

**CITY OF MILPITAS  
MAINTENANCE SERVICES AGREEMENT**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 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 **Technology, Engineering & Construction, Inc. dba TEC Accutite**, a California corporation with its principal place of business at **262 Michelle Court, South San Francisco, CA 94080** (“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 storage tank maintenance and certification 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 **Aboveground and Underground Storage Tank Maintenance and Certification 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 Aboveground and Underground Storage Tank Maintenance and Certification Services 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 15, 2019 to October 14, 2024**, 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 **Tony Ndah, Public Works Director**, 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 **Anthony McIntyre**, 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 subcontractors 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.

3.2.13.1 Performance Bond. If required by law or otherwise specifically requested by City in **Exhibit “D”** attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.13.2 Payment Bond. If required by law or otherwise specifically requested by City in **Exhibit “D”** attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.13.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

3.2.13.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.2.14 Accounting Records. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred 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.

### **3.3 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 Forty-Five Thousand Two Hundred Fifty Dollars and Zero Cents (\$245,250.00)** 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 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:**

TEC Accutite  
262 Michelle Court

South San Francisco, CA 94080  
Attn: Anthony McIntyre

**City:**

City of Milpitas  
1265 N. Milpitas Boulevard  
Milpitas, California 95035  
Attn: 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 TECHNOLOGY, ENGINEERING & CONSTRUCTION, INC. DBA TEC  
ACCUTITE**

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

**CITY OF MILPITAS**

*Approved By:*

\_\_\_\_\_  
Steve McHarris  
Interim City Manager

\_\_\_\_\_  
Date

*Approved As To Form:*

\_\_\_\_\_  
Christopher J. Diaz  
City Attorney

*Approved:*

\_\_\_\_\_  
Walter C. Rossmann  
Director of Finance

*Approved As To Content:*

\_\_\_\_\_  
Tony Ndah  
Director of Public Works

**TECHNOLOGY, ENGINEERING &  
CONSTRUCTION, INC. dba TEC  
ACCUTITE**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## **EXHIBIT “A”**

### **SCOPE OF SERVICES**

#### **1.01 Overview**

The City of Milpitas is issuing this Invitation for Bids (IFB) for qualified service providers to provide five (5) years of monitoring, maintenance, testing, and training services for the City’s Aboveground Storage Tanks (ASTs) and Underground Storage Tanks (USTs). All services performed will be to ensure that the City’s Aboveground Storage Tanks (ASTs) and Underground Storage Tanks (USTs) are operating in compliance with state and federal regulations.

All services will be scheduled in advance with City staff and regulatory agencies. Annual compliance inspections/monitoring certification and triennial secondary containment testing must be coordinated with the County of Santa Clara Hazardous Materials Compliance Division. Additional work provided above and beyond the contract allowance will be provided at the contract’s rates on a time-and-material basis.

#### **1.02 Qualifications and Requirements**

- A. The Contractor’s personnel must have at minimum two (2) years of experience in the field.
- B. The Contractor’s personnel must provide current certifications upon award of this contract and carry a valid certification throughout the term of the contract.
- C. For Underground Storage Tanks (USTs) Services
  - 1. The Contractor’s personnel must be an International Code Council (ICC) certified California UST Service Technician, California UST Designated Operator, and/or California UST Designated Inspector per Title 23 CCR Chapter 16, Section 2715. The Contractor’s personnel must provide current certifications upon award of this contract and carry a valid certification throughout the term of the contract.
- D. For Aboveground Storage Tanks (ASTs) Services
  - 1. The Contractor’s personnel must have a valid tank testing license from the State Water Resources Control Board and be certified in the American Petroleum Institute (API) Standard 653 and/or the Steel Tank Institute (STI) SP001 inspection standards in order to provide tank integrity testing.
  - 2. The Contractor’s personnel must have completed and passed an aboveground storage tank inspector training program.
- E. The Contractor’s personnel performing the work of a service technician must meet all of the following requirements:
  - 1. Possess or be employed by a person who possesses one of the following licenses: Class “A” General Engineering Contractor License, C-10 Electrical Contractor License, C-34 Pipeline Contractor License, C-36 Plumbing Contractor License, or a C-61 (D40) Limited Specialty Service Station Equipment and Maintenance Contractor License issued by the Contractors State License Board, as applicable. Individuals who possess a valid tank testing license issued by the State Water Resources Control Board will also satisfy the licensing requirement.

2. Be trained and certified by the manufacturer of the equipment as follows:
  - i. For service technicians conducting secondary containment testing (SB 989), this training and certification may be obtained through the developer of the testing equipment or test method being used in accordance with Title 23 CCR Chapter 16, Section 2637, or through the manufacturer of the secondary containment system being tested, as applicable.
  - ii. For service technicians performing work on monitoring equipment, training and certification shall be obtained from the manufacturer of the monitoring equipment.
  - iii. For service technicians conducting spill container testing, this training and certification may be obtained through the manufacturer of the spill container being tested or through the developer of the testing equipment or test method being used.

### 1.03 Facilities

The Contractor shall provide services at the following facilities:

Location	Address	Type	Capacity (gallons)
Bellew Pump Station	481 Murphy Ranch Drive	UST GenSet	2,500 diesel
Berryessa Pump Station	731 Folsom Circle	UST	1,000 diesel
California Circle Pump Station	1735 California Circle	AST	1,000 diesel
Fire Station 1	777 South Main Street	AST	1,000 gas
Fire Station 1	777 South Main Street	AST	1,000 diesel
Fire Station 2	1263 Yosemite Drive	AST	1,000 diesel
Fire Station 3	45 Midwick Drive	AST	500 diesel
Fire Station 4	775 Barber Lane	AST	2,000 diesel
Gibraltar Pump Station	641 Gibraltar Court	AST GenSet	8,000 diesel
Jurgens Pump Station	345 Jurgens Street	UST	2,500 diesel
Manor Pump Station	349 Marlyinn Drive	UST GenSet	400 diesel
McCarthy Pump Station	1001 North McCarthy Boulevard	AST GenSet	2,000 diesel
Murphy Ranch Pump Station	801 Murphy Ranch Drive	AST	2,000 diesel
Oak Creek Pump Station	1521 McCarthy Boulevard	AST	2,000 diesel
Penitencia Pump Station	944 La Honda Drive	UST	1,000 diesel
Pinewood Well	227 Lonetree Court	UST	1,000 diesel
Public Works Corporation Yard	1265 North Milpitas Boulevard	UST	12,000 gas
Public Works Corporation Yard	1265 North Milpitas Boulevard	UST	12,000 diesel
Wrigley Ford Pump Station	75 Marylinn Drive	AST	5,000 diesel
Zone 2 Pump Station	1429 East Calaveras Boulevard	AST GenSet	1,000 diesel

### 1.04 Scope of Services

#### A. General

1. The Contractor shall provide inspection, certification, and testing as specified herein. There shall be no additional cost to the City for these services.
2. The Contractor personnel shall serve as the City's Designated UST Operator and UST Service Technicians and shall submit "Designated UST Operator



Identification Form” for City submittal via the California Environmental Reporting System (CERS).

3. All regular scheduled work shall be performed during normal business hours between 8:00 AM and 5:00 PM. A minimum notification of one (1) week for any scheduled work shall be given to the Public Works Maintenance Manager (PWMM) for Utilities or to the PWMM for Facilities & Fleet or to his designee (heretofore referred to as “City Personnel”). A list of personnel (including contact information) to be notified for scheduled work shall be provided to the Contractor by the City upon award of the contract.
  4. Services include all labor, materials, equipment, tools, services, and supervision required to perform the work as described in the bid document.
  5. The Contractor shall procure and pay for all permits and licenses necessary to perform the work identified.
  6. The Contractor’s personnel shall wear identifiable uniforms at all times on City of Milpitas property. The Contractor’s personnel shall also provide picture identification upon request at any time while on City property.
- B. Monthly Designated UST Operator Visual Inspections (UST)
1. The Designated UST Operator shall perform monthly visual inspections of all USTs for which they are designated as required by Title 23 CCR Chapter 16, Section 2716 per UST location. Written records shall be maintained as required.
  2. The Designated UST Operator visual inspection shall identify compliance issues which cause the USTs to be out of compliance and shall include, but not be limited to, all of the following:
    - i. Review of the previous month’s “Designated Underground Storage Tank Operator Visual Inspection Report” to verify each compliance issue identified by the designated UST operator during the previous visual inspection has a documented action taken in response.
    - ii. Review of the alarm history since the previous visual inspection to verify that each alarm condition was documented and responded to appropriately.
    - iii. Review of the testing and maintenance records for the USTs to verify that all required testing and maintenance has been completed.
    - iv. Review of the facility employee training records to verify that all facility employees have been trained.
    - v. Inspect the spill container for damage and for the presence of any hazardous substance, water or debris.
    - vi. Inspect the fill pipe for obstruction.
    - vii. Inspect the fill cap to verify it is securely on the fill pipe.
    - viii. Inspect under-dispenser containment area for damage and for the presence of any hazardous substance, water, or debris, and check that the monitoring equipment in these areas is located in the proper position to detect a leak at the earliest possible opportunity (for tanks with a fuel dispensing system).
    - ix. Inspect containment sumps that have had an alarm since the previous visual inspection for which there is no record of a service visit. Inspect the

containment sumps for damage and for the presence of any hazardous substance, water, or debris, and check that the monitoring equipment in these containment sumps is located in the proper position to detect a leak at the earliest possible opportunity.

- x. For double-walled sumps with interstitial monitoring, check for leaks in the interstitial area.
3. The results of each inspection shall be made on a “Designated Underground Storage Tank Operator Visual Inspection Report Form” and submitted to City Personnel within 48-hours from the inspection date. Attach records verifying previous issues addressed. Record outstanding issues identified from the prior inspection. The designated operator shall alert the City of any condition discovered during the monthly visual inspection that may require follow-up actions. Within 48 hours of being provided a copy of the monthly inspection report, the City shall provide a description of each corrective action taken or to be taken.

C. Annual Compliance Inspection/Monitoring Certification (UST/AST)

1. Monitoring certification is required on an annual basis and shall be performed in the presence of a County and City Fire Inspector. The Contractor shall give a minimum of 48-hour notice to local regulatory agencies. Upon completion of testing, a detailed test report will be provided to both the City and County.
2. An ICC certified California UST Service Technician shall perform annual compliance monitoring certification as required by Title 23 CCR Chapter 16, Section 2638 for all UST locations. All monitoring equipment shall be certified in accordance with manufacturer’s instructions every 12 months for operability, proper operating condition, and proper calibration. These tests shall be performed in accordance with manufacturer’s guidelines or standards. Written records shall be maintained as required.
3. The designated UST operator visual inspection shall identify compliance issues which cause the USTs to be out of compliance and shall include, but not be limited to, all of the following:
  - i. Ensuring that floats (ATG, interstitial sensors, etc.) move freely.
  - ii. Inspecting for kinks and breaks in cables.
  - iii. Checking monitoring panel’s backup battery.
  - iv. Inspecting containment sumps for damage, debris, and liquids.
  - v. Affixing a tag/sticker on each underground storage tank monitoring equipment component that is being certified.
    - a. The tag/sticker shall be placed in a readily visible location by the service technician conducting the underground storage tank monitoring equipment certification and shall include the date the component was certified, repaired, or replaced, and the contractor’s or tank tester’s license number.
4. For ASTs, annual compliance monitoring certification will be performed by an API Standard 653 or STI SP001 certified service technician as required by 40 CFR 112 for AST locations. All monitoring equipment shall be certified every 12

months for operability, proper operating condition, and proper calibration. These tests shall be performed in accordance with manufacturer's guidelines or standards. Written records shall be maintained as required.

5. The monitoring equipment certification shall be made on a "Monitoring System Certification Form" and submitted to the City and County within 30 days after completion of the inspection.

**D. Annual Overfill Prevention Equipment Inspection (UST/AST)**

1. Testing is required on an annual basis for all USTs and ASTs and shall be performed in the presence of a City Fire Inspector.
2. The Contractor shall give a minimum of 48-hour notice to the local regulatory agency. Upon completion of testing, a detailed test report will be provided to both the City and the County.
3. A certified UST/AST Service Technician shall perform overfill prevention equipment inspection as required by Title 23 CCR Chapter 16, Section 2637.1 for all UST locations to determine if the overfill prevention equipment is set and activates at the correct level.
4. The overfill prevention equipment inspection shall be conducted using an inspection procedure that demonstrates that the overfill prevention equipment is set to activate at the correct level specified and will activate when the regulated stored substance reaches that level. These inspections shall be performed in accordance with the manufacturer's guidelines or standards. If there are no manufacturer's guidelines or standards, the overfill prevention equipment shall be inspected using an applicable method specified in an industry code or engineering standard. If there are no applicable manufacturer's guidelines, industry codes, or engineering standards, an inspection method approved by a state registered professional engineer shall be used.
5. The results of the overfill prevention equipment inspection shall be recorded on the "Overfill Prevention Equipment Inspection Report Form" and submitted to the City and County within 30 days of inspection and must include a copy of the inspection procedure used and any documentation required to determine the results.

**E. Annual Spill Container Testing (UST)**

1. An ICC certified California UST Service Technician shall perform spill container testing, on an annual basis and within 30 days of the date of the completion of a repair, as required by Title 23 CCR Chapter 16, Section 2637.1 for all UST locations to determine if the spill container is capable of containing spills until detected and cleaned up.
2. Spill container testing shall be performed in the presence of a County inspector. The Contractor shall give a minimum of 48-hour notice to the local regulatory agency.
3. The spill container tests shall be conducted using a testing procedure that demonstrates that the spill container is capable of containing the stored substance until it is detected and cleaned up. These tests shall be performed in accordance with manufacturer's guidelines or standards. If there are no manufacturer's

guidelines or standards, the spill container shall be tested using an applicable method specified in an industry code or engineering standard.

4. The results of the spill container test shall be recorded on the “Spill Container testing Report Form” and submitted to the City and County within 30 days of testing and include a copy of the test procedure used and any documentation required to determine the results.

F. Triennial Secondary Containment Testing (SB 989) (UST)

1. An ICC certified California UST Service Technician shall perform Secondary Containment Testing as required by Title 23 CCR Chapter 16, Section 2637 every three (3) years for each UST location in accordance with the manufacturer’s guidelines or standards.
2. Testing shall be performed in the presence of a County inspector. The Contractor shall give a minimum of 48-hour notice to the local regulatory agency.
3. Testing shall be performed without shutting down the site.
4. The service technician shall maintain all systems to the standards of the manufacturer, including the addition of any new requirements of the governing authorities.
5. The service technician shall use a method of continuous monitoring that automatically monitors the integrity of both the primary and secondary containment, such as components that are hydrostatically monitored or under constant vacuum or pressure.
6. Testing shall include, but not be limited to, the following components: dispenser pans, tank annular spaces, secondary lines, and piping/fill sumps.
7. The service technician shall prepare a report and review any outstanding issues, violations, or failed inspection items with City personnel. Recommendations for repair and pricing estimates shall be provided as necessary. The technician shall record the result on the “Secondary Containment Testing Report Form” and submit it to the City and County within 30 days of the completion of the inspection and include a copy of the test procedure used and any documentation required to determine the results.

G. Annual Designated Operator Facility Employee Training (UST/AST)

1. An ICC certified California designated UST operator shall provide training on an annual basis to facility employees who have responsibilities associated with the operation and/or maintenance of UST/AST systems and to new employees within 30 days of date of hire.
2. The training must include, but is not limited to, the following items as specified in Title 23 CCR Chapter 16:
  - i. The operation of the UST and/or AST system in a manner consistent with the facility’s Best Management Practices.
  - ii. The facility employee’s role with regard to UST and/or AST monitoring equipment as specified in the facility’s UST/AST monitoring plan and/or SPCC.
  - iii. The facility employee’s roles with regard to spills and overfills as specified in the facility’s UST/AST response plan.

- iv. The name of the contact person(s) for emergencies and monitoring equipment alarms.

#### H. Annual Secondary Containment Testing (AST)

1. Secondary Containment Testing shall be performed as required by 40 CFR 112 annually for each AST location in accordance with the manufacturer's guidelines or standards.
2. Testing shall be performed in the presence of a County inspector. The Contractor shall give a minimum of 48-hour notice to local regulatory agency.
3. Testing shall be performed without shutting down the site.
4. The service technician shall maintain all systems to the standards of the manufacturer, including the addition of any new requirements of the governing authorities.
5. The service technician shall use a method of continuous monitoring that automatically monitors the integrity of both the primary and secondary containment, such as components that are hydrostatically monitored or under constant vacuum or pressure.
6. Testing shall include, but not be limited to, the following components: dispenser pans, tank annular spaces, secondary lines, and piping/fill sumps.
7. The service technician shall prepare a report and review any outstanding issues, violations, or failed inspection items with City personnel. Recommendations for repair and pricing estimates shall be provided as necessary. All reports shall be submitted within 30 calendar days of the completion of the inspection.

#### I. Integrity Testing (AST)

1. A certified inspector shall perform integrity testing as required at each AST location in accordance with US Environmental Protection Agency Oil Spill Prevention regulations found in 40 CFR 112.8(c) and the Spill Prevention, Control, and Countermeasure (SPCC) rule.
2. The Contractor's personnel must have a valid tank testing license from the State Water Resources Control Board and be certified in the American Petroleum Institute (API) Standard 653 and/or the Steel Tank Institute (STI) SP001 inspection standards in order to provide tank integrity testing.
3. Integrity testing shall be performed according to American Petroleum Institute (API) Standard 653 and/or Steel Tank Institute (STI) Standard SP001 at each AST location per schedule/every 5 years or as specified by the City.
4. Examples of integrity tests include, but not be limited to, visual inspection, hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or other systems of non-destructive testing.
5. The Contractor shall also inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas.
6. The results of the integrity testing shall be submitted to the City and County within 30 days of inspection and must include a copy of the inspection procedure used and any documentation required to determine the results.

#### J. Additional Services at Gasoline Dispensing Facilities (Corporation Yard and Fire Station 1 UST/AST)

1. Gasoline Dispensing Facility (GDF) Testing
  - i. Performance testing and inspection of GDF vapor recovery and control equipment by a certified contractor is required on an annual basis and shall be performed in the presence of a Bay Area Air Quality Management District (BAAQMD and City Fire Inspector.
  - ii. The Contractor shall give a minimum of a 48-hour notice to local regulatory agencies prior to the performance of gasoline dispensing facility (GDF) testing per BAAQMD Regulation 8-7-301 and 302.
  - iii. Upon completion of testing, GFD test results shall be submitted to the BAAQMD Source Test Section within 20 days of the test date.
2. California Air Resources Board (CARB) Vapor Recovery Certification
  - i. The Contractor shall comply with Enhanced Vapor Recovery (EVR) requirements in accordance with CARB Executive Order VR-102 and Executive Order VR-204 for Phase II systems.

K. Additional Services

1. Additional services not included in the service contract shall be offered by the Contractor at the standard rates provided on the bid sheet on a Time-&-Material (T&M) basis.

**EXHIBIT “B”**

**SCHEDULE OF SERVICES**

Description	Frequency
Monthly Inspection (UST)	Monthly
Annual Monitoring System Certification (UST/AST)	Annually
Annual Overfill Prevention Equipment Inspection (UST/AST)	Annually
Annual Spill Container Testing (UST)	Annually
SB 989 Triennial Secondary Containment Testing (UST)	Tri-Annually
Annual Designated Operator Employee Training (UST/AST)	Annually
Annual Secondary Containment Testing (AST)	Annually
Integrity Testing (AST)	each
Annual Gasoline Dispensing Facility Testing (Corporation Yard & Fire Station 1)	Annually
Annual California Air Resources Board Vapor Recovery Certification (Corporation Yard & Fire Station 1)	Annually

**EXHIBIT “C”**  
**COMPENSATION**

Description	Unit	Unit Cost
Monthly Inspection (UST)	each	\$100.00
Annual Monitoring System Certification (UST/AST)	each	\$400.00
Annual Overfill Prevention Equipment Inspection (UST/AST)	each	\$350.00
Annual Spill Container Testing (UST)	each	\$50.00
SB 989 Triennial Secondary Containment Testing (UST)	each	\$900.00
Annual Designated Operator Employee Training (UST/AST)	each	\$350.00
Annual Secondary Containment Testing (AST)	each	\$500.00
Integrity Testing (AST)	each	\$750.00
Annual Gasoline Dispensing Facility Testing (Corporation Yard & Fire Station 1)	each	\$250.00
Annual California Air Resources Board Vapor Recovery Certification (Corporation Yard & Fire Station 1)	each	\$500.00

[CONTINUES ON FOLLOWING PAGE]



Description	Unit	Total
Labor Rate (normal business hours, enter the number minimum number of ours into the 'Quantity' field)	2 hours (minimum)	\$180.00
Trip Charge Note: It is understood by both parties that a single trip and not mileage may be invoiced by Contractor per service trip for the life of this contact. (e.g.: 1 UST/AST serviced for repairs – 1 trip charge; 3 UST/AST serviced for repairs – 1 trip charge)	lump sum	\$80.00
Prices for Parts Shall be on a Cost-Plus Basis. The maximum percentage (%) of markup will be:		10%

## 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.

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 per accident for bodily injury and property damage.

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

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

**Professional Liability (Errors and Omissions):**

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

\_\_\_ 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 Contractor or Consultant makes the following certification, required by section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

---

Contractor/Consultant Signature

**Builder's Risk (Course of Construction):**

     Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

**Surety Bonds:**

X Contractor shall provide the following Surety Bonds:

1. Bid Bond
2. Performance Bond
3. Payment Bond

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

**Contractor's or Consultant's Pollution Legal Liability:**

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

**Other Insurance Provisions:**

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

**X Additional Insured Status:**

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

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor or Consultant or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Contractor's or Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

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

**X Primary Coverage:**

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

For any claims related to this contract, the Contractor's or Consultant's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self-insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Contractor's or Consultant's insurance and shall not contribute with it.

**Builder's Risk (Course of Construction Insurance) (applicable to Construction Contracts only)**

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

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

**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.



**EXHIBIT “E”**  
**FEDERAL REQUIREMENTS**

**[RESERVED]**