



CITY OF MILPITAS



NOTICE OF REQUEST FOR PROPOSALS Underground Utility Locating Services

Notice is hereby given that proposals will be received until **March 3, 2020 at 1:00 pm** for:

Underground Utility Locating Services

The City of Milpitas (“City”) is seeking from a qualified proposer (“Proposer”) Utility Locating Services within the City of Milpitas.

The scope of services, content of the proposal, and the selection process are described in the Request for Proposals (“RFP”). Interested parties may obtain copies of the RFP from the City’s website or by contacting Lyhak Eam at Leam@ci.milpitas.ca.gov or 408-586-3349.

SUBMITTING THE PROPOSAL: Five complete bound copies of the proposal and one PDF electronic copy on CD or flash drive shall be provided. A fee schedule for the requested services shall be submitted with the proposal. Proposal packages shall be delivered to the Milpitas City Hall Public Service Counter located at Milpitas City Hall, 455 E, Calaveras Boulevard, Milpitas, California, 95035 to the attention of Lyhak Eam, Engineering Department, by date and time as specified above. It is the proposer’s sole responsibility to ensure that the proposal is received by the City by the due date and time.

Proposers shall carefully review the City’s Standard Professional Services Agreement located in **Attachment B** and **submit any requested changes as an attachment to the proposal entitled “Requested Changes to City Standard Professional Services Contract,” which must be signed by Proposer’s authorized representative.** If there are no requested changes to the Agreement, Proposers shall state so in the cover letter or as an attachment. Note, the City will not entertain extensive edits to its contract document or the insurance or liability requirements.

License and Bonding. Proposer shall be licensed and bonded in accordance with industry practices, laws, rules and regulations governing the performance of services required in this RFP.

For more information regarding the RFP, please contact:

Lyhak Eam, P.E.
Associate Civil Engineer
408-586-3349
Leam@ci.milpitas.ca.gov



City of Milpitas

REQUEST FOR PROPOSALS

For

Underground Utility Locating Services

Date Issued: January 16, 2020

Proposal Deadline: March 3, 2020 at 1:00 pm

Issued By: City of Milpitas
Engineering Department
455 E. Calaveras Blvd.
Milpitas, CA 95035

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Schedule of Activities. The City reserves the right to amend the schedule below as necessary. All times referenced are in Pacific Time.

<u>Activity</u>	<u>Tentative Dates</u>
RFP released	January 16, 2020
Deadline for Submitting Questions	February 18, 2020, 1:00PM
Proposal Submission Deadline	March 3, 2020, 1:00PM
Evaluation Committee Review	March 2020
Interview/Presentations	Anticipated April 2020
Contract Award	TBD

PROJECT DESCRIPTION

RFP: Underground Utility Locating Services

The City of Milpitas (“City”) is seeking proposals from qualified proposers (“Proposer”) in response to this Request for Proposals (“RFP”) to perform **Underground Utility Locating Services** within the City of Milpitas.

The scope of services (“Services”) sought under this RFP are set forth in more detail in **Attachment “A,”** attached hereto and incorporated herein by this reference. The City reserves the right to select more than one Proposer as part of this RFP.

The purpose of this Request for Proposals (“RFP”) is to solicit a proposal from Contractors that can perform all the services requested to prepare Underground Service Alert (USA) Utility Locating Services within the City of Milpitas city limits.

As an operator of underground utilities, the City of Milpitas participates in the Underground Service Alert (USA North 811) regional notification center in accordance with California Government Code 4216. Currently, the City receives and responds to an average of 20 notifications for planned excavation per day, and the City is seeking a certified Contractor to perform its Underground Utility Location Service obligations.

The City provides water, recycled water, sanitary sewer, storm water, streets, street lighting, traffic control, and fiber-optic communication services (among other essential services) to Milpitas residents within an area of approximately 13.63 square miles. Within this area, there are approximately 200 miles of water mains, 24 miles of recycled water mains, 185 miles of sanitary sewer main, and 75 miles of storm drain mains. There are approximately 4,600 City-owned and 50 PG&E-owned streetlights within City boundaries. The City has 78 traffic signals (most with video detection) and approximately 8.2 miles of City owned underground fiber optic conduit infrastructure carrying fiber optic communications cables. City owned "wet" utilities are located both within public streets and within easements in private streets. City utilities are also located with property owned by the City including 35 parks, 4 fire stations, Public Works Corporation Yard including Police Department and Administration facility, Senior Center, Community Center, Sports Center, Public Library and Parking Garage facility.

The City’s underground utilities are documented on various atlases. Locating services shall be provided for City owned underground utilities located within the public and private streets, easement right of way, and upon City owned property including parks, fire stations, community buildings, etc.

Proposals are to include sufficient information to assess the proposing company’s capability to conduct utility locating services for the City that are in compliance with the requirements of the State of California Government Code 4216. The utilities will include: water, recycled water, sanitary sewer, storm sewer, street lights, street light conduit, traffic signals, traffic loops, fiber optic cable, existing utilities abandoned in-place, and all related appurtenances.

The City is seeking a five-year agreement. The City reserves the right to review the successful Proposer’s performance at the end of each year and cancel all or part of the agreement.

INSTRUCTIONS TO PROPOSERS

RFP: Underground Utility Locating Services

ADDENDA. Addenda issued pursuant to this RFP, if any, will be posted on the City website. However, it is the sole responsibility of the Proposer to check the website and/or contact the City's representative listed in the Notice of Request for Proposals directly to determine whether any addenda has been issued.

Any proposal submitted that does not acknowledge each and every addenda issued may be considered non-responsive. Addenda, if any, must be acknowledged on the RFP Form in the space provided.

ANTI-DISCRIMINATION. It is the policy of the City that in connection with all Services performed under the Agreement; there will be no discrimination against any prospective or active employee engaged in the Services because of race, color, ancestry, national origin, religious creed, sex, age, or marital status. The Proposer agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment Practice Act, beginning with Labor Code Section 1735. In addition, the Proposer agrees to require like compliance by any subcontractor employed to complete any Services under the Agreement.

AUTHORIZED SIGNATURES. Every proposal must be signed by the person or persons legally authorized to bind the Proposer to a contract for the execution of the Services. Upon request of the City, any agent submitting a proposal on behalf of a Proposer shall provide a current power of attorney certifying the agent's authority to bind the Proposer. If an individual makes the proposal, their signature, and post office address must be listed in the proposal. If a firm or partnership makes the proposal, the name and post office address of the firm or partnership and the signature of at least one of the general partners must be listed in the proposal. If a corporation makes the proposal, the proposal shall show the name of the state under the laws of which the corporation is chartered, the name and post office address of the corporation and the title of the person signing on behalf of the corporation. Upon request of the City, the corporation shall provide a certified copy of the bylaws or resolution of the board of directors showing the authority of the officer signing the proposal to execute contracts on behalf of the corporation.

AWARD OF CONTRACT. Award, if made, will be made to the Proposer offering the most advantageous proposal after consideration of all evaluation criteria ("Evaluation Criteria") set forth below. An Evaluation Committee will be established by the City. **Proposers not meeting the minimum requirements established in this RFP and not submitting all required documents may be deemed non-responsive to the RFP and thus may not be considered by the Evaluation Committee.** The Evaluation Committee will evaluate all proposals received in accordance with the Evaluation Criteria. The City shall not be obligated to accept the lowest priced proposal but will make an award in the best interests of the City after all factors have been evaluated.

EVALUATION CRITERIA	Weighted %
Cover Letter	5 %
Company Profile	20 %
Execution Plan	35 %
Personnel Assigned	20 %
References	20 %

The Evaluation Committee may also contact and evaluate the Proposer's and subcontractor's references; contact any Proposer to clarify any response; contact any current users of a Proposer's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process.

Discussions may, at the City's sole option, be conducted with a short-list of responsive and responsible Proposers. Discussions may be for the purpose of clarification to assure full understanding of, and responsiveness to, the RFP requirements. Each Proposer shall be accorded fair and equal treatment with respect to any opportunity for discussion and written revision of proposals. Revisions may be permitted after submissions and before award for obtaining best and final proposals. In conducting discussions, the City will not disclose information derived from proposals submitted by competing Proposers. A notification of intent to award may be sent to any Proposer selected. The award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Proposers unless an agreement is reached. If contract negotiations cannot be concluded successfully, the City may negotiate a contract with the next highest scoring Proposer or withdraw the RFP. The City reserves the right to contract for services in the manner that most benefits the City including awarding more than one contract if desired. Once negotiations are successful, the Proposer will be recommended to the City Council for contract approval and the City Council has the final authority to approve or reject the contract award.

BACKGROUND CHECKS. All employees of the successful Proposers assigned to perform the Services and duties identified in this RFP must have a background security check (LifeScan or other background check as required by the City) conducted and passed as well as be a minimum of twenty-one (21) years of age.

BID PROTEST. Should any Proposer protest the award to the Proposer offering the most advantageous proposal after consideration of all Evaluation Criteria, such protest must be made in writing to the City's representative. All protests must be filed and will be adjudicated in compliance with the City Municipal Code Section "I-2-3.19 –Bid Protest".

BUSINESS LICENSE. If the Services under this RFP include performing services or installation on City property, the successful Proposer must have a current City Business License. Inquiries regarding Business Licenses may be directed to the Department of Financial Services at 408-586-3100. Business Licenses are not required for materials or equipment shipped by U.S. mail or common carrier.

COMMUNICATION. Each Proposer must comply with the specified communication requirements. Any Proposer who communicates concerning this RFP with parties or via methods not provided for in this RFP, may be subject to disqualification. Such communication includes contact with City elected officials, non-designated staff, or any member of the Evaluation Committee regarding this RFP.

The City is not responsible for any explanation, clarification, interpretation, or approval made or given in any manner, except by written addendum.

COMPENSATION/FEES. All proposals shall include the compensation proposed, both in writing and in figures, shall give all other information requested herein, and shall be signed by the Proposer's authorized representative. Fee proposals shall include everything necessary for the completion of all Services or otherwise fulfillment of the Agreement including but not limited to furnishing all labor, materials, equipment, tools, facilities and all management; overhead expenses and profit required to complete the Services in accordance with the Contract Documents, except as may be provided otherwise in the Contract Documents. Fee proposals must contain the information as outlined in the RFP.

COMPLIANCE WITH OR DEVIATION FROM RFP AND AGREEMENT. Proposer hereby agrees that the Services provided will meet all the requirements of the RFP including, without limitation, all Exhibits and in particular the **Professional Services Agreement** (“Agreement”) attached hereto as Attachment B and incorporated herein by this reference, unless deviations from them are clearly indicated in the Proposer’s proposal. **Any exceptions taken to the RFP or Agreement must be submitted as an attachment to the proposal entitled “Exceptions to RFP and Contract,” which must be signed by Proposer’s authorized representative. An explanation must be made for each item in which an exception is taken, giving in detail the extent of the exception, the reason for which it is taken, and the suggested change.** Any such exception taken to the RFP or Agreement may serve as a basis for rejection of the proposal as nonresponsive. Failure to comply with the requirements of this provision shall serve as a waiver of the Proposer’s right to challenge or otherwise take exception to any terms of the RFP or the Agreement. Submittal of a brochure, general list of terms and conditions, or other manufacturer literature is desirable but may not be a substitution for this requirement.

CONFLICT OF INTEREST. Pursuant to Government Code section 1090 and any other laws, rules and regulations that may apply, the Proposer covenants that neither it, its subcontractors nor employees presently have an interest, and shall not acquire any interest, direct or indirect, financial or otherwise that would conflict in any manner or degree with contract awarded from this RFP. Proposer certifies that to the best of its knowledge, no one who has or will have any financial interest in the contract awarded from this RFP is an officer or employee of the City. Through its submittal of a proposal, Proposer acknowledges that it is familiar with Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California and will immediately notify the City if it becomes aware of any facts concerning the contract to be awarded that constitute a violation of said provisions.

CONTRACT DOCUMENTS, EXAMINATION OF. It is the responsibility of the Proposer to carefully and thoroughly examine and be familiar with the RFP, all attached exhibits including the Agreement, responses to questions, and addenda, if any, (hereinafter collectively referred to as “Contract Documents”). Proposer shall satisfy themselves as to the character, quantity, and quality of the Services to be performed and materials, labor, supervision, equipment, and appurtenances necessary to perform the Services as specified by the Contract Documents. The failure or neglect of the Proposer to examine the Contract Documents shall in no way relieve them from any obligations with respect to the RFP or Agreement. The submission of a proposal shall constitute an acknowledgment upon which the City may rely that the Proposer has thoroughly examined and is familiar with the Contract Documents. The failure or neglect of a Proposer to receive or examine any of the Contract Documents shall in no way relieve them from any obligations with respect to the proposal. No claim will be allowed for additional compensation that is based upon a lack of knowledge of Contract Documents.

DEFINITION OF TERMS. For the purposes of this RFP, the following definitions will be used:

- a. **Contractor/successful Contractor/successful Proposer.** The terms “Contractor,” “successful Contractor” and “successful Proposer” refers to the party entering into a contract with the City as a result of this RFP.
- b. **Evaluation Committee.** An independent committee established by the City to review, evaluate, and score the proposals, and to recommend award to the Proposer that submitted the proposal determined by the committee to be in the best interest of the City.
- c. **May.** Indicates something that is not mandatory but permissible.
- d. **Must/Should.** Indicates a mandatory requirement. A proposal that fails to meet a mandatory requirement may be deemed non-responsive and not be considered for award.
- e. **Proposer.** The person or firm making a legally binding offer.
- f. **Proposal.** The offer submitted by the Proposer.
- g. **RFP.** Acronym for Request for Proposal; same as Solicitation and Contract Documents.
- h. **Should.** Indicates something that is recommended but not mandatory. Failure to do what "should" be done will not result in rejection of your proposal.
- i. **Submittal Deadline.** The date and time on or before all proposals must be submitted.

DISQUALIFICATION OF PROPOSER. If there is reason to believe that collusion exists among the Proposers, the City may refuse to consider proposals from participants in such collusion. No person, firm, or corporation under the same or different name, shall make, file, or be interested in more than one proposal for the same work unless alternate proposals are called for. A person, firm, or corporation who has submitted a sub-proposal to a Proposer, or who has quoted prices on materials to a Proposer, is not thereby disqualified from submitting a sub-proposal or quoting prices to other Proposers. Reasonable ground for believing that any Proposer is interested in more than one proposal for the same work will cause the rejection of all proposals for the work in which a Proposer is interested. If there is reason to believe that collusion exists among the Proposers, the City may refuse to consider proposals from participants in such collusion. Proposers shall submit as part of their proposal documents the completed Non-Collusion Declaration provided herein.

DOCUMENTS TO BE RETURNED WITH PROPOSAL. Failure to completely execute and submit the required documents before the Submittal Deadline may render a proposal nonresponsive. **The documents that must be returned by the Submittal Deadline are listed on the form entitled "List of Documents to be Returned with Proposal" and attached hereto on page 14.**

EXECUTION OF AGREEMENT. The Contractor shall execute the Agreement in substantially the form provided in this RFP. A copy of the Agreement is attached hereto as **Attachment B** and incorporated herein by this reference. The Agreement shall include, among other things, this RFP, any addenda, and the relevant scope and pricing terms under the Contractor's proposal. Contractor shall sign all necessary documents and submit all required bonds (if applicable) and evidences of insurance within ten (10) days after personal delivery of the Notice to Proceed or within fifteen (15) days after such Notice of Proceed has been deposited in the United States mail. One copy of the Agreement will be returned to the Contractor after the City executes the Agreement. In case of failure of the Contractor to execute and return the Agreement and all required documents within the time allowed, the City may, at its option, consider that the Proposer has abandoned the Agreement. After the Agreement has been executed, including the insurance documents, certificates, and bonds, if applicable, Contractor agrees to commence Services within ten (10) working days after the date of the Notice to Proceed.

EXPERIENCE AND COMPETENCE. The successful Proposer shall be skilled and regularly engaged in the general class or type of work called for under the Agreement and shall also have no less than **five (5)** years of experience in the magnitude and character of the Services proposed. It is the intention of the City to award a contract to a Proposer who furnishes satisfactory evidence that he or she has the requisite experience, ability, sufficient capital, and facilities to enable them to prosecute the Services successfully and properly and to complete it within the time specified in the Agreement. To determine the degree of responsibility to be credited to the Proposer, the City will weigh any evidence that the Proposer has performed satisfactorily other contracts of like nature, magnitude, and comparable difficulty. In selecting the proposal most advantageous to the City, consideration will be given to the general competency of the Proposer for the performance of the Services specified in the RFP. To this end, each Proposal shall be supported by a statement of the Proposer's experience on the form entitled "References," which is a part of the RFP.

Contractor's personnel assigned to the contract awarded from this RFP shall each have a minimum of **five (5)** years of training and experience related to services of similar scope to this RFP. Contractor will ensure that a full-time employee is assigned to the job as project manager for the duration of the Agreement and that he or she speaks English and has **three (3)** years of supervision experience in work of similar scope to this RFP. These minimum qualifications shall be maintained throughout the Agreement duration.

FORCE MAJEURE. If execution of the Agreement shall be delayed or suspended and if such failure arises out of causes beyond the control of and without fault or negligence of the Contractor, the Contractor shall notify the City, in writing, within twenty-four (24) hours, after the delay. Such causes may include but are not limited to

acts of God, war, acts of a public enemy, and acts of any governmental entity in its sovereign or contractual capacity, fires, floods, epidemics, strikes and unusually severe weather.

FORMATION OF CONTRACT. Proposer's signed proposal and City's acceptance shall constitute a binding contract.

INFORMED PROPOSER. Each Proposer is expected to fully inform themselves as to the conditions, requirements, and specifications of the RFP before submitting proposals. Failure to do so will be at Proposer's own risk, and they cannot secure relief on the plea of error.

INSURANCE REQUIREMENTS. Within ten (10) calendar days of award of the contract, the successful Proposer must furnish to the City with a Certificate of Insurance and accompany endorsements proving coverage, as specified in the Agreement attached as Attachment B. Failure to furnish the required certificates within the time allowed may result in forfeiture of the Agreement.

INTERPRETATION OF CONTRACT DOCUMENTS. If any person is in doubt as to the true meaning of any part of the RFP or finds discrepancies or omissions in the RFP, they may submit a written request for an interpretation or correction to the City's representative no later than the deadline for questions.

When the City considers interpretations necessary, interpretations will be in the form of an addendum to the RFP, and when issued, will be posted on the City website. All such addenda shall become a part of the Agreement. Oral and other interpretations or clarifications shall be without legal or contractual effect. It is the responsibility of each Proposer, including any Proposer who obtained a RFP from any source other than the City website, to check the website for addenda prior to submitting any proposal.

To submit questions: Email your questions or request for clarification to the contact listed for Engineering Department. **Responses to questions/requests for clarification will be sent via e-mail notification to firm and posted on the City website.**

The deadline for submitting questions related to this RFP is:

February 18, 2020 on 1:00 pm

Questions answered are considered to be a part of or clarification to the RFP and are considered to be addenda to be acknowledged by Proposers in its Proposal using the form provided. The City may also issue a separate addendum document in response to questions/requests for clarification. It is the responsibility of each Proposer to ensure that they have received all issued addenda and/or clarification.

Any proposal submitted that does not acknowledge each and every question issued may be considered non-responsive. Questions, if any, must be acknowledged on the RFP Form in the space provided.

Any Proposer obtaining this RFP from any source other than the City is responsible for contacting the City's representative for updates to the RFP.

LICENSES. The following license classifications are required for this Project: **Persons performing Underground Utility Locating Services shall be trained and certified as required by the State of California Government Code 4216.** Proposer represents that it is duly licensed and experienced in providing services similar to those being performed under this RFP and that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that it is familiar with the plans of City.

NOMENCLATURES. The terms successful Proposer, successful Contractor, and Contractor may be used interchangeably in this RFP and shall refer exclusively to the Proposer with whom the City enters into a contract as a result of this RFP.

NON-COLLUSION DECLARATION. Each Proposer is required to submit a signed copy of the Non-Collusion Declaration with its proposal.

WAGE THEFT PREVENTION. Proposers are required to submit a certification disclosing whether the Proposer or any of its proposed subcontractors has been found by a final court order or administrative action of an investigatory government agency to have violated federal, state or local wage and hour laws, including but not limited to the federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance, within the past five (5) years from the bid submission deadline. A copy of the Wage Theft Certification is attached hereto and must be completed and submitted as part of the proposal.

OFFERS OF MORE THAN ONE PRICE. Proposer is NOT allowed to submit more than one proposal.

PREVAILING WAGES. Proposer shall take cognizance of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public work" and "maintenance" projects. If applicable, employees working in these categories at the site must be paid not less than the basic hourly rates of pay and fringe benefits established by the California Department of Industrial Relations. Copies of the State of California wage schedules are available for review at <https://www.dir.ca.gov/oprl/>. The Contractor and all subcontractor(s) under him or her, shall comply with all applicable Prevailing Wage Laws, which include, but are not limited to the payment of not less than the required prevailing rates to all workers employed by them in the execution of the Agreement, the employment of apprentices, the hours of labor and the debarment of contractors and subcontractors. It shall be the Proposer's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this RFP and applicable law in its proposal.

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No proposal will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. If awarded a contract, the Contractor and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project.

PRICE DISCREPANCIES. In the event that there are unit price items in a proposal schedule and the "amount" indicated for a unit price of an item does not equal the product of the unit price and quantity listed, the unit price shall govern, and the amount will be corrected accordingly. If there is more than one item in a proposal schedule, and the total indicated for the schedule does not agree with the sum of prices of the individual items, the prices given for the individual items shall govern, and the total for the schedule will be corrected accordingly. The Proposer will be bound by said corrections.

PROPOSAL CONTENT. (See Narrative Proposal) Proposer must describe in detail how they will meet the requirements of this RFP and may provide additional related information with its proposal. **The proposal shall be presented in a format that numerically corresponds to the numbered sections outlined in the Narrative Proposal – Part 1. Responses to each section should be labeled to indicate which item is being addressed.** Proposals shall be straightforward and concise and provide "layman" explanations of technical terms that are used. Emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP

requirements, and on providing a complete and clear description of the offer. If a complete response cannot be provided without referencing supporting documentation, you must provide such documentation with the proposal indicating where the supplemental information can be found.

The City is not liable for any costs incurred by Proposers before entering into a formal Agreement. The costs of developing the proposals, presentations, negotiations and any interview or any other such expenses incurred by any Proposer in responding to the RFP are entirely the responsibility of the Proposer and shall not be reimbursed in any manner by the City.

PROPOSAL MODIFICATIONS. Any Proposer who wishes to make modifications to a proposal already received by the City must withdraw its proposal in order to make the modifications. Withdrawals must be made in accordance with the terms and conditions of this RFP (see Withdrawal of Proposal). All modifications must be made in ink, properly initialed by Proposer's authorized representative, executed, and submitted in accordance with the terms and conditions of this RFP. It is the responsibility of the Proposer to ensure that modified or withdrawn proposals are resubmitted before the Submittal Deadline.

PROPOSAL PRICES AND NOTATIONS. All prices and notations must be in ink or typewritten. Prices shall be stated in units and offers made separately on each item. In case of conflict between unit prices and extended prices, unit prices will govern. Where there is a conflict between words and figures, words will govern.

PROPOSAL RESULTS. At discretion of the City, a proposal results tabulation with the names of Proposers will be available upon the written request after contract award, if any. The City reserves the right to postpone the Submittal Deadline and opening of proposals any time before the date and time announced in the RFP or subsequent addenda.

PROPRIETARY INFORMATION. Pursuant to *Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, proposals submitted in response to this RFP shall be held confidential by Authority and shall not be subject to disclosure under the California Public Records Act (Cal. Government Code section 6250 *et seq.*) until after either City and the successful proposer have completed negotiations and entered into an Agreement or City has rejected all proposals. All correspondence with the City including responses to this RFP will become the exclusive property of the City and will become public records under the California Public Records Act. Furthermore, the City will have no liability to the Proposer or other party as a result of any public disclosure of any proposal or the Agreement.

If a Proposer desires to exclude a portion of its proposal from disclosure under the California Public Records Act, the Proposer must mark it as such and state the specific provision in the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if a Proposer submits trade secret information, the Proposer must plainly mark the information as "Trade Secret" and refer to the appropriate section of the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City is not in a position to establish that the information that a Proposer submits is a trade secret. If a request is made for information marked "Confidential", "Trade Secret" or "Proprietary", the City will provide Proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

RECYCLED PRODUCT PROCUREMENT. The City is committed to the conservation and protection of state and local resources, therefore:

- a. For all paper materials of any kind delivered to the City, by a contractor, supplier, or consultant, whether in the form of a product such as a cup or a deliverable such as a report, shall use recycled paper that bears

an imprint identifying the recycled content of the paper as not less than the 30% post-consumer fiber as specified in Section 12209 of the Public Contract Code. A product such as a cup may have the identifying logo and/or language on the packaging, while a deliverable such as a report shall have the identifying logo on the first page. This shall apply to all paper materials delivered to the city whenever practicable.

- b. Contractors and consultants shall use both sides of paper sheets whenever practicable.

REJECTION OF PROPOSALS AND WAIVER OF INFORMALITIES. Issuance of this RFP and receipt of proposals does not commit the City to award a contract. The City reserves the right to waive any irregularities and to reject any proposals, all proposals, or any part of any proposal presented and re-advertise for proposals. The City reserves the right to cancel the RFP and make no award. The City reserves the right to reject the proposal of any Proposer who previously failed to perform adequately for the City or any other governmental agency. The City expressly reserves the right to reject the proposal of any Proposer who is in default on the payment of taxes, licenses, or other monies due to the City.

RULES FOR SUBMITTING PROPOSALS.

- a. **Submittal Deadline.** Proposals must be submitted by the Submittal Deadline shown in this RFP and any subsequent addenda to this RFP.
- b. **Responsibility.** Proposer is solely responsible for ensuring its proposal is successfully received by the City in accordance with the RFP requirements before the Submittal Deadline. The City shall not be responsible for any delays in transmission errors or delays.
- c. **Extension of Submittal Deadline.** The City reserves the right to extend the Submittal Deadline when it is in the best interest of the City.
- d. **Forms.** To be considered for the award, each proposal shall be made on forms furnished by the City in this RFP.
- e. **Late Proposals.** The Submittal Deadline is firm. Proposals will not be accepted after the Submittal Deadline.
- f. **Signature.** To be considered for the award, each proposal shall be signed by an authorized representative of the Proposer.

SITE EXAMINATION. If applicable or otherwise required by City, Proposer may visit the City and its physical facilities and determine the local conditions which may in any way affect the performance of the Services; familiarize themselves with all federal, state and local laws, ordinances, rules, regulations, and codes affecting the performance of the Services; make such investigations, as it may deem necessary for performance of the Services at its proposal price within the terms of RFP; and correlate its observations, investigations, and determinations with the requirements of the RFP.

SUBMITTAL METHOD. Three complete bound copies of the proposal and one PDF electronic copy on CD or flash drive shall be submitted. A fee schedule for the requested services shall be submitted with the proposal. Proposal shall be delivered to the Milpitas City Hall Public Service Counter, Milpitas City Hall, 455 E. Calaveras Boulevard, Milpitas, California, 95035 to the attention of Lyhak Eam, Engineering Department.

TAXES. Successful Proposer shall pay all federal, state and local taxes, levies, duties, and assessments of every nature due in connection with any Services under the Agreement and shall indemnify and hold harmless the City from any liability on account of any and all such taxes, levies, duties, assessments, and deductions. Proposal prices shall include said taxes.

TERMS OF THE OFFER. The City reserves the right to negotiate final contract terms with any Proposer selected. Proposer understands and acknowledges that the representations above are material and important and will be

relied on by the City in the evaluation of the proposal. Proposer misrepresentation shall be treated as fraudulent concealment from the City of the facts relating to the proposal.

WITHDRAWAL OF PROPOSAL. Following the Submittal Deadline, Proposer may not withdraw its proposal for a period of ninety (90) calendar days from the date of opening and the proposal must remain open and firm. At no time may the successful Proposer(s) withdraw their proposal. Proposer's authorized representative may withdraw proposals prior to the Submittal Deadline.

LIST OF DOCUMENTS TO BE RETURNED WITH PROPOSAL

**THIS FORM MUST BE PRINTED OUT, COMPLETED AND
SUBMITTED WITH THE PROPOSAL**

RFP: Underground Utility Locating Services

REQUIRED PROPOSAL DOCUMENTS TO BE RETURNED	RFP page numbers <small>(for reference)</small>	INCLUDED (Indicate Yes or No for items 1 through 8)	IF NOT, EXPLAIN
1. This form			
2. Narrative Proposal (Including Company Profile and Execution Plan)			
3. Certification of Proposer			
4. Non-Collusion Declaration			
5. Proposer's Statement Regarding Insurance Coverage			
6. Worker's Compensation Insurance Certificate			
7. Nondiscriminatory Employment Certificate			
8. Wage Theft Certification			
9. References			

Failure to complete, sign (where required), and return the above documents with your proposal may render it nonresponsive and thus be rejected by the City.

ACKNOWLEDGMENT

PROPOSER NAME (Company Name): _____

PRINT NAME AND TITLE OF AUTHORIZED OFFICIAL OFFERING THE PROPOSAL:

AUTHORIZED SIGNATURE: _____ Date: _____

NARRATIVE PROPOSAL – DO NOT RETURN THIS FORM

RFP: Underground Utility Locating Services

NARRATIVE PROPOSAL FORMAT – Use this as a guide to write your proposal.

In order to be fully compliant with the requirements of the RFP, please follow this format exactly siting each heading (Cover Letter, Company Profile, etc.). Proposer may include any information they feel is relevant to the proposal, but at a minimum include each and every numbered and lettered item below in the written narrative proposal.

The proposal shall not exceed 50 pages, not including resumes and references which must be attached as appendices.

Once submitted, the proposal including any supplementary documents become the property of the City.

1. **Cover Letter** – The cover letter shall address items a through h:

- a. The cover letter is to introduce the Proposer and should contain the names, title, address, and telephone numbers of the individual(s) with authority to bind the Proposer during the period that the proposals are being evaluated.
- b. The cover letter shall identify the legal form of the firm, and if a corporation, shall identify in which state the firm was incorporated.
- c. The cover letter shall be signed by a principal of the firm or other person authorized to act on behalf of the firm.
- d. The proposal shall identify the location of the firm’s home office, and whether or not the firm has management staff in the San Jose/Oakland/San Francisco area.
- e. The number of employees.
- f. Name, address, and telephone number of the Proposer’s point of contact for a contract resulting from this RFP.
- g. Length of time Proposer has been providing services described in this RFP. Please provide a brief description.

h.) Proposer must include in their cover letter a complete disclosure of any alleged significant ***prior or ongoing*** contract failures, any civil or criminal litigation or investigation ***pending*** which involves the Proposer or in which the Proposer has been judged guilty or liable. If “None” proposer shall state as follows:

“Proposer has no prior or ongoing contract failures, civil or criminal litigation or pending investigation.”

Failure to comply with this provision will disqualify any proposal.

2. **Company Profile** – The Proposer shall provide a general description of the firm, including a brief history and its experience in providing similar services as those requested in this RFP. The City will only consider submittals from Proposers whose proposed team can demonstrate the following background and capabilities:

- a. A long term, well established entity in the State of California;
- b. Contractually commit that the team defined in the proposal will perform the Services under the

Agreement should it be chosen.

Each submittal should address the following areas:

- a. Describe your firm's capabilities, experience, and approach to implementing and performing Underground Utility Location Services for similar agencies. Included shall be a description of both public agency, private companies, or corporations your firm has provided services within the past five (5) years. Include the following information:
 - b. Project Public Agency, Private Company or Corporation
 - c. Description and frequency of services provided
 - d. Number of years Proposer has performed these services
 - e. Client reference name and contact email and telephone number;
 - f. Provide an organizational chart showing the proposed team for this project. Also, include resumes for key individuals showing their experience with these types of projects.
 - g. Provide a description of how your firm is uniquely qualified for this project.
 - h. Provide details on the training and certifications held by Proposer's employees that will conduct the Underground Utility Locates in the field
 - i. Provide details on the equipment Proposer will use to perform the services
 - j. A statement that discloses any past, ongoing or potential conflicts of interest that the firm may have or may develop as a result of performing the Services specified in this RFP.
3. **Execution Plan** – The plan represents the Proposer's offer of Services to the City. The proposed execution plan must include a detailed work plan describing how the Proposer will meet the project objective in the most cost-effective and timely manner. This section is to provide a detailed explanation of the Proposer's approach in performing the Services described in the RFP – **SEE ATTACHMENT A – SCOPE OF SERVICES.**
4. **Personnel Assigned** – Include all of the following: (Answer items a through d)
- a. A project manager authorized to act on behalf of the firm must be designated and shall be the principal contact for the City.
 - b. Identify any individuals expected to have backup responsibilities.
 - c. Provide a brief resume/background of the specific individuals assigned to this project; resumes should not exceed one paragraph per person.
 - d. The proposal shall state that no changes in key personnel are to be made without written consent of the City.
- If, and when the City interviews prospective firms, such persons shall be in attendance and materially contribute to the discussion.
5. **References** – This section shall consist of a list of three references for work of a similar nature as that required by the City, performed within the last three years. Proposers are directed to use the attached References form to list references.
6. **Proposed Compensation** – This section shall consist of a detailed outline of Proposer's proposed compensation for Services outlined in Attachment A – Scope of Services.

CERTIFICATION OF PROPOSER

**THIS FORM MUST BE PRINTED OUT, COMPLETED AND
SUBMITTED WITH THE PROPOSAL**

RFP: Underground Utility Locating Services

By listing the Addenda Numbers below and checking the box next to “ADDENDA” below, Proposer acknowledges receipt of Addenda Number (s) __, __, __, __, from the City’s website pertaining to this RFP (if any). ADDENDA:

By checking the box next to “QUESTIONS” below, Proposer acknowledges receipt of Questions and Answers from the City’s website pertaining to this RFP (if any): QUESTIONS:

I/We (Insert Company Name) _____ agree to provide the Services as stipulated in this RFP and pricing as indicated in the Proposal. I/We further agree that the below; undersigned is authorized by the (Insert Company Name) _____ to bind the company in contract for the specified contract term. All exceptions (if applicable) are attached as an addendum to this pricing proposal. I understand that the City may not accept exceptions to the RFP. I/We further agree that if awarded the contract, to abide the terms and conditions of the contract and not to materially modify such terms without expressed written consent of the City Purchasing Agent.

Company Name: _____ Legal Entity Type: _____

Authorized Contact Title: _____ Print Contact Name: _____

Contact Signature: _____ Contact Email Address: _____

Contact Telephone: _____ Contact Fax: _____

Proposer’s Address: _____ City, State and ZIP Code: _____

Taxpayer I.D. No.: _____ Business License No.: _____

DIR Registration No. (if applicable): _____

NON-COLLUSION DECLARATION

**THIS FORM MUST BE PRINTED OUT, COMPLETED AND
SUBMITTED WITH THE PROPOSAL**

RFP: Underground Utility Locating Services

The undersigned declares:

I am the _____ of _____, the party making the foregoing proposal.

The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The proposal is genuine and not collusive or sham. The Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham proposal, or that anyone shall refrain from bidding. The Proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Proposer or any other Proposer, or to fix any overhead, profit, or cost element of the proposal price, or that of any other Proposer, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract. All statements contained in the proposal are true. The Proposer has not, directly or indirectly, submitted its proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham proposal and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

Name of Proposer _____

Signature _____

Name _____

Title _____

PROPOSER'S STATEMENT REGARDING INSURANCE COVERAGE

**THIS FORM MUST BE PRINTED OUT, COMPLETED AND
SUBMITTED WITH THE PROPOSAL**

RFP: Underground Utility Locating Services

PROPOSER HEREBY CERTIFIES that the Proposer has reviewed and understands the insurance coverage requirements specified in the RFP. Should the Proposer be awarded the contract for the Services, Proposer further certifies that the Proposer can meet the specified requirements for insurance, including insurance coverage of the subcontractors, and agrees to name the City as additional insured for the Services specified.

Name of Proposer (Person, Firm, or Corporation)

Signature of Proposer's Authorized Representative

Name and Title of Authorized Representative

Date of Signing

WORKER'S COMPENSATION INSURANCE CERTIFICATION

**THIS FORM MUST BE PRINTED OUT, COMPLETED AND
SUBMITTED WITH THE PROPOSAL**

RFP: Underground Utility Locating Services

The Proposer shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

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

Name of Proposer (Person, Firm, or Corporation)

Signature of Proposer's Authorized Representative

Name and Title of Authorized Representative

Date of Signing

NONDISCRIMINATORY EMPLOYMENT CERTIFICATE

THIS FORM MUST BE PRINTED OUT, COMPLETED AND SUBMITTED WITH THE PROPOSAL

RFP: Underground Utility Locating Services

Certificate Generally

Consistent with a policy of nondiscrimination in employment on contracts of the City and in furtherance of the provisions of Section 1735 and 1777.6 of the California Labor Code a "contractor's obligation for nondiscriminatory employment certificate" as hereinafter set forth shall be attached and incorporated by reference as an indispensable and integral term of all RFP specifications and contracts of the City for the construction, repair, or improvement of public works.

Contents of Certificate

The Proposer's obligation for nondiscriminatory employment is as follows:

If awarded the contract and in performing the Services under the Agreement, the Proposer agrees as follows:

1. The Proposer will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification.

2. The Proposer will take positive action or ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification. Such action shall include but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Proposer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

3. The Proposer will, in all solicitations or advertisements for employees placed by or on behalf of the Proposer, state that all qualified applicants will receive consideration for employment without regard to race, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification.

4. The Proposer will send to each labor union or representative of workers, with which the Proposer has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City advising the said labor union or workers' representative of the Proposer's commitments under this provision, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. The Proposer will permit access to the Proposer's records of employment, employment advertisements, application forms, and other pertinent data and records by the City, the Fair Employment Practices

Commission, or any other appropriate Agency of the State designated by the City for the purposes of investigation to ascertain compliance with the Proposer's obligation for nondiscriminatory employment provisions of the Agreement, or Fair Employment Practices statute.

6. A finding of willful violation of the nondiscriminatory employment practices article of this contract or of the Fair Employment Practices Act shall be regarded by the City as a basis for determining that as to future contracts for which the Proposer may submit quotes, the Proposer is a "disqualified proposer" for being "non-responsible".

7. The City shall deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has investigated and determined that the Proposer has violated the Fair Employment Practices Act and has issued an order under Labor Code Section 1426 or obtained an injunction under Labor Code Section 1429.

8. Upon receipt of any such written notice, the City shall notify the Proposer that unless he or she demonstrates to the satisfaction of the City within a stated period that the violation has been corrected, he or she shall be declared a "disqualified proposer" until such time as the Proposer can demonstrate that he or she has implemented remedial measures, satisfactory to the City, to eliminate the discriminatory employment practices which constituted the violation found by the Fair Employment Practices Commission.

9. Upon receipt from any person of a complaint of alleged discrimination under any City contract, the City Administrator shall ascertain whether probable cause for such complaint exists. If probable cause for the complaint is found, the Administrator shall request the City Council to hold a public hearing to determine the existence of a discriminatory practice in violation of this contract.

10. In addition to any other remedy or action provided by law or the terms of this contract, the Proposer agrees that, should the Council determine after a public hearing duly noticed to the Proposer that the Proposer has not complied with the nondiscriminatory employment practices provisions of this contract or has willfully violated such provisions, the City may, without liability of any kind, terminate, cancel, or suspend this contract, in whole or in part. In addition, upon such determination, the Proposer shall, as a penalty to the City, forfeit a penalty of Twenty-Five Dollars and Zero Cents (\$25.00) for each calendar day, or portion thereof, for each person who was denied employment as a result of such noncompliance. Such monies shall be recovered from the Proposer. The City may deduct any such penalties from any monies due to the Proposer from the City.

11. The Proposer certifies to the City that he or she has met or will meet the following standards for positive compliance, which shall be evaluated in each case by the City:

- a. The Proposer shall notify all supervisors and other personnel officers in writing of the content of the nondiscrimination provision and their responsibilities under it.
- b. The Proposer shall notify all sources of employee referrals (including unions, employment agencies, advertisements, Department of Employment) of the content of the nondiscrimination provision.
- c. The Proposer shall file a basic compliance report as required by the City. Willfully false statements made in such reports shall be punishable as provided by law. The compliance report shall also specify the sources of the workforce and who has the responsibility for determining whom to hire, or whether or not to hire.
- d. The Proposer shall notify the City of opposition to the nondiscrimination provision by individuals, firms or organizations during the period of this contract.

12. Nothing contained in this Proposer's Obligation for Nondiscriminatory Employment Certificate shall be construed in any manner to prevent the City from pursuing any other remedies that may be available at law.

13. The Proposer certifies to the City that the Proposer will comply with the following requirements with regard to all subcontractors and suppliers:

- a. The Proposer will include the provisions of the foregoing paragraphs (1) through (8) in all subcontracts and in any supply contract to be performed within the State of California, so that such provisions will be equally binding upon each subcontractor and each supplier.
- b. The Proposer will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Proposer becomes involved in, or is threatened with, litigations with a subcontractor or supplier as a result of such direction by the City, the Proposer may request the City to enter into such litigation to protect the interests of the City.

Signature of Proposer's Authorized Representative

Name and Title of Authorized Representative

Date of Signing

WAGE THEFT CERTIFICATION

**THIS FORM MUST BE PRINTED OUT, COMPLETED AND
SUBMITTED WITH THE PROPOSAL**

RFP: Underground Utility Locating Services

The Proposer certifies subject to penalty for perjury that the option checked below relating to the Proposer and its subcontractors' status in regard to wage theft is true and correct:

- Neither the Proposer nor any of its subcontractors have been found by a final court order or administrative action of an investigatory government agency to have violated federal, state or local wage and hour laws, including but not limited to the federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance, within the past five (5) years from the bid submission deadline.

- The Proposer or its subcontractors have been found by a final court order or administrative action of an investigatory government agency to have violated federal, state or local wage and hour laws, including but not limited to the federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance, within the past five (5) years from the bid submission deadline. For each violation, the Proposer shall provide a copy of (i) the final court order and/or final administrative decision/action; and (ii) documents demonstrating either that the order/decision/action has been fully satisfied, or if the order/decision/action has not been fully satisfied, documents evidencing a payment or other alternative plan approved by the court/government agency to satisfy the order/decision/action and proof that the Proposer or its subcontractors are in compliance with that plan as of the bid submission deadline.

- The City has exempted the Proposer from the requirements of the City of Milpitas Wage Theft Procurement Policy.

Signature: _____

Printed Name: _____

Title: _____

Firm Name: _____

Date: _____

REFERENCES

**THIS FORM MUST BE PRINTED OUT, COMPLETED AND
SUBMITTED WITH THE PROPOSAL**

RFP: Underground Utility Locating Services

Proposer: _____
(Legal Name of Entity Submitting Proposal)

List three references for work of a similar nature to the Services performed within the last three years.

1. _____

_____	_____
Name of Agency	Agency Address
_____	_____
Contact Name	Contact Title
_____	_____
Contact Telephone	Contact Email Address
_____	_____
Contract Period	Contract Amount

Description of Services Performed

2. _____

_____	_____
Name of Agency	Agency Address
_____	_____
Contact Name	Contact Title
_____	_____
Contact Telephone	Contact Email Address
_____	_____
Contract Period	Contract Amount

Description of Services Performed

3. _____

_____	_____
Name of Agency	Agency Address
_____	_____
Contact Name	Contact Title
_____	_____
Contact Telephone	Contact Email Address
_____	_____
Contract Period	Contract Amount

Description of Services Performed

I hereby certify that the Proposer performed the work listed above.

Signature of Proposer

Name

Date

ATTACHMENT A – SCOPE OF SERVICES

RFP: Underground Utility Locating Services

1. PROJECT OVERVIEW

As an operator of underground utilities, the City of Milpitas participates in the Underground Service Alert (USA North 811) regional notification center in accordance with California Government Code 4216. Currently, the City receives and responds to an average of 20 notifications for planned excavation per day, and the City is seeking a certified Contractor to perform its Underground Utility Location Service obligations.

The Contractor shall conduct utility locating services for the City of Milpitas in compliance with the requirements of the State of California Government Code 4216. Utilities will include: water, recycled water, landscape irrigation mains, sanitary sewer, storm sewer, street lights, street light conduit, traffic signals, traffic loops, fiber optic cable, existing utilities abandoned in-place, and all related appurtenances. Locating services shall be provided for City owned underground utilities located within the public and private streets, easement right of way, and upon City owned property including parks, fire stations, community buildings, etc.

Contractor will receive facility locate requests directly from Underground Service Alert (USA) North One-Call Center and manage the entire locating process for the City of Milpitas. Contractor shall furnish all labor, supervision, tools, materials, paint, flags, equipment (including a hardware compatible with the existing communication systems used by the Underground Service Alert (USA) North One-Call Center and transportation to perform Underground Facilities Locating and Marking services, as requested by the City of Milpitas and the USA North One-Call Center on behalf of Owner.

2. SCOPE OF SERVICES

- Contractor will receive and respond to all Excavation notices directed to City of Milpitas through the One-Call Center in accordance with current State Laws and Codes. Contractor shall provide such Markings and protection as may be required. Such protection shall include painting, flagging or staking in accordance with the current State Laws governing the protection of Underground Facilities.
- Responses to Excavation notices shall comply with California Government Code Section 4216.3 and shall be within two working days of the notification, excluding weekends and holidays, or before the start of excavation work, whichever is later.
- Contractor will comply with all applicable federal, state, county and local laws, ordinances and regulations including current California Government Code Section 4216.
- Contractor will be responsible for obtaining all licenses, permits, inspections and other authorizations required for Contractor's performance of the Services.
- Contractor's personnel shall be trained, certified to perform underground utility locating services, and be proficient in the use of approved locating devices, methods, marking

procedures, communicative skills, and record-keeping requirements necessary to perform the Locate Request and Marking tasks.

- Contractor's locating equipment or devices are subject to City of Milpitas approval and shall be a minimum of a single-frequency utility locating device.
- All Underground Facilities shall be electronically located, except where electronically impossible and another means of positive location shall be implemented.
- All underground facility location and field mark activities shall comply and be within the mandated Tolerance Zone of 24 inches on each side of the outside diameter of each utility or as specified by California law.
- Contractor's personnel shall always represent City of Milpitas in a courteous and professional manner.
- Contractor shall receive and record Locate Requests from the One-Call Center during normal service hours consistent with the requirements of USA North One-Call Center but should be no less than Monday through Friday, (7:00 a.m. through 5:00 p.m. PST), except for holidays observed by the One-Call Center.
- Contractor shall receive and record Emergency Locate Requests at any time of any day.
- All Emergency notices shall be responded to within two (2) hours of receipt by Contractor, unless otherwise required by law or regulation to be sooner, unless otherwise agreed to with requesting party or excavator.
- Contractor shall provide all circuits and equipment required to receive requests from USA North One-Call Center. City of Milpitas shall be responsible for all other contractual and cost obligations from the One-Call Center.
- Contractor shall be responsible to make arrangements with all Excavators for Locate purposes.
 - All Locate Requests will be processed within the required timeframe or contact will be made with the Excavator to arrange an appropriate time to perform the Locate.
 - All Excavators will be called as soon as possible to confirm requested time of appointments or to make appropriate arrangements, as required.
 - Contractors' administrative responsibility shall include, but not be limited to, receipt, recording, dispatching, reporting, monitoring and closing out of Notice of Excavation.
- When the Underground Facility is "Identifiable, but Un-locatable", Contractor must contact Owner.
 - Owner will then determine the course of action to be taken.
 - If no course of action is successful, Contractor shall notify the Excavator of the presence of any "Identified, but Un-locatable" Facilities of City of Milpitas and shall caution the Excavator that any location information supplied may not be within the scope of the definition of Reasonable Accuracy.

In the event Contractor fails to meet the demands for Locate Requests, the City of Milpitas, in its sole determination, shall have the right to use its own employees or the services of another outside vendor to satisfy such needs. City of Milpitas shall then invoice Contractor for City's costs in using its own employees or other vendor.

- If requested by the City of Milpitas, Contractor shall provide additional services, such as Site Surveillance (standby protection) or Extended Locate.
- Additional visits to the Excavation Site required due to Contractor's unsatisfactory performance or for re-mark shall not be treated or considered as an additional ticket.
- Contractor shall keep a record for a minimum of two (2) years of each Notice of Excavation indicating the time and date; when locate was received, the type of facility marked, date and name of the call-back person notified.
- Contractor shall at all times afford City of Milpitas access to any and every part of the Services so as to enable them to inspect and ensure that the Services being performed conform to the terms of the Agreement.
- Contractor 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.
- Contractor shall share excavation notice data, initial and closed, via their electronic management system, and shall provide an electronic positive response through the regional notification center before the legal excavation start date and time as allowed by law commencing January 1, 2018.
- In the event that an Underground Facility is damaged by a third party as a result of Contractor errors and omissions to properly mark such Underground Facilities in accordance with its contractual agreement with the City of Milpitas, all applicable laws and regulations, and state laws governing utility protection, the Contractor shall be liable for full costs for such damage, unless such damages resulted due to circumstances or factors beyond the control of the Contractor. Contractor will also be responsible for downtime/delays to Company due to inaccurate locates.
- Contractor shall investigate incidents of damage, as requested by City of Milpitas, for accuracy of the Locates(s).
 - Contractor shall respond, within one hour, to the work site following notification by City of Milpitas.
 - Contractor shall submit a written report of damage investigations within 5 days and maintain a copy of such written reports for a period of three (3) years.
 - Contractor and City of Milpitas shall hold meetings as needed to review completed investigation reports, and to assess responsibility.

- Should the damage review process between City of Milpitas and Contractor reveal that City of Milpitas does not find Contractor liable for damage, City of Milpitas agrees to hold Contractor harmless from any ensuing damages owed 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.
- Should the damage review process between City of Milpitas and Contractor reveal that the Excavator is responsible for the damage, Contractor shall provide testimonial and investigative support for any recovery efforts by the City of Milpitas.
- Should the damage review process between City of Milpitas and Contractor reveal that Contractor is liable for the damage, Contractor agrees to hold City of Milpitas 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.
- Contractor will be responsible for any costs involved with distributing electronic mapping, or updates to maps and records for its employees.
- Contractor shall retain and safeguard City's location maps and records.
- Contractor shall be responsible to notify the City of any discrepancies or omissions in the City of Milpitas provided records, to the extent Contractor can determine the discrepancies and omissions.
 - Contractor shall acknowledge that City maps and records of underground facilities may not be available and to the extent that maps are available, they do not reflect the actual physical location of Underground Facilities and may not exist for all installations.
 - Contractor shall be solely responsible for determining the existence of Underground Facilities.
 - Contractor shall be responsible for and liable for any failure to locate Underground Facilities consistent with the provisions of this Statement of Services.

3. CITY RESPONSIBILITIES

- The City of Milpitas shall provide maps, records, data to the Contractor at no charge. Documents shall be provided in an electronic PDF format or GIS where available.
- City shall provide sufficient copies and updates of the documents of City owned underground facilities for all excavation sites within City right of way including streets, easements, and City owned property. The documents provided will reflect the most current information. The City of Milpitas shall work with the Contractor to arrange for the USA North regional call to send all Locate Requests directly to Contractor and shall pay the USA North fees for Locator Request transmittals. The City shall forward any direct Locate Requests received from USA North to the Contractor.

4. INVOICING and REPORTING

- The Contractor shall provide invoices to the City with sufficient documentation in compliance with City requirements on a monthly basis. Contractor's invoices shall include the following:
 - City of Milpitas Name, Attention Engineering Department

- Period during which the services were performed (Billing Period)
- Total number of Locate Requests received and performed
- Total number and nature of additional services performed for City of Milpitas
- Total charges for the Billing Period

5. **DEFINITIONS**

- A monthly report will accompany and support the month invoice, which will include an itemized tabulation of the following information with respect to each Locate Request the Contractor received:
 - Ticket number
 - Locate Date
 - Locations of proposed excavation
 - Type of request

- A. “Emergency” – Any condition constituting a clear and present danger to life, health or property, or a customer service outage.

- B. “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.

- C. “Excavation Site” – The area where an Excavator intends to perform or actually performs Excavation.

- D. “Excavator” – Any Person who engages directly in Excavation and/or the design of Excavation and who requests the location of Owner’s Underground Facilities.

- E. “Excavator Notification” – Notification given to the Excavator that Underground Facilities are not present at the Excavation Site.

- F. “Facility Owner” – The owner of a specific Underground Facility. For purposes of this Agreement, the Facility Owner is the Owner. “Identified, But Un-locatable” – An Underground Facility, the presence of which is known, but cannot be field-marked with Reasonable Accuracy.

- G. “Locatable Underground Facility” – Facilities for which the Tolerance Zone can be determined by the locator using generally accepted practices such as as-built construction drawings, system maps, probes, locator devices or any other type of proven technology for location.

- H. “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 $\frac{1}{2}$ hour or more to complete.

6. FEE PROPOSAL/COMPENSATION

The Contractor shall provide two separated seal envelopes with pricing for:

1. USA services for the remaining fiscal year 2019-2020 (April 1, 2020 to June 30,2020)
2. USA services for one full fiscal year (July 1 to June 30)

ATTACHMENT B – SAMPLE PROFESSIONAL SERVICES AGREEMENT

RFP: Underground Utility Locating Services

[AGREEMENT FORM ATTACHED BEHIND THIS PAGE]

**CITY OF MILPITAS
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of _____, 20____ (“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 [***INSERT NAME***], a [***INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY***] with its principal place of business at [***INSERT ADDRESS***] (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:

_____ (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. **[Alternatively, Scope of Services can be included here and all subsequent exhibits renumbered accordingly.]**

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. **[Alternatively, Schedule of Charges may be included here and all subsequent exhibits renumbered accordingly.]**

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of \$ _____ **Dollars and _____ Cents [Insert amount of compensation]**. 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. [Insert Term or Time of Performance].

[If engaging the Consultant for a particular term, use the following provision]

The term of this Agreement shall be from **[Insert start date]** to **[Insert end date]**, 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. **[If the City has specific milestones or timelines for performance, please input those requirements in the "Activity Schedule" attached as Exhibit C, otherwise mark reserved in Exhibit C.]**

[If engaging the Consultant to perform a discrete task with a specified deadline, use the following provision]

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon the Effective Date. Consultant shall complete the services required hereunder within **[Insert number of calendar days for performance of the services – if more detail is required attach "Activity Schedule" as Exhibit C, otherwise mark reserved in Exhibit C.]**

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.

[Delete the following provision and renumber all further provisions, if not applicable.]

15. City Material Requirements.

Consultant is hereby made aware of the City’s requirements regarding materials, as set forth in **[Insert the name of the document that contains the City’s standard material requirements]**, which are deemed to be a part of this Agreement.

16. 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.

17. 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.

18 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.

19. Organization

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

20. Limitation of Agreement.

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

21. 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: [***INSERT NAME & DEPARTMENT***]

CONSULTANT:

[***INSERT NAME, ADDRESS & CONTACT
PERSON***]

and shall be effective upon receipt thereof.

22. 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.

23. 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.

24. 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.

25. Severability

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

26. 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.

27. Non-Waiver

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

28. Time of Essence

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

29. 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.

30. 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.

31. 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 [***INSERT NAME***]**

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

CITY OF MILPITAS

[*INSERT CONSULTANT NAME***]**

Approved By:

Steven G. McHarris, Interim City Manager

Signature

Date

Name

Approved As To Form:

Title

Christopher J. Diaz, City Attorney

Date

Approved:

DIR Registration Number (If Applicable)

Walter C. Rossmann, Risk Manager/Director
of Finance

Approved As To Content:

[INSERT NAME], [INSERT TITLE]

EXHIBIT A
Scope of Services

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.

EXHIBIT C
Activity Schedule

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 XX. 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:

_____ **Additional Insured Status and Primary/Non-Contributory Language:**

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

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

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

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

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

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

_____ **Waiver of Subrogation:**

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

___ Completed Operations

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

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

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

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

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

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

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

Acceptability of Insurers:

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

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

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract of work.

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

Subcontractors:

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

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

Verification of Coverage:

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

Special Risks or Circumstances

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

Failure to Comply:

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

Applicability of Coverage:

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