CITY OF MILPITAS
AGREEMENT FOR UTILITY BILL PRINTING AND MAILING SERVICES

1.   PARTIES AND DATE.

This Agreement for Utility Bill Printing and Mailing Services ("Agreement") entered into this _____ 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 **DataProse, LLC**, a limited liability company, with its principal place of business at **1122 W Bethel Road, Suite 100 Coppell, TX 75019** ("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 Utility Bill Printing and Mailing Services required by City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing Utility Bill Printing and Mailing Services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2   Project.

City desires to engage Contractor to render such services for the Utility Bill Printing and Mailing Services – RFP No. 2499 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 City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the services and advice on various issues affecting the decisions of City regarding the Project and on other programs and matters affecting City ("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 **July 1, 2021** to **June 30,2026**, 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 of City. 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 skilled 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   Substitution of Key Personnel. Contractor has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence and experience upon written approval of City. In the event that City and Contractor cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to City, or who are determined by City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by Contractor at the request of City. The key personnel for performance of this Agreement are as follows: **Bill Murray, Tim Zombik**.

        3.2.5   City's Representative. City hereby designates **Dante Ong, Senior Accountant**, 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 City for all purposes under this Agreement. Contractor shall not accept direction or orders from any person other than City's Representative or his or her designee.

        3.2.6   Contractor's   Representative.   Contractor   hereby   designates _____, 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 Contractor for all purposes under this Agreement. Contractor's Representative shall supervise and direct the Services, using his or her 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.

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

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3.2.8   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 contractors in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the 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 any required 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 City, any services necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein, and shall be fully responsible to City for all damages and other liabilities provided for in the indemnification provisions of this Agreement arising from the Contractor's errors and omissions.. Any employee of Contractor or its subcontractors who is determined by 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 City, shall be promptly removed from the Project by Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9   Laws and Regulations. 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 Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to City, Contractor shall be solely responsible for all costs arising therefrom. 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   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.

3.2.11   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, 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 life saving 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.

3.3   Fees and Payments.

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3.3.1 <u>Compensation</u>. 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 **Three Hundred Thirty-Seven Thousand One Hundred Fifty Dollars and Zero Cents ($337,150.00)** 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 <u>Payment of Compensation</u>. 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 <u>Reimbursement for Expenses</u>. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 <u>Extra Work</u>. 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 <u>California Labor Code Requirements</u>

(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

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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   Accounting Records.

3.4.1   Maintenance and Inspection. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred and fees charged under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5   General Provisions.

3.5.1   Termination of Agreement.

(a)   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 fully and adequately rendered to City through the effective date of the termination, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

(b)   Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished Documents and Data, as defined below, 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.

(c)   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.

3.5.2   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:

DataProse, LLC
1122 W. Bethel Road
Suite 100
Coppell, TX 75019
Attn: William K. Murry, CEO

City:

City of Milpitas
455 E. Calaveras Boulevard
Milpitas, California 95035
Attn: Director of Finance

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.

      3.5.3 <u>Cooperation; Further Acts</u>. 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.

      3.5.4 <u>Attorneys' Fees</u>. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all costs of such action.

      3.5.5 <u>Indemnification</u>. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold 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, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subcontractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages, attorneys' fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City or its officials, officers, employees, agents or volunteers. This Section 3.5.5 shall survive any expiration or termination of this Agreement.

      3.5.6 <u>Entire Agreement</u>. 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 supplemented, amended or modified by a writing signed by both Parties.

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3.5.7 <u>Governing Law</u>. This Agreement shall be governed by the laws of the State of California. Venue shall be in Santa Clara County.

3.5.8 <u>Time of Essence</u>. Time is of the essence for each and every provision of this Agreement.

3.5.9 <u>City's Right to Employ Other Contractors</u>. City reserves the right to employ other Contractors in connection with this Project.

3.5.10 <u>Successors and Assigns</u>. This Agreement shall be binding on the successors and assigns of the parties.

3.5.11 <u>Assignment or Transfer</u>. 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 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.

3.5.12 <u>Construction; References; Captions</u>. 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 elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

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

3.5.14 <u>Waiver</u>. 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.

3.5.15 <u>No Third Party Beneficiaries</u>. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.16 <u>Invalidity; Severability</u>. 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.

3.5.17 <u>Prohibited Interests</u>. 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. 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

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with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.18 <u>Equal Opportunity Employment</u>. 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. Contractor shall also comply with all relevant provisions of any minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.19 <u>Labor Certification</u>. 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.

3.5.20 <u>Authority to Enter Agreement.</u> 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.

3.5.21 <u>Counterparts</u>. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.22 <u>Employment Adverse to City</u>. Contractor shall notify City, and shall obtain City's written consent, prior to accepting work to assist with or participate in a third-party lawsuit or other legal or administrative proceeding against City during the term of this Agreement.

3.5.23 <u>Conflict of Employment</u>. Employment by Contractor of personnel currently on the payroll of City shall not be permitted in the performance of this Agreement, even though such employment may occur outside of the employee's regular working hours or on weekends, holidays or vacation time. Further, the employment by Contractor of personnel who have been on City's payroll within one year prior to the date of execution of this Agreement, where this employment is caused by and or dependent upon Contractor securing this or related Agreements with City, is prohibited.

3.5.24 <u>Survival</u>. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification and confidentiality obligations, and the obligations related to receipt of subpoenas or court orders, shall survive any such expiration or termination.

3.5.25 <u>Subcontracting</u>. 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.

3.5.26 <u>Wage Theft Prevention</u>

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

**SIGNATURE PAGE FOR AGREEMENT
FOR UTILITY BILL PRINTING AND MAILING SERVICES
BETWEEN THE CITY OF MILPITAS
AND DATAPROSE LLC**

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

CITY OF MILPITAS
Approved By:

DATAPROSE LLC

_____
Steven G. McHarris, City Manager

_____
Signature

_____
Date

_____
Name

Approved:

_____
Title

_____
Lauren Lai, CPA
Risk Manager/Director of Finance

_____
Date

Approved As To Form:

_____
Christopher J. Diaz, City Attorney

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The City uses the Cayenta Utility billing system to generate bills, reminder notices and final notices. Bills are mailed out each Monday, and reminder and final notices are mailed out each Wednesday, with the exception of four skip weeks in a calendar year. The City regularly includes inserts with the bills or reminder notices. The City bills eight cycles every two months with a range of 1500-2700 bills per cycle and a range of 300-500 reminder notices per cycle and 50-75 final notices per cycle. The utility bills and notices are printed on 8.5" by ll" paper with one perforation. The utility bills include a return envelope. The City currently bills utility customers through Cayenta Software. The City is currently operating Version 9.0. Additionally, Contractor shall provide testing for the City as it migrates from Cayenta's Actuate to Cognos and bank information changes from Wells Fargo Bank to JP Morgan-Chase Bank at no additional charge. Contractor will add/print at no cost the JP Morgan-Chase Bank OCR scanline on the remittance stub of the regular utility bill, reminder notice and final notice.

SCOPE OF SERVICE

The Contractor is to provide the following services:

1. Contractor must provide programming and bill design services as required. The design should be able to accommodate the use of graphics and allow for messages.

Document Design

The City requires the design of a new utility bill statement that is both professional looking, and easy to understand. The same design can be used for both the original bill statements and reminder notices. The new statement should be flexible enough to accommodate single account bills and multiple account consolidated bills with sufficient space to include information on the front and the back. The statement should include a scan-able pay stub to enable payment by check, bar coding to enable payment by cash thru 7-11 or CVS stores and bar coding for postal mailing and payment processing. The use of color, graphics, and icons is encouraged.

2. Services must be compatible with the City's billing system and provide means for secure data transmission and confirm receipt of data. The City transmits data electronically. The Contractor is expected to acknowledge receipt of the data. The Contractor should report non-certified addresses to the City for correction in future billings.

System and Software

The City requires a secure transmission of billing data to the Contractor. The Contractor must be able to provide secure web and/or sFTP file transfer options for upload of the billing file for processing. The City expects the Contractor's software to be able to handle Extended Markup Language (XML) file, fixed length text file to accommodate accounts with multiple service locations and CSV (comma delimited) to accommodate bar code files to be printed on the statement. The City must be able to log into the Contractor's server and transmit the files as needed. The City must have the ability to view and approve sample bills online before they are printed and mailed. Contractor must be able to provide reports via a secure portal which requires username, password and SSL to access.

The Contractor must send via email a File Confirmation Report – to confirm receipt of file transmission

(Please see Reporting Section for more details)

Invoice Cloud is the Electronic Bill Presentment and Payment (EBPP) service provider of the City of Milpitas. The Contractor must have Application Programming Interface (API) integration with Invoice Cloud to mark auto-pay and/or paperless customers for printing and mailing of bills. The Contractor must provide bill images (PDF) to Invoice Cloud through the interface.

Contractor must provide individual customer bill images (PDF) of every bill, reminder notice and final notice thru API or SFTP to interface with City of Milpitas-Cayenta Utility billing system for CSR viewing and printing purposes.

Contractor must possess and provide information about its Disaster Recovery policy and Information Security. Contractor must have out-of-state Disaster Recovery support. The Contractor must have a disaster recovery facility to process the City's bills if the main facility becomes inoperable. Provide locations and information about these facilities.

The Contractor must provide necessary security to protect the City's data from unauthorized access. Please provide details about the security measures that are in place. Include procedures for ensuring that only authorized persons are admitted to the production floor.

The Contractor must be able to provide an independent test report stating the application is free from known security defects.

The Contractor must accommodate any billing system upgrades and accommodate data testing as necessary.

The Contractor must allow site visits by City personnel.

3. The Contractor will be required to print, insert, meter, and mail via first class postage. Confirmation or receipt must be provided. This schedule must be contractually guaranteed.

Document Printing

The City prefers to take advantage of volume discounts in the printing of the forms and envelopes; consequently the City may require storage of such forms by the Contractor until they are needed for production. The City requires consistent print registration and quality so that the imaged billing data falls correctly into appropriate locations on the forms.

The Contractor must be able to reproduce the preprinted and perforated paper stock that can match or exceed the quality of the current stock and provide the same number of preprinted colors.

The Contractor must have the capability to suppress the printing of bills and/or envelopes for certain customers, based on City requirements.

The Contractor must have the capability to print messages, logos and usage history graphs, and multiple page bills as needed.

Contractor must have the capability of taking PDF or JPG image(s) from the city's directory of PDF or JPG files and merging them with the customer's utility bill. The proposed solution should be able to create a custom section on the utility bill based on either a flag reference embedded in the XML or based on the account type. It should be able to merge image files into the section of the utility bill using either a file reference embedded in XML or using a business rule referencing the image file name (e.g., customer's account number has a corresponding image file name provided in the directory of PDF or JPG files). There should be a default (blank value) image if file is not found.

Contractor must have the capability of taking CSV (comma delimited) files and be able print individual bar code on the bills, reminder notices and final notices.

The Contractor must confirm the file counts of bills/statements produced and mailed immediately after the process is complete. The data is the sole property of the City of Milpitas and will not be used by the Contractor for any other purpose without prior written authority.

4. Provide necessary materials to include:

   a. Billing Statement 8.5xll with City logo and perforation with a pre-printed backer. (City will provide backer information)

   b. Ink: Color(s) will be determined during programming

   c. Paper: White

   d. Outgoing envelope: #10 generic with double windows

   e. Remittance envelope: #9 generic with single window

5. The Contractor must support bill insert services, in which the Contractor can print inserts and include with utility bill statements. City departments occasionally need special inserts printed. These services should be charged at a per unit fee and based on the insert specifications. Insert prices must be quoted separately prior to inclusion.

Mailing Services

The City requires the accurate insertion of items into the mailing envelopes. Some commercial accounts may require two or more pages due to consolidated statements. From time to time, the City may provide additional inserts to be included in the mailing. The Contractor must accept inserts printed by other vendors and will provide insert specifications upon request. The City also requires certain inserts to be included with selected bills – for example residential related inserts to be included with residential bills only. The Contractor must be able to provide insert printing services as well.

The City expects that all bills, reminder notices and final notices will be generated and delivered to the U.S. Postal Service (USPS) the same day that the billing data was

transmitted to the Contractor. The Contractor must ensure that proper postage is applied to the envelopes for mailing. Bills must be mailed via presorted first-class mail to maximize postal discounts. Contractor must use the USPS Intelligent Mail Barcode for all outgoing mail pieces. The City should be able to verify proof of delivery to the USPS on an as-needed basis. Customer addresses must be validated and updated as necessary by the Contractor using Coding Accuracy Support System (CASS) USPS-certified software. The Contractor must provide National Change of Address (NCOALink) or Address Correction Service (ACS).

The City must be notified of the number of bills, reminder notices and final notices sent immediately following completion of the mailing. The Contractor to provide documentation for the use of postage monthly.

Upon mailing of the bills, reminder notices and final notices, the exact image of the bills and reminder notices be available for the City in a non-proprietary format (like Portable Document Format (PDF), Tagged Image File Format (tiff) or Joint Photographic Expert Group (jpg) format).

6. Contractor must pre-process data for address certification and pre-sort for lowest first-class rate. Software used to pre-sort must be USPS approved. Any non-certified addresses should be reported to the City.

7. Contractor must be capable of providing combined multiple statements for one customer into one envelope, also conditional exclusion of return envelopes for customers with zero or credit balances.

8. Contractor must allow for conditional messaging on the front of the statement.

9. Contractor must be able to extract billing data from spool files provided through our billing software.

10. Contractor must provide access to image of bills. The City wants to have the ability to view, print, fax or email images of the bills sent by mail for a specified period of time after mailing.

Document Archive

The City requires all "valid" (bills not in error) bill images sent via secured transmission to the City of Milpitas and archived as Portable Document Format (PDF) files at the Contractor's portal on the same day the bill files are received by the Contractor. This includes bills that are not printed based on requirements from the City. Archived individual customer bill, reminder notice, and final notice (PDF images) files should be accessible by City Staff and Invoice Cloud thru API or SFTP interface. Bill images shall be stored for 60 months.

11. The City would prefer the postmark be from California in order to ensure Milpitas residents receive their bills within a 24 hour period of being mailed.

Reporting

The Contractor must email a File Confirmation Report to financecustomerservice@ci.milpitas.ca.gov   to confirm receipt of file transmission. This report

should contain the following details, at a minimum:
- Number of bills received for processing
- Number of bills printed
- Number of impressions
- Number of suppressions
- Number of duplex pages
- Postage presort breakdown including actual rates
- Inserts used and insert counts
- Total $ value of bills contained in data file

Invoicing

The Contractor shall submit an invoice/bill for services rendered and postage used on a monthly basis. Invoice should contain the following details, at a minimum, and should align with the report above:

- Serial identification of invoice/bill
- The beginning and ending dates of the billing period

  Task/Bill Summary containing amount due for the period broken down, as follows:
- Printing and mailing services of:
  - Regular Utility Bills
  - Reminder Notices
  - Final Notices
  - Inserts
- Postage used for:
  - Regular Utility Bills
  - Reminder Notices
  - Final Notices
  - Inserts
- Other charges (e.g., Oversized Surcharge, Search and View bill, Taxes)

Integration with Invoice Cloud – Electronic Bill Presentment and Payment service provider

The Contractor must provide an Application Programming Interface (API) integration with the City's Electronic Bill Presentment and Payment (EBPP) service provider, currently Invoice Cloud. The integration will be used for presenting PDF bills online, managing the auto pay and paperless bill process, and re-enrollment in paper billing if customer's email notification "bounces" as undeliverable.

The City requires that once the bills are printed, images will be accessible through the City's website for viewing and to those who have registered to receive their bills over the internet.

Integration with City of Milpitas Utility Billing System – Cayenta

Vendor must provide individual customer bill images (PDF) of every bill, reminder notice and final notice thru API or SFTP to interface with City of Milpitas-Cayenta Utility billing system for CSR viewing purposes.

Customer Support and Customer Service Interface

The Vendor must provide unlimited customer support Monday through Friday during the hours of 8:00 am to 5:00 pm, Pacific Standard Time. Provide procedures for after-hours support, list of company holidays and contact points for customer and/or technical service.

Contractor application must include the following:

- Contractor application must supply an interface for customer service staff to administer the application.

- Contractor application must be hosted by the Contractor, be accessible via web, and require no software be installed on customer service computers.

- Contractor application must require a Customer Service Representative (CSR) username and password.

- Contractor application must have multiple CSR access levels, including an administrator level which can create and modify other CSR users. It must have a CSR access level that is read-only.

- Contractor application must allow CSRs to set their own passwords.

- Contractor application must allow CSRs to search for accounts by account number, account first or last name.

- Contractor application must allow CSRs to view billing history, up to 60 months.

- Contractor application must allow CSRs to view the same PDF bill that was delivered to the customer.

- Contractor application must show the Simple Mail Transfer Protocol (SMTP) email tracking for each bill email, listing whether it was delivered with no errors or received an error from the user's mail server and what error code was.

OPTIONAL SCOPE OF WORK and REQUIREMENTS

The City may, during the term of this agreement, desire to purchase additional services from the Contractor in order to enhance the level of service it provides to its customers.

Special Document

Contractor shall maintain the capability to produce utility bills and reminder notices in Braille writing for customers that are blind and visually impaired.

Other Utility Billing Methods/Services

Contractor may be requested to provide other Utility Billing methods/services not mentioned but may be negotiated and added to this agreement by mutually agreeable amendment.

EXHIBIT "B"
SCHEDULE OF SERVICES

The initial term will include a four (4) month implementation period March 1, 2021 through June 30, 2021 followed by five (5) years performance period July 1, 2021 through June 30, 2026.

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Item	Cost	Unit of Measure	Notes from Contractor
One-Time Implementation (date of award through June 30, 2021) Includes all phases of the project prior to the production phase: initial programming, testing, and implementation	$ waived	N/A	As your current vendor, there is no standard implementation time needed. However, if the City would like to change the design of the current bill, DataProse will offer this service at no cost to the City.
Professional Services Charges For requested programming changes after initial implementation.	$125.00	Per Hour	
Cost of Materials			
Statement Paper Stock Cost 8.5 X 11, 24-pound paper stock with micro-perforation	$0.011	Each	
Outgoing Envelope Cost Double window #10 envelope with security tint	$0.0175	Each	
Return Envelope Cost Single window #9 envelope with security tint	$0.0135/each		
Flat Envelope Cost Applies only to multi-page bills that do not fit in the standard double window #10 envelope.	$0.35/each		- includes 9 x 12 envelope - for hand inserting of statements greater than 8 pages

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Service Fees

1 Page Bill Service Fee Includes file transmission, data processing, mail preparation (folding, inserting a 1-page bill and the return envelope into an outgoing envelope), bar coding, pre-sort, and delivery to the USPS Option 1 : Simplex Black Bill Printing Or Option 2 : Multi-colored Bill Printing	Option 1: $0.043 Option 2: $0.056/	Each	Based on duplex black printing, not preprint used Based on full color duplex printing
Additional Bill Pages Service Fee Per page cost to print and insert additional pages if the bill contains more than 1 page Option 1 : Simplex Black Bill Printing Or Option 2 : Multi-colored Bill Printing	Option 1: $0.03 Option 2: $0.037	Each	
Marketing Insert Fee Charge for inserting client-provided marketing insert. For example: City Announcements For pricing purposes use one (1) insert in 100 mailed envelopes	$0.01	Each	
Move Update Service Fees NCOALink or ACS service	$0.00 No charge $0.25/per occurrence		CASS Certification is included in Contractor's process
Archive Fee Images must be stored in PDF format for 60 months	$0.015/each		
Travel and Office Support	$ TBD		No charge for office support. Any travel needs will be approved by the vendor and city prior to occurrence.

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Other Charges (e.g., Oversized Surcharge, Search and View bill, Taxes)	$		Please refer to Optional Services Pricing
Optional: Producing Bill in Braille Writing Per page cost to produce and additional pages if the bill contains more than 1 page	$TBD	As Needed	Contractor will engage a third party to facilitate this service.
Optional: Additional vendor proposed services FILL IN	$TBD	Various	Please refer to Optional Services Pricing provided by Contractor in its Proposal on following page

OPTIONAL SERVICES PRICING:

OPTIONAL SCOPE OF WORK and REQUIREMENTS

The City may, during the term of this contract, desire to purchase additional services from the Vendor in order to enhance the level of service it provides to its customers. Vendors responding to this RFP should respond in detail regarding their ability to provide the optional services requested below. The City also encourages Vendors to list any other services they provide that would benefit our customers or the City. The inability to provide any or all the optional services will not cause a Vendors proposal to be declared non-responsive; however, the ability to provide such services must be in addition to, and readily distinguishable from, prices quoted for document printing and mailing services and payment processing.

Special Document

Please provide details of capability to produce utility bills and reminder notices in Braille writing for customers that are blind and visually impaired.

- DataProse would need to engage a third party to facilitate this service.

Other Utility Billing Methods/Services

Please provide other Utility Billing methods/services not mentioned that you can offer to the City of Milpitas.

Implementation/Utility Set-up	Waived	1 Time
Search & View Bill statement archive – includes 60 months of storage	$0.015	Each
Additional inserts – cost to insert (newsletter, water quality report, buck slips, etc.)	$0.01	Each
Oversized bills (8-99 pages) - includes 9 x 12 envelope	$0.35	Each
- Oversized bills (100 + pages) includes envelope	$4.00	Each
Bill Suppression	$0.035	Each
API – DataProse Search&ViewBill API is a tool that allows clients already utilizing the S&V service or their eBill payment vendor, a back-end path to access PDFs from the DataProse system. This product is a connector service between the client application or website and the indexed billing cycle PDFs at DataProse.	$100.00	Month
Additional programming – client requested/approved	$125.00	Hour
NCOALink (Address Correction/Update)	$0.25	Correction
Offline folding – for inserts provided by client that are not folded	$0.005	Each
Special Handling – Overnight + FedEx charge	Cost	Each
Estimated Postage Cost / 1-3oz. Piece – Based on the lowest 5-digit zip code rate. Actual postage will apply.	$0.386	Each

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.

_X_ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than $1,000,000.00 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:

_X_ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than $1,000,000.00 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 liit 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):

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

Workers' Compensation Insurance:

_X_ Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000.00 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 Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

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

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

Verification of Coverage:

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

Special Risks or Circumstances

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

Failure to Comply:

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

Applicability of Coverage:

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