

**ON-CALL MAINTENANCE SERVICES AGREEMENT  
BETWEEN THE  
CITY OF MILPITAS AND TUCKER CONSTRUCTION, INC.  
FOR HOMELESS ENCAMPMENT CLEANUP SERVICES**

**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 **Tucker Construction, Inc.**, a California corporation with its principal place of business at 1725-D Little Orchard Street, San Jose, CA 95125 (“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 and in the task order(s) to be issued pursuant to this Agreement and executed by the City and Contractor (“Task Order”). Contractor represents that it is experienced in providing On-Call Homeless Encampment Cleanup 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 **On-Call Homeless Encampment Cleanup Services** (“Project”) as set forth in this Agreement on an on-call, as-needed basis. There is no guarantee of any of work under this Agreement other than what is specified herein or that the not-to-exceed compensation amount set forth herein will be spent.

**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 maintenance services necessary for the Project (“Services”). The types of Services to be provided are described in Exhibit “A” attached hereto

and incorporated herein by reference and in the individual Task Orders issued by the City. No Services shall be performed unless authorized by this Agreement or by a fully executed Task Order in the form attached hereto as Exhibit “E”. All Services shall be subject to, and performed in accordance, with this Agreement, any relevant Task Order, 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 **June 22, 2020 to June 21, 2025**, unless earlier terminated as provided herein. The City reserves the right to review the Contractor’s performance at the end of each year and cancel all or part of the Agreement.

### **3.2 Responsibilities of Contractor.**

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

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the specific schedule that shall be set forth in this Agreement and any Task Order(s) (“Schedule of Services”). 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 each Schedule, the City shall respond to Contractor’s submittals in a timely manner. Upon the City’s request, Contractor shall provide a more detailed schedule of anticipated performance to meet the relevant Schedule of Services as set forth in each Task Order.

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

3.2.4 City’s Representative. The City hereby designates the James Levers, Public Works Manager 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 **Penny Bitcon**, Project Manager, or his or her designee, to act as its representative for the performance of this Agreement (“Contractor’s Representative”). Contractor’s Representative shall have full authority

to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his 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 and as described in the relevant Task Order.

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 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 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. Contractor shall perform and complete all Services under this Agreement within the term set forth in Section Error! Reference source not found. above ("Performance Time"). Contractor shall perform the Services in strict accordance with any completion schedule or Project milestones described in this Agreement and any Task Order issued by the City, or which may be provided separately and agreed upon in writing by the Parties. Contractor shall be responsible for the cost of any damages suffered by the City by reason of delay caused by Contractor, its employees or subcontractors, if any.

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 Services 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, if any, 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.

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 subcontracts, sub-subcontractors or consultants, if any, to meet any of the requirements provided for in Sections 3.2.10.1; (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, if any, 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 or willful misconduct 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, if any, 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, if any, 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 "C" (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, if any, 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 "B" attached hereto and incorporated herein by reference. The maximum compensation for Services to be provided pursuant to each Task Order shall be set forth in the relevant Task Order. The cost of travel time, bonds, insurance, office support, accounting, regulatory compliance, and other business expenses are covered under the allowed percentage of Overhead and Profit entered on Exhibit "B;" and will not be allowed as a direct expense. The total compensation shall not exceed **Five-Hundred Thousand Dollars and Zero Cents, (\$500,000)** without written approval of the City. 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 30 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

3.3.5.1 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.

3.3.5.2 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.

3.3.5.3 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.

### **3.5 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:**

Tucker Construction, Inc.  
1725-D Little Orchard Street  
San Jose, CA 95125  
Attn: Penny Bitcon, Project Manager

**City:**

City of Milpitas  
455 E. Calaveras Boulevard  
Milpitas, California 95035

Attn: James Levers, Public Works Manager

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, if any, consultants or agents in connection with the performance of the Contractor's Services, the Project, this Agreement, or any Task Order, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses, except for any claims, demands, causes of action, costs, expenses, liabilities, losses, damage or injuries arising through the sole negligence or willful misconduct of the City, or its officials, officers, employees, agents or independent contractors.

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 the City or its officials, officers, employees, volunteers and agents. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the City or its officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding, except for any judgments, awards or decrees arising through the sole negligence or willful misconduct of City, or its officials, officers, employees, agents or independent contractors. Contractor shall also reimburse City for the cost of any settlement paid by the City or its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding, except for any costs of settlements arising through the sole negligence or willful misconduct of the City, or its officials, officers, employees, agents or independent contractors. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse the 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, except for any legal expenses and costs arising through the sole negligence or willful misconduct of the City, or its officials, officers, employees, agents or independent contractors. 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. 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, subcontractors, if any, and agents 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, if any, 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 official, 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 Attorney's 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 attorney's fees and all other costs of such action.

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 Recitals. The recitals set forth above are true and correct and incorporated herein by reference.

### 3.5.20 Wage Theft Prevention.

3.5.20.1 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.

3.5.20.2 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.

3.5.20.3 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.

3.5.20.4 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.

3.5.20.5 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.

3.5.20.6 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 ON-CALL MAINTENANCE SERVICES AGREEMENT  
BETWEEN THE  
CITY OF MILPITAS AND TUCKER CONSTRUCTION INC**

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, Public Works Director

**TUCKER CONSTRUCTION INC**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
DIR Registration Number (If Applicable)

## **EXHIBIT “A”**

### **SCOPE OF SERVICES**

The Contractor shall provide a reliable service to assist the City in homeless camp clean-up, which will include as-needed/on-call homeless camp clean-up services including the removal of materials stored and/or illegally dumped at abandoned camps.

Homeless camps in the City of Milpitas are typically established on trails, pathways, parks, and overpasses/underpasses. For the purposes of this service, Contractor will be working only in City of Milpitas jurisdiction. Homeless camps are also present in other jurisdictions or rights-of-way, including freeway on-ramp/off-ramps (Caltrans), expressways (Santa Clara County Roads and Airports), creeks (Santa Clara Valley Water District), and railroads (Union Pacific Railroad/VTA-BART). In the event that a requested homeless camp cleanup is located in another agency's jurisdiction or rights-of-way, City staff will take the lead in communicating with other agencies in order to coordinate homeless camp cleanup.

#### **A. SCOPE OF WORK**

Homeless camps can create unsafe conditions and blight. The Contractor will provide a reliable service to clean-up abandoned camps on an as-needed basis.

1. Encampment sites are considered to contain a variety of materials that may contain hazardous materials, including biohazardous materials (e.g. syringes), garbage, general debris, human waste, animal waste, constructed temporary shelter, and other items associated with homeless occupancy. Sites may also contain illegally dumped materials including furniture, appliances, motors, tires, construction debris, automobile parts, bicycles, mattresses, box springs, and other items.
2. As directed by the City, Contractor will provide turnkey homeless encampment site cleanup for a safe and clean site by removing large items, biohazardous material and other illegally dumped or encampment waste material.
3. Cleanup duties shall include surveying sites, collecting debris, dismantling temporary structures, removal of trash, removal of human waste, and State approved handling and removal of all material.

There are two alternatives for disposal and hauling of non-hazardous removed waste:

- a. Contractor shall transport waste materials to a City designated transfer facility, or
- b. Contractor will coordinate with the City's franchised solid waste hauler,

Milpitas Sanitation, to provide debris box and waste hauling.

The Contractor will provide all labor, materials, tools, equipment, transportation, and supplies required to abate homeless camps within the limits and/or jurisdiction of the City.

4. Contractor shall coordinate with the City on a site-by-site basis to determine the work order for each encampment or illegal dumping site. The work order will establish the site cleanup start date, estimated timeframe of the work, staging areas, traffic control, if required, and the name of the onsite representative.
5. Milpitas Police Department will post a "notice to vacate" at the camp, ordering the occupant(s) to vacate the premises and take belongings with them. Camp occupants typically have 72 hours to vacate the site. Police Department and/or other agencies will respond to person(s) who are violent or unable to care for themselves. The Contractor will work when the camp occupants are no longer on-site. If the person(s) that occupied the site return during the clean-up, the Contractor will stop work and call the Police Department. At no time is the Contractor expected to interact with the homeless or put employees at risk.
6. The Contractor will notify the Milpitas Fire Department if hazardous waste is discovered and/or a release of chemicals has occurred. The City will coordinate the hazardous materials response.
7. Under most circumstances, the Police Department will have confiscated weapons and illegal contraband prior to the arrival of the Contractor. Occasionally an undiscovered cache may be found. Contractor will stop work immediately, contact the Police Department, and wait for the assigned unit to arrive to process evidence /crime scene.
8. The City may require the Contractor to trim shrubs and vegetation as a deterrent for other urban campers once the camp is abated.
9. Camps may be located on properties shared by the City and other agencies. Contractor is expected to become familiar with Milpitas and verify the jobsite property is within the City's jurisdiction. Access may be restricted and Contractor will coordinate entry with the City.
10. Work is typically scheduled Monday through Friday. Occasionally the Police Department may require the camp be abated immediately. The Contractor will provide the City with a cell phone number where someone will answer 24-hours a day.
11. If the Contractor is unfamiliar with the specific location, City staff will provide a map or meet the Contractor staff at the job site.
12. Contractor will notify the City when the work is complete.

13. Additional homeless camps may be discovered in the same general area during the course of abatement. Contractor must notify the City's designated representative to obtain authorization prior to proceeding with any additional work. This will prevent conflicts regarding billing and safety issues if the Police Department has not cleared the area.
14. Large jobs will require special arrangements for taking material to the Transfer Facility. Contractor will contact the City to arrange delivery of materials in advance if special arrangements are needed.
15. Depending on the length of time and use of the camp, some hand digging of soil may be required. The Contractor will contact the City if mobile equipment is recommended.
16. Persons ordered from camps are told to take possessions of importance with them. In some cases, they are not able to remove valuable/usable items, such "personal property" must be stored for a period as determined by the Milpitas Municipal Code and available for retrieval. Contractor shall provide bags and tags and identify and tag certain items as "personal property." Such items include but are not limited to items in good repair such as tents, backpacks, medications, eye glasses, books, jewelry, stoves, audio equipment, toiletries, personal records, handbags, personal photographs, duffle bags, bedrolls, blankets, watches, and clean clothing. The Contractor will transport identified property for storage to a site designated by City as directed by City Staff. Contractor will refer to the "**GUIDELINES FOR PROPERTY IDENTIFICATION**" for proper handling of these materials.
17. If the Contractor is responsible for hauling of removed debris, Contractor will take debris to the City designated transfer station. The driver will tell the gatekeeper it is from a City of Milpitas project. The original weigh ticket will accompany the invoice. If the encampment is large and/or a significant level of debris is expected, the City's refuse and recycling contractor will provide a roll-off container and haul it away when filled. The City of Milpitas may opt to use one of its dump trucks and haul the material to the Transfer Station once the Contractor has loaded it.
18. The Contractor shall follow best practices work procedures to safely manage any hazardous materials found on the jobsite, including urine, feces, solid personal hygiene items, syringes, and other materials which could pose a health threat.
19. Contractor, its employees and subcontractors, shall perform work in a timely and efficient manner, and conduct themselves in a courteous and business-like fashion.

## **B. SCHEDULE AND RESPONSE TIME**

1. The City will schedule abatement with the Contractor about the site. Abandoned camps must be cleaned within **48 hours** to decrease the chance of re-occupation and meet the requirements of this agreement.

2. If a camp presents an immediate threat, a more urgent response of one day will be required.
3. Contractor is to contact the City if something will interfere with completion of the project as scheduled. This should be a rare occurrence. Continual shifts in schedule can lead to cancellation of the Service Agreement.

### **C. SAFETY**

1. The City of Milpitas emphasizes safety in all employee and contractor performance. Contractor will comply with all other safety rules, protocols, and licensing requirements as mandated by the State of California.
2. Safety and appropriate training/licensing are critical requirements for the Contractor. At no time is the Contractor expected to interact with the homeless residents or put their employees at risk.
3. Some camps are established in areas that are difficult to access. Sometimes it is not possible for trucks and other vehicles to park close to the job site. The debris will have to be carried out. If it cannot be done without vehicles, Contractor will need to coordinate traffic safety and an encroachment permit with the City to protect employees, passerby, and infrastructure that could be damaged.
4. Work may be performed in inclement weather. Jobsites can be in heavy foliage, poison oak, steep embankments, next to train tracks, by creeks and lakes, and other areas requiring alertness to the environment and pre-planning to prevent injury or illness. Contractor will perform a hazard assessment and provide all training and supplies necessary.
5. Contractor shall be OSHA certified to operate any heavy equipment required to complete the illegal dumping or encampment clean-up work, including trash compactors, bulldozers, graders or other ground moving equipment.
6. Work within 25 feet of railroad tracks will require staff to wear safety vests and hard hats.
7. Contractor shall conform to all applicable occupational safety and health standards, rules, regulations and orders established by the State of California. The Contractor shall provide all safety equipment, materials, and will supply training as required. The Contractor shall provide its employees with appropriate safety apparel. This apparel shall include, but not be limited to, hardhats, safety glasses, vests, gloves, and leather (or adequately puncture resistant) boots.
8. Field staff must be trained annually in OSHA's Bloodborne Pathogen Standard 1910.1030. This training must be supplemented with precautions regarding West Nile Virus, hanta virus, and histoplasmosis. Employees must have work procedures to be able to safely manage urine, feces, soiled personal hygiene items, syringes, and other materials which could pose a health threat. Wearing

Personal Protective Equipment (PPE) and following other protocols established for this situation must be followed. Solid infectious waste will be placed in a plastic bag, tied off, and taken to the Transfer Facility with trash. Liquids that cannot be poured into a sanitary sewer (NOT storm drain), or rendered solid with absorbents or toweling, will need to be managed as infectious waste. The Contractor will coordinate disposal of these wastes and syringes with the City.

9. The City reserves the right to periodically review Contractor's training records, licenses, and disposal records

#### D. JOB TASK ORDER AND AWARD

Specific homeless encampment cleanup project work will be issued through individual task orders as follows:

1. Contractor(s) will receive a request for task order proposal from the City for the specific project work,
2. The City and Contractor(s) will meet on site to develop the scope of work
3. The Contractor(s) will submit the completed Task Order within five (5) days of the site meeting, with pricing based on Exhibit "D" Pricing Table
4. Each Encampment to be cleaned up by the Contractor will be authorized, and awarded by the City through the use of the Task Order Form available in Exhibit "E" only.
5. The City will award the Task Order to the Contractor who submitted the quote with the lowest price.

## GUIDELINES FOR PROPERTY IDENTIFICATION

Unless an item is trash or poses an immediate threat to public health or safety, it should be retained for storage as personal property.

Items that are arranged in a manner that suggest ownership (e.g. items that are neatly folded or stacked, stored off the ground, hung or clearly on display or packed in a bag or box) should be retained for storage.

If there is any uncertainty regarding whether an item should be thrown away or stored, it should be stored.

**Examples of items to take to storage:** *The following are examples of items that could be considered personal property and will be stored:*

ID/Social Security Cards	Tents
Medications*	Pots & Pans
Photos/Photo Albums	Radios & Electronics
Tax/Medical Records	Tools
Jewelry	Stoves and Generators
Eyeglasses	Bicycles
Books/Collectibles	Purses/Backpacks/Briefcases

**Examples of items that are trash or pose a threat to public health or safety will not be stored:** *The following examples of conditions that will cause an item (including those examples listed above) to be immediately disposed of:*

- **Dirty or Soiled:** items that smell, are stained with urine, bodily waste, or mud, or are infested with fleas, bed bugs, rats or other vectors
- **Perishable:** open food or personal products that will spoil or rot in storage
- **Contaminated:** items used for hygiene or that present a risk of biohazard (i.e. used toothbrushes, hairbrushes, washcloths, bandages, sponges, and underwear)
- **Hazardous or Explosive:** items that could corrode or burn in storages (i.e. car batteries, gasoline cans, and propane tanks)
- **Broken or Disassembled:** items that are broken, damaged, or stripped of parts (i.e. electronics stripped for copper, flat tires, torn up clothes)
- **Weapons:** weapons will be turned over to the Milpitas Police Department
- **Obvious Trash:** Food/beverage wrappers, tissue/paper napkins, open household product containers

\* All medications and controlled substances will be turned over to the Milpitas Police Department for storage. Contractor will submit a completed Task Order Form when turning over medications and controlled substances to the Milpitas Police Department. Task Order Form is available in Exhibit E.

**EXHIBIT “B”**  
**COMPENSATION**

**CONTRACT COSTS**

1. Payment shall be made at the cubic yard rate contractually agreed upon between the Contractor and the City of Milpitas. This is an all-inclusive rate taking into account labor, fuel, tolls, equipment, and supplies. Contractor cubic yard rate is provided in Exhibit D, Pricing Table.
2. The City recognizes that the Public Works Department may occasionally direct Contractor to respond at night, on holidays, and weekends. Labor rates are higher and the Transfer Facility will not be open requiring additional storage and movement of debris collected. Contractor will be paid a different cubic yard rate in these circumstances.
3. No additional billing for costs shall be made, nor shall any payment be made for travel time of any crew or equipment.
4. Most of the work will be performed with hand tools. Use of specialized equipment will be at the Contractor's expense unless agreed to in advance.
5. Payments shall be made once per month based on the correct invoices submitted in the preceding month.
6. The City of Milpitas reserves the right to periodically review Contractor's payroll to verify payment of prevailing wage.

**INVOICING**

1. Invoices will be submitted within 30 days of work completion. The following information must be on the bill:
  - b. Purchase order number
  - c. Date the service was performed
  - d. Location of the clean-up
  - e. Name of City employee that made the request
  - f. Whether or not valuables were bagged, labeled, and taken to the designated storage location
  - g. Cubic yard rate
  - h. After-hours cubic yard rate
  - i. Approved specialized equipment costs
  - j. Weigh ticket for material taken to the Transfer Facility

## **LENGTH OF CONTRACT**

The Contract will be for 5 years. Pricing for each year will be based on the Pricing Table in Exhibit "D". City reserves the right to cancel any time with 7 days written notice.

## EXHIBIT "C"

### 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 C. 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:**

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

       Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than \$5,000,000.00 combined single 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
- \_\_\_X\_\_\_ Performance Bond
- \_\_\_X\_\_\_ 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.

**EXHIBIT “D”  
PRICING TABLE**

**[Begins on following page]**

## **RFP 2392 Homeless Encampment Clean-up Services**

### **A. CONTRACT COSTS**

1. Payment shall be made at the cubic yard rate contractually agreed upon between the Service Provider and the City of Milpitas. This is an all-inclusive rate taking into account labor, fuel, tolls, equipment, and supplies.
2. The City recognizes that the Public Works Department may occasionally direct Service Provider to respond at night, on holidays, and weekends. Labor rates are higher and the Transfer Facility will not be open requiring additional storage and movement of debris collected. Service Provider will be paid a different cubic yard rate in these circumstances.
3. No additional billing for costs shall be made, nor shall any payment be made for travel time of any crew or equipment.
4. Most of the work will be performed with hand tools. Use of specialized equipment will be at the Service Provider's expense unless agreed to in advance.
5. Payments shall be made once per month based on the correct invoices submitted in the preceding month.
6. The City of Milpitas reserves the right to periodically review Service Provider's payroll to verify payment of prevailing wage.

### **B. INVOICING**

1. Invoices will be submitted within 30 days of work completion. The following information must be on the bill:
  - a. Purchase order number
  - b. Date the service was performed
  - c. Location of the clean-up
  - d. Name of City employee that made the request
  - e. Whether or not valuables were bagged, labeled, and taken to the designated storage location
  - f. Cubic yard rate
  - g. After-hours cubic yard rate
  - h. Approved specialized equipment costs
  - i. Weigh ticket for material taken to the Transfer Facility

Schedule of Prices							
Item	Description	Unit	Cost per Unit Year One	Cost per Unit Year Two	Cost per Unit Year Three	Cost per Unit Year Four	Cost per Unit Year Five
1	Cleanup of Homeless Camp — Standard Rate	Cubic Yard	\$400.00	\$412.00	\$425.00	\$437.00	\$450.00
2	Cleanup of Homeless Camp — Night / Holiday / Weekend Rate	Cubic Yard	\$600.00	\$618.00	\$637.00	\$656.00	\$675.00
3	Hazardous Waste Disposal at permitted HazMat Site ** Loose packed barrel conversion.	Cubic Yard	\$8,000.00	\$9,500.00	\$11,150.00	\$12,965.00	\$14,962.00
4a.	Debris Box and Hauling Provided by Milpitas Sanitation	Cubic Yard	\$10.00	\$11.00	\$12.00	\$13.000	\$15.00
4b.	Contractor hauls to: Kirby Canyon 910 Coyote Creek Golf Dr. Morgan Hill, CA 95037	Cubic Yard	\$35.00	\$39.00	\$42.00	\$47.00	\$51.00
4c.	Contractor hauls to: GreenWaste 625 Charles St. San Jose, CA 95112	Cubic Yard	\$30.00	\$33.00	\$36.00	\$40.00	\$44.00

5.	Transport of: Personal Property to Designated City Facility	Hourly	\$110.00	\$115.00	\$118.00	\$121.00	\$125.00
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**EXHIBIT "E"**  
**TASK ORDER FORM**  
**CITY OF MILPITAS**  
**TASK ORDER**

Task Order No. \_\_\_\_\_

Agreement: [INSERT NAME OF AGREEMENT]

Contractor: [INSERT NAME OF CONTRACTOR]

**The Contractor is hereby authorized to perform the following work subject to the provisions of the Agreement identified above:**

**List any attachments:** [INSERT ATTACHMENTS, IF ANY]

**Dollar Amount of Task Order:** Not to exceed \$\_\_\_\_\_,\_\_\_\_\_.00

**Completion Date:** \_\_\_\_\_, 20\_\_\_\_

The undersigned Contractor hereby agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted above, and perform all services for the work above specified in accordance with the Agreement identified above and will accept as full payment therefore the amount shown above.

**CITY OF MILPITAS**

**[INSERT CONTRACTOR NAME]**

Dated: \_\_\_\_\_ Dated: \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_