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WHEN RECORDED RETURN TO:

CITY OF MILPITAS
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MILPITAS, CA 95035
ATTN: Engineering Department

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Section 6103

CITY OF MILPITAS, CALIFORNIA

By: _____
City Clerk

AGREEMENT FOR COMPLETION OF PUBLIC IMPROVEMENTS

between
CITY OF MILPITAS

a California municipal corporation

and

BRIDGE POINT MILPITAS LLC

a Delaware limited liability company

AGREEMENT FOR COMPLETION OF PUBLIC IMPROVEMENTS

I. PARTIES AND DATE.

This Agreement for the Completion of Public Improvements (“Agreement”) is entered into as of this ____ day of _____, 2021 by and between the City of MILPITAS, a California municipal corporation (“City”) and Bridge Point Milpitas LLC a limited liability company with its principal office located at 11100 Santa Monica Blvd, Suite 700, Los Angeles CA 90025 (“Developer”). City and Developer are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

II. RECITALS.

A. On October 1, 2019, Developer submitted to City an application for approval of a Site Development Permit Amendment and an Environmental Impact Assessment (the “Bridge Point Project”) for real property located within City, a legal description of which is attached hereto as Exhibit “A” (“Property”).

B. On December 12, 2019, the **MILPITAS PLANNING COMMISSION** conditionally approved Developer’s application for a Site Development Permit Amendment (SA19-0003) and Environmental Impact Assessment No. (EA19-0006) for the Bridge Point Project to develop North Campus in a different manner previously approved in March 2009. On March 3, 2009, the **MILPITAS CITY COUNCIL** approved the Tentative Map No. (MT08-0001), Conditional Use Permit No. (UP08-0045) and Site Development Permit No. (SZ07-0002) for the Campus at McCarthy Ranch Project.

C. Developer has not completed all of the work or made all of the public improvements required by **Title X, Chapter 1, Section 10** of the City’s Municipal Code, the conditions of approval for the Bridge Point Project, or other ordinances, resolutions, or policies of City requiring construction of public improvements in conjunction with the Bridge Point Project.

D. Pursuant to Section **Title X, Chapter 1, Section 10** of the City’s Municipal Code, Developer and City enter into this Agreement for the timely construction and completion of the public improvements and the furnishing of the security therefor, acceptable to the City Engineer and City Attorney, for the Bridge Point Project.

E. Developer’s execution of this Agreement and the provision of the security are made in consideration of City’s approval of the Bridge Point Project.

III. TERMS.

1.0 Effectiveness. This Agreement shall not be effective unless and until both 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. If the above described conditions are not satisfied within 60 days after the entry date of this Agreement, this Agreement shall automatically terminate without need of further action by either City or Developer.

2.0 Public Improvements. Developer shall construct or have constructed at its own cost, expense, and liability all improvements required by City as part of the approval of Bridge Point Project, 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 plans, profiles, and specifications which have been prepared by or on behalf of Developer for Bridge Point Project ("Public Improvements"). The Public Improvements are more specifically described in Exhibit "B," which is attached hereto and incorporated herein by this reference and as shown on City approved Improvement Plan No. 2-1332 on file with the City. Construction of the Public Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. The Developer shall be responsible for the replacement, relocation, or removal of any component of any irrigation water system in conflict with the construction or installation of the Public Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of the City Engineer and the owner of such water system. 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, 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. Prior to commencing any work, Developer shall file a written statement with the City Clerk and the City Engineer, signed by Developer and each utility which will provide utility service to the Property, attesting that Developer has made all deposits legally required by each utility for the extension and provision of utility service to the Property.

2.3 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any Public Improvement until all plans and specifications for such Public Improvement 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 Applicable 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. The 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 in Exhibit "B" 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 the 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 and the Public Improvements to be completed may be accomplished without giving prior notice thereof to Developer's surety for this Agreement.

3.0 Maintenance of Public Improvements and Landscaping. 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 the Public Improvements until accepted by City pursuant to Section 11.0. Any use by any person of the Public Improvements, or any portion thereof, shall be at the sole and exclusive risk of the Developer at all times prior to City's acceptance of the Public Improvements. Developer shall maintain all the 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 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, 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.

4.0 Construction Schedule. Unless extended pursuant to this Section 4.1 of this Agreement, Developer shall fully and adequately complete or have completed the Public Improvements within 24 months of the effective date of this Agreement, unless extended pursuant to Section 4.1.

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 waives 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 required or agreed upon Public Improvements.

5.0 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 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, and prior to City's approval and acceptance of the Public Improvements and release of the Security as set forth in Sections 11.0 and 13.0 et seq. of this Agreement.

6.0 Utilities. Developer shall provide utility services, including water, power, gas, and telephone service to serve each parcel, lot, or unit of land within the Bridge Point Project 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 utilities shall be installed underground.

7.0 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 Bridge Point Project.

8.0 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.

9.0 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 federal, state, or local law, ordinance, regulation, code, standard, or other requirement, 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 immediately 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 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 a completion acceptable to City within the time frame contained in the Notice, City may complete all remaining work, 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.

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.

10.0 Administrative Costs. If Developer fails to construct and install all or any part of the Public Improvements within the time required by this Agreement, 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.

11.0 Acceptance of Improvements by City Council; 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. The City Council may, in its sole and absolute discretion, accept fully completed portions of the Public Improvements prior to such time as all of the Public Improvements are complete and reduce the requirement Security amount pursuant to Section 13.0 *et seq.*, which shall not release or modify Developer's obligation to complete the remainder of the Public Improvements within the time required by this Agreement. Upon the total or partial 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 9204, at which time the accepted Public Improvements shall become the sole and exclusive property of City without payment therefor. Issuance by City of occupancy permits for any buildings or structures located on the Property 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 and shall reflect the condition of the Public Improvements as constructed, with all changes incorporated therein.

12.0 Warranty and Guarantee. Developer hereby warrants and guarantees all Public Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of all landscaping within the Property in a vigorous and thriving condition reasonably acceptable to City, for a period of one (1) year following completion of the Public Improvements and acceptance of them by the City Council ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the Public Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of City, and subject 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 the 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.

13.0 Improvement Security; Surety Bonds. Prior to this Agreement taking effect as set forth in Section 1.0 above, Developer shall provide City with surety bonds in the amounts and under the terms set forth below ("Security"). The amount of the Security shall be based on the City Engineer's approximation of the actual cost to construct the Public Improvements, including the replacement cost for all landscaping ("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 provision (Section 13.0 et seq.) shall in no way limit or modify Developer's indemnification obligation provided in Section 16.0 of this Agreement.

13.1 Performance Bond. 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 9.0 et seq. of this Agreement, and to secure Developer's one-year 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 bond in the amount of Four Hundred Eighty One Thousand and Forty Dollars (\$481,040.00), which sum 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 portions of the Public Improvements are completed and accepted by the City Council, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Bridge Point Project, and the total remaining security is not less than twenty-five percent (25%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period, or any extension thereof as provided in Section 12.0 of this Agreement, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Bridge Point Project.

13.2 Labor & Material Bond. To secure payment to the contractors, subcontractors, laborers, material men, 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 bond in the amount of Four Hundred Eighty One Thousand and Forty Dollars (\$481,040.00), which sum shall not be 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 all stop notice or mechanic's lien claims of which City is aware, plus an amount equal to twenty percent (20%) of 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 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, the 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. The 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 "C," 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 "C" and incorporated herein by this reference.

14.0 Monument Security. Not applicable

15.0 [Reserved]

16.0 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 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. 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 Agency 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 section 1770 et seq., including, without limitation S.B. 975, which require the payment of prevailing wage rates and the performance of other requirements if it is determined that this Agreement constitutes a public works contract. It shall be the sole responsibility of Developer to determine whether to pay prevailing wages 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 pay prevailing wages for work required by this Agreement.

17.0 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

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 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 \$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 \$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 \$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 \$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 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.

18.0 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 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.

19.0 Relationship Between the Parties. The Parties hereby mutually agree that neither this Agreement, nor any other related entitlement, permit, or approval issued by City for the Property 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.

20.0 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 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 the Parties or their agents have 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
455 E. Calaveras Blvd
MILPITAS, CA 95035
Attn: Steve Erickson, PE
Director of Engineering/City Engineer

BRIDGE POINT MILPITAS LLC
11100 Santa Monica Blvd, Suite 700
Los Angeles, CA 90025
Attn: Brian Wilson

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 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, 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first above written.

CITY OF MILPITAS

By: _____
 (signature)
Steven McHarris
 (print name)
City Manager
City of MILPITAS

BRIDGE POINT MILPITAS LLC

By: _____
 (signature)
BRYAN WILSON
 (print name)
MANAGER
 (title)

APPROVED AS TO FORM:

By: _____
 (signature)
Christopher Diaz
 (print name)
City Attorney
City of MILPITAS

APPROVED AS TO CONTENT:

By: _____
 (signature)
Lauren Lai, CPA,MPA
 (print name)
Finance Director/Risk Manager
City of MILPITAS

APPROVED AS TO SUFFICIENCY:

By: _____
 (signature)
Steve Erickson, PE
 (print name)
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.**

All Capacity 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

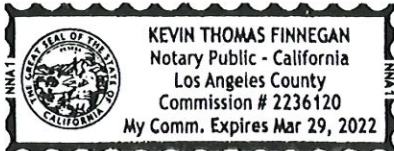
COUNTY OF Los Angeles

On January 4, 2021, before me, Kevin Thomas Finnegan, Notary Public, personally appeared Brian Wilson, 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 of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER**DESCRIPTION OF ATTACHED DOCUMENT**

- ☐ Individual
- ☐ Corporate Officer

Title(s)

Title or Type of Document

- ☐ Partner (s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Number of Pages

Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

All Capacity 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 _____, 20____, before me, _____, 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 of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)
- ☐ Partner ☐ Limited
(s)
☐ General
- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

EXHIBIT “A”

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT 'A'
LEGAL DESCRIPTION
ADJUSTED PARCEL 4

REAL PROPERTY SITUATE IN THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL "A" AND A PORTION OF PARCEL 4, AS SAID PARCELS ARE SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON JUNE 6, 2002 IN BOOK 749 OF MAPS AT PAGES 13 THROUGH 16, SANTA CLARA COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID PARCEL 4;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 4, SOUTH 69° 02' 02" EAST, 1,244.70 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF NORTH McCARTHY BOULEVARD, A VARYING WIDTH PUBLIC RIGHT OF WAY, SAID POINT ALSO BEING THE NORTHEASTERLY CORNER OF SAID PARCEL 4;

THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE THE FOLLOWING FIVE (5) COURSES:

- 1 – ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT, THE CENTER OF WHICH BEARS SOUTH 87° 38' 01" WEST, HAVING A RADIUS OF 1,790.00 FEET, THROUGH A CENTRAL ANGLE OF 3° 00' 42" HAVING AN ARC LENGTH OF 94.09 FEET,
- 2 – SOUTH 7° 46' 20" WEST, 66.17 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT,
- 3 – ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 1,783.00 FEET, THE CENTER OF WHICH BEARS SOUTH 86° 09' 37" EAST, THROUGH A CENTRAL ANGLE OF 1° 05' 03" HAVING AN ARC LENGTH OF 33.74 FEET,
- 4 – SOUTH 1° 32' 30" EAST, 62.94 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, AND
- 5 – ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 1,790.00 FEET, THE CENTER OF WHICH BEARS NORTH 84° 09' 15" WEST, THROUGH A CENTRAL ANGLE OF 28° 05' 13" HAVING AN ARC LENGTH OF 877.47 FEET;

THENCE LEAVING SAID WESTERLY RIGHT OF WAY LINE THE FOLLOWING FOUR (4) COURSES:

- 1 – NORTH 63° 15' 33" WEST, 537.68 FEET,
- 2 – NORTH 63° 05' 27" WEST, 332.61 FEET,
- 3 – NORTH 73° 41' 38" WEST, 221.89 FEET, AND
- 4 – SOUTH 68° 46' 22" WEST, 384.59 FEET TO A POINT ON THE WESTERLY LINE OF SAID PARCEL 4;

THENCE ALONG LAST SAID WESTERLY LINE THE FOLLOWING THREE (3) COURSES:

- 1 – ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 650.00 FEET, THE CENTER OF WHICH BEARS NORTH 88° 36' 08" EAST, THROUGH A CENTRAL ANGLE OF 35° 40' 33" HAVING AN ARC LENGTH OF 404.73 FEET TO A POINT OF REVERSE CURVATURE,
- 2 – ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 2,600.00 FEET, THROUGH A CENTRAL ANGLE OF 17° 24' 10" HAVING AN ARC LENGTH OF 789.71 FEET TO A POINT OF REVERSE CURVATURE, AND
- 3 – ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 2,300.00 FEET, THROUGH A CENTRAL ANGLE OF 2° 55' 30" HAVING AN ARC LENGTH OF 117.42 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 1,489,899 SQUARE FEET, OR 34.2034 ACRES OF LAND, MORE OR LESS.

DAVID W. ENKE, L.S.,

David W. Enke
DAVID W. ENKE, LS 4071

4/7/20
DATE

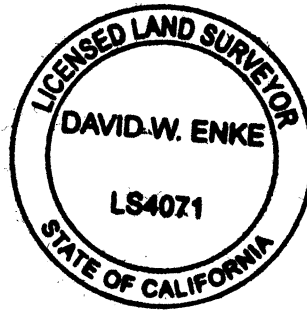


EXHIBIT “B”

LIST OF PUBLIC IMPROVEMENTS

ENGINEER'S OPINION OF PROBABLE COST

Bridge Point Silicon Valley - Public Improvements
for
Bridge Acquisition, LLC
205 N. McCarthy Blvd., Milpitas, CA

ITEM NO.	DESCRIPTION	UNITS	QUANTITY	UNIT PRICE	AMOUNT
I. Demolition					
1	SAWCUT	LF	937	\$1.50	\$1,405.50
2	CURB REMOVAL	LF	776	\$0.50	\$388.00
3	SIDEWALK REMOVAL	SF	2,835	\$1.00	\$2,835.00
4	AC PAVEMENT REMOVAL	SF	5,028	\$1.00	\$5,028.00
5	REMOVE EXISTING LIGHT POLE	EA	2	\$1,000.00	\$2,000.00
6	REMOVE EXISTING TRAFFIC SIGNAL	EA	1	\$750.00	\$750.00
7	REMOVE EXISTING JOINT TRENCH & VAULTS	LS	1	\$2,500.00	\$2,500.00
8	REMOVE EXISTING TREE	EA	4	\$450.00	\$1,800.00
SUBTOTAL==>					\$16,706.50

II. Utilities

1	STORM DRAIN MANHOLE	EA	1	\$5,000.00	\$5,000.00
2	18" STORM DRAIN	LF	64	\$65.00	\$4,160.00
3	24" STORM DRAIN	LF	59	\$70.00	\$4,130.00
4	6" SANITARY SEWER	LF	70	\$50.00	\$3,500.00
5	SANITARY SEWER CLEANOUT	EA	2	\$500.00	\$1,000.00
6	SANITARY SEWER MANHOLE	EA	2	\$5,500.00	\$11,000.00
7	FIRE HYDRANT RELOCATION	EA	1	\$6,000.00	\$6,000.00
8	90' ~ 10" FIRE SERVICE & DDCV (STD DET 730) (OFF-SITE SERVICE)	EA	3	\$7,750.00	\$23,250.00
9	2" IRRIGATION SERVICE & METER (STD DET 728 & 734) (ON-SITE SERVICE)	EA	1	\$3,000.00	\$3,000.00
10	2" DOMESTIC WATER SERVICE & METER (STD DET 728 & 734) (ON-SITE SERVICE)	EA	1	\$3,000.00	\$3,000.00
11	OFF-SITE IRRIGATION	LS	1	\$10,500.00	\$10,500.00
SUBTOTAL==>					\$74,540.00

III. Paving Activities

1	12" AC DEEP LIFT	SF	905	\$4.00	\$3,620.00
2	CONCRETE CURB AND GUTTER	LF	77	\$25.00	\$1,925.00
3	CONCRETE CURB	LF	539	\$15.00	\$8,085.00
3	CONCRETE DRIVEWAY	SF	2,476	\$11.00	\$27,236.00
4	2" GRIND AND OVERLAY	SF	13,789	\$3.50	\$48,260.45
5	CONCRETE SIDEWALK	SF	665	\$8.00	\$5,320.00
6	ACCESSIBLE CURB RAMP	EA	2	\$1,500.00	\$3,000.00
7	MICRO SURFACE AC PAVEMENT	SF	28,342	\$0.30	\$8,502.54
SUBTOTAL==>					\$105,948.99

IV. Joint Trench & Lighting

1	JOINT TENCH	LF	222	\$150.00	\$33,300.00
2	ELECTRICAL VAULT	EA	3	\$22,500.00	\$67,500.00
2	STREET LIGHT RELOCATION	EA	2	\$9,250.00	\$18,500.00
SUBTOTAL==>					\$119,300.00

V. Traffic Signals & Signage/Striping

1	SIGNALS	LS	1	\$94,800.00	\$94,800.00
2	SIGNING AND STRIPING	LS	1	\$7,000.00	\$7,000.00
SUBTOTAL==>					\$101,800.00

TOTAL ==> \$418,295.49

15% CONTINGENCY \$62,744

GRAND TOTAL \$481,040

EXHIBIT "C"

SURETY BONDS AND OTHER SECURITY

As evidence of understanding the provisions contained in this Agreement, and of the Developer's intent to comply with same, the Developer has submitted the below described security in the amounts required by this Agreement, and has affixed the appropriate signatures thereto:

PERFORMANCE BOND PRINCIPAL AMOUNT:

\$ 481,040.00

Surety: Harco National Insurance Company

Attorney-in-fact: J. Spencer Miller

Address: 500 West Madison Street

Chicago, Illinois 60661

MATERIAL AND LABOR BOND PRINCIPAL AMOUNT:

\$ 481,040.00

Surety: Harco National Insurance Company

Attorney-in-fact: J. Spencer Miller

Address: 500 West Madison Street

Chicago, Illinois 60661

BOND NO. 0792982
INITIAL PREMIUM: \$6,581.00
SUBJECT TO RENEWAL

CITY OF MILPITAS
BRIDGE POINT PROJECT IMPROVEMENTS
PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California ("City") and Bridge Point Milpitas, LLC ("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 the Bridge Point Project. ("Public Improvements");

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain Agreement for Completion of Pubic Improvements dated _____, _____ ("Improvement Agreement");

WHEREAS, the Improvement Agreement is hereby referred to and incorporated herein by reference; and

WHEREAS, Principal is required by the Improvement Agreement to provide a good and sufficient bond for performance of the Improvement Agreement, and to guarantee and warranty the Public Improvements constructed thereunder.

NOW, THEREFORE, Principal and Harco National Insurance Company ("Surety"), a corporation organized and existing under the laws of the State of Illinois, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City in the sum of Four Hundred Eighty One Thousand and Forty dollars (\$481,040.00), said sum being not less than one hundred percent (100%) of the total cost of the Public Improvements as set forth in the 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 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 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 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 the Milpitas Municipal 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 Improvement Agreement.

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 Chicago, Illinois, this 4th day of December, 2020.

(Corporate Seal)

Bridge Point Milpitas, LLC
Principal

By 

Title Brian Wilson, Manager

(Corporate Seal)

Harco National Insurance Company
Surety

By 

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title J. Spencer Miller, Attorney In Fact

The rate of premium on this bond is .01368 per thousand. The total amount of premium charges is \$ \$6,581 for both bonds.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

Harco National Insurance Company
2999 Oak Road
Walnut Creek, California 94597

(Name and Address of Agent or Representative for service of process in California, if different from above)

Dorothy O'Connor, Representative
Harco National Insurance Company
Same as Above

(Telephone number of Surety and Agent or Representative for service of process in California)

925-658-9250

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 Los Angeles

On December 14, 2020 before me, Kevin Thomas Finnegan, Notary Public
(insert name and title of the officer)

personally appeared Brian Wilson,
who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 *Kevin Thomas Finnegan* (Seal)



BOND NO. 0792982
INITIAL PREMIUM: Included with \$6,581.00
SUBJECT TO RENEWAL

CITY OF MILPITAS
BRIDGE POINT PROJECT IMPROVEMENTS
LABOR AND MATERIAL BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California ("City") and Bridge Point Milpitas, LLC ("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. MT08-0001 ("Public Improvements");

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain Agreement for Completion of Pubic Improvements dated _____, _____ ("Improvement Agreement");

WHEREAS, the Improvement Agreement is hereby referred to and incorporated herein by reference; and

WHEREAS, Principal is required to furnish a bond in connection with the 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 3 (commencing with section 9000) of Part 6 of Division 4 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 Harco National Insurance Company ("Surety"), a corporation organized and existing under the laws of the State of Illinois, 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 contractors, subcontractors, material suppliers, 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 Four Hundred Eighty One Thousand and Forty Dollars (\$481,040.00), said sum being not less than

100% of the total cost of the Public Improvements under the terms of the 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 herein, 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 the Milpitas Municipal 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 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 3 (commencing with Section 9000) of Part 6 of Division 4 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 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 Chicago, Illinois, this 4th day of December, 2020.

(Corporate Seal)

Bridge Point Milpitas, LLC

Principal

By

Title Brian Wilson, Manager

(Corporate Seal)

Harco National Insurance Company

Surety

By

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title J. Spencer Miller

The rate of premium on this bond is 01368 per thousand. The total amount of premium charges is \$ 6,581 for both bonds.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

Harco National Insurance Company
2999 Oak Road

Walnut Creek, California 94597

(Name and Address of Agent or Representative for service of process in California, if different from above)

Dorothy O'Connor, Representative
Harco National Insurance Company

Same as Above

(Telephone number of Surety and Agent or Representative for service of process in California)

925-658-9250

POWER OF ATTORNEY
HARCO NATIONAL INSURANCE COMPANY
INTERNATIONAL FIDELITY INSURANCE COMPANY

Bond # 0792982

Member companies of IAT Insurance Group, Headquartered: 702 Oberlin Road, Raleigh, North Carolina 27605

KNOW ALL MEN BY THESE PRESENTS: That HARCO NATIONAL INSURANCE COMPANY, a corporation organized and existing under the laws of the State of Illinois, and INTERNATIONAL FIDELITY INSURANCE COMPANY, a corporation organized and existing under the laws of the State of New Jersey, and having their principal offices located respectively in the cities of Rolling Meadows, Illinois and Newark, New Jersey, do hereby constitute and appoint

DONALD B. ZIMELIS, KAREN THORP, J. SPENCER MILLER

Chicago, IL

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said HARCO NATIONAL INSURANCE COMPANY and INTERNATIONAL FIDELITY INSURANCE COMPANY, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of HARCO NATIONAL INSURANCE COMPANY and INTERNATIONAL FIDELITY INSURANCE COMPANY and is granted under and by authority of the following resolution adopted by the Board of Directors of INTERNATIONAL FIDELITY INSURANCE COMPANY at a meeting duly held on the 13th day of December, 2018 and by the Board of Directors of HARCO NATIONAL INSURANCE COMPANY at a meeting held on the 13th day of December, 2018.

"RESOLVED, that (1) the Chief Executive Officer, President, Executive Vice President, Senior Vice President, Vice President, or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, HARCO NATIONAL INSURANCE COMPANY and INTERNATIONAL FIDELITY INSURANCE COMPANY have each executed and attested these presents
on this 31st day of December, 2018



STATE OF NEW JERSEY
County of Essex

Kenneth Chapman
Executive Vice President, Harco National Insurance Company
and International Fidelity Insurance Company

STATE OF ILLINOIS
County of Cook



On this 31st day of December, 2018, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of HARCO NATIONAL INSURANCE COMPANY and INTERNATIONAL FIDELITY INSURANCE COMPANY; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.



IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark,
New Jersey the day and year first above written.

Shirelle A. Outley a Notary Public of New Jersey
My Commission Expires April 4, 2023

CERTIFICATION

I, the undersigned officer of HARCO NATIONAL INSURANCE COMPANY and INTERNATIONAL FIDELITY INSURANCE COMPANY do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand on this day, December 04, 2020

A00324

Irene Martins, Assistant Secretary

State of **Illinois**
County of **Cook**

ss:

On December 4, 2020 before me, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared J. Spencer Miller

known to me to be Attorney-in-Fact for Harco National Insurance Company

the corporation described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument in behalf of the said corporation, and he duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year stated in this certificate above.

My Commission Expires 8/1/23
Kristine G Cwik

Notary Public

360212-6-66



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 Los Angeles)

On December 14, 2020 before me, Kevin Thomas Finnegan, Notary Public
(insert name and title of the officer)

personally appeared Brian Wilson,
who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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  (Seal)

