



**AMENDMENT NO. 4 TO THE AGREEMENT**  
**WITH**  
**ACCO ENGINEERED SYSTEMS, INC.**  
**FOR**  
**MAINTENANCE AND REPAIR OF CITY HALL HVAC SYSTEM & RELATED**  
**SERVICES**

This Amendment is entered into this \_\_<sup>th</sup> day of May 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 Twenty-One Thousand One Hundred Forty-Four Dollars (\$21,144.00) for a total contract not-to-exceed amount of Two Hundred Four Thousand Eight Hundred Fifty-Four Dollars Forty Cents (\$204,854.40); and

WHEREAS, the parties entered into Amendment No. 3 to the Agreement on February 18, 2014, to extend the term of the Agreement to June 30, 2014 and increased compensation by Thirty-four Thousand Dollars (\$34,000.00) for a total contract not-to-exceed amount of Two Hundred Thirty-Eight Thousand Eight Hundred Fifty-Four Dollars and Forty Cents (\$238,854.40); and

WHEREAS, the parties now desire to extend the term of the Agreement from July 1, 2014 to June 30, 2015 and increase the total compensation to the CONTRACTOR by Seventy-Two Thousand, Nine Hundred and Sixty dollars (\$72,960) for a total

contract not-to-exceed amount of Three Hundred Eleven Thousand Eight Hundred Fourteen Dollars Forty Cents (\$311,814.40) and to clarify the prevailing wage requirements;

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 shall terminate on June 30, 2015 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: \$311,814.40."

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 \$311,814.40 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 \$311,814.40. The City shall not be responsible for compensating Contractor for any amounts in excess of \$311,814.40."

5. Supplemental Conditions paragraph 10 entitled "Scope of Work" is amended to read as follows:

"Scope of Work. Attached hereby is Exhibit B incorporated into this Agreement which has been updated in its entirety, effective the date of this Amendment No. 4."

6. The Supplemental Conditions attached to the Agreement is amended to add the following prevailing wage requirements:

"Prevailing Wage. Each laborer or mechanic of VENDOR or any subcontractor engaged in work on the project under this contract shall be paid, if applicable, pursuant to provisions of Section 1770, including amendments thereof, of the Labor Code of the State of California. the Director of the Department of Industrial Relations, State of California, has ascertained the general prevailing rate of wages for straight time, overtime Saturdays, Sundays and Holidays including employer payment for health and welfare, vacation,

pension and similar purposes, copies of the General Prevailing Wage Determination (applicable to the work), for the locality in which the work is to be done can be reviewed at Website: [www.dir.ca.gov/dlsr/pwd/northern.html](http://www.dir.ca.gov/dlsr/pwd/northern.html) . Any laborer or mechanic employed to perform work on the project under this contract, which work is not covered by any of the foregoing classifications, shall be paid not less than the prevailing rate of per diem wages specified for the classification which most nearly corresponds to the work to be performed by him/her.

VENDOR shall promptly notify the City requesting the quotation in writing, about all labor classifications not listed in the prevailing wage determinations but necessary for the performance of the work described in the bid documents or the specifications for the work.

VENDOR and each approved subcontractor shall keep accurate payroll records and comply in all respects with Labor Code Section 1776, including the timely response to written notices requiring copies of such records. In the event contractor or any subcontractor fails to comply within the ten (10) day period, that bidder or subcontractor shall forfeit fifty dollars (\$50.00) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated.

7. All other provisions of the amended Agreement not modified by this Amendment No. 4 shall remain in full force and effect.

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

APPROVED BY:

CITY OF MILPITAS

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Thomas C. Williams, City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

ACCO ENGINEERED SYSTEM

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Name of Authorized Representative

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Title of Authorized Representative

APPROVED AS TO CONTENT:

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Steve Erickson, City Project Manager