



**AMENDMENT NO. 3 TO THE AGREEMENT**  
**WITH**  
**ACCO ENGINEERED SYSTEMS**  
**FOR**  
**MAINTENANCE AND REPAIR OF CITY HALL HVAC SYSTEM**

This Amendment is entered into this 18<sup>th</sup> day of February 2014, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and **ACCO Engineered Systems, Inc.**, a California Corporation (hereafter referred to as "VENDOR").

**RECITALS**

WHEREAS, VENDOR was the lowest responsible bidder for the original installation of the HVAC system when City Hall was built; and

WHEREAS, due to the customized and proprietary nature of the software used in the HVAC control system, on February 17, 2009 the City Council adopted Resolution 7838 approving VENDOR as the "Sole Source" maintenance provider pursuant to Municipal Code Section I-2-3.09 "Sole Source Procurement", for a period of five years which expires on February 17, 2014; and

WHEREAS, on June 15, 2010, City Council approved a three year agreement for maintenance and repair of the City Hall HVAC system with VENDOR for the annual not-to-exceed amount of \$61,236.80 for a total contract not-to-exceed amount of \$183,710.40 for the period of July 1, 2010 to June 30, 2013 ("Agreement"); and

WHEREAS, the parties entered into Amendment No. 1 to the Agreement on August 31, 2011 to correct a typographical error at no cost to the City; and

WHEREAS, the parties entered into Amendment No. 2 to the Agreement on June 18, 2013 to extend the Agreement for eight months expiring on February 17, 2014, to coincide with the end of the Sole Source designation and increased compensation by \$21,144.00 for a total contract not-to-exceed amount of \$204,854.40; and

WHEREAS, the parties now desire to extend the term of the Agreement from February 17, 2014 to June 30, 2014 and increase the total compensation to the CONTRACTOR by Thirty-Four Thousand dollars (\$34,000.00);

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to amend the Agreement as follows:

1. Section 2, entitled "Term" of the agreement is amended to read as follows:

"The effective date of this contract is July 1, 2010 and it terminates on June 30, 2014 unless sooner terminated as provide herein."

2. Section 3 entitled "Payment Limit" of the Agreement is amended to read as follows:

"The City's total payments to Contractor under this contract shall not exceed: \$238,854.40."

3. Section 5 Entitled "City's Obligation" of the Agreement is amended to read as follows:

"City shall pay Contractor as follows: not-to-exceed \$238,854.40 as total payment for all services rendered."

4. Section 3 of the Supplemental Conditions, item 3 entitled "Termination" of the Agreement is amended to read as follows:

"This Contract shall automatically terminate when the total accumulated compensation paid or due to Contractor under this Contract reaches \$238,854.40. The City shall not be responsible for compensating Contractor for any amounts in excess of \$238,854.40."

5. All other provisions of the amended Agreement not modified by this Amendment No. 3 shall remain in full force and effect.

This Amendment is executed as of the date first on page one.

APPROVED BY:

CITY OF MILPITAS

ACCO ENGINEERED SYSTEM

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
Name of Authorized Representative

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Title of Authorized Representative

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

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Michael J. Ogaz, City Attorney

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Steve Erickson, City Project Manager