer shall designate one qualified representative with experience in public street maintenance to (1) meet with City on a quarterly basis at the City Public Streets; (2) be available by telephone for any emergency; (3) schedule and coordinate maintenance and repairs required under this Agreement;

(4) coordinate and prepare pesticide and incident reports; and (5) address and respond to any questions or concerns that may arise during the performance of this Agreement.

ii. All Developer employees, agents, representatives, contractors or subcontractors ("**Work Force**") to perform Maintenance Services under this Agreement shall be personally presentable at all times. All Work Force shall be competent and qualified, and shall be U.S. citizens or have the legal right to work in the United States.

iii. All Work Force personnel shall be qualified to perform the duties assigned to them by Developer and possess the requisite licenses and necessary permits to perform such Maintenance Services. All Work Force personnel shall conduct themselves at all times in a courteous and businesslike manner.

(h) Days and Hours of Services.

Maintenance Services shall be performed on Monday, Tuesday, Wednesday, Thursday, and Friday between 8:00 a.m. and 5:00 p.m., unless agreed to otherwise by the Parties in writing.

(i) Materials.

All materials used in the Maintenance Services that are not standard materials used by City shall be approved in advance by City's Director of Public Works (Director) prior to usage as part of the Maintenance Services. Developer shall meet all agricultural licensing and reporting requirements in connection with its work performed hereunder.

(j) Compliance.

i. Developer shall comply with all applicable City rules, regulations, and policies relating to Public Street use, and special permitted public street activities at the City Public Streets. Unless explicitly authorized in this Agreement, nothing herein shall give Developer the authority to alter, revise, or otherwise restrict the public's use of the City Public Streets or the Public Street Improvements.

ii. Developer, or its contractor, shall be solely responsible for, and shall pay, any excise, taxes, fees, contributions, or charges applicable to the conduct of its business or which may be levied on the Maintenance Services hereunder.

iii. Once the City Public Streets have been accepted by City, Developer shall not make any improvements, alterations, additions, or changes to the Public Street Improvements other than normal maintenance as described herein and in Exhibit C and in

furtherance of providing agreed upon Maintenance Services, without obtaining City's prior written consent.

iv. Developer and/or its contractor, subcontractor, agent, or representative shall not store any equipment, materials, or supplies in, on or upon the City Public Streets or Public Street Improvements.

(k) Public Street Cost Sharing Acknowledgement. The Parties acknowledge and agree that Developer shall has the obligation to bear all of the costs and expenses associated with the performance of the maintenance obligations under this Agreement, pursuant to the terms of Condition 42 of Resolution No. 8420 of the City Council of the City of Milpitas ("Conditions of Approval"). Notwithstanding anything to the contrary in the foregoing, at such time as the Phase Two Parcel is developed with the Phase Two Development, Developer shall seek reimbursement from SMSL (or its successor in interest), as the developer of the Phase Two Development, and SMSL (or its successor in interest as to the Phase Two Development) shall be obligated to pay for an allocable fair share of the costs to install the City Public Streets and Public Street Improvements and to perform the Maintenance Services hereunder, as provided for in the DDA. Provided, however, the Parties further acknowledge and agree that City nor the Housing Authority shall have any such reimbursement obligation.

Accordingly, the Parties acknowledge this anticipated future cost sharing, and agree that a Notice in substantially the same form as attached Exhibit D shall be recorded against the Property concurrent with the recordation of this Agreement. Such Notice shall not be released or terminated without the consent of Developer or a successor in interest to the developer as to the Phase Two Development.

In no event shall City or the Housing Authority have any liability to Developer or any other parties for the events contemplated by this Notice. The Parties agree and acknowledge that in the event that a cost sharing agreement is not entered into between Developer and the developer of the Phase Two Development, then Developer and the developer of the Phase Two Development shall be jointly and severally liable (based on pro rata fair share obligations) for the Public Improvements Construction Expenses and Public Street Maintenance Expenses as such terms are defined in Exhibit D, and that Developer and the developer of the Phase Two Development shall be responsible for determining what constitutes said pro rata fair share and notifying City of same. Until such time as said agreement is reached between Developer and the developer of the Phase Two Development and City is notified of same, then City shall continue to look solely to Developer to cover the costs and expenses referenced above.

6. Damage or Destruction to Improvements.

In the event that the Public Street Improvements are damaged by fire or other casualty or event during the Term of this Agreement, Developer shall, at its sole cost within thirty (30) days, commence and diligently pursue to completion the repair, replacement or reconstruction of the Public Street Improvements.

7. Liens.

Developer shall keep the City Public Streets and Public Street Improvements free from any encumbrances or liens arising out of any work performed, materials furnished or obligations incurred by or for Developer; provided, however, that Developer may contest any such liens in good faith by appropriate proceedings. Developer shall promptly pay and discharge all claims for work or labor done, supplies furnished or services rendered at the request of Developer in connection with the work performed hereunder and shall keep the City Public Streets free and clear of all mechanics' and material liens in connection therewith. City shall have the right to post or keep posted on the City Public Streets, or in the immediate vicinity thereof any notices of non-responsibility for any construction, alteration or repair of the City Public Streets by Developer. If any such lien is filed, City may, but shall not be required to, upon written notice to Developer, take such action or pay such amount as may be necessary to remove such lien. Developer shall reimburse City for all reasonable sums paid by City under this Section within thirty (30) days after written notice is received from City of the amount expended.

8. Insurance of Developer.

(a) Occurrence Coverage Insurance. Before beginning any work under this Agreement, Developer 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 consisting of the construction of the Public Street Improvements and the ongoing maintenance of the City Public Streets and Public Street Improvements hereunder by Developer and its Work Force. Developer 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 City. Developer shall maintain the insurance policies required by this Section throughout the Term of this Agreement and shall produce copies of said policies to City upon demand. Verification of the required insurance shall be submitted to City prior to recordation of this Agreement.

(b) Subcontractors.

Developer shall include all contractors or subcontractors it retains to perform its obligations under this Agreement as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

(c) Workers' Compensation. Developer shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Developer in the performance of its responsibilities under this Agreement. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS ($1,000,000.00) per accident. The insurer shall waive all rights of subrogation against City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled, except after thirty (30) days' prior written notice has been given to City.

(d) Commercial General and Automobile Liability Insurance.

i. General requirements. Developer, 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 TWO MILLION DOLLARS ($2,000,000.00) 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 protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from Developer's performance, or failure to perform, its obligations under this Agreement, including the use of owned and non-owned automobiles.

ii. 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.

(e) Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

i. City and its officers, officials, agents, and employees (the "City Additional Insureds") shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed pursuant to this Agreement by or on behalf of Developer, including the insured's general supervision of Developer; products and completed operations of Developer with respect to the Public Street Improvements; premises owned, occupied, or used by Developer to the extent the same pertain to the performance of its obligations under this Agreement; and automobiles owned, leased, or used by Developer to the extent the same pertains to its obligation under this Agreement.

ii. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

iii. An endorsement must state that coverage is primary insurance with respect to City and City Additional Insureds, and that, except as otherwise provided herein, no insurance or self-insurance maintained by City shall be called upon to contribute to a loss under the coverage.

iv. Any failure of Developer to comply with reporting provisions of the policy shall not affect coverage provided to City and the City Additional Insureds.

v. An endorsement shall state that coverage shall not be suspended, voided, or canceled except after thirty (30) days' prior written notice has been given to City.

vi. Verification of Coverages.

Insurance is to be placed with insurers acceptable to the City Manager. Developer shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Agreement. 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.

Proof of insurance shall be either emailed in pdf format to: nhawk@ci.milpitas.ca.gov, or mailed to the following postal

address or any subsequent email or postal address as may be directed in writing by the Director of Public Works:

The City of Milpitas
Director of Public Works
Nina Hawk
1265 N. Milpitas Boulevard
Milpitas, CA 95035

vii. Insurance coverage levels under this Agreement may be modified by City, in its sole discretion and provided that such coverage levels are commercially reasonable, upon one (1) year's advance notice to Developer.

viii. Developer shall provide to City certificates of insurance upon acquisition and renewal of insurance coverage.

ix. In no event shall Developer be obligated to insure City or the City Additional Insureds with respect to any loss to the extent such loss is caused by the sole negligence or willful misconduct of City or the City Additional Insureds.

9. Duration.

The Term of this Agreement is perpetual unless otherwise terminated by agreement of both Parties in writing ("Term").

10. Right of City to Remedy Failure of Maintenance Obligation.

If Developer fails to comply with the provisions of this Agreement, then City may deliver written notice to Developer identifying the specific defects regarding the Maintenance Services performed with respect to the Public Street Improvements. Subject to Section 5(e) above, Developer shall have thirty (30) calendar days to correct City's concerns, provided that if such correction cannot be completed within such thirty (30) calendar day time period, then Developer shall be afforded a reasonable amount of additional time to correct such City's concerns provided Developer commences such correction during such thirty (30) calendar day time period and diligently pursues such correction. Notice provided by City shall specify the date Developer must remedy City's concerns in order to avoid action by City. If Developer disagrees in good faith with City's concerns, Developer shall notify City of such disagreement within seven (7) business days of receipt of such notice and the Parties shall discuss in good faith City's concerns and Developer's disagreement with such concerns. Notwithstanding the foregoing, if City determines an emergency situation exists which must be remedied immediately, then City shall provide written notice to Developer specifying the emergency situation must be remedied within twenty-four (24) hours or City may

remedy such emergency situation on its own and submit an invoice to Developer for immediate payment of City's actual costs to remedy said emergency.

If after notice from City, Developer fails to correct the specific defects identified in City's notice within the specified time period set forth above, City shall have the right to remedy the defects. City may retain, at its election its own contractors, or Developer's contractors, or other appropriate third party company to complete the work. Any costs incurred by City for maintenance of the City Public Streets shall be solely borne by Developer. City shall provide an invoice for the maintenance cost incurred by City. Developer shall remit payment to City within thirty (30) days from receipt of the invoice. The Parties agree that any maintenance undertaken by City under this Section shall not terminate the maintenance obligation of Developer hereunder. In the event of non-compliance with City's notice more than twice in any twelve (12) month period, or lack of prompt reimbursement, City retains the right to any collection remedies it may have according to law.

11. City's Costs of Maintenance a Lien.

If City incurs costs in restoring or maintaining the Public Street Improvements after following the procedure set forth above, City shall make demand on Developer for payment. If Developer fails to pay the costs incurred by City within thirty (30) days of the date demand was made, City may make the costs a lien upon the Phase One Parcel of the real property depicted in Exhibit A-2 then owned by Developer by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Santa Clara County. The notice shall state the fact that City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws simple interest at the rate of seven percent (7%) a year until paid.

12. Indemnification.

Developer hereby covenants and agrees to indemnify, defend, and hold City, its officers, agents, and employees harmless from and against any and all claims, damages (including damage to property and injury to persons), demands, losses, obligations, judgments, liabilities, costs and expenses (including, without limitation, attorneys' and other fees) (collectively, "Losses") arising from or in any way connected with or related to any of the following: (i) any lawsuit, arbitration, administrative proceeding or other legal action directly concerning Developer's and/or its agents' performance of the Maintenance Services of the Public Street Improvements and, (ii) any breach by Developer of any of its obligations under this Agreement. However, in no event shall Developer be obligated to defend or indemnify City with respect to Losses to the extent caused by the sole negligence or willful misconduct of City, its officers, agents, and employees.

(a) If any portion of the City Public Streets or any of the Public Street Improvements, or any portion of other City property is damaged by any of the activities conducted by Developer or its Work Force hereunder, Developer shall promptly, at its sole cost, repair any and all such damage and restore the City Public Street(s), Public Street Improvement(s) or any other part of the City property to substantially the same condition as it was prior to such damage, reasonable wear and tear excepted.

13. Validity.

If any one or more of the terms, provisions, promises, covenants, conditions or option provisions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, conditions and option provisions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

14. Notices.

Unless otherwise provided in this Agreement, all notices, demands, or other communications given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been given upon personal delivery or as of the second (2nd) business day after mailing in the United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows or to such other address or to such other person as either Party may designate:

City:
City Milpitas
Milpitas Boulevard, Fourth Floor
Milpitas, California 95035
Attention: Director of Public Works
Telephone: (408) 586-3000

Developer:
Milpitas Phase I, LP
111 N. Post, Suite 200
Spokane, WA 99201
Attn: Ryan Leong
Telephone: (509) 944-4557

15. Headings.

The titles or headings of the sections of this Agreement are not a part of the Agreement and shall have no effect upon the construction of or interpretation of this Agreement.

16. Binding Effect.

This Agreement, and the terms, provisions, promises, covenants, conditions and option provisions hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns.

17. Nondiscrimination.

Developer covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that this Agreement is made and accepted upon and subject to the following conditions:

(a) That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, national origin, ancestry, gender, disability or sexual orientation, in the assignment of obligations or hiring for the Maintenance Services on the City Public Streets and Public Street Improvements herein operated.

18. Exhibits. This Agreement includes the following Exhibits that are attached hereto and incorporated herein:

Exhibit A-1 and Exhibit A-2	Property
Exhibit B	Public Street Improvements Maintenance Functions
Exhibit C	Maintenance Services
Exhibit D	Notice of Cost Sharing Obligations

19. General Provisions.

(a) Hazardous Materials.

i. Developer covenants and agrees that it shall not cause any Hazardous Material (as defined by "Laws" below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the City Public Streets, nor expressly allow any of its Work Force to bring upon, keep, store, generate or dispose of in, or about the City Public Streets, except in compliance with applicable environmental laws. Developer agrees that during the Term of this Agreement, Developer shall not be in violation of any applicable federal, state or local law, ordinance or regulation relating to industrial hygiene, soil, water, or environmental conditions on, under or about the City Public Streets including, but not limited to,

Hazardous Material Laws. Developer further agrees that during the Term of this Agreement, there shall be no use, presence, disposal, storage, generation, release, or threatened release of Hazardous Materials by Developer or its Work Force on, from or under the City Public Streets in violation of any Hazardous Material Laws. Developer shall take reasonable precautions to eliminate any hazards relating to its activities hereunder on or about the City Public Streets and all Public Street Improvements.

ii. If, during its performance of the Maintenance Services as required hereunder, Developer or any of its Work Force causes the release of any Hazardous Materials in, on, under or about the City Public Streets or any other City property, Developer shall, promptly, at no expense to City, take any and all appropriate actions to return the City Public Streets or other City property affected thereby to the condition existing prior to such release and otherwise investigate and remediate the release in accordance with all applicable laws and requirements.

iii. Developer shall indemnify City from and against all claims or lawsuits during or after the Term of this Agreement relating to any release of Hazardous Materials caused by Developer or its Work Force as set forth in this Section 9(A) but shall have no obligation to indemnify City as a result of a release of Hazardous Materials not caused by Developer or its Work Force. The foregoing indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Materials and with the restoration of the City Public Streets to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and re-vegetation of the City Public Streets and the Public Street Improvements.

(b) Waiver. The waiver by one Party of any breach by any other Party of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.

(c) Entire Agreement. This Agreement, including all exhibits attached hereto, 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 a written amendment duly executed by the Parties to this Agreement.

(d) Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect and unimpaired by the holding.

(e) Compliance with Laws. Developer 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.

(f) Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of California.

(g) Venue. In the event that suit is 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 José, California.

(h) Time is Essence. Time is of the essence with respect to the performance of each and every provision of this Agreement.

(i) Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. A copy, original or facsimile with all signatures appended together shall be deemed a fully executed Agreement.

(j) Prevailing Wage. Developer shall carry out and shall cause its contractors to carry out the Maintenance Services in conformity with all applicable laws and regulations, including without limitation, all applicable federal and state labor laws and standards. To the extent applicable to the Maintenance Services, Developer and its subcontractors and agents shall comply with California Labor Code Section 1720 *et seq.* and regulations adopted pursuant thereto ("**Prevailing Wage Laws**") as it relates to the performance of the Maintenance Services within the City Public Streets and shall be responsible for carrying out the requirements of such provisions.

Developer has been alerted to the requirements of California Labor Code Sections 1720 *et seq*. and 1770 *et seq*., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the work to be performed under this Agreement by Developer is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, Developer agrees to fully comply with such

Prevailing Wage Laws. Developer shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon Developer and its contractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Section 1776), hours of labor (Labor Code Sections 1813 and 1815), public works contractor registration (Labor Code Sections 1725.5 and 1771.1) and debarment of contractors and subcontractors (Labor Code Sections 1777.1). It shall be the sole responsibility of Developer to determine whether to comply with Prevailing Wage Laws for any or all work required by this Agreement. As a material part of this Agreement, Developer agrees to assume all risk of liability arising from any decision not to comply with Prevailing Wage Laws for work required by this Agreement.

(k) No Lease. This Agreement (i) is not a lease and does not grant Developer any real property rights in the City Public Streets or Public Street Improvements, and (ii) shall not make Developer an agent for City.

(l) Ownership. City, as the fee owner of the City Public Streets, shall own the Public Street Improvements constructed under this Agreement upon acceptance. Nothing stated in this Agreement shall transfer any ownership rights or interests of the City Public Streets or Public Street Improvements from City to Developer.

(m) Conflict. In the event of any conflicts between the terms and conditions of this Agreement and the terms and conditions of other agreements, the terms of this Agreement shall prevail.

(n) Successor and Assigns. This Agreement shall inure to the benefit and binds each of the Parties' successors and assigns.

(o) Confidential Information. All City data, documents, discussions or other information developed or received by or for Developer in performance of this Agreement are confidential and must not be disclosed to any person or entity except as authorized in writing by City or as required by law ("Confidential Information"), provided however such Confidential Information may be disclosed to Developer's lenders, accountants, lawyers, insurers, representatives and any other advisors who shall be required under a written agreement to comply with this provision. Developer, its respective agents, directors, officers, employees, consultants, contractors, and subcontractors shall hold the Confidential Information in strict

confidence and not use on its own behalf or disclose such Confidential Information to any third party, unless required by law.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as set forth below.

Dated: _____

_____
THE CITY OF MILPITAS,
A municipal corporation under the
laws of the State of California

"CITY"

_____
Steve J. Pangelinan
Acting City Manager

APPROVED AS TO FORM:

_____
Name: Christopher Diaz
City Attorney

Approved as to Sufficiency:

By: _____

Name: Nina Hawk
Its: Director of Public Works

Dated: _____

DEVELOPER:

MILPITAS PHASE I, LP,
a Delaware limited partnership

GENERAL PARTNERS:
WESTMONT DEVELOPMENT, LP, a California limited partnership

By: Westmont Manager GP, LLC, a California limited liability company
Its: General Partner

By:_____
Name: Andrew S. Plant
Its: Manager

By:_____
Name: Michael G. O'Rourke
Its: Manager

SRMJVV, LP, a Delaware limited partnership

By: Stone Rivard McGonigle Development, L.L.C., a Washington limited liability company
Its: General Partner

By:
Name:_____
Its: Authorized Member

By:_____
Name:_____
Its: Authorized Member

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____,
Date *Here Insert Name and Title of the Officer*
personally appeared _____
Name(s) of Signer(s)
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____,
Date *Here Insert Name and Title of the Officer*
personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____,
Date *Here Insert Name and Title of the Officer*
personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

EXHIBIT "A-1"

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "A-2"

PLAT TO ACCOMPANY LEGAL FOR PROPERTY

EXHIBIT "B"

PUBLIC STREET MAINTENANCE FUNCTIONS

EXHIBIT "B"
PUBLIC STREET MAINTENANCE FUNCTIONS

Cedar Way and Costa Street Maintenance. Developer shall maintain all public improvements along and within Cedar Way and Costa Street. Maintenance activities shall include restoration and capital repairs necessary to meet City's standard of service as described more fully in the Agreement.

Limits: Cedar Way and Costa Street shall be privately maintained public streets. The limit of private maintenance on Cedar Way shall begin from the back of concrete valley gutter on the east side of S. Main Street to Costa Street and bordered by back of sidewalks on Cedar Way. The limit of private maintenance on Costa Street shall begin from Cedar Way to the Project's southerly limit and bordered by the back of sidewalk and railroad sound wall.

Scope: Maintenance of these public streets shall include but not be limited to AC pavement, sidewalk, street lights, inlets, bioretention areas, railroad sound wall, landscapes, trees, striping and signing. Maintenance activities shall be regularly performed to the following minimal standard levels:

(1) Roadbed. Restoration and repair of the surface and base within the roadbed extending from curb line to curb line. The Pavement Condition Index (PCI) shall be maintained above 70. The roadbed shall roadbed shall be inspected annually. PCI's below 70 shall be remediated within 4 months of inspection. Continuous vehicular access shall be maintained on all public streets.

(2) Roadside. The area between the roadbed and the outer right-of-way boundary line. Maintenance includes the cleaning of inlets, bioretention areas, gutters, culverts, restoring side slopes, removal of drifted material, drift prevention, erosion control work and maintenance of sound walls.

(3) Curb, Gutter, and Sidewalk. Inspection, repair, and replacement of curbs, gutters, sidewalks, and other facilities as necessary to keep them in a reasonably safe condition. Sidewalks shall be kept free of tripping hazards. Continuous pedestrian (ADA compliant) access shall be maintained on all public sidewalks.

(4) Litter and Debris. Pavement, sidewalks, landscapes, and storm drain inlets shall be kept free of debris and litter (street sweeping, etc.)

(5) Pavement Delineation. All work necessary to maintain distinctive roadway markings on the travelled way including layout, removal of old stripe, painting of existing stripe, replacement/removal of raised pavement markers including the cleaning of markers, cross walks, and the use of thermoplastic, tape or raised bars.

(6) Graffiti, Vandalism, Private Signage. Pavement, sidewalks, street lights, and sound walls shall be kept free of graffiti and private signage. Signage maintenance shall consist of replacement of existing signs and the repair, cleaning, and painting of signs.

(7) Electrical. Inspection, repair, servicing, and replacement of street lighting, safety and sign lighting, traffic safety devices, and electrical facilities used to operate automatic watering systems. Street lights shall be in a good state of repair to provide nighttime illumination for safe vehicle and pedestrian travel. All traffic signal devices within Cedar Way, including detector oops, control boxes, etc. shall be maintained by City.

(8) Landscaping, Irrigation, Bioretention. Landscaping, trees, and planting shall be irrigated, pruned, and fertilized to maintain healthy growth. Maintenance shall include weed abatement, tree trimming/removal, plant replacement, chipping, and pest control Irrigation lines, meters, and appurtenances shall be maintained, repaired or replaced as needed. All bioretention treatment facilities shall be maintained to comply with all the provisions of the Mitigation and Reporting Program and the approved Storm Water Control Plan and Operation & Maintenance Agreement.

EXHIBIT "C"

MAINTENANCE SERVICES

EXHIBIT "C"
MAINTENANCE SERVICES

MAINTENANCE FUNCTION	MAINTENANCE SERVICES	FREQUENCY	PERMIT* REQUIRED
Roadbed	Inspect roadway for PCI of 70 Remove, repair, replace or install pavement section.	1 time per year. W/in 4 months	No Yes
Roadside	Inspect, clean, and remove all trash and debris.	As needed.	No
Curb, Gutter & Sidewalk	Blow pedestrian walkways. Power wash hard surfaces. Removal, repair, or replacement of C&G or SW. Pedestrian Tripping Hazard Removal	1 time per week 2 times per year As needed. Within 24 hrs	No No Yes Yes
Litter & Debris	Remove litter and debris. Street sweeping.	Within 48 hrs City Standard	No No
Pavement Delineation	Respond to delineation damage causing travel hazard Repair, replace damaged delineation. Routine restriping	Within 24 hrs Within 48 hrs City Standard	No Yes Yes
Graffiti, Vandalism, Signs	Graffiti removal (washing, cleaning, and painting). Vandalism removal, repair, and or replacement. Sign cleaning, repair, removal, and/or replacement.	Within 48 hrs Within 48 hrs As needed.	No No No
Electrical	Inspect, repair, service, or replace electrical facilities.	As needed.	Yes in ROW
Landscaping	Trim and edge turf. Collect and dispose of leaves. (3/1-10/31) Collect and dispose of leaves. (11/1-2/28) Weed Abatement (turf areas) Weed Abatement (non-turf areas) Hedging to retain and fullness of shrubs. Aerate Turf using tractor-mounted aerator. Structural tree trimming (not in travel lane). Structural tree trimming in travel lane. Pruning and trimming trees. Trim and fertilize landscape planting.	2 times per month 1 time per month 2 times per month 4 times per year 3 times per year 2 times per year 2 times per year 1 time per year 1 time per year 2 times per year 2 times a year	No No No No No No No No Yes No No
Irrigation	Check system, adjust and repair as needed. Irrigation Controller (IC) annual cleaning. IC fuse check. IC fuse & battery replacement. Test backflow preventer & submit certificate.	2 times per month. 1 time per year. 1 time per year. As needed. 1 time per year.	No No No No No
Bioretention Area	Per SCVURPPP guidelines and approved O&M Plan.	Per O&M plan.	Yes
Pest Control	Control flies, ants, bees, spiders, & other insects in landscaping and treatment areas.	As needed.	No
Vector control	Provide rodent control and removal to maintain safe and attractive landscape.	As needed.	No
Sound Walls	Inspection of structural stability and foundation. Repair, replacement of wall and/or foundation Graffiti removal	1 time per year As needed. Within 48 hrs	No Yes No
Emergency Repair	All public safety concerns & hazard removal.	Within 24 hrs	No

EXHIBIT "D"

NOTICE OF COST SHARING OBLIGATIONS

EXHIBIT "D"

NOTICE OF COST SHARING OBLIGATIONS

Recording Requested By
and When Recorded Return to:

City of Milpitas
455 E. Calaveras Boulevard
Milpitas, CA 95035-5411
Attention: Engineering Department

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Exempt from Recording Fees
Pursuant for Government Code § 27383
CITY OF MILPITAS, CA

MEMORANDUM OF NOTICE OF
FUTURE COST SHARING OBLIGATIONS FOR PUBLIC STREET
CONSTRUCTION AND MAINTENANCE

This MEMORANDUM OF NOTICE OF FUTURE COST SHARING OBLIGATIONS FOR PUBLIC STREET CONSTRUCTION AND MAINTENANCE ("**Notice**") is entered into this ___ day of _____, 2017 ("**Execution Date**"), by and between the CITY OF MILPITAS, a municipal corporation ("**City**"), and MILPITAS PHASE I, LP, a Delaware limited partnership ("**Developer**"). City and Developer are from time to time hereinafter referred to in this Notice individually as a "Party" and collectively as the "Parties," as appropriate.

The Milpitas Housing Authority ("**Housing Authority**") is the owner of certain real property located in the City of Milpitas, County of Santa Clara, State of California, which consists of the "**Phase One Parcel**" and the "**Phase One Parcel**" (collectively the "**Property**"). The Phase One Parcel is described on **Exhibit "A"** hereto and the Phase Two Parcel is described on **Exhibit "B**" hereto. Developer is acquiring the Phase One Parcel from the Housing Authority. Pursuant to the terms of the Subdivision Improvement Agreement ("**SIA**") and the Public Street Maintenance Agreement ("**Public Street Maintenance Agreement**") entered into concurrently

herewith by City and Developer, Developer will construct certain public streets in order to develop the Phase One Parcel in accordance with the related conditions of approval, and Developer will be required to maintain the public streets and ancillary public street improvements, with said construction and maintenance of certain of these public street improvements also benefitting the Phase Two Parcel.

This Notice is being recorded in order to insure that the developer of the Phase Two Parcel fairly reimburses Developer for the expenses incurred by Developer performing its maintenance obligations under the Public Street Maintenance Agreement ("**Public Street Maintenance Expenses**") and its obligations to construct public street improvements under the SIA ("**Public Improvements Construction Expenses**"), some of which also benefit the Phase Two Parcel. Accordingly, City shall require as a condition of issuance of building permits required for construction of the Phase Two Parcel that Developer and the developer of the Phase Two Parcel shall, no fewer than ___ (___) days before the developer of the Phase Two Parcel obtains building permits for the Phase Two Parcel, enter into a cost sharing agreement customary for the allocation of expenses for obligations which benefit multiple properties, which cost sharing agreement shall provide for the following:

(a) the developer of the Phase Two Parcel will pay its allocable share of the Public Street Maintenance Expenses, which allocable share shall be based upon the linear feet within the Phase One Parcel and Phase Two Parcel bordering any public streets which Developer is obligated to maintain under the Public Street Maintenance Agreement;

(b) the developer of the Phase Two Parcel will pay to Developer its allocable share of the Public Improvements Construction Expenses, which allocable share shall be based on a final accounting of the Public Improvements Construction Expenses provided by Developer to the developer of the Phase Two Parcel; and

(c) such other terms and provisions which are customarily found in a cost sharing agreement including lien rights and other remedies for failure to pay, self-help rights for failure to perform obligations, and notice provisions, among others.

This Notice is intended to provide notice of the agreement of the Parties that such cost sharing agreement will be executed by Developer and the developer of the Phase Two Parcel as contemplated by the Disposition and Development Agreement with respect to the Property dated August 18, 2009, as amended ("**DDA**"). Such Notice shall not be released or terminated without the consent of Developer or a successor in interest to the developer as to the Phase Two Parcel.

In no event shall City or the Housing Authority have any liability to any of the other parties for the events contemplated by this Notice. The Parties agree and acknowledge that in the event that a cost sharing agreement is not entered into between Developer and the developer of the Phase Two Parcel, then Developer and the developer of the Phase Two Parcel shall be jointly and severally liable (based on pro rata fair share obligations) for the Public Improvements Construction Expenses and Public Street Maintenance Expenses as such terms are defined in Exhibit C to the Public Maintenance Agreement, and that Developer and the developer of the Phase Two Parcel shall be responsible for determining what constitutes said pro rata fair share

and notifying City of same. Until such time as said agreement is reached between Developer and the developer of the Phase Two Parcel and City is notified of same, then City shall continue to look solely to Developer to cover the costs and expenses referenced above.

IN WITNESS WHEREOF, the Parties have executed this Notice as of the Execution Date above.

Signature on next page

CITY OF MILPITAS

By:_____
(signature)

_____
Steve J. Pangelinan
Acting City Manager
City of MILPITAS

DEVELOPER:

MILPITAS PHASE I, LP,
a Delaware limited partnership

GENERAL PARTNERS:
WESTMONT DEVELOPMENT, LP, a California limited partnership

By: Westmont Manager GP, LLC, a California limited liability company
Its: General Partner

By:_____
Name: Andrew S. Plant
Its: Manager

By:_____
Name: Michael G. O'Rourke
Its: Manager

SRMJVV, LP, a Delaware limited partnership

By: Stone Rivard McGonigle Development, L.L.C., a Washington limited liability company
Its: General Partner

By:_____
Name: _____
Its: Authorized Member

By:_____
Name: _____
Its: Authorized Member

APPROVED AS TO FORM:

By: _____
(signature)
Christopher Diaz
City Attorney

APPROVED AS TO SUFFICIENCY:

By: _____
(signature)
Greg Chung, PE
Interim Director of Engineering/City Engineer
City of MILPITAS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT "B"

CITY OF MILPITAS
FEE REIMBURSEMENT AGREEMENT
FOR PUBLIC IMPROVEMENTS

This Fee Reimbursement Agreement for Public Improvements (the "Agreement"), dated as of November 7 , 2017, is by and between the City of Milpitas, a municipal corporation of the State of California ("City"), and Milpitas Phase I, LP, a Delaware limited partnership ("Developer").

WITNESSETH:

A. The Milpitas Housing Authority ("Housing Authority") is the owner of certain real property located in the City of Milpitas, County of Santa Clara, State of California, as shown on and more particularly described in Exhibit A-1 and Exhibit A-2 attached hereto and incorporated herein by reference (the "Property").

B. South Main Senior Lifestyles, LLC, a California limited liability company ("SMSL") and predecessor in interest to Developer with respect to the Phase One Development (as defined below) and City entered into a Disposition and Development Agreement with respect to the Property on August 18, 2009 ("Original DDA"), as amended by those parties by an amendment entered into on October 18, 2011 ("Original Amendment to DDA"), as fully amended and restated by those parties in a First Amended and Restated Disposition and Development Agreement on November 19, 2013, and a Memorandum of the Disposition and Development Agreement was recorded in the Santa Clara County Recorder's Office, as Document No. 22457857 ("First Amended DDA"). Subsequent to entering into the First Amended DDA, City and SMSL entered into a series of Operating Memoranda (pursuant to Section 10.20 of the First Amended DA) to implement the terms thereof. For purposes of this Agreement, the Original DDA, the Original Amendment to DDA, the First Amended DDA and the Operating Memoranda shall be collectively referred to as the "DDA". Capitalized terms used but not defined herein shall have the meaning set forth in the DDA.

C. Among other things, the DDA provides for development of the following:

1. The first phase of residential development ("Phase One Development") consists of a one hundred ninety-nine (199) unit "continuum of care" senior (62 years of age and older) housing rental development and related amenities, parking, landscaping, and public street, utility and infrastructure improvements. The Phase One Development includes ten (10) residential units available at an affordable housing cost to income-qualified very low-income households. The Phase One Development will be developed on the Phase One Parcel.

2. The second phase of residential development ("Phase Two Development") consists of one hundred ninety (190) apartment units for active, independent seniors (62 years of age and older), and related amenities, parking, landscaping and public street, utility, and infrastructure improvements. The Phase Two Development includes thirty-eight (38) residential units available at an affordable housing cost to income-qualified very low-income households. The Phase Two Development will be developed on the Phase Two Parcel; provided, however, SMSL (or its successor in interest), as the developer of the Phase Two Development, will be required to obtain all necessary entitlements from City prior to commencement of construction of same.

Collectively, the Phase One Development and the Phase Two Development are referred to herein as the "Project".

D. On April 22, 2014, SMSL submitted to City an application for approval of a Vesting Minor Tentative Map (TP14-0001), Site Development Permit (SD14-0006), and Density Bonus (DB14-0001) for the Phase One Development for the Phase One Parcel. Subsequently, on November 18, 2014, the City Council conditionally approved the above referenced entitlements and imposed numerous conditions on the Vesting Minor Tentative Map, including Condition of Approval No. 28 (discussed further below).

SMSL subsequently assigned to Developer all of SMSL's right, title, and interest under the DDA with respect to the Phase One Development pursuant to that certain *Assignment and Assumption of Disposition and Development Agreement (Phase One)* dated September 22, 2016, with said assignment and assumption being acknowledged by City in Operating Memorandum #2. SMSL retained all of its right, title and interest under the DDA with respect to the Phase Two Development.

E. On September 27, 2017, an application for approval of a parcel map for the Phase One Development (Parcel Map) was approved by the City's Planning Commission, which, once recorded, will subdivide the Phase One Parcel to allow for the construction of the Phase One Development.

F. On November 7, 2017, concurrent with the City Council's approval of this Agreement, the City Council also approved that certain *Public Maintenance Agreement Between the City of Milpitas and Milpitas Phase I, LP* ("Public Maintenance Agreement"), and that certain *Subdivision Improvement Agreement Between the City of Milpitas and Milpitas Phase I, LP* ("Subdivision Improvement Agreement"). As described more fully therein, the Public Maintenance Agreement sets forth Developer's obligations with respect to ongoing operation and maintenance of certain public improvements to serve the Project, and the Subdivision Improvement Agreement sets forth Developer's obligations to provide security for and construct specified improvements (including, among others, the sanitary sewer line that is the subject of this Agreement).

G. City has adopted development impact fees in connection with the sanitary sewer provision to properties within the City's boundaries. The Project is subject to said development impact fees for sewer service.

H. Pursuant to Condition of Approval No. 28 (imposed on the Vesting Tentative Minor Map for the Phase One Development) set forth in City Council Resolution No. 8420 on November 18, 2014, Developer is required to replace the existing 8-inch sanitary sewer pipe with a 12-inch pipe (the "Improvement"), which is a portion of the project 11D as described in City approved 2009 Sewer Master Plan Update ("Sewer Master Plan Update"); in connection therewith, Developer is also required to complete the design and construction drawings for the Improvement, which have been submitted to City for its review and approval, as Improvement Plan No. E-PI16-0002 (the "Design"). The Improvement and Design are included in the City's Sewer Master Plan Update and related fee, and thus would otherwise be financed by said fee, and as such, the Improvement and Design will serve the Property as well as other numerous properties in the Project vicinity. Accordingly, Developer and City desire to enter into this Agreement to set forth the parties' understanding of the method of reimbursement to Developer as it relates to the Improvement and Design.

NOW, THEREFORE, in consideration of the mutual promises contained herein, City and Developer hereby agree as follows:

SECTION 1. Reimbursement

Subject to the terms, conditions, and obligations of this Agreement, City shall provide a reimbursement to Developer, in an amount based on verifiable actual costs of the Improvement and the Design pursuant to the procedure in Section 9 of this Agreement, which shall equal one hundred percent (100%) of the actual amount paid by Developer to complete the Improvement and Design.

SECTION 2. Reimbursement Issuance Timing

2.1 Developer shall pay City all applicable development impact fees, including the above referenced sewer impact fee, as required by the Phase One Development's entitlements in accordance with the conditions of approval imposed in connection therewith, at the time of the building permit issuance for site improvements (B-SI) or as otherwise required by City (if and to the extent fee deferral is permitted by the City).

2.2 City shall pay to Developer the reimbursement required hereunder upon Developer's completion and City's acceptance of the Improvement and Design as stipulated hereinafter, including Developer's provision of all supporting documentation for all costs in accordance with the timing specified in Section 9 below.

SECTION 3. Completion of the Improvement

Developer shall complete construction of the Improvement in accordance with the plans and specifications approved by City and in accordance with City standard construction specifications, this Agreement, and the related Subdivision Improvement Agreement. The Improvement shall be completed (determined by filing of a notice of completion) prior to issuance of the certificate of occupancy for the first (1st) residential unit of the first (1st) building in Parcel 1 of the Parcel Map as recorded with the County of Santa Clara Recorder's Office as book XXX, pages XXXX, unless City determines in its sole discretion to waive such condition.

SECTION 4. Inspection of Improvement

4.1 City shall at all times have access to the construction site during construction of the Improvement. Developer shall furnish City with all reasonable information necessary for ascertaining full knowledge of the Improvement with respect to the progress, workmanship and character of materials and equipment used and employed in the work contemplated herein.

4.2 Neither observation of the work by City nor failure of City to inspect the Improvement or to discover defects in material or workmanship shall relieve Developer from its obligations to complete construction in accordance with the plans and specifications approved by City and to ensure that the Improvement is free of defects in materials and workmanship.

SECTION 5. Acceptance of the Improvement

5.1 At such time as Developer believes that the Improvement is complete, Developer shall provide written notice of completion to City, requesting an inspection. Within ten (10) business days, or as mutually agreed following the date of receipt of Developer's written notice of completion of the Improvement, City shall conduct a final inspection of the applicable Improvement. If, during the final inspection, City determines that the Improvement has not been completed in accordance with all applicable codes, regulations, permits and approved plans, City shall prepare a punch list of all items to be completed by Developer and shall provide such punch list to Developer within ten (10) business days or as mutually agreed following the final inspection.

5.2 If City delivers such punch list to Developer within said ten (10) business day period, or such other mutually agreed upon period, then Developer shall undertake to repair such punch list items in a diligent manner within twenty (20) calendar days. Upon completion of the punch list work, Developer shall request another final inspection from City and within ten (10) business days following such written notice from the Developer, City shall conduct another final inspection.

5.3 If City determines that the punch list work is complete and no other deficiencies are identified, Developer shall be deemed to have successfully completed the final inspection. If City determines that the punch list work is not complete, then City and Developer shall repeat the inspection/punch list procedures specified in this Section until the successful completion of the punch list work and a final inspection. At such time as Developer has successfully completed the final inspection, City shall schedule the initial acceptance of the completed Improvement within thirty (30) calendar days thereafter before the City Council.

SECTION 6. Conveyance of the Improvement

Once the Improvement is accepted by the City Council and no liens have been filed with respect to such Improvement within ninety (90) days following the date of filing the Notice of Completion for such Improvement (or if valid liens were filed during such period, such liens have been bonded around or removed prior to acceptance), the Improvement shall become the property of City. Developer shall take any and all actions necessary to convey to City and vest in City full, complete and clear title to the Improvement through City's initial and final acceptance procedures.

SECTION 7. Completion and Acceptance of the Design

7.1 Developer shall perform and complete the Design in accordance with the Phase One Development Condition No. 28 for sanitary sewer pipe replacement. The Design is considered deemed complete upon approval of the construction plans and specifications, including all required supporting documents by City.

7.2 In the event the Design is not fully completed and approved by City as set forth herein, Developer shall be in breach of this Agreement and in violation of the Phase One Development Condition No. 28. In addition to all other legal remedies available at law or equity, City may seek reimbursement from Developer for all reimbursements provided under this Agreement including interest at the legal rate (if and to the extent any such reimbursements have been provided hereunder). Additionally, City may withhold any and all certificates of occupancy, building permits, map approval, or any other City approval or permit relating to the Phase One Development until such time as the Design is completed and approved by City. City approved plans and specifications, including all supporting documents become City property upon completion of the **Design.**

SECTION 8. Delivery of Design Plans and Specifications

Prior to acceptance of the Improvement by City and approval of the Design by City, Developer shall deliver to City copies of all plans, specifications, shop drawings, as-built plans, operating manuals, service manuals, warranties and other documents relating to the design, construction, installation and operation of the applicable Improvement and Design. Plans shall be submitted in CAD format, GIS format and/or PDF format as acceptable to City.

SECTION 9. Supporting Documents for the Actual Costs

Following Developer's completion and City's acceptance of the Improvement and the Design as provided in Sections 3 to 8 above, Developer shall provide final invoices, records, change order documents, payment invoices, cancelled checks and other necessary documents, as reasonably requested by City, in order to provide to City a final accounting of the total amount of actual costs for the Improvement and Design. City shall thereafter have sixty (60) days in which to review and approve such items. If City notifies Developer within that 60-day period that it does not approve all such items, and, if Developer disputes the disapproval of such items by City, the sixty (60) days may be extended as mutually agreed upon to provide an opportunity for the Parties to use diligent and good faith effort to resolve said dispute. Assuming no dispute as to the final accounting (or once said dispute has been resolved), City shall, within thirty (30) days thereafter, reimburse Developer in the amount equal to one hundred percent (100%) of the actual costs to complete the Improvement and Design, as documented in the final accounting.

SECTION 10. Limited City Obligation

The reimbursement obligations arising from this Agreement are neither a debt of City nor a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except for the developer impact fees that would have otherwise been collected for the Improvement, the Design and other capital facilities set forth in the project plans. Neither the City of Milpitas general fund nor any other fund of City, except the City's sewer fee program, shall be liable for the reimbursement or payment of any obligations arising from this Agreement. The reimbursement or taxing power of City is not pledged for the payment of any obligation arising from this Agreement. Developer shall not compel the forfeiture of any of City's property to satisfy any obligations arising from this Agreement.

SECTION 11. Liens, Claims, and Encumbrances

Prior to acceptance of the Improvement by City, and approval of the Design by City, Developer shall provide a written guarantee and assurance to City that there are no liens, claims, or monetary encumbrances on the Improvement and the Design, together with unconditional final releases from all contractors and material suppliers, and with copies of invoices and corresponding checks issued by Developer for all items for which fee reimbursements are requested under this Agreement for the Improvement and the Design. City shall have no obligation to accept the Improvement or approve the Design, or to issue any reimbursements for Improvement and the Design until Developer has cleared any and all liens, claims and monetary encumbrances from the Improvements and the Design and provided the required documentation, guarantee and assurance in writing, to the reasonable satisfaction of City in accordance with this Section 11.

SECTION 12. No Third Party Beneficiary

By entering into this Agreement, City is not entering into any contract or agreement with any general contractor, subcontractor, or other party nor is any general contractor, subcontractor, or other party a third party beneficiary of this Agreement, and City shall have no obligation to pay any general contractor, subcontractor, or other party for any work that such general contractor, subcontractor, or other third party may do pursuant to the plans and specifications for the Improvement and the Design.

SECTION 13. Warranty and Repair

In accordance with this Section 13 and the terms and conditions of the Subdivision Improvement Agreement, Developer hereby warrants the Improvement as to materials and workmanship and should any failure of any Improvement occur within a period of one (1) year after initial acceptance of such Improvement by City Council, Developer shall promptly cause the needed repairs to be made without cost to City. The provisions contained herein shall not be deemed to limit any rights Developer has or may have to seek damages or other relief from any acts or omissions of any contractor involved in the construction or design of the Improvement. Nothing herein shall be construed to limit any other warranties City may have from the manufacturer or any materials used in the Improvement nor in any way limit any rights of City in equity or law under this Agreement.

SECTION 14. Notice

Any notice, payment, or instrument required or permitted by this Agreement to either party shall be deemed to have been received when personally delivered to that party or seventy-two (72) hours following deposit of the same in any United States Post Office, first class, postage prepaid, addressed as follows:

City:
Greg Chung, Interim Director of Engineering/City Engineer
Milpitas City Hall
455 East Calaveras Boulevard
Milpitas, California 95035
Phone: 408-586-3355; Fax: 408-586-3305

Developer:
Milpitas Phase I, LP
Attention: Ryan Leong, Principal – Real Estate,
Finance & Operations
111 N Post, Suite 200
Spokane, WA 99201
Email: ryan@srmdevelopment.com
Phone: 509-944-4557

Either party hereto may, by notice given hereunder, designate a different address to which subsequent notices, payments, and instruments shall be delivered to it.

SECTION 15. Term

15.1 The term of this Agreement shall start as of the Effective Date (as defined below) and shall remain in effect until all the terms and conditions contained in this Agreement have been satisfied ("Term").

15.2 This Agreement shall only be effective if all three (3) of the following conditions are satisfied: (a) the City Planning Commission approves the Parcel Map; (b) the Subdivision Improvement Agreement is recorded; and (c) Developer records the Parcel Map in the Recorder's Office of Santa Clara County. The Parties acknowledge and agree that the recordation of the above-referenced Parcel Map and the Subdivision Improvement Agreement shall be recorded simultaneously in connection with the contemplated conveyance of the Phase One Parcel as provided for in the DDA, and Developer shall not record the Parcel Map without adhering to the foregoing requirement to simultaneously record this Agreement. For purposes of this Agreement, the "Effective Date" shall be defined to mean the date upon which the Subdivision Improvement Agreement and the Parcel Map are recorded. If the above described conditions are not satisfied, this Agreement shall not be effective, and shall terminate upon written notice by either City or Developer to the other Party that the above three conditions have not been satisfied.

SECTION 16. Captions

Captions to Sections of this Agreement are for convenience purposes only, and are not part of this Agreement.

SECTION 17. Severability

If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.

SECTION 18. Successors and Assigns/Reimbursements to Developer

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

SECTION 19. Governing Law Venue

This Agreement is made under, and shall in all respects be interpreted, enforced, and governed by the laws of the State of California. In the event of a dispute concerning the terms of this Agreement, the venue for any legal action shall be with the appropriate court in the County of Santa Clara, State of California.

SECTION 20. Indemnity

To the fullest extent permitted by law, Developer shall protect, indemnify, defend and hold City, its officers, employees, and agents harmless (with counsel acceptable to City) from and against any and all liability, loss, cost and obligations arising out of or resulting from any injury or loss caused directly or indirectly by any cause whatsoever in connection with or incidental to the (i) activities

performed Developer, its officers, employees, or agents under this Agreement, or (ii) negligence, omission or willful misconduct by Developer, its officers, employee, or agents.

SECTION 21. Time of Essence

Time is of the essence in the performance of this Agreement.

SECTION 22. Waiver

Developer agrees that waiver by City of any breach or violation of any term, condition, or obligation of this Agreement shall not be deemed to be a waiver of any other term, condition, or obligation contained herein or a waiver of any subsequent breach or violation of the same term, condition or obligation.

SECTION 23. Compliance with Laws

Developer has been alerted to the requirements of California Labor Code Sections 1720 *et seq*. and 1770 *et seq*., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the work to be performed under this Agreement by Developer is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, Developer agrees to fully comply with such Prevailing Wage Laws. Developer shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon Developer and its contractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Section 1776), hours of labor (Labor Code Sections 1813 and 1815), public works contractor registration (Labor Code Sections 1725.5 and 1771.1) and debarment of contractors and subcontractors (Labor Code Sections 1777.1). It shall be the sole responsibility of Developer to determine whether to comply with Prevailing Wage Laws for any or all work required by this Agreement. As a material part of this Agreement, Developer agrees to assume all risk of liability arising from any decision not to comply with Prevailing Wage Laws for work required by this Agreement.

SECTION 24. Entire Agreement

This Agreement contains the entire agreement between the parties with respect to the matters contained herein and may be amended only by subsequent written agreement signed by both parties.

SECTION 25. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

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

CITY OF MILPITAS

By:_____
(signature)
Steve J. Pangelinan
Acting City Manager

_____
City of MILPITAS

APPROVED AS TO FORM:

By:_____
(signature)
Christopher Diaz
City Attorney
City of MILPITAS

DEVELOPER:

MILPITAS PHASE I, LP,
a Delaware limited partnership

GENERAL PARTNERS:
WESTMONT DEVELOPMENT, LP, a California limited partnership

By: Westmont Manager GP, LLC, a California limited liability company
Its: General Partner

By:_____
Name: Andrew S. Plant
Its: Manager

By:_____
Name: Michael G. O'Rourke
Its: Manager

SRMJVV, LP, a Delaware limited partnership

By: Stone Rivard McGonigle Development, L.L.C., a Washington limited liability company
Its: General Partner

By:_____
Name:_____
Its: Authorized Member

By:_____
Name:
Its: Authorized Member

APPROVED AS TO SUFFICIENCY:

By: _____
(signature)
Greg Chung, PE
Interim Director of
Engineering/City Engineer
City of MILPITAS

NOTE: DEVELOPER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO PHASE 1 DEVELOPER'S BUSINESS ENTITY.

Insert Notary Acknowledgements

EXHIBIT "A-1"

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "A-2"

PLAT TO ACCOMPANY
LEGAL DESCRIPTION OF PROPERTY

*

REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND
MUTUAL ESCROW INSTRUCTIONS

(230 N. Main Street, Milpitas CA 95035; APN 028-34-001 through 028-34-094)

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT (the "Agreement") is entered by and between the Successor Agency of the Former Redevelopment Agency of the City of Milpitas, a separate public entity ("Successor Agency" or "SELLER") and Milpitas Community Museum ("BUYER") on NOVEMBER 9, 2017.

RECITALS

A. The real property which is subject to this Agreement is located at 230 N. Main Street, Milpitas, California, (APN 028-34-001 through 028-34-094) and legally described in Exhibit "A" which is attached hereto and incorporated herein by reference (the "Property"). The Property is vacant land and is approximately 1.609 acres in size.

B. The California State Legislature enacted Assembly Bill x1 26 in 2011 to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code sections 33000 *et seq.*, as amended by Assembly Bill 1484 in 2012 and Senate Bill 107 in 2015) hereafter referenced as "Dissolution Law". All references to Health and Safety Code sections in this Agreement are references to the Dissolution Law.

C. Prior to the effective date of the Dissolution Law, the Redevelopment Agency of the City of Milpitas (the "Former Redevelopment Agency") owned fee interest title in and to the Property.

D. On February 1, 2012 and upon dissolution of the Former Redevelopment Agency, the City of Milpitas, acting in a separate limited capacity and as a separate legal entity, became the Successor Agency of the Former Redevelopment Agency of the City of Milpitas ("Successor Agency").

E. Successor Agency ("SELLER") now holds fee title interest in and to the Property.

F. SELLER is responsible for the disposition of the Property in accordance with the procedures and requirements of Dissolution Law. Pursuant to Health and Safety Code Section 34177, successor agencies are required to dispose of assets and properties of the Former Redevelopment Agency expeditiously and in a manner aimed at maximizing the value.

G. In accordance with Health and Safety Code Section 34191.5, the SELLER prepared and the Oversight Board of the Successor Agency ("Oversight Board") approved a "Long-Range Property Management Plan" which included sale of the Property under a Request for Proposals ("RFP") process.

H. On June 14, 2017, the Oversight Board approved Seller's issuance of a Request for Proposals for the purchase of the Property.

I. BUYER was the successful bidder under the RFP process.

J. SELLER has submitted this Agreement to the Oversight Board for approval which has adopted a resolution approving the sale and submitted it to the California Department of Finance (DOF).

K. The parties acknowledge and agree that the purchase and sale of the Property pursuant to this Agreement may be reviewed by the California Department of Finance (DOF).

L. SELLER desires to convey fee title interest in and to the Property to BUYER in a manner consistent with the Dissolution Law requiring, *inter alia*, the disposition of its former property.

M. BUYER desires to purchase the Property from SELLER and SELLER desires to sell the Property on the terms and conditions contained in this Agreement.

AGREEMENT

The foregoing recitals are incorporated herein as if fully set forth. For valuable consideration and subject to the terms and conditions hereof, BUYER and SELLER agree as follows:

1. PURCHASE AND SALE.

A. Conveyance of Property. SELLER agrees to sell to BUYER and BUYER agrees to purchase from SELLER, the Property on the terms and conditions set forth in this Agreement. The Legal Description of the Property is attached as Exhibit A.

B. Purchase Price for the Property. The total purchase price to be paid by BUYER to the SELLER for the Property is three hundred fifteen thousand dollars ($315,000.00) (the "Purchase Price").

C. Effective Date. The Effective Date is the last date set forth opposite the signatures of the parties at the end of this Agreement and which is entered at the beginning of this Agreement.

2. OPENING OF ESCROW AND DEPOSIT.

A. Opening Escrow. Within five (5) business days of the Effective Date of this Agreement, SELLER shall open an escrow (the "Escrow") with Chicago Title at 12156 Saratoga Sunnyvale Road, Saratoga, CA 95070 (the "Title Company" or "Escrow Holder") for conveyance of the Property to BUYER. This Agreement shall constitute mutual instructions to the Escrow Holder. The Opening Date of escrow shall be the date on which Escrow Holder receives a fully executed copy of this Agreement. BUYER and SELLER shall execute additional escrow instructions as may be required to enable the Escrow Holder to close the

escrow consistent with the terms of this Agreement and as BUYER and SELLER may approve, which approval shall not be unreasonably withheld.

B. Deposit.

(1) **Deposit**. Together with BUYER's response to the Request for Proposal, BUYER delivered to SELLER a check in the sum of Fifty Thousand Dollars ($50,000.00) ("Deposit"). Immediately upon the opening of Escrow, SELLER shall deliver the Deposit to Escrow Holder for the benefit of BUYER.

(2) **Conditions for Refund of Deposit**. The Deposit shall become nonrefundable to BUYER upon expiration of the Due Diligence Period if this Agreement has not been terminated; except that the DEPOSIT shall be refundable to BUYER if: (i) Escrow fails to close due to SELLER's default or breach of its representations or warranties under this Agreement or (ii) Closing fails to occur due to the failure of any condition to Closing set forth in this Agreement which is for the benefit of the BUYER. If upon termination of this Agreement SELLER is entitled to retain any portion of the Deposit, then BUYER shall within one (1) business day thereafter instruct Escrow Holder to immediately release such portion of the Deposit to SELLER (which obligation shall survive the termination of this Agreement). Upon termination of this Agreement, the parties shall have no further obligations hereunder except for the Surviving Obligations. As used in this Agreement, "Surviving Obligations" shall mean all obligations of BUYER and/or SELLER which are expressly stated in this Agreement to survive Close of Escrow (defined in Section 6.A) or termination of this Agreement.

(3) **Handling of Deposit.** The Deposit shall be deposited in an interest bearing money market or savings account with a national banking association or federally chartered savings and loan association, which interest shall accrue to the benefit of the BUYER and shall be applied to the Purchase Price at the Closing.

3. DUE DILIGENCE PERIOD AND INSPECTIONS.

A. Due Diligence Period. BUYER shall have ninety (90) days following the Effective Date to conduct BUYER's due diligence, as BUYER deems necessary, but at BUYER's sole cost and expense, including but not limited the right to review and approve the Property Materials, to inquire and meet with all governmental or quasi-governmental authorities, and to inspect and approve the physical conditions of and all other matters concerning the Property (the "Due Diligence Period"). If BUYER is not satisfied for whatever reason, or no reason, with the condition of the Property, BUYER may terminate this Agreement not later than the expiration of the Due Diligence Period by providing SELLER and Escrow Holder written notice thereof ("Buyer's Termination Notice") prior to the end of the Due Diligence Period. If BUYER fails to deliver Buyer's Termination Notice, then, BUYER shall be deemed to have elected not to terminate this Agreement.

B. Return of Deposit During Due Diligence Period. Upon receipt of Buyer's Termination Notice in escrow pursuant to Section 3.A., the Deposit shall be returned to BUYER. After the Due Diligence Period, if the Agreement is not terminated pursuant to Section 3.A., the DEPOSIT shall become nonrefundable.

C. Property Materials. Not later than three (3) days following the Effective Date, SELLER shall deliver to BUYER for BUYER's review and copying the following documents relating to the condition of the Property to the extent in the possession or control of SELLER (collectively, the "Property Materials"): (i) all soils, groundwater, and environmental assessments; (ii) all notices of violations of laws, if any, from any governmental or quasi-governmental authorities; and (iii) other correspondence and notices from any governmental or quasi-governmental authorities.

D. Access. Subject to this Section below, until the earlier to occur of the Close of Escrow or termination of this Agreement, BUYER shall have the right to enter upon the Property to inspect, investigate and conduct non-invasive tests upon the Property, as BUYER, in its sole discretion deems necessary but at its sole cost and expense. The written consent of BUYER shall be required for invasive tests. BUYER shall keep the Property free and clear of any and all liens related to BUYER's inspections, test, and investigations. All entry onto and inspections of the Property shall be subject to the following:

(1) BUYER shall give SELLER not less than one (1) business day prior notice of any entry onto the Property by BUYER or by BUYER's agents, employees, consultants, and contractors (collectively, "BUYER's Representatives").

(2) If the Property is physically damaged in connection with any of BUYER's or BUYER's Representatives' activities on, in or about the Property pursuant to this Agreement, then BUYER, at BUYER's sole cost and expense, shall promptly repair such damage.

(3) BUYER shall indemnify, protect, defend (with counsel reasonably acceptable to SELLER) and hold harmless SELLER and each of SELLER's employees, agents, officer, directors, and City Council for, from and against any and all claims, damages, liens, suits, causes of action, legal or administrative proceedings, fines, penalties, judgments, demands, obligations, costs, liabilities and losses (including mechanics' liens) and expenses (including, without limitation, reasonable attorneys' fees) (all collectively and each individually referred to herein as the "Claims and Liabilities") for property damage (both real and personal), death or personal injury to the extent caused by the acts or negligence of BUYER or BUYER's Representatives acting on behalf of BUYER pursuant to this Agreement while on, in, or about the Property, subject to this Section 4.C below, which obligation shall survive Close of Escrow or termination of this Agreement.

4. REPRESENTATIONS, WARRANTIES AND COVENANTS.

A. Representations by SELLER. SELLER represents and warrants to BUYER based on information and belief as follows:

(1) The Dissolution Law requires that the Oversight Board's approval of the disposition of this property be submitted to the California Department of Finance (DOF). No other consent or approval is required for the execution and delivery of this Agreement by SELLER or the performance by SELLER of its obligations hereunder other than those already obtained by SELLER, or specifically set forth in this Agreement.

(2) To the best of SELLER's knowledge based on information and belief presently available to SELLER at the time of this Agreement, the Property Materials delivered to BUYER are complete copies of such documents in the actual possession or control of SELLER, and are all of the Property Materials known to be in the actual possession or control of SELLER. Prior to Closing, SELLER agrees to promptly deliver to BUYER any additional documents received by SELLER relating to the physical condition, use, and operation of the Property.

(3) SELLER has not received written notice from any governmental or quasi-governmental authority of existing violations of any laws or other legal requirements specifically with respect to the Property.

(4) As of the Closing, there shall be no outstanding contracts made by SELLER for any improvements to the Property which have not been fully paid for, and SELLER shall cause to be discharged and removed as an exception to title all mechanics' and materialmen's liens arising from any labor and material furnished prior to the Closing (other than those caused by work performed by BUYER).

The representations and warranties of SELLER set forth in this Section 4.A shall survive the Close of Escrow.

B. Representations by BUYER. BUYER represents and warrants to SELLER that no consent or approval from anyone other than BUYER is required for the execution and delivery of this Agreement by BUYER or the performance of BUYER of its obligations hereunder. The representations and warranties of BUYER set forth in this Section 4.B shall survive the Close of Escrow.

C. Mutual Representations and Indemnity. Each party represents and warrants to the other that it has had no dealings with any real estate broker, agent, or finder in connection with the negotiation of this Agreement. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection with this Agreement, BUYER, if such claim is based upon an alleged relationship with or any agreement alleged to have been made by BUYER, hereby agrees to indemnify, protect and defend with counsel reasonably acceptable to SELLER and hold SELLER and its officers, agents, employees, successors and assigns harmless

against any and all such claims and liabilities which SELLER may or does sustain or incur by reason of such claim or claims. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection herewith, SELLER, if such claim is based upon an alleged relationship with or any agreement alleged to have been made by SELLER, hereby agrees to indemnify, protect, and defend with counsel reasonably acceptable to BUYER, and hold BUYER, officers, agents, employees, successors and assigns harmless against any and all Claims and Liabilities which BUYER may sustain or incur by reason of such claim or claims. The provisions of this Section 4.C shall survive the Close of Escrow or termination of this Agreement.

D. Covenants of SELLER. SELLER hereby agrees as follows:

(1) After the Effective Date and prior to the Closing, no part of the Property, or any interest therein, shall be sold, encumbered or otherwise transferred without BUYER's prior written consent.

(2) Prior to Closing, SELLER shall promptly notify BUYER of any fact or circumstance of which SELLER becomes aware which would make any of SELLER's representations and warranties untrue in any material respect, or any covenant of SELLER under this Agreement incapable or improbably of being cured or performed.

E. Covenants of BUYER.

(1) BUYER shall not cause or be the reason for the imposition of any mechanics' and materialmen's liens to be placed on or attached to the Property prior to Closing.

(2) Prior to Closing, BUYER shall promptly notify SELLER of any fact or circumstance of which BUYER becomes aware which would make any of BUYER's representations and warranties untrue in any material respect, or any covenant of BUYER under this Agreement incapable of being cured or performed.

5. AS-IS.

A. "AS-IS" Purchase. BUYER EXPRESSLY ACKNOWLEDGES AND AGREES, AND REPRESENTS AND WARRANTS TO SELLER, THAT, EXCEPT FOR THE SELLER REPRESENTATIONS AND COVENANTS EXPRESSLY SET FORTH HEREIN BUYER IS PURCHASING THE PROPERTY "AS-IS", AND "WITH ALL FAULTS", AFTER SUCH INSPECTION, ANALYSIS, EXAMINATION AND INVESTIGATION BUYER DESIRES TO MAKE AND EXPRESSLY WITHOUT SELLER'S COVENANT, WARRANTY OR REPRESENTATION AS TO PHYSICAL CONDITION, TITLE, LEASES, RENTS, REVENUES, INCOME, EXPENSES, OPERATION, ACCESS, ZONING OR OTHER REGULATION, COMPLIANCE WITH LAW, SUITABILITY FOR PARTICULAR PURPOSES OR ANY OTHER MATTER WHATSOEVER, EXCEPT FOR THE SELLER REPRESENTATIONS AND COVENANTS SET FORTH IN THIS AGREEMENT OR ANY REPRESENTATIONS AND COVENANTS OF SELLER SET FORTH IN ANY DOCUMENT

DELIVERED BY SELLER AT THE CLOSING. SELLER HAS NO OBLIGATION TO MAKE REPAIRS, REPLACEMENTS OR IMPROVEMENTS TO THE PROPERTY, OR TO PAY ANY FEES, COSTS OR EXPENSES RELATED TO THE PROPERTY EXCEPT AS PROVIDED IN THIS AGREEMENT. BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE SELLER REPRESENTATIONS AND COVENANTS HEREIN AND ANY REPRESENTATIONS AND COVENANTS OF SELLER SET FORTH IN ANY DOCUMENT DELIVERED BY SELLER AT THE CLOSING, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO: (A) THE VALUE OF THE PROPERTY; (B) THE INCOME TO BE DERIVED FROM THE PROPERTY; (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, INCLUDING THE POSSIBILITIES FOR DEVELOPMENT OF THE PROPERTY; (D) THE HABITABILITY, MARKETABILITY, MERCHANTABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; (E) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY; (F) THE NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION, SOILS AND GEOLOGY; (G) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (H) COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATION, ORDERS OR REQUIREMENTS, INCLUDING BUT NOT LIMITED TO, TITLE III OF THE AMERICANS WITH DISABILITIES ACT OF 1990, CALIFORNIA HEALTH AND SAFETY CODE, THE FEDERAL WATER POLLUTION CONTROL ACT, THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 CFR PART 261, CERCLA, AS AMENDED, RCRA, THE CLEAN WATER ACT, THE SAFE DRINKING WATER ACT, THE HAZARDOUS MATERIALS TRANSPORTATION ACT AND THE TOXIC SUBSTANCE CONTROL ACT, AS ANY OF THE FOREGOING MAY BE AMENDED FROM TIME TO TIME AND REGULATIONS PROMULGATED UNDER ANY OF THE FOREGOING FROM TIME TO TIME; (I) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS AT, ON, UNDER, OR ADJACENT TO THE PROPERTY; (J) THE CONTENT, COMPLETENESS OR ACCURACY OF THE PROPERTY DOCUMENTS AND ANY OFFERING CIRCULAR OR INFORMATION PACKAGE PROVIDED BY SELLER; (K) THE CONFORMITY OF THE PROPERTY TO PAST, CURRENT OR FUTURE APPLICABLE ZONING OR BUILDING REQUIREMENTS; (L) DEFICIENCY OF ANY DRAINAGE OR UNDERSHORING; (M) THAT THE PROPERTY MAY BE LOCATED ON OR NEAR EARTHQUAKE FAULTS; (N) THE EXISTENCE OR NON-EXISTENCE OF LAND USE, ZONING OR BUILDING ENTITLEMENTS AFFECTING THE PROPERTY; (O) THE ENTITLEMENT STATUS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, GENERAL PLAN STATUS, SPECIFIC PLAN STATUS, ZONING STATUS, SUBDIVISION STATUS UNDER THE CALIFORNIA SUBDIVISION MAP ACT; (P) THE APPLICABILITY OF THE FEDERAL OR CALIFORNIA ENDANGERED SPECIES ACTS AND THE EXISTENCE OF ANY

SPECIES PROTECTED THEREUNDER; (Q) ANY NON-COMPLIANCE OF THE PROPERTY OR ANY IMPROVEMENTS; (R) ANY ERRORS, INACCURACIES OR DEFECTS IN THE WORK PRODUCT RELATING TO THE PROPERTY; OR (S) ANY OTHER MATTER CONCERNING THE PROPERTY. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY AND HAVING OBTAINED AND EXAMINED SUCH INFORMATION AND DOCUMENTATION AFFECTING THE PROPERTY AS BUYER HAS DEEMED NECESSARY OR APPROPRIATE, BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATIONS AND REVIEW, AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER OTHER THAN THE SELLER REPRESENTATIONS AND COVENANTS SET FORTH HEREIN AND ANY REPRESENTATIONS AND COVENANTS OF SELLER SET FORTH IN ANY DOCUMENT DELIVERED BY SELLER AT THE CLOSING. AT THE CLOSING BUYER SHALL HAVE INDEPENDENTLY CONFIRMED, SUBJECT TO THE SELLER REPRESENTATIONS AND COVENANTS SET FORTH HEREIN AND ANY REPRESENTATIONS AND COVENANTS OF SELLER SET FORTH IN ANY DOCUMENT DELIVERED BY SELLER AT THE CLOSING, TO ITS SATISFACTION ALL INFORMATION THAT IT CONSIDERS MATERIAL TO ITS PURCHASE OF THE PROPERTY, INCLUDING WITHOUT LIMITATION THE EXISTENCE OF ANY AND ALL MUNICIPAL FEES, CHARGES, OR OTHER LIABILITIES THAT MAY EXIST WITH RESPECT TO THE PROPERTY. EXCEPT FOR THE SELLER REPRESENTATIONS AND COVENANTS, BUYER ASSUMES ALL RISK OF DISCOVERING AND UNDERSTANDING ALL FACTS AND CIRCUMSTANCES RELATING TO THE PROPERTY, INCLUDING PHYSICAL FEATURES AND CONDITIONS, PERMIT AND ENTITLEMENT STATUS, DEVELOPMENT OBLIGATIONS, LIABILITIES, AND OTHER FACTORS RELEVANT TO THE DEVELOPMENT OF THE REAL PROPERTY. SELLER FURTHER ADVISES BUYER THAT PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1102, 1103.1(A), 3434 AND OTHER APPLICABLE PROVISIONS OF CALIFORNIA LAW, SELLER IS NOT LIABLE AND SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE OCCASIONED BY ANY CONSTRUCTION DEFECT OR OTHER DEFECT IN THE REAL OR PERSONAL PROPERTY SO DESIGNED, MANUFACTURED, CONSTRUCTED, REPAIRED, MODIFIED OR IMPROVED OR FOR ANY LOSS OR DAMAGE RESULTING FROM THE FAILURE OF SELLER OR ANY OTHER PARTY THAT PARTICIPATED IN THE DESIGN OR CONSTRUCTION OF THE PROPOSED IMPROVEMENTS ON THE PROPERTY TO USE DUE CARE IN THE DESIGN, MANUFACTURE, CONSTRUCTION, REPAIR, MODIFICATION OR IMPROVEMENT OF SUCH REAL OR PERSONAL PROPERTY. THIS PROVISION WILL SURVIVE THE CLOSING AND CONSTITUTE MATERIAL CONSIDERATIONS FOR SELLER'S AGREEMENT TO SELL THE PROPERTY TO BUYER.

BUYER'S Initials

B. Release. Effective upon the Closing, except for the Excluded Claims and as otherwise provided herein or in any documents delivered at the Closing, BUYER, on behalf of itself, and the BUYER representatives fully, unconditionally, and irrevocably release SELLER from any and all claims that BUYER may now have or hereafter acquire against SELLER for

any liabilities arising from or related to Property, its design, development, entitlements or any conditions existing or events occurring on, in or about the Property before the Closing, including without limitation any construction defects, or other conditions, latent or otherwise, including, without limitation, environmental matters affecting the Property or any portion thereof; provided, however, that nothing herein shall constitute a release of the Excluded Claims and/or any Liabilities of (or Claims against) the Excluded Parties. The foregoing release includes claims of which BUYER is presently unaware or which Buyer does not presently suspect to exist which, if known by BUYER, would materially affect Buyer's release of the Released Parties. In connection with this release, BUYER specifically waives the provision of California Civil Code Section 1542, which provides as follows:

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

This release by BUYER shall constitute a complete defense to any claim, cause of action, defense, contract, liability, indebtedness or obligation released pursuant to this release. Nothing in this release shall be construed as (or shall be admissible in any legal action or proceeding as) an admission by SELLER or any other released party that any defense, indebtedness, obligation, liability, claim or cause of action exists which is within the scope of those hereby released.

BUYER'S Initials _____ SELLER'S Initials _____

6. CLOSING AND ESCROW INSTRUCTIONS.

A. Closing. The consummation of the purchase and sale of the Property (the "Closing" or "Close of Escrow") shall take place on the Closing Date, through the escrow established with Escrow Holder ("Escrow"), as evidence by recordation of the Grant Deed described in Section 6.B. in the Official Records of Santa Clara County, California ("Official Records"). The "Closing Date" shall be March 18, 2018, or such earlier date as the parties may mutually agree upon (without obligation to so agree).

B. SELLER'S Deposits.

Prior to Closing, in sufficient time prior thereto to allow Closing on the Closing Date, SELLER shall cause to be delivered into the Escrow:

(1) A Grant Deed executed by SELLER, with signatures notarized for recording in the Official Records, conveying to BUYER the Property, in the form of Exhibit B attached hereto ("Grant Deed"), which Grant Deed shall be recorded in the Official Records at the Closing;

(2) An affidavit in compliance with the Foreign Investment and Real Property Tax Act and a California Tax Withholding Form 593-C, executed by SELLER (the "Non-Foreign Status Certificate" and "Form 593-C", respectively), certifying that SELLER is not subject to withholding under federal or state law; and

(3) Such additional instruments or documents reasonably required by Escrow Holder in order to consummate the purchase and sale of the Property in accordance with the terms and conditions of this Agreement, to the extent consistent with this Agreement, including without limitation escrow instructions and an owner's affidavit reasonably required by the Title Company to enable the Title Company to issue the Title Policy to BUYER at the Closing.

C. BUYER'S Deposits. Prior to Closing, in sufficient time prior thereto to allow Closing to occur on the Closing Date, BUYER shall cause to be delivered into the Escrow the following:

(1) In immediately available funds a sum equal to the Purchase Price less the Deposit together with any interest earned thereon; and

(2) Such additional instruments or documents reasonably required by Escrow Holder in order to consummate the purchase and sale of the Property in accordance with the terms and conditions of this Agreement, to the extent consistent with this Agreement, including without limitation escrow instructions.

D. Failure to Timely Close Escrow. If the Closing does not occur by the Closing Date, then either party not then in default may elect to terminate this Agreement and cancel Escrow by giving written notice of such termination and cancellation to the other party. If neither party is in default, then the cost of cancellation of the Escrow shall be shared equally between BUYER and SELLER, unless otherwise expressly provided in the Agreement. If only one of the parties hereto is in default, then such defaulting party shall pay for the entire cost of cancellation of the Escrow. The termination of this Agreement and cancellation of the Escrow, as provided herein, shall be without prejudice to whatever legal rights, as said rights may be limited by the terms contained in this Agreement, that BUYER or SELLER may have against each other arising out of this Agreement and the Escrow, which rights shall survive the termination of this Agreement.

E. Conditions to Closing.

(1) **BUYER'S Conditions.** In addition to all other conditions to the completion of the transaction described in this Agreement, SELLER and BUYER agree that the Closing of the sale and purchase contemplated by this Agreement is subject to satisfaction, approval or waiver by BUYER of the matters specified below in this Section 6.E. (1), which conditions are solely for the benefit of the BUYER and can be unilaterally waived by BUYER:

i. The Title Company shall be irrevocably committed to issue to BUYER at the Closing an Owner's Standard ALTA policy of title insurance in the amount of the Purchase Price, insuring the Property is vested in BUYER subject to no exceptions other than the Permitted Exceptions, in the form and with endorsements to be approved by BUYER prior to the end of the Due Diligence Period (the "Title Policy");

ii. There shall have been no material adverse change in the physical condition of the Property from the Effective Date through the Closing Date; and

iii. SELLER shall not be in material default of SELLER's obligations under this Agreement, and all of SELLER's express representations and warranties set forth in this Agreement shall continue to be true, correct, and unchanged in all material respects as of the Closing.

(2) **SELLER's Conditions.** In addition to all other conditions to the completion of the transaction described in this Agreement, SELLER and BUYER agree that the Closing of the sale and purchase contemplated by this Agreement is subject to satisfaction, approval or waiver by SELLER of the matters specified below in this Section 6.E (2), which conditions are solely for the benefit of SELLER and can be unilaterally waived by SELLER:

i. BUYER shall not be in material default of BUYER's obligations under this Agreement, and all of BUYER's express representations and warranties set forth in this Agreement shall continue to be true, correct, and unchanged in all material respects as of the Closing.

F. Title. At Closing, title to the Property shall be conveyed to BUYER subject to only the following exceptions (collectively, "Permitted Exceptions"): (i) non-delinquent real property taxes and assessments (if any), (ii) the standard pre-printed exceptions and exclusions contained in an ALTA Standard coverage owner's policy of title insurance, and (iii) liens and encumbrances resulting from the acts of BUYER or any of BUYER's representatives. Anything to the contrary in this Agreement notwithstanding, SELLER shall pay or discharge, or cause to be removed, whether or not specifically objected to by BUYER, all monetary liens or encumbrances affecting the Property (other than non-delinquent real property taxes and assessments, and other than monetary liens and encumbrances created by BUYER, but otherwise including without limitation all deeds of trust and mortgages and other encumbrances relating thereto, judgment liens, mechanics' and materialmen's liens or claims of lien, and liens relating to defaulted taxes), and all liens or encumbrances voluntarily created or assumed by SELLER prior to the Close of Escrow; and in no event shall SELLER be allowed to elect or be deemed to have elected not to pay, discharge or cause to be removed such matters.

If following the Effective Date, the Title Company discloses additional exceptions not previously disclosed as exceptions in the preliminary title report delivered to BUYER before the Effective Date, other than the Permitted Exceptions, then unless BUYER agrees to accept title as

it then is without reduction of the Purchase Price, BUYER may at its option, determined in BUYER's sole and absolutely discretion, terminate this Agreement, in which event the Deposit shall be released to BUYER.

G. Prorations.

(1) Subject to Subsection (2) below, all revenues and expenses of the Property, including without limitation real property taxes, special taxes, assessments (if any) shall be prorated and apportioned between BUYER and SELLER as of the Closing Date, so that SELLER bears all expenses with respect to the Property, and has the benefit of all income with respect to the Property, through and including the date immediately preceding the Closing Date. If any portion of the Property is affected by any assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become payable in installments, and an installment payment of such assessment is then a lien due and payable as part of the annual ad valorem property tax bill received for the Property, then such installment shall be prorated as of the Closing Date; and if any such assessment or other charge is not payable in installments or are not billed as part of the annual ad valorem property tax bill for the Property, shall be paid in full by SELLER at the Closing. Notwithstanding the foregoing, SELLER shall be solely responsible for clearing all possessory interest taxes from the Property not later than the Closing. Any necessary adjustment due either party on receipt of a supplemental tax bill will be made by the parties outside of this Escrow within the time required by this Section 10 below, which obligation shall survive the Closing.

(2) Subject to Subsection (1) above, if any of the items to be prorated as of Closing cannot be finally determined as of Closing, the prorations shall be made at Closing based on the last available information, and post-closing adjustments between BUYER and SELLER shall be made within twenty (20) days after the date that the actual amounts are determined, and if payment is not made within this twenty (20) day period the party owing such sums shall pay interest thereon, at the rate of ten percent (10%) per annum, from the date of delivery of the bill to the non-paying party to the date of payment. This subsection shall survive the Closing.

H. Title Charges, Other Closing Costs. If this transaction is terminated by BUYER prior to the expiration of the Due Diligence Period for any reason other than SELLER's default hereunder, BUYER shall pay all escrow costs billed by the Escrow Holder and Title Company. If this transaction closes as provided in this Agreement, customary escrow costs shall be paid from the proceeds of the sale. The term customary escrow costs does not include SELLER'S costs, if any, associated with providing clean title to the property including but not limited to removal of liens or encumbrances as set forth in Subsection G immediately above.

I. Disbursement of Funds. On the Close of Escrow, Escrow Holder shall be instructed to disburse the Purchase Price less customary escrow costs pursuant to Subsection H immediately above.

J. Delivery of Documents. Escrow Holder shall be instructed to, upon the Close of Escrow, deliver all instruments and documents as follows:

(1) Escrow Holder shall be instructed to deliver to SELLER:

i. A copy of the Grant Deed executed by SELLER, showing recording information, and certified by the Escrow Holder as being a true and complete copy of the Grant Deed recorded in the Official Records;

ii. A copy of the Non-Foreign Status Certificate, and Form 593-C;

iii. A copy of all other documents Deposited into Escrow; and

iv. The Purchase Price, less the costs and prorations chargeable to SELLER pursuant to this Agreement.

(2) Escrow Holder shall be instructed to deliver to BUYER following the Close of Escrow the following:

i. A copy of the Grant Deed signed by SELLER, showing recording information, and certified by the Escrow Holder as being a true and complete copy of the Grant Deed recorded in the Official Records;

ii. A copy of the Non-Foreign Status Certificate, and Form 593-C;

iii. The original Title Policy; and

iv. A copy of all other documents Deposited into Escrow.

7. CONDEMNATION.

If between the date of this Agreement and the Closing Date any condemnation or eminent domain proceedings are initiated which would result in the taking of any portion of the Property, then BUYER may terminate this Agreement by written notice of the commencement or occurrence of any condemnation or eminent domain proceedings affecting the Property. If such proceedings are initiated for the taking of any part of the Property, BUYER shall then notify SELLER, within ten (10) business days after BUYER's receipt of SELLER's notice (but in no event later than the Closing Date), whether or not BUYER elects to terminate this Agreement. If BUYER elects not to terminate this Agreement or fails to make an election within such ten (10) business day period or prior to the Closing Date, whichever is earlier, then BUYER shall be deemed to have elected to proceed with the Closing without any reduction to the Purchase Price, in which event SELLER shall assign to BUYER at Closing all of SELLER's right, title and interest in and to any award made in connection with such condemnation or eminent domain proceedings, or if such payment has been received by SELLER such payment shall be credited to

BUYER at the Closing, and Closing shall be delayed, if necessary, until the later to occur of (i) the Closing Date, or (ii) ten (10) days after the expiration of the ten (10) business day period. If this Agreement is terminated in accordance with this Section 7, then the Nonrefundable Consideration shall be released to SELLER, the Deposit Balance shall be refunded to BUYER by the Escrow Holder, and SELLER and BUYER shall thereupon be released from all further obligations under this Agreement other than the Surviving Obligations.

8. RISK OF LOSS.

If prior to the Closing, the existing Improvements, or any part thereof, are materially and substantially damaged or destroyed such that the total cost of restoring the Property to the condition that existed just prior to the damage of destruction is equal to or exceeds thirty percent (30%) of the Property's fair market value prior to the damage or destruction, BUYER has the option , exercisable by giving written notice to the SELLER within ten (10) days after receiving written notice of such damage or destruction (but in any event no later than the Closing Date, to elect either of the following options: (i) to terminate this Agreement, in which case the Deposit Balance shall be returned to BUYER, and any other money or documents in escrow shall be returned to the party depositing the same, and neither party shall have any further rights or obligations under this Agreement other than the Surviving Obligations, or (ii) to accept the Property in its then condition and to proceed with the Closing. A failure by BUYER to notify SELLER in writing within such ten (10) business day period or prior to the Closing Date, whichever is earlier, will be deemed an election to proceed under clause (ii) above. If BUYER elects option (ii) all of SELLER's insurance proceeds as a consequence of such casualty, if any, shall be assigned or paid to BUYER.

9. DEFAULT AND REMEDIES.

A. DEFAULT BY BUYER; LIQUIDATED DAMAGES. IF THE SALE OF THE PROPERTY IS NOT CONSUMMATED BECAUSE OF BUYER'S DEFAULT UNDER THIS AGREEMENET, ESCROW HOLDER SHALL BE INSTRUCTED BY SELLER TO CANCEL THE ESCROW, SELLER AND BUYER SHALL THEREUPON BE RELEASED FROM EACH OF ITS RESPECTIVE OBLIGATIONS HEREUNDER (OTHER THAN THE SURVIVING OBLIGATIONS), AND AS LIQUIDATED DAMAGES HEREUNDER, THE DEPOSIT (DEFINED IN SECTION 2.B), TO THE EXTENT MADE, SHALL BE PAID TO AND RETAINED BY SELLER AS LIQUIDATED DAMAGES. THE PARTIES ACKNOWLEDGE THAT SELLER'S ACTUAL DAMAGES IN THE EVENT OF A DEFAULT BY BUYER WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR SIGNATURES OR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE AMOUNT DESIGNATED AS LIQUIDATED DAMAGES IN THIS SECTION 9.A. HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS REASONABLE LIQUIDATED DAMAGES PURSUANT TO THE TERMS HEREOF, CALIFORNIA CIVIL CLODE SECTIONS 1671 AND 1677 AND ANY RETENTION OF LIQUIDATED DAMAGES AS A RESULT THEROF SHALL CONSTITUTE SELLER'S ONLY AND EXCLUSIVE REMEDY AGAINST

BUYER IN THE EVENT OF A DEFAULT ON THE PART OF BUYER. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES. THE PROVISIONS OF THIS SECTION 9.A. SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

SELLER'S INITIALS: _____ BUYER'S INITIALS: _____

B. Default or Breach by SELLER. If SELLER materially defaults in the performance of its obligations hereunder or is otherwise in material breach of the terms hereof, such that BUYER is materially and adversely impacted, BUYER shall, at its election, have the right to:

(1) Seek specific performance of SELLER's obligation to convey the Property to BUYER pursuant to this Agreement, and SELLER agrees that because of the unique nature of the Property, specific performance is an appropriate remedy for enforcement of SELLER's obligation to convey the Property to BUYER pursuant to the Agreement; provided, however, that in the event Buyer elects to sue Seller for specific performance of Seller's obligations under this Agreement; (i) Buyer must have reasonably demonstrated that it is prepared to deliver into Escrow all funds and documents required by this Agreement in order for the Closing to occur, and Buyer shall be ready and willing in all other respects to close Escrow in accordance with the terms and conditions of this Agreement; and (ii) Buyer must have filed a petition with the Superior Court of Santa Clara County, seeking specific performance of Seller's obligations under this Agreement, within sixty (60) days after the scheduled Closing Date (as the same may be mutually extended by the parties).

(2) Terminate this Agreement, upon which termination BUYER's remedy shall be the return of the Deposit and recovery of all out of pocket expenses incurred by BUYER in connection with this Agreement and BUYER's due diligence investigations relating to the Property and all other damages incurred by BUYER as the result of SELLER's default; and

C. Remedies.

(1) SELLER'S Default. If SELLER defaults hereunder, or the Closing does not occur by reason of Seller's default hereunder which is not cured within ten (10) days after Seller's first have knowledge of such default, then Buyer shall be entitled to pursue its right to specifically enforce this Agreement or to terminate this Agreement. In the event Buyer terminates this Agreement, Seller, to the extent that any Deposit has been released, or Escrow Holder, to the extent any Deposit has not been released, shall immediately return said

Deposit(s) to Buyer and except as otherwise provided, neither party will have any further obligations under this Agreement.

(2) BUYER'S Default. **BUYER AND SELLER AGREE THAT IN THE EVENT THE CLOSING FAILS TO OCCUR BECAUSE OF BUYER'S DEFAULT OR BREACH (NOT DUE TO SELLER'S WRONGFUL ACTS OR OMISSIONS OR SELLERS' BREACH) HEREUNDER, THE DAMAGES TO SELLER WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE TO ASCERTAIN, AND THAT THEREFORE THE DEPOSIT, TO THE EXTENT MADE AND RELEASED AND BECOME NON-REFUNDABLE, IS A REASONABLE ESTIMATE OF THE DAMAGES TO SELLERS, SUCH DAMAGES INCLUDING COSTS OF NEGOTIATING AND DRAFTING OF THIS AGREEMENT, COSTS OF COOPERATING IN SATISFYING CONDITIONS TO CLOSING, COSTS OF SEEKING ANOTHER BUYER UPON BUYER'S DEFAULT, OPPORTUNITY COSTS IN KEEPING THE PROPERTY OUT OF THE MARKETPLACE, AND OTHER COSTS INCURRED IN CONNECTION HEREWITH. ACCORDINGLY, BUYER AGREES THAT UPON BUYER'S RECEIPT OF NOTICE OF SUCH DEFAULT OR BREACH FROM SELLER, WHICH NOTICE SHALL SPECIFY THE BREACH IN DETAIL, AND FAILURE BY BUYER TO CURE SAID BREACH, DEFAULT OR FAILURE TO PERFORM WITHIN TEN (10) DAYS AFTER RECEIPT OF SUCH NOTICE, AND CLOSING FAILS TO OCCUR BECAUSE OF SUCH BREACH OR DEFAULT, SELLERS' DAMAGES SHALL BE LIMITED TO THE DEPOSIT, TO THE EXTENT SAID DEPOSIT HAS BEEN MADE, RELEASED AND HAVE BECOME NON-REFUNDABLE, AS LIQUIDATED DAMAGES, AS SELLER'S SOLE REMEDY IN THE EVENT OF ANY SUCH MATERIAL BREACH OR DEFAULT BY BUYER HEREUNDER. THE PARTIES ACKNOWLEDGE THAT SELLER'S RETENTION OF LIQUIDATED DAMAGES AS CONTEMPLATED IN THIS SECTION 9 IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER UNDER CALIFORNIA CIVIL CODE SECTIONS 1671, 1676, AND 1677. THE FOREGOING IS NOT INTENDED TO LIMIT BUYER'S SURVIVING OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY OBLIGATIONS OF BUYER TO INDEMNIFY SELLERS OR WITH RESPECT TO ANY DEFAULT BY BUYER WHICH OCCURS FOLLOWING THE APPLICABLE CLOSING.**

INITIALS OF BUYER: _____ INITIALS OF SELLERS: _____/_____

10. NOTICE.

All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following address:

If to BUYER: Milpitas Community Museum
1996 Tarob Court
Milpitas, Ca 95035
Attn: Donald Peoples

With a copy to: Steve Munzel
542 Walnut Drive
Milpitas, CA 95035

If to SELLER: _____

With a copy to: _____

Any notices required under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service, if served personally on the person to whom notice is to be given, (ii) on the date of service if sent by tele copier with confirmation of successful transmission, provided the original is concurrently sent by first class mail, and provided that notices received by tele copier after 5:00 p.m. shall be deemed given on the next business day, (iii) on the next business day after Deposit with a recognized overnight delivery service, or (iv) on the third day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, and postage-prepaid.

11. TIME OF ESSENCE.

Time is of the essence of this Agreement.

12. GOVERNING LAW AND VENUE.

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to any choice of law principles. Venues for all court proceedings or alternative forms of dispute resolution proceedings shall be Santa Clara County.

13. COUNTERPARTS.

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14. CAPTIONS.

The captions/headings in this Agreement are inserted for convenience of reference and in no way define, describe, or limit the scope or intent of this Agreement or any of the provisions hereof.

15. ASSIGNABILITY.

BUYER shall not assign this Agreement without prior written consent of SELLER.

16. BINDING EFFECT.

This Agreement shall be binding upon and inure to the benefit of both parties hereto and their respective successors and permitted assigns.

17. MODIFICATIONS; WAIVER.

No waiver, modification, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by both parties.

18. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded hereby.

19. AMBIGUITIES.

This Agreement shall be interpreted as if it had been jointly drafted by both parties. Therefore, the normal rule of construction that ambiguities are construed against the drafter is waived.

20. SEVERABILITY.

Any provision of this Agreement which is void, unenforceable or invalid or the inclusion of which would adversely affect the validity, legality or enforcement of this Agreement shall be of no effect, but all the remaining provisions of this Agreement shall remain in full force and effect.

21. SUBMISSION OF AGREEMENT.

The submission of this Agreement by one party to the other or their agents or attorneys for review will not be deemed an offer to sell or purchase the Property, and no agreement with respect to the purchase and sale of the Property will exist unless and until this Agreement is executed and delivered by both SELLER and BUYER.

22. REAL ESTATE REPORTING PERSON.

Escrow Holder is designated the "real estate reporting person" for purposes of Section 6045 of Title 16 of the United States Code and Treasury Regulation 1.6045-4 and any instructions or settlement statement prepared by Escrow Holder shall so provide. Upon the consummation of the transaction contemplated by this Agreement, Escrow Holder shall, after review and approval by SELLER (such approval not to be unreasonably withheld, conditioned or delayed), file a Form 1099 information return and send the statement to SELLER as required under the aforementioned statute and regulation.

23. COMPUTATION OF TIME.

In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time begins to run will not be included, and the last day of the period so computed will be included, unless it is a Saturday, Sunday, or legal holiday recognized as such in California, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or such legal holiday. As used in the Agreement, "business day" shall mean a day which is not a Saturday, Sunday, or legal holiday recognized as such in California.

24. WAIVER.

No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

25. NUMBER AND GENDER.

When required by the context of this Agreement, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

26. NEGOTIATED TERMS.

Each party has had the opportunity to be advised by legal counsel and other professionals in connection with this Agreement, and each party has obtained such advice as each party deems appropriate. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement.

27. SIGNATURES.

Signatures and initials to this Agreement created by the signer by electronic means and/or transmitted by telecopy or other electronic transmission shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an executed original of this Agreement with its actual signature and initials to the other party, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each party to this Agreement shall be bound by its own electronically created and/or electronically transmitted signature and initials and shall accept the electronically created and/or electronically transmitted signature and initials of the other party to this Agreement.

28. EXCLUSIVITY.

During the terms of this Agreement, SELLER shall not offer the Property or any interest therein for sale or lease to any other party, or negotiate, solicit, or entertain any offers.

[Signature pages follow]

IN WITNESS WHEROF, the parties hereto have executed this Agreement as of the day and year first above written.

SELLER:

Successor Agency of the Former Redevelopment Agency of the City of Milpitas

_____

Name: _____
Title: _____

Date: _____

ATTEST:

_____

Name: _____
Clerk, Successor Agency

BUYER:

Steve Munzel
Name: Steve Munzel
Title: President

Date: November 9, 2017

ATTEST:

Donald R Peoples
Name: Donald R. Peoples
Title: Vice President

EXHIBIT INDEX

Exhibit Reference	Content
Exhibit A	Legal Description of Real Property
Exhibit B	Grant Deed

Milpitas Community Museum
1996 Tarob Court
Milpitas, CA 95035
408-957-9229
Incorporated June 10, 2013

Steve J. Pangelian
Acting City Manager
City of Milpitas
455 East Calaveras Blvd.
Milpitas, California 95035-5479

October 23, 2017

Subject: Proposal To Purchase 230 N. Main Street, Milpitas, CA
APN 028-34-001 through APN 028-34-094

Dear Mr. Pangelian:

The Milpitas Community Museum (henceforth *the Museum*) is pleased to provide this proposal to purchase the subject property. The Museum is registered as a non-profit corporation with the State of California. The Milpitas Community Museum was incorporated on June 10, 2013 and its California Corporate or Organization Number is 3579179.

The purpose of the purchase is to construct a community-funded neighborhood park and museum building at the property address. The passage of Measure K, which protects open space and parkland in Milpitas, by over 85% of the electorate in November 2016, demonstrated the support our community has for neighborhood parks such as that which the Museum envisions. Our intent is to raise funds for construction of the park and museum from within the Milpitas community. We believe that this venture could be a great uniting force within our very diverse community and provide a source of great civic pride for generations to come. Our current Board of Directors have made financial commitments to acquire the land per this RFP. We believe that our intended use of the land is in complete compliance with current City zoning.

The Milpitas Community Museum would like to state the following:

1. The Museum accepts the terms and conditions of sale set forth in the Request for Proposals.
2. The Museum has adequate funds to complete the purchase and can accelerate the closing schedule.

The subject is zoned for use as a Park and Open Space. We believe our offer is Fair Market Value for Parkland. The Milpitas Community Museum hereby proposes to offer **Three Hundred Fifteen Thousand ($315,000.00) Dollars** in cash for title to the property located at 230 North Main Street in Milpitas, California [APN 028-34-001 through 028-34-094.

The Museum has the financial ability to pay the above stated offer in cash within the stipulated deadline should the Museum's offer for 230 North Main Street, Milpitas, California be accepted by the Milpitas Oversight Board. Members of the Board of Directors have donated funding to support this.

Attached is a cashier's check in the amount of fifty thousand dollars ($50,000) as an Initial Deposit.

Lead Purchasing Entity:
Milpitas Community Museum
1996 Tarob Court
Milpitas, CA 95035
Phone: 408-957-9229
Fax: 408-957-9221
Incorporated June 10, 2013

Primary Contact Person:
Steve Munzel
President, Milpitas Community Museum
1996 Tarob Court
Milpitas, CA 95035
Phone: 408-263-3099
Fax: 408-957-9221
Email: smunzel@earthlink.net

Thank you for your consideration of this proposal. Should you have any questions or require any clarification, please do not hesitate to contact me.

Respectfully,

Steve Munzel

Steve Munzel
President, Milpitas Community Museum

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

OFFICIAL CHECK

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

citibank

Citibank, N.A.

314235983

62-20
311

FC# 00384 FA# 004 $0.00 ONL PIC
050-03 Ck. Ser.# 314235983

DATE 10/23/17

PAY ****FIFTY THOUSAND DOLLARS****

$50,000.00

TO THE ORDER OF ****CHICAGO TITLE COMPANY****

Security Features Details on Back

NAME OF REMITTER
ADDRESS

DONALD PEOPLES
MEMO: ON BEHALF OF MILPITAS COMMUNITY MUSEUM

Drawer: Citibank, N.A.

AUTHORIZED SIGNATURE

MP

Citibank, N.A. One Penn's Way
New Castle, DE 19720

[redacted]