

**AGREEMENT FOR SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
GROOME INDUSTRIAL SERVICE GROUP, LLC**

**PREAMBLE**

This Agreement is made and entered into on the date last signed by the Parties (“Effective Date”) between the City of Santa Clara, California, a chartered California municipal corporation (City) and Groome Industrial Service Group, LLC, a New Jersey limited liability company, (Contractor). City and Contractor may be referred to individually as a “Party” or collectively as the “Parties.”

**RECITALS**

- A. City desires to secure the services (“Services”) more fully described in this Agreement, in Exhibit A, entitled “Scope of Services”;
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required Services and goods of the quality and type which meet objectives and requirements of City; and,
- C. The Parties agree that Contractor will perform the Services under the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants, and conditions herein contained, the Parties hereto agree as follows:

**AGREEMENT TERMS AND CONDITIONS**

**1. AGREEMENT DOCUMENTS**

The documents forming the entire Agreement between City and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees and Payment Provisions

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

## **2. TERM OF AGREEMENT**

- A.** Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by written amendment to this Agreement, the term of this Agreement shall begin on June 1, 2026 and terminate on May 31, 2028 (“Initial Term”).
- B.** After the Initial Term, City reserves the right, at its sole discretion, to extend the term of this Agreement for up to three (3) additional years through May 31, 2031 (“Option Periods”) in such increments as determined by City. The Option Periods shall be authorized through an Amendment to this Agreement executed by the Parties. The Initial Term and Option Periods shall collectively be referred to as “Term”.

## **3. SCOPE OF SERVICES AND PERFORMANCE SCHEDULE**

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence.

## **4. WARRANTY**

In addition to those warranties contained in Exhibit A, Contractor expressly warrants that all Services and materials covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements, and instructions applicable to this Agreement. Contractor agrees to promptly replace or correct any incomplete, inaccurate or defective Services or materials at no further cost to City when defects are due to the negligence, errors, or omissions of Contractor. If Contractor fails to promptly correct or replace Services or materials, City may make corrections or replace Services or materials and charge Contractor for the cost incurred by City.

## **5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE**

- A.** Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services, including its duties and obligations, expressed and implied, contained herein. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. City expressly relies upon Contractor’s representations regarding its skills and knowledge.

- B. Contractor warrants that all employees and subcontractor, if any, shall have sufficient skill and experience to perform the Services assigned to them.
- C. Contractor shall comply with all applicable federal, state and local laws in the performance of the Services; including but not limited to those of the Occupational Safety and Health Administration (OSHA) and the California Department of Industrial Relations and State Division of Industrial Safety and the professional standard of care. Where any applicable laws or ordinances conflict with the City's requirements, the more stringent requirement(s) shall be followed. Contractor's failure to be thoroughly familiarized with the provisions of any applicable federal, state, and local regulations, ordinances and codes shall not relieve Contractor from compliance with the obligations and penalties resulting therefrom.
- D. Contractor represents and warrants to the City that it has, shall obtain, and shall keep in full force in effect during the Term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Contractor to practice its profession and to perform Services.

## 6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all Services rendered and material provided by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES AND PAYMENT PROVISIONS." The maximum compensation of this Agreement is **One Million, Three Hundred Seventy-One Thousand, Five Hundred Twenty Dollars (\$1,371,520) for Initial Term**, subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services including any taxes. All Services performed or supplies, materials and equipment provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

## 7. TERMINATION

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor.
- B. Termination for Default. For purposes of this Section 7.B., the word "Default" shall mean the failure of Contractor to perform any of Contractor's duties or obligations or the breach by Contractor of any of the terms and conditions set forth in this Agreement. In addition, Contractor shall be deemed to be in Default upon Contractor (i) applying for, consenting to, or suffering of, the appointment of a receiver, trustee or liquidator for all or a

substantial portion of its assets; (ii) making a general assignment for the benefit of creditors; (iii) being adjudged bankrupt; (iv) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing); or (v) suffering or permitting to continue unstayed and in effect for fifteen (15) consecutive days any attachment, levy, execution or seizure of all or a substantial portion of Contractor's assets or of Contractor's interests hereunder. In the event of any Default by Contractor, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor.

- C.** Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession.
- D.** In the event of termination under sections 7.A. or 7.B., Contractor shall have no further rights hereunder

## **8. ASSIGNMENT AND SUBCONTRACTING**

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

## **9. NO THIRD PARTY BENEFICIARY**

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

## **10. INDEPENDENT CONTRACTOR**

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights to manage its employees in their performance of Services under this Agreement. Contractor has full rights to manage its workers, contractors and or employees in their performance of Services.

Contractor shall enter into written agreements with all persons it engages, hires, contracts with, or employs to perform Services or provide labor and or materials to City, which state the persons are not employees of the City, and such persons are required to immediately report to Contractor any and all instances of any of the following, if they occur during the time the persons provide labor and or materials to City: (a) The way a person supplies labor and or materials to City is supervised by City or City's designee; (b) The person is informed they should follow instructions given by City concerning how the person's labor and material are to be provided; (c) The person is informed they should give City access to on-going review of the person's labor and or materials; (d) The person is informed by City they should participate or attend training; (e) The person is unavailable to promote or otherwise make their labor and or materials available to the general public as a result of the provision of labor and materials to City; (f) The person is informed they are City's employee; or (g) The person forms a belief or opinion they are City's employee.

Contractor must immediately provide written notice to City of any report under Section 10 and provide related information as reasonably requested by City. The Parties agree failure of Contractor to immediately provide written report to City of any notice it receives from any source, relating to Section 10, constitutes material breach of this Agreement.

Contractor will inform and train persons it engages, hires, contracts with, or employs to provide labor and or materials to City on the requirements of Section 10. Contractor shall require that its workers and/or personnel immediately report to their respective Contractor supervisor any perceived occurrence under Section 10.

## **11. CONFIDENTIALITY OF MATERIAL**

**A.** "Confidential Information" means, with respect to a Party hereto, all information or material which either (1) is marked or identified as "Confidential," "Restricted," or "Proprietary Information" or other similar marking or identification, or (2) the other Party knew, as recipient, or under the circumstances, should have known, was considered confidential or proprietary by the Disclosing Party (as defined below), except that this Agreement, Contractor pricing, and Contractor proposals incorporated into this Agreement shall not be deemed Confidential Information. Confidential Information shall consist of all information, whether in written, oral, electronic, or other form, furnished in connection with this Agreement by the Disclosing Party or its Representatives ("Representative" is defined as any elected and appointed officials, affiliate, director, officer, employee, agent, advisor or Contractor of a Party or any of its subsidiaries or affiliates) to the Receiving Party (as defined below) or to its Representatives, and specifically includes but is not limited to the City's individually identifiable customer information, and the City's customer usage data and financial data.

- B.** Contractor and the City shall each hold the other's Confidential Information in confidence. Neither Party shall make the other's Confidential Information available in any form to any third party or use the other's Confidential Information for any purpose other than as specified in this Agreement. The Party providing Confidential Information ("Disclosing Party") to the other Party ("Receiving Party") shall remain the sole owner of such information. Except as provided elsewhere within this Agreement, nothing contained in this Agreement shall be construed as granting or conferring any right or license in any Confidential Information or in any patents, copyrights, software or other technology, either expressly or by implication to the Receiving Party, or to its Representatives or to others. The term Confidential Information shall not include any of the following: (1) information already in possession of, or already known to, the Receiving Party as of the Effective Date without an obligation of confidentiality; (2) information in the public domain at the time of the disclosure, or which, after such disclosure, enters into the public domain through no breach of this Agreement by the Receiving Party or its Representative(s); (3) information lawfully furnished or disclosed to the Receiving Party by a non-party to this Agreement without any obligation of confidentiality and through no breach of this Agreement by the Receiving Party or its Representative(s); (4) information independently developed by the Receiving Party without use of any Confidential Information of the Disclosing Party; (5) information authorized in writing by the Disclosing Party to be released from the confidentiality obligations herein; or (6) this Agreement and Contractor's proposals and Purchase Orders.
- C.** By virtue of this Agreement, each Party hereto may disclose to the other Party information that is Confidential Information. This Agreement does not diminish, revoke or supersede any existing confidentiality, non-disclosure or similar agreement between the Parties that does not pertain to the subject matter of this Agreement. However, any Confidential Information, whether or not previously disclosed, that pertains to the subject matter of this Agreement shall be governed by the terms of this Section 11 which shall supersede any such previous agreement with respect to such Confidential Information and any Confidential Information relating to the subject matter of this Agreement that was exchanged under such previous agreement shall be treated as though it was exchanged under this Agreement as of the date of such exchange.
- D.** The Receiving Party will treat all Confidential Information of the Disclosing Party, no matter written, electronic, or oral, as confidential and proprietary, and the Receiving Party shall only use such information in furtherance of this Agreement. As such, the Receiving Party shall hold in confidence the Confidential Information of the Disclosing Party and ensure that such Confidential Information is not disclosed to any other person or entity, except as expressly permitted by this Agreement or as authorized in writing by the Disclosing Party. The Receiving Party shall not disclose Confidential

Information of the Disclosing Party received under this Agreement to any person other than its Representatives who require knowledge of such Confidential Information in furtherance of this Agreement. The Receiving Party shall inform its Representatives of the confidential nature of the Confidential Information of the Disclosing Party and advise such Representatives of the limitations on the use and disclosure and prohibition on making copies or summaries of such Confidential Information. The Receiving Party shall be responsible for any breach of this Agreement by its Representatives. Neither Party shall use the Confidential Information of the other Party for any commercial purpose.

- E.** If the Receiving Party becomes legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information of the Disclosing Party or is requested Confidential Information pursuant to the California Public Records Act or similar law, the Receiving Party will provide the Disclosing Party with written notice of such an occurrence (if so permitted) as soon as possible. Thereafter, at its sole costs and expense, the Disclosing Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. If the disclosing Party (i) waives compliance, (ii) fails to respond to the Receiving Party within five (5) business days, or (iii) after providing the notice and assistance required under this Section, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose. So long as it is consistent with applicable law, the Receiving Party will not oppose action by, and the Receiving Party will cooperate with, the Disclosing Party, at the Disclosing Party's sole cost and expense, to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. If the Disclosing Party fails to obtain such protective order or other remedy, or if the Disclosing Party waives compliance with the requirements of the preceding sentence, the Receiving Party will disclose only that Confidential Information that it is legally required to disclose, and will exercise commercially reasonable efforts, at Disclosing Party's expense, to obtain reliable assurance that confidential treatment will be accorded the Confidential Information so disclosed.
- F.** In the event the Receiving Party discloses, disseminates or releases any Confidential Information, except as expressly permitted by this Agreement, such disclosure, dissemination or release will be deemed a material breach of this Agreement and the Disclosing Party may demand prompt return of all Confidential Information previously provided to the Receiving Party. As soon as the Receiving Party becomes aware that it has made an unauthorized disclosure of Confidential Information, the Receiving Party shall take any and all necessary actions to recover the improperly disclosed

Confidential Information and immediately notify Disclosing Party regarding the nature of the unauthorized disclosure and the corrective measures being taken. Each Party agrees that any breach of their confidentiality obligations could cause irreparable harm to the other Party, the amount of which would be extremely difficult to estimate. Accordingly, it is understood and agreed that monetary damages would not be a sufficient remedy for any material breach of this Agreement and that specific performance and injunctive relief in addition to monetary damages shall be appropriate remedies for any breach or any threat of such breach. The provisions of this Paragraph are in addition to any other legal rights or remedies the Disclosing Party may have.

- G.** Within two (2) weeks of the termination of this Agreement, Contractor will return to the City or destroy, to the extent permitted by law, any and all Confidential Information, including all originals, copies, translations, transcriptions or any other form of material, without retaining any copy or duplicate thereof; provided that Contractor may retain Confidential Information contained on backup media created in the ordinary course of business provided further that there is no effort to access such Confidential Information and Contractor's confidential obligations with respect to such information shall continue so long as such information is retained. Contractor shall certify in writing the destruction of the Confidential Information. The City may perform an audit of Contractor's records to confirm the return or destruction of the Confidential Information. The City shall have this audit right for two (2) years after the termination of this Agreement.
- H.** Notwithstanding the termination of this Agreement, this Confidentiality Section shall survive the expiration or earlier termination of this Agreement.

## **12. OWNERSHIP OF MATERIAL**

- A.** City shall furnish to Contractor such documents and materials as may be relevant and pertinent to the provision of Services hereunder as City may possess or acquire.
- B.** All documents and materials furnished by City to Contractor, pursuant to Section 12.A., shall remain the property of City and shall be returned to City upon termination of this Agreement, for any reason. All documents or material prepared or caused to be prepared by Contractor, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall be considered works made for hire and shall become the exclusive property of the City, and City shall have the sole right to use such documents and materials without restriction or limitation on their use in City's discretion without further compensation to Contractor or any other party. Contractor shall, at Contractor's sole cost and expense, provide such documents and material to City upon written request.

- C. Documents and material prepared by Contractor, pursuant to this Agreement, are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed documents for other projects and any use of incomplete documents without specific written authorization from Contractor will be at City's sole risk and without liability to Contractor. Further, any and all liability arising out of changes made to Contractor's deliverables under this Agreement by City or persons other than Contractor, is waived against Contractor and City assumes full responsibility for such changes unless City has given Contractor prior notice and has received from Contractor written consent for such change.

### **13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR**

- A. City, through its authorized employees, representatives or agents shall have the right during the Term and for four (4) years from the date of final payment for Services or goods provided under this Agreement ("Audit Period"), to audit the books and records of Contractor for the purpose of verifying any and all Contractor invoices and charges.
- B. Contractor shall keep records and invoices in connection with the Services for the length of the Audit Period. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City.
- C. Contractor shall use recognized accounting methods in preparing reports and invoices submitted to the City in connection with the Services. City reserves the right to designate its own employee representative(s) or its contracted representative(s) with a certified public accounting firm who shall have the right to audit Contractor's accounting procedures and internal controls of Contractor's financial systems and to examine any cost, revenue, payment, claim, other records or supporting documentation resulting from any items set forth in this Agreement. If Contractor fails to provide supporting documentation satisfactory to City for costs charged, then Contractor agrees to reimburse City for those costs. Any such audit(s) shall be undertaken by City or its representative(s) at reasonable times and in conformance with generally accepted auditing standards. Contractor agrees to fully cooperate with any such audit(s).
- D. Contractor will be notified in writing of any exception taken as a result of an audit. Any adjustments and/or payments which must be made as a result of any such audit or inspection of Contractor's invoices and/or records shall be made within thirty (30) days from presentation of City's findings to Contractor. If Contractor fails to make such payment, Contractor agrees to pay interest, accruing monthly, at a rate of ten percent (10%) per annum unless another section of this Agreement specifies a higher rate of interest, then the higher rate will prevail. Interest will be computed from the date of written notification of exception(s) to the date Contractor reimburses City for

any exception(s). If an audit inspection or examination in accordance with this Section discloses overcharges (of any nature) by Contractor to City in excess of one percent (1%) of the value of that portion of the Agreement that was audited, the actual cost of City's audit shall be reimbursed to City by Contractor.

- E. Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to the Services.

#### **14. HOLD HARMLESS/INDEMNIFICATION**

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees, subcontractors, affiliates, or persons contracting with Contractor to perform any portion of the Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all current or former worker, independent contractor, and or employment-related, and or benefit claims of any type brought by current or former workers, independent contractors, and or employees, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for

any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

- D.** Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor any other person or entity involved in the performance of the Services. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor shall be fully responsible according to the terms of this section.

## **15. INSURANCE REQUIREMENTS**

During the Term, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit C.

## **16. WAIVER**

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

## **17. NOTICES**

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara  
Attention: Silicon Valley Power  
1500 Warburton Avenue  
Santa Clara, CA 95050  
and by e-mail at [svpcontracts@santaclaraca.gov](mailto:svpcontracts@santaclaraca.gov) and  
[manager@santaclaraca.gov](mailto:manager@santaclaraca.gov)

And to Contractor addressed as follows:

Groome Industrial Service Group, LLC  
Attn: Steve Houghton, Chief Revenue Officer  
305 Palmer Rd.  
Denville, NJ 07834  
and by e-mail at [shoughton@groomeindustrial.com](mailto:shoughton@groomeindustrial.com)

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

**18. COMPLIANCE WITH LAWS**

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to “The Code of the City of Santa Clara, California” (“SCCC”). In particular, Contractor’s attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Contractor has read and agrees to comply with City’s Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

**19. CONFLICTS OF INTEREST**

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

**20. FAIR EMPLOYMENT**

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

**21. NO USE OF CITY NAME OR EMBLEM**

Contractor shall not use City’s name, insignia, or emblem, or distribute any information related to Services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

**22. GOVERNING LAW AND VENUE**

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

**23. SEVERABILITY CLAUSE**

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

**24. AMENDMENTS**

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties.

**25. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

**26. PREVAILING WAGE**

In the event the Services require payment of prevailing wage, Contractor shall comply, and ensure its subcontractors comply with Exhibit D.

Contractor certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as Section 16000 et seq. of Title 8 of the California Code of Regulations, Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure by Contractor or its employees, agents, contractors, and subcontractors to comply with the prevailing wage laws.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

**[SIGNATURES ON FOLLOWING PAGE]**

**CITY OF SANTA CLARA, CALIFORNIA**  
a chartered California municipal corporation

Approved as to Form:

Dated: \_\_\_\_\_

\_\_\_\_\_  
GLEN R. GOOGINS  
City Attorney

\_\_\_\_\_  
JOVAN D. GROGAN  
City Manager  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

“CITY”

**GROOME INDUSTRIAL SERVICE GROUP, LLC**  
a New Jersey limited liability company

Dated: \_\_\_\_\_

By (Signature): \_\_\_\_\_

Name: Steve Houghton

Title: Chief Revenue Officer

Principal Place of Business Address: 305 Palmer Rd  
Denville, NJ 07834

Email Address: shoughton@groomeindustrial.com

Telephone: (800) 505-6100

“CONTRACTOR”

**EXHIBIT A**  
**SCOPE OF SERVICES**

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## **SECTION 1. GENERAL**

- 1.1** The purpose of this Scope of Services is to define the requirements and deliverables for the cleaning of the Heat Recovery Steam Generators (HRSGs) Cleaning “Services” to restore optimal thermal efficiency, reduce backpressure, and extend equipment life.
- 1.2** Contractor shall provide all necessary supervision, labor, and services, plus all tools, equipment, materials, and supplies required for HRSGs Cleaning “Services” to remove deposits from the outer surface of two horizontal gas flow ATS Express HRSGs and other heat transfer equipment in support of Silicon Valley Power (SVP), the City’s Electric Utility, and other City departments, on an as-needed basis.
- 1.3** Contractor shall perform the Services in accordance with generally accepted industry best practices and the original equipment manufacturer (OEM) specifications. Any deviations must be approved in writing by City.
- 1.4** Contractor will primarily perform Services in City of Santa Clara limits.

## **SECTION 2. SERVICES TO BE PERFORMED**

- 2.1** Contractor will provide the following Services to the City on an as-needed basis pursuant to the Work Authorization Process described in Section 8 and as further described pursuant to individual Work Authorizations or Purchase Orders
- 2.2** Place of Performance:

Silicon Valley Power,  
Donald Van Raesfeld (DVR)  
850 Duane Ave  
Santa Clara, CA 95054

## **2.3 Deliverables**

### **2.3.1 Cleaning Plan and Safety Procedures**

### **2.3.2 Pre- and Post-Cleaning Inspection Reports**

### **2.3.3 Final Cleaning Report with Documentation**

## **SECTION 3. SPECIFIC REQUIREMENTS**

### **3.1 Pre-Cleaning Activities**

**3.1.1** Conduct a site visit and pre-cleaning inspection of the HRSGs.

**3.1.2** Review historical performance data and fouling trends.

**3.1.3** Identify access points, safety hazards, and logistical constraints.

**3.1.4** Submit a cleaning plan including method, schedule, and safety protocols.

### **3.2 Cleaning Methodology**

**3.2.1** Contractor shall perform cleaning used the high-pressure water jetting method (e.g., KinetiClean™ or equivalent), as approved by the City.

**3.2.1.1** Cleaning method must be non-destructive to the HRSG components.

**3.2.1.2** Minimize downtime and environment impact.

**3.2.1.3** Comply with OEM recommendations and industry best practices.

### **3.3 Execution of Cleaning**

**3.3.1** Contractor shall be responsible for providing and mobilizing the following, as required for the Services:

**3.3.1.1** All necessary labor, supervision, tools, equipment, and materials required to perform the Services in accordance with the terms of this Agreement;

**3.3.1.2** Transportation and logistics related to the movement of personnel, equipment, and materials to and from the work site(s);

**3.3.1.3** All applicable permits, licenses, certifications, and approvals required by local, state, or federal authorities to lawfully perform the Services;

- 3.3.1.4** Compliance with all health, safety, and environmental regulations and the implementation of appropriate safety procedures and protective measures at all times during the execution of the Services;
- 3.3.1.5** Any documentation, reports, or deliverables specified in the scope of services or otherwise required by the City for project monitoring, completion, or compliance purposes;
- 3.3.1.6** Any documentation, reports, or deliverables specified in the scope of services or otherwise required by the City for project monitoring, completion, or compliance purposes;
- 3.3.1.7** Contractor shall perform thorough cleaning of the cold-end, (tubes downstream of the Selective Catalytic Reduction (SCR) catalyst) HRSGs tubes from the gas side. Pending the award of optional work scope(s), the cleaning may include the SCR and/or Catalyst Cleaning (CO) catalyst. Cleaning of the HRSG tubes shall be accomplished via the KinetiClean process. The cleaning process shall ensure the effective removal of dust, debris, fouling, and any other foreign materials that may impair HRSG performance. All services shall be performed in accordance with OEM specifications, industry best practices, and in a manner that prevents damage to any internal components.
- 3.3.1.8** Contractor shall ensure that noise levels generated during the performance of services do not exceed 90 decibels (dB) when measured at a distance of 50 feet from the HRSGs. Contractor shall take all necessary measures, including the use of noise-reducing equipment or sound barriers, to maintain compliance with this requirement and to minimize disruption to site personnel and surrounding areas.
- 3.3.1.9** The cleaning method employed by the Contractor must be capable of providing 360-degree cleaning coverage of the finned tube modules within the HRSGs. The method shall ensure that all surfaces of each tube, including areas between closely spaced fins, are effectively cleaned to restore optimal thermal performance. Cleaning shall be performed without causing damage to the fins or tube surfaces and in accordance with OEM recommendations and industry best practices.
- 3.3.1.10** Contractor shall ensure that no deformation, bending, or displacement of high-pressure tubes is permitted during any activity undertaken to reach or access deep into a tube bundle. All access methods and tools used must preserve the structural integrity and alignment of the high-pressure tubing. Any damage

or deformation resulting from non-compliant access methods shall be the sole responsibility of the Contractor and subject to immediate corrective action at no cost to the City.

**3.3.1.11** All debris cleaned from the tube surfaces shall be removed from the HRSG and placed in drums for later profiling as hazardous waste. Vanadium may be present in the debris.

**3.3.1.12** Deposits to be removed may include dirt, iron oxides, and other residues.

**3.3.1.13** All work must be completed during the scheduled annual Spring and/or Fall outages.

**3.3.1.14** Contractor shall provide all parts, materials, tools, equipment, and consumables necessary to complete all tasks.

**3.3.1.15** As requested by the City, expedited procurement and transportation of materials, parts, and equipment.

**3.3.1.16** Supervision and administrative support

**3.3.1.17** Program and project management services

**3.3.1.18** Scheduling and logistical planning

**3.3.2** On-site miscellaneous services (portable restroom facilities, rental equipment such as light standards, generators, fueling services, etc.)

### **3.4** Post-Cleaning Activities

**3.4.1** Contract shall conduct post-cleaning inspection with client representatives.

**3.4.2** Provide a detailed cleaning report including:

**3.4.2.1** Before and after photos

**3.4.2.2** Descriptions of fouling and cleaning effectiveness

**3.4.2.3** Recommendations for future maintenance

**3.4.3** Demobilize equipment and restore the site to original condition.

### **3.5** Schedule

#### **3.5.1** Schedule of Milestones

The following schedule outlines the deliverables and/or milestones:

<b>3.5.2</b> Annual Spring and/or Fall Outage Periods	TBD
<b>3.5.3</b> HRSG Cleaning Start Date	TBD
<b>3.5.4</b> HRSG Cleaning Finish Date	TBD
<b>3.5.5</b> HRSG Inspection and Close Out	TBD

## **SECTION 4. REPORTS**

### **4.1 Service Reports**

**4.1.1** Within seven (7) days after final acceptance by the City of Services associated with each Work Authorization (as defined in Section 8), Contractor shall provide a report to the City, which shall include the following information:

- 4.1.1.1** Type of service such as preventative maintenance, inspection, repair, testing
- 4.1.1.2** Summary of existing conditions
- 4.1.1.3** Description of noted issues/deficiencies (including photos) and recommended corrective action
- 4.1.1.4** Description of service/repairs performed
- 4.1.1.5** Summary list of spare parts and materials inventory including serial number of all parts removed and installed
- 4.1.1.6** Other information that may be requested by the City.

### **4.2 Status Reports**

**4.2.1** Contractor shall provide regular cost, schedule, and status updates on Services performed throughout the Term.

**4.2.2** Depending on the nature and scope of the Services, Contractor may be required to provide status updates daily, weekly, or monthly at the direction of City.

**4.3** Contractor shall provide all reports in electronic format and hard copy if requested by the City.

## **SECTION 5. COMPLETION OF SERVICES**

All Services shall be completed in a timely, efficient manner so as to ensure the site, equipment, and/or system is operational as soon as possible and as provided in the applicable Work Authorization or Purchase Order as defined in Section 8.

## **SECTION 6. HOURS AND DAYS OF SERVICE**

Contractor will generally perform the required Services during regular business hours, Monday through Friday. City will, at its discretion, allow access during non-business hours when required.

## **SECTION 7. SCHEDULING AND PLANNING**

- 7.1** Contractor will coordinate with City to schedule outages associated with performance of Services. When requested by City, Contractor shall be able to plan, staff and execute scheduled maintenance and inspections with thirty (30) days advance notice.
- 7.2** Contractor may be required to work shifts longer than twelve (12) hours per day or alternative shifts including night shifts. Work hours may be limited by City noise restrictions.

## **SECTION 8. WORK AUTHORIZATION PROCESS**

All Services under this Agreement must be approved by the City prior to commencement of work, and must be authorized through a valid Purchase Order issued by the City. Contractor shall not perform any Services without such authorization. No Purchase Order or cumulative Purchase Order shall exceed the maximum compensation of the Agreement. All issued Purchase Orders shall be incorporated the Agreement. This section may be amended in writing by the City.

## **SECTION 9. WORKMANSHIP**

- 9.1** Contractor shall perform all Services in a professional and environmentally responsible manner that meets or exceeds industry and professional standards of performance. All Services shall be performed by a Contractor employee skilled in the particular task to which they are assigned.
- 9.2** All parts and/or components replaced or newly installed in the system shall be factory new and free of defects in title, materials and workmanship at the time of their delivery and installation. However, if approved by the City in writing including as part of a Work Authorization or Purchase Order, Contractor may use rebuilt

parts or new parts from another manufacturer if such alternate parts and/or components are approved by the original manufacturer and/or City for use in the specific piece of equipment of the system.

- 9.3** Poor or inferior workmanship, as determined at the sole discretion of the City, shall be removed and replaced to conform to the quality standards of the industry, or otherwise corrected to the City's satisfaction, at Contractor's sole expense.
- 9.4** City reserves the right to inspect any Services performed by Contractor and its subcontractors. If, upon inspection, the City determines that there is any unsatisfactory or defective Services, the Contractor must correct the Services at no additional cost to the City.

## **SECTION 10. PERMITS AND LICENSES**

- 10.1** Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates required by any statute, ordinance, rule, or regulation in order to perform the Services.
- 10.2** Contractor is responsible for working with the City of Santa Clara's Fire Department to obtain permits including those related to the proper storage and handling of explosives.
- 10.3** Change Orders/Amendments to the Agreement will not be granted to extend the period of performance to obtain permits.

## **SECTION 11. WARRANTY**

- 11.1** Services. For each Work Authorization and Purchase Order, all Services shall carry a warranty of a minimum of twelve (12) months from the date of completion of Services set forth in each Work Authorization or Purchase Order. Contractor shall perform all warranty-related work at no additional cost to the City.
- 11.2** Parts. All parts provided by Contractor shall include a warranty of no less than the greater of either twelve (12) months or the OEM warranty period. In the event the OEM warranty is less than twelve (12) months, Contractor shall extend the OEM warranty to a minimum of twelve (12) months. All parts fabricated by Contractor shall include a warranty of twelve (12) months. Contractor shall provide the City with a copy of any manufacturer's warranty or extended manufacturer's warranty.

- 11.3** Contractor shall be responsible for performing all warranty work within a reasonable time. In emergencies where damage may result from delay or where the loss of service may result, the City may choose to perform the work covered in the warranty. The cost associated with the City completing the warranty work shall be charged to Contractor.

## **SECTION 12. CITY FURNISHED MATERIALS**

Contractor shall credit the City for any City-furnished materials that are used, lost, stolen, damaged or rendered unusable by actions of Contractor.

## **SECTION 13. WORK AREA**

- 13.1** Contractor shall ensure that work area, where Services or other related work are being performed, is free from all surplus materials, waste materials, debris, spills, dirt and rubbish caused by Contractor's performance of Services. Upon completion of the scheduled Services or at the end of each day, whichever comes first, Contractor shall ensure the work area is in a clean safe condition. The City shall be the sole judge as to the adequacy of the cleanup.
- 13.2** Contractor shall follow all directions of City with regard to clean-up both during the course of, and upon completion of Services. If Contractor fails to clean up the work area within forty-eight hours (48) after demand by the City, City may charge Contractor for any costs of clean-up or other services required to adequately protect the City's electrical or other facilities or to restore work area to a safe condition. City may invoice Contractor or deduct costs from Contractor's invoice at City's sole discretion.
- 13.3** Contractor must provide work and traffic signage as required to warn pedestrians and vehicular traffic of work in progress. Contractor may be required to direct pedestrians and traffic around the work area. Contractor shall also be responsible for providing all equipment and personnel necessary to properly perform the traffic control measures, including but not limited to, flaggers, cones, reflectors, electronic signs, barricades, caution tape, temporary paving, or steel plates.
- 13.4** Contractor shall make all reasonable efforts to minimize obstructions and inconvenience to City's operations and others who may be impacted by Contractor's Services.

## **SECTION 14. CONTRACTOR'S EQUIPMENT, TOOLS, AND MATERIALS**

- 14.1** Contractor shall provide all equipment, tools (including any specialty tooling), and materials required for the performance of the Services. City will not loan tools or equipment to Contractor. Neither Contractor nor its workers shall attempt to borrow tools or other materials from City personnel.
- 14.2** Contractor shall maintain tools and equipment in proper operating condition and used only for the purpose for which they were designed. City reserves the right to suspend Services if improper tools or equipment are being used or operated.
- 14.3** Contractor shall safely store and secure tools, equipment, and vehicles under lock and key when not in use. Contractor will not leave keys in any vehicles or equipment when not in use. Contractor shall promptly report to the City any loss or damage to tools, equipment, or vehicles.
- 14.4** City will not be responsible for the loss of tools, equipment, or materials.

## **SECTION 15. DISPOSAL OF WASTE AND SCRAPS**

- 15.1** All wastes generated or encountered in the performance of Services must be managed in accordance with all applicable local, State, and federal regulations and laws. Contractor is solely responsible for handling the material safely and placing the material in storage bids provided by the City.
- 15.2** City will be responsible for the disposal of any hazardous materials.

## **SECTION 16. SAFETY**

- 16.1** Safety must always be the top priority. Contractor shall take all necessary precautions for the safety of all persons at the work site. Contractor must erect and properly maintain at all times, as required by the conditions and progress of the Services, all necessary safeguards for the protection of all persons and the public including posting danger signs and warnings against known or unusual hazards.
- 16.2** Contractor shall perform Services according to accepted industry standards and work/safety practices, including but not limited to the National Fire Protection Association (NFPA) Codes NFPA 70, 70B, and 70E, National Electrical Manufacturer's Association (NEMA), NETA, and IEEE standards.

- 16.3** Contractor shall maintain an effective Injury and Illness Prevention Program (IIPP) in writing pursuant to Section 3203, Title 8 of the California Code of Regulations (CCR). The written plan shall include specific instructions with regard to hazards unique to the employee's job assignment. Contractor will submit a copy of Contractor's IIPP at the City's request and Contractor shall make Contractor's IIPP available on-site.
- 16.4** Contractor shall schedule safety inspections as necessary and as may be requested by the City to identify and correct unsafe conditions and practices. The City reserves the right to accompany Contractor during these inspections.
- 16.5** Contractor must comply with all site-specific safety requirements and procedures including but not limited to Lockout/Tagout (LOTO), Energy Isolation, Confined Space, Fall Protection, Chemical Safety, Hazardous Waste, and Personnel Protective Equipment (PPE). Contractor must comply with SVP's clearance program for equipment safety requirements. City will provide the clearance program to the Contractor.
- 16.6** Contractor's employees (including any subcontractors) must use appropriate Personal Protective Equipment (PPE) and Fire Resistant (FR) clothing, as required. Any required PPE and FR clothing shall be provided at the expense of Contractor.
- 16.7** When requested by the City, Contractor shall provide an on-site Safety Manager/Supervisor to ensure compliance with all applicable safety rules and regulations. The onsite Safety Manager will perform daily audits and submit daily reports to the City that identify discrepancies or non-compliance and provide direction in regard to safety rules and regulations to Contractor Project Manager/On-Site Supervisor (as defined in Section 18) and Contractor employees.

## **SECTION 17. INJURY/PROPERTY DAMAGE**

- 17.1** Contractor shall notify the City immediately in the event of an injury or property damage that occurs during the performance of Services. Contractor shall investigate the reported injury or damage upon request from City and provide City with regular updates including all accident reports until the investigation is resolved. City reserves the right to perform its own investigation. Should City choose to conduct its own investigation, Contractor shall assist as required.

## **SECTION 18. CONTRACTOR PERSONNEL**

### **18.1 Project Manager/On-Site Supervisor**

Contractor must designate one (1) Project Manager or On-Site Supervisor to communicate with the City during the performance of Services. The Project Manager/On-Site Supervisor is the designated point of contact for the City to communicate tasks and receive feedback. The Project Manager/On-Site Supervisor must be capable of communicating effectively with City staff.

### **18.2 Staffing**

**18.2.1** Contractor shall be responsible for its employees' professional and technical competence and will select appropriate individuals who are qualified, certified, and/or licensed to perform the assigned task.

**18.2.2** Contractor shall ensure its employees, and any subcontractors supply proper identification when requested by the City.

**18.2.3** Contractor shall inform City immediately of any change in key personnel assigned to this agreement. Contractor shall submit the resumes and other qualifications of the proposed replacement employee(s) to City for review and approval.

**18.2.4** City may reasonably request reassignment of key staff, including the Project Manager. In the event of a request, Contractor shall submit the resumes and other qualifications of proposed replacement employee(s) to City for review and approval.

### **18.3 Employee Training**

**18.3.1** At Contractor's sole cost and expense, Contractor shall provide recurring, periodic (no less than annual) training to its employees (including subcontractors) appropriate to the duties and responsibilities of each employee.

**18.3.2** It is essential that all employees be thoroughly trained and familiar with the equipment and procedures to be followed.

**18.3.3** Contractor's training program shall follow Contractor's standard policies and procedures and shall be in compliance with all applicable federal, state, and local laws, including but not limited to safety and injury prevention training requirements contained in the OSHA standards.

**18.3.4** Contractor shall be familiar with SVP's operating standards. All employees are required to watch SVP's safety video once per calendar year or prior to the commencement of the Services.

**18.3.5** At the City's request, Contractor shall submit copies of training records for its employees.

#### **18.4** Standards of Conduct

**18.4.1** Contractor is solely responsible for its employees while on or about the work site. This includes but is not limited to, maintaining discipline, ensuring standards of conduct are adhered to, and enforcing safety policies, procedures, and orders. Contractor shall ensure that while on or about the work site, its employees do not:

**18.4.1.1** Display a discourteous, abrupt, abrasive, or belligerent attitude.

**18.4.1.2** Use any prescribed or over-the-counter medications which can potentially impair the employee's ability to perform the Services safely.

**18.4.1.3** Present or identify themselves as employees of the City of Santa Clara.

**18.4.1.4** Possess or use any firearms, narcotics, drugs, intoxicants, or other restricted materials while on City premises or performing Services.

**18.4.2** If a Contractor employee fails to meet these standards of conduct, Contractor shall immediately remove the employee and provide a replacement. Contractor shall determine appropriate disciplinary actions in accordance with its own policy, a copy of which may be requested by the City at any time.

**18.4.3** In the event that a complaint is made against a Contractor employee, Contractor shall notify the City immediately and provide a written explanation detailing how the situation was resolved.

**EXHIBIT B**  
**SCHEDULE OF FEES AND PAYMENT PROVISIONS**

**SECTION 1. MAXIMUM COMPENSATION**

- 1.1 The maximum compensation payable to Contractor during the Term shall not exceed the amount in Section 6 of this Agreement.
- 1.2 The City does not guarantee a minimum compensation under this Agreement.

**SECTION 2. RATES**

**2.1 Rate Schedule**

The rates applicable to the Services performed under this Agreement are listed in Appendix B1 (Rate Schedule), which is attached hereto and incorporated by reference. The rates shown in Appendix B1 are fully burdened, including all costs such as labor, overhead, and profit.

**2.2 Fixed Rates**

The rates listed in Appendix B1 shall remain fixed for the first two (2) years of the Agreement term and shall not be subject to escalation or adjustment during that period, except as otherwise authorized by the City under this Exhibit B.

**2.3 Additional Services**

Compensation for Additional Services, as defined in Section 7.2 of Exhibit A (Additional Services) shall be authorized in writing by the City prior to commencement. Such services shall be compensated at either at the rates set forth in Appendix B1, if applicable, or at a fixed price mutually agreed upon by the Parties.

**2.4 Rate Adjustments**

After the first two years of the Agreement, rate adjustments may be negotiated no more than once annually. Contractor shall submit any proposed rate adjustments in writing to the City at least ninety (90) days prior to the requested effective date. Any proposed rate adjustments are subject to approval by the City and must be substantiated by the Contractor to the satisfaction of the City.

**2.5 Labor Union or Prevailing Wage Adjustments**

If Contractor's employees are covered by a collective bargaining agreement or prevailing wage determination that results in an increase in mandatory labor wages during the term of the Agreement, Contractor may request a corresponding rate adjustment. Any such request shall include documentation substantiating the applicable labor agreement or

prevailing wage determination, the effective date and percentage of the wage increase, and a demonstration of how the increase impacts the rates in Appendix B1.

### **SECTION 3. NO REIMBURSABLE EXPENSES**

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### **SECTION 4. PAYMENT PROVISIONS**

#### **4.1 Time and Materials**

For Services authorized to be paid on a time and materials basis, Contractor shall provide an invoice to the City on a monthly basis for Services completed in the preceding month. The invoice must include the following information:

- 4.1.1** Invoice Number, Purchase Order Number, and Invoice Period.
- 4.1.2** Current amount due with a time and materials breakdown: titles, hours, hourly rates, and any City approved reimbursable expenses itemized with supporting documentation.
- 4.1.3** Sufficient detail for City to verify (a) that the charges are in accordance with the Purchase Order, (b) that rates listed in Appendix B1 are charged, and (c) where applicable, hours worked can be matched to certified payroll submittals.

#### **4.2 Fixed Price**

For Services authorized to be paid on a fixed price basis, Contractor shall base the invoice on a lump sum amount upon the completion of deliverable(s) and subject to the following:

- 4.2.1** Invoices must include the following information:
  - 4.2.1.1** Invoice Number, Purchase Order Number, and Invoice Period.
  - 4.2.1.2** Detailed information on the Services performed on each deliverable or task completed on each project, as applicable.
- 4.2.2** Contractor shall not invoice labor costs subject to prevailing wages in advance of performing the applicable Services.

#### **4.3 Pre-Payment**

City shall not be required to pay a deposit or any other form of pre-payment prior to Contractor beginning the Services.

#### **4.4 Payment Limited to Satisfactory Work.**

Contractor is not entitled to any payments until the City concludes that the Services and/or any furnished deliverables have been satisfactorily performed.

#### **4.5 Certified Payroll**

When applicable, Contractor and all subcontractors shall submit certified payroll records for all workers employed in the performance of the Services. All certified payrolls shall be submitted in accordance with the requirements set forth in Exhibit D (Labor Compliance).

#### **4.6 Accurate Invoice**

Invoices shall be accurate, itemized, and submitted in a form acceptable to the City. If an invoice is incomplete or inaccurate, the City may return it to Contractor for correction and resubmittal before payment can be processed. Contractor shall not charge the City any interest, late fees, or penalties on any outstanding or delayed invoices due to inaccurate billing.

#### **4.7 Payment**

If there are no discrepancies or deficiencies in the submitted invoice and Contractor has submitted all required certified payroll, City shall process the invoice for payment.

#### **4.8 Confidential**

Invoices and related payment documentation are public records and are not confidential, even if marked as confidential when submitted by Contractor.

**APPENDIX B1 TO EXHIBIT B  
RATE SCHEDULE**

Contractor agrees to provide the services and/or products as specified in Exhibit A at the rates set forth below., Servicing of units would rotate on an annual or semiannual (twice a year) basis depending on City requirements, with an option to add additional services on an as-needed basis.

**Table B1: Total Compensation for Initial Term**

<b>Item</b>	<b>Services Description</b>	<b># of Days</b>	<b>Duration of Shifts Per Day (Hours)</b>	<b>Lump Sum Pricing</b>
2026-Unit 1 or 2	KinetiClean	8	12	\$239,880.00
2027-Unit 1	KinetiClean	8	12	\$239,880.00
2027-Unit 2	KinetiClean	8	12	\$239,880.00
2028-Unit 1 or 2	KinetiClean	8	12	\$239,880.00
As-needed SCR Services	Selective Catalytic Reduction Services	3	12	\$128,000.00 (includes scaffolding)
As-needed CO Services	Catalyst Cleaning	3	12	\$128,000.00 (Includes scaffolding)
As-needed Services	KinetiClean HP Evap Superheater Cleaning	3	12	\$156,000.00
<b>Total</b>				<b>\$1,371,520.00</b>

**Table B2: Total Compensation for Option Periods**

<b>Item</b>	<b>Services Description</b>	<b># of Days</b>	<b>Duration of Shifts Per Day (Hours)</b>	<b>Lump Sum Pricing</b>
2028-Unit 1 or 2	KinetiClean	8	12	\$252,440.00
2029-Unit 1	KinetiClean	8	12	\$252,440.00
2029-Unit 2	KinetiClean	8	12	\$266,440.00
2030-Unit 1	KinetiClean	8	12	\$266,440.00
2030-Unit 2	KinetiClean	8	12	\$279,880.00
2031-Unit 1 or 2	KinetiClean	8	12	\$279,880.00
As-needed SCR Services	Selective Catalytic Reduction Services	3	12	\$128,000.00 (includes scaffolding)
As-needed CO Services	Catalyst Cleaning	3	12	\$128,000.00 (includes scaffolding)

As-needed Services	HP Evap Superheater Cleaning	5	12	\$156,000.00
<b>Total</b>				<b>\$3,381,040.00</b>

KineticClean - Four (4) modules, both sides of module, per year, on a single HRSG (Heat Recovery Steam Generator) unit. Routine cleaning services would typically occur in

Spring (March). First round of routine cleaning services would start with Unit 1. City reserves the right, in its sole discretion, to dictate that a different unit be cleaned first.

KineticClean – As-needed cleaning services may occur in Spring (March) or Fall (November).

Any quantities specified herein are estimates. Actual quantities may vary; any variations from these estimated quantities shall not entitle the Contractor to an adjustment in unit pricing or rates.

## **EXHIBIT C**

### **INSURANCE REQUIREMENTS**

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

#### **A. COMMERCIAL GENERAL LIABILITY INSURANCE**

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
  - \$1,000,000 Each occurrence
  - \$2,000,000 General aggregate
  - \$2,000,000 Products/Completed Operations aggregate
  - \$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
  - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

#### **B. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

#### C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

#### D. UMBRELLA/EXCESS LIABILITY INSURANCE

Umbrella or excess liability coverage with a limit of ten million dollars \$10,000,000 per occurrence and in the aggregate. Such coverage must include the Employer's Liability Insurance, Commercial General Liability Insurance (including completed operations) and Automobile Liability Insurance and the Umbrella/Excess coverage must "follow form" over the underlying coverages.

#### E. POLLUTION LIABILITY

1. Pollution Liability Insurance policy with limits of at least five million dollars (\$5,000,000).
2. The pollution policy needs to have coverage for (Including coverage for ongoing and completed site operations, transportation incidents and non-owned disposal sites).

## F. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. Waiver of Subrogation. Contractor hereby waives all rights of recovery (including rights of subrogation) against the City of Santa Clara and any other required Additional Insured or other party entitled to indemnification hereunder of any claim, injury, loss or damage arising from any occurrence covered by insurance maintained (or required to be maintained) by Contractor. All policies of insurance carried by Contractor, including Workers Compensation, shall include express provisions in which the insurer waives its subrogation rights against City or other party entitled to indemnification hereunder.
5. Cancellation.
  - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
  - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be

effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

6. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

#### G. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required by Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.
4. Requirements of specific insurance coverage features described in this Agreement shall not be construed to be a limitation of liability on the part of Contractor or any of its subcontractors, nor to relieve any of them of any liability or responsibility under the Contract Documents, as a matter of law or otherwise. Such requirements are not intended by any Party to be limited to providing coverage for the vicarious liability of the City or to the supervisory role, if any, of City. All insurance coverage provided pursuant to this Agreement in any way relating to City is intended to apply to the full extent of the policies involved.

5. Contractor shall maintain all required insurance policies in full force and effect during entire period of performance of the Services under this Agreement of Contract Documents. Contractor shall also keep such insurance in force during warranty and guarantee periods. At time of making application for extension of time, Contractor shall submit evidence that insurance policies will be in effect during requested additional period of time.
6. City reserves the right, at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Contractor thirty (30) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City will negotiate in good faith additional compensation proportional to the increased benefit to City.
7. Any type of insurance or any increase of limits of liability not described in this Exhibit which Contractor requires for its own protection or in compliance with applicable statutes or regulations, shall be Contractors' responsibility and at its own expense.
8. No liability insurance coverage provided by Contractor to comply with the terms of this Agreement shall prohibit Contractor, or Contractor's employees, or agents, from waiving the right of subrogation prior to a loss. Contractor waives its right of subrogation against indemnitees. Any property insurance policies affected by Contractor shall be endorsed to delete the subrogation condition as to indemnitees or shall specifically allow Contractor to waive subrogation prior to a loss. Contractor hereby waives any right of recovery against the indemnitees and agrees to require any subcontractor to do so.
9. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. . Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
10. Contractor shall cooperate fully with City and Contractor's insurance companies in any safety and accident prevention program and claims handling procedures as established for the performance of Services under this Agreement.
11. All coverage types and limits required under this Agreement are subject to approval, modification and additional requirements by the City, as the need

arises. Contractor shall not make any reductions in scope of coverage which may affect City's protection without City's prior written consent.

12. For purposes of applying insurance coverage only, all contracts pertaining to the performance of services will be deemed to be executed when finalized and any activity commences in furtherance of performance under this agreement.
13. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any of the insurance requirements set forth in this Agreement in no way imposes any additional obligations on City nor does it waive any of the City's rights under this Agreement or any other regard.
14. Any provision in this Agreement dealing with the insurance coverage provided pursuant to these requirements, is subordinate to and superseded by the requirements contained herein. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the Parties here to be interpreted as such.
15. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
16. Contractor agrees to obtain and provide to City evidence of Professional Liability insurance for Architects or Engineers if engaged by Contractor to perform any of the Services required under this Agreement. City shall determine the minimum coverage and policy limits required, after consultation with Contractor.
17. The City acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. The Contractor's insurance obligations under this Agreement under may be satisfied in whole or in part by adequately funded self-insurance retention, but only after approval from the City Attorney's Office upon satisfactory evidence of financial capacity.
18. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.



## **EXHIBIT D LABOR COMPLIANCE**

This Agreement is subject to the requirements of California Labor Code section 1720 et seq. requiring the payment of prevailing wages, the training of apprentices, and compliance with other applicable requirements.

### **K. Prevailing Wage Requirements**

1. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate, which can be found at [www.dir.ca.gov](http://www.dir.ca.gov) and are on file with the City Clerk's office, which shall be available to any interested party upon request. Contractor is also required to have a copy of the applicable wage determination posted and/or available at each job site.
2. Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime must be paid for work in excess of 8 hours per day or 40 hours per week pursuant to Labor Code Section 1811-1813.
3. Special prevailing wage rates generally apply to work performed on weekends, holidays and for certain shift work. Depending on the location of the project and the amount of travel incurred by workers on the project, certain travel and subsistence payments may also be required. Contractors and subcontractors are on notice that information about such special rates, holidays, premium pay, shift work and travel and subsistence requirements can be found at [www.dir.ca.gov](http://www.dir.ca.gov).
4. Only bona fide apprentices actively enrolled in a California Division of Apprenticeship Standards approved program may be employed on the project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are not properly supervised and employed in the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.
5. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, Contractor agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. Contractors shall submit certified payroll through LCP Tracker or similar system as directed by the City. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 *et seq.*, as well as any additional

documentation requested by the City or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.

6. In addition to submitting the certified payrolls and related documentation to City, Contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and/or final payment.
7. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
8. No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered "public works contractor" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
9. All contractors/subcontractors and related construction services subject to prevailing wage, including but not limited to: trucking, surveying and inspection work must be registered with the Department of Industrial Relations as a "public works contractor". Those you fail to register and maintain their status as a public works contractor shall not be permitted to perform work on the project.
10. Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the City for any fines assessed by the California Department of Industrial Relations against the City for such violation, including all staff costs and attorney's fee relating to such fine.
11. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

## **L. Audit Rights**

All records or documents required to be kept pursuant to this Agreement to verify compliance with this Exhibit shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Agreement with Groome Industrial Service Group, LLC

Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be made available at Contractor's address indicated for receipt of notices in this Agreement.

#### **M. Enforcement**

1. City shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., City may continue to hold sufficient funds to cover estimated wages and penalties under the Agreement.
2. Based on State funding sources, this project may be subject to special labor compliance requirements of Proposition 84.
3. The City is not obligated to make any payment due to Contractor until Contractor has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of this Exhibit.
4. City or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violation identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.