

**CITY OF MILPITAS
MAINTENANCE SERVICES AGREEMENT**

1. PARTIES AND DATE.

This Agreement is made _____ by and between the City of Milpitas, a municipal corporation organized under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 (“City”) and **Environmental Services Inc.** a corporation with its principal place of business at **3353 De La Cruz Blvd, Santa Clara, CA 95054** (“Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing **Citywide HVAC Maintenance Services** to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that is familiar with the plans of City. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

2.2 Project.

City desires to engage Contractor to render such services for the Citywide HVAC Maintenance Services project (“Project”) as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional Citywide HVAC maintenance services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term.

The term of this Agreement shall be from **October 1, 2020 to September 30, 2025**, unless earlier terminated as provided herein. The City reserves the right to review the Contractor’s performance at the end of each year and cancel all or part of the Agreement.

3.2 Responsibilities of Contractor.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

3.2.4 City's Representative. The City hereby designates the Public Works Manager for Facilities, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.5 Contractor's Representative. Contractor hereby designates **Ken Felice, Project Manager**, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.6 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.7 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally,

Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.8 Period of Performance and Liquidated Damages. Contractor shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Contractor shall perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be provided separately in writing to the Contractor. Contractor agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such completion schedule or Project milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum of One Hundred Dollars and Zero Cents (\$100.00) per day for each and every calendar day of delay beyond the Performance Time or beyond any completion schedule or Project milestones established pursuant to this Agreement.

3.2.9 Disputes. Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the size of any payment to Contractor during the performance of this Agreement, Contractor shall continue to perform the Work while said dispute is decided by the City. If Contractor disputes the City's decision, Contractor shall have such remedies as may be provided by law.

3.2.10 Laws and Regulations; Employee/Labor Certifications. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and will be complied with. These include but are not limited to the payment of prevailing wages, the stipulation that eight (8) hours' labor shall constitute a legal day's work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10.1 Employment Eligibility; Contractor. By executing this Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Contractor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for in Section 3.2.10 or any of its sub-sections.

3.2.10.2 Employment Eligibility; Subcontractors, Sub-subcontractors and Consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.10.1.

3.2.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Contractor verifies that they are a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in Sections 3.2.10.1 or 3.2.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Contractor under Section 3.2.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.10.4 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.2.10.5 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.2.10.6 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air

Resources Board (CARB). Contractor shall specifically be aware of the CARB limits and requirements' application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.2.10.7 Water Quality.

(A) Management and Compliance. To the extent applicable, Contractor's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); laws, rules and regulations of the Environmental Protection Agency and the State Water Resources Control Board; the City's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the state.

(B) Liability for Non-Compliance. Failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Contractor or City to penalties, fines, or additional regulatory requirements. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from and against any and all fines, penalties, claims or other regulatory requirements imposed as a result of Contractor's non-compliance with the laws, regulations and policies described in this Section, unless such non-compliance is the result of the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(C) Training. In addition to any other standard of care requirements set forth in this Agreement, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in this Section as they may relate to the Services provided under this Agreement. Upon request, City will provide Contractor with a list of training programs that meet the requirements of this paragraph.

3.2.11 Insurance. Contractor shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit "D" (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

3.2.12 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable

shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.13 Bonds.

[RESERVED]

3.3 Fees and Payments.

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Two Hundred Fourteen Thousand Seven Hundred Seven Dollars and Thirty-Five Cents (\$214,707.35)** without written approval of City's City Manager. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within forty-five (45) days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 California Labor Code Requirements

a. Contractor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000.00 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775),

employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor’s performance of Services, including any delay, shall be Contractor’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

3.4 Termination of Agreement.

3.4.1 Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to City, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished Documents and Data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

3.4.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.4.4 Agreement Subject to Appropriation of Funds. The Contractor understands and accepts that at all times; the Agreement is subject to appropriation of funds by the Milpitas City Council. The Agreement may terminate without penalty, liability or expense of any kind to the City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year.

If funds are appropriated for a portion of the fiscal year, the Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. The City has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and City Council. Contractor's assumption of risk of possible non-appropriation is a part of the consideration for the Agreement. This section controls against any and all other provisions of the Agreement

3.5 General Provisions.

3.5.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Contractor:

Environmental Systems Inc.
3353 De La Cruz Blvd.
Santa Clara, CA 95054
Attn: Ken Felice, Sr. Project Manager

City:

City of Milpitas
1265 N. Milpitas Boulevard
Milpitas, California 95035
Attn: Tony Ndah, Director of Public Works

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.2 Indemnification.

3.5.2.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Contractor's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor.

3.5.2.2 Additional Indemnity Obligations. Contractor shall defend, with Counsel of City's choosing and at Contractor's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.5.2.1 that may be brought or instituted against City or its officials, officers, employees, volunteers and agents. Contractor

shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorneys' fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its officials officers, employees, agents, or volunteers.

3.5.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Santa Clara County, California. In addition to any and all Agreement requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

3.5.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.5 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project.

3.5.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.7 Assignment or Transfer. Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.8 Construction; References; Captions. Since the Parties or their agents have participated fully 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 Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its 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.

3.5.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.5.11 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 3.5.7, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.12 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.

3.5.13 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.14 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.

3.5.15 Attorneys' Fees and Costs. If any action in law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover from the losing party attorney's fees and costs in an amount determined to be reasonable by a court of competent jurisdiction.

3.5.16 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.17 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.18 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.19 Wage Theft Prevention.

3.5.19.1 Contractor, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance.

3.5.19.2 BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT THAT CONTRACTOR OR ITS SUBCONTRACTORS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONTRACTOR AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.

3.5.19.3 If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Contractor or a subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Contractor shall inform the City no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Contractor or its subcontractor(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment, decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Contractor or its subcontractor is subject to a payment or other alternative plan, the Contractor or its subcontractor shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Agreement demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

3.5.19.4 For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the City, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

3.5.19.5 Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

3.5.19.6 Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section

are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

3.5.20 Federal Provisions.

[RESERVED]

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE FOR MAINTENANCE SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND ENVIRONMENTAL SERVICES INC.**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

CITY OF MILPITAS

Approved By:

Steven G. McHarris
City Manager

Date

Approved As To Form:

Christopher J. Diaz
City Attorney

Approved:

Walter C. Rossmann
Risk Manager/Director of Finance

Approved As To Content:

Tony Ndah
Director of Public Works

ENVIRONMENTAL SERVICES INC.

Signature

Name

Title

Date

EXHIBIT "A"

SCOPE OF SERVICES

Summary of Scope of Work

The Contractor must provide all labor, supervision, supplies, materials, tools, equipment, insurance, fuel charges, tolls, taxes, and permits necessary to perform all preventive and predictive maintenance for heating, air conditioning and ventilation units in various City-owned or occupied facilities as defined in this Scope of Work.

The City of Milpitas requires a qualified service provider with a C-20 California State Contractor's License to provide scheduled inspections and comprehensive preventative maintenance to comply with manufacturer's warranty or warranties, as applicable and improve equipment operations, increase efficiency, minimize breakdowns and prolong equipment life as well as develop an equipment maintenance and replacement program.

1. EQUIPMENT AND FACILITIES TO BE SERVICED

A this of equipment to be serviced as part of this contract is provided in Attachment A. The following table lists the various buildings, square footage and descriptions.

BUILDING NAME	SQUARE FOOTAGE	BUILDING DESCRIPTION
City Hall	96,808	Four story building with underground parking garage
Fire Station No. 1	15,000	Three story building
Fire Station No. 2	10,259	Single story building, opening Winter 2021
Fire Station No. 3	6,100	Single story building
Fire Station No. 4	6,668	Two story building
Milpitas Sports Center	44,676	Single story building
Barbara Lee Senior Center	10,000	Single story building
Police Department	57,320	Two story building
Public Works Department	15,520	Two story building
Sal Cracolice Building	5000	Single story building
Fleet Maintenance	6,250	Two story building at the Corporation Yard
Jose Higurea Adobe	1,200	Single story historical building

2. SERVICES TO BE PROVIDED

2.A. BASELINE EQUIPMENT INVENTORY AND CONDITION ASSESSMENT

The City of Milpitas has provided information about the physical location, type, make and model of the City's HVAC equipment to the best of its knowledge and ability. It is understood that the information is not 100% accurate. Therefore, prior to commencing maintenance services, the Contractor will work with Facilities Maintenance staff to walk each City building and conduct a

Baseline Equipment Inventory to document the physical location, type, make and model of all City HVAC equipment. The Contractor shall provide recommended updates/changes for the HVAC Equipment Inventory in an editable Microsoft Excel spreadsheet to the Assigned Public Works Manager within four (4) weeks of the beginning of the contract term. Contractor shall update the Equipment Inventory and Condition Report annually at no additional costs to the City and prior to October 30th of each year.

The initial inventory/report will document the condition of all equipment to be serviced by:

- Building address, building name, specific equipment location within the building
- Manufacturer name, equipment description; model and serial number and quantity
- Applicable warranties (Manufacture, Servicing entity; labor and materials)
- Rate the equipment condition as Excellent, Good, Satisfactory, Poor or Fail. Only new equipment or equipment under manufacturer warranty can be classified as “**Excellent**”; “**Good**” condition means that there are no current known repairs required; **Satisfactory** means that there are foreseeable minor repairs within twelve (12) months from the contract commencement date, but not required at the time of inspection; **Poor** or **Fail** means that repairs or replacement parts/equipment are required to bring the equipment up to routine maintenance serviceable condition.

2.B. PREVENTIVE MAINTENANCE PER MANUFACTURERS SPECIFICATIONS

Initial Preventive Maintenance Service. The contractor shall hold a contract kick-off meeting with the Assigned Public Works Manager within 30 calendar days following notice to proceed, to develop a timeline for all scheduled preventive maintenance and seasonal service visits for the first year. Service is to be performed from 8:00 a.m. to 5:00 p.m., Monday through Friday. The initial preventive maintenance schedule shall be due ten (10) calendar days following the contract kick-off meeting.

Regularly scheduled preventive Maintenance shall be comprehensive pursuant to manufacturer specifications for all city buildings and equipment. It shall include all routine preventative maintenance services as well as additional services not limited to the following:

Heating and Air Conditioning Equipment

- a. Check with General Buildings Supervisor and appropriate customer representative for operational deficiencies
- b. Check area around equipment
- c. Examine each piece of equipment and device to see that it is functioning properly and is in good operational condition.
- d. Clean all components of dust, old lubricants, etc. to allow the equipment to function as designed.
- e. Lubricate all equipment where needed to permit bearings, gears, and all contact wearing points to operate freely and without undue wear.
- f. Adjust all linkages, motors, drives, etc. that have drifted from the initial design settings and positions.
- g. Calibrate all sensing, monitoring, output, safety, and readout devices for proper ranges, settings, and optimum efficiencies.
- h. Check system thermostat operation, temperature and pressure controls and adjust as

- necessary
- i. Inspect and tighten all electrical connections
- j. Check for proper voltage and amp draw.
- k. Inspect safeties
- l. Inspect all contactor and relays
- m. Inspect all wiring for chafing, burning, or deteriorated insulation
- n. Inspect all breakers
- o. Inspect capacitors
- p. Check rain guards
- q. Check insulation and clamps
- r. Check and adjust dampers
- s. Lubricate all motors, bearings, and any other moving parts
- t. Inspect air filters and clean or replace as necessary
- u. Check all applicable belts, for proper condition; replace all belts once at the beginning of each contract year and then as necessary
- v. Check all applicable belt tension and adjust as necessary
- w. Check drives and pulleys for tightness and alignment
- x. Inspect fan control
- y. Inspect and adjust all valves
- z. Inspect oil in compressors and add if necessary
- aa. Wash fans at beginning of each contract year
- bb. Any applicable VAV Boxes are to be serviced once per year.
- cc. Check for unusual noises, vibration and wear
- dd. Carry out other preventive maintenance procedure recommended by the equipment manufacturers
- ee. Test and cycle all equipment as a system after it has been cleaned, lubricated, adjusted, and calibrated, to see that it is in good operational condition and at optimum efficiency
- ff. Provide itemized checklist documentation of Preventive Maintenance activities per location and report observations and any unusual or out of scope conditions to the Facilities Maintenance Manager.
- gg. Recommend the repair of the device by the addition of replacement parts, should the described maintenance not be adequate
- hh. Recommend the replacement of the device if needed, in view of its condition, age, and cost of previous and subsequent repair
- ii. Provide service tag on all serviced units, containing the information listed per these specifications

Heating Equipment

- a. Inspect all pilot lights and operation of the ignition system
- b. Inspect and clean the flame sensor
- c. Inspect and adjust burner assembly
- d. Inspect flue pipe, diverter and flue connections
- e. Inspect the heat exchanger
- f. Inspect heating coils
- g. Inspect temperature rise
- h. Inspect furnace safety controls
- i. Inspect fuel input
- j. Inspect for gas leaks

- k. Inspect gas valve operation
- l. Inspect gas pressure and set to factory specifications
- m. Inspect backup heat elements
- n. Inspect sequencer operation
- o. Inspect actual amperage draw on motors
- p. Inspect actual voltage to the unit
- q. Inspect oil filter and oil pressure switches
- r. Inspect all high limits and safety controls
- s. Inspect reversing valve operation
- t. Inspect valves, stem traps and belts
- u. Inspect flue pipe, diverter and flue connections
- v. Inspect any applicable hot water heaters, boilers and related pumps. Inspection shall include annual tune-up of burners and cleaning of boilers as required.

Air Conditioning Equipment

- a. Check refrigerant systems for leaks and operation
- b. Inspect temperature drop
- c. Check condenser general operation and condition and clean condenser coil thoroughly at the beginning of each contract year and then as necessary
 - i. Check for scaling or corrosion of water-cooled condensers, clean as required.
 - ii. Check condition of air-cooled condensers, clean as required.
- d. Check and adjust condensate pumps and drains as necessary
- e. Inspect and clean condensate drain pan, drains, and traps to ensure proper draining. Inform the Assigned Public Works Manager of unusual or discolored drain pan accumulations.
- f. Replenish condensate treatment tablets
- g. Inspect condenser fans – blade conditions, clearance, etc.
- h. Lubricate condenser fan motors and bearings
- i. Inspect amp and voltage draw
- j. Inspect evaporator coils and clean at the beginning of each contract year, then as necessary
- k. Inspect evaporator drip pan, drains, and filters
- l. Inspect all compressors and starter – contacts and free movement
- m. Inspect compressor general operation and condition, oil level, head pressure and suction pressure
- n. Inspect refrigerant pressure and charge and replenish as needed
- o. Inspect refrigerant system for leaks and for potential leak points—chafing lines, cap tubes, etc.
- p. Record amount of refrigerant, if applicable:
 - i. Removed from system _____ and amount replaced _____
- q. Inspect unit disconnect system
 - i. Record unit voltage – rated _____, and actual _____
- r. Inspect “economizer”, if applicable
- s. Megohm or oil test compressors – record readings _____
- t. Inspect compressor terminals
- u. Inspect disconnect power box
- v. Inspect all coils for cleanliness, fin condition
- w. Check for leaks in air supply if applicable

- x. Inspect the system to avoid or correct freeze up

Air Handlers

- a. Check and change filters as necessary
- b. Replace all belts one time per year
- c. Check drive components for wear and alignment
- d. Check blower wheels – conditions and cleanliness
- e. Inspect blower housing, deck mountings – cracks, loose bolts, etc.
- f. Check fan bearings
- g. Check blower bearings
- h. Check blower motor bearings
- i. Lubricate all bearings at least once at the beginning of each contract year and then as necessary
- j. Record supply fan amperage – rated _____, actual _____
- k. Record return fan amperage – rated _____, actual _____
- l. Inspect all wiring for chafing, burning, deteriorated insulation
- m. Record overall condition of equipment
- n. Check heat and cooling coils for cleanliness and clean if needed

Residential Refrigerant Type A/C Units, Heat Pumps

- a. Check economizer operation
- b. Check compressor crankcase heater(s)
- c. Record:
- d. Compressor voltage _____
- e. Compressor amperage _____
- f. Operating suction pressure _____
- g. Operating head pressure _____
- h. Operating superheat _____
- i. Operating oil level _____
- j. Operating oil pressure _____
- k. Check unloader function, if applicable
- l. Check hot gas bypass function, if applicable
- m. Check all controls for proper function and setpoints
- n. Check and record discharge air temperature
- o. Record overall condition of equipment

Forced Hot Air Heaters, Gas

- a. Check combustion controls
- b. Check room air intake system
- c. Check contacts
- d. Check mercury bulbs
- e. Inspect all wiring for chafing, burning and deteriorated insulation
- f. Clean internal surfaces, if necessary
- g. Clean external surfaces
- h. Clean burner assembly, if necessary
- i. Clean fireside
- j. Clean flue
- k. Inspect refractory

- l. Prepare heater for winter conditions
- m. Do efficiency test and record
- n. Log heater condition at departure

Controls: Temperature, Humidity HVAC Sensors

- a. Check alarms
- b. Check the operation of all controls, thermostats, starters, relays, pressure switches, disconnect switches and fuses
- c. Perform programming adjustments where needed
- d. Clean where needed
- e. Check for any overrides
- f. Check set points, make adjustments where needed
- g. Check contacts and relays, clean or tighten contact where needed
- h. Check thermostats, calibrate if needed
- i. Check sensors and adjust if needed
- j. Annual Calibration of Garage Exhaust System Sensors
- k. Perform Cooling Tower Drain and Flush

System Controls

- a. Log onto Automated Logic Controls (ALC) or Johnson Controls Front end
- b. Check for alarm condition
- c. Identify out-of-spec zones
- d. Troubleshoot out-of-spec zones
- e. Check room thermostats and calibrate, as required
- f. Check control valves
- g. Check dampers
- h. Back-up and restore hard drive

Water Treatment.

Monthly water treatment service will include the following:

- Contractor shall take water samples of both the make up and re-circulating water on a monthly basis.
- Contractor shall complete a field test at the jobsite and shall report results on the City's CMMS.
- Water tests shall measure the following items:
 - Conductivity- measures the amount of minerals present in the water. The unit of measurement shall be in micro mhos (Mmhos).
 - Calcium Hardness – measures the amount of calcium scale present in the water. The unit of measure shall be parts per million (ppm).
 - Total Alkalinity – measures the level of alkaline present in the water. The unit of measure shall be parts per million (ppm).
 - Chlorides - measures the level of chlorides in the water. The unit of measure shall be parts per million (ppm).
 - Total Threshold Sequestrates – measures the level of scale inhibitor in the recirculating system only. The unit of measurement shall be parts per million

- Contactor shall feed an algaecide and biocide to cut bacteria growth as required. All chemicals provided by Contactor shall be in full compliance with State and federal regulations. Contactor will provide City of Milpitas with safety data information on all chemicals utilized in conjunction with the proposed water treatment program.

2.C. SEASONAL MAINTENANCE

Initial Seasonal Preventive Maintenance. The Contractor shall provide a preventive maintenance and inspection program covering all City HVAC equipment to the Assigned Public Works Manager within ten (10) calendar days prior to the first service visit.

Initial Seasonal Inventory. The first service for each unit will include confirmation, in writing, of each unit’s location, type, model number, serial number, size and filter.

The Contractor shall provide the services required of each season by the deadline(s) shown in the schedule below to assure optimum and continuous HVAC equipment functioning. All seasonal Maintenance shall be completed within the calendar month outlined below.

Contract Year 1

Maintenance Scheduled	Start Date	Completed by Date
Fall Maintenance	October 1	October 31
Winter Maintenance	December 1	December 31
Spring Maintenance	March 1	March 31
Summer Maintenance	June 1	June 30

Contract Years 2-5

Maintenance Scheduled	Start Date	Completed by Date
Fall Maintenance	September 1	September 30
Winter Maintenance	December 1	December 31
Spring Maintenance	March 1	March 31
Summer Maintenance	June 1	June 30

Spring Inspection / Service: The Contractor shall schedule and perform a Pre-Cooling season maintenance service call. The following services shall be performed in addition to regularly scheduled maintenance:

- i. Cycle units and check pressures and refrigerant charge
- ii. Be sure condensate lines are clean and pump is working properly
- iii. Visually inspect all wiring
- iv. Check and clean the indoor and outdoor coil if needed
- v. Provide and replace filters, inspect belts, replace as needed

Summer Inspection / Service: The Contractor shall schedule and perform the following in addition to regularly scheduled maintenance:

- i. Provide and replace filters, inspect belts, replace as needed
- ii. Visually inspect all wiring

Fall Inspection / Service: The Contractor shall schedule and perform a Pre-Heating season maintenance service call. The following services shall be performed in addition to regularly scheduled maintenance:

- i. Cycle and check each unit for proper heating operation
- ii. Check and clean pilot lights and bearings if needed
- iii. Provide and replace filters, inspect belts, replace as needed
- iv. Visually inspect all wiring
- v. Inspect and service or repair gas radiant tube and space heaters

Winter Inspection / Service: The Contractor shall schedule and perform the following services in addition to regularly scheduled maintenance:

- i. Provide and replace filters, inspect belts, replace as needed
- ii. Visually inspect all wiring

2.D. ANNUAL PREVENTIVE MAINTENANCE

The contractor shall hold a contract kick-off meeting with the Assigned Public Works Manager within 30 calendar days following notice to proceed, to develop a timeline for the annual preventive maintenance. The initial annual maintenance schedule shall be due ten (10) calendar days following the contract kick-off meeting.

Contractor will troubleshoot and/or diagnose HVAC/Mechanical problems and recommend emergency or routine repair programs as required. Annual preventive maintenance shall include detailed maintenance reports for each system.

Annual preventive maintenance will include any and all costs for providing the necessary labor, tools, equipment, mobilization/demobilization, licenses and incidental materials such as fluids, belts and filters, etc. per the Annual Preventive Maintenance items below as required to test, maintain, and diagnose the specified HVAC equipment, including but not limited to air flow analysis, water quality and flow, delta T, humidity, refrigerant and electronic conditions.

Test and Inspection - All labor to visually inspect and search for worn, failed and/or doubtful parts. Visually check coil surfaces, fan blades, fan belts, couplings, equipment housings, motor mounts, dampers, valves, fluid levels, VAV boxes, heat exchangers, etc. Make recommendations to the City of any necessary replacements and/or adjustments outside of scheduled maintenance service(s).

Preventive Maintenance and Predictive Maintenance – Labor to perform preventive maintenance on the equipment included. Maintenance intervals for systems and equipment are determined by run time, system use, application, location and manufacturer’s recommendations.

Consumable Materials – Routine maintenance parts and supplies included at no additional cost to the City during the life of the contract such as: refrigerant, fan or drive belts, lubricants, grease, towels/rags, wire nuts and small quantities of electrical wire and cable up to 8 AWG, electrical tape/shrink tubing as required to maintain insulation integrity, paint and rust proofing

as required to prevent corrosion damage to metal parts, cleaning solutions, oil and clean-up materials. **NOTE: All refrigerant required to be removed from any unit during any maintenance or repair procedure shall be captured and replaced at no cost to the City. Any new refrigerant added to fully charge any system shall be at verified contractors cost plus a maximum of 10% markup.**

Air Filter Media and Service - Includes regular air filter changing per the manufacturer's specifications. Includes monitoring of air filter conditions. Should additional changes be required, Air Filter Media and Service include notifying the City of any recommended adjustments to the maintenance program.

Coil Service - One (1) annual cleaning of each condenser coil each Spring service or as defined in manufacturer's Equipment and Maintenance Schedule. Should additional cleaning be required, Coil Service includes notifying the City of any necessary adjustments to this program.

Belt Service – The Contractor will include one (1) annual belt change for each belt in the system during each Fall Service. Should additional belt changes be required, Belt Service includes notifying the City of any necessary adjustments to this program.

Service Tag/Sticker - All technicians shall complete a service tag/sticker and attach it to the serviced equipment after completion of work. The service tag/sticker shall be used to document the following information: the date serviced, the name of the technician(s), and a description of the service(s) performed. The service tag/sticker must contain adequate space to document future repairs and must be placed in a location to prevent weather related damages. The technician shall not place the new service tag over pre-existing service tags, including tags that have previous history and repairs.

3. GENERAL PROVISIONS AND PARTIAL LIST OF CONTRACT DELIVERABLES / REPORTS

a. General Provisions

- All parts, supplies and materials used must be new and comply with manufacture warranty requirements.
- All work performed under the contract shall meet all applicable state and local laws, rules, regulations and codes. The Contractor shall be responsible for obtaining all necessary permits. Permits issued by the City of Milpitas shall be no-fee permits.

b. Designated Contact Person - Contractor

The Contractor must provide the names, telephone numbers and email addresses of its Project Manager and back-up Project Manager who is designated as crew leader and point of contact for work to be executed under the contract.

- *The contractor must always notify the designated City personnel prior to arriving on City premises to start work. Likewise, when leaving for the day, the Contractor must notify the designated City personnel to notify the City of their departure upon completing work for the day.*

- The Contractor shall ensure that all staff wears clearly visible identification badges (company name/first name) and/or company uniforms when working on a job site for the City.
- The Contractor's Project Manager/Foreman must be able to work unsupervised and run a crew.
- Contractor will not assign any personnel for whom background checks have revealed factors that make them unsuitable for the work to be undertaken for the city. This includes replacement personnel and subcontractors.
- All personnel who report to work in buildings occupied by the Police Department require a background check which will be conducted by the City of Milpitas Police Department at no cost to the contractor.
- The Contractor will provide its assigned personnel with a copy of the installed HVAC equipment manufacturer's manuals to be used to effectively service the systems.
- Contractor's service personnel shall be equipped with the appropriate equipment and tools for testing and servicing

c. Designated Contact Person – City

Prior to commencement of services, the City shall provide the Contractor with a contact list for City Representatives required for the Contractor to execute its work.

d. Reporting.

COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM (CMMS). The City will be using a web-based CMMS called Lucity for work orders, cost tracking, and asset management. The contractor must be willing to use this system (at no cost to the City) for all work performed under this contract.

MAINTENANCE AND SERVICE REPORTS. The Contractor shall submit a full report for all scheduled maintenance and service calls. All information shall be inputted to the City's CMMS system to the satisfaction of the City's Facilities Manager.

The Contractor shall submit a full report for all work , not later than five (5) working days after such maintenance work is completed. The report shall include the following minimum information or as otherwise determined by the assigned Public Works Manager:

- a. Date of the maintenance or service request
- b. Name of City representative that placed the service call
- c. Date of service
- d. Time in and time out
- e. Type of Service
- f. Building serviced
- g. Specific area and equipment being serviced (location of equipment, make and model, serial number)
- h. Services performed or scheduled completion date
- i. Number of service hours
- j. Name of the technician
- k. Hourly rate for services performed
- l. Parts and Material(s) used
- m. Cost of material(s)/equipment

- n. Job title of the technician(s); Job Classification and Skill Level
- o. Signature of building representative
- p. Warranty of any new material/equipment installed (labor included)

SPECIAL REPORTS. If an issue is discovered that has the potential to become a major problem, or if it may be the cause for shutdown repairs, this problem must be directly brought to the attention of the Assigned Public Works Manager orally and in writing so that a plan of action can be formulated for the timeliest repair to the equipment.

REFRIGERANT STATUS REPORT. Refrigerant Status Report shall be executed every time refrigerant is added to or removed from any air conditioning unit. This form shall comply with EPA guidelines in form and content. One copy of each form shall be given to the assigned Public Works Manager, one copy shall be left on the jobsite in close proximity to the machine/equipment serviced and a copy shall be kept at the Contractor's office.

HVAC CAPITAL EQUIPMENT REPLACEMENT PLAN. A five (5) year HVAC Capital Equipment Replacement Plan, estimating equipment and replacement costs, must be provided at the end of the first year as part of the Annual Equipment Condition Report.

e. Invoicing

Invoices shall be sent within fifteen (15) calendar days of completion of each seasonal maintenance completion. Invoices shall only be processed by assigned Public Works Manager after verifying the completion of all items reported on the invoice. Invoices shall be numbered sequentially and shall include the following information as well as the other required items described in these specifications:

- i. Contractor's name, address, email address, and telephone number
- ii. Contractor's remittance address (if different from Item "i" above)
- iii. Date of Invoice
- iv. Service location/address
- v. Purchase Order number
- vi. Authorized Work Order number and City approver
- vii. Date(s) of services
- viii. Complete and detailed description of services and costs (labor, materials, rented equipment, markups, etc.)
- ix. Total cost
- x. Name and date of reports, as applicable
- xi. Copies of required reports, as applicable

f. Work Hours

For the purposes of this contract and due to the nature of the facilities covered under the terms of this agreement work hours are defined as follows:

- **Regular Hours:** Regular hours are defined as Monday through Friday from 8:00 a.m. to 5:00 p.m.
- **Overtime Hours:** Overtime hours are defined as Monday through Saturday outside of Regular Hours.
- **Premium/Holiday Hours:** Holiday/Premium hours are defined as anytime on Sundays and City Holidays.

EXHIBIT “B”

SCHEDULE OF SERVICES

Contractor shall adhere to all schedules outlined in Exhibit “A”. Any modification to schedules in Exhibit “A” shall be in writing and signed by the city’s project manager or their designee.

EXHIBIT "C"
COMPENSATION

[BEGINS ON FOLLOWING PAGE]

Year 1 Pricing

FACILITY	Annual Maintenance	Fall Maintenance	Winter Maintenance	Spring Maintenance	Summer Maintenance	Annual Total
Fleet Maintenance	\$ 300.00	\$ 450.00	\$ 150.00	\$ 450.00	\$ 150.00	\$ 1,500.00
Public Works/Police Main Building	\$ 1,685.00	\$ 3,750.00	\$ 2,950.00	\$ 3,750.00	\$ 2,950.00	\$ 15,085.00
Barbara Lee Senior Center	\$ 1,050.00	\$ 1,350.00	\$ 650.00	\$ 1,350.00	\$ 650.00	\$ 5,050.00
Community Center	\$ 1,160.00	\$ 750.00	\$ 375.00	\$ 750.00	\$ 375.00	\$ 3,410.00
Cracolice Buildings	\$ 400.00	\$ 300.00	\$ 150.00	\$ 300.00	\$ 150.00	\$ 1,300.00
Jose Higuera Adobe Sport Center	\$ -	\$ 150.00	\$ 150.00	\$ 150.00	\$ 150.00	\$ 600.00
City Hall	\$ 750.00	\$ 800.00	\$ 475.00	\$ 800.00	\$ 475.00	\$ 3,300.00
Fire Station 1	\$ 800.00	\$ 1,800.00	\$ 750.00	\$ 1,800.00	\$ 750.00	\$ 5,900.00
Fire Station 2	\$ 400.00	\$ 600.00	\$ 150.00	\$ 600.00	\$ 150.00	\$ 1,900.00
Fire Station 3	\$ 175.00	\$ 300.00	\$ 150.00	\$ 300.00	\$ 150.00	\$ 1,075.00
Fire Station 4	\$ 175.00	\$ 300.00	\$ 150.00	\$ 300.00	\$ 150.00	\$ 1,075.00
				Contract Year 1 NTE		\$ 41,270.00

Year 2 Pricing

FACILITY	Annual Maintenance	Fall Maintenance	Winter Maintenance	Spring Maintenance	Summer Maintenance	Annual Total
Fleet Maintenance	\$ 300.00	\$ 450.00	\$ 150.00	\$ 450.00	\$ 150.00	\$ 1,500.00
Public Works/Police Main Building	\$ 1,685.00	\$ 3,750.00	\$ 2,950.00	\$ 3,750.00	\$ 2,950.00	\$ 15,065.00
Barbara Lee Senior Center	\$ 1,050.00	\$ 1,350.00	\$ 650.00	\$ 1,350.00	\$ 650.00	\$ 5,050.00
Community Center	\$ 1,150.00	\$ 750.00	\$ 375.00	\$ 750.00	\$ 375.00	\$ 3,410.00
Cracolice Buildings	\$ 400.00	\$ 300.00	\$ 150.00	\$ 300.00	\$ 150.00	\$ 1,300.00
Jose Higuera Adobe	\$ -	\$ 150.00	\$ 150.00	\$ 150.00	\$ 150.00	\$ 600.00
Sport Center	\$ 750.00	\$ 800.00	\$ 475.00	\$ 800.00	\$ 475.00	\$ 3,300.00
City Hall	\$ 800.00	\$ 1,800.00	\$ 750.00	\$ 1,800.00	\$ 750.00	\$ 5,900.00
Fire Station 1	\$ 400.00	\$ 600.00	\$ 150.00	\$ 600.00	\$ 150.00	\$ 1,900.00
Fire Station 2	\$ 175.00	\$ 300.00	\$ 150.00	\$ 300.00	\$ 150.00	\$ 1,075.00
Fire Station 3	\$ 175.00	\$ 300.00	\$ 150.00	\$ 300.00	\$ 150.00	\$ 1,075.00
Fire Station 4	\$ 175.00	\$ 300.00	\$ 150.00	\$ 300.00	\$ 150.00	\$ 1,075.00
				Contract Year 2 NTE		\$ 41,270.00

Year 3 Pricing

FACILITY	Annual Maintenance	Fall Maintenance	Winter Maintenance	Spring Maintenance	Summer Maintenance	Annual Total
Fleet Maintenance	\$ 315.00	\$ 472.50	\$ 157.50	\$ 472.50	\$ 157.50	\$ 1,575.00
Public Works/Police Main Building	\$ 1,769.25	\$ 3,937.50	\$ 3,087.50	\$ 3,937.50	\$ 3,087.50	\$ 15,638.25
Barbara Lee Senior Center	\$ 1,102.50	\$ 1,417.50	\$ 682.50	\$ 1,417.50	\$ 682.50	\$ 5,302.50
Community Center	\$ 1,218.00	\$ 787.50	\$ 393.75	\$ 787.50	\$ 393.75	\$ 3,580.50
Cracolice Buildings	\$ 420.00	\$ 315.00	\$ 157.50	\$ 315.00	\$ 157.50	\$ 1,365.00
Jose Higuera Adobe	\$ -	\$ 157.50	\$ 157.50	\$ 157.50	\$ 157.50	\$ 630.00
Sport Center	\$ 787.50	\$ 840.00	\$ 488.75	\$ 840.00	\$ 488.75	\$ 3,465.00
City Hall	\$ 840.00	\$ 1,890.00	\$ 787.50	\$ 1,890.00	\$ 787.50	\$ 6,195.00
Fire Station 1	\$ 420.00	\$ 630.00	\$ 157.50	\$ 630.00	\$ 157.50	\$ 1,995.00
Fire Station 2	\$ 183.75	\$ 315.00	\$ 157.50	\$ 315.00	\$ 157.50	\$ 1,128.75
Fire Station 3	\$ 183.75	\$ 315.00	\$ 157.50	\$ 315.00	\$ 157.50	\$ 1,128.75
Fire Station 4	\$ 183.75	\$ 315.00	\$ 157.50	\$ 315.00	\$ 157.50	\$ 1,128.75
				Contract Year 3 NTE		\$ 43,333.50

Year 4 Pricing

FACILITY	Annual Maintenance	Fall Maintenance	Winter Maintenance	Spring Maintenance	Summer Maintenance	Annual Total
Fleet Maintenance	\$ 315.00	\$ 472.50	\$ 157.50	\$ 472.50	\$ 157.50	\$ 1,675.00
Public Works/Police Main Building	\$ 1,769.25	\$ 3,937.50	\$ 3,097.50	\$ 3,937.50	\$ 3,097.50	\$ 15,839.25
Barbara Lee Senior Center	\$ 1,102.50	\$ 1,417.50	\$ 682.50	\$ 1,417.50	\$ 682.50	\$ 5,302.50
Community Center	\$ 1,218.00	\$ 787.50	\$ 393.75	\$ 787.50	\$ 393.75	\$ 3,580.50
Cracolice Buildings	\$ 420.00	\$ 315.00	\$ 157.50	\$ 315.00	\$ 157.50	\$ 1,365.00
Jose Higuera Adobe Sport Center	\$ -	\$ 157.50	\$ 157.50	\$ 157.50	\$ 157.50	\$ 630.00
City Hall	\$ 787.50	\$ 840.00	\$ 498.75	\$ 640.00	\$ 498.75	\$ 3,465.00
Fire Station 1	\$ 840.00	\$ 1,890.00	\$ 787.50	\$ 1,890.00	\$ 787.50	\$ 6,195.00
Fire Station 2	\$ 420.00	\$ 630.00	\$ 157.50	\$ 630.00	\$ 157.50	\$ 1,995.00
Fire Station 3	\$ 183.75	\$ 315.00	\$ 157.50	\$ 315.00	\$ 157.50	\$ 1,228.75
Fire Station 4	\$ 183.75	\$ 315.00	\$ 157.50	\$ 315.00	\$ 157.50	\$ 1,228.75
				Contract Year 4 NTE		\$ 43,333.50

Year 5 Pricing

FACILITY	Annual Maintenance	Fall Maintenance	Winter Maintenance	Spring Maintenance	Summer Maintenance	Annual Total
Fleet Maintenance	\$ 330.75	\$ 496.13	\$ 165.38	\$ 496.13	\$ 165.38	\$ 1,653.77
Public Works/Police Main Building	\$ 1,857.71	\$ 4,134.38	\$ 3,252.38	\$ 4,134.38	\$ 3,252.38	\$ 16,631.23
Barbara Lee Senior Center	\$ 1,157.63	\$ 1,488.38	\$ 716.63	\$ 1,488.38	\$ 716.63	\$ 5,567.65
Community Center	\$ 1,278.90	\$ 826.88	\$ 413.44	\$ 826.88	\$ 413.44	\$ 3,759.54
Cracolice Buildings	\$ 441.00	\$ 330.75	\$ 165.38	\$ 330.75	\$ 165.38	\$ 1,433.26
Jose Higuera Adobe	\$ -	\$ 165.38	\$ 165.38	\$ 165.38	\$ 165.38	\$ 661.52
Sport Center	\$ 826.88	\$ 882.00	\$ 523.69	\$ 882.00	\$ 523.69	\$ 3,638.26
City Hall	\$ 882.00	\$ 1,984.50	\$ 826.88	\$ 1,984.50	\$ 826.88	\$ 6,504.76
Fire Station 1	\$ 441.00	\$ 661.50	\$ 165.38	\$ 661.50	\$ 165.38	\$ 2,094.76
Fire Station 2	\$ 192.94	\$ 330.75	\$ 165.38	\$ 330.75	\$ 165.38	\$ 1,185.20
Fire Station 3	\$ 192.94	\$ 330.75	\$ 165.38	\$ 330.75	\$ 165.38	\$ 1,185.20
Fire Station 4	\$ 192.94	\$ 330.75	\$ 165.38	\$ 330.75	\$ 165.38	\$ 1,185.20
				Contract Year 5 NTE		\$ 45,500.35

EXHIBIT "D"

INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below. **Those that have an "X" indicated in the space before the requirement apply to Contractor's or Consultant's Agreement.**

Contractor or Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor's or Consultant's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

Coverage at least as broad as Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$5,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000.00 combined single limit for bodily injury and property damage.

Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than \$5,000,000.00 combined single limit for bodily injury and property damage.

Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

Insurance appropriate to the Contractor or Consultant's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

(If Design/Build), with limits no less than \$1,000,000.00 per occurrence or claim, and \$2,000,000.00 policy aggregate.

Insurance appropriate to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000.00 per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Builder's Risk (Course of Construction):

Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Contractor's or Consultant's Pollution Legal Liability:

Contractor's or Consultant's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000.00 per occurrence or claim and \$2,000,000.00 policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Cyber Liability Insurance

___ Cyber Liability Insurance with limits not less than \$1,000,000 per claim.

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor or Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security.

The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.

Surety Bonds:

Contractor shall provide the following Surety Bonds:

- ___ Bid Bond
- ___ Performance Bond
- ___ Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

X Additional Insured Status and Primary/Non-Contributory Language:

Contractor's general liability and automobile liability policies shall be primary and shall not seek contribution from the City's coverage and be endorsed to add the City and its officers, officials, employees, and agents as additional insureds under such policies using Insurance Services Office form CG 20 10 (or equivalent) on the general liability policy. For construction projects, an endorsement providing completed operations coverage for the additional insured on the general liability policy, ISO form CG 20 37 (or equivalent), is also required.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

___ **Loss Payee Status – Builder’s Risk/Course of Construction Insurance (applicable to Construction Contracts only)**

Contractor or Consultant may submit evidence of Builder’s Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

X__ Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days’ prior written notice by certified mail, return receipt requested to the City.

X Waiver of Subrogation:

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers’ Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

___ **Completed Operations**

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

Deductibles and Self-Insured Retentions (“SIR”):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor or Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractor's Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

EXHIBIT "E"
FEDERAL REQUIREMENTS

[RESERVED]

ATTACHMENT "A"
EQUIPMENT LIST

[BEGINS ON FOLLOWING PAGE]