

RESOLUTION NO. 2020.39

RESOLUTION OF THE BOARD OF EDUCATION OF THE MILPITAS UNIFIED SCHOOL DISTRICT AUTHORIZING THE ISSUANCE OF 2020-21 TAX AND REVENUE ANTICIPATION NOTES AND REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA TO ISSUE SAID NOTES

WHEREAS, pursuant to Sections 53850 *et seq.* of the Government Code of the State of California (the “Act”) contained in Article 7.6 thereof, entitled “Temporary Borrowing” on or after the first day of any fiscal year (being July 1), a school district may borrow money by issuing notes for any purpose for which the school district is authorized to use and expend moneys, including but not limited to, current expenses, capital expenditures, investment and reinvestment, and the discharge of any obligation or indebtedness of the school district; and

WHEREAS, Section 53853 of the Act provides that such notes must be issued in the name of the school district by the board of supervisors of the county, the county superintendent of schools of which has jurisdiction over such school district, as soon as possible following the receipt of a resolution of the governing board of such school district requesting the borrowing; and

WHEREAS, the County Superintendent of Schools (the “County Superintendent”) of the County of Santa Clara (the “County”) has jurisdiction over the Milpitas Unified School District (the “District”), and this Board of Education (the “Board”), being the governing board of the District, hereby requests the borrowing of not-to-exceed Thirteen Million Dollars (\$13,000,000) at an interest rate not to exceed the maximum rate allowed by law, through the issuance by the Board of Supervisors of the County (the “County Board”) of 2020-21 Tax and Revenue Anticipation Notes (the “Notes”) in the name of the District; and

WHEREAS, such Notes shall be made payable no later than thirteen months after the date of delivery thereof; and

WHEREAS, pursuant to Section 53856 of the Act, the District may pledge to the payment of the Notes any taxes, income, revenue (including but not limited to, revenue from State and federal governments), cash receipts or other moneys, including moneys deposited in inactive or term deposits (but excepting moneys encumbered for a special purpose); and this Resolution specifies that certain of such revenues which will be received by the District for the General Fund thereof shall be pledged for the payment of the Notes; and

WHEREAS, the Notes shall be a general obligation of the District, and, to the extent not paid from the Unrestricted Revenues (defined herein) pledged for the payment thereof, shall be paid with interest thereon from any other moneys of the District lawfully available therefor, as required by Section 53857 of the Act, and shall not in any way be payable from County moneys; and

WHEREAS, the Notes shall be in denominations of \$5,000 principal amount, or integral multiples thereof, as permitted by Section 53854 of the Act; and the Note shall further be issued on a date to be designated pursuant to the Note Purchase Contract (as defined herein), and shall be in the form and executed in the manner prescribed in this Resolution, and the County Resolution (defined herein), all as permitted and required by Section 53853 of the Act; and

WHEREAS, the Board has found and determined that said \$11,000,000 maximum principal amount of Notes to be issued in the name of the District by the County Board in fiscal year 2020-21, when added to the interest payable thereon, does not exceed eighty-five percent (85%) of the estimated amount of the uncollected taxes, income, revenue (including but not limited to revenue from state and federal governments), cash receipts and other moneys of the District which will be available for the payment of the Notes and interest thereon, as required by Section 53858 of the Act; and

WHEREAS, the Notes will not be issued in an amount greater than the maximum anticipated cumulative cash flow deficit to be financed by the anticipated tax or other revenue sources for the period for which such taxes or other revenues are anticipated and during which such Notes are outstanding, all as provided in Section 148(f)(4)(B)(iii)(II) of the Internal Revenue Code of 1986, as amended (the "Code");

NOW, THEREFORE, THE BOARD OF EDUCATION OF THE MILPITAS UNIFIED SCHOOL DISTRICT HEREBY RESOLVES AS FOLLOWS:

Section 1. Authorization of Issuance of Notes; Terms Thereof; Paying Agent. The Board hereby requests the County Board to issue, in the name of the District, an amount not-to-exceed \$11,000,000 principal amount of Notes under the Act, designated "Milpitas Unified School District (Santa Clara County, California) 2020-21 Tax and Revenue Anticipation Notes." The Notes are authorized to be issued in one or more series of federally taxable or tax-exempt Notes, with appropriate series designation, numbered from 1 consecutively upward in order of issuance, and in the denominations of \$5,000 principal amount or integral multiples thereof (or such other integral multiple as may be provided in the Note Purchase Contract). The Notes shall be dated the date of delivery thereof; shall mature (with or without option of prior redemption, as set forth in the Note Purchase Contract defined herein) on a day (or days, if more than one series of Notes is issued) in which banks in New York or California are open for business and no later than thirteen months after the date of issuance (on a 30-day month/360-day year basis); and shall bear interest, payable on or before maturity and computed on a 30-day month/360-day year basis, at the per annum rate or rates set forth in the Contract of Purchase relating for the Notes (the "Note Purchase Contract"), by and among the County, the District and the underwriter named therein (the "Underwriter") but not in excess of the maximum rate allowed by law.

The principal amount of the Notes issued pursuant hereto and to the County Resolution, when added to the interest payable thereon, shall not exceed eighty-five percent (85%) of the estimate of uncollected taxes, income, revenue, cash receipts and other monies of the District which will be available for the payment of the Notes and interest thereon.

Both the principal of and interest on the Notes shall be payable, only upon surrender thereof, in lawful money of the United States of America at the principal corporate office of U.S. Bank National Association, acting as paying agent and registrar for the Notes (the "Paying Agent"). For purposes of the Notes, the Paying Agent shall be deemed to be a "fiscal agent" within the meaning of Section 53601 of the Government Code of the State of California. This Board hereby approves the payment of the reasonable fees and expenses of the Paying Agent as they shall become due and payable.

Section 2. Form of Notes. The Notes shall be issued in registered form, without coupons, and shall be substantially in the form and substance set forth in Exhibit A attached hereto and by reference incorporated herein, the blanks in said form to be filled in with appropriate words and figures. The Notes shall be initially registered in the name of "Cede & Co." as nominee of The Depository

Trust Company, New York, New York (“DTC”), and shall be evidenced by one or more note certificates, in the full principal amount of the Notes. DTC is hereby appointed depository for the Notes. Registered ownership may not thereafter be transferred except as set forth in the resolution of the County Board authorizing the issuance of the Notes by the County pursuant to Section 53853 of the Act (the “County Resolution”). There shall be attached to each Note, the legal opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, respecting the validity of said Notes.

Section 3. Deposit of Note Proceeds; No Arbitrage. The moneys so borrowed shall be deposited in the General Fund of the District. The District hereby covenants that it will make no use of the proceeds of the Notes that would cause the Notes to be “arbitrage bonds” under Section 148 of the Code; and, to that end, so long as any of the Notes are outstanding, the District, and all of its officers having custody or control of such proceeds, shall comply with all requirements of said section, including restrictions on the use and investment of proceeds of the Notes and the rebate of a portion of investment earnings on certain amounts, including proceeds of the Notes, if required, to the Federal government, and of the Income Tax Regulations of the United States Treasury promulgated thereunder or under any predecessor provisions, to the extent that such regulations are, at the time, applicable and in effect, so that the Notes will not be “arbitrage bonds.”

Section 4. Payment of Notes.

(A) **Source of Payment.** The principal amount of the Notes, together with the interest thereon, shall be payable from taxes, income, revenue (including but not limited to revenue from state and federal governments), cash receipts and other moneys including moneys deposited in inactive or term deposits (but excepting certain moneys encumbered for a special purpose), as provided in Section 53856 of the Act, and which are generally available for the payment of current expenses and other obligations of the District (collectively, the “Unrestricted Revenues”).

To the extent the Notes mature during the fiscal year succeeding fiscal year 2020-21, the Notes shall be payable only from Unrestricted Revenues which are received in or accrued to fiscal year 2020-21, and such accrued revenues are hereby determined to be accrued to the District’s 2020-21 fiscal year, and are further determined to be lawfully available to pay the principal of and interest on the Notes.

The Notes shall be a general obligation of the District, and to the extent the Notes are not paid from the Unrestricted Revenues pledged to the repayment thereof described herein, the Notes shall be paid with interest thereon from any other moneys of the District lawfully available therefor, as provided herein and by law.

(B) **Pledged Revenues.** As security for the payment of the principal of and interest on the Notes, the District hereby pledges such Unrestricted Revenues as may be identified in the Purchase Contract (such pledged amounts being hereinafter called the “Pledged Revenues”). The Pledged Revenues shall be deposited by the District into the Repayment Fund (defined herein) on the date or dates specified in the Purchase Contract.

The principal of the Notes and the interest thereon shall be a first lien and charge against and shall be payable from the first moneys received by the District from such Pledged Revenues, as provided by law.

In the event that there are insufficient Unrestricted Revenues received by the District to permit the deposit into the Repayment Fund, of the full amount of Pledged Revenues to be deposited from such Unrestricted Revenues, then the amount of any deficiency shall be satisfied and made up from any other moneys of the District lawfully available for repayment of the Notes and the interest thereon.

(C) Covenant Regarding Additional Short-term Borrowing. The District hereby covenants and warrants that, while provision for the payment of principal and interest on the Notes has not been made, the District will not request the County Treasurer-Tax Collector (the "Treasurer") to make temporary transfers of funds in the custody of the Treasurer to meet any obligations of the District during the 2020-21 fiscal year pursuant to the authority of Article XVI, Section 6 of the Constitution of the State of California or any other legal authority.

(D) Deposit of Pledged Revenues in Repayment Fund. The Pledged Revenues shall be held in a special fund designated as the "Milpitas Unified School District, 2020-21 Tax and Revenue Anticipation Notes Repayment Fund" (herein called the "Repayment Fund") and applied as directed in this Resolution. The Treasurer shall direct the moneys in the Repayment Fund to be invested as provided in Section 4(E) of this Resolution. Any moneys accounted for in the Repayment Fund shall be for the benefit of the owners of the Notes, and until the Notes and all interest thereon are paid or until provision has been made for the payment of the Notes at maturity with interest to maturity, the moneys in the Repayment Fund shall be applied only for the purposes for which the Repayment Fund is created.

(E) Disbursement and Investment of Moneys in Repayment Fund. From the date this Resolution takes effect, all Pledged Revenues shall, when received, be accounted for in the Repayment Fund. After such date as the amount of Pledged Revenues accounted for in the Repayment Fund shall be sufficient to pay in full the principal of and interest on the Notes, when due, any moneys in excess of such amount remaining in or accruing to the Repayment Fund shall be transferred to the general fund of the District upon the request of the District. On the maturity date of the Notes, the moneys in the Repayment Fund shall be used, to the extent necessary, to pay the principal of and interest on the Notes.

Moneys accounted for in the Repayment Fund shall be invested by the County in any one or more investments generally permitted for investment by school districts under the laws of the State of California, consistent with the investment policy of the County, this Resolution and the County Resolution; provided, however, that no such investments shall have a maturity date later than the maturity date of the Notes.

Section 5. Execution of Notes. The District hereby requests the Chair of the County Board of Supervisors to sign the Notes manually or by facsimile signature; the Treasurer to sign the Notes manually or by facsimile signature; the Clerk of the County Board (the "Clerk") to countersign the Notes manually or by facsimile signature; the Clerk to affix the seal of the County thereto by facsimile impression thereof; and said officers to cause the blank spaces thereof to be filled in as may be appropriate. Subject to the provisions of the County Resolution, the District also authorizes the Paying Agent to manually authenticate the Notes. No Note shall be valid or obligatory for any purpose or shall be entitled to any security or benefit hereunder unless and until the certificate of authentication printed on the Bond is signed by the Paying Agent as authenticating agent. Authentication by the Paying Agent shall be conclusive evidence that the Bond so authenticated has been duly issued, signed and delivered under this Resolution and is entitled to the security and benefit of this Resolution.

Section 6. Preliminary Official Statement and Official Statement. The Preliminary Official Statement relating to the Notes, substantially in the form on file with the Secretary to the Board is hereby approved and the Superintendent, the Assistant Superintendent, Business Services or a designee thereof (collectively, the "Authorized Officers"), each alone, are hereby authorized and directed, for and in the name and on behalf of the District, to deliver such Preliminary Official Statement to the Underwriter to be used in connection with the offering and sale of the Notes. The Authorized Officers, each alone, are hereby authorized and directed, for and in the name and on behalf of the District, to deem the Preliminary Official Statement "final" pursuant to Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, prior to its distribution and to execute and deliver to the Underwriter a final Official Statement, substantially in the form of the Preliminary Official Statement, with such changes therein, deletions therefrom and modifications thereto as the Authorized Officer executing the same shall approve. The Underwriter is hereby authorized to distribute copies of the Preliminary Official Statement to persons who may be interested in the purchase of the Notes and is directed to deliver copies of any final Official Statement to the purchasers of the Notes. Execution of the Official Statement shall conclusively evidence the District's approval of the Official Statement.

Section 7. Approval of Note Purchase Contract. The Board hereby approves the sale of the Notes at a negotiated sale. The form of Note Purchase Contract for the Notes, by and among the District, the County and the Underwriter, substantially in the form on file with the Secretary to the Board, is hereby approved. The Authorized Officers, each alone, are hereby authorized to execute and deliver the Note Purchase Contract, with such changes therein, deletions therefrom and modifications thereto as the Authorized Officer executing the same shall approve, such approval to be conclusively evidenced by his or her execution and delivery thereof; provided, however, that the maximum interest rate on the Notes shall not exceed that authorized by law and that the Underwriter's discount shall not exceed 0.350% of the par amount of the Notes. The Authorized Officers are hereby further authorized to determine the maximum principal amount of Notes to be specified in the Note Purchase Contract, up to \$11,000,000 and to enter into and execute the Note Purchase Contract with the Underwriter and the County, if the conditions set forth in this Resolution and the County Resolution are satisfied.

Section 8. Delivery of Notes. The proper officers of the County Board are hereby requested to deliver the Notes to the purchaser thereof. All actions heretofore taken by the officers and agents of the Board, including the Authorized Officers or their designees, with respect to the Notes are hereby approved, confirmed and ratified, and the officers of the Board, including the Authorized Officers, are hereby authorized and directed to do any and all things and take any and all actions which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Notes in accordance with this Resolution and the County Resolution.

Section 9. Proceeds of Notes Conditionally Pledged; Investment of Note Proceeds. Notwithstanding anything to the contrary contained herein, the proceeds of the Notes shall, prior to their expenditure by the District, be pledged to the payment of the Notes in the event and to the extent sufficient Pledged Revenues of the District and other legally available revenues are not deposited into the Repayment Fund. Proceeds of the Notes shall be invested by the County in any one or more investments generally permitted for investment by school districts under the laws of the State of California, consistent with the investment policy of the County, this Resolution and the County Resolution.

Section 10. Continuing Disclosure. As may be required in the event of a negotiated sale of the Notes, the Board hereby authorizes and directs the Authorized Officers, each alone, to comply and

carry out, all of the provisions of that certain Continuing Disclosure Certificate relating to the Notes, dated the date of issuance and delivery of the Notes, as originally executed and as it may be amended from time to time in accordance with the terms thereof (the "Continuing Disclosure Certificate"). Notwithstanding any other provision of this Resolution, failure of the District to comply with the Continuing Disclosure Certificate shall not be considered an event of default under this Resolution; however, any Noteholder may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District to comply with its obligations under this Section. The form of Continuing Disclosure Certificate attached as an appendix to the Preliminary Official Statement is hereby approved, and the Authorized Officers, each alone, are hereby authorized and directed to execute and deliver to the purchaser of the Notes such Continuing Disclosure Certificate, with such changes therein as any such official may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 11. Transmittal of Resolution. The Superintendent or a designee of the District is hereby directed to send a certified copy of this Resolution to the County Board, the Treasurer and the County Superintendent.

Section 12. Indemnification. In connection with the issuance of the Notes on behalf of the District, the District hereby agrees to indemnify and hold harmless, to the extent permitted by law, the County and its officers and employees ("Indemnified Parties"), against any and all losses, claims, damages or liabilities, joint or several, to which such Indemnified Parties may become subject because of the sale, issuance and delivery of the Notes in accordance herewith and with the District Resolution. The District further agrees to reimburse any such Indemnified Parties for any legal or other expenses incurred in connection with investigating or defending any such claims or actions.

Section 13. Further Actions Authorized.

(A) Stradling Yocca Carlson & Rauth, a Professional Corporation, is hereby designated as Bond Counsel and Disclosure Counsel to the District, and KNN Public Finance, LLC is hereby appointed as Municipal Advisor to the District, each in connection with the Notes. The Board hereby authorizes the appointment of such Underwriter as shall be identified in the Note Purchase Contract.

(B) Officers of the Board and District officials and staff are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to proceed with the issuance of the Notes and otherwise carry out, give effect to and comply with the terms and intent of this Resolution. Such actions heretofore taken by such officers, officials and staff are hereby ratified, confirmed and approved. It is hereby covenanted that the Board and its appropriate officials will cause the County, to take all proceedings necessary to be taken by them, and will take any additional proceedings necessary to be taken by them for carrying out the provisions of this Resolution.

(C) The provisions of this resolution as they relate to the terms of the Notes may be amended by the Note Purchase Contract.

PASSED AND ADOPTED by the Board of Education of the Milpitas Unified School District
this 9th day of June, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

By: _____
President
Board of Education
Milpitas Unified School District

ATTEST:

By: _____
Secretary to the Board of Education
Milpitas Unified School District

SECRETARY'S CERTIFICATE

I, Cheryl Jordan, Secretary to the Board of Education of the Milpitas Unified School Santa Clara County, California, hereby certify as follows:

The following is a full, true and correct copy of a resolution duly adopted at a regular meeting of the Board of Education of said District duly and legally held at the special meeting place thereof on June 9, 2020, of which meeting all of the members of the Board of Education of said District had due notice and at which a quorum was present.

I have carefully compared the same with the original minutes of said meeting on file and of record in the Superintendent's office and the foregoing is a full, true and correct copy of the original regulation adopted at said meeting and entered in said minutes.

Said resolution has not been amended, modified or rescinded since the date of its adoption, and the same is now in full force and effect.

Dated: June 9, 2020

By: _____
Secretary to the Board of Education
Milpitas Unified School District

EXHIBIT A
FORM OF NOTE

REGISTERED
No. ____

REGISTERED
\$

MILPITAS UNIFIED SCHOOL DISTRICT
SANTA CLARA COUNTY, CALIFORNIA
2020-21 TAX AND REVENUE ANTICIPATION NOTE

<u>Rate of Interest:</u>	<u>Note Date:</u>	<u>Maturity Date:</u>	<u>CUSIP:</u>
____%	____, 2020	____, 2021	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: _____ DOLLARS

FOR VALUE RECEIVED, the Milpitas Unified School District (the "District"), Santa Clara County, State of California, acknowledges itself indebted to and promises to pay the Registered Owner identified above, or registered assigns, at the corporate trust office of the Paying Agent, the Principal Amount specified above in lawful money of the United States of America, on the Maturity Date specified above, together with interest thereon at the Rate of Interest per annum set forth above (computed on the basis of a 360-day year of twelve 30-day months), in like lawful money of the United States of America from the Note Date specified above until payment in full of said principal sum. Both the principal of and interest on this Note shall be payable only upon surrender of this Note as the same shall fall due; provided, however, no interest shall be payable for any period after maturity during which the Registered Owner fails to properly present this Note for payment.

It is hereby certified, recited and declared that this Note is one of an authorized issue of Notes in the aggregate principal amount of _____ Dollars (\$_____) all of like date, tenor and effect, made, executed and given pursuant to and by authority of a resolution of the Board of Supervisors of Santa Clara County (the "County") duly passed and adopted on June 23, 2020 and a Resolution of the Board of Education of the District duly passed and adopted on June 9, 2020, under and by authority of Article 7.6 (commencing with Section 53850) of Chapter 4, Part 1, Division 2, Title 5, California Government Code, and that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Note have existed, happened and been performed in regular and due time, form and manner as required by law, and that this Note, together with all other indebtedness and obligations of the District, does not exceed any limit prescribed by the Constitution or statutes of the State of California.

The principal amount of the Notes, together with the interest thereon, shall be payable from taxes, income, revenue (including, but not limited to, revenue from state and federal governments), cash receipts and other moneys including moneys deposited in inactive or term deposits (but excepting certain moneys encumbered for a special purpose), received in or accrued to fiscal year 2020-21, and which are generally available for the payment of current expenses and other obligations of the District (the "Unrestricted Revenues"). As security for the payment of the principal of and interest on the Notes the District has pledged an amount equal to (i) ____ percent (___%) of the principal of and interest

due on the Notes from the first Unrestricted Revenues received by the District in the month ending _____, 2021 and (ii) ____ percent (___%) of the principal of and interest due on the Notes from the first Unrestricted Revenues received by the District in the month ending _____, 2021 (such pledged amounts being hereinafter called the “Pledged Revenues”). The principal of the Notes and the interest thereon shall constitute a first lien and charge on such Pledged Revenues, and shall be payable therefrom, and to the extent not so paid shall be paid from any other moneys of the District lawfully available therefor.

This Note is transferable by the Registered Owner hereof in person or by his or her attorney duly authorized in writing at the corporate trust office of the Paying Agent, in San Francisco, California, but only in the manner, subject to the limitations and upon payment of the charges provided in the Resolution, and upon surrender and cancellation of this Note except that this Note shall not be transferred or exchanged later than the 15th day prior to the maturity date hereof. Upon such transfer a new Note or Notes of authorized denominations and for the same aggregate principal amount will be issued to the transferees in exchange herefor.

The County, the District and the Paying Agent may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes, and neither the County, District nor the Paying Agent shall be affected by any notice to the contrary.

Unless this certificate is presented by an authorized representative of The Depository Trust Company to the issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co. has an interest herein.

IN WITNESS WHEREOF, Santa Clara County has caused this Milpitas Unified School District, Santa Clara County, State of California, 2020-21 Tax and Revenue Anticipation Note to be executed by the Chair of its Board of Supervisors and by the Treasurer-Tax Collector by manual or facsimile signature and countersigned by the Clerk of the Board of Supervisors by manual signature and has caused a facsimile of its official seal to be printed hereon this ____ day of _____, 2020.

SANTA CLARA COUNTY

By: _____ [Facsimile Signature]
Chair of the Board of Supervisors

By: _____ [Facsimile Signature]
Treasurer-Tax Collector

Countersigned

By: _____ [Signature]
Clerk of the Board of Supervisors

CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the Resolutions referred to herein which has been authenticated and registered on _____, 2020.

U.S. BANK NATIONAL ASSOCIATION, as Paying
Agent

By: _____
Authorized Signatory

LEGAL OPINION

I HEREBY CERTIFY that the following is a true and correct copy of the legal opinion upon the Notes therein described that was provided by Stradling Yocca Carlson & Rauth, a Professional Corporation, and was dated as of the date of delivery of and payment for said Notes.

[Facsimile Signature]

Superintendent, Milpitas Unified School
District

ASSIGNMENT

For value received the undersigned do(es) hereby sell, assign and transfer unto the _____ within-mentioned registered Note and hereby irrevocably constitute(s) and appoint(s) _____ attorney, to transfer the same on the books of the Paying Agent with full power of substitution in the premises.

Dated: _____

Signature Guaranteed by:

NOTE: Signature(s) must be guaranteed by an eligible guarantor institution.

NOTE: The signature to the assignment must correspond to the name as it appears upon the face of this Note in every particular, without any alteration or change whatsoever.