

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AWARDING A SOLE SOURCE AGREEMENT TO TELECOMMUNICATIONS ENGINEERING ASSOCIATES, A SUBSIDIARY OF DARYL D. JONES, INC., FOR MAINTENANCE AND SUPPORT OF THE PUBLIC SAFETY DISPATCH CENTER TELECOMMUNICATIONS SYSTEM IN ACCORDANCE WITH MILPITAS MUNICIPAL CODE SECTION I-2-3.09 (SOLE SOURCE PROCUREMENT)**

**WHEREAS**, Section I-2-3.09 of the Milpitas Municipal Code authorizes the City Council to award contracts for up to five (5) years without competition when the Purchasing Agent determines that there is only one (1) source for the required supply or service; and

**WHEREAS**, Telecommunications Engineering Associates, a subsidiary of Daryl D. Jones, Inc., (“TEA”) was designated a Sole Source on November 4, 2011 pursuant to Municipal Code section I-2-3.09 Sole Source Procurement, which is now expiring; and

**WHEREAS**, TEA was the manufacturers recommended installer of the telephone and radio communications system in the Dispatch Center and is the only vendor who has ever worked on the system since its installation in 2002; and

**WHEREAS**, TEA also worked on the Enhanced Public Safety Capital Improvement Program (CIP 3389) to upgrade those same telephone and radio communication systems in the Dispatch Center in 2004; and

**WHEREAS**, TEA has been under contract to provide 24 hour, seven day per week maintenance and support of the system for over 14 years and therefore has exclusive knowledge of the design and installation of this highly customized and complex system; and

**WHEREAS**, the City is a founding member of the Silicon Valley Radio Interoperability Authority (SVRIA) which was formed for the specific purpose of upgrading the Public Safety radio systems for all members in the in the Joint Powers Authority; and

**WHEREAS**, the project is scheduled to be complete by the first quarter of 2018; and

**WHEREAS**, TEA with its unique skills and knowledge of the current system will be essential to help the City transition to the new system, and the logical choice to provide maintenance and support until the transition is complete; and

**WHEREAS**, it is in the City’s best interest to retain TEA who will continue to provide preventative maintenance, periodic review of system components and any necessary training of City staff until such time as its services are no longer needed.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. The City Council hereby approves the sole source agreement with TEA in the annual amount of \$86,232 with a contingency for unforeseen repairs of \$5,000 for a total annual contract amount not to exceed of \$91,232 for a total two year contract amount not-to-exceed of \$182,464 in accordance with Milpitas Municipal Code Section I-2-3.09 (Sole Source Procurement). A copy of the TEA Agreement is attached hereto as **Exhibit A**.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher J. Diaz, City Attorney

## EXHIBIT A



### CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF MILPITAS AND TELECOMMUNICATIONS ENGINEERING ASSOCIATES A SUBSIDIARY OF DARYL D. JONES, INC.

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and **Telecommunications Engineering Associates**, a subsidiary of **Daryl D. Jones, Inc.**, a California corporation, ("Consultant") as of **November 14, 2016**.

#### AGREEMENT

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on **November 13, 2017**, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant a guaranteed maximum price not to exceed **\$182,646** for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Consultant's signature.

- 2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the

requirements above and is otherwise acceptable to the City to pay Consultant. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

- 2.3 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

- 2.4 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.

- 2.5 Reimbursable Expenses.** Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

- 2.6 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.

- 2.7 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

- 2.8 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

**4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.2 Commercial General and Automobile Liability Insurance.**

- 4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.
- 4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 (“any auto”). No endorsement shall be attached limiting the coverage.
- 4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:
- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured’s general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.
  - b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
  - c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.3 Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

**4.3.1** Any deductible or self-insured retention shall not exceed \$150,000 per claim.

**4.3.2** An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.3.3** The policy must contain a cross liability clause.

**4.3.4** The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.

- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

#### **4.4 Requirements for All Policies.**

- 4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.
- 4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
- 4.4.3 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 4.4.4 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

- 4.4.5 **Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

- 4.5 **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

**4.6 Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

**Section 6. STATUS OF CONSULTANT.**

**6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the

right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

**Section 7. LEGAL REQUIREMENTS.**

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.
- 7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this

Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

## **Section 8. TERMINATION AND MODIFICATION.**

- 8.1 Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement for one additional year beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein as EXHIBIT C - NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:
- 8.6.1 Immediate cancellation of the Agreement;
  - 8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and
  - 8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

**Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds

expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

**Section 10 MISCELLANEOUS PROVISIONS.**

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et.seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 Contract Administration.** This Agreement shall be administered by **Armando Corpus-408-586-2534** who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 Notices.** Any written notice to Consultant shall be sent to:

**Telecommunications Engineering Associates  
Daryl D. Jones, President  
1160 Industrial Road, Suite 15  
San Carlos, CA 95035**

Any written notice to City shall be sent to:

**City of Milpitas  
Armando Corpus, Police Captain  
455 East Calaveras Boulevard  
Milpitas, California 95035**

- 10.11 Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

**10.12 Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

**10.13 Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

TELECOMMUNICATIONS ENGINEERING  
ASSOCIATES, A SUBSIDIARY OF DARYL D.  
JONES, INC.

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

\_\_\_\_\_  
Signature of Authorized Representative

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

\_\_\_\_\_  
Title of Authorized Representative

APPROVED AS TO FORM:

\_\_\_\_\_  
Taxpayer Identification Number

\_\_\_\_\_  
Christopher J. Diaz, City Attorney

\_\_\_\_\_  
City of Milpitas Business License Number

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Armando Corpus, Police Captain

## EXHIBIT A

### SCOPE OF SERVICES

#### **SUMMARY**

Telecommunications Engineering Associates proposes to provide professional telecommunications engineering services to manage and maintain the City's radio base station and console equipment. Maintenance of mobile and portable radio equipment is not included in this proposal.

This is a unique proposal and must be evaluated differently than a proposal for routine contractual maintenance. Routine maintenance will be provided under this proposal, however the level of service extends far beyond a regular maintenance program.

Based on the equipment listed in the attached itemization, the monthly cost for this service is \$7186.00. TEA will submit monthly invoices to the City.

#### **FACILITIES MANAGEMENT SERVICES**

It is the objective of this proposal to assure the City that communications problems will not occur as long as we are providing maintenance and support services. In the event that a piece of equipment covered by this agreement fails, our firm will promptly make the necessary repairs in a manner that will keep system downtime to an absolute minimum.

We provide total problem resolution services. This includes maintaining liaison with equipment manufacturers, other vendors, the County, and ATT/SBC. Many of the technical problems that occur with communications equipment are caused by telephone line trouble or by unsuitable electrical power. We will investigate all reports of system problems and work with the appropriate vendor or agency to correct it. We will serve as the City's single point of contact for radio system problems.

As part of the service we offer, we will make recommendations to the City when equipment needs to be replaced and offer suggestions about new products and equipment which can be used to enhance system performance.

Telecommunications Engineering Associates will provide consulting services for any system or piece of equipment covered under this proposal without additional charge. This includes consulting services to make minor system design changes. Labor and materials necessary to accomplish the design changes are at additional cost.

We will prepare bid specifications for base station equipment when directed to do so by the City.

Written reports on the status of the City's communications system will be provided when necessary.

## **MAINTENANCE AND REPAIR SERVICES**

Every effort will be made to keep the equipment covered by this proposal in excellent working condition by using modern preventive maintenance techniques. Our goal is to prevent malfunctions that would affect day to day operations.

We will maintain the equipment listed in the attached itemization in good working condition. All labor necessary to accomplish preventive maintenance and repair will be provided without additional charge.

TEA will provide parts necessary to accomplish any repair of a single problem up to a value of \$100. If the total expense for parts exceeds \$100, the City will reimburse TEA for the balance over \$100. TEA shall obtain prior approval from the City before ordering parts where the cost to the City will exceed \$100.

## **RESPONSE TIME TO REPAIR REQUESTS**

Three levels of priority will be established with regard to responding to requests by the City for maintenance service.

Every effort will be made to respond to emergency requests for service within one hour. Emergency requests are justified when a malfunction of equipment has a major affect on day to day operations. An example of a justifiable emergency service request would be a major failure of the dispatch console.

High priority service requests will be handled within 4 hours of notification. An example of a high priority service request would be if the primary police radio channel becomes non-operational and dispatch traffic is moved to a secondary channel.

Non critical service requests will be handled within 24 hours of notification. Examples include headset jack failures and reports of intermittent problems.

In all cases, every effort will be made to be available for immediate telephone consultation for any problem. In most cases, telephone instructions can be immediately given to City personnel on how to deal with an equipment failure.

## **SERVICES SPECIFICALLY EXCLUDED**

The following equipment items and services are specifically excluded from this proposal. The following services may be available on a time and materials basis.

- Antennas - Base station antennas and coaxial cable at all sites.
- Telephone headsets.
- System relocation or design changes.
- Installation of new equipment.
- Batteries.

Additionally, neither parts or labor will be provided without additional charge to correct malfunctions or damage for problems caused by natural or manmade disaster such as flood, earthquake or fire. Labor and materials to repair damage to equipment caused by variation in electrical power quality from PG&E or emergency generators is excluded.

Services to diagnose or correct problems caused by modifications to the equipment or systems covered under this agreement that are made by persons other than TEA employees are excluded.

It is understood that TEA may determine that a particular piece of equipment is beyond economic repair due to age or condition. If this occurs, the equipment item will no longer be eligible for maintenance under this proposal.

### **MISCELLANEOUS TERMS AND CONDITIONS**

Telecommunications Engineering Associates will maintain insurance as required by the City and will cause the City to receive certificates of insurance. The City will be named as an additional insured if requested to do so. TEA's liability will be limited to the coverage described in the certificates of insurance provided to the City.

It shall be the joint responsibility of the City and TEA to maintain an accurate list of equipment, which should be included on the equipment itemization and fee schedule. It is understood that only equipment listed in the most current copy of the equipment itemization is covered under the fixed fee proposal.

It is mutually understood that nothing in this proposal shall prohibit TEA from providing additional services for an additional fee to the City.

It is further understood that TEA personnel will need to periodically possess radio equipment that belongs to the City. TEA agrees to exercise reasonable care for the equipment and shall be responsible for its return to the City.

The fees charged for the services provided under this agreement shall be reviewed in February of each year. If adjustments to fees are required, the City will be notified in writing prior to March 31st. No other fee adjustments will be made during the year unless equipment is added to or deleted from the equipment itemization list.

TEA reserves the right to install its own radio repeater and antenna at any City radio site in order to facilitate administrative communication between TEA personnel. If TEA determines that this is necessary, all equipment and installation services will be at TEA's expense and the City shall incur no additional charge. The City agrees to not charge TEA for use of space or electrical power at City radio sites.

TEA reserves the right to invoice the City for reimbursement of all fees for licenses required to do business in the City.

### **RIGHT TO SUBCONTRACT**

TEA reserves the right to subcontract repair work at any time. In all cases, TEA will be responsible for system design, performance, and the quality of service provided. Additionally, TEA will be the single point of contact for the City.

**TERMINATION**

The City may cancel this agreement without penalty at any time upon thirty days written notice to Telecommunications Engineering Associates. Telecommunications Engineering Associates may cancel this agreement upon ninety days written notice to the City.

## SUPPLEMENTAL TERMS AND CONDITIONS

Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. If the services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws, if applicable. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. To the extent applicable, Consultant and all subconsultants shall comply with all California Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor, contractor registration, certified payroll records and debarment of contractors and subcontractors.

**EXHIBIT B**  
**COMPENSATION SCHEDULE**

Revised: 10/07/2016

<b>CONSOLE EQUIPMENT</b>	<b>Quantity</b>	<b>Monthly Cost Each</b>	<b>Monthly Total</b>
Zetron Model 4048 with dual power supply	1	\$184	\$184
Zetron dual channel control card	15	\$37	\$555
Zetron Model 4217T CRT operator position*	6	\$158	\$948
Zetron 950-9695 console interface card	6	\$21	\$126
Zetron radio/telephone headset interface	12	\$16	\$192
Zetron 702-9105 aux I/O card	4	\$16	\$64
	Total >>		<u>\$2,069</u>

\*Note: Repairs to touchscreen computer displays are excluded from the fixed-fee agreement. Repairs will be made on a "time and materials" basis.

<b>PD-1 SYSTEM</b>	<b>Quantity</b>	<b>Monthly Cost Each</b>	<b>Monthly Total</b>
UHF Motorola Quantar duplex base station	3	\$140	\$420
UHF Motorola AstroTac receiver	2	\$55	\$110
Motorola Digitac voter/comparator	1	\$160	\$160
Site select relay system	1	\$8	\$8
	Total >>		<u>\$698</u>

<b>PD-3 SYSTEM</b>	<b>Quantity</b>	<b>Monthly Cost Each</b>	<b>Monthly Total</b>
UHF Motorola Quantar duplex base station	3	\$140	\$420
UHF Motorola AstroTac receiver	2	\$60	\$120
Motorola Digitac voter/comparator	1	\$160	\$160
Site select relay system	1	\$8	\$8
	Total >>		<u>\$708</u>

<b>FD-1 SYSTEM</b>	<b>Quantity</b>	<b>Monthly Cost Each</b>	<b>Monthly Total</b>
UHF Motorola MTR2000 duplex base station	3	\$130	\$390
UHF Motorola MTR2000 receiver	2	\$60	\$120

Motorola Digitac voter/comparator	1		\$160	\$160
Site select relay system	1		\$8	\$8
		Total >>		<u>\$678</u>

<b>FIRE TAC SYSTEM</b>	<b>Quantity</b>		<b>Monthly Cost Each</b>	<b>Monthly Total</b>
UHF Motorola MTR2000 duplex base station	2		\$130	\$260
UHF Motorola MTR2000 receiver	3		\$60	\$180
Motorola Digitac voter/comparator	1		\$160	\$160
Site select relay system	1		\$8	\$8
		Total >>		<u>\$608</u>

<b>DPW SYSTEM</b>	<b>Quantity</b>		<b>Monthly Cost Each</b>	<b>Monthly Total</b>
800 Motorola MTR2000 duplex base station	2		\$140	\$280
Site select relay system	1		\$8	\$8
		Total >>		<u>\$288</u>

<b>MONITOR RECEIVERS</b>	<b>Quantity</b>		<b>Monthly Cost Each</b>	<b>Monthly Total</b>
Motorola CDM750 monitor receiver	2		\$12	\$24
Kenwood 800 MHz monitor receiver	1		\$12	\$12
Motorola 800 MHz Spectra trunked monitor	3		\$35	\$105
GE Phoenix monitor receiver	1		excluded	excluded
Monitor receiver power supply	1		\$5	\$5
		Total >>		<u>\$146</u>

<b>DIGITAL TRANSPORT BACKBONE</b>	<b>Quantity</b>		<b>Monthly Cost Each</b>	<b>Monthly Total</b>
Adtran TSU-600 channel bank	6		\$140	\$840
		Total >>		<u>\$840</u>

<b>MISCELLANEOUS EQUIPMENT</b>	<b>Quantity</b>		<b>Monthly Cost Each</b>	<b>Monthly Total</b>
Motorola MTR-2000, White Channel (Hilton)	1		\$65	\$65
Motorola MTR-2000, Blue Channel (Hilton)	1		\$65	\$65
Motorola CDM 750, low-band, LawNet	0		excluded	excluded
Motorola CDM 750, low-band, RedNet	0		excluded	excluded
Uninterruptable Power System UPS	?		excluded	excluded
Netbotz network monitoring device	3		\$20	\$60
		Total >>		<u>\$190</u>

<b>FIRE STATION ALERTING SYSTEM</b>	<b>Quantity</b>		<b>Monthly</b>	<b>Monthly</b>
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		<b>Cost Each</b>	<b>Total</b>
Station alerting - shared resources	1	\$350	\$350
Station alerting - Station-1	1	\$203	\$203
Station alerting - Station-2	1	\$136	\$136
Station alerting - Station-3	1	\$136	\$136
Station alerting - Station-4	1	\$136	\$136
	<b>Total &gt;&gt;</b>		<u>\$961</u>

**SUMMARY**

	<b>Monthly Total</b>
CONSOLE EQUIPMENT	\$2,069
PD-1 SYSTEM	\$698
PD-3 SYSTEM	\$708
FD-1 SYSTEM	\$678
FIRE TAC SYSTEM	\$608
DPW SYSTEM	\$288
MONITOR RECEIVERS	\$146
DIGITAL TRANSPORT BACKBONE	\$840
MISCELLANEOUS EQUIPMENT	\$190
FIRE STATION ALERTING SYSTEM	<u>\$961</u>

Monthly Total	\$7,186
Less 10% for 5 year commitment	<u>\$0</u>
Monthly Total With Discount	\$7,186

Annual Total \$86,232

Contingency for Unforeseen Repairs \$5,000

Annual Grand Total \$91,232

**EXHIBIT C**

**NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT**

<b>AGREEMENT TITLE and DATE:</b>	
<b>CONTRACTOR Name and Address:</b>	
<b>DATE OF OPTION:</b>	

*(Date the notice is sent must be consistent with the time for exercise set forth in Agreement)*

Pursuant to the Terms and Conditions of the Agreement referenced above, the City of Milpitas hereby exercises its option to extend the term under the following provisions:

<b>OPTION NO.</b>	
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**NEW OPTION TERM**

Begin date:	
End date:	

**CHANGES IN RATE OF COMPENSATION**

<b>Percentage change in ___ index upon which adjustment is based:</b>	
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Pursuant to the Terms and Conditions of the Agreement, page \_\_\_\_. The Rate of Compensation is hereby adjusted as follows:

<b>MAXIMUM COMPENSATION for New Option Term:</b>	
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For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Milpitas hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

<b>CITY OF MILPITAS</b> a Municipal corporation  By _____ Name: Chris Schroeder Title: Purchasing Agent	Telecommunications Engineering Associates a Subsidiary of Daryl D. Jones, Inc. a California corporation  By _____ Name: Title:
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