

**AGREEMENT FOR SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
ADVANCED CHEMICAL TRANSPORT, INC.**

**PREAMBLE**

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Advanced Chemical Transport, Inc., a California corporation (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 of Contractor to provide hazardous waste management services for the City of Santa Clara's electric utility, Silicon Valley Power ("SVP"), as more fully described in this Agreement in Exhibit A ("Services"), 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 the Services which meet objectives and requirements of City; and,
- C. City desires to retain Contractor to render the Services under the terms and conditions set forth in this Agreement.

The Parties 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**

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment(s) to this Agreement, the term of this Agreement shall begin on July 1, 2023, and terminate on June 30, 2028 (“Initial Term”).

After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for up to one additional one-year term through June 30, 2029 (“Option Period”). Such extensions of term shall be authorized through an Amendment to this Agreement executed by the Parties.

## **3. SCOPE OF SERVICES**

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

## **4. WARRANTY**

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 set forth in 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 materials or services, City may make corrections or replace the Services and materials and charge Contractor for the cost incurred by City.

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

Contractor 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 Contractor's representations regarding its skills and knowledge. Contractor 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.

## 6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES AND PAYMENT PROVISIONS." The maximum compensation of this Agreement is **Two Million Five Hundred Dollars (\$2,500,000)**, 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. All Services performed or materials 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 unless an amendment has been executed by both Parties.

## 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. If Contractor fails to perform any of its material obligations under this Agreement, 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.

## 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.

**11. CONFIDENTIALITY OF MATERIAL**

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

**12. OWNERSHIP OF MATERIAL**

All material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

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

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years

from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. 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. Any expenses not so recorded shall be disallowed by City. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

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 Contractor's Services hereunder.

#### **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 or persons contracting with Contractor to perform any portion of the Scope of 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.
- 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.

**15. INSURANCE REQUIREMENTS**

During the term of this Agreement, 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:  
Advanced Chemical Transport, Inc.  
Attention: Shawn Ball, Vice President  
967 Mabury Road, San Jose, CA 95133  
and by e-mail at [SBall@ACTenviro.com](mailto:SBall@ACTenviro.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 California Code of Regulations, Title 8, Section 16000 et seq. 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.

[SIGNATURES ON NEXT PAGE]



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

**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

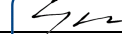
"CITY"

**ADVANCED CHEMICAL TRANSPORT, INC.**  
a California corporation

Dated: 5/25/2023

By (Signature):

DocuSigned by:



Name: Shawn Ball

Title: Vice President

Principal Place of  
Business Address: 967 Mabury Road, San Jose, CA 95133

Email Address: SBall@ACTenviro.com

Telephone: (408) 548-5050

Fax: (408) 548-5052

"CONTRACTOR"

## EXHIBIT A – SCOPE OF SERVICES

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## **SECTION 1. GENERAL**

- 1.1** Contractor shall provide hazardous waste management services, including, but not limited to, remedial and cleanup work, waste materials testing, disposal and recycling, and professional services to assist City with regulatory compliance, monitoring, and reporting for the City of Santa Clara's electric utility, Silicon Valley Power ("SVP").
- 1.2** The terms "City" and "SVP" may be used interchangeably throughout this Exhibit.
- 1.3** To the extent not inconsistent with this Agreement, the City's RFP 22-23-08 (including subsequent updates) and Contractor's proposal response dated November 15, 2022, are hereby incorporated by reference herein and shall supplement this Scope of Services and be subject to the terms and conditions of the Agreement. In the event of a conflict between the Agreement (including its Exhibits and the RFP or Contractor's proposal), the Agreement and this Exhibit shall govern.

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

- 2.1 Waste Management Services.** Contractor shall provide hazardous waste management services to include but not limited to:
  - 2.1.1** Perform waste characterization to determine proper disposal.
  - 2.1.2** Provide packaging, handling, and transportation of hazardous waste including completion of uniform hazardous waste manifests and any other documentation required by law.
  - 2.1.3** Perform remedial and cleanup work, including containment of contamination and testing.
  - 2.1.4** Provide notifications to agencies as required (if required by regulations and/or the City of Santa Clara).
  - 2.1.5** Provide test kits to immediately determine Polychlorinated Biphenyls (PCB) content in the field and send a sample to lab for analysis.
  - 2.1.6** Transport and dispose of hazardous waste and cleanup materials compliant with all applicable laws and regulations.
  - 2.1.7** Pump and clean underground storage tanks for oily water separators, turbines, Heat Recovery Steam Generators (HRSG), wash water tanks, natural gas condensate tanks, secondary

containment vaults, manholes, and other containment devices and equipment as may be required.

**2.1.8** Recycle used lubricating oil.

**2.1.9** Perform a site visit to Stony Gorge and Black Butte Power Houses every 170 days for waste pickup and haul to the appropriate facility. Contractor shall restock any depleted supplies and drums.

**2.1.10** Provide trained personnel to enter into confined spaces and have up-to-date training in fall protection, hazardous waste operations and emergency response (Hazwoper), air-purifying respirators, asbestos, and lead handling.

**2.1.11** Track recycling and disposal revenue. Contractor shall provide a credit to the City for the recycle value.

**2.2 Consulting Services.** Contractor shall provide consulting services which include but are not limited to:

**2.2.1** Assist City with Environmental, Health & Safety (EH&S) standards compliance.

**2.2.2** Provide program management services such as tracking budget, scheduling waste, recycling pickups, and coordinating regulatory reporting as required and requested by City.

**2.2.3** Provide a spill prevention and emergency response plan for all services.

**2.2.4** Provide a manifest verifying that all hazardous waste has been lawfully and efficiently to permitted disposal facilities. The manifest shall meet all requirements of the California Department of Toxic Substances Control (DTSC), California Department of Transportation (DOT), United States Department of Transportation (US DOT), and Environmental Protection (EPA). All waste shall be transported under manifest using City's EPA generator identification number.

**2.3 Dedicated On-site Personnel.** Contractor shall designate at least one (1) dedicated personnel to assist at the City of Santa Clara Utilities Center located at 1705 Martin Ave, Santa Clara, CA, 95050, for a minimum of four (4) hours per week. Responsibilities of the on-site personnel include but are not limited to:

**2.3.1** Acquire PCB oil samples from de-energized electrical equipment for lab analysis.

- 2.3.2 Transfer oil (PCB and non-PCB) into totes/drums.
  - 2.3.3 Label drums/totes with appropriate hazardous waste labels.
  - 2.3.4 Prepare drums/totes for shipping per DOT rules and regulations.
  - 2.3.5 Coordinate the loading of oil totes and recycled equipment onto trucks.
  - 2.3.6 Keep the 90-day hazardous waste area clean and orderly.
  - 2.3.7 Sign weekly hazardous waste storage inspection forms.
  - 2.3.8 Perform transformer management, disposal, and recycling.
  - 2.3.9 Provide weekly replenishment of supplies (e.g., pumps, hoses, hand tools, flanges, etc.) or as requested by the City.
- 2.4 Services at Other Locations.** Contractor shall respond to emergency and non-emergency hazardous waste and material events at other facilities within City limits and remote locations such as, but not limited to:
- 2.4.1 Donald Von Raesfeld (DVR) Power Plant located at 850 Duane Ave., Santa Clara, CA 95054
  - 2.4.2 Fuel Gas Compressor Building (Gas Compressor) located at 2977 Lafayette St., Santa Clara, CA 95054
  - 2.4.3 Gianera Generating Station (Gianera) located at 2339 Gianera St., Santa Clara, CA 95054
  - 2.4.4 Cogeneration Plant (Cogen) located at 524 Robert Ave., Santa Clara, CA 95050
  - 2.4.5 Stony Gorge Powerhouse located at 2550 County Road 306, Elk Creek, CA 95939
  - 2.4.6 Black Butte Powerhouse located at County Road 200, Orland, CA 95963
  - 2.4.7 High Line Canal located in Orland, CA 95316
  - 2.4.8 Orland Junction located in Orland, CA 95316

### **SECTION 3. SPECIFIC REQUIREMENTS**

- 3.1 Contractor shall provide suitable transportation to remove waste materials and haul waste materials to the disposal location. Contractor shall comply with all applicable statutes, rules, regulations, ordinances, and laws of the

United States and all applicable state and local regulations in moving, handling, transporting, and disposing of such waste material.

- 3.2** Unless otherwise agreed upon in writing, Contractor shall be solely responsible for loading the waste materials on vehicles provided by Contractor. As to all loading activities, Contractor assumes full risk of loss as to all equipment and premises of the City and as to all transportation vehicles furnished by the Contractor.
- 3.3** Contractor shall notify the City of any leak and/or spill and shall notify all agencies required under federal, state, and local laws, rules, and regulations within the time period required by governing regulations.
- 3.4** Contractor shall transport, store, treat, recycle, and dispose of the waste materials in full compliance with all valid and applicable statutes, ordinances, rules, and regulations of the federal, state, and local governments in whose jurisdictions such activities are performed under this Agreement.
- 3.5** Any disposal facility or facilities used for disposal will have permits, licenses, certificates, or approvals required by valid and applicable statutes, ordinances, rules, and regulations of the federal, state, and local governments in which the facility is located, necessary to allow such facility accept, and store, treat, process, and dispose of the involved waste materials.
- 3.6** In the event that the disposal facility loses its permitted status or is the subject of the action of a government agency which could reasonably result in the loss of its permitted status, during the term of this agreement, Contractor will promptly notify the City of such loss, or possible loss, of permitted status.
- 3.7** Contractor shall, at its sole expense and risk, transport and dispose of hazardous waste or materials caused by work performed by Contractor, including all costs associated with the spreading or dissemination.

#### **SECTION 4. REPORTS**

- 4.1** Contractor shall provide and maintain written and electronic (e.g., online portal) reports for the City and the required agencies, including but not limited to:
  - 4.1.1** Manifest reporting for DTSC. The City shall be copied on all reports.
  - 4.1.2** Sign hazardous waste manifests, mail copies to DTSC, and maintain records.

**4.1.3** Spill reports documenting Contractor's response to the event. The spill report shall include photos and any lab analysis (e.g., PCB, lead, asbestos, etc.)

**4.1.4** Regulatory monthly reporting

**4.1.5** Other reports that the City may request.

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

The Services shall be completed in a timely, efficient manner so as to ensure the site is operational as soon as possible.

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

Contractor will generally perform the required services during regular business hours which is between 7:00 AM - 7:00 PM PST/PDT, Monday through Friday. City will, at its discretion, allow access during non-business hours when required.

## **SECTION 7. EMERGENCY SERVICES AND RESPONSE TIMES**

**7.1** Emergency Services: Contractor shall provide emergency services 24 hours /day, seven (7) days per week, including holidays. Contractor shall provide a phone number for contact at any time.

**7.2** Response Times: Contractor shall respond via phone or email to emergency requests and hazardous waste and material events within one (1) hour from the City's notification.

**7.2.1** For the City of Santa Clara locations, Contractor shall be on-site within two (2) hours or less from notification to perform Services.

**7.2.2** For locations outside of Santa Clara, Contractor shall be on-site within six (6) hours or less from notification to perform Services.

## **SECTION 8. APPLICABLE LAWS AND REGULATIONS**

**8.1** Contractor shall be informed of and comply with all applicable present and future federal, state, and local regulations, ordinances, and codes, including but not limited to the U.S Occupational Safety and Health Administration (OSHA), the California Department of Industrial Relations and the Division of Occupational Safety and Health (Cal/OSHA).

**8.2** 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.

## **SECTION 9. WORKMANSHIP**

- 9.1** Contractor shall perform all work in a professional manner and environmental responsible manner that meets or exceeds industry and professional standards of performance. All items of work shall be done by a Contractor employee skilled in the particular task to which they are assigned.
- 9.2** 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 satisfaction of the City, at Contractor's sole expense.
- 9.3** City reserves the right to inspect any work performed by Contractor and its subcontractors. Should the City determine any unsatisfactory or defective work upon inspection, Contractor must correct the work at no additional cost to the City.

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

Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates required by any statute, ordinance, rule, or regulation.

## **SECTION 11. 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 12. WORK AREA**

- 12.1** Contractor shall ensure that the work site 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 work 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.
- 12.2** Contractor shall follow all directions of City with regard to clean-up both during the course of, and upon completion of the 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 work required to adequately protect 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.



- 12.3** 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.
- 12.4** Contractor shall make all reasonable efforts to minimize obstructions and inconvenience to SVP's operations and others who may be impacted by Contractor's work.

### **SECTION 13. CONTRACTOR'S EQUIPMENT, TOOLS, AND MATERIALS**

- 13.1** All equipment, tools (including any specialty tooling), and materials required for the execution of the work shall be provided by Contractor. 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.
- 13.2** Tools and equipment shall be kept in proper operating condition and used only for the purpose for which they were designed. City reserves the right to suspend work if improper tools or equipment are being used or operated.
- 13.3** Tools and equipment shall be safely stored overnight under lock and key. Loss of any tools or equipment shall be reported immediately to City.
- 13.4** All vehicles, equipment, and ladders shall be secured when not in use. Keys shall not be left in any vehicles or equipment when not in use.
- 13.5** City will not be responsible for the loss of tools, equipment, or materials.

### **SECTION 14. DISPOSAL OF WASTE & SCRAPS**

- 14.1** All wastes generated or encountered in the performance of work must be managed in accordance with all applicable local, State, and federal regulations and laws. Contractor is solely responsible for arranging and implementing the proper handling, management, storage, transport, and disposal of all wastes including any hazardous materials.
- 14.2** Contractor shall provide the City with a written report of all disposal of materials within twenty-four (24) hours of disposal unless a shorter timeline is required by local, state, and/or federal regulations.
- 14.3** Contractor shall recycle all material scraps, and credit the value to the City.

## **SECTION 15. SAFETY**

- 15.1** Safety must always be the top priority. Contractor shall take all necessary precautions for the safety of all persons on the work site. Contractor must erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of all persons and the public including posting danger signs and warnings against known or unusual hazards.
- 15.2** 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. At City's request, a copy of Contractor's IIPP shall be submitted to the City and be made available on-site.
- 15.3** Contractor shall schedule safety inspections as necessary and as may be requested by the City to identify and correct unsafe conditions and work practices. The City reserves the right to accompany Contractor during these inspections.
- 15.4** 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).
- 15.5** Contractor's employees (including any subcontractors) shall utilize 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.
- 15.6** When requested by the City, Contractor shall provide an on-site Safety Manager/Supervisor to ensure compliance with all applicable Safety rules and regulations, perform daily audits and submit daily reports to the City that identify discrepancies or non-compliance, provide direction in regards to safety rules and regulations to Contractor Supervisor and Contractor employees.

## **SECTION 16. INJURY/PROPERTY DAMAGE**

Contractor shall notify the City immediately in the event of an injury or property damage that occurs during the performance of the 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 17. CONTRACTOR'S PERSONNEL**

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

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

### **17.2 Staffing**

**17.2.1** 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.

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

**17.2.3** 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.

### **17.3 Employee Training**

**17.3.1** 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.

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

**17.3.3** Training 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.

**17.3.4** 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 work.

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

## **17.4 Standards of Conduct**

**17.4.1** Contractor shall be solely responsible for its employees while on or about the work site, including but 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:

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

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

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

**17.4.1.4** Possess any firearms, narcotics, drugs, intoxicants, or other restricted materials while on the premises.

**17.4.2** In the event a Contractor employee fails to meet these standards of conduct, Contractor shall immediately remove that employee and provide a replacement.

**17.4.3** 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.

## **SECTION 18. E-BUILDER**

**18.1** When required by City, Contractor shall use utilize e-Builder for submission of data and documents throughout the term of this agreement.

**18.2** e-Builder is a web-based construction management application hosted by e-Builder, Inc. For certain projects to be defined by the City, e-Builder shall be the primary means of project information submission and management or as otherwise agreed upon with the City.

**18.3** The City will establish the Contractor's access to e-Builder by providing licenses to Contractor's personnel at City's cost. The Contractor's designated users will be required to set up their computers/systems to use e-Builder in accordance to the e-Builder User Training Guide. The City reserves the right to limit the licenses issued to Contractor in the future.

**18.4** Contractor is required to obtain all necessary training to use the software. The City will provide one classroom training or a web-based seminar. A training session is 1 - 2 hours.

- 18.5** e-Builder is a web-based environment and therefore it is subject to the inherent speed and connectivity limitations of the Internet. Contractor is responsible for its own connectivity to the Internet. e-Builder's response time is dependent on the Contractor's equipment, including processor speed, Internet access speed, etc., and current traffic on the Internet. The City will not be liable for any delays associated with the usage of e-Builder including, but not limited to slow response time, downtime periods, connectivity problems, or loss of information. The Contractor shall ensure connectivity to the e-Builder system whether at the home office or job site. Under no circumstances will the usage of e-Builder be grounds for a time extension or cost adjustment to the Contract.
- 18.6** Data entered in a collaborative mode (entered with the intent to share as determined by permissions and workflows within the e-Builder system) by the City and the Contractor will be jointly owned.
- 18.7** Contractor is responsible for managing, tracking, and documenting the work to comply with the requirements of this Agreement. The City's acceptance via automated system notifications or audit logs extends only to the face value of the submitted documentation and does not constitute a validation of the Contractor's submitted information.
- 18.8** At the City's sole discretion, project documents may be processed and distributed digitally over the internet or may be required to be presented in hard copy format.
- 18.9** While regular email may still be used for communication, when requested by the City, e-Builder shall be utilized as much as possible in connection with all document and information management required in the performance of projects where City has directed the use of e-Builder. Contractor shall be responsible for scanning or otherwise converting to electronic format all project submittals and Contractor correspondence, drawings, sketches, etc., and uploading them to the e-Builder website and shall be responsible for the validity of the information placed in e-Builder. The Contractor shall utilize the existing forms and processes in e-Builder to the maximum extent possible. If a required form does not exist in e-Builder, the Contractor shall include a form of its own or one provided by the City (if available) as an attachment to a submittal or process. Documents and information to be submitted electronically include, but are not limited to:
- 18.9.1** Correspondence
  - 18.9.2** Meeting Minutes
  - 18.9.3** Submittals and Shop Drawings

- 18.9.4** Product Data, reports, certifications, etc. must be submitted in PDF.  
(If a sample can be scanned, it is requested that a scanned PDF copy be submitted with the sample.)
- 18.9.5** Requests for Information (RFI's)
- 18.9.6** Submittals and Shop Drawings
- 18.9.7** Change Order requests and documentation, including record copies of change orders, proposals, and modifications.
- 18.9.8** Pay Applications
- 18.9.9** "Official" correspondence (such as letters) including informal correspondence, such as email.
- 18.9.10** Pre-Task Plans (PTPs)
- 18.9.11** Daily Construction Reports and other Daily Reports including Contractor Quality Control (CQC) Reports
- 18.9.12** All official reports, such as Commissioning reports
- 18.9.13** Notices and Claims
- 18.9.14** Operations and Maintenance Manuals
- 18.9.15** All Close-out documents, and
- 18.9.16** All testing results
- 18.10** Archive Copies: When requested by City, Contractor shall keep an archive copy of all digital data created by Contractor, or submitted to Contractor via e-mail, or resident on the e-Builder for the duration of the Project. Such data shall be available to City, and authorities with the jurisdiction (including funding agencies or representatives) on demand.
- 18.11** Should the City replace e-Builder with a different project management tool, Contractor, and subcontractors shall be required to utilize the new project management tool selected by the City.

## EXHIBIT B

### SCHEDULE OF FEES AND PAYMENT PROVISIONS

#### 1. MAXIMUM COMPENSATION

The maximum amount of compensation to be paid to Contractor during the Term of this Agreement shall not exceed the amount in Section 6 (Compensation and Payment) of the Agreement.

#### 2. FEES SCHEDULE

Contractor shall charge, and the City shall pay for actual services rendered. Rates for labor and fees for materials and services are listed in Table B1 – Fee Schedule, attached and incorporated by reference. Invoices made to the City must be based upon the fees listed in Table B1 Fee Schedule. Where rates are not listed in Table B1, Contractor shall submit rates to be approved by the City in writing in advance of performing services.

- 2.1. Labor Rates and Fees.** Rates and Fees listed in Table B1 are fully burdened and will remain fixed for the first two (2) years of the Agreement.
- 2.2. Rate Increase.** Rates may be negotiated no more than once annually. Contractor shall notify the City ninety (90) days in advance of any proposed rate increase. Any rate increases are subject to approval by the City and must be substantiated by the Contractor to the satisfaction of the City. All rate adjustments must be approved by the City by executing an amendment to this Agreement.
- 2.3. Definitions.** The following definitions apply to the hourly rates in Table B1:
  - 2.3.1. “Straight Time”** means the first eight (8) hours worked between Monday and Friday, excluding U.S. Federal Holidays.
  - 2.3.2. “Overtime”** means the:
    - 2.3.2.1.** hours worked in excess of eight (8) hours, from Monday through Friday, during regular hours of operation from 7:00 a.m. to 5:00 p.m. PST/PDT;
    - 2.3.2.2.** first eight (8) hours worked on Saturdays; or
    - 2.3.2.3.** hours worked while performing emergency work (excluding Sundays).
  - 2.3.3. “Double Time”** means the:

- 2.3.3.1. hours worked in excess of twelve (12) hours from Monday to Friday;
- 2.3.3.2. hours worked in excess of eight (8) hours on Saturdays;
- 2.3.3.3. hours worked during U.S. Federal Holidays; or
- 2.3.3.4. hours worked on Sundays.

**2.3.4. “On-site minimum hours”**

- 2.3.4.1. two (2) hours per person portal to portal from Contractor’s San Jose office.

**3. CREDIT TO CITY**

Contractor shall credit to the City any revenues for recycled materials listed in Table B2. The recovered value shall be credited to the City and itemized on Contractor’s invoice.

**Table B2: Recycled Materials**

Description	Credit to City
Metal Revenue	\$100.00/ton or current market rate
Recycled Metal	current market rate

**4. REIMBURSABLE EXPENSES**

- 4.1. Any and all reimbursable expenses shall be itemized in Contractor’s invoice. Expenses shall be reimbursable only to the extent that (1) Contractor submits sufficient documentation to City that the expenses were directly incurred in providing the required services, (2) Contractor demonstrates that such expenses are not included in the hourly rate where applicable, (3) Contractor submits receipts, invoices, or other supporting documentation demonstrating that such reimbursable costs were incurred (4) Contractor has received written approval in advance of incurring such expenses. Any reimbursement to the Contractor is limited to the expenses in Table B3.

**Table B3: Reimbursable Expense Schedule**

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Charges for outside services and materials (including subcontractor fees, equipment, materials, and facilities not furnished directly by Contractor to the extent the City has preapproved, in writing, the cost of such services.	Not to exceed 15%
4.	Other reimbursable expenses with prior written approval from the City	No Markup



<b>Reimbursable Expense Schedule</b>		<b>Mark Up</b>
5.	Allowable mileage will be charged at the prevailing IRS rate per mile.	No Markup
6.	Unless approved in writing (e-mail acceptable) in advance, meals, lodging, and related per diem shall not exceed the rates outlined by United States General Services Administration (GSA). <a href="https://www.gsa.gov/travel-resources">https://www.gsa.gov/travel-resources</a> . Airfare or rental car, where applicable shall be at economy rates.	No Markup

- 4.2.** Except in the case of emergency, Contractor will notify the City in advance when reimbursable expenses are anticipated.

## **5. PAYMENT PROVISIONS**

- 5.1.** Contractor shall provide an invoice to the City on a monthly basis for services completed in the immediately preceding month. The invoice must include the following information:

**5.1.1.** Invoice Number and Invoice Period.

**5.1.2.** Current amount due with a time and materials breakdown: titles, hours, hourly rates, service fee, and any City approved reimbursable expenses itemized with supporting documentation.

- 5.2. Pre-Payment.** City shall not be required to pay a deposit or any other form of pre-payment prior to Contractor beginning work.

- 5.3. 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.

- 5.4. Recalculation.** The City may recalculate and pay invoices based on the rates established in this Agreement.

- 5.5. Disputed Invoices.** If the City in good faith disputes any portion of an invoice, the City shall pay the undisputed portion of the invoice and submit written notice to Contractor regarding the disputed amount. The notice shall include documentation supporting the disputed amount.

- 5.6. 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. City will make payments to Contractor within thirty (30) days after the date of approval of each invoice.

**TABLE B1: FEE SCHEDULE**

<b>Labor:</b>			
<b>Classification</b>	<b>Straight Time Hourly Rate</b>	<b>Overtime Hourly Rate</b>	<b>Double Time Hourly Rate</b>
On-site personnel (as described in Section 2.3 of Exhibit A)	\$85.00	\$110.00	\$134.00
Chemist	\$85.00	\$110.00	\$134.00
Professional / Consulting Services	\$125.00	\$188.00	\$250.00
Project Manager	\$81.00	\$125.00	\$145.00
Site Safety Officer	\$111.00	\$130.00	\$150.00
Technician	\$85.00	\$110.00	\$134.00
Hazardous Waste Endorsed Driver	\$95.00	\$122.00	\$122.00
Tanker Driver (Including Tanker Truck)	\$96.00	\$123.00	\$145.00
Project Lead Emergency Response	\$86.00	\$110.00	\$135.00
Two-Person Emergency Response Team	\$175.00	\$220.00	\$268.00
<b>Other Fees:</b>		<b>Standard Rate</b>	
Manifest	\$35.00 per manifest		
Profile	No Charge		
Environmental Surcharge	12% of total invoice		
<b>Disposal</b>		<b>Standard Rate</b>	
Bulk Oil	\$0.25/Gallon		
Oil <10% water	\$85.00/55-Gallon Drum		
Bulk Oily water	\$1.50/Gallon		
Oily Debris	\$76.00/55-Gallon Drum		
Aerosols	\$168.00/55-Gallon Drum		
Glycol	\$ 95.00/55-Gallon Drum		
Oily Water	\$ 95.00/55 Gallon Drum		
PCB Transformers 0-5 parts per million (PPM)	\$0.85/Pound		
PCB Transformers 5-49 PPM	\$1.60/Pound		
PCB Transformers over 50 PPM	\$5.75/Pound		
<b>Transportation</b>		<b>Standard Charge</b>	
5-20 Gallon	\$21.00 per drum		
30-55 Gallon	\$38.00 per drum		
275 Gallon Totes	\$150.00 per drum		
Gear Truck	\$125.00 per day		

<b>Materials</b>	<b>Unit Cost</b>
Personal Protective Equipment (PPE) Level D	\$13.00/each
Closed Top Poly Carboy	\$17.00/5-Gallon
Open Top Poly Drum-Reconditioned	\$20.00/5-Gallon
Open Top Poly Drum-Reconditioned	\$57.00/30-Gallon
Closed Poly Top Drum-Reconditioned	\$35.00/55-Gallon
Open Poly Top Drum-Reconditioned	\$47.00/55-Gallon
Closed Metal Top Drum-Reconditioned	\$58.00/55-Gallon
Open Metal Top Drum-Reconditioned	\$92.00/55-Gallon
On-Site Service Supplies (e.g., pumps, hoses, hand tools, flanges, etc.)	\$95.00 per week
pH Test Strip	\$1.00/each
Spilfyters	\$19.00/each
Volatile Organic Compound (VOC) Sampling with 5-Day Turnaround	\$105.00 per sample
Cam 17 Sampling with 5-Day Turnaround	\$120.00 per sample
PCB Field Test Kit (Emergency Response Use Only)	\$225.00 per kit
PCB Testing and Sampling with Same Day Turnaround for Formal Lab Testing Per Transformer During Emergency Response	\$1,200.00 per sample
Decontamination Kit	\$150.00 per kit
Pogo Pump	\$50.00 per pump
Stabilization Kit	\$200.00 per kit

## **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 during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Contractor's insurance. The minimum coverages, provisions and endorsements are as follows:

### **1. COMMERCIAL GENERAL LIABILITY INSURANCE**

- 1.1.** Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01 with no exclusion for explosion, collapse, or underground perils (XCU) and no exclusion for subcontractors. Policy limits are subject to review, but shall in no event be less than, the following:

\$5,000,000 Each Occurrence  
\$5,000,000 General Aggregate Per Project  
\$5,000,000 Products/Completed Operations Aggregate  
\$5,000,000 Personal Injury

- 1.2.** 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.

- 1.3.** 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:

- 1.3.1.** The general aggregate limit shall, by endorsement or otherwise, provide a designated aggregate limit solely for Work performed under this contract.

- 1.3.2.** Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

- 1.3.3.** There shall be no cross-liability exclusion which precludes coverage for claims or suits by one insured against another; and

- 1.3.4.** 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.

## **2. 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 five million dollars (\$5,000,000) combined single limit for bodily injury and / or property damage liability including coverage for all owned (if any), non-owned and hired autos. Where hazardous or regulated substances or hazardous or regulated waste are being transported by Contractor or its subcontractors, the limits of liability shall be not less than \$5,000,000 each occurrence combined single limit and the policy shall contain endorsement MCS-90.

## **3. WORKERS' COMPENSATION**

- 3.1.** 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.
- 3.2.** 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).
- 3.3.** 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.

## **4. POLLUTION LIABILITY**

- 4.1.** In the event that this contract involves hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors shall provide a Contractor's Pollution Liability Insurance policy with coverage limits not less than ten million dollars (\$10,000,000) per occurrence and ten million (\$10,000,000) aggregate limits, including claim expenses and defense in connection with the Work performed under this Contract. All activities contemplated in this agreement including ongoing and completed site operations, transportation incidents and non-owned disposal sites shall be specifically scheduled on the policy as "covered operations." Any deductible must be declared to and approved by City. Such policy shall cover, at a minimum, liability for bodily injury, damage to and loss of use of property, and clean-up costs arising from sudden, accidental and gradual pollution and remediation in connection with the Work under this Agreement. Contractor will use its best efforts to have the City, Council, officers, employees and volunteers added as additional insureds under this policy. The following provisions shall apply:

- 4.1.1. The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.
- 4.1.2. Contractor shall also ensure the licensed hazardous waste disposal facility maintain at least \$5,000,000 in pollution liability limits.
- 4.1.3. Products/completed operations coverage shall extend a minimum of Ten (10) years after project completion.
- 4.1.4. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors.
- 4.1.5. If the insured is using subcontractors the Policy must include work performed "by or on behalf" of the insured.
- 4.1.6. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer.

## **5. PROFESSIONAL LIABILITY**

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Contractor. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than three million dollars (\$3,000,000) per claim or three million dollars (\$3,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

## **6. 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.

- 6.1. 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.
- 6.2. 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.

**6.3.** Cancellation.

**6.3.1.** 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.

**6.3.2.** 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.

**6.4.** 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 1 through 5 of this Exhibit C.

**7. ADDITIONAL INSURANCE RELATED PROVISIONS**

Contractor and City agree as follows:

**7.1.** 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.

**7.2.** 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.

- 7.3.** 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.

## **8. EVIDENCE OF COVERAGE**

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

## **9. EVIDENCE OF COMPLIANCE**

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be e-mailed to: [ctsantaclara@ebix.com](mailto:ctsantaclara@ebix.com)

## **10. QUALIFYING INSURERS**

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 7 (A- VII) or shall be an insurance company of equal financial stability that is approved by the City or its in insurance compliance representatives.



## 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.

#### A. 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. Contractor 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.

## **B. AUDIT RIGHTS**

All records or documents required to be kept pursuant to this Agreement to verify compliance with this Addendum 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 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.

## **C. 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 Addendum.
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.