



April 11, 2019

The City of Santa Clara
1500 Warburton Ave.
Santa Clara, CA 95050

Ref. #: 4767

DOBLE MASTER SERVICES AGREEMENT

Doble Engineering Company ("Doble"), a Massachusetts corporation with global headquarters located at **85 Walnut St., Watertown, MA 02472**, hereby confirms the Doble Master Services Agreement ("Agreement") with **The City of Santa Clara**, a California company with principal address at **1500 Warburton Ave. Santa Clara, CA 95050**, ("you" or "your") as follows:

- 1. Term.** The duration of this Agreement ("Agreement Period") shall extend from **April 1, 2018 until March 31, 2020** ("the Initial Term") and shall be extended thereafter for successive periods of one year at Doble's then applicable rates, up to ten (10) years from Effective Date ("Extended Terms") unless either party shall notify the other in writing at least sixty days prior to the end of the then current term of its intention to terminate this Agreement.
- 2. Contract Price.** During the agreement period, Doble will furnish you for your use, EXW Doble facility, Test Equipment (as defined below) with pricing ("Contract Price") per Exhibit A attached hereto for reference. Doble reserves the right to furnish the Test Equipment to you from one or more Doble facilities, dependent upon the Test Equipment identified in Exhibit A.
- 3. General Service.** In connection with your use of the described equipment, software, and/or services, together with any additional or substitute equipment, software, and/or services furnished you by Doble under this Agreement or any amendment thereof ("Test Equipment") as per Exhibit A, and in consideration for your agreement to pay the Contract Price, Doble, at your request, agrees to provide the following services and instructions (hereinafter called "General Service") during the Agreement Period:
 - A.** Access to Doble Library and Knowledge Base of Conference Proceedings, tutorials, reference guides, maintenance and test procedures, manufacturer service advisories, test data reference book, and committee transactions.
 - B.** Right to attend and participate in the twice-yearly meetings of the nine Doble Client Technical Committees.
 - C.** Right to participate in the Annual International Conference of Doble Clients, and access of the proceedings thereof.
 - D.** The services of an engineer, as mutually agreed and during normal business hours, to consult with and instruct you on insulation power-factor testing for a continuous period not exceeding five (5) eight-hour days plus travel time once each contract year. In addition, Doble will provide a total of two (2) training days per year specifically for the support of any Myrkos portable DGE test set(s) that may be included as Test Equipment under this Agreement.
 - E.** Oral reviews and reasonable written reviews of and reports on your test data; the privilege of general consultation on your insulation problems; and application and data analysis support for any applicable Test Equipment.
 - F.** Laboratory testing service on insulating fluid samples up to \$500 annually.
 - G.** Right to participate in the Doble Maintenance Engineer E-Mail Discussion Forum, access via Internet to the Doble On-Line Center for technical support, FAQs on apparatus testing and Doble publications, access to Doble electronic test database via Doble Engineer.
- 4. Services, Generally.** The above listed Test Equipment and General Service, together with any additional or substitute Test Equipment and/or General Service furnished you by Doble under this Agreement or any amendment thereof, shall hereinafter be called the "Services". Any equipment included as part of the provision of Services shall still be referred to as Test Equipment alone when the intent is to speak of such apart from its existence under the Services generally.
- 5. Substitution and Provision of Additional Test Equipment.** Doble agrees to furnish you at your request with such substitute or additional Services as may be available at Doble's then applicable rates. Any additional or substitute Test Equipment furnished you by Doble shall be held by you subject to all of the terms, provisions and conditions of this Agreement except as may be



expressly agreed in writing between you and Doble at or prior to the time of delivery thereof. This Agreement and its terms are based upon you retaining the Test Equipment for the Initial Term, and the Test Equipment shall not be returned during the term of this Agreement, except as expressly defined under Section 7, Warranty. Doble reserves the right, but not the obligation, to request from You that the Test Equipment be exchanged for replacement Test Equipment of equivalent functionality, at Doble's sole discretion.

6. Defense of Claims. Subject to your compliance with the provisions of §24 hereof, Doble will defend you in any legal proceeding or against any claim brought or threatened against you for alleged infringement of patent rights occasioned by your use of the Services provided under this Agreement and will indemnify and save you harmless from and against all such claims or judgments resulting therefrom and/or settlement of such claims if Doble has assented to such settlement;

7. Warranty. Doble will repair, adjust or replace, as the circumstances may warrant and subject to your payment obligations in Section 8 below, any impaired Test Equipment returned by you to Doble at Watertown, Massachusetts:

- A.** without charge for transportation, including handling costs (if any) or for Doble's actual cost of repair, adjustment or replacement if occasioned by inherent defect;
- B.** on payment by you of charges for transportation, including handling costs (if any), and without charge to you for Doble's actual cost of repair, adjustment or replacement, if occasioned by reasonable wear and tear; and
- C.** on payment by you of charges for transportation, including handling costs (if any) and for Doble's actual cost of repair, adjustment or replacement, if occasioned by any cause other than inherent defect or reasonable wear and tear.
- D.** non-gaseous consumables (one year – 300 test supply) will be supplied to you at no additional charge (solely with applicable Test Equipment).

8. Payments. You agree to pay Doble promptly and as the same shall become due:

- A.** the Contract Price specified in the Exhibit A;
- B.** additional charges at Doble's then current monthly rates with respect to any Services retained by you after the expiration of the Agreement Period;
- C.** the actual living and traveling expenses incurred by Doble engineers sent to you in accord with your §3(d) request;
- D.** the actual cost of repair, adjustment, or replacement of any Test Equipment retained by you as part of the Services as provided in §7, such as any damage generated from your excessive wear and tear, misuse or abuse of, the Test Equipment, including but not limited to direct liquid oil injection into the applicable Test Equipment. In the event that Doble must replace any Test Equipment because You are unable to return the Test Equipment for any reason (including but not limited to units that are lost, stolen, or damaged beyond reasonable repair), You shall promptly pay to Doble the replacement fee for the applicable Test Equipment including any applicable re-stocking fees and/or charges, which shall be the list price for the applicable Test Equipment at the time of replacement;
- E.** the cost of transportation of any Test Equipment except as provided in paragraph §7;
- F.** any additional equipment provided, or charges which may become payable by reason of furnishing of additional or substitute Services at your request, or the application of any other provision of this Agreement.
- G.** any additional monthly late charge for any invoice remaining unpaid beyond the period set forth in Section 7(e) of this Agreement. This late fee shall be calculated each month at 1.5 percent of the total amount due on the invoice, inclusive of any pre-existing fees and late charges as of the date of the calculation.

9. Taxes. You hereby assume, unless current evidence of tax exempt status is provided to Doble, liability for and payment of all taxes, duties and assessments which shall be levied against or in respect of this Agreement, its renewals, the Services, or any interest therein upon whomsoever the same may be assessed or levied.

10. Invoices. You shall render invoices for payment of the Contract Price in advance and invoices with respect to all other charges under this Agreement shall be rendered by you as they accrue; and payment of all invoices shall be due thirty (30) days from the invoice date.

11. Calibration. You shall return any Test Equipment to Doble for calibration and testing when requested by Doble;



- 12. Impaired Equipment.** You shall return impaired Test Equipment to Doble as soon as such impairment is discovered;
- 13. Return of Equipment upon Termination.** To the extent possible, you shall return all Test Equipment and Doble instruction books to Doble at the expiration of the Agreement Period or upon the earlier termination of your rights hereunder in the same condition as they were in when delivered to you, reasonable wear and tear excepted.
- 14. Authorized Use Only.** You shall use the Services only in accordance with the written or printed instructions furnished by Doble and, except as Doble may expressly authorize in writing, to permit its use only by your employees and authorized agents and only upon your property. The words "only upon your property" shall be deemed to include power systems on which you have been retained to do testing and/or maintenance. This shall be a non-exclusive right and shall not be construed as a prohibition against direct dealings and transactions between Doble and any of these systems.
- 15. Indemnification.** To the fullest extent permitted by applicable law, you shall indemnify and save Doble harmless from and against any and all claims for personal injury, death or property damage (including reasonable Attorney and court fees) resulting from or incidental to the operation of any Test Equipment while it is in your possession or control, except to the extent (if any) that such injury or damage shall be due to Doble's sole negligence.
- 16. Holdover and Short-Term Rentals.** You shall comply with all of the terms, provisions and conditions of this Agreement with respect to any short-term rentals of equipment, or any Test Equipment retained by you after the expiration of the Agreement Period. Rental options are available, to be billed on a monthly basis. In the event of any such holdover after termination, you shall have a sixty (60) day period to cure by either promptly returning the applicable equipment, or formally renewing the applicable Agreement. After the expiration of such cure period, you shall be charged two (2) times the applicable Agreement price until the equipment is confirmed returned to Doble or a new Agreement has been executed.
- 17. EULA Applicability.** You shall comply with the terms of any applicable end-user license agreement ("EULA") that may be provided to you by Doble at the time of the Doble proprietary software being furnished to you.
- 18. Supplemental Consulting.** You shall comply with the provisions of the Supplemental Terms and Conditions for Testing and Consulting Services for any additional field testing or consulting services that you may request to be performed by Doble on your behalf.
- 19. Confidentiality.** Doble acknowledges that Santa Clara is a public agency subject to the California Public Records Act Cal. Gov. Code section 6250 et. seq. Santa Clara acknowledges that Doble may submit information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et. seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Doble acknowledges that Santa Clara may submit to Doble information that Santa Clara considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Disclosing Party as Confidential Information, the Receiving Party as soon as practical but within three (3) days of receipt of the request, shall notify the Disclosing Party that such request has been made, by telephone call, letter send via facsimile and/or by US Mail to the address and facsimile number listed at the end of the Agreement. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.
- 20. Bankruptcy or Insolvency.** This Agreement shall be automatically terminated in the event of 1) you commence a voluntary case under title 11 of the United States Code or the corresponding provisions of any successor laws; 2) anyone commences an involuntary case against you under title 11 of the United States Code or the corresponding provisions of any successor laws and either (A) the case is not dismissed by midnight at the end of the 60th day after commencement or (B) the court before which the case is pending issues an order for relief or similar order approving the case; 3) a court of competent jurisdiction appoints, or you make an assignment of all or substantially all of your assets to, a custodian (as that term is defined in title 11 of the United States Code or the corresponding provisions of any successor laws) for you or all or substantially all of your assets; or 4) you fail generally to pay your debts as they become due (unless those debts are subject to a good-faith dispute as to liability or amount) or you acknowledges in writing that you are unable to do so..



21. Expressly Unauthorized Use of Doble Equipment. Without limiting any other terms of this agreement, you agree to refrain from:

- A. breaking any seal on, or repairing or permitting repairs on any Test Equipment except at the request or with the consent of Doble;
- B. manufacturing or causing or permitting to be manufactured copies of any Services; or
- C. in any way impairing, reverse engineering, or otherwise manipulating or handling any Test Equipment in a manner inconsistent with the advice or consent of an authorized client service engineer or otherwise violating any of Doble's patents, copyrights, trade secrets, or other intellectual property rights.

22. Assignment. Doble and you further agree that neither this Agreement nor any right created hereby shall be assigned or assignable by your voluntary act or by operation of law, and no Test Equipment or written material including instructions shall be transferred, delivered, sublet or the use thereof authorized by you to any other person, firm or corporation without Doble's prior consent in writing.

23. Title and Risk of Loss. Any Test Equipment and Doble instruction books shall at all times remain and be the sole and exclusive property of Doble, and you shall have no property right therein, but only the right to use the same during the Agreement Period. Any Test Equipment shall until redelivery to Doble at Watertown, Massachusetts, be held at your sole risk of loss from injury, loss or destruction from any cause whatsoever except as specified in §7.

24. Notification of Claims. You shall promptly notify Doble of any legal proceedings or claims brought or threatened against you for alleged infringement of patent rights occasioned by your use of any Services or methods furnished hereunder, allow Doble to undertake the defense thereof and furnish Doble with all information in your possession relating thereto.

25. Breach. In the event of any breach of any of the terms, provisions or conditions of this Agreement, not remedied within 30 days, then Doble by notice in writing to you may immediately terminate your rights hereunder, and in such event you hereby irrevocably authorize and license Doble and its agents to enter upon any premises where Test Equipment and/or Doble Instruction Books furnished you under this Agreement, if any, are located and to take possession of and remove the same.

26. Liability upon Termination. The termination of this Agreement or your rights hereunder as provided anywhere in this Agreement shall not release you from your obligation to make any payment provided for in this Agreement and shall be without prejudice to any other rights or remedies which Doble may have for breach of this Agreement. In no event shall either party's liability or obligations to indemnify another party under this Agreement exceed the amount listed in Section 2(a) herein. Further, in no event shall either party be liable to the other party for incidental, indirect, special, or consequential damages, or lost profits.

27. Governing Law. This Agreement and any dispute arising out of or related to this Agreement or your use of the Services shall be governed by the laws of the Commonwealth of Massachusetts, United States of America, without regard to any otherwise applicable choice-of-law provision, and the rights and obligations of the parties and their respective successors and assigns shall be governed by and determined in accordance with the laws of said Commonwealth. You further agree that the state or federal courts located in Boston, Massachusetts, United States of America, shall have exclusive jurisdiction and venue over any action arising out of or relating to the terms or subject matter of this Agreement and you hereby waive any claim of lack of personal jurisdiction, improper venue, or inconvenient forum that otherwise might apply.

28. Counterparts. This Agreement may be executed in several counterparts, including by facsimile or other electronic transmission, and each of which shall for all purposes be deemed to be an original.

29. Notices and Demands. Any notice or demand which by the provisions of this Agreement is required or may be given or served upon one of the parties hereto by the other shall be deemed to have been sufficiently given or served for all purposes by being sent as regular mail, postage prepaid, to the addressee at the address appearing on page 1 of this Agreement unless some other address shall be substituted therefor by a notice in writing containing a reference to this Agreement and a statement of the purpose of such notice.

30. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject



matter and this Agreement supersedes all prior or contemporaneous agreements, representations, or understandings, written or oral, explicit or implied, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party; no other act, document, usage or custom will be deemed to amend or modify this Agreement. It is expressly agreed that the terms of this Agreement will supersede the terms of any of your purchase orders or other ordering documents.

If the foregoing is in accordance with your understanding, please sign the form of confirmation and acceptance on one of the enclosed counterparts hereof and return it to Doble. Upon Doble's receipt of one counterpart at Watertown, Massachusetts, this Agreement will become and evidence a binding contract.

DOBLE ENGINEERING COMPANY

By: Maria McSherry

Name: Maria McSherry

Title: Contracts Supervisor

THE CITY OF SANTA CLARA

By: Deanna J. Santana

Name: Deanna J. Santana

Title: City Manager

**APPROVED AS TO FORM:
SANTA CLARA CITY ATTORNEY'S OFFICE**

[Signature]





EXHIBIT A

TEST EQUIPMENT AND CONTRACT PRICE

EQUIPMENT

Qty.	Description	Price
1	M4100 Insulation Analyzer	\$23,950.00
1	Doble Test Assistant, for M4100	\$2,390.00
1	M4300 Transport	\$290.00
1	M5400 SFRA	\$7,240.00
	TOTAL	\$33,870.00

Contract Price payable: annually in advance, net 30 days, pricing in USD
EXW Watertown, MA, USA (Incoterms 2010)
Taxes are not included

METHOD OF PAYMENT

☐ Purchase Order _____ (please attach copy) ☐ No Purchase order required

☐ Check # _____
(REMIT TO: DOBLE ENGINEERING COMPANY, P.O. BOX 843730, KANSAS CITY, MO 64184-3730)

Wire Transfer
(USA WIRE TO: COMMERCE BANK; ABA# 101000019; SWIFT: CBKCUS44; ACCT# 208016616)
ACH'S: COMMERCE BANK; ABA# 101000019; ACCT# 208016616

Billing instructions: _____