

**CITY OF MILPITAS
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of June 16, 2020 (“Effective Date”) by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 (“City”), and Pacific Coast Locators, Inc., a California Corporation with its principal place of business at 2606 Foothill Blvd, Suite G, La Crescenta-Montrose, CA 91214 (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

Underground Service Alert - Utility Locating Services
(hereinafter referred to as “the Project”).

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit A.

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit B.

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **Two Hundred One Thousand Dollars and Cents (\$201,000.00)**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within thirty (30) days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by

both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the Agreement term and for four (4) years from the date of final payment under the Agreement for inspection by City.

5. Term.

The term of this Agreement shall be from **July 1, 2020** to **June 30, 2021**, unless earlier terminated as provided herein. The City reserves the right to review the Consultant's performance at the end of each year and cancel all or part of the Agreement.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Consultant

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant 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, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), 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 acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Consultant 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 One Thousand Dollars and Zero Cents (\$1,000.00) or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant 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 Consultant and all subconsultants 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 Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, 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 Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant’s performance of services, including any delay, shall be Consultant’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant 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 Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant 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, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California.

16. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of

the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

c. The Consultant 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 Agreement term. The City has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other contracts. City budget decisions are subject to the discretion of the Mayor and City Council. Consultant'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.

17. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

18. Organization

Consultant shall assign Mark Baghdassarian as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

19. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

20. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:
City of Milpitas
455 E. Calaveras Boulevard
Milpitas, California 95035
Attn: Michael Silveira, CIP Manager

CONSULTANT:
Pacific Coast Locators, Inc.
2606 Foothill Blvd., Suite G
Crescenta, CA 91214
Attn: Don Greenman, Owner

and shall be effective upon receipt thereof.

21. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

22. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. 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.

23. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

24. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

25. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

26. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

27. Time of Essence

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

28. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

29. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant 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 Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, 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.

30. Wage Theft Prevention

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

b. BY SIGNING THIS AGREEMENT, CONSULTANT 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 CONSULTANT OR ITS SUBCONSULTANTS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONSULTANT(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONSULTANT AFFIRMS THAT IT OR ITS SUBCONSULTANT(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONSULTANT OR ITS SUBCONSULTANT(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.

c. If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Consultant or a subconsultant it employs to perform work under this Agreement has violated any applicable wage and hour law, or Consultant learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Consultant 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. Consultant or its subconsultant(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 Consultant or its subconsultant is subject to a payment or other alternative plan, the Consultant or its subconsultant shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Agreement demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND PACIFIC COAST LOCATORS, INC.**

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

CITY OF MILPITAS

Approved By:

Steven G. 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:

Steve Erickson
City Engineer/Director of Engineering

PACIFIC COAST LOCATORS, INC.

Signature

Don Greenman

Name

Owner

Title

Date

DIR Registration Number (If Applicable)

EXHIBIT A

Scope of Services

PROJECT OVERVIEW

As an operator of underground utilities, the City of Milpitas (“City”) participates in the Underground Service Alert (USA North 811) regional notification center in accordance with California Government Code 4216.

Pacific Coast Locators, Inc. shall conduct utility locating services for the City of Milpitas in compliance with the requirements of the State of California Government Code 4216, and USA North. Locating services shall be provided for City owned underground utilities located within the public and private streets, easement right-of-way, and City owned properties including, but not limited to, parks, fire stations, and community buildings. City owned utilities include water, sanitary sewer, storm sewer, irrigation mains, streetlight electric, traffic signals conductors and cables, traffic loops, fiber optic cable, existing utilities abandoned in-place, recycled water within the City limits, and all related appurtenances.

SCOPE OF SERVICES

- Pacific Coast Locators, Inc. will receive and respond to all Tickets directly from Underground Service Alert North 811 regional notification center (USA North 811) and manage the entire locating process for the City in accordance with current State Law during normal City Business hours and consistent with the requirements of USA North One-Call Center. Pacific Coast Locators, Inc.’s normal working hours shall be 7:00 a.m. through 4:00 p.m. PST, Monday through Friday, except for City observed holidays. City staff normal working hours, assigned to this agreement, are 7:00 a.m. through 4:00 p.m. PST, Monday through Friday, except for City observed holidays.
- The City shall work with Pacific Coast Locators, Inc. to arrange for the USA North 811 to send all Tickets directly to Pacific Coast Locators, Inc.
- The City will be responsible for all other contractual and cost obligations of the USA North 811 for Ticket transmission.
- Pacific Coast Locators, Inc. shall respond to Ticket requests received within two working days or as required by USA North 811 requirements, excluding weekends and City observed holidays, or before the start of excavation in accordance with California Government Code Section 4216.3.
- Pacific Coast Locators, Inc. shall comply with all applicable federal, state, county and local laws, ordinances and regulations including current USA North 811, California Government Code Section 4216, Federal Occupational Safety and Health Administration (OSHA), California State Occupational Safety and Health Administration (Cal/OSHA).
- Pacific Coast Locators, Inc. shall furnish all labor, materials, supervision, tools, vehicles/transportation, paint, flags, and equipment including hardware compatible with communication systems used by the USA North 811 as required to perform Underground Facilities Locating and Marking services. Pacific Coast Locators, Inc. shall provide its

personnel with laptop computers, software, and other electronic equipment as required to receive and review the City's electronic record maps and data.

- Pacific Coast Locators, Inc. shall be responsible for, receiving, responding to, documenting, recording, dispatching, reporting, monitoring and closing out all Tickets received.
- Pacific Coast Locators, Inc.'s personnel shall be trained and certified to perform underground utility locating services and be proficient in the use of single-frequently utility locating devices or other equipment required for locating services, methods, marking procedures, communicative skills, and record-keeping requirements necessary to perform the Locating services.
- Pacific Coast Locators, Inc. shall perform the locating activities for City owned underground infrastructure in accordance with the Government Code, Article 2, Regional Notification Center System. All Underground Facilities owned by the City shall be electronically located, except where electronic locating is not possible. Where not possible, Pacific Coast Locators, Inc. shall utilize another means of positive locating as required by law. Pacific Coast Locators, Inc. shall photograph and date each location of utility for a Field Locate and Mark ticket. The photographs shall clearly show the markings and a reference point so the location of the photograph can be determined.
- Pacific Coast Locators, Inc. will be responsible for obtaining all licenses, training, certifications, permits, inspections and other authorizations required for its performance of the Services under this Contract.
- Pacific Coast Locators, Inc. shall cooperate with the City in obtaining Permits from other Agencies to allow Pacific Coast Locators, Inc. personnel to work within their right of way when locating City utilities.
- Pacific Coast Locators, Inc. shall field locate and mark all City owned underground utility facilities with an accuracy of no less than 24 inches on each side of the outside diameter of each utility (Tolerance Zone) or as specified by the requirements of USA North 811.
- Pacific Coast Locators, Inc. shall receive and record Emergency Tickets at any time of any day. All Emergency Tickets within normal working hours shall be responded to within two (2) hours, unless otherwise required by law or regulation to be sooner or agreed to with requesting party or Excavator. Emergency Tickets that require Field Locate and Mark outside normal working hours shall be subject to City approval.
- Pacific Coast Locators, Inc. shall be responsible to contact all Excavators, if necessary, for utility locating purposes within the required timeframe or make arrangements to arrange an appropriate time to perform utility field locate and mark.
- Pacific Coast Locators, Inc. shall contact the City when the underground facility is "Identifiable, but Un-locatable" to determine the course of action. If the course of action is unsuccessful, Pacific Coast Locators, Inc. shall notify the Excavator of the presence of any "Identified, but Un-locatable" Facilities of the City and shall caution the Excavator that any location information supplied may not be within the scope of the definition of Reasonable Accuracy.

- Pacific Coast Locators, Inc.'s personnel shall always represent City of Milpitas in a courteous and professional manner. Vehicles shall be marked with the company name, and employees working shall wear appropriate safety equipment including vests or hardhats with the company name.
- Additional visits to the Excavation Site required due to Pacific Coast Locators, Inc.'s unsatisfactory performance as determined by the City for re-mark shall not be considered as an additional work or a new Ticket.
- Ticket requests for areas that are absent of City underground utilities, and/or do not require field locate and mark shall be closed out and the Excavator and USA North 811 shall both be notified that the City does not have utilities present. Ticket requests such as this shall not be considered towards the monthly ticket counts.
- Pacific Coast Locators, Inc. shall, at all times, afford the City access and review to any and every part of the Locating Services to ensure the Services being performed conform to the terms of the Contract.
- Pacific Coast Locators, Inc. shall provide and maintain at all locations, where work is being performed, safe, adequate, and suitable traffic control, warning signs, all necessary suitable guards, and appropriate warning signals of any hazards in connection with the work, in order to prevent accidents during the course of the work.
- Upon request by City, Pacific Coast Locators, Inc. shall provide review of all Tickets that have been responded to including field and office data used to respond to the Ticket.
- Pacific Coast Locators, Inc. shall provide an electronic positive response through the USA North 811 before the legal excavation start date and time as allowed by law.
- In the event Pacific Coast Locators, Inc. fails to meet the demands for Ticket Requests, the City, in its sole determination, shall have the right to use its own employees or the services of another outside vendor to satisfy such needs. The City shall then invoice Pacific Coast Locators, Inc. for City's costs in using its own employees and vendors in completing the requirements under this Contract.
- The City shall also have the right to use its own forces at any time to complete Ticket Requests for location services. In this case, City will advise Pacific Coast Locators, Inc. which Tickets it will complete on its own without Pacific Coast Locators, Inc..
- Pacific Coast Locators, Inc. shall be responsible and liable for all damages and costs associated with the failure to locate Underground Facilities consistent with the provisions of this Contract and the requirements of USA North 811.
- Pacific Coast Locators, Inc. shall keep a record of all locating activities conducted pursuant to this Contract for a minimum of three (3) years. Records shall include each Ticket indicating the time and date; when locate was received, the type of facility marked, photographs of markings, date and name of the call-back person notified.
- On a monthly basis, Pacific Coast Locators, Inc. shall provide the City with a report of all locating services conducted the previous month. The report shall include the USA Notification Request notification number; date received by Pacific Coast Locators, Inc.; date responded to excavator and USA North 811; date of field location and marking; and a

summary of the City utilities found and marked. Copies of Notification Requests listed in the report shall be provided as back-up, and pictures of each mark out location shall also be provided. Pacific Coast Locators, Inc. shall also include a summary and the locations where City utilities could not be located or where utilities located using a means of electronic locating proved City records were in error or outside the required tolerance zone.

PROCEDURE FOR INVESTIGATING DAMAGED UTILITIES BY THIRD PARTY

- In the event an underground City utility facility is damaged by third party excavation after Pacific Coast Locators, Inc. provided locating services, Pacific Coast Locators, Inc. shall investigate incidents of damage as requested by the City, for accuracy of the Locate(s). Pacific Coast Locators, Inc. shall respond, within one hour, to the excavation site following notification by the City.
- Pacific Coast Locators, Inc. shall submit a written report of damage investigations within 5 days.
 - Should the City determine Pacific Coast Locators, Inc. is not liable for damages, the City agrees to hold Pacific Coast Locators, Inc. harmless from any ensuing damage costs or fines that may be owed to any third-party including liability for the cost to repair the damaged City utility.
 - Should the City determine the Excavator is responsible for the damage, Pacific Coast Locators, Inc. shall provide expert testimonial and investigative support for any recovery efforts by the City.
 - Should the City determine Pacific Coast Locators, Inc. is liable for damage to City utilities through its failure to perform locating services as required by this Contract and the requirements of USA North, Pacific Coast Locators, Inc. shall be responsible for all 3rd party costs and claims by the excavator. Pacific Coast Locators, Inc. shall also be responsible for the full cost to repair the damaged City utility and any fines levied by the State of California. Pacific Coast Locators, Inc. shall agree to hold the City harmless from any ensuing damages owned to any third party as a result of the damage to the City's Underground Facilities or any fines that may later be levied by the State of California.

CITY PROVIDED RECORD MAPS AND DATA

- The City shall provide Pacific Coast Locators, Inc. access to the City record maps and GIST records of City underground utility facilities. Pacific Coast Locators, Inc. shall supply its personnel all equipment and software as required to access this equipment remotely and in the field. Pacific Coast Locators, Inc. shall be responsible for any costs involved with distributing electronic mapping, or updates to maps and records for its employees.
 - Pacific Coast Locators, Inc. shall acknowledge these record maps and GIST data shall be used as a reference only and Pacific Coast Locators, Inc. shall be solely responsible for determining the existence of City own Underground Facilities in the field per California Code 4216.

- Pacific Coast Locators, Inc. shall acknowledge the City does not guarantee the accuracy of this information and the record maps and GIST data may not reflect the actual physical location of City owned Underground Facilities.
- Pacific Coast Locators, Inc. shall be responsible to notify the City of any discrepancies, errors, or omissions on the City provided records found during the field locate and mark process. Any discrepancy between the City records and the actual physical location of the utility shall be redlined by Pacific Coast Locators, Inc. on the record map and submitted to the City.

DEFINITIONS

- A. “City” – City of Milpitas
- B. “Emergency” – Any condition constituting a clear and present danger to life, health or property, or a customer service outage.
- C. “Excavation” – Any operation in which earth, rock or other material on or below the surface of the ground is moved or otherwise displaced by any means (except the tilling of soil for agricultural purposes, or railroad, or road and ditch maintenance that does not change the existing railroad grade, road grade and/or ditch flow line , or operations related to exploration and production of crude oil or natural gas, or both.
- D. “Excavation Site” – The area where an Excavator intends to perform or actually performs Excavation.
- E. “Excavator” – Any Person who engages directly in Excavation and/or the design of Excavation and who requests the location of Owner’s Underground Facilities.
- F. “Ticket” – means an excavation location request issued a number by the regional notification center
- G. “Facility Owner” – The owner of a specific Underground Facility. For purposes of this Contract, the Facility Owner is the City.
- H. “Identified, But Un-locatable” – An Underground Facility, the presence of which is known, but cannot be field-marked with Reasonable Accuracy.
- I. “Locate or Locating” – The process of detecting Underground Facilities through the use of inductive, conductive equipment or a minimum of a single-frequency device and marking the surface of the ground to identify the existence and location of Underground Facilities.
- I. “Locate Request”
 - ”Normal Locate Request” – A request to locate received at least forty-eight (48) hours, but no more than 15 business days, prior to the commencement of excavation, excluding Saturdays, Sundays and state and federal holidays.

- “Emergency Locate Request” – A request to locate which demands Immediate action to prevent significant environmental damage or loss of life, health, property or essential public services, including the re-erecting of critically needed traffic control signs or devices.
- J. “Marking” – Application of paint, flags or stakes to clearly identify on a horizontal plane the location of City Underground Facilities within the tolerances set forth under the current State Laws of California governing Underground Facility Protection.
- K. “One-Call Center” – The Underground Service Alert (USA North 811) statewide communication system operated by an organization which has as one of its purposes to receive and record notification of planned excavation in the state from excavators and to disseminate such notification of planned excavation to operators who are members and participants.
- L. “Person” – Any individual, partnership, franchise holder, association, corporation, state, city or county, or any subdivision or instrumentality of a state and its employees, agents or legal representatives.
- M. “Reasonable Accuracy” – Markings within the Tolerance Zone (24 inches) on either side of the Underground Facility as specified by the current State Laws governing Underground Facility Protection.
- N. “Underground Facility” – Any item buried or place below the surface of the ground for use in connection with the storage or conveyance of water, sewage, electronic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids or other substances, including, but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and those parts of poles or anchors below ground.
- O. “Site Surveillance” – To watch over and protect Owner’s plant during unusual or extensive excavation projects (i.e.: road-widening projects, sewer projects, etc.) and providing such continuous on-site locate services as may be dictated by the nature and scope of the excavation or as may be required by the Excavator, also known as standby protection.
- P. “Project or Extended Locate” – A single ticket or project requiring the locating and marking of multiple non-adjacent addresses or dig areas in an urban environment or the locating and marking of more than one mile in a rural environment. Notification will be provided to the Owner when Project or Extended Locate activity is initiated. Locates of this nature typically exceed 1/2 hour or more to complete.

EXHIBIT B
Schedule of Charges/Payments

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant. This is a time-and-materials Agreement.

SCHEDULE OF CHARGES:

Pacific Coast Locators, Inc. will charge a Monthly Service of \$15,000 for up to 400 Tickets that require Pacific Coast Locators, Inc. to Field Locate and Mark City owned utilities. Period of the Monthly Service is defined from the first and last day of the month. The above mention charge includes all provisions in Exhibit A.

Work for Field Locate and Mark tickets exceeding 400 monthly count shall first be subject to City approval. Once the monthly count reaches 350 tickets, Pacific Coast Locators, Inc. shall notify the City in order to estimate the cost and the course of action. If the City directs Pacific Coast Locators, Inc. to conduct Field Locate and Mark above the 400 ticket monthly count, Pacific Coast Locators, Inc. will charge \$150 for each Ticket that are actual Field Locate and Mark.

Work outside normal working hours, including responding to Emergency Tickets as defined in Exhibit "A," shall first be subject to City approval. If the City directs Pacific Coast Locators, Inc. to conduct a Field Locate and Mark outside normal working hours, Pacific Coast Locators, Inc. will charge \$250 for each Ticket that are an actual Field Locate and Mark.

Emergency Ticket within normal working hours shall be considered as regular Excavation Notification that are Field Locate and Mark.

Additional visits to the Excavation Site required due to Pacific Coast Locators, Inc.'s unsatisfactory performance as determined by the City or for re-mark shall not be considered as an additional work and shall the City shall not be charged.

Ticket requests for areas that are absent of City underground utilities, and/or do not require field locating and marking shall be closed out and the Excavator and USA North shall both be notified that the City does not have utilities present. Notification requests such as this shall not be considered towards the monthly ticket counts.

Base Contract for 12 months is **\$180,000** which does not include tickets exceeding monthly count and outside normal work.

Additional Services for tickets exceeding monthly count and outside normal work is **\$21,000**. Pacific Coast Locators, Inc. shall receive written authorization prior to performing any Additional Service. The City will not be responsible for additional work that Pacific Coast Locators, Inc. performs prior to receiving written authorization.

INVOICING AND REPORTING:

Pacific Coast Locators, Inc. shall provide invoices to the City with sufficient documentation and reporting as specified in Exhibit “A” and in compliance with City requirements on a monthly basis.

The invoices shall include the following:

- City of Milpitas Name, Attention Casey Crary
- Period during which the services were performed (Billing Period)
- Total charges for the Billing Period
- Certified Payroll

TERM OF CONTRACT:

This contract is for a 12-month period with the possibility for renewal. The City and Pacific Coast Locators, Inc. agree to review the services provided and the actual number of tickets received on a monthly basis near the end of the contract term and adjust pricing and services as may be required.

EXHIBIT C

Reserved

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 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:

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

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

Builder's Risk (Course of Construction):

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

Contractor's or Consultant's Pollution Legal Liability:

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

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

Cyber Liability Insurance

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

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

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

Surety Bonds:

Contractor shall provide the following Surety Bonds:

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

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

Other Insurance Provisions:

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

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

Contractor's general liability and automobile liability policies shall be primary and shall not seek contribution from the City's coverage and be endorsed to add the City and its officers, officials, employees, and agents as additional insureds under such policies using Insurance Services Office form CG 20 10 (or equivalent) on the general liability policy. For construction projects, an

endorsement providing completed operations coverage for the additional insured on the general liability policy, ISO form CG 20 37 (or equivalent), is also required.

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

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

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

 X **Notice of Cancellation, Suspension or Otherwise Voiding Policies:**

Each insurance policy required above shall contain or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

 X **Waiver of Subrogation:**

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

 Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

Deductibles and Self-Insured Retentions ("SIR"):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention

or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor or Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

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

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

Verification of Coverage:

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

Special Risks or Circumstances

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

Failure to Comply:

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

Applicability of Coverage:

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