

CITY OF MILPITAS
AGREEMENT FOR LANDSCAPING SERVICES AT VARIOUS CITY FACILITIES SERVICES

1. PARTIES AND DATE.

This Agreement for LANDSCAPING SERVICES AT VARIOUS CITY FACILITIES Services (“Agreement”) _____ 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 **Brightview Landscape Services, Inc.**, a corporation with its principal place of business at **980 Jolly Road Suite 300, Blue Bell, PA 19422** (“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 LANDSCAPING SERVICES AT VARIOUS CITY FACILITIES services required by City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing LANDSCAPING SERVICES AT VARIOUS CITY FACILITIES 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 **LANDSCAPING SERVICES AT VARIOUS CITY FACILITIES – RFP No. 2522** 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 **September 20, 2021** to **September 19, 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: .

3.2.5 City's Representative. City hereby designates **Public Works Manager – Facilities and Fleet**, 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 **Fred Freund, Senior Vice President** or their 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.

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.

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 **Five Hundred Eighty-One Thousand Three Hundred Dollars and Zero Cents (\$581,300.00)** 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 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:

BrightView Landscape Services, Inc.
825 Mabury Road
San Jose, CA 95133
Karine Stuimer, General Manager

City:

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

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

3.5.3 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.

3.5.4 Attorneys' Fees. 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 Indemnification. 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 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 supplemented, amended or modified by a writing signed by both Parties.

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

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

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

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

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

3.5.14 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.

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

3.5.16 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.

3.5.17 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. 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.

3.5.18 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. 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 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.

3.5.20 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.

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

3.5.22 Employment Adverse to City. 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 Conflict of Employment. 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 Survival. 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 Subcontracting. 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 Wage Theft Prevention

(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 LANDSCAPING SERVICES AT VARIOUS CITY FACILITIES SERVICES
BETWEEN THE CITY OF MILPITAS
AND BRIGHTVIEW LANDSCAPE SERVICES INC.**

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

CITY OF MILPITAS
Approved By:

Steven G. McHarris, City Manager

Date

Approved:

Lauren Lai, CPA, MPA
Finance Director/Risk Manager

Approved As To Form:

Christopher J. Diaz, City Attorney

Approved As To Content:

Tony Ndah
Director of Public Works

**BRIGHTVIEW LANDSCAPE SERVICES
INC.**

Signature

Name

Title

Date

EXHIBIT "A"
SCOPE OF SERVICES

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

MAINTENANCE AND SERVICE REPORTS. The Contractor shall submit a full report for all scheduled maintenance and service calls. All information shall be inputted to the City's CMMS system to the satisfaction of the City's Facilities Manager. The Contractor shall submit a full report for all work , not later than five (5) working days after such maintenance work is completed. The report shall include the following minimum information or as otherwise determined by the assigned Public Works Manager:

- a. Date of the maintenance or service request
- b. Name of City representative that placed the service call
- c. Date of service
- d. Time in and time out
- e. Type of Service
- f. Building serviced
- g. Specific area and equipment being serviced (location of equipment, etc.)
- h. Services performed or scheduled completion date
- i. Number of service hours
- j. Name of the technician
- k. Hourly rate for services performed
- l. Parts and Material(s) used
- m. Cost of material(s)/equipment
- n. Job title of the technician(s); Job Classification and Skill Level
- o. Signature of building representative
- p. Warranty of any new material/equipment installed (labor included)

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

SUSPENSION OF SERVICES. At the City's sole discretion, service(s) may be suspended or resumed from any City facility with fourteen (14) calendar day written notice to the Contractor. Email from the City's Project Manager to the Contractor's Project Manager shall constitute written notice and will be effective the date sent from the City's Project Manager.

[CONTINUES ON FOLLOWING PAGE]

Request For Proposal No. 2522
Grounds Maintenance At Various City Facilities

Scope of Work

LOCATION/AREAS OF WORK

1. City Hall 455 E. Calaveras Blvd.
2. Recreation Center 457 E Calaveras Blvd
3. Senior Center 40 N. Milpitas Blvd.
4. Milpitas Sports Center 1325 E Calaveras Blvd.
5. Fire Station No. 1 777 S Main St.
6. Fire Station No. 2 1263 Yosemite Dr.
7. Fire Station No. 3 45 Midwick Dr.
8. Fire Station No. 4 775 Barber Ln.
9. Milpitas Community Library 160 N Main St.
10. Public Works Admin/Corp Yard 1265 N Milpitas Blvd.
11. Police Station 1275 N Milpitas Blvd.

SCOPE OF WORK

Contractor shall furnish all labor, equipment, expertise, equipment, transportation, materials and supervision necessary to provide complete and continuous care of all trees, shrubs, ground covers, annuals, turf and all other work connected thereto as specified below. This Bid does not include Pond maintenance. All work shall be performed in accordance with the Frequency Schedule. Within one hundred (100) calendar days of contract start and every subsequent October of the Agreement the Contractor shall bring forth to the Monthly Coordination Meeting their recommended changes (if any) to the Frequency Schedule to ensure the City facilities are maintaining a neat and tidy appearance year-round.

1. PERSONNEL/SUPERVISION

- 1.1. All included work shall be performed by persons directly employed and supervised by the Contractor. The Contractor shall provide management and technical supervision.
- 1.2. Sub Contractors may be utilized to perform certain specialized functions within this contract and will be directly supervised by Contractor.
- 1.3. All employees of the Contractor shall be U.S. citizens or resident aliens and each is subject to the approval of the City as to professional appearance in uniform and performance.
- 1.4. All work shall be conducted in a manner so as to cause the least possible interference with or annoyance to others.

2. MATERIALS

- 2.1 Materials shall be of the highest quality available. The County Agricultural Commissioner's Office must, by law, be given a monthly record of all herbicides, insecticides and disease control chemicals used.

- 2.2 Client understands and acknowledges that, in the performance of their obligations herein, Contractor will require the use of certain government-approved chemicals, which will be applied in accordance with manufacturer's instructions and government regulations. Client agrees to hold Contractor shall be responsible for the proper use of said chemicals in the course and scope of the performance of Contractor's work.

3. LAWN CARE

Lawns shall be maintained in accordance with the Frequency Schedule by furnishing necessary services, including the following:

- 3.1 Lawns shall be mowed to a height of two inches or as appropriate using sharp, adjusted mowing equipment, once each week during the season of active growth (between April and November) and otherwise as needed during the dormant season from December to February. No mowers larger than a "Toro Z" mower will be permitted. The turf is currently hand mowed and preferred.
- 3.2 No grass clippings shall be left on the lawn that will not dry up and fall below growing level within 24 hours.
- 3.3 All edges will be trimmed in accordance with the Frequency Schedule. Edging must be done with a string machine, no blades are allowed.
- 3.4 Paper, trash, twigs, and other undesirable materials will be removed from lawns in accordance with Frequency Schedule.
- 3.5 Lawns will be fertilized to supply a minimum of 6 pounds of actual nitrogen per 1000 square feet per application.
- 3.6 Broadleaf weeds will be controlled as per Frequency Schedule with selective herbicides. Pre-emergent chemicals may be used, if necessary in spring to reduce crabgrass, spurge, and other annual weed infestations. All pesticides will be applied by trained pesticide applicators with a current recommendation issued by a licensed Pest Control Advisor. The City practices Integrated Pest Management (IPM) and would require Landscape Contractor to do the same.
- 3.7 Contractor shall maintain reasonable control of pests and diseases with approved materials. The objective shall be not to keep the site entirely pest-free, but to carry on a responsible pest management which control those problems which threaten permanent or irreparable damage to plant material.
- 3.8 Aerating shall be performed in accordance with the Frequency Schedule.
- 3.9 Other services such as over seeding or power raking to remove thatch build-up will be performed as an additional charge as approved.

4. GROUND COVER CARE

Ground cover shall be maintained in accordance with the Frequency Schedule, including the following:

- 4.1 Weed control shall be maintained so that no obvious weeds are left visible. Weeds shall be controlled with suitable pre-emergent herbicide, and also with systemic herbicides.

- 4.2 Ground covers shall be edged back from paved areas, buildings and walkways in accordance with the Frequency Schedule.
- 4.3 Fertilization will be done with a complete fertilizer furnishing needed nutrients including nitrogen, phosphorus, potassium and minor elements in proportion to maintain normal, healthy growth.
- 4.4 Ground covers shall not be allowed to grow over shrubs or trees planted in ground cover beds.
- 4.5 Rodent control in these areas will be done at an additional charge to this contract.
- 4.6 All dead, diseased, and unsightly branches, vines, or other growth shall be removed.
- 4.7 Areas shall be policed for litter in accordance with the Frequency Schedule.
- 4.8 Mowing of groundcover areas is recommended to rejuvenate, reduce fire hazard and control rodents and other pests. This work will be done in accordance with the Frequency Schedule.

5. TREE AND SHRUB CARE

Trees and shrubs shall be maintained in accordance with the Frequency Schedule, by the following:

- 5.1 Pruning shall be done to select and develop permanent scaffold branches; to eliminate diseased or damaged growth; to eliminate weak branch attachment angles, to reduce wind damage by thinning out the crown, to encourage a natural growth within space limitations, and to encourage a natural growth pattern to each specific variety.
- 5.2 All included trees and shrubs shall be kept pruned back to clear all roads, drives and walkways towards achieving optimum efficiency and safety for all pedestrians and vehicles.
- 5.3 Pruning shall be done to keep plants clear of all doorways and important windows, to permit a clear view of all signage, to remove blocks to full illumination of lighting fixtures and the airflow from vents. Any limbs or branches touching or brushing buildings or other structures shall also be removed.
- 5.4 Deciduous tree and shrub pruning shall be done when trees are dormant.
- 5.5 Evergreen trees and shrubs shall be thinned and shaped as necessary.
- 5.6 Damaged trees or those that constitute health or safety hazards shall be pruned at any time of the year required.
- 5.7 Lower branches of young trees shall not be removed but shall be retained in a "tipped back" condition to attain maximum trunk caliper growth until the trees are able to stand without artificial support.
- 5.8 All pruning cuts are to be made to lateral branches, buds, and flush with trunk. Stubs will not be permitted.

- 5.9 Sucker growth at the base from soil level or below will be removed.
- 5.10 A tree pit of bare earth shall be maintained weed and grass free around each tree in turf areas to facilitate mowing and to prevent damage to roots or trunk from mowing or excess water.
- 5.11 The objectives of shrub pruning are the same as for trees: to thin, shape, to maximize ornamental qualities (i.e. flowers and fruit or berries) and to attain a natural, healthy appearance. Shrubs shall not be sheared into balled or boxed forms. If previous maintenance practices have been to shear and ball, then a natural shape will be restored gradually. To prevent legginess (sparse lower branches) shrubs shall be maintained with lower foliage wider than upper foliage. This practice shall allow more light to reach lower foliage, preventing the loss of leaves due to shading.
- 5.12 Staking and guying shall be eliminated as rapidly as trees become self-supporting. If still unstable after trunk caliper exceeds four inches (4"), replacement shall be recommended to City. While in place, stakes and guys shall be inspected regularly to prevent girdling or rubbing damage to trunk or limbs.
- 5.13 Trees and shrubs will be sprayed if necessary and at an additional charge to this contract.
- 5.14 Dead plants and those in a state of decline shall be brought to the City's attention immediately. Replacement plants shall be of a size, variety, and condition acceptable to the City, to be paid for by the City unless due to negligence of the Contractor.
- 5.15 Vines shall be trained to follow intended design. Installation of additional hardware for support purposes will be performed at an additional charge upon approval from City.

6. PAVED AREAS

- 6.1 Cracks in sidewalks, curbs, gutters, and other paved areas which are included in this contract shall be kept weed free.
- 6.2 All paved area maintenance of driveways and sidewalks shall be maintained in accordance with the Frequency Schedule.

7. IRRIGATION

Irrigation system management shall be maintained by City staff.

8. NON-VEGETATED / NATURAL AREAS

Non-vegetated / natural areas will be maintained in accordance with the Frequency Schedule.

EXHIBIT "B"
SCHEDULE OF SERVICES

WORK ITEM	January	February	March	April	May	June	July	August	September	October	November	December
Coordination Meetings with Public Works Manager	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly
A. TURF CARE												
Leaf, Debris Removal	2	1	1	1	1	1	1	1	1	1	1	2
Trash Removal	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly
Weed Eater	2	2	2	2	2	2	2	2	2	2	2	2
Weed Control-pre			1						1			
Weed Control-broad				1							1	
Weed Control-Rndup			1			1				1		
Pesticide & Herbicide Application	Version Signed		2	1		1				1	1	
Fertilize			1			1				1		
Mow	2	2	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	2
Edge	2	2	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	2
Blow	2	2	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	2
Aeration			1						1			
B. GROUND COVER												
Leaf, Debris Removal	2	1	1	1	1	1		1	1	1	1	2
Trash Removal	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly
Neat Appearance	1	1	1	1	1	1	1	1	1	1	1	1
Weed Control-pre				1							1	
Weed Control-Rnd-up			1			1				1		
Pesticide & Herbicide Application			1	1		1			1	1	1	
*Weed Control-Man	1	1	1	1	1	1	1	1	1	1	1	1
Mulch Application				1								
Fertilize			1			1				1		
Mow/Sheer		1										
Edge from walks/curbs	2	2	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	2
C. SHRUBS, TREES & FLOWERS												
Neat Appearance	1	1	1	1	1	1	1	1	1	1	1	1
Weed Control-pre				1							1	
Weed Control-Rnd-up			1			1				1		
* Weed Control-Man	1	1	1	1	1	1	1	1	1	1	1	1
Fertilize			1			1				1		
Pruning Shrubs		1			1			1				
Pruning Trees		1										
Plantings: Trees & Shrubs				1								
Plantings: Flowers				1					1			
D. IRRIGATION SYSTEM MAINTENANCE	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly
*As Needed Items												

EXHIBIT "C"
COMPENSATION

[BEGINS ON FOLLOWING PAGE]

Location	Address	Weed, Disease, & Pest Control SOW 3.2 (Monthly)	Irrigation System Maint. and Repairs SOW 3.3 (Monthly)	Pesticide Application SOW 3.5 (Monthly)	Turf Care SOW 3.6 (Monthly)	Groundcover Maintenance SOW 3.8 (Monthly)	Pruning SOW 4.0 (Monthly)	Cleaning SOW 4.1 (Monthly)	Monthly Lump Sum	Fertilizing SOW 3.4 (Biannual)	Mulching SOW 5.0 (Please enter total amount for an estimated 5 cubic yards annually per site)	Spring & Fall Planting SOW 5.0 (Biannual)	Annual Lump Sum
Milpitas City Hall	455 E. Calaveras Blvd.	\$ 89.00	\$ 300.00	\$39.00	\$277.00	\$14.00	\$287.00	\$235.00	\$1,241.00	\$82.00	\$ 860.00	\$1,800.00	\$ 17,634.00
Recreation Center	457 E. Calaveras Blvd.	\$ 40.00	\$ 300.00	\$38.00	\$366.00	\$14.00	\$181.00	\$172.00	\$1,111.00	\$51.00	\$ 860.00	-	\$ 14,243.00
Senior Center	40 N. Milpitas Blvd.	\$ 58.00	\$ 300.00	\$43.00	\$255.00	\$14.00	\$220.00	\$195.00	\$1,085.00	\$54.00	\$ 860.00	-	\$ 13,934.00
Milpitas Library	160 N. Main St.	\$ 69.00	\$ 229.00	\$59.00	\$ 89.00	\$14.00	\$243.00	\$188.00	\$ 891.00	\$87.00	\$ 860.00	-	\$ 11,639.00
Milpitas Fire Station #1	777 S. Main St.	\$ 37.00	\$ 114.00	\$33.00	-	\$ 7.00	\$173.00	\$128.00	\$ 492.00	\$46.00	\$ 860.00	-	\$ 6,810.00
Milpitas Fire Station #2	1263 Yosemite Dr.	\$ 49.00	\$ 114.00	\$43.00	\$ 46.00	\$ 7.00	\$210.00	\$150.00	\$ 619.00	\$56.00	\$ 860.00	-	\$ 8,344.00
Milpitas Fire Station #3	45 Midwick Dr.	\$ 18.00	\$ 114.00	\$16.00	\$ 37.00	\$ 7.00	\$125.00	\$103.00	\$ 420.00	\$23.00	\$ 860.00	-	\$ 5,923.00
Milpitas Fire Station #4	775 Barber Ln.	\$ 26.00	\$ 114.00	\$23.00	\$ 78.00	\$14.00	\$106.00	\$114.00	\$ 475.00	\$33.00	\$ 860.00	-	\$ 6,593.00
Public Works Admin/Corp Yard	PDF Version Signed	\$ 52.00	\$ 82.00	\$17.00	-	-	\$137.00	\$ 46.00	\$ 334.00	\$10.00	\$ 860.00	-	\$ 4,878.00
Police Station	1275 N. Milpitas Blvd.	\$ 52.00	\$ 229.00	\$42.00	\$488.00	\$14.00	\$208.00	\$220.00	\$1,253.00	\$65.00	\$ 860.00	-	\$ 15,961.00
Milpitas Sports Center	1325 E. Calaveras Blvd.	\$ 25.00	\$ 229.00	\$16.00	\$245.00	\$ 7.00	\$149.00	\$110.00	\$ 781.00	\$69.00	\$ 860.00	-	\$ 10,301.00
Annual Total											\$ 860.00	\$ -	\$ 116,260.00

EXHIBIT "D"

INSURANCE REQUIREMENTS

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

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

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

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

Commercial General Liability (CGL):

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

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

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

Automobile Liability:

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

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

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

Professional Liability (Errors and Omissions):

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

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

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

Workers' Compensation Insurance:

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.