

**LICENSE BETWEEN CITY OF MILPITAS AND
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
FOR USE OF CITY REAL PROPERTY**

This license ("LICENSE") is made and entered by and between the CITY OF MILPITAS ("CITY"), a municipal corporation of the State of California, and the Bay Area Air Quality Management District the ("LICENSEE"), a California Public Agency, upon execution by the CITY ("Effective Date").

RECITALS

- A. 
- B. LICENSEE is a Local agency dedicated to monitoring and managing the air quality of the Bay Area, including Milpitas; and
- C. All CITY residents directly benefit if the air quality in the area is improved; and
- D. LICENSEE desires to utilize a portion of the Premises ("Location") to install one air monitoring system on each of the locations for a period of not more than one year.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1. PURPOSE.

LICENSEE enters into this LICENSE for the purpose of installing and maintaining two air quality monitoring devices.

SECTION 2. LICENSE

- A. Subject to the other terms, provisions and conditions of this LICENSE, CITY hereby grants a license to LICENSEE to utilize that portion of the Premises further indicated in **Exhibit A**, attached hereto for the purposes of installing two air quality monitoring devices and other related equipment (collectively "Equipment"), which Equipment is further described in **Exhibit B**, attached hereto. LICENSEE acknowledges and agrees that this LICENSE is expressly subject to CITY's reasonable security and safety requirements including, without limitation, CITY's right to accompany LICENSEE's personnel when any work is being done on the Equipment.
- B. LICENSEE acknowledges and agrees that LICENSEE bears all risk of loss or damage from any cause related to this LICENSE.

SECTION 3. TERMINATION WITHOUT CAUSE.

This LICENSE may be terminated by either party without cause upon sixty (60) days' prior written notice to the other. CITY's City Manager is authorized to terminate this LICENSE on behalf of CITY.

SECTION 4. LICENSE CONSIDERATION.

The rights and privileges granted by CITY to LICENSEE under this LICENSE are in consideration of the public benefits that will result from LICENSEE's use of the Premises.

Licensee shall pay City One Thousand Two Hundred Fifty and No/100 dollars (\$1,250.00) per sites per year, payable upon execution of this Agreement, to offset the costs of electricity used by the Equipment.

SECTION 5. USES PERMITTED.

LICENSEE may access the Building's power supply during the term of this LICENSE. LICENSEE shall not access or use or permit the access or use of the power supply for any other purpose, without obtaining the prior written consent of CITY.

LICENSEE shall not do or permit anything to be done in or about the City Equipment which will in any way obstruct or interfere with CITY's use of the Premises or with the rights of other parties which may utilize the Premises in the future. LICENSEE shall not commit or suffer to be committed any waste to the Premises or other property. LICENSEE acknowledges that no warranties or representations have been made by CITY or CITY's agents, contractors, employees, or directors regarding the fitness or suitability of the Premises for the conduct of LICENSEE's activities.

SECTION 6. INTERFERENCE.

Any interference or other adverse impact caused by LICENSEE's activities or work under this LICENSE to the Premises or any CITY use of the Premises (including such uses as CITY may allow third parties) shall be remedied by LICENSEE promptly upon receipt of written notice from CITY that the Premises and/or activities conducted thereon are experiencing such interference or other adverse impact. LICENSEE shall use its best efforts to promptly remedy any interference or other adverse impact as soon as practicable. If such interference or other adverse impact cannot be eliminated by LICENSEE to CITY's satisfaction within thirty (30) days from the date of the written notice of the interference or other adverse impact from CITY to LICENSEE, then CITY may terminate this LICENSE upon notice to LICENSEE pursuant to **Section 15.**

SECTION 7. MAINTENANCE AND REPAIRS.

LICENSEE shall be responsible for making all repairs to the Premises which in CITY's determination has become damaged because of any act or omission of LICENSEE, its agents, contractors, employees or invitees. LICENSEE shall repair the Premises or Building to a condition or standard that is at least equal in quality to the condition or standard of the Premises immediately prior to the act or omission of LICENSEE. Said repairs shall be completed within thirty (30) days of notice by CITY that they are needed. If LICENSEE has not made such repairs within such time, CITY shall have the right to make such repairs itself and bill LICENSEE for the cost thereof.

SECTION 8. ALTERATIONS AND MODIFICATIONS.

Except as expressly and specifically authorized under this LICENSE, LICENSEE shall not make any alteration, modification or improvement to the Premises without CITY's prior written consent.

SECTION 9. DAMAGE OR DESTRUCTION.

In the event that any portion of the Premises are damaged or destroyed from any cause to the extent that the Premises is rendered totally or partially inaccessible or unusable, either party may terminate this LICENSE by giving a ten (10) day written notice to the other party.

SECTION 10. SURRENDER.

Upon the expiration or sooner termination of this LICENSE, LICENSEE shall, at its sole cost and expense remove its Equipment from the Premises.

SECTION 11. PERSONAL LICENSE.

This license is personal to LICENSEE. LICENSEE shall not assign or sublicense this LICENSE, either in whole or in part. Any such assignment or sublicense of this LICENSE by LICENSEE shall be void and of no effect unless LICENSEE first obtained the written consent of CITY prior to the assignment or sublicense. Notwithstanding the provisions of **Sections 2 and 15** of this LICENSE, CITY may immediately revoke and terminate this LICENSE if LICENSEE assigns or sublicenses this LICENSE without CITY’s prior written consent.

SECTION 12. WAIVER.

The waiver by CITY of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

SECTION 13. NOTICES.

Any notice which is required to be given hereunder or which either party may desire to give to the other, shall be in writing, and may be personally delivered or given by mailing the same by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

CITY: City of Milpitas
Engineering Division
455 E. Calaveras Boulevard
Milpitas, CA, 95035

Attn: Greg Armendariz, City Engineer

LICENSEE: Bay Area Air Quality Management District
Air Sampling Unit
939 Ellis Street
San Francisco, CA 94109

Attn: Satnam Hundel, Business Manager

or such other place or places as the parties hereto may from time to time designate. Personal delivery of notices shall be deemed to be equivalent to mailing.

SECTION 14. SUCCESSORS AND ASSIGNS.

The obligations, covenants and conditions applicable to LICENSEE herein shall apply to and bind the heirs, successors, executors, administrators, sublicensees and assigns of LICENSEE.

SECTION 15. DEFAULT.

Notwithstanding **Section 2** of this LICENSE, if LICENSEE fails to timely perform any work or other obligation under this LICENSE within thirty (30) days after receipt of notice from CITY specifying such failure, then LICENSEE shall be deemed in default and CITY may exercise any remedies available at law or in equity, including but not limited to terminating this LICENSE, upon three (3) days’ prior written notice to LICENSEE. CITY shall have the authority to disconnect and remove LICENSEE’s Equipment upon the conclusion of this three (3) day notice

period. CITY shall have no liability whatsoever for or arising out of the disconnection of Licensee's Equipment.

SECTION 16. COMPLIANCE WITH LAWS.

LICENSEE shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments governing or related to the performance of any and all activities permitted or required by this LICENSE.

SECTION 17. MISCELLANEOUS.

- A. This instrument contains all of the agreements and conditions entered into and made by and between the parties and may not be modified orally, or in any manner, other than by an agreement in writing signed by all the parties hereto or their respective successors-in-interest.
- B. Time is and shall be of the essence of each term and provision of this Agreement.
- C. LICENSEE shall not discriminate in any way against any person on the basis of age, sex, sexual orientation, race, color, creed or national origin in connection with or related to the performance of work and LICENSEE's other obligations under this LICENSE.
- D. Each and every term, condition, covenant and provision of this Agreement is and shall be deemed to be a material part of the consideration for City's entry into this Agreement, and any breach hereof by LICENSEE shall be deemed to be a material breach. Each term and provision of this Agreement performable by LICENSEE shall be construed to be both a covenant and a condition.
- E. This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of, the State of California.
- F. The headings of the several paragraphs and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
- G. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either City or Company in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.
- H. All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if set forth fully herein.
- I. This Agreement shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either party.
- J. Days, unless otherwise specified, shall mean calendar days.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate on the date and year first written herein.

Date: _____

CITY OF MILPITAS:

LICENSEE:
**BAY AREA AIR QUALITY MANAGEMENT
DISTRICT**

By: _____
Thomas C. Williams, City Manager

By: _____
Jack P. Broadbent, Executive Officer

Attest:

Mary Lavelle, City Clerk

Approved as to form:

Steven T. Mattas, City Attorney

Recommended by:

Greg Armendariz, Public Works Director/City Engineer

EXHIBIT "A"
PROXIMITY DIAGRAM

EXHIBIT "B"

DESCRIPTION OF EQUIPMENT

- 1 – Thermo Anderson Dioxin Sampler**
- 1 – Anderson PM 2.5, RAAS-300, Particulate Sampler**
- 1 – Met One PM 2.5, SASS, Speciation Sampler**
- 1 – 20 Amp Electrical Circuit tied to building power**

EXHIBIT "C"
INSURANCE REQUIREMENTS

LICENSEE, at LICENSEE'S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the Licensee's operation and use of the leased premises. The cost of such insurance shall be born by the Licensee.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).
2. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
3. Property insurance against all risks of loss to any tenant improvements or betterments.

B. Minimum Limits of Insurance

LICENSEE shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limit; and
2. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident; and
3. Property Insurance: Full replacement cost with no coinsurance penalty provision.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY. At the option of CITY, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officer, employees, agents and contractor; or LICENSEE shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY.

D. **Other Insurance Provisions**

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability
 - a. The City of Milpitas, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, LICENSEE; products and completed operations of LICENSEE; premises owned, leased or used by LICENSEE; and automobiles owned, leased, hired or borrowed by LICENSEE. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
 - b. LICENSEE's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of LICENSEE's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by LICENSEE shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
 - d. Coverage shall state that LICENSEE'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.
2. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY.

F. **Verification of Coverage**

LICENSEE shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the CITY:

CITY OF MILPITAS
Engineering Division
455 E. Calaveras Boulevard
Milpitas, California 95035

G. **Contractors and SubContractors**

LICENSEE shall include all Contractors and SubContractors as insured under its policies or shall obtain separate certificates and endorsements for each Contractor and SubContractors.