

AGREEMENT

THIS AGREEMENT is between The City of Santa Clara dba Silicon Valley Power ("Buyer") and Wireless Structures Consulting, Inc. dba Western Utility Telecom, Inc. ("Seller") Buyer and Seller, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 – GOODS AND SPECIAL SERVICES

- 1.01 Seller shall furnish the Goods and Special Services as specified or indicated in the Contract Documents and Sellers bid documents.

ARTICLE 2 – THE PROJECT

- 2.01 The Project for which the Goods and Special Services to be provided under the Contract Documents may be the whole or only a part is generally described as follows:
- A. Item #1 is the procurement of a 62' tall custom engineered tubular steel structure for STR. #58.
 - B. Item #2 is the procurement of a 26' long anchor bolt cage for STR. #58.
 - C. Item #3 is the cost adder per foot change in length of the anchor bolt cage for STR. #58.
 - D. Item #4 is the cost subtracter per foot change in length of the anchor bolt cage for STR. #58.
 - E. Item #5 is the procurement of a 61' tall custom engineered tubular steel structure for STR. #58A.
 - F. Item #6 is the procurement of a 26' long anchor bolt cage for STR. #58A.
 - G. Item #7 is the cost adder per foot change in length of the anchor bolt cage for STR. #58A.
 - H. Item #8 is the cost subtracter per foot change in length of the anchor bolt cage for STR. #58A.
 - I. Item #9 is the procurement of a 66' tall custom engineered tubular steel structure for STR. #58B.
 - J. Item #10 is the procurement of a 26' long anchor bolt cage for STR. #58B.

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- K. Item #11 is the cost adder per foot change in length of the anchor bolt cage for STR. #58B.
- L. Item #12 is the cost subtracter per foot change in length of the anchor bolt cage for STR. #58B.
- M. Item #13 is the procurement of a 67' tall custom engineered tubular steel structure for STR. #59.
- N. Item #14 is the procurement of a 26' long anchor bolt cage for STR. #59.
- O. Item #15 is the cost adder per foot change in length of the anchor bolt cage for STR. #59.
- P. Item #16 is the cost subtracter per foot change in length of the anchor bolt cage for STR. #59.
- Q. Item #17 is the procurement of a 60' tall custom engineered tubular steel structure for STR. #60.
- R. Item #18 is the procurement of a 26' long anchor bolt cage for STR. #60.
- S. Item #19 is the cost adder per foot change in length of the anchor bolt cage for STR. #60.
- T. Item #20 is the cost subtracter per foot change in length of the anchor bolt cage for STR. #60.
- U. Item #21 is the procurement of an H6-80' light duty tubular steel structure for STR. #59A
- V. Item #22 is the Subtotal for items #1 through #21 (Excluding items 3, 4, 7, 8, 11, 12, 15, 16, 19 and 20)
- W. Item #23 is the Shipping Charge for items #1 through #21 (Excluding items 3, 4, 7, 8, 11, 12, 15, 16, 19 and 20)
- X. Item #24 is the Subtotal of items #22 and #23
- Y. Item #25 is the Bid Total (Item #24)

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ARTICLE 3 – ENGINEER

- 3.01 The Contract Documents for the Goods and Special Services have been prepared by Buyer, who will assume all duties and responsibilities, and have the rights and authority assigned to the Electric Engineering Division Manager or Designate (Engineer) in the Contract Documents in connection with the furnishing of Goods and Special Services.

ARTICLE 4 – POINT OF DESTINATION

- 4.01 The place where the Goods are to be delivered is defined in the General Conditions as the Point of Destination and is designated as:
- A. Point of Destination for all tubular steel structures and the anchor bolt cages (Items #1 through #21) shall be at 795 Mathew Street, Santa Clara, CA 95050.

ARTICLE 5 – CONTRACT TIMES

5.01 *Time of the Essence*

- A. All time limits for Milestones, if any, the delivery of Goods and the furnishing of Special Services as stated in the Contract Documents are of the essence of the Contract.

5.02 *Days to Achieve Delivery of Goods*

- A. The Goods are to be delivered to the Point of Destination and ready for Buyer's receipt of delivery based on a schedule to be determined at the time the order is placed by the Buyer with the Seller.
- B. The anchor bolt cages for the custom tubular steel structures must be delivered by January 2, 2019.
- C. All tubular steel structures must be delivered by January 30, 2019.

ARTICLE 6 – CONTRACT PRICE

- 6.01 Buyer shall pay Seller for furnishing the Goods and Special Services in accordance with the Contract Documents in current funds as follows:

**NOTE: SALES TAX SHOULD NOT BE INCLUDED IN BID AMOUNT.
THE SHEAR TIE REINFORCEMENT FOR THE ANCHOR BOLT CAGES SHOULD
NOT BE INCLUDED IN ITEMS #2, #6, #10, #14, and #18.**

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Item	Qty	Description	Contract Price
#1	1 ea.	<i>STR. #58: 62' tall custom engineered tubular steel structure</i>	<u>\$34,860.00</u>
		Contract Price in Words: Thirty-four thousand eight hundred sixty dollars and zero cents	
#2	1 ea.	<i>26' long anchor bolt cage for STR. #58</i>	<u>\$11,030.00</u>
		Contract Price in Words: Eleven thousand thirty dollars and zero cents	
#3	10 ft.	<i>Cost adder change in length of anchor bolt cage for STR. #58</i>	<u>\$2,250.00</u>
		Contract Price in Words: Two thousand two hundred fifty dollars and zero cents	
#4	0 ft.	<i>Cost subtracter per foot change in length of anchor bolt cage for STR. #58</i>	<u>\$0.00</u>
		Contract Price in Words: Zero dollars and zero cents	
#5	1 ea.	<i>STR. #58A: 61' tall custom engineered tubular steel structure</i>	<u>\$22,968.00</u>
		Contract Price in Words: Twenty-two thousand nine hundred sixty-eight dollars and zero cents	
#6	1 ea.	<i>26' long anchor bolt cage for STR. #58A</i>	<u>\$8,175.00</u>
		Contract Price in Words: Eight thousand one hundred seventy-five dollars and zero cents	
#7	10 ft.	<i>Cost adder change in length of anchor bolt cage for STR. #58A</i>	<u>\$2,250.00</u>
		Contract Price in Words: Two thousand two hundred fifty dollars and zero cents	

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#8	0 ft.	<i>Cost subtracter per foot change in length of anchor bolt cage for STR. #58A</i>	<u>\$0.00</u>
		Contract Price in Words: Zero dollars and zero cents	
#9	1 ea.	<i>STR. #58B: 66' tall custom engineered tubular steel structure</i>	<u>\$24,652.00</u>
		Contract Price in Words: Twenty-four thousand six hundred fifty-two dollars and zero cents	
#10	1 ea.	<i>26' long anchor bolt cage for STR. #58B</i>	<u>\$8,205.00</u>
		Contract Price in Words: Eight thousand two hundred five dollars and zero cents	
#11	1 ft.	<i>Cost adder change in length of anchor bolt cage for STR. #58B</i>	<u>\$2,250.00</u>
		Contract Price in Words: Two thousand two hundred fifty dollars and zero cents	
#12	0 ft.	<i>Cost subtracter per foot change in length of anchor bolt cage for STR. #58B</i>	<u>\$0.00</u>
		Contract Price in Words: Zero dollars and zero cents	
#13	1 ea.	<i>STR. #59: 67' tall custom engineered tubular steel structure</i>	<u>\$30,130.00</u>
		Contract Price in Words: Thirty thousand one hundred thirty dollars and zero cents	
#14	1 ea.	<i>26' long anchor bolt cage for STR. #59</i>	<u>\$8,385.00</u>
		Contract Price in Words: Eight thousand three hundred eighty-five dollars and zero cents	

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#15	1 ft.	<i>Cost adder per foot change in length of anchor bolt cage for STR. #59</i>	\$2,250.00

Contract Price in Words:

Two thousand two hundred fifty dollars and zero cents

16	10ft.	<i>Cost subtracter per foot change in length of anchor bolt cage for STR. #59</i>	\$0.00

Contract Price in Words:

Zero dollars and zero cents

#17	1 ea.	<i>STR. #60: 60' tall custom engineered tubular steel structure</i>	\$44,026.00

Contract Price in Words:

Forty-four thousand twenty-six dollars and zero cents

#18	1 ea.	<i>26' long anchor bolt cage for STR. #60</i>	\$11,030.00

Contract Price in Words:

Eleven thousand thirty dollars and zero cents

#19	1 ft.	<i>Cost adder per foot change in length of anchor bolt cage for STR. #60</i>	\$2,250.00

Contract Price in Words:

Two thousand two hundred fifty dollars and zero cents

#20	0 ft.	<i>Cost subtracter per foot change in length of anchor bolt cage for STR. #60</i>	\$0.00

Contract Price in Words:

Zero dollars and zero cents

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#21	1 ea.	<i>STR. #59A: Light Duty H6-80' tubular steel structure</i>	<u>\$11,030.00</u>
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Contract Price in Words:

Eleven thousand thirty dollars and zero cents

#22	<i>Subtotal for Items #1 through #21</i>	<u>\$225,741.00</u>
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Contract Price in Words:

Two hundred twenty five thousand seven hundred forty-one dollars and zero cents

#23	<i>Shipping Charges for Items #1 through #21</i>	<u>\$14,935.00</u>
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Contract Price in Words:

Fourteen thousand nine hundred thirty-five dollars and zero cents

#24	<i>Subtotal of Items #22 and #23</i>	<u>\$240,676.00</u>
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Contract Price in Words:

Two hundred forty thousand six hundred seventy-six dollars and zero cents

#25	<i>Bid Total (Item #24)</i>	<u>\$240,676.00</u>
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Contract Price in Words:

Two hundred forty thousand six hundred seventy-six dollars and zero cents

ARTICLE 7 – PAYMENT PROCEDURES

7.01 *Submittal and Processing of Payments*

- A. Seller shall submit Applications for Payment no later than 30 days after the date of shipment of the material. Applications for Payment will be processed by Engineer upon receipt and acceptance of all the items including but not limited to as-built vendor drawings, factory certified test results, manuals, etc. at the Point of Destination.

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7.02 *Liquidated Damages*

Buyer and Seller recognize that time is of the essence of this Agreement and that Buyer will suffer financial loss in the form of contract administration expenses (such as project management and consultant expenses), if all or any part of the Product is not completed within the times specified (Section 5.01.B. and C.), plus any extensions thereof allowed in accordance with the Contract Documents. Consistent with Procurement Document 00750 (Liquidated Damages), Seller and Buyer agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by Buyer because of a delay in completion of all or any part of the Product. Accordingly, Buyer and Seller agree that as liquidated damages for delay Seller shall pay Buyer.

- A. \$5,000 for each Day that expires after the delivery time specified herein for Seller.

These measures of liquidated damages shall apply cumulatively and except as provided below, shall be presumed to be the damages suffered by Buyer resulting from delay in delivery of product.

Liquidated damages for delay shall only cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by Buyer as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from Buyer (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof.

ARTICLE 8 – SELLER’S REPRESENTATIONS

- 8.01 In order to induce Buyer to enter into this Agreement, Seller makes the following representations:
 - A. Seller has examined and carefully studied the Contract Documents and the other related data identified in the Bid Documents.
 - B. If specified or if, in Seller's judgment, any local condition may affect cost, progress or the furnishing of the Goods and Special Services, Seller has visited the Point of Destination and become familiar with and is satisfied as to the local conditions that may affect cost, progress or the furnishing of the Goods and Special Services.
 - C. Seller is familiar with and is satisfied as to all local federal, state and local Laws and Regulations that may affect cost, progress and the furnishing of the Goods and Special Services.

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- D. Seller has carefully studied and correlated the information known to Seller, and information and observations obtained from Seller's visits, if any, to the Point of Destination, with the Contract Documents.
- E. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Seller.
- F. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing Goods and Special Services.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. All plans and drawings listed on Document 00015 – (List of Maps, Drawings, and Sketches
 - 2. Document 00301 – Schedule of Bid Price
 - 3. Document 00510 – Bid Certification Form
 - 4. Document 00520 – Agreement
 - 5. Document 00750 – Liquidated Damages
 - 6. Document 00821 – Insurance
 - 7. Section 01100 – General Requirements
 - 8. Section 05120 – Structural Steel – Tubular Steel Structures
 - 9. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice of Award;
 - b. Written Amendment(s);
 - c. Change Order(s);
 - d. Field Order(s);
 - e. Engineer's Written Interpretation(s).
- B. The documents listed in paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.

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ARTICLE 10 – MISCELLANEOUS

10.01 *Term of Agreement*

- A. Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term shall terminate three (3) years from the Effective Date.

10.02 *Assignment*

- A. Buyer has the right to assign the Contract for furnishing Goods and Special Services hereunder and Seller shall accept such assignment. Forms documenting the assignment of the Contract, and consent of Seller's surety to the assignment are attached as exhibits to this Agreement.
 - 1. The Contract will be executed in the name of Buyer initially, and will be assigned to an assignee designated by Buyer. The assignment will occur on the effective date of the agreement between Buyer and the Seller. As of the date of acceptance of assignment by the Seller, all references in the Contract Documents to Buyer shall mean the designated Assignee whose responsibilities will include the incorporation of the Goods.
 - 2. The assignment of the Contract shall relieve Buyer from all further obligations and liabilities under the Contract. After assignment, Seller shall become a subcontractor or seller to the assignee and, except as noted herein, all rights, duties, and obligations of Buyer under the Contract shall become the rights, duties and obligations of the assignee.
 - 3. After assignment:
 - a. All performances warranties and guarantees required by the Contract Documents will continue to run for the benefit of Buyer and, in addition, for the benefit of the assignee.
 - b. Except as provided in this Paragraph 10.02.A.3.b, all rights, duties and obligations of Engineer to assignee and Seller under this Contract will cease.
 - 1) Engineer will review Seller's Applications for Payment and make recommendations to assignee for payments.
 - 2) Upon the written request of either the assignee or Seller, Engineer will issue with reasonable promptness such clarifications or interpretations of the Contract Documents, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Such written clarifications and interpretations will be final and binding on assignee and Seller unless:
 - a) an appeal from Engineer's clarification or interpretation is made within the time limits and in accordance with the dispute resolution procedures; or

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- b) if no such dispute resolution procedures have been set forth, a written notice of intention to appeal is delivered by assignee or Seller to the other within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision (unless otherwise agreed to in writing by assignee and Seller), to exercise such rights or remedies as the appealing party may have with respect to such clarification or interpretation in accordance with applicable Laws and Regulations.
 - 3) When rendering a clarification or interpretation under Paragraph 10.02.A.3.b.2, Engineer will not show partiality to assignee or Seller and will not be liable in connection with any clarification or interpretation rendered in good faith.
- B. No other assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound. Specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law). Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Buyer and Seller each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Buyer and Seller. The Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Warranty, Disclaimer, and Limitation of Liability*

Seller represents and warrants that it is and will be at all times fully qualified and capable performing every phase of work and to complete work in accordance with the terms of the contract documents. Seller warrants that all services shall be performed in accordance with generally accepted professional standards of good and sound practices and all requirements of the Contract Documents. Seller warrants that work, including but not limited to each item of material and equipment incorporated therein, shall be new, of suitable grade of its respective kind for its intended use, and free from

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defects in design, engineering, materials, construction and workmanship. Seller warrants that work shall conform in all respects with all applicable requirements of federal, state and local laws, applicable construction codes and standards, licenses and permits, drawings and specifications and all descriptions set forth therein, and all requirements of Contract Documents. Seller shall not be responsible, however, for the negligence of others in the specification of specific equipment, materials, design parameters and means or methods of construction where that is specifically shown and expressly required by Contract Documents.

Extended Guarantees: Any guarantee exceeding one (1) year provided by the supplier or manufacturer of any equipment or materials used shall be extended for such term. Seller expressly agrees to act as co-guarantor of such equipment and materials and shall supply City with all warranty and guarantee documents relative to equipment and materials incorporated in the Project and guaranteed by their suppliers or manufacturers.

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IN WITNESS WHEREOF, Buyer and Seller have signed this Agreement in duplicate. One counterpart each has been delivered to Buyer and Seller. All portions of the Contract Documents have been signed or identified by Buyer and Seller or on their behalf.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"BUYER"

***INSERT CONTRACTOR'S NAME**

*choose one: a[n] _____ (insert State) corporation/partnership/individual

Dated: _____

By (Signature): _____

Name: ADRIAN MCJUNKIN, PE

Title: President

Principal Place of 5032 Salem Dallas Hwy, NW

Business Address: Salem, OR 97304

Email Address: seanh@westernutilitytelecom.com

Telephone: (503) 587-0101

Fax: (503) 316-1864

"SELLER"