

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH ACCO ENGINEERED SYSTEMS FOR ANNUAL HVAC MAINTENANCE AND REPAIR

WHEREAS, Section I-2-3.09 of the Milpitas Municipal Code authorizes the City Council to award contracts without competition when the Purchasing Agent determines that there is only one source for the required supply or service; and

WHEREAS, on August 2, 2005 and again on August 1, 2007, the City Council approved ACCO Engineered Systems as a sole source pursuant to Municipal Code section I-2-3.09 for maintenance and repair services for the City Hall HVAC system based on the customized and proprietary nature of the software used for the City Hall HVAC control system; and

WHEREAS, in the past, each repair job has been handled on an individual basis.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City of Milpitas wishes to enter into an annual maintenance and repair contract with ACCO Engineered Systems to streamline the contracting and payment process.
3. The City Manager is authorized to execute a contract with ACCO Engineered Systems, as a sole source for the procurement, for the annual maintenance and repair of the City Hall HVAC system, for an amount not-to-exceed \$40,000.00 and subject to approval as to form by the City Attorney.

PASSED AND ADOPTED this _____ day of _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney



SHORT FORM PURCHASE OF SERVICE CONTRACT

The parties to this Short Form Purchase of Services Contract (Contract) do mutually agree and promise as follows:

1. Parties. The parties to this Contract are the CITY OF MILPITAS, CALIFORNIA, a municipal corporation (City) and the following named Contractor: **ACCO Engineered Systems**

(Contact Name) **Jack Holke**
(Street Address) **1133 Aladdin Ave.**
(City/State/Zip Code) **San Leandro, CA 94577**
(Telephone) **925-360-5704**
(Email Address) **jholke@accoes.com**
(Fax Number) **510-347-1318**
(Taxpayer ID #) **95-1625123**
(Milpitas Business License #) **02331**

2. Term. The effective date of this contract is **January 14, 2009** and it terminates **January 14, 2010** unless sooner terminated as provided herein. The term of this contract shall be for one (1) year with two (2) one (1) year renewal options.

3. Payment Limit. City's total payments to Contractor under this contract shall not exceed: **\$40,000.00 annually.**

4. Contractor's Obligations.

(a) To the satisfaction of the City's Project Manager, Contractor shall provide the following services: (Attach extra sheet/s if necessary)

Provide on-call and scheduled HVAC maintenance and repair.

(b) Contractor shall perform the above-referenced services at the following specified location/s:

**City Hall
455 E. Calaveras Blvd.
Milpitas, Ca 95035-5411**

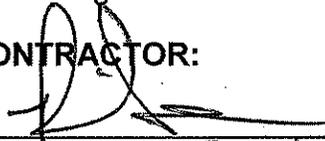
(c) Name or type of service:
Maintenance and repair parts and labor.

5. City's Obligations. City shall pay Contractor as follows: **not-to-exceed \$40,000.00 annually** as total payment for all services rendered.

6. Supplemental Conditions. This Contract is subject to the Supplemental Conditions attached hereto, which are incorporated herein by reference.

7. Signatures. These signatures attest the parties' agreement hereto:

CONTRACTOR:


Name and Title Rick Adams, Operations Mgr.

CITY OF MILPITAS, CALIFORNIA
a municipal corporation:

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

Approved as to content:

By: _____
City Project Manager

Approved as to Insurance:

By: _____
City Risk Manager


Prepared by City Purchasing Agent

SUPPLEMENTAL CONDITIONS

1. Contract Incorporation. This contract shall incorporate by reference all of the terms and conditions and preventative maintenance of the ACCOCare letter contract dated July 1, 2005 between ACCO Engineered Systems and the City of Milpitas. Said contract shall now be null and void.
2. Independent Contractor. It is expressly agreed that Contractor is to perform the services described herein as an independent contractor pursuant to California Labor Code Section 3353, under the control of the City as to the result of his work only but not as to the means by which such result is accomplished. Nothing contained herein shall in any way be construed to make Contractor or any of its agents or employees, an agent, employee or representative of the City. Contractor shall be entirely responsible for the compensation of any assistants used by Contractor in providing said services.
3. Termination. This Contract shall automatically terminate when the total accumulated compensation paid or due to Contractor under this Contract reaches \$40,000.00. The City shall not be responsible for compensating Contractor for any amounts in excess of \$40,000.00.
4. Cancellation. Either the City or Contractor may cancel this Contract at any time upon giving the other party five (5) days' written notice of such cancellation. In the event of cancellation, the City shall be liable only to pay to the Contractor compensation for services rendered up to the date of the Contract's cancellation.
5. Assignment. Contractor shall not assign this Contract, or any part thereof, or any right of the Contractor hereunder without the prior written consent of the City.
6. Indemnity. Contractor shall indemnify, defend and hold the City harmless from and against all claims, demands and causes of action for injury, death or damage to any person or property which may arise or result from the contractor's performance of this Contract or from acts or omissions of any person(s) employed by Contractor.
7. Anti-Discrimination. Contractor agrees to observe the provisions of the City of Milpitas Standard Operating Procedure 16.8 "Anti-Discrimination Policy" and Title VII of the Civil Rights Act of 1964, obligating every contractor or subcontractor under a contract or subcontract to the City of Milpitas for public works or for goods or service to refrain from discriminatory employment practices on the basis of the race, color, sex, sexual orientation, religious creed, national origin or ancestry of any employee of, or applicant for employment with, such contractor or subcontractor.
8. Business License. Pursuant to the City of Milpitas Municipal Code, Title III Business and Professions, Section 1-4.01 Requirement and Special Exemptions ... "it shall be unlawful for any person to transact and carry on any business, trade, profession, calling or occupation in the City of Milpitas without first having procured a license from said City ..."

9. Insurance. During the entire term of this Contract and any extension or modification thereof, the CONTRACTOR shall keep in effect insurance policies meeting the following insurance requirements detailed in **Exhibit A – Insurance Requirements – General**, attached.



EXHIBIT A INSURANCE REQUIREMENTS - GENERAL

Definition:

For purposes of this contract, the following definition applies: City of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the City of Milpitas, individually or collectively.

Insurance Required:

No work shall be done under this Contract unless there is in effect insurance required by the Contract and under this section, and such insurance has been approved by the City, nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been so obtained and approved. The CONTRACTOR shall maintain or cause to be maintained adequate workers' compensation insurance as required under the laws of the State of California, for all labor employed by him or by any subcontractor under him who may come within the protection of such worker's compensation laws of the State of California and shall provide or cause to be provided employer's general liability insurance for the benefit of his employees and the employees of any subcontractor under him not protected by such compensation laws.

Minimum Scope of Insurance:

Coverage shall be *at least as broad as*:

1. Insurance Services Office Form CG 0001 covering Commercial General Liability on an "occurrence" basis.
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Minimum Limits of Insurance:

Contractor shall maintain limits no less than:

1. **General Liability:** (Including operations, products and completed operations.)

\$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** \$1,000,000 per accident for bodily injury and property damage.
3. **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.

Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **The City, its officers, officials, employees, and volunteers are to be covered as insureds** with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner's policy.
2. For any claims related to this project, the **Contractor's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the **Contractor's insurance and shall not contribute with it.**
3. The Insurance Company agrees to **waive all rights of subrogation** against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the City. This provision also applies to the Contractor's Workers' Compensation policy.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after **thirty (30) days' prior written notice (10 days for non-payment)** by certified mail, return receipt requested, has been given to the City.

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 the City.

Verification of Coverage:

Contractor shall furnish the City with original certificates and amendatory endorsements 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's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications, at any time.

The Certificate with endorsements and notices shall be mailed to: City of Milpitas, Attention: Purchasing, 455 East Calaveras Boulevard, Milpitas California, 95035-5411.

Absence of Insurance:

If the CONTRACTOR allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the Contractor shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered CONTRACTOR's delay and shall not be considered to increase cost to the City or increase time in which the Project shall be completed.



**engineered
systems**

Mechanical Services

510 / 346-4300 Voice
800 / 598-2226 Service
510 / 347-1318 Fax
1133 Aladdin Avenue
San Leandro, California
94577-4311

June 22, 2005

Mr. Eddie Loreda
Facility Maintenance Supervisor
MILPITAS CITY HALL
1265 N. Milpitas Blvd.
Milpitas, CA 95035

Dear Eddie:

ACCO Engineered Systems (ACCO) is pleased to have this opportunity to offer Milpitas City Hall our proposal for a continuation of our *ACCOCare*[™] maintenance program. A continuation of our partnership makes good sense for several reasons:

1. ACCO's knowledge of the system design, installation, equipment, and application of the system.
2. ACCO's experience servicing the equipment and controls systems for the last 2 years.
3. Our guarantee of a 2-hour response to emergency service calls.
4. A proactive Preventive Maintenance program designed to reduce downtime.
5. ACCO is a factory trained and authorized service provider of your building automation system, ALC.

Per your request, we have added the following services to this agreement:

1. Comprehensive Boiler Annual to be performed on a weekend.
2. Cooling tower Drain and Flush to be performed on a weekend.
3. Annual testing and calibration of garage exhaust system sensors.
4. Annual replacement of 6" final filter cartridges.
5. Use anti-microbial filters in place of standard filters for quarterly replacement.

Eddie, our revised price reflects the labor and material for these changes as well as a small overall increase due to our increasing costs (labor, insurance, fuel, etc). We did not increase our price last year at this time when you renewed our agreement for a second year.

Respectfully,

Jim Ferry
Service Sales Engineer
Mechanical Services

Established 1984
License #120696

ACCO is clearly your best choice for on-going maintenance and service of the mechanical process systems at your facility. There are several reasons why a continuation of your relationship with ACCO through a service agreement warrants your strongest consideration. These include:

- Experience
- Resources
- Response Time
- Job knowledge

NEARLY 70 YEARS OF EXPERIENCE

ACCO was founded in 1934. As California's most experienced mechanical contractor, ACCO will provide the highest level of service the industry has to offer. Having serviced buildings like yours for so many years, we know what it takes to keep your system running at peak efficiency and to reduce the chance of costly downtime.

RESOURCES

A proper preventive maintenance program will reduce the possibility of a major catastrophe. However, if necessary, ACCO is capable of mobilizing a team of skilled individuals at a moment's notice. ACCO's Northern California Mechanical Services Division consists of *more than 75 union trained and certified service technicians*. Any number of them can be radio dispatched to your facility at any time should the need arise.

At the disposal of these technicians are all of the resources of the premiere mechanical contractor in California. Be it the need for additional manpower, the expertise of area supervision, or the problem solving skills of a mechanical engineer, ACCO can and will deliver.

RESPONSE TIME

Given the resources ACCO has and the size of its service fleet, we are able to respond to your emergency service needs within two hours. This is an on-site commitment, not simply returned phone call.

JOB KNOWLEDGE

Due to the fact that ACCO has designed and installed your system, and has serviced it for the last year, ACCO is your best choice for on-going service. Service technicians with instant access to the job superintendent, project manager and commissioning technician while on-site ensures the fastest possible diagnoses and repair of a problem. History of service and repairs is also available to them.

ACCOCare

ACCO is recommending its' *ACCOCare* Preventive Maintenance program to protect your investment in your equipment. This program includes the following procedures at a minimum:

- Inspect all equipment for unusual noise and/or vibration
- Inspect and adjust all fan belts
- Check for refrigerant and/or water leaks
- Check condition of coils
- Check condition of contactors
- Check all fans for proper rotation
- Check condition of sheaves
- Check condition of burners
- Check condition of pilot assemblies
- Lubricate all fan bearings
- Check/record refrigerant and oil pressures
- Check pressure drop across final filters
- Check/clear condensate drain lines and pans
- Check all pumps for proper operation
- Record voltage and amperage readings
- Check spray nozzles
- Check/clean strainers
- Quarterly anti-microbial pre-filter replacement
- Annual calibration of Garage Exhaust system sensors
- Perform Comprehensive Boiler Annual
- Annual replacement of final filter cartridges
- Perform Cooling Tower Drain and Flush

Automated Logic Controls

Included in our proposal is routine maintenance of your ALC building automation system. On each visit, we will:

- Log onto ALC front end
- Check for alarm conditions
- Identify out-of-spec zones
- Troubleshoot out-of-spec zones
- Check room thermostats and calibrate as required
- Check control valves
- Check dampers
- Back-up and Restore hard drive
- Provide end user education

Water Treatment

Included in our proposal is monthly water treatment service to include the following:

- A. ACCO shall take water samples of both the makeup and recirculating water on a monthly basis.
- B. ACCO shall complete field water tests at the jobsite and shall report results on the Maintenance Work Order in the section headed "Remarks".
- C. Said water tests shall measure the following items:
 - 1. Conductivity – measures the amount of minerals present in the water. The unit of measurement shall be in micro mhos (Mmhos).
 - 2. Calcium Hardness – measures the amount of calcium scale present in the water. The unit of measure shall be parts per million (ppm).
 - 3. Total Alkalinity – measures the level of alkalines present in the water. The unit of measure shall be parts per million (ppm).
 - 4. Chlorides – measures the level of chlorides present in the water. The unit of measure shall be parts per million (ppm).
 - 5. Total Threshold Sequestrates – measures the level of scale inhibitor in the recirculating system only. The unit of measurement shall be parts per million (ppm).
- D. ACCO shall feed an algaecide and biocide to cut bacteria growth as required.
- E. All chemicals provided by ACCO shall be in full compliance with State and Federal regulations.
- F. ACCO will provide Milpitas City Hall with safety data information on all chemicals utilized in conjunction with the proposed water treatment program.

Terms and Conditions

ACCO AGREES TO:

1. To perform services as required.
2. To furnish MILPITAS CITY HALL with a report of any irregularities revealed as a result of the inspection and adjustments. Corrective measures or repairs that are required will be recommended to MILPITAS CITY HALL. MILPITAS CITY HALL approval is required on repair work.
3. To service only the equipment listed.
4. To report to the person or office designated in writing by MILPITAS CITY HALL. MILPITAS CITY HALL to inform of changes of personnel.
5. ACCO agrees, that during the warranty period, it will replace failed or defective parts, at no cost to Milpitas City Hall, under the condition that a proper maintenance program is carried out by a qualified HVAC mechanic. If ACCO is performing this maintenance, ACCO ensures that it will perform the maintenance necessary to keep the manufacturers' warranties in force.

EXCLUDED FROM THIS PLAN:

1. Service, repair, adjust, clean, or replace parts of any of the following: Air balancing, duct work; cabinet interiors and exteriors; disposal of hazardous waste; drains which are not a part of the equipment covered by this plan; heating and cooling coils; electrical service beyond the subject equipment disconnect; surfaces exposed to air and water as part of the system performance (such as sump pans, evaporative condenser tube bundles, tower and evaporative condenser distributors, panels, fans, shafts, etc.); recording instruments, gauges, and thermometers.
2. The cost of repair parts, replacement parts, emergency calls, refrigerant.
3. Labor costs other than that required under the ~~ACCO~~ agreement.

TERMS:

1. The ~~ACCO~~ service shall commence on 1/1/2005 and shall continue thereafter until terminated. Either party may terminate this agreement by giving the other party thirty (30) days prior written notice.
2. Failure to make payment when due, or impairment of owner's credit, shall relieve ACCO of the obligation of further performance of this agreement.
3. This agreement is subject to annual price escalation.

PRICING:

For Quarterly mechanical maintenance, quarterly ALC Maintenance, annual services and monthly water treatment services, Milpitas City Hall shall be invoiced \$4,355.00 each 90 days.

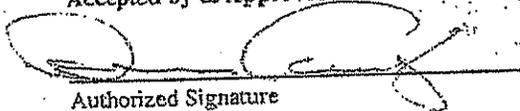
GENERAL CONDITIONS:

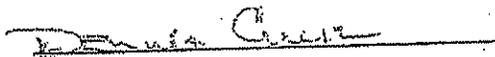
1. For the convenience of both MILPITAS CITY HALL and ACCO, MILPITAS CITY HALL will permit ACCO personnel the use of his common building equipment, such as ladders, elevators, etc., together with free and timely access to necessary areas.
2. ACCO will not be required to remove, replace or alter any part of the building structure in the performance of this agreement.
3. Both MILPITAS CITY HALL and ACCO agree that all work referred to in this agreement shall be performed during the regular working hours of 8:00 AM to 4:30 PM, Monday through Friday, except Holidays.
4. This ~~ACCO~~ agreement takes into consideration the extension of the manufacturer's warranties to MILPITAS CITY HALL on the equipment outlined herein.

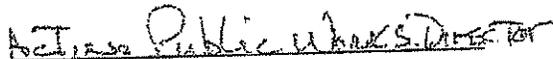
GENERAL CONDITIONS (cont'd):

5. MILPITAS CITY HALL agrees to make prompt payments. Should a payment become thirty (30) days delinquent, this contract may become null and void at any time thereafter at the option of ACCO, and all moneys owed ACCO will become due upon demand.
6. To assure best performance MILPITAS CITY HALL should operate the system and all equipment properly and as per manufacturer's instructions. Expenses to ACCO caused by improper operation, negligence, misuse of the equipment, or by any cause beyond the control of ACCO, shall be paid by MILPITAS CITY HALL.
7. Operational efficiency will be assured if all necessary work is performed or equipment added by qualified ACCO personnel. In the event of any alterations, additions, adjustments, or repairs by others (unless authorized by ACCO) ACCO assumes no responsibility and has option to terminate this agreement.
8. ACCO does not include the replacement or inspection of HEPA filters.
9. Any parts that are not available from normal sources in the judgment of ACCO, and which may impair proper operation, may be replaced by ACCO and paid for by MILPITAS CITY HALL.
10. Loss of business or any delays occasioned by events that ACCO cannot control, such as strikes, riots, lock-outs, transportation delays, accidents, Acts of God, force majeure or any other cause beyond ACCO's control shall not be the responsibility of ACCO.
11. Any item of equipment or labor required by insurance companies, federal, state, municipal or other authorities will not be required to be furnished by ACCO.
12. ACCO shall not be responsible for original system design, installation or its performance in maintaining design conditions, except through failure of equipment covered herein.
13. This agreement covers the complete understanding between ACCO and MILPITAS CITY HALL, and shall become a valid contract only when accepted and approved by authorized person for both parties. No verbal representations shall be binding on either party.

MILPITAS CITY HALL
Accepted by & Approved:

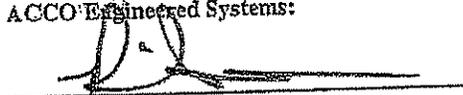

Authorized Signature


Name

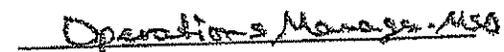

Title


Date

APPROVED AND ACCEPTED:
ACCO Engineered Systems:


Authorized Signature


Name


Title


Date