

## **ADDENDUM MAINTENANCE AGREEMENT**

This Addendum to the Maintenance Agreement (“Agreement”) is a material part of the Agreement between TD Industries, Inc. (“TD Industries”) and the City of Maricopa, Arizona (“City”) dated June \_\_\_\_\_, 2015. This Addendum modifies, supplements, and/or amends the terms of the Agreement only to the extent expressly set forth herein.

1. Paragraph 6 under customer agreements related to payment in the event the City hires a TD Industries employee shall be deleted in its entirety.
2. The Agreement shall be amended to include these additional provisions:

### INSURANCE:

Insurer Qualifications. Without limiting any obligations or liabilities of TD Industries, TD Industries shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect TD Industries. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but have no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve TD Industries from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

Primary Insurance. TD Industries' insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates

of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of TD Industries. TD Industries shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. TD Industries shall be solely responsible for any such deductible or self-insured retention amount.

Use of Subcontractors. If any work under this Agreement is subcontracted in any way, TD Industries shall execute written agreement with the Subcontractor containing the indemnification provisions and insurance requirements (unless waived by City in City's sole discretion) set forth herein protecting the City and TD Industries. TD Industries shall be responsible for executing the agreement with the Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

Evidence of Insurance. Prior to commencing any work or services under this Agreement, TD Industries shall furnish the City with certificate(s) of insurance, or formal endorsements as required by this Agreement, issued by TD Industries' insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. If a certificate of insurance is submitted as verification of coverage, the City shall reasonably rely upon the certificate of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the above-cited policies expire during the life of this Agreement, it shall be TD Industries' responsibility to forward renewal certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates of insurance shall specifically include the following provisions:

(1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

- (a) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.
- (b) Auto Liability - Under ISO Form CA 2048 or equivalent.
- (c) Excess Liability - Follow Form to underlying insurance.

(2) TD Industries' insurance shall be primary insurance as respects performance of the Agreement.

(3) All policies, including Workers' Compensation, waive rights of recovery (subrogation) against the City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by TD Industries under this Agreement.

(4) A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

Required Insurance Coverage.

(1) Commercial General Liability. TD Industries shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$1,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily injury or death, personal injury, advertising injury and property damage. Coverage under the policy will be at least as broad as ISO policy forms CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials, volunteers and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

(2) Vehicle Liability. TD Industries shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on TD Industries' owned, hired and non-owned vehicles assigned to or used in the performance of TD Industries' work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

(3) Workers' Compensation Insurance. TD Industries shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of TD Industries' employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the City.

INDEMNIFICATION BY TD INDUSTRIES: To the fullest extent permitted by law, TD Industries shall defend, indemnify, and hold City, its officers and employees harmless from any and all loss, damage, claim for damage, liability, expense, or cost, including reasonable

attorneys' fees, which arise out of, or is in any way connected with the performance of work provided under this Agreement by TD Industries, or any of TD Industries' employees, agents or subconsultants, and from all claims by TD Industries' employees, subconsultants and agents for compensation for services rendered to TD Industries in the performance of this Agreement, notwithstanding that City may have benefited from their services. This indemnification provision shall only apply to any and all negligent acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of TD Industries or TD Industries' employees, subconsultants or agents. This section shall survive the expiration or early termination of the Agreement.

**ARBITRATION:** In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by Safeguard and the City. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, Safeguard and the City shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between Safeguard and the City. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

**GOVERNING LAW AND VENUE:** The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

**INDEPENDENT CONTRACTOR:** TD Industries shall at all times during TD Industries' performance of the services retain TD Industries' status as independent contractor. TD Industries' employees shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or TD Industries. TD Industries shall not have any authority to bind or act on behalf of the City.

**NO THIRD PARTY BENEFICIARIES:** Only the parties may enforce this Agreement. The parties do not intend through this Agreement to confer enforceable rights on any non-party and do not intend to create any third party beneficiaries to this Agreement.

**SEVERABILITY:** If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

UNDOCUMENTED WORKERS: TD Industries understands and acknowledges the applicability to it of the Immigration Reform and Control Act of 1986. TD Industries hereby warrants to City that TD Industries and each of its subcontractors, if any, will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees.

CONFLICT OF INTEREST: This Agreement is subject to the conflict of interest provisions set forth in A.R.S. Section 38-511.

3. All remaining terms of the Agreement remain unchanged and in effect.

City of Maricopa

TD Industries, Inc.,

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_