



## CONTRACT

Project: Park Irrigation System Rehabilitation  
IFB No: 5086  
Amount of Contract: \$50,271.00

THIS CONTRACT, made this 4th day of March, 2009, by and between the City of Milpitas, hereinafter referred to as "the City of Milpitas" and **Valley Crest Landscape Maintenance, Inc.**, hereinafter referred to as "Contractor",

WITNESSETH:

A. WHEREAS, the City of Milpitas has caused specifications, drawings and other contract documents, hereinafter referred to as "Specifications", to be prepared for certain work on the referenced project; and

B. WHEREAS, said Specifications include:

- Part A - Legal and Procedural Documents
- Part B – Invitation For Bids
- Part C – Detailed Specifications or Scope of Work
- Part D – Instructions To Bidder
- Part E – Terms and Conditions
- Part F – Special Provisions For Services
- Part G – Drawings / Photos
- Part H – Addenda
- Part I– Non-Collusion Affidavit
- Part J – Bid Security Bond
- Part K – Payment Bond
- Part L - Performance Bond
- Part M – Bidder's Statement Regarding Insurance Coverage
- Part N – Worker's Compensation Insurance Certificate
- Part O – Bidder's Nondiscriminatory Employment Certificate
- Part P – Experience Statement
- Part Q – Subcontractors List

C. WHEREAS, Contractor has offered to perform the proposed work in accordance with the terms of said Specifications as set forth by submission of the Contractor's Proposal;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained in said Specifications and Contractor's Proposal, which are made a part hereof as though fully set forth, Contractor hereby agrees to complete the work at the prices and on the terms and conditions therein contained, and the City of Milpitas hereby employs the Contractor and agrees to pay the Contractor the contract prices therein

provided for the fulfillment of the work and the performance of the covenants therein set forth.

IN WITNESS WHEREOF, this contract has been executed on the day and year first above written.

City of Milpitas,  
A Municipal Corporation

_____	_____
City Manager	Contractor's Signature
_____	_____
Title	Title

Business Tax Compliance: Certificate No. \_\_\_\_\_

Approved As  
To Content: \_\_\_\_\_  
City Project Manager

Prepared By: \_\_\_\_\_  
City Purchasing Agent

Approved As  
To Form: \_\_\_\_\_  
City Attorney

Approved As  
To Insurance: \_\_\_\_\_  
City Risk Manager

ATTEST:  
By \_\_\_\_\_  
City Clerk



**CITY OF MILPITAS**  
**NOTICE TO CONTRACTORS**  
**INVITATION FOR BID**



**For**  
**Park Irrigation System Rehabilitation**  
**IFB 5086**

NOTICE IS HEREBY given that sealed bids will be received by the City of Milpitas Purchasing Division until January 20, 2009 local time, at which time and place they will be publicly opened and read for furnishing all labor, materials and equipment, and performing all work necessary and incidental to:

**The installation of centralized radio controlled park irrigation controllers and components,**

according to City of Milpitas plans, specifications and contract documents.

Bids shall be delivered and addressed to the City of Milpitas Purchasing Agent, 455 E. Calaveras Blvd., California, 95035-5411, and shall be labeled "Park Irrigation System Rehabilitation, IFB 5086". Any Bidder who wishes its bid to be considered is responsible for making certain that its bid is received in the Purchasing Office by the proper time. No oral, telegraphic, electronic, facsimile or telephonic bids or modifications will be considered unless specified. Bids received after the scheduled bid opening time will be returned unopened.

Plans and Specifications. Specifications may be examined and obtained at no charge at the Purchasing Office, or by calling 408-586-3161.

Pre-Bid Conference & Mandatory Job Walk. A pre-bid conference and mandatory job walk will be held at **1:00 PM on January 13, 2009 at Augustine Park Milpitas at the intersection of Coelho and Rogers, in the picnic area by the big trees.** Bidders who plan to attend the pre-bid conference should call the Purchasing Agent at least 2 days before the bid opening date. Bidders must attend the walk-through to be eligible to bid.

Contractors License. All Bidders shall be licensed under the provisions of Chapter 9, Division 3 of the Business and Professions Code of the State of California to do the type of work contemplated in the project. The Successful Bidder shall possess a valid Contractor's License issued by the Contractor's State License Board at the time the contract is awarded. The class of license shall be **C-27** or any other classification applicable to the work specified in the contract. Each bidder shall also have no less than **five (5) of years of experience** in the magnitude and character of the work bid.

Prevailing Wages. Pursuant to provisions of Section 1770, et seq., of the Labor Code of the State of California, it shall be mandatory upon the Contractor to pay its employees the general prevailing rate of wages as determined by the Director of the Department of Industrial Relations. In addition, the Contractor shall be responsible for compliance with the requirements of Section 1777.5 of the California Labor Code relating to apprentices on public works contracts.

Bid Security Bond. Each Bid shall be accompanied by a certified check, cashier's check, or Bid bond duly completed on the form provided herewith by a guaranty company authorized to carry on business in the State of California, in an amount equal to at least ten percent (10%) of the sum of the total amount bid, including any options. Said bond is payable without condition to the City of Milpitas as a guaranty that the bidder, if awarded the contract, will promptly execute the contract in accordance with the Bid in manner and form required by these contract documents and will furnish. The Bid Security shall be forfeited to the City of Milpitas as liquidated damages in the case of failure or neglect of the bidder to furnish, execute and deliver to the City of Milpitas the required performance bond, payment bond and evidences of insurance, and to enter into, execute and deliver to the City of Milpitas the contract on the form provided herewith, within ten (10) days after being notified in writing by the City of Milpitas that the award has been made and the contract is ready for execution.

Payment Bond. Pursuant to Civil Code 3247, for work involving an expenditure of greater than \$25,000 the Successful Bidder will be required to furnish a Payment Bond in an amount equal to one hundred percent (100%) of the total amount of the contract before commencement of work and conforming to the contract documents.

Performance Bond. The Successful Bidder will be required to furnish a Performance Bond in an amount equal to one hundred percent (100%) of the total amount of the contract before commencement of work and conforming to the contract documents.

Substitution of Securities. The Contractor shall be permitted to substitute securities for any monies withheld by the City of Milpitas to ensure performance under this contract, such substitution to be subject to the limitations and requirements of Public Contract Code Section 22300.

Project Managers Estimate. The value of the installation portion of the project is estimated to be approximately \$103,000.00.

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Signature  
Purchasing Agent

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January 8 & 15, 2009

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Exhibit A	“INSURANCE REQUIREMENTS - GENERAL”
Exhibit B	“JOHN DEERE - CENTRAL IRRIGATION CONTROL SYSTEMS SPECIFICATIONS”
Exhibit C	“AERIAL PARK PHOTOS – BASE BID”
Exhibit D	“JOHN DEERE LANDSCAPES QUOTATION/PARTS LIST”

## **SCOPE OF WORK**

### **BACKGROUND**

The City of Milpitas is located in the Silicon Valley between Highways 880 and 680. The City has a population of approximately 65,000 and encompasses 13.6 square miles. Milpitas is a progressive community that is an integral part of the high tech Silicon Valley. Milpitas features quality schools, conveniently located neighborhood parks and shopping centers and a population rich in diversity

Incorporated in 1954, Milpitas is a general law city operating under the City Council/City Manager form of government, Milpitas is a creative, forward-thinking city providing quality police, fire, water, streets, parks, engineering, planning and recreation services. The City is financially secure with an annual budget in excess of \$151 million. The operating budget of \$125 million and the capital improvement budget of \$26 million include all City services and the Redevelopment Agency administered by the City.

The City provides the full range of services normally associated with municipality, including fire, police, parks and recreation, planning, zoning and building, engineering, public works, utility service including water and sewer, and general administration. Solid waste collection is provided through a franchise arrangement with a local refuse collection service.

The City of Milpitas owns 30 parks with 53 irrigation controllers. Under the Park Irrigation System Rehabilitation Project, staff plans to upgrade all of the controllers to be operated by computerized radio from one centralized control location utilizing master valves, flow sensors and a wireless weather station. The goal is to decrease water use and maintenance expenditures for park irrigation. This is a “turn key” project to include all installation, testing and instruction on system operation including software and FCC frequencies.

On November 18, 2008, Council approved the standardization of Rain Master as the City’s standard brand of irrigation equipment, and the purchase of \$295,938.70 worth of new Rain Master equipment toward the project. The equipment is being acquired sole source from John Deere Landscape who has worked closely with staff to determine the exact quantity, type and layout of irrigation equipment for each park. Based on a

combination of factors including frequency of use of the park, condition of the existing landscape, and age of the existing irrigation equipment, the following fifteen (15) parks will be retrofitted in the following order of priority hereby defined as: "Phase I" - Sports Center, Cardoza, Augustine, Russell Fields. "Phase II" - Strickroth, Oliver Jones, Gill - Los Pinos/Santa Rita, Gill, Murphy, Dixon Landing, Hillcrest, Ben Rogers, Pinewood, Hall Memorial and Adobe; to the extent that funding is available.

The City of Milpitas is seeking a qualified firm with a demonstrated ability to perform the tasks identified in this Invitation for Bid (IFB). In summary, the successful bidder shall furnish all labor, materials, supervision, implements, tools, machinery, and transportation, necessary to perform the required installation work.

## INSTRUCTIONS TO BIDDER

ADDENDA. Addenda issued pursuant to this IFB, if any, will be posted on the City website. However, it is the sole responsibility of the bidder to check the website and/or contact the project manager directly to determine that they have included all addenda in their proposal before submitting it to the City. Any proposal submitted that does not acknowledge each and every addenda issued will be considered non-responsive. Addenda, if any, must be acknowledged on the bid form in the space provided.

AUTHORIZED SIGNATURES. Every bid must be signed by the person or persons legally authorized to bind the Bidder to a contract for the execution of the work. Upon request of the City of Milpitas, any agent submitting a bid on behalf of a Bidder shall provide a current power of attorney certifying the agent's authority to bind the Bidder. If an individual makes the bid, his or her name, signature, and post office address must be shown. If a firm or partnership makes the bid, the name and post office address of the firm or partnership and the signature of at least one of the general partners must be shown. If a corporation makes the bid, the bid 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 of Milpitas, 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 bid to execute contracts on behalf of the corporation.

### AWARD OF BID

Bid award will be made to the lowest responsible and responsive bidder. The low bidder will be determined by the lowest responsible bid for the Total Base Bid that complies with all the requirements prescribed in the bid/contract documents. Pursuant to Public Code section 20103.8 (c), in the event the lowest responsive and responsible bid for a construction project exceeds available funds, and such bid does not exceed such funds by more than **five (5)** percent, the City of Milpitas reserves the right, when time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the lowest responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent additive items specified in the invitation for bids. Additionally, the City of Milpitas reserves the right to reject any or all bids.

BID ACCEPTANCE PERIOD. Unless otherwise specified herein, prices are firm for a period of ninety (90) days.

BID FORMS. Bids shall be made on the blank forms prepared and provided by the City of Milpitas. Bids shall give the prices proposed, both in writing and in figures, shall give all other information requested herein, and shall be signed by the bidder or authorized representative, with the appropriate address. If an individual makes the bid, his or her name, signature, and post office address must be shown. If a firm or partnership makes the bid, the name and post office address of the firm or partnership and the signature of at least one of the general partners must be shown. If a corporation makes the bid, the bid 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 who signs on behalf of the corporation. If the corporation makes the bid, a certified copy of the bylaws or resolution of the board of directors of the corporation shall be furnished showing the authority of the officer signing the Bid to execute contracts on behalf of the corporation.

BID RESULTS. It is not the policy of the City of Milpitas to provide bid results in response to telephone inquiries. Bids are opened publicly and interested parties are invited to attend. A tabulation of bids received is posted on the Purchasing page of the City website.

BID SUBMITTAL. Bids shall be submitted in a sealed envelope bearing on the outside the name of the bidder, his address and the project name and bid number for which the bid is submitted. Bidder's authorized representative must properly initial any erasures or alterations of any kind. Bids that contain omissions or improper erasures or irregularities may be rejected. No oral, electronic, telegraphic, or telephonic bids or modifications will be considered unless otherwise specified herein.

BID WITHDRAWAL. Bidder's authorized representative may withdraw bids only by written request received before Bid Opening.

BIDDER AGREEMENT TO TERMS AND CONDITIONS. Submission of a signed bid will be interpreted to mean bidder has agreed to all the terms and conditions set forth in the pages of this bid.

CANCELLATION OF SOLICITATION. The City of Milpitas may cancel this solicitation at any time.

COMPLIANCE WITH OR DEVIATION FROM SPECIFICATIONS. Bidder hereby agrees that the material, equipment or service offered will meet all the requirements of the specifications in this solicitation unless deviations from them are clearly indicated in the bidder's response. Bidder may submit an attachment entitled "Exceptions to Specifications", which must be signed by bidder'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 and the reason for which it is taken. Bids failing to comply with this requirement will be considered non-responsive. Submittal of brochure or other manufacturer literature is desirable but may not be a substitution for this requirement.

CONTRACT DOCUMENTS, EXAMINATION OF. It is the responsibility of the Bidder to carefully thoroughly examine and be familiar with legal and procedural documents, general conditions, all bid forms, specifications, drawings, plans, and addenda (if any), hereinafter referred to as Contract Documents. Bidder shall satisfy himself as to the character, quantity, and quality of work to be performed and materials, labor, supervision, equipment and appurtenances necessary to perform the work as specified by the Contract Documents. The failure or neglect of the Bidder to examine the Contract Documents shall in no way relieve him from any obligations with respect to the bid or contract. The

submission of a bid shall constitute an acknowledgment upon which the City of Milpitas may rely that the bidder has thoroughly examined and is familiar with the contract documents. The failure or neglect of a bidder to receive or examine any of the contract documents shall in no way relieve the bidder from any obligations with respect to the bid. No claim will be allowed for additional compensation that is based upon a lack of knowledge of any bid document.

CONTRACTOR'S LICENSE. At the time of award, the Successful Bidder must possess a valid California Contractor's License issued by the Contractor's State License Board for the classification(s) of work specified in the contract documents. Bidders must show their contractor's license number, classification and expiration date on their bid

DEADLINE, BID SUBMITTAL. Bidders shall submit their bids by the "Bid Submittal Deadline". The "Bid Submittal Deadline", is shown on the Notice to Contractors form. The receiving time in the Purchasing Office will be the governing time for receipt of bids. Bids will not be opened or revealed before the time set for receipt.

DISQUALIFICATION OF BIDDER. If there is reason to believe that collusion exists among the bidders, the City of Milpitas may refuse to consider bids 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 bid for the same work unless alternate bids are called for. A person, firm, or corporation who has submitted a sub-Bid to a bidder, or who has quoted prices on materials to a bidder, is not thereby disqualified from submitting a sub-Bid or quoting prices to other bidders. Reasonable ground for believing that any bidder is interested in more than one Bid for the same work will cause the rejection of all Bids for the work in which a bidder is interested. If there is reason to believe that collusion exists among the bidders, the City of Milpitas may refuse to consider Bids from participants in such collusion. Bidders shall submit as part of their Bid documents the completed Non-Collusion Affidavit provided herein.

DOCUMENTS TO BE RETURNED WITH BID. Failure to completely execute and submit the required documents before the date and time set for bid opening, may render a bid non-responsive. The documents that must be returned by bid opening time are listed on the form entitled "Bid Documents To Be Returned" and attached hereto.

ESCROW IN LIEU OF RETENTION. In the event the Contractor wishes to choose this option, the Contractor shall enter into an escrow agreement with the City of Milpitas. The escrow agent shall be a qualified bank approved by the City of Milpitas. The costs of such escrow account shall be equivalent in fair market value to the amount to be withheld as performance retention. The securities shall be held in accordance with the provisions of Public Contract Code Section 22300, and the implementing agreement. The Contractor is obligated to ensure that such securities deposited are sufficient to maintain, in total fair market value, an amount equal to the cash amount of the sums to be withheld under the contract. If the City of Milpitas Finance Director, or the appropriate escrow agent, gives written notice to the Contractor indicating that the fair market value of the securities has dropped below the dollar amount of monies to be withheld by the

City of Milpitas to ensure performance, Contractor shall within five days of the date of such notice post all such securities held by the City of Milpitas, or in escrow, equivalent to the amount of money to be withheld by the City of Milpitas under the contract. Any Contractor wishing to exercise this option shall give notice in writing to the City of Milpitas.

EXECUTION OF CONTRACT. Time is of the essence of this contract. The Successful Bidder/Contractor shall execute the contract, including but not limited to signing all necessary documents and submitting all required bonds and evidences of insurance, within ten (10) days after personal delivery of the notice within fifteen (15) days after such notice has been deposited in the United States mail. One copy of the contract will be returned to the Contractor after the City of Milpitas executes the contract. In case of failure of the Contractor to execute and return the contract and all required documents within the time allowed, the City of Milpitas may, at its option, consider that the bidder has abandoned the contract, in which case the bid security bond shall be forfeited by the bidder and become the property of the City of Milpitas. After the contract has been executed, including the insurance documents, certificates, and bonds a Notice to Proceed will be issued. Bidder agrees to commence work within ten- (10) working days after the date of the Notice to Proceed, to proceed with the work and fully complete the project within (number of completion days allowed) from the date of the Notice to Proceed.

EXPERIENCE AND COMPETENCY. The Successful Bidder shall be skilled and regularly engaged in the general class or type of work called for under the contract. The Successful Bidder shall also have no less than (5) years' experience in the magnitude and character of the work bid. Each Bidder shall set forth his experience on the form entitled Bidder's Experience and submit it with his bid. It is the intention of the City of Milpitas to award a contract to a Bidder who furnishes satisfactory evidence that he/she has the requisite experience, ability, sufficient capital, and facilities to enable him to prosecute the work successfully and properly, and to complete it within the time specified in the contract. To determine the degree of responsibility to be credited to the Bidder, the City of Milpitas will weigh any evidence that the Bidder has performed satisfactorily other contracts of like nature, magnitude, and comparable difficulty and comparable rates of progress. In selecting the lowest responsive and responsible Bidder, consideration will be given not only to the financial standing but also to the general competency of the Bidder for the performance of the work specified in the contract documents.

FIRM PRICE PERIOD. Bidders' bids shall remain open and firm for a period of not less than ninety- (90) calendar days from the date of the bid opening.

FORMATION OF CONTRACT. Bidder's signed bid and City of Milpitas' written acceptance shall constitute a binding contract.

INDEPENDENT CONTRACTOR. Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. Contractor further covenants that, in the performance of this contract, no subcontractor or

person having such an interest shall be employed. Contractor certifies that to the best of his knowledge, no one who has or will have any financial interest under this contract is an officer or employee of the City of Milpitas. It is expressly agreed by Contractor that in the performance of the services required under this contract, Contractor, and any of its subcontractors or employees, shall at times be considered independent Contractors and not agents of the City of Milpitas.

**INFORMED BIDDER.** Bidders are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting bids. Failure to do so will be at the bidders' own risk and they cannot secure relief on the plea of error.

**INK OR TYPEWRITTEN.** All information, prices, notations, signatures, and corrections must be in ink or typewritten. Mistakes may be crossed out and corrections typed or printed adjacent to the mistake and initialed in ink by the person signing the Bid.

**INSURANCE REQUIREMENTS.** Successful Bidder shall acquire and maintain at his/her own expense all insurance described in: EXHIBIT A – INSURANCE REQUIREMENTS – GENERAL. All insurance shall remain in full force and effect until final project completion and acceptance, as determined by the City of Milpitas. Within ten (10) calendar days of award of contract, Successful Bidder must furnish the City of Milpitas with the Certificates of Insurance proving coverage as specified and with an endorsement naming the City of Milpitas, its officers, and agents, Additional Insured. Failure to furnish the required certificates and endorsements within the time allowed will result in withdrawal of award and forfeiture of the Bidder's Bid Security.

**INTERPRETATION OF CONTRACT DOCUMENTS.** If any person is in doubt as to the true meaning of any part of the specifications or other contract documents, or finds discrepancies or omissions in the specifications, he may submit to the City of Milpitas a written request for an interpretation or correction. Requests for interpretations shall be made in writing and delivered to the Purchasing Office by e-mail at [cschroeder@ci.milpitas.ca.gov](mailto:cschroeder@ci.milpitas.ca.gov) three (3) days before the time announced for opening the bids, you may also call the Purchasing Agent, Chris Schroeder at 408-586-3161. Technical questions regarding the specifications shall be made in writing and delivered to the Park Maintenance Supervisor, Craig Wisneski by e-mail at [cwisneski@ci.milpitas.ca.gov](mailto:cwisneski@ci.milpitas.ca.gov) three (3) days before the time announced for opening the bids, you may also contact him at 408-586-2661. When the City of Milpitas considers interpretations necessary, interpretations will be in the form of an addendum to the contract documents, and when issued, will be posted on the City website. All such addenda shall become a part of the contract. Oral and other interpretations or clarifications shall be without legal or contractual effect. It is the responsibility of each bidder, including any prospective bidder who obtained a set of contract documents from anyone other than the City of Milpitas, to check the website for addenda prior to submitting any bid.

LATE BIDS. Late bids will not be considered and will be returned to bidders unopened. It is the bidders' responsibility to ensure that their bids have sufficient time to be received by the Purchasing Office before bid opening.

MEASUREMENTS. It is the responsibility of the Bidder to make all measurements to determine his bid price. The City of Milpitas will not be responsible for determining the quantities of materials necessary to complete the work specified.

MODIFICATION OF BIDS. Any Bidder who wishes to make modifications to a bid already received by the City of Milpitas must withdraw his bid in order to make the modifications. Withdrawals must be made in accordance with the terms and conditions of this solicitation (see Withdrawal of Bids). All modifications must be made in ink, properly initialed by bidder's authorized representative, executed, and submitted in the same form and manner as the original bid. It is the responsibility of the bidder to ensure that modified or withdrawn bids are resubmitted before the time announced for the opening of bids.

NOMENCLATURES. The terms Successful Bidder, supplier, vendor, or contractor may be used interchangeably in these specifications and shall refer exclusively to the firm with whom the City of Milpitas enters into a contract because of this solicitation.

NON-COLLUSION AFFIDAVIT. Bidders are required to submit a Non-Collusion Affidavit with their bids. See attached Affidavit.

OFFERS OF MORE THAN ONE PRICE. Bidders are NOT allowed to submit more than one bid.

OPENING OF BIDS. All bids, irrespective of irregularities or informalities, will be opened and publicly read aloud at the time announced for the opening of bids. All interested persons are invited to be present at the opening and reading of bids. The public reading will include the names of the bidders, the total amounts bid and the acknowledgment of receipt of bid guaranties.

Postponement of Opening. The City of Milpitas reserves the right to postpone the date and time for opening of bids at any time before the date and time announced in the Notice to Contractor.

PAYMENT TERMS. Discounts for payments made within 14 calendar days from receipt of a correctly itemized and properly documented invoice will be considered in the award of the bid. Payment discounts must be clearly shown on the Bid Form.

PRICE DISCREPANCIES. In the event that there are unit price items in a bid schedule and the "amount" indicated for a unit price of a bid 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. The Contractor will be bound by said corrections, subject to the provisions of Section 5100 et seq. of the California Public Contract Code. If there is more than one bid item in a bid schedule, and the total indicated for the schedule does not agree with the sum

of prices of the individual bid items, the prices bid on the individual items shall govern and the total for the schedule will be corrected accordingly. The Contractor will be bound by said corrections, subject to the provisions of Section 5100 et seq. of the California Public Contract Code.

PRICES. All bids shall give the prices proposed, both in writing and in figures, shall give all other information requested herein, and shall be signed by the Bidder's authorized representative. Bid prices shall include everything necessary for the completion of construction and fulfillment of the contract including but not limited to furnishing all materials, equipment, tools, facilities and all management, superintendence, labor, services, taxes, licenses and permits required to complete the work in accordance with the contract documents, except as may be provided otherwise in the contract documents. The work and the bid price shall also include providing the necessary safety precautions such as barricades, warning signs for protection of the public and any necessary "cleanup" that is required to restore the work site to a satisfactory condition. Any items shown on the plans or details or described in the specifications that are not specifically listed in the bid item are to be considered included in the bid item and no additional or special compensation will be allowed. In the event that there is more than one bid item in the bid schedule, the Bidder shall furnish a price for all bid items in the schedule, and failure to do so will render the bid as non-responsive and may cause its rejection. The total amount of the bid will be the sum of the total prices of all items in the bid schedule. The total price of unit price items will be the product of the unit price and estimated quantity of the item. In case of discrepancy between the unit price and total price of an item, the unit price shall prevail if the unit price is ambiguous, unintelligible, or uncertain for any cause, or is omitted, it shall be the amount obtained by dividing the amount set forth as the total price by the estimated quantity of the item.

QUALIFICATION OF BIDDERS. Each bidder shall be skilled and regularly engaged in the general class or type of work called for under the contract. The bidder's experience shall be set forth and submitted on the form provided herewith. It is the intention of the City of Milpitas to award a contract to a bidder who furnishes satisfactory evidence that the bidder has the requisite experience, ability, sufficient capital, facilities, and plant to enable the bidder to prosecute the work successfully and properly, and to complete it within the time specified in the contract. To determine the degree of responsibility to be credited to the bidder, the City of Milpitas will weigh any evidence that the bidder has performed satisfactorily other contracts of like nature, magnitude and comparable difficulty and comparable rates of progress. In selecting the lowest responsive and responsible bidder, consideration will be given not only to the financial standing but also to the general competency of the bidder for the performance of the work covered specified in the contract documents. To this end, each Bid shall be supported by a statement of the bidder's experience on the form entitled "Bidder's Experience", which is a part of the contract documents.

REJECTION OF BIDS. The City of Milpitas reserves the right to reject any bids, all bids, or any part of any bid presented and readvertise for bids. The City reserves the right to cancel the solicitation and make no award. The City of Milpitas reserves the right to

reject the bid of any Bidder who previously failed to perform adequately for the City of Milpitas or any other governmental agency. The City of Milpitas expressly reserves the right to reject the bid of any Bidder who is in default on the payment of taxes, licenses, or other monies due the City of Milpitas. The City accepts no liability for any cost incurred by any bidder in the preparation of a bid. All costs associated with the preparation of a bid shall be born solely by the bidder

RULES FOR SUBMITTING BIDS.

- a. **Bid Submittal Deadline. The Bid Submittal Deadline is: January 20, 2009.** Bids must arrive in the Purchasing Office, 455 E. Calaveras Blvd., Milpitas, CA 95035-5411 by the Bid Submittal Deadline.
- b. **Responsibility.** Bidders are solely responsible for ensuring their Bid is received by the City of Milpitas in accordance with the solicitation requirements, before the Bid Submittal Deadline, and at the place specified. The City of Milpitas shall not be responsible for any delays in mail or by common carriers or by transmission errors or delays or mistaken delivery. Delivery of bid shall be made at the office specified in the Notice to Contractors. Deliveries made before the Date & Time Due but to the wrong City of Milpitas office will be considered non-responsive unless re-delivery is made to the office specified before the Date & Time Due and time specified in the Notice to Contractors.
- c. **Time for Receipt.** Bids must be received on or before the **Bid Submittal Deadline.** Bids received after the Bid Submittal Deadline will be considered late and will not be considered for award.
- d. **Extension of Bid Submittal Deadline.** The City of Milpitas reserves the right to extend the Bid Submittal Deadline when it is in the best interest of the City of Milpitas.
- e. **Facsimile Transmissions.** Bids may be NOT submitted by facsimile.
- f. **Forms.** To be considered for award, each bid shall be made on forms furnished by the City of Milpitas.
- g. **Late Bids.** This is a formal solicitation with a formal Date & Time Due. The Date & Time Due it IS FIRM. Bids will NOT be accepted after the Date & Time Due and will be returned to the bidder unopened.
- h. **Signature.** To be considered for award, each bid shall be signed by an authorized representative of the bidder.
- i. **Sealed.** Bids may be submitted by hand, by courier, or any other method specified herein. Bids MUST BE submitted in a sealed envelope.

SELL OR ASSIGN. The successful bidder shall not have the right to sell, assign, or transfer any rights or duties under this contract without the specific written consent of the City of Milpitas.

SEVERABILITY. If any provision, or any portion of any provision, of any contract resulting from this bid shall be held invalid, illegal, or unenforceable, the remaining provisions or portions of any provisions shall be valid and enforceable to the extent possible.

SPECIFICATIONS & SITE OF WORK, INSPECTION OF. It is the responsibility of the Bidder to carefully and personally examine the specifications and site of the proposed work, access to the work, aboveground and underground utilities, buildings, structures or other improvements that may be within the limits of the work or adjacent to the work and which may or may not be shown on the plans, public safety and traffic requirements. Bidders are required to inspect the site of work in order to judge for themselves, by personal examination or by such other means, as they may prefer, of the location and as to the actual conditions of and at the site of work and the proposed work and the nature and extent of the work to be done. If, during the course of the site inspection a bidder finds facts or conditions which appear to conflict with the letter or spirit of the contract documents, or with any other furnished data, the bidder may apply to the City of Milpitas for additional information and explanation before submitting a bid. However, no such supplemental information or clarification so requested or furnished shall vary the terms of the specifications of the work to be performed unless included in an Addendum to this bid document that is issued by the City of Milpitas. The submission of a bid by a bidder shall constitute the acknowledgment that it has relied and is relying on its own examination of (a) the site of the work, (b) the access to the site and (c) all other data, matter and things requisite to the fulfillment of the work and on its own knowledge of existing services and utilities on and in the vicinity of the site of the work to be construed under the contract, and not on any representations or warranty by the City of Milpitas. No claim will be allowed for additional compensation that is based upon a lack of knowledge of the above items.

SOIL INFORMATION. Bidders is solely responsible for making all deductions and conclusions as to the nature of any materials to be excavated, the difficulties of making and maintaining the required excavation, the difficulties which may arise from subsurface conditions, all testing and disposal requirements, and of doing any other work affected by the subsurface conditions.

SPECIFICATIONS, CHANGES TO. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein or by written amendment. No changes, amendments, or modifications of any of the terms or conditions of the bid specification shall be valid unless reduced to writing and signed by both parties.

SPECIFICATIONS, DEFINITION. The term "specification" or "bid specification" as used in this solicitation shall be interpreted to mean all the pages that make up this bid solicitation, including *but not limited to* the Notice to Contractors, Instructions To Bidder, Terms and Conditions, Detailed Specifications or Scope of Work, Contractor's Bid form, Proposed Equipment & Material Manufacturers form, Experience Statement, Subcontractor's List, Workers Compensation Insurance Certificate, and Bid Security Bond, etc.

STANDARD SPECIFICATIONS FOR INSTALLATION. Where applicable, all work will be performed in accordance with the John Deere / Green Tech Central Irrigation Satellite Assembly Specifications, which are incorporated herein by this reference.

Where conflicts arise, the John Deere / Green Tech Central Irrigation Satellite Assembly Specifications shall prevail.

SUBCONTRACTORS. In accordance with California Public Contract Code Section 4104, each bid shall be listed on the form provided by the City of Milpitas: (a) The type of work to be performed and the name and location of the place of business of each subcontractor who will perform work or labor or render services to the Bidder in or about the construction of the work or improvement; or (b) of any subcontractor licensed by the State of California who, under subcontract to the Bidder, will specially fabricate and install a portion of the work or improvement according to the detailed plans and specifications, in an amount in excess of one-half of one percent of the total amount of the bid; or (c) in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of one percent of the Bidder's total bid or ten thousand dollars (\$10,000), whichever is greater. For the purpose of this section, a subcontractor is defined as one who contracts with the successful bidder/contractor to furnish materials and labor, or labor only, for the performance of onsite work or who will specially fabricate a portion of the work offsite, pursuant to detailed plans and specifications in the contract documents.

SUBCONTRACTOR COMPETENCY. The Successful Bidder will be required to establish to the satisfaction of the City of Milpitas the competency, reliability and responsibility of the subcontractors proposed to furnish or perform the work described in the contract documents. Before the award of the contract, the City of Milpitas will notify the Bidder in writing if, after due investigation, the City of Milpitas has reasonable objection to any proposed subcontractor. If the City of Milpitas has reasonable objection to any subcontractor the Bidder shall submit an acceptable substitute person to the City of Milpitas. Persons and entities proposed by the bidder to be used as subcontractors, and to whom the City of Milpitas has made no reasonable objection, must be used on the work for which they were proposed and shall not be changed except with the written consent of the City of Milpitas.

SUBCONTRACTOR SUBSTITUTION. The provisions of the California Subletting and Subcontracting Fair Practices Act (California Public Contract Code §§4100-4113) are incorporated herein by this reference and the City of Milpitas Purchasing Agent is authorized to consent to substitutions as provided therein.

TAXES. Contractor shall pay all federal, state and taxes, levies, duties and assessments of every nature due in connection with any work under the contract and shall indemnify and hold harmless the City of Milpitas from any liability on account of any and all such taxes, levies, duties, assessments and deductions. Bid prices shall include allowance for said taxes.

TERMS OF THE OFFER. City of Milpitas' acceptance of bidder's offer shall be limited to the terms herein unless expressly agreed in writing by the City of Milpitas. Bids offering terms other than those shown herein will be declared non-responsive and will not be considered.

WITHDRAWAL OF BIDS. A bidder may withdraw any bid he has submitted at any time prior to the hour set for the closing of the bids provided the request for withdrawal is signed in a manner identical with the Bid being withdrawn. No withdrawal or modification will be permitted after the hour designated for closing of bids.

## TERMS AND CONDITIONS

AGREEMENT. Submission of a signed bid will be interpreted to mean bidder hereby agrees to all the terms and conditions set forth in all the pages of this Notice to Contractors/bid solicitation. Bidder's signed bid and City of Milpitas' written acceptance or purchase order shall constitute a contract.

ASSIGNMENT OF RIGHTS OR OBLIGATIONS. Except as noted hereunder, Successful Bidder may not assign, transfer or sell any rights or obligations resulting from this bid without first obtaining the specific written consent of the City of Milpitas.

In accordance with Public Contract Code Section 7103.5 "In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties. (c) Subdivision (b) shall be included in full in the specifications for the public works contract or in the general provisions incorporated therein and shall be included in full in the public works contract or in the general provisions incorporated therein."

ATTORNEY FEES. In the event a suit or action is instituted in connection with any controversy arising out of this contract, the prevailing party shall be entitled to receive, in addition to its costs, such sum as the court may adjudge reasonable as to attorney's fees and costs.

AUTHORITY OF THE CITY OF MILPITAS. Subject to the power and authority of the City of Milpitas as provided by law in this contract, the City of Milpitas shall in all cases determine the quantity, quality, and acceptability of the work, materials and supplies for which payment is to be made under this contract. The City of Milpitas shall decide the questions that may arise relative to the fulfillment of the contract or the obligations of the contractor hereunder.

CANCELLATION OF CONTRACT. *Without cause*, the City of Milpitas may cancel this contract at any time with thirty- (30) days written notice to the supplier/contractor. *With cause*, the City of Milpitas may cancel this contract at any time with ten- (10) days written notice to the supplier/contractor. Cancellation for cause shall be at the discretion of the City of Milpitas and shall be, but is not limited to, failure to supply the materials, equipment or service specified within the time allowed or within the terms, conditions or provisions of this contract. The successful bidder may not cancel this contract without prior written consent of the Purchasing Agent.

CHANGES IN WORK. The City of Milpitas may, at any time work is in progress, by written order and without notice to the sureties, make alterations in the terms of work as shown in the specifications, require the performance of extra work, decrease the quantity of work, or make such other changes as the City of Milpitas may find necessary or desirable. The Contractor shall not claim forfeiture of contract by reasons of such changes by the City of Milpitas. Changes in work and the amount of compensation to be paid to the Contractor for any extra work as so ordered shall be determined based on time and materials.

CONTRACTOR, DEFINITION. The term "Contractor" refers to the party entering into a contract with the City of Milpitas as a result of this solicitation.

COOPERATION BETWEEN CONTRACTORS. The City of Milpitas reserves the rights to contract for and perform other or additional work on or near the work covered by these specifications. When separate contracts are let within the limits of any one project, each Contractor shall conduct his work so as not to interfere with or hinder the progress or completion of the work being performed by other Contractors. Contractors working on the same project shall cooperate with each other as directed. Each Contractor involved shall assume all liability, financial or otherwise, in connection with his contract and shall protect and save harmless the City of Milpitas from any and all damages or claims that may arise because of inconvenience, delays, or loss experienced by him because of the presence and operations of other Contractors working within the limits of the same project.

COORDINATION WITH AGENCIES. The Contractor shall coordinate his activities with the proper regulatory agencies and have their representative on site at the proper times.

DAMAGE. The Contractor shall be held responsible for any breakage, loss of the City of Milpitas' equipment or supplies through negligence of the Contractor or his employee while working on the City of Milpitas' premises. The Contractor shall be responsible for restoring or replacing any equipment, facilities, etc. so damaged. The Contractor shall immediately report to the City of Milpitas any damages to the premises resulting from services performed under this contract. Failure or refusal to restore or replace such damaged property to the satisfaction of the City of Milpitas will be a breach of this contract.

FORCE MAJEURE. If execution of this contract 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 of Milpitas, in writing, within twenty-four (24) hours, after the delay. Such causes may include but are not limited to Acts of God, war, or acts of public enemy, acts of any governmental agency in its sovereign or contractual capacity, fires, floods, epidemics, strikes, and unusually severe weather.

LAWS - ADHERENCE TO ALL LOCAL, STATE, AND FEDERAL LAWS AND REQUIREMENTS. The Contractor shall adhere to all applicable federal, state, and local laws, codes and ordinances, including, but not limited to, those promulgated by CAL-OSHA, FED-OSHA, EPA, the California State Department of Health Services, and City of Milpitas Environmental Health Department.

LAWS GOVERNING CONTRACT. This contract shall be in accordance with the laws of the state of California. The parties stipulate that this contract was entered into in the county of Santa Clara, in state of California. The parties further stipulate that the county of Santa Clara, California, is the only appropriate forum for any litigation resulting from a breach hereof or any questions risen here from.

PRE-CONSTRUCTION MEETING. The contractor shall not commence work until a meeting between representatives of the contractor and the City of Milpitas is held. The meeting will be held at the City of Milpitas Public Works offices at 12565 N. Milpitas Blvd. at a time and date later to be established.

RECYCLED PRODUCT PROCUREMENT. The City of Milpitas is committed to the conservation and protection of state and local resources; therefore bidders able to supply recycled products and products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals. The Purchasing Agent shall purchase recycled products whenever they are available at the same total cost and the fitness and quality are equal to that of non-recycled products

- a.) Contractors and consultants are required to use environmentally preferable products, and use products manufactured with the maximum practicable amount of post-consumer material, whenever cost effective and to the extent practicable.
- b.) All businesses doing business with the City are required to certify in writing the minimum, if not exact, percentage of post consumer materials in the products or supplies offered or sold to the City.
- c.) With respect to printer or duplication cartridges, a certification from the vendor is required to specify that the cartridges are remanufactured and are in compliance with the requirements of Section 12156 (e) of the Public Contract Code.
- d.) 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 for all paper materials delivered to the city whenever practicable.

- e.) Contractors and consultants shall use both sides of paper sheets whenever practicable.
- f.) The purchasing agent shall provide to the suppliers of recycled products a preference of 10% (percent) of the lowest bid or price quoted by suppliers of non-recycled products.

REJECTION OF WORK. Contractor agrees that the City of Milpitas has the right to make all final determinations as to whether the work has been satisfactorily completed.

RIGHTS RESERVED. (a) Rejection of Work. Contractor agrees that the City of Milpitas has the right to make all final determinations as to whether the work has been satisfactorily completed. (b) Completion of Work. If Contractor fails to comply with the conditions of the contract, or fails to complete the required work or furnish the required materials within the time stipulated, the City of Milpitas reserves the right to purchase in the open market, or to complete the required work, at the expense of the Contractor, including but not limited to, by recourse to provisions of the performance bond if such bond is required under the conditions of this bid.

SAFETY, FIRST AID REQUIREMENTS. Successful Contractor shall comply with the provisions of California Code of Regulations Section 1502 & 1512, et. seq. regarding safety and first aid kits on site.

TERMS OF THE CONTRACT. The terms of the contract shall be limited to the terms herein unless expressly agreed otherwise in writing by the City of Milpitas.

## **SPECIAL PROVISIONS FOR MATERIALS & EQUIPMENT**

AUTHORIZED DISTRIBUTOR. Successful Bidder must be an authorized distributor for the product he offers, or with his bid he must submit documentation from an authorized distributor that he has purchased the specified product/equipment from that distributor and that the distributor will honor all of the manufacturer's warranties.

COMPLIANCE WITH OSHA. Bidder agrees that all item(s) offered comply with all applicable Federal and the State Occupational Safety and Health Act, laws, standards and regulations, and that Bidder will indemnify and hold the City of Milpitas harmless for any failure to so conform.

DELIVERY HOURS. Unless otherwise specified, all items must be delivered to the location(s) during normal park hours: Monday through Sunday dawn to dusk.

NEW AND UNUSED. Unless specifically provided to the contrary, all materials and equipment shall be new and unused and of the current production year. Bids that are received for other than the current production year or for items and materials that have been previously used will be rejected.

SAMPLES. For evaluation purposes, samples may be requested from any Bidder. Samples shall be provided at no charge unless Bidder indicates on his bid the exact charge for samples. The City of Milpitas reserves the right to consume samples for testing purposes. The City of Milpitas may retain samples until delivery and acceptance of contracted items. Bidder shall remove samples at his expense within (30) days of request by the City of Milpitas.

TESTING. After delivery, random samples may be submitted to a commercial laboratory, or other inspection agency, for testing to determine if they conform to the specifications. In cases where tests indicate the samples do not meet specifications, the cost of the testing shall be borne by the contractor. When tests indicate the materials do not meet specifications, the City of Milpitas reserves the right to cancel the award and purchase the goods in the open market at the expense of the vendor.

WARRANTY, SUCCESSFUL BIDDER. Successful Bidder shall fully warrant all materials and equipment furnished under the terms of this contract, against poor and inferior quality, for a period of not less than ***one (1) year*** from date of the final acceptance by the City of Milpitas. Time is of the essence of this contract. While under warranty, successful Bidder shall repair or replace inoperable materials or equipment in a timely manner to minimize the disruption of City of Milpitas operations.

## **SPECIAL PROVISIONS FOR SERVICES**

ACCESSIBILITY. The contractor shall fully inform himself regarding any peculiarities and limitations of the spaces available for the performance of work under this contract. He shall exercise due and particular caution to determine that all parts of his work are made quickly and easily accessible.

BONDS - BID SECURITY. Bids shall be accompanied by cash, a money order, or a cashier's certified check, payable to the order of the City of Milpitas, amounting to ten percent (**10%**) of the bid, or by a bond in said amount and payable to said City of Milpitas, signed by the Bidder and a corporate surety, or by the Bidder and two sureties who shall justify before any officer competent to administer oaths, in double said amount over and above all statutory exemption. Said check shall be forfeited, or said bond shall become payable in case the Bidder depositing same does not within **ten (10) consecutive calendar days** after written notice, execute this contract. See below for "Substitution of Securities for Retained Funds".

BONDS - PAYMENT BOND (Labor & Materials). Successful Bidder shall furnish within **ten (10) consecutive calendar days** after written notice, a Payment Bond in an amount equal to one hundred percent (**100%**) of the total amount of the contract. See below for "Substitution of Securities for Retained Funds".

BONDS - PERFORMANCE BOND. Successful Bidder shall furnish within **ten (10) consecutive calendar days** after written notice, a Performance Bond in an amount equal to one hundred percent (**100%**) of the total amount of the contract.

Substitution of Securities for Retained Funds. The contractor shall be permitted to substitute securities for **any** monies withheld by the City of Milpitas to ensure performance under this contract, such substitution to be subject to the limitations and requirements of Public Contract Code Part 5, §22300.

BUSINESS LICENSE. If the scope of work under this bid includes performing services or installation on City of Milpitas property, the **SUCCESSFUL BIDDER** must have a current City of Milpitas Business License. Inquires regarding Business License may be directed to **Rosina Castellanos at 408-586-3131**. Business Licenses are not required for materials or equipment shipped by U.S. mail or common carrier.

CLEANUP COST. Bidder shall include in the bid, all costs for cleanup during performance and upon completion of work on this project. Successful Bidder will remove all unused equipment and instruments of service, all excess or unsuitable material, trash, rubbish and debris, and legally dispose of same, unless otherwise directed by these specifications. Successful Bidder shall leave entire area in a neat, clean, and acceptable condition as approved by the City of Milpitas.

COMPLIANCE WITH FAIR EMPLOYMENT PRACTICE ACT. Contractor agrees in accordance with Section 1735 and 1777.6 of California Labor Code, and the California Fair Employment Practice Act (Sections 1410-1433) that in the hiring of common or skilled labor for the performance of any work under this contract or any subcontract hereunder, no contractor, material supplier or vendor shall, by reason of race, color, national origin or ancestry, or religion, discriminate against any person who is qualified and available to perform the work to which such employment relates.

CONTRACT INCORPORATION. This contract embodies the entire contract between the City of Milpitas and the Contractor. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments, or modifications of any of the terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties. The complete contract shall include the entire contents of the bid solicitation, all addenda, all of Bidder's successful submittal, supplemental agreements, change orders, performance bond(s), and any and all written agreements which alter, amend or extend the contract.

INDEPENDENT CONTRACTOR. In accepting this contract, Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. Contractor further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be employed. Contractor certifies that to the best of his knowledge, no one who has or will have any financial interest under this contract is an officer or employee of City of Milpitas. It is expressly agreed by Contractor that in the performance of the services required under this contract, Contractor, and any of its subcontractors or employees, shall at times be considered independent contractors and not agents of City of Milpitas.

LIQUIDATED DAMAGES. Time is of the essence of this contract. Failure to start and complete all work specified within the time allowed shall constitute material breach of contract. The "time allowed" will be calculated *from the* date of the Notice of Award through the "Maximum Completion/Delivery Time" indicated by the Successful Bidder/Contractor on his Bid Form for the completion of the work or delivery of the goods specified. Failure of successful Bidder to complete the work or deliver the goods within the time allowed will result in damages, and for each consecutive day in excess, the contractor shall pay to the City of Milpitas the sum of **\$150.00** per calendar day. Such amount shall not be construed as a penalty but as a minimum value of liquidated damages that may be deducted from payment due to the contractor if such delay occurs.

MEASUREMENTS. It is the responsibility of the Bidder to make all measurements to determine his bid price. The City of Milpitas will not be responsible for determining the quantities of materials necessary to complete the work specified.

PERMITS. Unless otherwise specified herein, Contractor shall at his expense, obtain all permits and licenses and pay all charges and fees necessary for the performance of the

contract, and shall give all public notices necessary for the lawful performance of the contract. Contractor shall pay all taxes, levies, duties and assessments of every nature due in connection with any work under the contract, shall make any and all payroll deductions required by law, and shall indemnify and hold harmless the City of Milpitas from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

PREVAILING WAGE. In accordance with Section 1773 et seq. of the Labor Code of the State of California, the Director of the Department of Industrial Relations of the State of California has established the prevailing or current rate of per diem wages to be paid to laborers, workers and mechanics for all work done under or by virtue of this contract. Copies of said prevailing wage rates are on file in the office of the City Engineer and will be made available to the Contractor. A copy of said wage rate shall be posted on the job site by the Contractor.

The rate for work performed on Sundays and such legal holidays as are designated by the Council by ordinance, and for work performed in excess of eight (8) hours in one working day, in such cases in which such overtime is permitted by law, is not less than one and one-half (1-1/2) times the above described prevailing rate of per diem wages.

The Contractor and his subcontractors shall not pay less than said rates and the Contractor shall forfeit as a penalty to the City, the sum of Twenty-five dollars (\$25.00) for each worker(s) and for each working day such worker(s) is paid less than the above stipulated rates for any work done under or by virtue of this contract by him or her or by any subcontractor under him or her.

REPORTS. The Contractor shall keep or cause to be kept an accurate record showing the names and occupation of all laborers, workers, or mechanics employed by him or her or by any subcontractor under him or her in connection with the work and also showing the actual hours worked and actual wages paid to each of such workers, which record shall be open at all reasonable hours to the inspection of the Engineer and to the Chief of the Division of Labor Law Enforcement of the Department of Industrial Relations, his or her deputies and agents as required of Section 1776 of the Labor Code of the State of California and shall be submitted upon request.

PROTECTION OF PUBLIC. Adequate warning devices, barricades, guards, flagmen or other necessary precautions shall be taken by the contractor to give advised and reasonable protection, safety and warning to persons and vehicular traffic concerned in the area.

UNKNOWN OBSTRUCTIONS. Should any unknown obstruction be encountered during the course of this contract the Contractor immediately bring it to the attention of the City of Milpitas. The contractor shall be responsible for the protection of all existing equipment, furniture, or utilities encountered within the work area.

VIEW JOB SITE. A **mandatory job walk** will walk will be conducted by Craig Wisneski, or his designee, on January 13, 2009 at Augustine Park at the intersection of Coelho and Rogers in the picnic area by the big trees 1:00 PM. Bidders must attend the walk-through to be eligible to bid.