ADDENDUM TO THE CITY OF SANTA CLARA'S PURCHASE ORDER TERMS & CONDITIONS

This Addendum to the City of Santa Clara's Purchase Order Terms & Conditions entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Flow America, LLC (Supplier). City and Supplier may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement.

1. The following sections of the City of Santa Clara's Purchase Order Terms & Conditions are amended to read as follows:

2. SCHEDULE; TIME OF PERFORMANCE: Suppliers shall supply the goods and perform the services, with the schedule and term, as specified herein. If the agreed delivery date is delayed through a cause which Supplier could have reasonably controlled, following a seven (7) day grace period, Supplier undertakes to pay liquidated damages (not a penalty) at the rate of one-half percent (0.5%) for each week of delay up to a maximum of five percent (5%) of the value of the portion of the order so delayed. Such payment shall be in full and final satisfaction of Supplier's liability for delay and the sole remedy available to City for delay.

3. **SCHEDULE OF PAYMENT:** City shall make milestone Purchase Order payments as follows: 40% upon approval of drawings, 40% upon receipt of the goods, and 20% upon the City's written acceptance of the goods following testing and verification of conformity with the approved drawings. City shall complete its testing and verification of the goods within 10 business days after receipt. If City does not provide written notice of acceptance within that period, the goods shall be deemed accepted as of the expiration of that period. Supplier shall submit an invoice and City shall make payment within thirty (30) calendar days after receipt of such invoice. Supplier is responsible for all costs and expenses incident to the performance of this Purchase Order, including without limitation costs, taxes, and all other costs of doing business.

6. **PACKING AND SHIPPING OF GOODS; TITLE AND RISK OF LOSS;** All goods shall be delivered, full freight prepaid except for special or expedited orders, which shall be agreed upon prior to shipment. Deliveries of goods shall be made without charge for boxing, crating, carting or storage unless otherwise specified, and goods shall be suitably packed to secure lowest transportation costs, and in accordance with the requirements of common carriers, and in such a manner as to assure against damage from weather or transportation. City's order numbers and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each box or package shipment. City's count or weight shall be final and conclusive on shipments not accompanied by packing lists. Shipments for two or more destinations when so directed by City shall be shipped in separate boxes or containers for each destination at no extra charge. Title to and risk of loss on all goods pass to City only upon City's acceptance of such goods.

7. WARRANTIES: Supplier represents and maintains that it has the expertise in the professional calling necessary to perform the services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Supplier's representations regarding its skills and knowledge. Supplier shall perform such services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California. For a period of twelve (12) months from initial start-up or eighteen (18) months from the date of delivery of goods or performance of services, whichever occurs earlier, Supplier warrants that all goods and services shall be delivered or performed free of all liens, claims, security interest or encumbrances, will conform to applicable specifications, drawings, descriptions and samples, and will be merchantable, of good workmanship and material, and free from defect. Supplier assumes design responsibility, and warrants that all goods shall be delivered or performed free of design defect, and that neither purchase, use or resale, nor delivery or performance thereof shall violate any patent, copyright or similar rights. Supplier's warranties shall run to City and shall not be deemed to be exclusive. Supplier agrees to promptly replace or correct any incomplete, inaccurate or defective goods or services at no further cost to City when defects are due to the negligence, errors or omissions of Supplier. This warranty shall not apply to (i) any loss or damage resulting from normal wear and tear or alteration, misuse, abuse, or neglect, (ii) improper installation, operation, or maintenance by City or a third party or (iii) any labor, dismantling, reinstallation, transportation or access costs, or other expense associated with the repair or replacement of the goods or services. THE FOREGOING WARRANTIES STATE SUPPLIER’S ENTIRE WARRANTY OBLIGATION (EXCEPT TITLE) AND CITY’S SOLE AND EXCLUSIVE REMEDY RELATED TO SUCH GOODS AND SERVICES. EXCEPT AS EXPRESSLY SET FORTH ABOVE, SUPPLIER MAKES NO WARRANTY OF ANY KIND WHATSOEVER, AND SUPPLIER EXPRESSLY DISCLAIMS ANY WARRANTIES IMPLIED BY LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. CHANGES: City shall have the right by written notice, accepted in writing by Supplier, to change the extent of the work covered by this Purchase Order, the time or place of delivery, the method of shipment or packaging, or to suspend work. Notice of change must be signed by the Director of Finance ("Director") or his/her designee. Upon receipt of any such notice, Supplier shall promptly make the changes in accordance with the terms of the notice. If Supplier believes that the change will cause an increase or decrease in the cost of or time for performance, then Supplier must deliver to City a statement showing the effect of any such changes within ten (10) calendar days of receipt of the City's notice of change. An equitable adjustment shall be negotiated promptly and the purchase order modified in writing accordingly. Failure of Supplier to submit the statement within the time limit shall constitute its consent to perform the change without increase in compensation or time for performance. Changes may only be made in writing.

9. TERMINATION FOR DEFAULT OR CONVENIENCE: City may, by written notice, terminate this Purchase Order in whole or in part for default; (i) if Supplier fails to timely deliver the goods, or perform the services, or if no time is specified, within a reasonable time; (ii) if the goods delivered or services performed are incorrect or unsatisfactory; (iii) if Supplier fails to perform any of the other provisions of this Purchase Order, or so fails to make progress as to endanger performance of this Purchase Order; or (iv) if the Supplier becomes insolvent. If this Purchase Order is terminated for default, City, in addition to all the rights afforded by law, shall have the right to charge Supplier the amount by which the costs of fabricating or procuring the goods or services cancelled from another source *exceed* the compensation specified herein, and City may offset any such charge against any amounts which had or may become payable to Supplier under this Purchase Order or otherwise. City may, by not less than thirty (30) days written notice to Supplier, terminate this Purchase Order without cause or penalty, except as set forth in the following sentence. If the Purchase Order is terminated for convenience after the City's issuance of the applicable Purchase Order, Supplier shall be entitled to recover according to the following schedule:

0-30 days: 25% of applicable Purchase Order
31-60 days: 50% of applicable Purchase Order
61-90 days: 75% of applicable Purchase Order
91+ days: 100% of applicable Purchase Order

10. INDEMNITY: TO THE FULLEST EXTENT PERMITTED BY LAW, SUPPLIER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY CLAIM, LOSS OR LIABILITY (COLLECTIVELY "CLAIMS") FOR INJURIES OR DEATH TO PERSONS OR DAMAGE TO OR DESTRUCTION OF PROPERTY, INCLUDING ECONOMIC LOSS, CAUSED BY OR RESULTING FROM THE ACTS OR OMISSIONS OF SUPPLIER, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS PURCHASE ORDER, OR THE BREACH BY SUPPLIER OF ANY OF ITS OBLIGATIONS UNDER THIS PURCHASE ORDER. SUPPLIER'S OBLIGATION TO PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS, SHALL SPECIFICALLY EXTEND TO ANY AND ALL EMPLOYMENT RELATED CLAIMS OF ANY TYPE BROUGHT BY EMPLOYEES, CONTRACTORS, SUBCONTRACTORS OR OTHER AGENTS OF SUPPLIER. SUPPLIER WARRANTS THAT IT IS MEETING ITS OBLIGATIONS UNDER THE AFFORDABLE CARE ACT ("ACT") AND/OR ANY OTHER SIMILAR FEDERAL OR STATE LAW, AND WILLFULLY INDEMNIFIES AND HOLDS HARMLESS CITY FOR ANY PENALTIES, FINES, ADVERSE RULINGS, OR TAX PAYMENTS ASSOCIATED WITH SUPPLIER'S RESPONSIBILITIES UNDER THE ACT.

11. **INSURANCE REQUIREMENTS**: Supplier shall maintain insurance coverage consistent with its existing programs but shall not name City as an additional insured nor waive any rights of subrogation Supplier or such insurers may have against City or its affiliates. Supplier shall provide City with its standard certificate of insurance upon request.

2. The section 22 is hereby added to the City of Santa Clara's Purchase Order Terms & Conditions to read as follows:

22. **LIMITATION OF LIABILITY: NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, EXCEPT AS OTHERWISE PROHIBITED BY LAW: (A) THE PAYMENT OF LIQUIDATED DAMAGES FOR DELAY, NEITHER SUPPLIER NOR CITY SHALL BE LIABLE, WHETHER BY WAY OF INDEMNITY OR BY REASON OF ANY BREACH OF CONTRACT OR OF STATUTORY DUTY OR BY REASON OF TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), FOR ANY LOSS OF PRODUCTS, LOSS OF PROFIT, LOSS OF REVENUE, LOSS OF USE, LOSS OF PRODUCTION, LOSS OF CONTRACTS, LOSS OF BUSINESS, OR FOR ANY SPECIAL OR INCIDENTAL COSTS, OR FOR ANY FINANCIAL OR ECONOMIC LOSS, OR FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OR LOSSES WHATSOEVER; AND (B) EACH OF SUPPLIER'S AND CITY'S MAXIMUM AGGREGATE LIABILITY ARISING FROM OR RELATED TO THE ORDER/CONTRACT SHALL NOT EXCEED THE TOTAL VALUE OF THE ORDER/CONTRACT.**

3. All other provisions of the City of Santa Clara's Purchase Order Terms & Conditions shall remain in full force and effect. In case of a conflict in the terms of the City of Santa Clara's Purchase Order Terms & Conditions and this Addendum, the provisions of this Addendum shall control.

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

Approved as to Form: Dated: ______________________________

______________________________ ______________________________

GLEN R. GOOGINS
City Attorney

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

"CITY"

FLOW AMERICA, LLC
a limited liability company

Dated: Feb 17 2026

By (Signature): Kenneth Lazzara

Name: Kenneth Lazzara

Title: Global Commercial Leader – Copes Vulcan

Principal Place of Business Address: 8800 Westplain Dr.Houston Texas 77041

Email Address: Kenneth.Lazzara@celerosFT,com

Telephone: (813)716-8072

"CONTRACTOR"