10

MEMORANDUM

Department of Information Services

To: Honorable Mayor and City Council

Through: Charles Lawson, City Manager

From: Bill Marion, Information Services Director

Keyvan Irannejad, Chief Building Official

Subject: Development System/On-line Permitting

Date: April 11, 2006

BACKGROUND:

Last year staff presented a proposal to move forward with an Online Permitting/Development System project. The focus of this project was two-fold, to provide an online permitting capability and to support the process improvement initiatives. This process began with a review of the permitting systems in use with other local jurisdictions. In total the permitting systems of 12 other jurisdictions were reviewed and 4 vendor presentations were coordinated. A general requirements definition involving the Building, Planning, Engineering, Fire Prevention and Finance Departments was completed. Based on the information gathered in this effort, a Request for Proposal (RFP) was drafted and released on October 10th, 2005. The following were included in the RFP as the goals of the new system:

- Support Permit Process Improvement (Improved Customer Service)
- Online Capabilities (Permit Application and Issuance, Plan Check Comments)
- Better Tracking of Application/Permit Status (Online Status)
- Better Accountability (Fees, Time Tracking)

Another concern was the projected increase in permitting activity. Based on planned or in progress developments, Building staff estimates that over the next 2 years the number of permits issued and inspections performed will double. The existing permitting system and staffing will not be sufficient to handle this increase at current service levels.

Staff reviewed the proposals received from the RFP and conducted 3 days of vendor demonstrations. Of the top proposals two were chosen as finalists. Site visits to local jurisdictions using these two systems were accomplished and a final selection was made. Staff then began discussions with the selected vendor to establish a fixed 5 year cost for the system. With the assistance of the Finance Department, a projection for Permitting and Development fees over the next 5 years was accomplished. This projection was then used to determine what the required cost recovery would be for the estimated 5 year life of the system. The cost calculations included hardware and software costs, hardware and software maintenance over 5 years, data conversion and initial installation costs. This cost could be recovered through a permitting automation fee. Based on the data above, it would require a 3.1% automation fee to recover the cost of the system over a 5 year period. On a typical residential water heater replacement, this would amount to $4.37. For this fee, the customer would

have the ability to obtain a permit online, view plan check comments and inspection results online and schedule an inspection via an automated voice response system. While this example is for a residential customer, the development community would be provided with an even greater degree of service improvement.

While 5 years is commonly used as an estimated life of an automated system, the recovery period could be extended to six years with a 2.7% fee or seven years with a 2.5% fee. For the residential water heater example, this would equate to a $3.81 or $3.52 fee respectively. This fee would apply to the following:

- Building Permit
- Fire Safety Construction Permit
- Eng & Planning Services
- Planning Fees
- Traffic Impact Fees
- Park in-lieu Fees
- Water Line Ext. Connection Fees
- Sewer Connection Fees
- Treatment Plant Fees
- Storm Drain Connection Fees

The Finance Department suggested that the Capital Contingency Reserve could be used to fund the initial purchase and installation of the system. The automation fee would then replenish the Capital Contingency Reserve. Based on the current financial situation, there does not seem to be any other practical sources of funding other than through cost recovery.

This new system will provide a higher level of service to citizens, builders and developers justifying the automation fee. Information will be more readily and more quickly available, reducing applicant turn-around time, and hopefully reducing their cost to build in the City. The new system will also allow existing staff to manage an increased workload by reducing many of the time consuming ancillary tasks. For example, Building Inspectors now spend one hour per day entering the results of their daily inspections. With the proposed system, Building Inspectors would record inspections on a handheld device which would then transfer the results to the permitting system. Building staff spend several hours per day returning phone calls to schedule inspections. With the new system, applicants can schedule inspections via an automated voice response system, saving time for both City staff and customers. These efficiencies will make existing staff even more effective and productive.

This project is described as a development system because building permitting is just one part of a much larger process that an applicant must follow. This concept is the key to the process improvement initiative in that the activities of all departments are coordinated and the results of each step in the process are available to any City staffer who interacts with the customer. By providing a single integrated system, more accountability of deadlines, hours charged against a project, fees due and fees paid will be provided. At any step in the process, staff will be warned of outstanding conditions or fees prior to continuing work on a project.

While the fee does represent an increase in the overall monetary cost to an applicant, it will more than repay the customer with time savings and improved service. The City will benefit in that the

existing staff will be made more productive and the overall experience of building in Milpitas will be improved, making the City more attractive for future development.

RECOMMENDATION:
Staff recommends that Council consider the following:

1. Direct staff to return with the implementing language for a permitting automation fee effective July 1st, 2006 in the amount of 3.1%, 2.7% or 2.5%
2. Establish a Capital Improvement Project (CIP) for Online Permitting/Development System Implementation and approve the transfer of $500,000 from the Capital Contingency Reserve for project funding
3. Award bid to CRW Associates for an automated development system

AGREEMENT

FOR THE INSTALLATION AND USE OF

PERMIT, PLANNING, AND CODE ENFORCEMENT SOFTWARE

This Agreement is entered into this _____ day of _____, ____, by and between the City of Milpitas, (hereinafter "CLIENT") and CRW ASSOCIATES, a d.b.a. of CRW Systems, Inc., (hereafter "CRW") for the installation of a permit and code enforcement software, and other services, as specifically provided herein (hereafter referred to as "the Project").

IN CONSIDERATION of the covenants as set forth in this Agreement, CLIENT and CRW agree as follows:

A. SCOPE OF SERVICES / SCOPE OF WORK

A.1. PROJECT DESCRIPTION:

The Project is more specifically defined as follows: Installation of an automated permit management, project tracking, code enforcement, and/or business license tracking software system, and related subsystems.

A.2. AGREEMENT CONTENTS:

This Agreement includes the following Exhibits:

Exhibit A. Project Scope of Work.
Exhibit B. Project Milestone and Payment Schedule.
Exhibit C. Project Cost Summary
Exhibit D. Software License
Exhibit E. System Acceptance Testing
Exhibit F. Software Escrow Agreement

A.3. COMMENCEMENT DATE / SCOPE OF WORK:

A.2.1. The commencement date for the services to be provided by CRW shall be the date upon which CRW is in receipt of all of the following: (a) a fully executed original of this Agreement, (b) written notice to proceed provided by CLIENT. CRW shall not be obligated to perform any work pursuant to the Project, including labor or materials, prior to the commencement date as defined herein.

A.2.2. A Scope of Work, with itemized pricing of various items associated with the Project is attached hereto as Exhibits A, B and C, and incorporated herein by this reference. Subject to CLIENT'S duties and responsibilities provided in Section C below, the time periods set forth in Exhibits A and B shall be adhered to. The time periods indicated are provided as a general understanding of the estimated time period in which various Project items will be completed. It is not intended to impose strict deadlines for completion of all or any part of the work.

A.2.3. The time schedule provided in Exhibit B, Project Milestone, is based in large part on the assumption that CLIENT will provide all necessary information to CRW in a timely manner in accordance with Section C of this Agreement.

B. DUTIES AND OBLIGATIONS OF CRW

B.1. SCOPE OF WORK:

B.1.1 After the commencement date, CRW shall perform the following services:

(1) Install Permit Management, Code Enforcement, Business License Tracking, and Project Tracking software.

(2) Provide data conversion of CLIENT'S existing data and incorporate data into CRW system.

(3) Provide hands-on, Administrator Training, as specifically provided herein.

(4) Provide on-site, hands-on, User Training, as specifically provided herein.

(5) Provide remote access support during Annual Maintenance period. CLIENT to provide local workstation with remote connection and appropriate remote access software.

B.1.2. CRW shall install software and provide all services in a workmanlike manner in accordance with the Scope of Work, subject to the terms and conditions as stated in the Agreement. Any additional services must be evidenced by a written modification of this Agreement, or change request pursuant to Section C of the Agreement. Services to be provided do not include hardware.

B.2. IMPLEMENTATION:

CRW shall perform implementation services including setup of permit/project/case types, fee formulas, valuation schedules, using data provided by CLIENT to CRW. CRW shall provide custom report development for up to three (3) custom reports and up to three (3) custom forms as designated by CLIENT.

B.3. DATA CONVERSION:

CRW shall provide database conversion services necessary to convert the CLIENT's existing permit database to CRW system format. The source information for data conversion shall be limited to ASCII, Access or dBase-formatted data provided by CLIENT to CRW within 30 days of project commencement date.

B.4. ADMINISTRATOR TRAINING:

CRW shall provide training for designated System Administrators. The training will be conducted at a location to be determined by CRW. Registration for three (3) CLIENT staff are included in Exhibit C, Cost Summary.

B.5. USER TRAINING:

CRW shall provide training as further defined herein for Permit Trak, Code Trak, Business Trak, and Project Trak software. Training will be conducted at CLIENT offices.

B.6. MAINTENANCE AND SUPPORT:

CRW shall provide the following maintenance and support services to CLIENT during the twelve (12) month time period following payment of Annual Maintenance and Technical Support fees. Annual Maintenance and Technical Support fees are waived for the first twelve (12) month period following System Acceptance of software, as defined in Exhibit E.

B.6.1. Trakit software modifications to correct bugs or errors that are reported to CRW by CLIENT.

B.6.2. Trakit software updates that are posted from time to time by CRW on web site (www.crwassoc.com/support). Updates may be downloaded and installed by CLIENT onto CLIENT's network.

B.6.3. Technical support via telephone. CRW reserves the right to restrict phone access to CLIENT-designated System Administrators. Toll-free phone access is provided by CRW (888-279-2043).

B.6.4. Technical support via web form on CRW web site (www.crwassoc.com/support).

B.6.5. Trakit Software enhancement requests may be submitted by CLIENT to CRW. Enhancement requests will be reviewed by CRW and may be incorporated into future releases. CLIENT understands that submittal of enhancement request does not obligate CRW to provide software modification.

B.6.6. CLIENT may register for and enroll in CRW training classes for System Administrators or Users. Registration fees may vary from time to time. Registration for three (3) CLIENT staff are included in Exhibit C Cost Summary.

B.7. NOT RESPONSIBLE FOR DAMAGES DUE TO UNFORESEEN DELAYS:

Neither CLIENT nor CRW shall be responsible for any damages resulting from delays outside of its reasonable control, including, but not limited to, (a) failure of CLIENT to furnish timely information; (b) failure of CLIENT to approve or disapprove of CRW's work, and/or (c) strikes, lockouts, accidents, or acts of GOD.

C. DUTIES AND RESPONSIBILITIES OF CLIENT:

C.1. INFORMATION TO BE PROVIDED BY CLIENT:

C.1.1. CLIENT will provide all information necessary for CRW to establish the permit software control files, including but not limited to:

1. Current valuation and fee structures
2. Current Permit, Project, License, and Case types designations and categories
3. Examples of all current reports used by the CLIENT relating to permit management.
4. Any exceptions to the typical permit process, or any special permit processing requirements.

C.1.2. The CLIENT will provide CRW with access to CLIENT workstations and disk space for installation of the software.

C.1.3. The CLIENT will ensure and provide that staff who will be trained in the use of CRW software will have sufficient basic knowledge of permit processing and MS-Windows functions.

C.2. CLIENT COOPERATION:

C.2.1. CLIENT understands that timely completion of the Project is dependent in significant part upon the timely cooperation of CLIENT in providing information to CRW necessary to complete the project, including, but not limited to: (a) Data obtained from CLIENT'S present system to be incorporated into the new CRW system; and (b) information relative to desired permit forms to be incorporated into the CRW system.

D. COMPENSATION

D.1. CRW COMPENSATION AND FEES:

CLIENT agrees to compensate CRW for software and professional services rendered under this Agreement for the total contract price of **$ 325,500 [Three Hundred Twenty Five Thousand Five Hundred Dollars]**, which amount shall include all labor, materials, taxes, insurance and all other costs associated with the Project, except any specific optional items identified in Exhibit C, Project Cost Summary. Total Contract Price does not include any changes to the work as may be requested by CLIENT and incorporated into the project pursuant to a written request by CLIENT as provided in section E of this Agreement.

D.2. TERMS OF COMPENSATION

CRW will submit invoices for work performed according to the payment schedule shown in Exhibit C, Cost Summary. CLIENT agrees to notify CRW of any disputed invoice within ten (10) business days of receipt of such invoice. Failure of CLIENT to pay undisputed invoices within 30 days of receipt will subject CLIENT to a late payment fee computed at a periodic rate of 1.0% per month of the amount past due, representing an annual percentage rate of 12%, which late fee shall be applied to any unpaid balance.

E. CHANGES AND ADDITIONS TO THE WORK

E.1 REQUIREMENT OF WRITTEN CHANGE ORDERS:

CLIENT may request CRW to perform additional services not covered by the specific Scope of Work as set forth in Exhibit A of this Agreement. Any such requests shall be submitted in writing, and shall be signed by the Client Representative, as identified in I1.1 of this Agreement, and an authorized representative of CRW. Such signed requests shall include (a) a description of the additional services to be performed, and (b) the agreed upon price for such services. Any such requests signed by the Client Representative, or other authorized agent of CLIENT, shall be deemed authorized by CLIENT and shall bind CLIENT to its terms.

E.2. PAYMENT FOR ADDITIONAL WORK:

Any such additional work performed by CRW shall be added to the contract price and billed in accordance with the Cost Summary as outlined in Exhibit C of this Agreement. CRW will not commence any additional services for the CLIENT until written authorization has been given by CLIENT and approved by CRW, as provided above.

F. INDEMNIFICATION AND INSURANCE

F.1. INDEMNIFICATION:

F.1.1. CRW shall indemnify, defend and hold harmless CLIENT from and against any claims, based upon infringement of any United States copyright trademark or patent by the Software. CLIENT agrees to notify CRW of any such claim promptly in writing. CLIENT agrees to cooperate fully with CRW during such proceedings. CRW shall defend at its sole expense all proceedings arising out of the foregoing. In the event of such infringement, CRW may replace, in whole or in part, Software with a substantially compatible and functionally equivalent computer program or modify Software to avoid the infringement.

F.1.2. 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 substantial 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 or in substantial part 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 not contributed in substantial 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.

F.1.3. 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.

F.2. INSURANCE:

CRW, shall at CRW's own expense, purchase, maintain and keep in force during the term of this Agreement (unless otherwise stated below) such insurance as set forth below. All insurance policies provided under this Agreement shall be written on an "occurrence" basis. The insurance requirements shall remain in effect throughout the term of this Agreement.

F.2.1. Worker's Compensation as required by law, Employers Liability Insurance of not less than $100,000.00 00 for each accident, $100,000.00 disease-each employee, $500,000.00 disease-policy limit..

F.2.2. Commercial General Liability Insurance - $1,000,000.00 Limit.

F.2.3. Professional Liability Insurance - $500,000.00 Limit. Professional Liability insurance will be in force for thirty-six (36) months from commencement date. Professional Liability insurance shall apply to services performed by CRW staff only. Professional Liability insurance shall not apply to third-party services or services of subcontractors.

F.2.4. All policies are to be written through companies duly approved to transact that class of insurance in the State of California

F.2.5. Insurance is to be placed with carriers with a Best rating of A:VII or better.

F.2.6. CRW hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against CLIENT, it being the intention that the insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the policies

F.3. PROOF OF INSURANCE

Within 30 days of the commencement date CRW shall deliver to CLIENT a Certificate of Insurance for Items F.2 above as proof that said insurance will remain in full force throughout the term of this Agreement.

CLIENT, its officers and agents, shall be endorsed as an additional insured under CRW's General Liability Insurance. CRW will not modify or cancel its General Liability Insurance without written notification and approval from the CLIENT.

G. TERMINATION

G.1. TERMINATION OF AGREEMENT

G.1.1. This Agreement may be terminated by CLIENT at any time, with or without cause, upon written notice to CRW. Notwithstanding the date of such notice, termination shall be effective upon receipt by CRW of such notice of termination. In the event of termination by CLIENT, CLIENT shall pay CRW for all services and materials provided to CLIENT pursuant to this Agreement up to and including the date of receipt by CRW of notice of termination.

G.1.2. In the event CLIENT terminates this Agreement, the CLIENT agrees to immediately return all source code or other materials provided to CLIENT by CRW, and to destroy, erase, and purge all software provided by CRW from any and all CLIENT computers.

G.1.3. Within 30 days of termination CLIENT agrees to provide CRW with written confirmation that all CRW software has been destroyed. Within its sole discretion, and upon reasonable notice to CLIENT, CRW shall have the right to verify that CRW software has in fact been removed or destroyed by personal inspection of CLIENT computers.

G.1.4. Any use by CLIENT of any CRW software after termination of this agreement by CLIENT without the express written authorization of CRW shall be a breach of this agreement and subject CLIENT to substantial damages.

H. OWNERSHIP OF DOCUMENTS

H.1. OWNERSHIP OF DOCUMENTS

H.1.1. All plans, specifications, reports, and other design documents prepared by CRW pursuant to this Agreement shall become property of CLIENT only after completion of the Project.

H.1.2. All source code for computer programs or modifications to programs, which are produced pursuant to this Agreement shall be deemed, and remain, the intellectual property of CRW and are protected under the copyright, patent, or other laws, of the United States as well as other jurisdictions where such programs are being used.

H.1.3. CLIENT agrees to respect CRW's purported ownership of any such proprietary rights which may exist, including patent, copyright, trade secret, trademark and other proprietary rights, in and to Software and any corrections, bug fixes, enhancements, updates or other modifications, including custom modifications, to Software, whether made by CRW or any third party. Under no circumstances shall CLIENT sell, license, publish, display, distribute or otherwise transfer to a third party Software or any copy thereof, in whole or in part, without CRW 's prior written consent.

H.2. SOURCE CODE ESCROW

H.2.1. CRW shall maintain a software escrow account, as described in Exhibit F. A copy of the latest source code for the software being installed by CRW pursuant to this Agreement shall be deposited in this escrow account.

H.2.2. CRW will pay the entire cost of this source code escrow account.

H.2.3. CLIENT will be registered as a Registered Beneficiary of the Software Escrow Agreement, as defined in Exhibit F.

I. COMMUNICATION THROUGH CLIENT / CRW DESIGNATED REPRESENTATIVES:

All communication relating to project status shall be exchanged between a designated representative of the CLIENT and a designated representative of CRW as identified below.

I.1. DESIGNATED CONTRACT REPRESENTATIVES:

I.1.1. The designated representative of CLIENT and CRW Associates is as follows:

CLIENT	CRW
CLIENT. Phone: () Fax: email:	Christopher R. Wuerz, P.E. President, CRW Systems, Inc., d.b.a. CRW Associates 16980 Via Tazon, Suite 320 San Diego, CA 92127 Phone: (858)451-3030 Facsimile: (858) 451-3870 email: chris@crwassoc.com

I.1.2. If the designated representative or address of either party changes during the term of this Agreement, a written notice shall be given to the other party prior to the effective date of change.

I.2 DESIGNATED SYSTEM ADMINISTRATOR:

I.2.1. The CLIENT Representative shall identify and designate System Administrators. All communication related to day-to-day operations of the system, including system maintenance, systems problems and/or troubleshooting, shall be made to CRW only through either the designated representative of CLIENT as identified in I.1.1 above, or the System Administrators as identified below.

I.2.2. The System Administrators shall participate in all training sessions conducted by CRW as required by this Agreement, and shall become fully knowledgeable and competent to use all aspects of the system software. It is highly recommended that the designated System Administrators be someone with experience and competence with personal computers and with the business processes of the Community Development Department.

I.2.3. The System Administrator for CLIENT is designated as follows:

Name: [redacted]

J. MISCELLANEOUS GENERAL PROVISIONS

J.1. LICENSES

CRW shall obtain and maintain all business licenses as may be required by law.

J.2. STATUS OF CRW AS CONSULTANT

Throughout the term of this Agreement, CRW, its employees, subcontractors, consultants, and agents shall be considered as an independent contractor(s). Nothing in this Agreement shall be interpreted to imply an employee-employer relationship between CLIENT and CRW.

J.3. PAYMENT OF TAXES.

CRW is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes

J.4. NONDISCRIMINATION AND EQUAL OPPORTUNITY

CRW 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 CRW under this Agreement. CRW 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 CRW thereby.

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

J.5. SURVIVAL

All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and CRW shall survive the termination of this Agreement.

J.6. CONFLICT OF INTEREST

CRW may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place CRW in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

CRW 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.*

CRW 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 CRW were an employee, agent, appointee, or official of the City in the previous twelve months, CRW warrants that it did not participate in any manner in the forming of this Agreement. CRW understands that, if this Agreement is made in violation of Government Code §1090 *et.seq.*, the entire Agreement is void and CRW will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and CRW will be required to reimburse the City for any sums paid to the CRW. CRW 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.

CRW 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 CRW) in connection with procuring this Agreement, nor has CRW 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.

J.7. MEDIATION OF DISPUTES:

Prior to the commencement of any litigation arising out of this Agreement, both CRW and CLIENT agree to participate in good faith in non-binding mediation of any dispute or claim, which remains unresolved after informal discussions. Both CRW and CLIENT shall negotiate in good faith to select a qualified mediator.

J.8. ATTORNEY'S FEES:

In the event that any legal proceeding is instituted by either CRW or CLIENT to enforce the terms of this Agreement or to determine the rights of CRW or CLIENT, the prevailing party in said legal proceeding shall be entitled to recover its reasonable costs and attorney's fees.

J.9. APPLICABLE LAW:

This Agreement, its interpretation and all work performed thereunder shall be governed by the laws of the State of California. Venue for the enforcement of this agreement shall lie exclusively in Stanislaus County, California.

All claims, disputes, and other matters in question arising out of, or relating to, this agreement or the breach thereof shall be resolved in the Superior Court of Stanislaus County, California, and all parties hereto specifically waive any "venue privilege" they may have in any other jurisdiction.

J.10. BINDING ON SUCCESSORS:

All the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

J.11. DUE AUTHORITY:

CLIENT represents and warrants that the person executing this Agreement on behalf of CLIENT is an agent of CLIENT and has full and complete authority to execute this Agreement and enter into the terms and covenants provided herein, and has been designated by CLIENT to execute this Agreement on behalf of CLIENT.

CRW represents and warrants that the person executing this Agreement on behalf of CRW is an agent of CRW and has full and complete authority to execute this Agreement and enter into the terms and covenants provided herein, and has been designated by CRW to execute this Agreement on behalf of CRW.

J.12. WARRANTY OF TITLE

CRW warrants that it has good title and all proprietary rights to the Software to enable it to license its use to CLIENT free of any proprietary rights of any other party or any other encumbrance.

J.13. SERVICES WARRANTY

CRW warrants that the services provided hereunder shall be executed in a correct and competent manner consistent with the professional standards of the industry. Any error or defect in the services provided hereunder shall be corrected by CRW at no additional cost to the CLIENT.

J.14. ENTIRE AGREEMENT

This Agreement contains the entire understanding and agreement between CRW and CLIENT. Any prior agreements, promises, proposals, negotiations or representations—oral or written—not expressly set forth herein shall be of no force or effect. In the event of a conflict between the terms and conditions of this Agreement and any document incorporated by reference, the terms and conditions of this Agreement shall prevail. This Agreement may be modified or amended only by written agreement signed by both CRW and the CLIENT.

J.15. AGREEMENT AS OFFER

This Agreement shall be valid only if it is signed by both CLIENT and CRW, and a signed original has been received by both parties on or before May 1, 2006

CLIENT **City of Milpitas, California**	**CRW SYSTEMS, INC.** **dba. CRW ASSOCIATES** **San Diego, California**
Dated: _____	Dated: _____
By: _____	By: _____ Christopher R. Wuerz, President President, CRW Systems, Inc. d.b.a. CRW Associates
Dated: _____	
By: _____	

EXHIBIT A

PROJECT SCOPE OF WORK

Upon receipt of a written Notice to Proceed from CLIENT, CRW shall perform the following services:

A. On-Site attendance and participation in project meetings.

Meetings: Project kick-off meeting; software installation; database installation; project implementation meetings.

B. Deliver computer software (TRAKIT) and database structures for SQL/Server database.

Deliverable: CD containing computer software; installation instructions; services to install software on CLIENT network and up to three workstations; services to train CLIENT IT staff for installation of remaining CLIENT workstations; services to install SQL/Server database and tables.

C. Provide data conversion services.

Deliverable: CD and electronic transfer (via FTP or email) of converted database; services to develop conversion software for translation; services to perform data conversion; services to install converted data; services to investigate and correct any errors uncovered during conversion balancing and/or system testing.

Applies to: Permits and Inspections; Project applications; Code Enforcement; Business Licenses.

CLIENT will provide to CRW all tables and files that are necessary for historical data conversion. CLIENT agrees to provide all necessary files and data to CRW within thirty (30) days of project commencement date.

D. Provide software training.

Deliverable: Provide System Administrator training for three (3) CLIENT staff during scheduled training at CRW office.

Deliverable: Conduct sixteen (16) days of on-site, hands-on End User training at CLIENT office. Class size is limited to eight (8) students per day. Classes shall be conducted on four (4) separate weeks, each consisting of four (4) days of instruction.

CRW to provide workstations (laptops) and networked server for all on-site classes. CLIENT to provide classroom space at CLIENT facilities.

E. Provide Project Implementation services.

Deliverable: Develop up to three (3) custom forms, and up to three (3) custom reports, as directed by CLIENT staff; provide standard (ICBO/BOCA/SBCCI or other) Valuation tables; develop custom valuations and fee formulas as directed by CLIENT staff, using information provided by CLIENT.

Deliverable: Installation of permit forms, fee tables and valuations tables in Trakit database.

Deliverable: Data import specification (using standard Trakit import function) for monthly updates of assessor records.

CLIENT to provide information regarding fee formulas, usage, permit and business license forms.

CLIENT agrees to provide all necessary custom report and custom form definitions to CRW within thirty (30) days of project commencement date.

F. Provide eTrakIt modules for web-based permit processing

Deliverable: ASP and HTML pages (source code) to provide the following functions:

1. User/password logon.
2. User logon verification.
3. Permit lookup (by Permit Number, Site address, APN, Owner name)
4. Permit status information.
5. New Inspection request.
6. New Permit application.
7. Inspection result posting (CRW to work with CLIENT to design and develop appropriate ASP/HTML web screens for real-time posting of inspection results)

G. Provide Mobile Trak module for field-ready interface

Deliverable: TrakIt module for interface to either field-ready laptop/tabletPC.

H. Provide IVR System through sub-contractor selected by CRW

I. Provide Twelve (12) months technical support and software updates/upgrades.

Applies to: TrakIt software. Time period for no-charge technical support to begin upon completion of System Acceptance, as defined in Exhibit E.

EXHIBIT B

PROJECT MILESTONE AND PAYMENT SCHEDULE

Task Item:	Projected Target Date
1. Contract Execution and Notice to Proceed	May 2006
2. Project kick-off meeting. CRW reviews project timetable and training schedule with CLIENT. CRW and CLIENT mutually adjusts schedule as necessary. CRW installs standard software with demonstration database for initial testing by CLIENT.	May 2006
3. First Payment Due. 20% of total Phase 1 contract = $ 65,100	May 2006
4. Initial Configuration and Data Conversion. CRW delivers initial, preliminary configuration of system based on system requirements provided by CLIENT. CRW delivers initial, preliminary data conversion for CLIENT to begin review. Subsequent deliveries of configuration and data conversion will continue as necessary during the remainder of the project implementation.	Date to be determined at kick-off meeting
5. System Administrator Training. CRW trains up to three (3) CLIENT staff.	Date to be determined at kick-off meeting
6. Second Payment Due. 20% of total contract = $ 65,100	Date to be determined at kick-off meeting
7. System Acceptance testing begins. CLIENT begins System Acceptance Testing.	Date to be determined at kick-off meeting
8. User Training Week 1 for 'power users'.	Date to be determined at kick-off meeting
9. Third Payment Due. 20% of total contract = $ 65,100	Date to be determined at kick-off meeting,
10. System Acceptance testing ends. CLIENT completes System Acceptance Testing.	Date to be determined at kick-off meeting
11. User Training Weeks 2, 3 and 4.	Date to be determined at kick-off meeting
12. Fourth Payment Due. 20% of total contract = $ 65,100	Date to be determined at kick-off meeting

14. Go-Live support. CRW assists CLIENT in cut-over to live operation.	Date to be determined at kick-off meeting
15. Final Payment Due. 20% of total contract = $ 65,100	45 Days after the completion of item 14 above.

Target dates on this schedule are intended to reflect projected completion dates for the respective milestone, not contractual date deadlines.

EXHIBIT C

PROJECT COST SUMMARY

Software

1. 20 User Trakit License	$60,000	
1a. Annual Maintenance Fee following the first full year of implementation	$12,000	
2. eTrakit – web interface for public access (software and implementation)	$ 15,000	
2a. Annual Maintenance Fee following the first full year of implementation	$ 1,000	
3. MobileTrak – interface software for handheld or field laptops (software and implementation)	$ 15,000	
3a. Annual Maintenance Fee following the first full year of implementation	$ 1,000	
4. IVR Interface – API Interface for IVR System	$5,000	
4a. Annual Maintenance Fee following the first full year of implementation	$ 500	
TOTAL SOFTWARE COST		**$ 95,000**
TOTAL ANNUAL MAINTENANCE Following first full year of implementation (see	**$ 14,500**	

IVR (Interactive Voice Response) System

Hardware and software to be provided by others (CRW will contract with one of our technology partners, Selectron or TeleWorks, to provide this system) **$ 52,000**

Basic 4-port system is proposed for single department.
All required computer hardware is included in proposal.
Up to 100 professionally
City is responsible for providing phone lines (4 proposed) and network service necessary to support the installation.

Included software functions:

1. Schedule an inspection
2. Cancel an inspection
3. Post inspection results (Inspector access only)
4. Obtain inspection results
5. Speak Site address (customer inquiry)
6. Obtain Plan Review status
7. Fax-back inspection results

Implementation and Professional Services

A. Installation and Configuration

1. Kick-Off meeting	$8,000
2. Project meetings on-site	$18,000
3. System Configuration and setup of basic control tables	$60,000
4. System installation	$5,000
5. Software Customizations	None proposed
6. Go-Live Support	$8,000
Total Installation and Configuration costs	**$ 99,000**

B. Data Conversion

Data conversion of PTWIN (permits and inspections) records	$30,000
Data conversion of Stanislaus County assessor records for LandTrak	$ 5,000
Total Data Conversion Costs	**$ 35,000**

SANTA CLARA

C. Training

1. End-User Training - 16 days *Additional User training is available at the rate of $ 2,500 per day.	$40,000
2. System Administrator Training -- 3 registrations for City staff *Conducted at CRW location	$ 4,500
3. Report Writing Training – 3 registrations for City staff *Conducted at CRW location	Included
Total Training Costs	**$ 44,500**

Total Implementation Costs (A-C)	**$ 178,500**

Travel and Expenses

Travel and other out-of-pocket expenses	**$ 15, 000**

Discount

Professional Discount (expires if contract not executed on or before May 1, 2006)	**Less $ 15,000**

TOTAL CONTRACT PRICE	**$ 325,500**

EXHIBIT D

SOFTWARE LICENSE AGREEMENT

This perpetual License Agreement for the use of "Community Development Software" (Software) developed and marketed by CRW is granted to CLIENT by CRW as of the date of this Agreement.

SUMMARY OF LICENSE TERMS

1. Software is marketed by CRW under the title of "***Trak It***".

2. Software provided to the CLIENT under this License allows the CLIENT to perpetually use, not own, the software.

3. Software is provided to the CLIENT as a multi-user, concurrent access license. The designated number of concurrent Users/Administrators/Observers for this license is **20**. CLIENT is permitted to install Software on any and all workstations owned or controlled by the CLIENT. Software will allow a designated number of concurrent users to access the databases maintained by Software. Users attempting to access the system databases with Software after the designated number of concurrent users is logged on will be prohibited from logging on.

4. This software license shall not be sub-licensed, re-sold, assigned, transferred or otherwise distributed by the CLIENT to any other person, company or organization without the written authorization of CRW.

5. This Software, including any and all modifications, upgrades and bug fixes, is protected by the copyright laws of the United States and international copyright treaties. Unauthorized copying of the Software, including software that has been modified, merged or included with the Software, or the associated written materials (the "Documentation") is expressly forbidden. CLIENT may not remove, obscure, or alter any notice of patent, copyright, trademarks, trade secret or other proprietary rights in the Software. The Title, ownership rights, and intellectual property rights in and to this Software shall remain with CRW.

6. CRW has made reasonable checks of the Software to confirm that it will perform in normal use on compatible equipment substantially as described in the specifications for the Software. However, due to the inherent nature of computer software, neither CRW nor any individuals involved in the development or installation of the Software warrant that the Software or the Documentation is completely error free, will operate without interruption, is compatible with all equipment and software configurations, or will otherwise meet your needs.

7. CRW warrants that it has good title and all proprietary rights to the Software to enable it to license its use to CLIENT free of any proprietary rights of any other party or any other encumbrance.

8. CRW warrants that its Software will perform in the manner described in the Agreement documents including CRW's Response to the CLIENT's RFP, hereby incorporated by reference as if fully contained herein and any other written user documentation for the version installed.

9. This Warranty shall commence upon date of acceptance by CLIENT as defined by Exhibit F attached hereto.

10. Neither CRW nor any of the people or companies involved in providing this license to the CLIENT may be held liable for any incidental or consequential damages caused by failures or faults of the software or its functions.

11. CRW's sole responsibilities with respect to error corrections will be to correct any defects or errors in the Software or its functions, which are brought to the attention of CRW by the CLIENT.

12. This License Agreement will remain in effect until CLIENT returns Software to CRW, or until CLIENT destroys Software.

EXHIBIT E

SYSTEM ACCEPTANCE TESTING

1. CLIENT shall commence System Acceptance tests upon written notification from CRW that system software and database conversion has been installed and is ready for System Acceptance testing. Testing shall be conducted at CLIENT site, using CLIENT computer hardware. CLIENT staff will conduct all System Acceptance Testing.

2. CLIENT shall be allowed a period of thirty (30) business days for System Acceptance Testing, beginning from the date of notification as provided in paragraph 1 above, and continuing, and completed, as provided in paragraphs 3 and 4 below. CLIENT shall immediately advise CRW, in writing, of any error, or perceived error, discovered at any time during the testing period.

3. Upon delivery of written notification from CLIENT to CRW of a software system or database conversion error, or other problem, has occurred, CRW shall have ten (10) business days to address and correct such error so as to render the system operable. CRW shall provide written notice to CLIENT that the error has been corrected. During the time period between notification of any error until to such time that CRW advises CLIENT of correction of such error the thirty (30) day System Acceptance test period shall be suspended. The thirty (30) day System Acceptance test period shall resume upon notice by CRW that the previously noticed errors have been corrected and once the corrections have been made available to the CLIENT.

4. CRW shall provide written notice to CLIENT when the thirty (30) day System Acceptance test period has expired. Thereafter, CLIENT shall have five (5) business days to provide CRW with written notice of any remaining errors or problems. ACCEPTANCE SHALL BE DEEMED TO HAVE OCCURRED AT THE LATEST OF THE FOLLOWING DATES: (a) THE DATE WRITTEN NOTICE IS PROVIDED BY CRW TO CLIENT THAT THE FINAL PROBLEMS IDENTIFIED BY CLIENT PURSUANT TO THIS SECTION HAVE BEEN CORRECTED, OR (b) THE DATE OF NOTICE BY CRW TO CLIENT INDICATING THAT THE ACCEPTANCE TESTING PERIOD HAS EXPIRED.

5. CLIENT may begin using the software for productive use following completion of the System Acceptance tests. "Productive Use" shall include the issuance of any building permits, inspections and/or fee collection from the general public for Phase 1 work. "Productive Use" shall include the receipt of any citizen complaint or incident record from the general public for Phase 3 work.

6. CLIENT may not begin to use the software for productive use prior to completion of the System Acceptance tests. If CLIENT begins using software for productive use prior to completion of the System Acceptance test, then the system acceptance test will be deemed completed and satisfactory.

EXHIBIT F

SOFTWARE ESCROW AGREEMENT

Date of Agreement: November 21, 2003	Escrow No. 5794-MB

EscrowTech:	EscrowTech International, Inc. C7 Data Center Building 333 South 520 West - Suite 230 Lindon, UT 84042	Tel.: Fax:	(801) 852-8202 (801) 852-8203

Owner:	CRW Systems Inc. (dba CRW Associates) 16980 Via Tazon #320 San Diego, CA 92127	Tel.: Fax:	(858)451-3030 (858)451-3870

1. ***Software and Establishment of Escrow.*** Owner owns, or has the right to license or distribute, the "Software" identified in Exhibit A. By this Agreement, Owner establishes an escrow of "Deposit Materials" (see Exhibit A) for the Software (the "Escrow").

2. ***Beneficiaries.*** Each licensee of the Software who registers under Section 3 shall be a "Beneficiary."

3. ***Registration.*** To register a licensee as a Beneficiary with EscrowTech:

(a) Owner and the licensee will complete and execute EscrowTech's then-current Beneficiary Registration Form.

(b) The completed and executed Beneficiary Registration Form will be submitted to EscrowTech.

(c) EscrowTech will give written notice to Owner and the licensee of receipt of the Beneficiary Registration Form.

4. ***Deposit Materials.*** Owner shall deposit the "Deposit Materials" (including "Updates") into the Escrow by delivering to EscrowTech the Deposit Materials described in Exhibit A. Owner warrants that it has the right to provide the Deposit Materials to EscrowTech for the purposes of this Agreement and shall indemnify EscrowTech against, and hold it harmless from, any claim to the contrary by a third party.

5. ***Encryption and Reproduction.*** Owner warrants that none of the Deposit Materials will be encrypted or password protected and that all of the Deposit Materials will be in a readable and useable form (for purposes of the Permitted Use - see Section 14) and will be readily reproducible by EscrowTech for copying as needed under this Agreement (see, e.g., Section 13). Exception: If Deposit Materials are transmitted electronically to EscrowTech via FTP or other electronic transmission method accepted by EscrowTech, then such Deposit Materials may be in an encrypted format that is acceptable to EscrowTech and that can be decrypted by EscrowTech and stored in an unencrypted format on physical media (e.g., a CD ROM). It is Owner's responsibility to provide any decryption tools/keys, passwords, and information needed for decryption. It is not EscrowTech's responsibility to discover if any of the Deposit Materials are encrypted or password protected or to provide de-encryption tools/keys, passwords or information needed for decryption.

6. ***Updates.*** Owner shall update the Escrow by delivering to EscrowTech Updated Deposit Materials ("Updates") as described in Exhibit A. Updates shall be part of the "Deposit Materials."

7. ***Deposit Procedure.*** Deposit Materials shall be delivered by Owner to EscrowTech in accordance with EscrowTech's then-current deposit procedures. Duplicate copies (i.e., two sets) of all

Deposit Materials in reliable storage media should be delivered by Owner, but EscrowTech is not responsible if Owner fails to comply with this.

(a) ***Deposit Inventory Form.*** Owner will submit with the Deposit Materials a completed Deposit Inventory Form. Such Deposit Inventory Form shall be a representation by Owner to each Beneficiary and EscrowTech that the Deposit Materials conform to the descriptions and identifications in the Deposit Inventory Form.

(b) ***Confirmation.*** To confirm receipt of the Deposit Materials, EscrowTech will mail or otherwise deliver a copy of the Deposit Inventory Form to Owner and each Beneficiary.

(c) ***Deficiency.*** If a Beneficiary believes that the Deposit Materials, as identified in the Deposit Inventory Form, are deficient (e.g., incomplete or inadequate) or if there is some other problem, then the Beneficiary shall notify Owner and resolve the matter with Owner. It is Owner's responsibility to deposit all required Deposit Materials.

(d) ***Reproducible.*** It is Owner's responsibility to ensure that the Deposit Materials provided by Owner (including, without limitation those on any electronic media - e.g., CD-ROMs, magnetic tapes, etc.) are provided in a reproducible form.

(e) ***Verification.*** EscrowTech is not responsible for verifying the completeness, accuracy, suitability, state, format, safety, quality, or content of the Deposit Materials. However, at the request of any Beneficiary or Beneficiaries, EscrowTech may conduct technical verifications of Deposit Materials for such Beneficiary or Beneficiaries in accordance with a Technical Verification Addendum to this Agreement. The requesting Beneficiary or Beneficiaries must pay EscrowTech's then-current fees plus expenses for the technical verifications.

(f) ***Designated Beneficiary Option.*** If certain Deposit Materials apply only to one Beneficiary (e.g., the Software is customized for a given Beneficiary), then Owner has the option of depositing such Deposit Materials only for that Beneficiary. In making a given deposit of Deposit Materials, Owner may designate the Beneficiary in the Deposit Inventory Form. Only the designated Beneficiary will have escrow rights (and potentially release rights) with respect to these Deposit Materials. Except for this restriction, the other terms and conditions of this Agreement shall apply thereto. It is the responsibility of Owner to clearly indicate the designated Beneficiary. Owner may designate more than one Beneficiary, and in such case each of the designated Beneficiaries will be a designated Beneficiary as described above. The Beneficiary Fee for each designated Beneficiary will be increased as provided in Exhibit B.

8. ***Replacement of Obsolete Deposit Materials.*** Owner may identify for EscrowTech any Deposit Materials which become obsolete, outdated or redundant and instruct EscrowTech to destroy or return the identified Deposit Materials. Such identification shall be made in writing and must be consistent with the labeling and identification used by Owner when the Deposit Materials were delivered to EscrowTech or be otherwise understandable to EscrowTech. The instructions to EscrowTech must be accompanied by written permission from each affected Beneficiary for EscrowTech to destroy or return the identified Deposit Materials in accordance with Owner's instructions. The "Deposit Materials" shall cease to include any destroyed or returned Deposit Materials.

9. ***License Agreement.*** Owner and each Beneficiary have entered into one or more agreements identified in the Beneficiary's Registration Form that relate to the Software. For that Beneficiary, such agreement(s) is (are) referred to herein as the "License Agreement." This Software Escrow Agreement is "supplementary" to the License Agreement within the meaning of Section 365(n) of the U.S. Bankruptcy Code (11 U.S.C. 365(n)). If this Agreement and/or the License Agreement are/is rejected by Owner as a debtor in possession or a trustee or by any other person or entity under the U.S. Bankruptcy Code, then the Beneficiary may elect to retain its rights as provided in Section 365(n). The Parties intend that no bankruptcy or bankruptcy proceeding, petition, law or regulation (and no other proceeding, petition, law or regulation of a similar nature in any state or foreign jurisdiction) will impede, delay or prevent the release of Deposit Materials to a Beneficiary in accordance with the provisions of this Agreement, and Owner hereby conveys and licenses to EscrowTech such rights (including intellectual property rights) as are necessary to allow EscrowTech to lawfully make such release and perform this Agreement. This license is granted as of the date of this Agreement and shall predate any bankruptcy petition subsequent to such date.

10. ***Embodiments of Intellectual Property.*** The Parties agree that the Deposit Materials are an

"embodiment" of "intellectual property" as those terms are used in Section 365(n) of the U.S. Bankruptcy Code (11 U.S.C. 365(n)). The tangible Deposit Materials and any copies thereof made by EscrowTech in accordance with this Agreement are owned by EscrowTech, but such ownership does not include ownership of any copyrights or other intellectual property in or to the Deposit Materials.

11. ***Release of Deposit Materials - Request of Beneficiary.*** A Beneficiary will be entitled to receive the Deposit Materials if the "Release Condition" described in the applicable Beneficiary Registration Form occurs. The following release procedure shall apply:

(a) ***Notice to EscrowTech.*** The Beneficiary shall give written notice to EscrowTech informing EscrowTech that the Release Condition has occurred, and shall request EscrowTech in writing to release the Deposit Materials to Beneficiary.

(b) ***Notice to Owner.*** EscrowTech shall then promptly send written notice to Owner of the Beneficiary's notice and request for release. Such notice will be sent by a "next day" or "overnight" or "priority" or "express" delivery service (e.g., Federal Express, UPS, U.S. Express Mail, etc.) or will be delivered personally.

(c) ***Release and Waiting Period.*** Unless there is a timely dispute or objection as provided in Section 11 (d) below, EscrowTech shall release the Deposit Materials to the Beneficiary promptly after expiration of the Waiting Period. The "Waiting Period" shall be two weeks, beginning on the date that the notice is sent by EscrowTech to Owner.

(d) ***Dispute.*** If Owner disputes the Beneficiary's right to the Deposit Materials or otherwise objects to their release, then Owner must give written notice of such dispute or objection to EscrowTech prior to the conclusion of the Waiting Period. If EscrowTech receives such timely notice of dispute or objection, EscrowTech will not release the Deposit Materials to the Beneficiary until the dispute is resolved by Owner and the Beneficiary in accordance with Section 19 or by court order. Such resolution will determine whether or not the Beneficiary is entitled to receive the Deposit Materials. EscrowTech has no obligation to determine whether or not the Beneficiary is entitled to the Deposit Materials.

(e) ***Partial Release.*** If Owner believes that the Beneficiary is entitled to a release of only a portion of the Deposit Materials (e.g., Deposit Materials corresponding to unlicensed versions - see (f) below), it is the responsibility of Owner to indicate this in a written notice to EscrowTech and to clearly identify in such notice the portion of the Deposit Materials that should be released to the Beneficiary and what should not be released. This notice must be given promptly and must be received by EscrowTech within the above Waiting Period. If the Beneficiary believes that it is entitled to more than said portion of the Deposit Materials, then this dispute shall be resolved in accordance with Section 19.

(f) ***Unlicensed Versions.*** A Beneficiary is not entitled to receive Deposit Materials corresponding to Software versions not licensed or provided by Owner to Beneficiary. [For example, if the Deposit Materials correspond to versions 1.0, 2.0, 2.1 and 3.0 of the Software, but only versions 2.0 and 2.1 are licensed to the Beneficiary, then the Beneficiary is only entitled to a release of the Deposit Materials corresponding to versions 2.0 and 2.1.] If applicable, it is the responsibility of Owner under (e) above to inform EscrowTech of the specific Deposit Materials which should not be released to the Beneficiary. In the absence of such information, EscrowTech may release all of the Deposit Materials in the Escrow or all of the Deposit Materials requested by the Beneficiary under (a) above.

12. ***Release of Deposit Materials - Owner's Instruction.*** Upon receipt of notice and instruction from Owner and the receipt of the Release Fee, EscrowTech shall release the Deposit Materials to the Beneficiary designated in the instruction.

13. ***Copies.*** Because there are multiple Beneficiaries under this Escrow, any Deposit Materials released to Beneficiaries under this Agreement may be in the form of copies of the Deposit Materials. EscrowTech may copy the Deposit Materials for the purposes of this Agreement. Such copies shall be considered Deposit Materials for the purposes of this Agreement.

14. ***Use of Released Deposit Materials.*** Deposit Materials released to a Beneficiary under this Agreement may only be used by the Beneficiary as permitted in its Beneficiary Registration Form ("Permitted Use"). Owner hereby licenses the Beneficiary to practice the Permitted Use. Although Beneficiary is not entitled to receive any Deposit Materials until after a release under this Agreement, this Permitted Use license is granted as of the date the applicable Beneficiary Registration Form is first

signed by Beneficiary or Owner and shall predate any bankruptcy petition subsequent to such date. If this Agreement and/or the License Agreement are/is rejected by Owner as a debtor in possession or by a trustee or by any other person or entity under the U.S. Bankruptcy Code, then the Beneficiary may elect to retain this Permitted Use license as part of the rights it may retain in accordance with Section 365(n) of the U.S. Bankruptcy Code. This shall not negate, prejudice or limit any other rights which the Beneficiary may have.

15. ***Fees.*** EscrowTech shall receive the following fees and payments:

(a) ***Annual Fee.*** Beginning on the date of this Agreement and on each anniversary thereafter until termination of the Escrow, Owner shall pay an Annual Fee to EscrowTech in accordance with the Fee Schedule (Exhibit B). The Annual Fee is payable at the beginning of the contract year to which it is applicable.

(b) ***Beneficiary Fees.*** For each Beneficiary, the Beneficiary Fee will be paid to EscrowTech in accordance with the Fee Schedule (Exhibit B). The Beneficiary Fee is first payable at the time of registration. This entitles the Beneficiary to registration for the remainder of the contract year in which the Beneficiary Fee is paid. Thereafter and until the Beneficiary ceases to be a "Beneficiary" (see Section 16), the Beneficiary Fee will be paid to EscrowTech in advance for each subsequent contract year. "Contract years" are based on the date of this Agreement and anniversaries thereof.

(c) ***Excess Update Fee.*** Four Updates to the Escrow per contract year are included at no extra charge. If more than four Updates are made in a contract year, Owner shall pay the Excess Update Fee (see Exhibit B) to EscrowTech for each extra Update. Any deposits of Deposit Materials for designated Beneficiaries under Section 7(f) shall be deemed Updates for the purpose of this Excess Update Fee.

(d) ***Release Fees.*** Each Beneficiary requesting a release of any Deposit Materials under Section 11 shall pay the Release Fee (see Exhibit B) to EscrowTech. If any Deposit Materials are released to a Beneficiary at the instruction of Owner under Section 12, Owner shall pay the Release Fee to EscrowTech.

(e) ***Excess Storage Charges.*** If the storage requirement for the Deposit Materials exceeds two cubic feet, then Owner will pay the Excess Storage Charge (see Exhibit B).

(f) ***Increases.*** The fees set forth in Exhibit B are fixed for the first three years of this Agreement. Thereafter, fees are subject to reasonable increase by EscrowTech upon written notice. EscrowTech's then-current fees shall be payable.

(g) ***Costs.*** Each Beneficiary shall pay EscrowTech for reasonable costs incurred by EscrowTech in releasing, copying and delivering the Deposit Materials to the Beneficiary. All other out-of-pocket costs reasonably incurred by EscrowTech in connection with this Agreement are reimbursable by the applicable Beneficiary and Owner to EscrowTech. Costs are not included in the above fees and are payable in addition to the above Fees.

16. ***Termination of Beneficiary's Registration.*** A Beneficiary's registration will terminate and the Beneficiary will cease to be a "Beneficiary" under this Agreement if any of the following occurs:

(a) The Beneficiary gives written notice of such termination to EscrowTech.

(b) The Beneficiary's License Agreement terminates. [If the License Agreement consists of more than one agreement and if less than all such agreements terminate, then the License Agreement shall consist of the unterminated agreements and the Beneficiary shall continue as a "Beneficiary" under this Agreement.] In the event of such termination, the Beneficiary and Owner will give written notice thereof to EscrowTech. If such notice is given by Owner, but not the Beneficiary, then EscrowTech may send notice thereof to Beneficiary and if EscrowTech does not receive a written objection from Beneficiary within three weeks after the date of EscrowTech's notice, then EscrowTech may terminate the Beneficiary's registration.

(c) The Beneficiary breaches this Agreement and does not cure such breach within 30 days of written notice of such breach, and EscrowTech gives notice of termination to the Beneficiary.

(d) The Escrow terminates.

EscrowTech will have no obligation or liability to the Beneficiary after termination of its registration. Termination of a Beneficiary's registration shall not affect the other Beneficiaries.

17. ***Termination of Escrow.*** Subject to Section 18, this Escrow may be terminated by either Owner or EscrowTech upon 90 days advance written notice of termination to the other Party and to the Beneficiaries. Termination will not be effective until the end of the 90 day period (and any extension pursuant to Section 18). If a Release Condition occurs and EscrowTech is given written notice thereof under Section 11(a) prior to the date of termination, then the Escrow will not terminate without the written consent of the affected Beneficiaries. Upon termination of the Escrow, the following shall apply:

(a) EscrowTech shall either return the Deposit Materials to Owner or destroy the Deposit Materials, whichever Owner requests. If destruction is requested, EscrowTech will certify in writing to Owner that such destruction has occurred.

(b) EscrowTech shall have no obligation or liability to Owner or any Beneficiary after termination.

(c) Termination of the Escrow shall not affect any rights and licenses granted to EscrowTech or a Beneficiary with respect to Deposit Materials released to (or which should be released to) the Beneficiary because of a Release Condition occurring prior to the date of termination.

18. ***Establishment of Substitute Escrow.*** During the 90 day period under Section 17, Owner shall establish a substitute escrow of the Deposit Materials with a third party escrow agent for the benefit of each Beneficiary. The substitute escrow must be approved by the Beneficiary, but such approval will not be unreasonably withheld or delayed. If necessary, this matter shall be resolved in accordance with Section 19. If more than 90 days is needed to establish the substitute escrow and if EscrowTech receives written notice from Owner or a Beneficiary of such need prior to the end of such 90 days, then the 90 day period under Section 17 shall be extended as reasonably necessary and the Escrow shall not terminate until EscrowTech receives written notice from Owner that the substitute escrow has been established and approved. Owner has no obligation to establish a substitute escrow if all License Agreements for all Beneficiaries have terminated or if none of the Beneficiaries request a substitute escrow within three weeks after an written inquiry thereof from Owner to each Beneficiary.

19. ***Dispute Resolution.*** In the event of any dispute between any two or more of the Parties relating to this Agreement or the Escrow, they shall first seek to settle the dispute by mutual agreement. If they have not reached a settlement within one week, then any disputing Party may thereafter submit the dispute to arbitration, and if so submitted, such dispute shall be finally settled by arbitration conducted in accordance with the commercial arbitration rules of the American Arbitration Association or its successor. The disputing Parties shall attempt to mutually agree upon a neutral arbitrator. If the disputing Parties cannot reach such agreement, they shall request the American Arbitration Association or its successor to designate a neutral arbitrator. Any arbitration involving EscrowTech as a party shall be conducted in Salt Lake City, Utah. Any arbitration to which EscrowTech is not a party shall be conducted in Owner's city as indicated at the beginning of this Agreement. This Section does not apply to any dispute between two Beneficiaries that does not include EscrowTech or Owner as a party to such dispute. The institution of any arbitration proceeding hereunder shall not relieve any Party of its obligation to make payments under this Agreement. The decision by the arbitrator shall be binding and conclusive upon the Parties, their successors, assigns and trustees and they shall comply with such decision in good faith, and each Party hereby submits itself to the jurisdiction of the courts of the place where the arbitration is held, but only for the entry of judgment or for the enforcement of the decision of the arbitrator hereunder. Judgment upon the award may be entered in any court having jurisdiction.

20. ***Protection of Deposit Materials.*** EscrowTech shall keep the Deposit Materials delivered to it in secure storage and shall keep the contents thereof confidential. If any of the Deposit Materials are damaged, destroyed or lost by fire, theft, accident, or other mishap or cause, Owner shall promptly submit to EscrowTech such Updates or replacements as are necessary to replace the damaged, destroyed or lost Deposit Materials. There shall be no Excess Update Fees charged for such Updates or replacements.

21. ***Indemnification.*** In the event that EscrowTech takes any action or inaction at the request or demand of Owner or a Beneficiary, then the Owner or Beneficiary making such request or demand shall indemnify and hold harmless EscrowTech and its directors, officers, employees, shareholders, and representatives from and against any and all liabilities, claims, judgments, damages, losses and expenses, including attorneys' fees, arising

out of or relating to such action or inaction.

22. ***Depository Only.*** EscrowTech acts hereunder as a depository only and is not responsible or liable for the completeness, accuracy, suitability, state, format, safety, quality, content, sufficiency, correctness, genuineness or validity of the Deposit Materials or any document submitted to EscrowTech or the execution of the same or the identity, authority, or rights of any person executing or depositing the same. EscrowTech is not responsible for any loss of Deposit Materials due to defective, outdated, or unreliable storage media (e.g., CD ROMs, magnetic tape, disks, etc.) or for the degradation of storage media.

23. ***Uncertainty.*** Notwithstanding anything in this Agreement to the contrary, if EscrowTech is uncertain as to any duty, obligation, demand, or right, EscrowTech may hold the Deposit Materials and refrain from taking any action and wait for a final resolution under Section 19 or a court order.

24. ***Reliance.*** EscrowTech shall not incur any liability in acting upon any notice, request, waiver, consent, receipt or other paper or document believed by EscrowTech to be genuine and to be signed by the proper party or parties, or in acting upon any resolution under Section 19 or any court order.

25. ***Extraordinary Services.*** In addition to the fees and charges for the usual services of EscrowTech under this Agreement (see Section 15 and Exhibit B), EscrowTech shall be entitled to additional reasonable compensation should EscrowTech be requested or required to perform any additional or extraordinary service; and EscrowTech shall be reimbursed for any out-of-pocket expenses (including, without limitation, travel expenses and fees of counsel) reasonably incurred in connection with such additional or extraordinary services. Extraordinary services include, but are not limited to, any involvement of EscrowTech, at the request or demand of Owner or a Beneficiary, in any arbitration or litigation between Owner and the Beneficiary.

26. ***Disclaimer.*** **ESCROWTECH MAKES NO WARRANTY NOT EXPRESSLY SET FORTH HEREIN. ANY IMPLIED WARRANTIES ARE DISCLAIMED AND EXCLUDED BY ESCROWTECH.**

27. ***Limitation on Liability.*** **FOR ANY AND ALL CLAIMS AND CAUSES OF ACTION (INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, TORT, MALPRACTICE, ETC.), ESCROWTECH'S AGGREGATE LIABILITY TO OWNER AND THE BENEFICIARIES SHALL NOT EXCEED THE TOTAL FEES PAID TO ESCROWTECH UNDER THIS AGREEMENT. IN NO EVENT SHALL ESCROWTECH BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES OR LOSS OF PROFITS, REVENUES OR BUSINESS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.**

28. ***Interpretation.*** The wording used in this Agreement is the wording chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against or in favor of any Party. Section headings are for convenience only, and do not limit or affect the provisions of this Agreement or their interpretation.

29. ***Entire Agreement.*** This Agreement constitutes the entire agreement of the Parties relating to the Escrow. This Agreement sets forth all the duties and obligations of EscrowTech with respect to any and all matters relating to this Agreement, the Escrow or the Deposit Materials. EscrowTech has no implied duties or obligations.

30. ***Force Majeure.*** Except for obligations to make payment, no Party shall be liable for any failure to perform arising from causes beyond its control, including, but not limited to, fire, storm, flood, earthquake, explosion, accident, theft, terrorism, acts of public enemies, war, insurrection, sabotage, illness, labor disputes or shortages, product shortages, failure or delays in transportation, inability to secure materials, parts or equipment, acts of God, or acts of any governmental authority or agency thereof.

31. ***Governing Law.*** This Agreement, the Escrow and the relationship of EscrowTech with Owner and each Beneficiary shall be governed and construed under and in accordance with the laws of the state of Utah without regard to conflict of laws principles. Furthermore, in the event of any litigation or arbitration between EscrowTech and Owner or between EscrowTech and any Beneficiary, such litigation or arbitration shall be conducted exclusively in Salt Lake City, Utah and the Parties hereby agree and submit to such jurisdiction and venue.

32. ***Notices.*** All notices under this Agreement shall be in writing and shall be delivered to the address indicated for the intended Party at the beginning of this Agreement or, in the case of a Beneficiary, on Beneficiary's Registration Form, or to

such substitute address as any Party may designate for itself by proper notice to the other Parties. It is the responsibility of each Party to keep the other Parties informed of its address and telephone and fax numbers (except that a Beneficiary is not obligated to keep other Beneficiaries informed of this information).

33. ***Modification.*** This Agreement may only be modified, amended or rescinded by a writing signed by all affected Parties.

34. ***Assignment.*** This Agreement may be assigned by a Party to a successor who acquires substantially all of such Party's business assets relevant to the subject matter of this Agreement. The assigning Party shall give notice thereof to the other affected Parties and shall deliver to such other affected Parties a copy of the successor's written agreement to accept or assume this Agreement.

35. ***Execution.*** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. The persons signing below represent that they are duly authorized to execute this Agreement for and on behalf of the Party for whom they are signing.

SOFTWARE ESCROW AGREEMENT
BENEFICIARY REGISTRATION FORM

Owner: CRW Systems, Inc **Escrow No. 5794-MB**

Beneficiary: City of Milpitas

Tel.: _____
Fax: .: _____
Contact: .: _____
E-Mail: .: _____

This Beneficiary Registration Form applies to the above-identified Escrow and the Software Escrow Agreement dated November 21, 2003 to which Owner and EscrowTech International, Inc. ("EscrowTech") are parties (the "Escrow Agreement").

Owner and Beneficiary have entered into one or more other agreements identified below:

AGREEMENT FOR THE INSTALLATION AND USE OF
PERMIT, PLANNING and CODE ENFORCEMENT SOFTWARE

Such agreement(s) (including addendums or amendments thereto, if any) is (are) referred to in the Escrow Agreement as the "License Agreement."

Beneficiary has received and reviewed a copy of the Escrow Agreement. Beneficiary agrees to the terms and conditions of the Escrow Agreement and is hereby made a Party thereto. Beneficiary is entitled to the rights and benefits of a "Beneficiary" under the Escrow Agreement and accepts the obligations of a "Beneficiary" under the Escrow Agreement.

Appendix 1, attached hereto, is part of this Beneficiary Registration Form and describes the Release Condition and Permitted Use applicable to the Beneficiary under the Escrow Agreement.

Date of this Beneficiary Registration: _____

ACCEPTED AND AGREED TO BY BENEFICIARY AND OWNER:

Beneficiary: City of Milpitas, California

_____
Authorized Signature

Owner: CRW Systems, Inc

_____
Authorized Signature

For EscrowTech Only!

Date Received by EscrowTech: _____ EscrowTech Signature: _____

SOFTWARE ESCROW AGREEMENT
BENEFICIARY REGISTRATION FORM
APPENDIX 1

RELEASE CONDITION

The Release Condition shall be deemed to have occurred if any of the following is satisfied:

a. Owner files a petition for protection under the U.S. Bankruptcy Code, or an involuntary petition in bankruptcy is filed against Owner and is not dismissed within 60 days thereafter.

b. Owner defaults in its obligation to provide maintenance and support services as required by the License Agreement (or any other contract with Beneficiary), and fails to cure such default within 10 days after receiving written notice of the default from Beneficiary. The notice must describe the default and state the action which Beneficiary believes is necessary to cure the default.

c. Beneficiary becomes entitled to a release of the Deposit Materials (i.e., source code for the Software) pursuant to the terms of the License Agreement.

PERMITTED USE OF RELEASED DEPOSIT MATERIALS:

In the event that the Deposit Materials are released to Beneficiary, the following shall apply:

a. Beneficiary may only use the Deposit Materials to maintain, modify and enhance the Software. The maintained, modified and enhanced Software may only be used in accordance with the License Agreement.

b. Beneficiary may not disclose the Deposit Materials to any third party and shall keep the Deposit Materials confidential, except as provided below.

c. Beneficiary may engage the services of independent contractors (e.g., computer programmers or an outsourced maintenance service) to assist Beneficiary in exercising its Permitted Use rights. Each such independent contractor must agree in writing that it/he/she will not disclose or transfer the Deposit Materials to any other person, and will not use the Deposit Materials for any purpose other than to assist Beneficiary in exercising its Permitted Use rights. These restrictions shall not limit or negate the rights, if any, of the independent contractor with respect to materials that are similar or identical to the Deposit Materials and are lawfully received by the independent contractor from a source other than Beneficiary (e.g., a maintenance service that receives similar or identical materials from other beneficiaries or licensees).

d. Items a., b. and c. above are subject to such additional rights or limitations as may be set forth in a provision, if any, in the License Agreement which addresses use of the released Deposit Materials by Beneficiary.

The Permitted Use is a fully paid-up license and may not be revoked, terminated or rejected without Beneficiary's written consent. This Permitted Use license also includes the right to use and copy the binary, executable and object code versions of the Software and the maintained, modified and enhanced versions of Software created from or with the Deposit Materials.

Budget # _____
Refer # _____

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one: ☒ Budget Appropriation ☐ Budget Transfer	100-2938 331-9513398153831	$500,000 $500,000	100-3952 331-951339824800 331-951339884800 331-951339894800	$500,000 $100,000 $50,000 $350,000

Explain the reason for the budget change:

Last year staff presented a proposal to move forward with an Online Permitting/Development System project. The focus of this project was two-fold, to provide an online permitting capability and to support the process improvement initiatives. This process began with a review of permitting systems in use with other jurisdictions followed by a requirements definition involving the Building, Planning, Engineering, Fire Prevention and Finance Departments. A Request for Proposal (RFP) was released on October 10th, 2005. A major concern is the projected increase in permitting activity. Based on planned or in progress developments, Building staff estimates that over the next 2 years they will issue in excess of 60,000 permits. Staff reviewed the proposals and selected a system that best met the City's requirements.

A fixed 5-year cost for the system was calculated along with projected permitting and development fees for the same period in order to determine the required cost recovery over the life of the system. This resulted in a 3.1% permitting automation fee. The recovery period could be extended to six years with a 2.7% fee or seven years with a 2.5% fee. It is suggested that the Capital Contingency Reserve be used to fund the initial purchase and installation of the system. The automation fee would then replenish the Capital Contingency Reserve over time.

The proposed system will provide a higher level of service to citizens, developers and builders justifying the automation fee. Information will be more readily and quickly available, reducing applicant turn-around time. With the efficiencies gained, it is expected that existing staffing levels would be sufficient to handle the projected increase in workload.

Approve a budget appropriation of $500,000 from General Fund, Capital Contingency Reserve, to fund the initial purchase and installation of the system.

☒ **Check if City Council Approval required.** **Meeting Date**: April 18, 2006

Itemization of funds, if needed:		Amount

Requested by:	Division Head:	Date:
	Department Head:	Date:
Reviewed by:	Finance Director: [signature]	Date: 4/12/06
Approved by:	City Manager:	Date:

Date approved by City Council, if required: Confirmed by: