

**MAINTENANCE SERVICES AGREEMENT
BETWEEN THE
CITY OF MILPITAS AND HCI SYSTEMS**

1. PARTIES AND DATE.

This Agreement is made and entered into this day of _____ 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 **HCI Systems**, a California corporation with its principal place of business at **3566 Investment Blvd., Hayward, CA 94545** (“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 **Fire Alarm and Fire Suppression System Inspection, Testing, and Maintenance Services** to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that is familiar with the plans of City. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

2.2 Project.

City desires to engage Contractor to render such services for the **Fire Alarm and Fire Suppression System Inspection, Testing, and Maintenance Services** project (“Project”) as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **Fire Alarm and Fire Suppression System Inspection, Testing, and Maintenance 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 **January 6, 2021** to **January 4, 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. 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 **James Levers**, 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 **Jennifer Felker** or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

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

3.2.7 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

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

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

3.2.10 Laws and Regulations; Employee/Labor Certifications. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and will be complied with. These include but are not limited to the payment of prevailing wages, the stipulation that eight (8) hours' labor

shall constitute a legal day's work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

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

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

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

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

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

related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.2.10.6 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Contractor shall specifically be aware of the CARB limits and requirements' application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.2.10.7 Water Quality.

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

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

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

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

3.2.12 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 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 and Eight Thousand Six-Hundred Sixty Dollars and Zero Cents (\$208,660.00)** without written approval of 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 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:

HCI Systems
3566 Investment Blvd.
Hayward, CA 94545
Attn: Dario Canizalez, CFO

City:

City of Milpitas
455 E. Calaveras Boulevard
Milpitas, California 95035
Attn: Tony Ndah, Director of Public Works

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

3.5.2 Indemnification.

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

3.5.2.2 Additional Indemnity Obligations. Contractor shall defend, with Counsel of City's choosing and at Contractor's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.5.2.1 that may be brought or instituted against City or its officials, officers, employees, volunteers and agents. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorneys' fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its officials officers, employees, agents, or volunteers.

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

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

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

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

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

3.5.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease

of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

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

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

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

3.5.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

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

3.5.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

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

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

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

3.5.18 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations,

understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.19 Wage Theft Prevention.

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

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

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

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

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

3.5.19.6 Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE FOR MAINTENANCE SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND HCI SYSTEMS**

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

CITY OF MILPITAS

Approved By:

Steven McHarris, City Manager

Date

Approved As To Form:

Christopher J. Diaz, City Attorney

Approved:

Walter C. Rossmann
Risk Manager/Director of Finance

Approved As To Content:

Tony Ndah, Director of Public Works

HCI SYSTEMS

Signature

Name

Title

Date

1000000046

DIR Registration Number

EXHIBIT "A"
SCOPE OF SERVICES

SCOPE OF WORK

The Contractor will provide all necessary certified and trained labor, supervision, machinery, tools, equipment, apparatus, and other resources required to perform the work required of this scope of work in accordance with manufacturer's standards and the most current and applicable NFPA standards.

Equipment By Location and Bid Form Supplement in **Exhibit C** provides a detailed list of equipment for each of the ten (10) City facility locations applicable to these detailed specifications.

I. FIRE ALARM SYSTEM EQUIPMENT

LOCATIONS 1-9: City Hall, Public Works/Police Bldg., Community Center, Sports Center, Senior Center, Library, Garage, Fire Station 1, Ayer & Gibraltar Pump Stations, Sal Cracolice Recreation Center

II. FIRE SUPPRESSION SYSTEM EQUIPMENT

LOCATIONS 1-10: City Hall, Public Works/Police Bldg., Community Center, Sports Center, Senior Center, Library, Garage, Fires Stations 1 & 4, Ayer & Gibraltar Pump Stations

The equipment lists provided are the best known available. The Contractor will be required to provide an annual report with complete inspection, testing, and maintenance service records.

Special Notes for Certain Locations

- A. In general, the Contractor shall be responsible for restoring all equipment to normal position and operating condition to avoid disruption of service. Specifically, roller doors shall be returned to their normal position and functionality.
- B. **Public Works/Police Bldg. & City Hall** - have Elevator recalls when smoke detectors in front of elevator doors activate, or smoke detector in elevator machine room. An escort will be required to service equipment located at the Police Department facility.

Two (2) Halon systems are included in the Police/Public Works buildings.

C. **Senior Center, Kitchen** - Roll-down shutters over windows that drop with the activation of fuseable link in front of these doors. When testing annually, assistance may be needed getting these properly reset (rolled up) again.

SERVICING REQUIREMENTS

I. Fire Alarm System Inspection and Testing

This work shall be performed in accordance with Chapter 14 "Inspection, Testing, and Maintenance" of the National Fire Alarm and Signaling Code – NFPA 72, 2013 Edition, in its entirety where applicable, or the most current edition as required by law or as directed by the City. All "May" options in the NFPA 72 requirements are "Shall" and are not optional.

A. Programming shall be charged at the appropriate hourly rate if done in house, and if done as a Pass Through, a 10% markup will be allowed, ONLY if a third party programmer is required.

Contractor must specify whether or not programming will be contracted out.

II. Fire Suppression Systems Inspection and Testing

Reports of applicable quarterly, semi-annual and annual inspections and tests shall be delivered in writing to the Public Works Manager, within 48 hours after completion of work. All reports for Fire Alarms, Halon Suppression Systems, and Wet Chemical Suppression Systems shall be reflective of all applicable NFPA Chapter requirements. All reports for Water Suppression Systems shall at a minimum use all applicable Automatic Extinguishing Systems (AES) Forms specific to that NFPA Chapter listed below.

A. Water Based System

Work shall be performed in accordance with the California Code of Regulations, Title 19, Division 1, Chapter 5 and NFPA 25 2013 "Inspection, Testing and Maintenance of Water Based Fire Protection Systems" in its entirety where applicable, or the most current edition as required by law or as directed by the City. All "May" options in NFPA 25 2013 requirements are "Shall" and are not optional.

B. Halon Based System

Work shall be performed in accordance with the California Code of Regulations, Title 24, Part 9, Chapter 80 and Chapter 6 NFPA 12A 2009 "Inspection, Maintenance and Testing" in its entirety where applicable, or the most current edition as required by law or as directed by the City. All "May" options in NFPA 12A 2009 requirements are "Shall" and are not optional.

C. Wet Chemical Based System

Work shall be performed in accordance with the California Code of Regulations, Title 24, Part 9, Chapter 80 and Chapter 7 of NFPA 17A 2009 "Inspection, Maintenance, and Recharging" in its entirety where applicable, or the most current edition as required by law or as directed by the City. All "May" options in NFPA 17A 2009 requirements are "Shall" and are not optional.

In the event future additions to the National Fire Alarm and Signaling Code – NFPA 72, 2013 or the California Code of Regulations, Title 19, Division 1, Chapter 5 and NFPA 25 2013, or the California Code of Regulations, Title 24, Part 9, Chapter 80 and Chapter 6

NFPA 12A 2009 or the California Code of Regulations, Title 24, Part 9, Chapter 80 and Chapter 7 of NFPA 17A 2009 are adopted during the life of the contract and the changes to any of the requirements under any chapter are of a material nature such that the effect on service requirements would necessitate a change in the price of the service, then at the applicable anniversary date, contractor shall be allowed to submit changes to the Scope of Work that are outside the then current chapter requirements. If changes to any chapter reflect a decrease in service levels then the City shall be entitled to negotiate a decrease in price.

III. General Servicing Requirements

All inspection, testing and maintenance services are to be completed in accordance with the recommended frequency per the applicable NFPA Standard.

1. Inventory.

The City of Milpitas has provided information about the type and general building location of the City's fire alarms and fire suppression systems to the best of its knowledge and ability. It is understood that the information is not entirely accurate. Therefore the Contractor shall at the first regularly scheduled quarterly inspection and testing, will work with the Facilities Maintenance staff to walk each City building to assess and document the physical location of each fire alarm and fire suppression system and all of their component parts. Contractor shall also use best practices to determine if an area has the appropriate number of pull stations and if they are properly labeled, with appropriate building signage clearly designating their location to City staff. The report shall be compiled and delivered to Facilities Maintenance Manager, in the form of an Excel spreadsheet, or other format as agreed upon by the parties.

2. Service Records.

The Contractor shall provide detailed service records that includes photos, tags, inspection and test results, , scheduled maintenance requirements and other recommendations as necessary to keep fire safety functions operating at all times.

3. Parts for Preventative Maintenance.

The replacement of all parts that may become worn or inoperable, or that otherwise affects the equipment's operability in any way shall require notification to the City's Public Works Manager or other designee prior to ordering and/or installing parts that are not covered under a maintenance warranty.

4. Warranty of Work.

The Contractor shall guarantee all services performed by the Contractor's service technicians, including all replaced parts, for a minimum of one (1) year. If an equipment failure or malfunction is determined to have occurred due to defective parts, workmanship or lack of preventive maintenance recommendation, Contractor shall correct the failure or malfunction at no additional expense to the City.

This warranty does not include service, repair or replacement or parts required as a result of Contractor's accident, neglect, abuse, misuse, alteration of equipment, or other improper operations. Breakdowns due to the integrity of the existing system are excluded.

EXHIBIT "B"

SCHEDULE OF SERVICES

Schedule for Inspection, Testing, and Maintenance Services

- a. All service dates for scheduled inspection and testing services shall be coordinated between the Contractor and the City's Public Works Manager.
- b. Within ten (10) working days after Notice of Award, the Contractor shall submit to the City's Public Works Manager for approval, a written quarterly schedule (for each contract year) as applicable for each required scheduled service and when the service is performed, confirm in writing, any necessary coordination with third party service providers such as the elevator maintenance contractor.
- c. All work that does not involve the activation or testing of audio and visual devices shall be scheduled and performed between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday – excluding City Holidays.
- d. All work that involves the activation or testing audio and visual devices shall be scheduled and performed between the hours of 6:00 a.m. to 8:00 a.m., Monday through Friday – excluding City Holidays. City Hall shall be tested in this manner on Saturdays between the hours of 8:00 a.m. – 5:00 p.m.
- e. In the event working hours and/or work days need to be adjusted, the changes must be approved, in writing by the City's Public Works Manager, prior to this work taking place. Any unapproved hours of work will be considered performed at the Contractor's own expense.
- f. Prior to commencing work, Contractor's staff must check in with the Public Works Manager or designee and be escorted as required for certain facilities such as the Police Department. Upon completion of work, the Contractor shall notify the City's Public Works Manager/designee and have the completion verified by written sign off.
- g. If deficiencies are identified, a punch list or the appropriate AES Form detailing the needed repairs will be created and delivered to the Public Works Manager or designee for written approval.
- h. A Service Tag conforming to C.S.F.M. regulations must be securely attached to each fire alarm or fire suppression system at the time of service. Tag should include contractor name, address, phone number and month and year maintenance was performed and the identity of the person who performed the service.

EXHIBIT "C"

COMPENSATION

Contractor cost for Inspection, or replace and testing services will be **Forty-One Thousand Seven Hundred Thirty-Two Dollars and Zero Cents (\$41,732.00)** Annually. See HCI Systems Cost in the **Equipment By Location** form below.

Invoicing and Payment.

- a. For services satisfactorily rendered, and upon receipt and approval of the invoices, the City agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified in the bid and resulting contract agreement.
- b. Payment shall be made monthly in arrears upon satisfactory performance of work and upon receipt of an invoice reviewed and approved by the City's Facilities Manager or City's designated representative.
- c. The City's payment of an invoice does not necessarily reflect satisfaction and approval of services rendered.
- d. The invoice must be submitted on the Contractor's letterhead signed by an authorized representative, and include:
 - i. The Purchase Order Number
 - ii. Invoice Number
 - iii. Contract/Project Title
 - iv. Monthly Period Covered
 - v. Description of the work completed for the period supported with a detailed statement of services rendered.

[ANNUAL COST SCHEDULE AVAILABLE ON THE FOLLOWING PAGE]



IFB 2479 – FIRE ALARM AND FIRE SUPPRESSION SYSTEM INSPECTION, TESTING, MAINTENANCE AND REPAIR SERVICE
THIS FORM MUST BE ELECTRONICALLY COMPLETED AND UPLOADED BACK INTO THE PUBLIC PURCHASE SYSTEM
REVISED Exhibit B - Equipment By Location and Bid Form Supplement

FIRE ALARM DEVICE QUANTITIES PER BUILDING LOCATION												
EQUIPMENT DESCRIPTION	City Hall 455 E. Calaveras Blvd.	Public Works/Police 1265/75 N. Milpitas Blvd.	Community Center 457 E. Calaveras Blvd.	Sports Center 1325 E. Calaveras Blvd.	Senior Center 40 N. Milpitas Blvd.	Library Garage 120 N. Main St	Fire Station #1 777 S. Main Street	Fire Station #4 775 S. Barber Lane	Ayer Pump Station 1429 E. Calaveras Blvd	Gibraltar Pump Station 641 Gibraltar Ct	Sal Cracolice Recreation Center 775 Gardent Street	TOTALS
<i>ALARM TYPE</i>	<i>Edwards ES III</i>	<i>Simplex 4100-8001</i>	<i>Simplex 4005-9101</i>	<i>Simplex 4010-ID Net NAC Extender</i>	<i>Gamewell Fire Control Instruments ES</i>	<i>Honeywell Notifier Fire Warden 100</i>	<i>Pitney Notifier Model SFP-1024</i>	<i>N/A</i>	<i>Simplex 4001 & Silent Knight Dialer</i>	<i>Simplex 4001 & Silent Knight Dialer</i>	<i>Edwards ES 3</i>	
Last Annual or Semi Date												
Chiller Fire Panel		1										1
FACP (Fire Alarm Control Panel)		1	1	2	1	1	1		1	1	1	10
FCPS (Horn/Strobe Power Supplies)		1	1	2	1	2	1		1	1		10
Annunciators	1				1	1					1	3
Manual Pull Stations	18	12	4	22	13	9	4		2	2	7	93
Smoke Detectors	30	19	8	22	9	16	12		8	16	2	142
15 cd Strobe Only	46											46
30 cd Strobe Only	5											5
110 cd Strobe Only	4											4
Control Relay Module	6										3	6
Single Input Module	7										1	7
Dual Input Module	5										1	5
Strobes		6	4		9	17						36
Heat Detectors	3					2						5
Horn Strobes	57	15	4	38	25	31			2	2	10	184
Strobes Only	55											
Horns Only		18			25	1						44
Water Flow Monitors	8	3	1	1	2	3	1	1			1	21
Tamper Monitors		3	1	1	2	5	1	1			1	15
PIV Monitors	1	3	1	1	1	1	1	1			1	11
Sprinkler Heads	896	499	139	237	221	789	135	61	4	4	55	3040
Electromagnetic Door Holders	4	4										8
Booster Power Supply	3										1	3
Valve Tamper	8									1	1	9
Roll-up Doors/Shutters	0	1			1	3						5
Elevator Recalls	2	4										6
Monitored Halon System Last Annual or Semi Date __/__/__	0	1										1
SUMMARY OF ALARM SYSTEM INSPECTION, TESTING AND MAINTENANCE COSTS PER LOCATION												
Total Annual Cost	\$ 2,590.00	\$ 2,180.00	\$ 990.00	\$ 1,290.00	\$ 990.00	\$ 1,290.00	\$ 990.00	\$ -	\$ 980.00	\$ 980.00	\$ 980.00	
										TOTAL		\$ 13,260.00

FIRE SUPPRESSION SYSTEM DEVICE QUANTITIES PER BUILDING LOCATION												
EQUIPMENT DESCRIPTION	City Hall 455 E. Calaveras Blvd.	Public Works/Police 1265/75 N. Milpitas Blvd.	Community Center 457 E. Calaveras Blvd.	Sports Center 1325 E. Calaveras Blvd.	Senior Center 40 N. Milpitas Blvd.	Library Garage 120 N. Main St	Fire Station #1 777 S. Main Street	Fire Station #4 775 S. Barber Lane	Ayer Pump Station 1429 E. Calaveras Blvd	Gibraltar Pump Station 641 Gibraltar Ct	Sal Cracolice Recreation Center 775 Gardent Street	TOTALS
<i>SYSTEM TYPE</i>	<i>Wet-automatic</i>	<i>Wet-automatic</i>	<i>Wet-automatic</i>	<i>Wet-automatic</i>	<i>Wet-Automatic & Wet Chemical</i>	<i>Wet-automatic</i>	<i>Wet-automatic</i>	<i>Wet-Automatic</i>	<i>Wet-automatic</i>	<i>Wet-Automatic</i>		
Last 5-Year Test Date	Feb-'2010	Nov-'2012	Nov-'2012	Nov-'2012	Installed July-'2010	Oct-'2013	Feb-'2010	Oct-'2011	Never Tested	Never Tested		
Last Annual or Semi Date												
Sprinkler Riser(s)	3	2	1	1	1	1	1	1	1	1		13



IFB 2479 – FIRE ALARM AND FIRE SUPPRESSION SYSTEM INSPECTION, TESTING, MAINTENANCE AND REPAIR SERVICE
THIS FORM MUST BE ELECTRONICALLY COMPLETED AND UPLOADED BACK INTO THE PUBLIC PURCHASE SYSTEM
REVISED Exhibit B - Equipment By Location and Bid Form Supplement

Viking Elec./Phnu.Double Interlock Dry PreAction System	1												
Post Indicator Valve(s)	3	2	1	1	1	1	1	1	1	1	1	1	13
Butterfly/OS/Backflow Valve(s)	3	2	1	1	1	1	1	1	1	1	1	1	13
Hose Valve(s)	3	2	1	1	1	1	1	1	1	1	1	1	13
Standpipe(s)	3	2	1	1	1	1	1	1	1	1	1	1	13
Hydrants		2		1	1								4
Fire Department Connections	1	1	1	1	1	1	1	1	1	1	1	1	10
Water Flow Switch(s)	8	2	1	1	1	1	1	1	1	1	1	1	18
Tamper Switch(s)	8	2	1	1	1	1	1	1	1	1	1	1	18
Exterior Audible Bell									1	1	1	1	3
Riser Check/Alarm Valve	3	2	1	1	1	1	1	1	1	1	1	1	13
Riser Alarm Valve Strainer	3	2	1	1	1	1	1	1	1	1	1	1	13
Viking PCL 300 Wet Chemical Hood System (1 tank) Last Annual or Semi Date __/__/__					1								1
Halon (3 tanks) Last Annual or Semi Date __/__/__		1											1

SUMMARY OF SUPPRESSION INSPECTION, TESTING AND MAINTENANCE COSTS PER LOCATION

Annual Cost	\$ 2,560.00	\$ 2,750.00	\$ 695.00	\$ 695.00	\$ 695.00	\$ 695.00	\$ 695.00	\$ 695.00	\$ 695.00	\$ 695.00	\$ 695.00	\$ 695.00	
Quarterly Cost for 3 Quarters	\$ 1,872.00	\$ 1,500.00	\$ 1,135.00	\$ 1,125.00	\$ 1,125.00	\$ 1,125.00	\$ 1,125.00	\$ 1,125.00	\$ 1,125.00	\$ 1,125.00	\$ 1,125.00	\$ 1,125.00	
5-Year Cost ONLY - Excluding Annual	\$ 450.00	\$ 295.00	\$ 295.00	\$ 295.00	\$ 295.00	\$ 295.00	\$ 295.00	\$ 295.00	\$ 295.00	\$ 295.00	\$ 295.00	\$ 295.00	
Total Annual Cost	\$ 4,882.00	\$ 4,545.00	\$ 2,125.00	\$ 2,115.00	\$ 2,115.00	\$ 2,115.00	\$ 2,115.00	\$ 2,115.00	\$ 2,115.00	\$ 2,115.00	\$ 2,115.00	\$ 2,115.00	
TOTAL												\$ 28,472.00	

SUMMARY OF ALARM & SUPPRESSION SYSTEM INSPECTION, TESTING AND MAINTENANCE COSTS PER LOCATION

	City Hall	Public Works/Police	Community Center	Sports Center	Senior Center	Library Garage	Fire Station #1	Fire Station #4	Ayer Pump Station	Gibraltar Pump Station		
Total Annual Cost - Alarms	\$ 2,590.00	\$ 2,180.00	\$ 990.00	\$ 1,290.00	\$ 990.00	\$ 1,290.00	\$ 990.00	\$ -	\$ 980.00	\$ 980.00	\$ 980.00	
Total Annual Cost - Suppression	\$ 4,882.00	\$ 4,545.00	\$ 2,125.00	\$ 2,115.00	\$ 2,115.00	\$ 2,115.00	\$ 2,115.00	\$ 2,115.00	\$ 2,115.00	\$ 2,115.00	\$ 2,115.00	
Total Annual Cost	\$ 7,472.00	\$ 6,725.00	\$ 3,115.00	\$ 3,405.00	\$ 3,105.00	\$ 3,405.00	\$ 3,105.00	\$ 2,115.00	\$ 3,095.00	\$ 3,095.00	\$ 3,095.00	
GRAND TOTAL ANNUAL COST												\$ 41,732.00

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), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000.00 combined single limit for bodily injury and property damage.

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

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

Professional Liability (Errors and Omissions):

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

Workers' Compensation Insurance:

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

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

Builder's Risk (Course of Construction):

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

Contractor’s or Consultant’s Pollution Legal Liability:

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

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

Cyber Liability Insurance

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

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

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

Surety Bonds:

Contractor shall provide the following Surety Bonds:

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

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

Other Insurance Provisions:

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

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

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

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

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

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

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.

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.