

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
ELECTRICAL CONSULTANTS, INC.**

PREAMBLE

This Agreement is made and entered into on the date last signed by the Parties (“Effective Date”) between the City of Santa Clara, California, a chartered California municipal corporation (City) and Electrical Consultants, Inc., a Montana corporation (Consultant). City and Consultant may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

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

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

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Consultant 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 (if applicable)

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 to this Agreement, the term of this Agreement shall begin on September 1, 2026 and terminate on August 31, 2031 ("Term").

3. SCOPE OF SERVICES AND PERFORMANCE SCHEDULE

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

4. WARRANTY

In addition to those warranties contained in Exhibit A, Consultant expressly warrants that all Services and materials covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements, and instructions applicable to this Agreement. Consultant 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 Consultant. If Consultant fails to promptly correct or replace Services or materials, City may make corrections or replace Services or materials and charge Consultant for the cost incurred by City.

5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE

- A. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services including its duties and obligations, expressed and implied, contained herein. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. City expressly relies upon Consultant's representations regarding its skills and knowledge.
- B. Consultant warrants that all employees and subconsultants, if any, shall have sufficient skill and experience to perform the Services assigned to them.
- C. Consultant shall comply with all applicable federal, state and local laws in the performance of the Services; including but not limited to the

Occupational Safety and Health Administration (OSHA) and the California Department of Industrial Relations and State Division of Industrial Safety; and the professional standard of care. Where any applicable laws or ordinances conflict with the City's requirements, the more stringent requirement(s) shall be followed. Consultant's failure to be thoroughly familiarized with the provisions of any applicable federal, state, and local regulations, ordinances and codes shall not relieve Consultant from compliance with the obligations and penalties resulting therefrom.

- D. Consultant represents and warrants to the City that it has, shall obtain, and shall keep in full force in effect during the Term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Consultant to practice its profession and to perform Services.

6. COMPENSATION AND PAYMENT

In consideration for Consultant's complete performance of Services, City shall pay Consultant for all Services rendered and materials provided by Consultant in accordance with Exhibit B, entitled "SCHEDULE OF FEES AND PAYMENT PROVISIONS." The maximum compensation of this Agreement is one million dollars (\$1,000,000), 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 including any taxes. All Services performed or supplies, materials, and equipment provided in excess of the maximum compensation shall be at Consultant's expense. Consultant shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Consultant.
- B. Termination for Default. For purposes of this Section 7.B., the word "Default" shall mean the failure of Consultant to perform any of Consultant's duties or obligations or the breach by Consultant of any of the terms and conditions set forth in this Agreement. In addition, Consultant shall be deemed to be in Default upon Consultant (i) applying for, consenting to, or suffering of, the appointment of a receiver, trustee or liquidator for all or a substantial portion of its assets; (ii) making a general assignment for the benefit of creditors; (iii) being adjudged bankrupt; (iv) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing); or (v) suffering or permitting to continue unstayed and in effect for

fifteen (15) consecutive days any attachment, levy, execution or seizure of all or a substantial portion of Consultant's assets or of Consultant's interests hereunder. In the event of any Default by Consultant, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Consultant.

- 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, Consultant will deliver to City all City information or material that Consultant has in its possession.
- D. Effect of Termination; Payment. In the event of termination under Sections 7.A or 7.B., Consultant shall have no further rights hereunder, except that, subject to Exhibit B (Schedule of Fees and Payment Provisions), City shall pay Consultant for: (i) Services duly authorized and satisfactorily performed up to the effective date of termination; and (ii) reimbursable expenses actually and reasonably incurred and in compliance Section 3 of Exhibit B prior to the effective date of termination. For any fixed-price Services or milestones, payment for partially completed deliverables shall be made on a pro rata basis based on the percentage of completion as reasonably determined by City. City may set off against any such amounts any damages, costs, or expenses incurred by City as a result of Consultant's Default.

8. ASSIGNMENT AND SUBCONTRACTING

City and Consultant 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. Consultant shall not hire subconsultants or subcontractors without express written permission from City.

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

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

employees in their performance of Services under this Agreement. Consultant has full rights to manage its workers, contractors and or employees in their performance of Services.

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

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

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

11. CONFIDENTIALITY OF MATERIAL

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

Receiving Party (as defined below) or to its Representatives, and specifically includes but is not limited to the City's individually identifiable customer information, and the City's customer usage data and financial data.

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

this Agreement. As such, the Receiving Party shall hold in confidence the Confidential Information of the Disclosing Party and ensure that such Confidential Information is not disclosed to any other person or entity, except as expressly permitted by this Agreement or as authorized in writing by the Disclosing Party. The Receiving Party shall not disclose Confidential Information of the Disclosing Party received under this Agreement to any person other than its Representatives who require knowledge of such Confidential Information in furtherance of this Agreement. The Receiving Party shall inform its Representatives of the confidential nature of the Confidential Information of the Disclosing Party and advise such Representatives of the limitations on the use and disclosure and prohibition on making copies or summaries of such Confidential Information. The Receiving Party shall be responsible for any breach of this Agreement by its Representatives. Neither Party shall use the Confidential Information of the other Party for any commercial purpose.

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

of this Agreement and the Disclosing Party may demand prompt return of all Confidential Information previously provided to the Receiving Party. As soon as the Receiving Party becomes aware that it has made an unauthorized disclosure of Confidential Information, the Receiving Party shall take any and all necessary actions to recover the improperly disclosed Confidential Information and immediately notify Disclosing Party regarding the nature of the unauthorized disclosure and the corrective measures being taken. Each Party agrees that any breach of their confidentiality obligations could cause irreparable harm to the other Party, the amount of which would be extremely difficult to estimate. Accordingly, it is understood and agreed that monetary damages would not be a sufficient remedy for any material breach of this Agreement and that specific performance and injunctive relief in addition to monetary damages shall be appropriate remedies for any breach or any threat of such breach. The provisions of this Paragraph are in addition to any other legal rights or remedies the Disclosing Party may have.

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

12. OWNERSHIP OF MATERIAL

- A. City shall furnish to Consultant such documents and materials as may be relevant and pertinent to the provision of Services hereunder as City may possess or acquire.
- B. All documents and materials furnished by City to Consultant, pursuant to Section 12.A., shall remain the property of City and shall be returned to City upon termination of this Agreement, for any reason. All documents or material prepared or caused to be prepared by Consultant, its officers, employees, agents and subconsultants, in the course of implementing this Agreement, shall be considered works made for hire and shall become the

exclusive property of the City, and City shall have the sole right to use such documents and materials without restriction or limitation on their use in City's discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's sole cost and expense, provide such documents and material to City upon written request.

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

13. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT

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

be made within thirty (30) days from presentation of City's findings to Consultant. If Consultant fails to make such payment, Consultant agrees to pay interest, accruing monthly, at a rate of ten percent (10%) per annum unless another section of this Agreement specifies a higher rate of interest, then the higher rate will prevail. Interest will be computed from the date of written notification of exception(s) to the date Consultant reimburses City for any exception(s). If an audit inspection or examination in accordance with this Section discloses overcharges (of any nature) by Consultant to City in excess of one percent (1%) of the value of that portion of the Agreement that was audited, the actual cost of City's audit shall be reimbursed to City by Consultant.

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

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Consultant 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, to the extent arising out of, pertaining to, or related to the negligence, recklessness, or willful misconduct of the Consultant, its employees, subconsultants, affiliates, or persons contracting with Consultant in the performance, or non-performance, of the Services under this Agreement.
- B. Consultant'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, subconsultants, subcontractors or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought. Consultant's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all current or former worker, independent contractor, and or employment-related, and or benefit claims of any type brought by current or former workers, independent contractors, and or employees, subcontractors or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Consultant 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, Consultant 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 Consultant's responsibilities under the Act.

- D. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor any other person or entity involved in the performance of the Services. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant shall be fully responsible according to the terms of this section.
- E. Neither Party shall be liable to the other for any lost profits or any indirect, special, incidental, punitive, or consequential loss or damage of any kind arising in connection with the agreement, even if the Party has been advised or should be aware of the possibility of such damages. Nothing in the Agreement limits or excludes either Party's liability for loss or damage resulting from death or personal injury caused by its gross negligence, or any fraud or fraudulent misrepresentation.
- F. The total aggregate liability of Consultant to City, for all claims (direct and third-party), damages, losses, expenses, costs, and liabilities of any kind arising out of this Agreement, whether such arise from a breach of contract; a defense, indemnification, or hold harmless obligation; warranty; tort, including negligence; strict liability; or otherwise, shall be limited to ten million dollars (\$10,000,000) or the actual paid compensation set forth in section 6 as may be amended from time to time, up to a maximum of fifteen million dollars (\$15,000,000), whichever is greater. Notwithstanding the foregoing, the foregoing liability limitation shall not apply in cases of Employment-Related Claims, personal injury to a third party or damage to property of a third party.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

Consultant 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 and
manager@santaclaraca.gov

And to Consultant addressed as follows:

Electrical Consultants, Inc.
Attention: Dave Maehl, Executive Vice President – Power Supply
3521 Gabel Road
Billings, MT 59102
and by e-mail at dave.maehl@eciusa.com

With a copy to:
Electrical Consultants, Inc.
Attention: Chief Legal Officer
3521 Gabel Road
Billings, MT 59102
and by e-mail at kevin.freeman@eciusa.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

Consultant 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, Consultant’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 Consultant has read and agrees to comply with City’s Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant 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. Consultant will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Consultant 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

Consultant 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, Consultant shall comply, and ensure its subconsultants and subcontractors comply with Exhibit D.

Consultant certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as Section 16000 et seq. of Title 8 of the California Code of Regulations, Consultant 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 Consultant or its employees, agents, contractors, subconsultants, and subcontractors to comply with the prevailing wage laws.

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

GLEN R. GOOGINS
City Attorney

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

"CITY"

ELECTRICAL CONSULTANTS, INC.
a Montana corporation

Dated: _____

By (Signature): _____

Name: Dave Maehl

Title: Vice President – Power Supply

Principal Place of 3521 Gabel Road
Business Address: Billings, MT 59102
Email Address: Dave.maehl@eciusa.com
Telephone: (406) 259-9933
"CONSULTANT"

EXHIBIT A SCOPE OF SERVICES

SECTION 1. GENERAL

- 1.1** Consultant shall provide all necessary supervision, labor, and services, plus all tools, equipment, materials, and supplies required to provide as-needed electric utility engineering services ("Services").
- 1.2** Consultant shall perform the Services in accordance with generally accepted industry best practices and the original equipment manufacturer (OEM) specifications. Any deviations must be approved in writing by City.
- 1.3** Consultant will primarily perform Services in City of Santa Clara limits.
- 1.4** To the extent not inconsistent with this Agreement, the City's SOQ-23-24-30 (including subsequent updates) and Consultant's proposal response dated April 10, 2024, 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 SOQ-23-24-39 or Consultant's proposal, the Agreement and its Exhibits shall govern.

SECTION 2. SERVICES TO BE PERFORMED

Consultant will provide the following Services to the City on an as-needed basis pursuant to the process described in Section 6. The specific service area(s) authorized for a Consultant are expressly identified by checkbox(es). Only those service areas that are checked shall be considered within the Consultant's authorized scope of services under this Agreement.

2.1 DESIGN AND CONSTRUCTION (PLAN & IMPLEMENTATION)

The following service areas within Design and Construction (Plan & Implementation) are intended to be scoped as full-service Engineer of Record design services through construction for projects with all subservices included.

2.1.1 ☒ Transmission or Distribution Line Design Services

The required services associated with full Engineer of Record transmission or distribution line design and project implementation may include, but not be limited to:

- 2.1.1.1** Creation of an Alternative Routes Analysis Report which must provide a determination of the most advantageous of the routing options. This report should include a summary table that

compares cost, schedule, and advantages/disadvantages for each alternative.

- 2.1.1.2** Subsurface investigation and utility potholing services, including subsurface site investigation for geotechnical report, environmental site characterization, soil conductivity, thermal soil resistivity, and identification and location of utilities in proposed working area.
- 2.1.1.3** Design project management including managing project schedules and budget related to design, testing and commissioning, and construction.
- 2.1.1.4** Coordination with SVP and City departments, and outside agencies as needed.
- 2.1.1.5** Design packages, including circuit design, structure design, construction sequence plan, outage plan coordination, equipment sizing, all necessary electrical, civil, and structural calculations and design to support design submittals, terrestrial and/or aerial LiDAR (Light Detection and Ranging) survey for PLS CADD (Power Line System - Computer Aided Design and Draft) model, subsurface investigations for utilities, and surface structures needed to perform the overhead and underground design.
- 2.1.1.6** Engineering studies, including power flow using PSLF, short circuit analysis using ASPEN, CYMCAP ampacity analysis, ASPEN Line Constants modeling, mutual coupling studies, line insulation coordination for lightning and switching, and thermal soils tests and analysis.

2.1.2 □ Testing and Commissioning

- 2.1.2.1** Environmental permitting and regulatory compliance, including preparation and filing of Federal Aviation Administration (FAA) notices. Services include preparation of Storm Water Pollution Prevention Plans, engineering documents to support SVP's environmental requirements, and coordination with the environmental consultant to ensure compliance with California Environmental Quality Act (CEQA), including reviews and permit applications.
- 2.1.2.2** Right of way easement acquisition and encroachment permitting services including providing comments and revisions made during the encroachment permit or easement review process; researching permit requirements; obtaining required permits;

preparing submittals and supporting documentation to permitting agencies including project descriptions, plans, and permit package applications; responding to all questions and comments from permitting agencies; revising drawings and documents as necessary; supporting preparation of Reports to Council regarding authorization for negotiation, eminent domain actions, easement acceptance; preparing legal descriptions; preparing, creating, and mailing Notice of Intent to Apprise letters, offer letters, and Notice for Resolution of Necessity; obtaining and reviewing title reports; performing easement acquisition negotiations with property owners on behalf of SVP; preparing Purchase and Sale Agreements (PSA) using templates from SVP; assisting with escrow process for final acquisition; and assist with any condemnation proceedings.

2.1.2.3 Material procurement support SVP, including providing bill of materials, technical specifications, and load tree drawings and reviewing and approving vendor material specifications; responding to vendors' Requests for Information (RFIs); and conducting technical reviews of vendor materials and equipment specifications. All procurement specifications are to include rigging of equipment into place and acceptance testing.

2.1.2.4 Construction bidding support including preparing and submitting plans, specifications, and the 100% design submittal package; preparing construction cost estimate and project schedule; responding to bidder's requests for information; informing plan holders of significant responses to RFI's; preparing addenda; evaluating bids; preparing recommendation letter to award contract; and preparing a conformed set of documents that incorporate all addenda.

2.1.2.5 Engineering construction support including preparing for kickoff meeting; reviewing and commenting on submittals for equipment and materials procured by the construction contractor and manufacturers; attending meetings; addressing means and methods to ensure feasibility; managing field design changes; reviewing and responding to submittals; providing revised drawings; coordinating with relevant parties; and providing engineering assistance during testing and commissioning activities.

2.1.2.6 Construction management including acting as the Owner's Engineer to the primary construction contractor and commissioning and testing contractors; monitoring daily activities; confirming compliance with Engineer of Record (EOR) design, drawings, and specifications; coordinating planned

outages; observing construction activities; coordinating materials testing; ensuring all test results are properly recorded; completing daily reports; attending weekly meetings; providing recommendations to SVP and construction contractor; reviewing work progress; inspecting completed work for acceptance; reviewing as-builts and monthly invoices; managing commissioning and testing activities; conducting final site walk; and developing and managing punch list items.

2.1.2.7 Final testing and commissioning support may include providing full-time on-site support; verifying that all apparatuses and equipment conform to the issued specifications and drawings; ensuring completion of all FAT and SAT punch lists items; verifying full system integration and operation of all communication devices; and confirming that the system is ready for safe energization.

2.1.2.8 Record (as-built) drawings and project closeout services include attending the final walkthrough to provide input to the final “punch list” and help determine if the work is ready for City acceptance; providing a written recommendation regarding project completion; preparing and submitting, at final completion, two (2) sets of reproducible record drawings and all X-ref files “bound” that reflect the changes to the work during construction based upon marked-up prints, drawings, and other data furnished by the construction contractor, SVP, and other consultants; ensuring record drawings are not produced prior to in-field verification of all changes and as built conditions; ensuring that all additional sheets are properly numbered and referenced on affected drawings and included in the drawing sheet index; and providing a complete set of issued for record drawings in native and PDF format.

2.1.3 ☒ Substation Design Services

The required services associated with full Engineer of Record substation design and project implementation may include, but not be limited to:

2.1.3.1 Preliminary investigation including survey, property rights research/easements, title reports, underground utility locating necessary for the design and construction, and a preliminary design package.

2.1.3.2 Preparation of substation single line metering and relaying (SLMR) control diagram and communication single line.

- 2.1.3.3** Preparation of control enclosure drawings, protection line panel drawings, and security designs for substation monitoring and access.
- 2.1.3.4** Project management, design and preparation of Plans, Specifications, and Engineer's Estimate (PSEE) including permitting and CEQA determinations, geotechnical investigation, land acquisition activities, bid and construction support, record drawings, and project closeout.
- 2.1.3.5** Coordination with SVP Divisions including Planning, Fiber, Protection, Substation, Systems Support, Operations, Engineering, Records Retention, Electrical Control Center, and management.
- 2.1.3.6** Preparation of all electrical drawings and calculations. At a minimum calculations, shall include Substation Short Circuit Duty study, breaker rating study, load flow study, arc flash study, insulation coordination study, protection and control calculations (including all settings for all relays), interface coordination, and required communications to the existing SVP system.
- 2.1.3.7** Preparation of all civil/structural/geotechnical/architectural drawings and calculations.
- 2.1.3.8** Preparation of all support discipline engineering calculations.
- 2.1.3.9** Comprehensive grounding study in accordance with IEEE80/81.
- 2.1.3.10** Procurement plans and specifications and bid support services, including stamped and signed plans, final engineer's cost estimate, and responses to bidder questions.
- 2.1.3.11** Onsite construction management supporting substation construction including filling daily reports; attending weekly meetings; facilitating and tracking submittals; tracking and responding to RFI's; enforcing design compliance; performing field observations and documentation; tracking and reviewing change orders and potential change orders; providing acceptance or denial recommendations; reviewing invoices; performing post construction inspections; developing the final punch list; ensure materials testing results are properly recorded; managing the commissioning and testing phases.
- 2.1.3.12** Substation testing and commissioning including 85% factory inspections at the manufacturer's facility; performing Factory Acceptance Testing (FAT) of the control enclosure, line protection panels, and other components as requested.

- 2.1.3.13** Engineering support for equipment commissioning and energization activities and assistance to the commissioning and testing contractor, as needed, during commissioning and energization activities.
- 2.1.3.14** Preparation of enhanced Protection, Control, and Automation (PCA) documentation including communication architecture, data flow diagrams, point lists, and integration requirements with SCADA (Supervisory Control and Data Acquisition), PI (Plant Information), MDMS (Master Data Management System), Power Quality, and Asset Lifecycle and monitoring systems.
- 2.1.3.15** Development of testing, control, and automation test plans to validate the integration of all devices working as designed and per the PCA. This includes development of tests for logic settings, trip times, backup devices, battery control logic, LTC (Load Tap Changer) controls, DGA (Dissolved Gas Analysis), and other asset monitoring devices, ventilation controls, and similar systems. These test plans can be developed using RTS (Real Time Simulator), RTDS (Real Time Digital Simulator), or equivalent platforms.
- 2.1.3.16** Creation of protection system testing and commissioning plans in accordance with applicable IEEE/ANSI standards and coordination with SVP and contractor to execute the testing and commissioning plan.
- 2.1.3.17** Provision of test plans and review of test reports for electrical equipment, including but relays, transformers, circuit breakers, and battery systems.

2.2 ENGINEERING DESIGN OR SERVICES DURING CONSTRUCTION (ENGINEERING SERVICES)

2.2.1 ☒ Grounding System Design

- 2.2.1.1** Grounding system design including reviewing field test reports; preparing soil model developed in CDEGS (Current Distribution, Electromagnetic Fields, Grounding and Soil Structure Analysis) RESAP (Soil Resistivity Analysis); simulating step voltage, touch voltage, and ground potential rise using CDEGS; preparing ground grid designs with detailed drawings; graphically representing voltage gradients, with step and touch potential calculations; and preparing test plans for grounding systems. Services may include using CDEGS software or an approved equal by creating a model of the existing grounding system, lightning protection system, and other site specific details in

CDEGS SESCAD module using as-built and field data; developing a multilayer soil model in CDEGS RESAP module based on field testing; analyzing the system using CDEGS software modules such as FCDIST, TRALIN, HIFREQ to evaluate full fault magnitude and fault current split; analyzing step and touch potentials and ground potential rise (GPR), with the most conservative scenario; and creating voltage gradient graphs.

2.2.2 ☒ Civil/Structural Design Services

2.2.2.1 Consultant shall provide civil/structural design services including designing security fencing, retaining walls, gates, gate/fence/wall/pole foundations and other civil site work as needed; and preparing or supporting geotechnical or soil report work when required.

2.2.3 ☒ Standards, procedures, and specifications development

2.2.3.1 Consultant shall provide standards, procedures, and specifications development including updating and reviewing existing documentation for the utility pertaining to standards, procedures, and specifications; creating missing documents as needed; and developing standards for substations, transmission and distribution, system design, operations, low voltage, operation & revenue metering, testing & commissioning; and Distributed Energy Resource (DER) Interconnection.

2.2.4 ☒ Equipment Rating

2.2.4.1 Equipment rating including creating, updating, documenting, and reviewing equipment ratings for utility assets, including conductors, cables, transformers, devices, breakers, switches, poles and structures, and terminations.

2.2.5 ☒ System Modeling

2.2.5.1 System modeling including creating, updating, documenting, and/or revising system modeling needs, including PSLF, Powerworld, ASPEN OneLiner, ASPEN Line Constant, ASPEN Breaker Rating Module, CYMCAP, insulation coordination, harmonics, thermal soils and test analysis, Distributed Engineering Workstation, and Mathlab.

2.2.6 ☒ Interconnection Studies

- 2.2.6.1** Interconnection studies including creating, updating, documenting, and reviewing interconnection study needs such as performing affected system studies for CAISO Cluster Interconnection Studies; and performing Distributed Energy Resource interconnection study within the SVP sub transmission and/or distribution system, including conducting System Impact Study (SIS) to evaluate the point of interconnection, Feasibility Study (FS) to determine system impacts and estimated project costs, and Facility Study (FAC) to determine electrical configuration, price, and schedule to complete the interconnection.

2.2.7 ☒ Construction Management and Inspection Services

- 2.2.7.1** Onsite construction management and inspection including to act as the Owner's representative to construction, commissioning, and testing contractors including attending weekly construction meetings, field observation, daily reports, tracking open items (RFI's, submittals, change orders, etc.), review and document all testing of materials, review as-builts, monthly invoices, inspection services, and punch list/closeout.

2.2.8 ☒ Distribution Engineering System Support

- 2.2.8.1** Distribution engineering system support including performing power distribution studies such as distribution planning studies, power system studies, interconnection studies, protection studies, reactive power studies, and thermal ampacity studies; performing distribution protection and control engineering including developing distribution protection standards, conducting studies such as load flow, short circuit, arc flash, voltage and stability analysis, breaker ratings, insulation coordination, and reactive power requirements; preparing relay settings and logic drawings for SVP distribution field relays; preparing control system settings and designs to integrate field DER into the SVP distribution system; performing distribution communication engineering such as creating communication standards for distribution field control and telemetry devices for capacitor, switches, DER etc.; preparing radio communication network designs; preparing distribution design including plans, specifications, and cost estimates involving power distribution system design including generation system, feeder design, protection systems, grid automation, communication and control system including integration of DER, reactive power compensation and street light systems.

- 2.2.8.2** Miscellaneous distribution engineering support including perform cost analyses related to evaluating distribution municipal fee items such as load development fee(s) or change order proposals; review existing processes; revising and implementing systems for work management system related to distribution planning group; reviewing and updating existing cost estimating engine to integrate with GIS (Geographic Information System); and providing engineering services to review pole contact, pole calculations, and encroachment permit plan review.

2.3 OPERATIONS (OPERATION SERVICES)

2.3.1 ☒ Protection and Control Engineering

- 2.3.1.1** Protection and control engineering services including developing protective relaying standards; performing studies including short circuit studies, arc flash, voltage and stability analysis, breaker ratings, insulation coordination, and reactive power requirements; preparing relay settings and logic drawings for SVP new and existing substation projects; and performing protection system coordination studies for new and existing substation projects.

SECTION 3. SPECIFIC REQUIREMENTS

- 3.1** Consultant shall be responsible for providing the following, as required for the Services:
 - 3.1.1** Supervision and administrative support
 - 3.1.2** Program and project management services
 - 3.1.3** Scheduling and logistical planning
 - 3.1.4** Subcontractor/subconsultant management

SECTION 4. REPORTS

- 4.1.1** Consultant shall provide regular cost, schedule, and status updates on Services performed throughout the Term, as requested by City.
 - 4.1.2** City may, at its sole discretion, require Consultant to provide status updates daily, weekly, or monthly at the direction of City.
- 4.2** Consultant shall provide all reports in electronic format and hard copy if requested by the City.

SECTION 5. COMPLETION OF SERVICES

Consultant shall perform and complete the Services in a timely, efficient manner, so as to meet the project schedule of each Purchase Order.

SECTION 6. SERVICE REQUEST

- 6.1** Consultant acknowledges that Consultant is one of multiple firms selected to perform the Services pursuant to separate agreements. The City will award and authorize specific Services as set forth in this Section 6. The City does not guarantee that any specific service will be authorized under this Agreement. This Section 6 contains the process for awarding Services under a master agreement process.
- 6.2** When the City requires services, City will notify consultant(s) under contract to provide a written proposal. City will provide a description of the Services required and any other pertinent information (Work Request).
- 6.3** Consultant shall prepare and submit a written proposal (Proposal). Consultant's Proposal must include all information requested by the City in its Work Request, including, (as applicable) the proposed scope of services, the expected deliverables, proposed project timeline, assigned personnel, and costs including hourly rates by position, equipment, materials, and reimbursable expenses, in accordance with Exhibit B.
- 6.4** The City will evaluate the Proposals according to the criteria and weights listed in the Work Request.
- 6.5** At the City's discretion, the City may interview consultants submitting the highest scoring Proposal. Such interviews will be scored according to the criteria and weights listed in the Work Request.
- 6.6** City will enter into negotiations with the highest-ranked consultant. Negotiations may include, but are not limited to, the scope of work, schedule to perform scope, and technical specifications. The City will not renegotiate any established rates as set forth in Exhibit B but may negotiate the level of effort required for the Services. In the event negotiations with the highest-ranked consultant are unsuccessful, the City will either move on to the next highest-ranked consultant, suspend the selection process, or terminate the solicitation process and issue a new Work Request (except, as determined by City, reissuance would not be an idle act).
- 6.7** Provided that the original cost Proposal includes all applicable items listed in the Work Request, the City and the selected consultant may negotiate whether the cost for the Purchase Order will be fixed price (lump sum) or based on specific rates of compensation (time-and-materials) for completion of the Services.

6.8 If a fixed fee or lump sum is authorized by the City, Consultant must include a payment schedule in their final Proposal. The final Proposal shall be in conformance with Exhibit B and:

6.8.1 Include a clear breakdown of materials and labor indicating taxable and non-taxable items, along with an estimate of required taxes.

6.8.2 Include separation of materials subject to tax so that payment for such materials and the associated taxes occur in a single payment.

6.8.3 Payment milestones shall be connected to deliverables and shall not include payment for labor subject to prevailing wage in advance of such labor taking place.

6.9 Consultant must submit a revised Proposal to the City based upon such negotiations.

6.10 Authorization of Work; Issuance of Purchase Order

6.10.1 Once City and the selected consultant agree on the final pricing, scope, and specific requirements of the proposed services, the City shall issue a Purchase Order. The Purchase Order shall at a minimum identify the specific scope of services, a maximum compensation, and such other information the City may require.

6.10.2 Each Purchase Order shall incorporate, as applicable, the Proposal approved by the City.

6.10.3 Consultant shall have seven (7) calendar days from the date of the City's issuance of the Purchase Order in which to respond in writing if Consultant elects not to perform the Services. If Consultant (a) agrees in writing to perform the Services, (b) begins performance of the Services, or (c) fail to respond within the seven-day period, then Consultant will be deemed to have accepted the Purchase Order and in such case the Purchase Order shall be incorporated into this Agreement. The Purchase Order shall be included within the Services.

6.11 Additional Services or Modifications

6.11.1 Consultant shall promptly notify the City when a situation occurs that may result in a change to an approved Purchase Order, including the need for additional work or modifications to the Services approved under the Purchase Order. Consultant shall provide the reason for the change specific to each Purchase Order. Consultant shall submit an updated Proposal to the City for review and approval by the City in advance of performing any additional work or services. For such changes, Consultant shall submit justification demonstrating that changes in cost are associated with changes in scope.

- 6.11.2** If the City determines that the change is within the general scope and intent of the original Purchase Order, the City may approve the modification and issue an amended Purchase Order authorizing the additional or revised Services. Any such amended Purchase Order shall be incorporated into the Agreement and any work described therein shall be included within the Services.
- 6.11.3** If the City determines that the proposed change materially alters the scope or falls outside the intent of the original Purchase Order, the City will issue a new Work Request pursuant to Section 6.2.
- 6.11.4** Consultant shall not be entitled to additional compensation for issues such as errors in calculation of original pricing, changes in staff, or other changes that are not directly related to changes requested by City.

6.12 Immediate Need / Interim Work Orders

- 6.12.1** The City may authorize Consultant to proceed with work on an interim basis through written or verbal authorization pending issuance or amendment of a formal Purchase Order for immediate need in the following circumstances:
 - 6.12.1.1** In the event work is required to address or deal with a threat to public health or safety, loss of or damage to property, or serious disruption to essential services.
 - 6.12.1.2** In the event work is required to maintain a critical City function or project schedule.
- 6.12.2** Each interim authorization shall at a minimum identify the specific scope of services, a maximum compensation, and such other information the City may require.
- 6.12.3** Following issuance of an interim authorization, Consultant shall promptly submit a detailed written Proposal to City consistent with this Agreement. The Proposal shall include all services required including those services already completed or initiated, and associated rates and costs. All work performed under an interim authorization is subject to cost validation, and the City reserves the right to disallow or adjust any costs not consistent with the terms of this Agreement.
- 6.12.4** If the City approves the Proposal, the City will issue a Purchase Order as soon as reasonably practicable. Any such Purchase Order shall be incorporated into the Agreement and any work described therein shall be included within the Services.

- 6.13** A Purchase Order must be consistent with – and cannot alter - the terms and conditions of this Agreement.

- 6.14** The terms and conditions of this Agreement shall prevail over any and all terms and conditions contained in a Proposal, or Purchase Order, and the City's SOQ-23-24-39 (including subsequent updates) and Consultant's proposal response dated April 10, 2024, even if those documents state otherwise. If any terms and conditions conflict of those documents with the Agreement, any conflicting terms are invalid and unenforceable. The order of precedence is as follows: (1) Agreement and any exhibits or amendments thereto, (2) Purchase Order, (3) Proposal, (4) City's SOQ-23-24-39 (including subsequent updates) and (5) Contractor's proposal response dated April 10, 2024.
- 6.15** The City may terminate a Purchase Order for convenience with ten (10) days prior written notice to Consultant. In such event, the Consultant shall have no further rights hereunder, except that Consultant shall be paid for all Services adequately rendered prior to such termination. The City shall have no liability for Services not yet performed or deliverables not yet commenced as of the date of termination.

SECTION 7. [INTENTIONALLY OMITTED]

SECTION 8. WARRANTY

All Services performed by Consultant shall carry a warranty of a minimum of twelve (12) months from the date of completion of the Services set forth in the applicable Purchase Order. Consultant shall perform all warranty-related work at no additional cost to the City.

SECTION 9. WORK AREA

- 9.1** Consultant shall maintain all work areas, where Services or related work are being performed, in a clean and orderly condition at all times. The work area shall be kept free from surplus materials, waste materials, debris, spills, dirt, rubbish, or other refuse caused by Consultant's performance of Services. Upon completion of the scheduled Services or at the end of each day, whichever comes first, Consultant shall ensure the work area is left in a clean, safe, and secure condition. The City shall be the sole judge as to the adequacy of the cleanup.
- 9.2** Consultant shall comply with all City requests regarding cleanup both during the course of and upon completion of Services. If Consultant fails to clean the work area within forty-eight hours (48) after demand by the City, City may charge Consultant for any costs of clean-up or other services required to adequately protect City property or restore work area to a safe condition. City may invoice Consultant or deduct costs from Consultant's invoice at City's sole discretion.
- 9.3** Where applicable, Consultant must provide work and traffic control signage to warn pedestrians and vehicular traffic of work in progress. Consultant may be required to safely direct pedestrians and traffic around the work area and provide all equipment, personnel, and materials 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.

- 9.4** Consultant shall make all reasonable efforts to minimize obstructions and inconvenience to City operations, employees, and the public during the performance of Services.

SECTION 10. CONSULTANT'S EQUIPMENT, TOOLS, AND MATERIALS

This Section applies only if the performance of Services requires the use of physical tools, equipment, vehicles, or materials.

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

SECTION 11. DISPOSAL OF WASTE AND SCRAPS

- 11.1** All wastes generated or encountered in the performance of Services must be managed in accordance with all applicable local, State, and federal regulations and laws. Consultant is solely responsible for arranging and implementing proper handling, management, storage, transport, and disposal of all wastes including any hazardous materials.
- 11.2** Consultant shall provide the City with a written report of all material disposals within twenty-four (24) hours of such disposal, unless a shorter reporting period is required by applicable law or regulation.
- 11.3** Consultant shall recycle or salvage all materials, where feasible, and shall credit the value of any recycled or salvaged materials to the City.

SECTION 12. SAFETY

- 12.1** Safety must always be the top priority. Consultant shall take all necessary precautions for the safety of all persons, property, and the public during the

performance of Services. Consultant shall install and maintain appropriate safeguards, warning signs, and barriers as required by applicable law and the conditions of work, and post warnings against known or unusual hazards.

- 12.2** Where applicable, Consultant shall perform all Services in accordance with accepted industry standards and practices, including but not limited to the National Fire Protection Association (NFPA) Codes NFPA 70, 70B, and 70E, National Electrical Manufacturer's Association (NEMA), NETA, and IEEE standards.
- 12.3** If required by applicable law due to the nature of the Services, Consultant shall maintain a written Injury and Illness Prevention Program (IIPP) in compliance with Section 3203, Title 8 of the California Code of Regulations (CCR). The IIPP shall include specific instructions with regard to hazards unique to the employee's job assignment. Consultant shall make a copy available to the City upon request and shall keep a copy accessible at the work site.
- 12.4** As applicable, Consultant shall conduct safety inspections as necessary and as may be requested by the City to identify and correct unsafe conditions and practices. The City reserves the right to accompany Consultant during these inspections.
- 12.5** Where applicable, Consultant 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). Consultant must comply with SVP's clearance program for equipment safety requirements. City will provide the clearance program to the Consultant.
- 12.6** Where applicable, Consultant's employees (including any subconsultants) must use appropriate Personal Protective Equipment (PPE) and Fire Resistant (FR) clothing. Any required PPE and FR clothing shall be provided at the expense of Consultant.
- 12.7** When requested by the City, Consultant shall provide an on-site Safety Manager/Supervisor to ensure compliance with all applicable safety rules and regulations. The onsite Safety Manager will perform daily audits and submit daily reports to the City that identify discrepancies or non-compliance, and provide direction in regards to safety rules and regulations to Consultant Project Manager (as defined in Section 14) and Consultant Personnel.

SECTION 13. INJURY/PROPERTY DAMAGE

Consultant shall notify the City immediately in the event of an injury or property damage that occurs during the performance of Services. Consultant 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, Consultant shall assist as required.

SECTION 14. CONSULTANT PERSONNEL

14.1 Project Manager

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

14.2 Staffing

- 14.2.1** Consultant 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.
- 14.2.2** Consultant shall ensure its employees and any subconsultants supply proper identification when requested by the City.
- 14.2.3** Consultant shall inform City immediately of any change in key personnel assigned to this agreement. Consultant shall submit the resumes and other qualifications of the proposed replacement employee(s) to City for review and approval.
- 14.2.4** City may reasonably request reassignment of key staff, including the Project Manager. In the event of a request, Consultant shall submit the resumes and other qualifications of proposed replacement employee(s) to City for review and approval.

14.3 Employee Training

- 14.3.1** At Consultant's sole cost and expense, Consultant shall provide recurring, periodic (no less than annual) training to its employees (including subconsultants) appropriate to the duties and responsibilities of each employee.
- 14.3.2** Consultant's training program shall follow Consultant'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.
- 14.3.3** Consultant shall be familiar with SVP's operating standards. Where applicable, all employees are required to watch SVP's safety video once per calendar year or prior to the commencement of the Services.

- 14.3.4** At the City's request, Consultant shall submit copies of training records for its employees.

14.4 Standards of Conduct

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

14.4.1.1 Display a discourteous, abrupt, abrasive, or belligerent attitude.

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

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

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

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

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

SECTION 15. E-BUILDER

- 15.1** Use of e-Builder. When required by City, Consultant shall use e-Builder for submission of data and documents to City throughout the Term. 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.

- 15.2** Access to e-Builder. The City will establish the Consultant's access to e-Builder by providing licenses to Consultant's personnel at City's cost. The Consultant's designated users will be required to set up their computers/systems to use e-

Builder in accordance with the e-Builder User Training Guide. The City reserves the right to limit the licenses issued to Consultant at any time.

- 15.3** E-builder Training. Consultant is required to obtain all necessary training to use the e-builder software. Consultant must participate in at least one classroom training or a web-based seminar as determined by City.
- 15.4** Connectivity to e-Builder. e-Builder is a web-based environment and therefore it is subject to the inherent speed and connectivity limitations of the Internet. Consultant is responsible for its own connectivity to the Internet. e-Builder's response time is dependent on the Consultant'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 Consultant's use of e-Builder including, but not limited to slow response time, downtime periods, connectivity problems, or loss of information. The Consultant shall ensure connectivity to the e-Builder system whether at the home office or job site. Under no circumstances will Consultant's use of e-Builder be grounds for a time extension or cost adjustment to a Purchase Order.
- 15.5** Acceptance of Information. 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 Consultant will be jointly owned. Consultant is responsible for managing, tracking, and documenting the Services as provided in each Purchase Order and to comply with the requirements of this Agreement. The City's acceptance of documentation in e-builder via automated system notifications or audit logs extends only to the face value of the submitted documentation and does not constitute validation of the Consultant's submitted information.
- 15.6** Format of Project Documents. In addition to submittal of documents through e-Builder, at the City's sole discretion, the City may require Consultant to submit documents in hard copy format, or both electronic and hard copy format.
- 15.7** Project Communication. While regular email may still be used for communication, when requested by City, e-Builder shall be used as much as possible in connection with all document and information management required in the performance of Services where City has directed the use of e-Builder. Consultant shall be responsible for scanning or otherwise converting to electronic format all submittals, correspondence, drawings, sketches, payment requests, change orders, reports, and other documents associated with the Services, and uploading them to the e-Builder website. Consultant shall be responsible for the validity of its information placed in e-Builder. Consultant shall use the existing forms and processes in e-Builder to the maximum extent possible. If a required form does not exist in e-Builder, Consultant may include a form of its own or one provided by the City (if available) as an attachment to a submittal or process.
- 15.8** Archive Copies. When requested by City, Consultant shall keep an archive copy of all digital data created by Consultant, or submitted to Consultant via e-mail, or

resident on e-Builder for the duration of the Agreement. Such data shall be available to City, and authorities with the jurisdiction (including funding agencies or representatives) on demand.

- 15.9** Should the City replace e-Builder with a different project management tool, Consultant, and subconsultants shall be required to use the new project management tool selected by the City.

EXHIBIT B
SCHEDULE OF FEES AND PAYMENT PROVISIONS

SECTION 1. MAXIMUM COMPENSATION

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

SECTION 2. RATES

2.1 Rate Schedule

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

2.2 Fixed Rates

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

2.3 Additional Rates

If a specific rate, labor classification, equipment type, or service type required under this Agreement is not listed in Appendix B1, Consultant shall submit a written Proposal in response to the City's Work Request. The City shall review the Proposal, and, if acceptable, approve the proposed rate(s) through a Purchase Order or a written amendment. Consultant must clearly provide justification for any additional rates. No such rates shall be effective or compensable unless expressly approved by the City through a Purchase Order or a written amendment.

2.4 Rate Adjustments

After the first two years of the Agreement, rate adjustments may be negotiated no more than once annually. Consultant shall submit any proposed rate adjustments in writing to the City at least sixty (60) days prior to the requested effective date. Any proposed rate adjustments are subject to approval by the City and must be substantiated by the Consultant to the satisfaction of the City.

2.5 Labor Union or Prevailing Wage Adjustments

If Consultant's employees are covered by a collective bargaining agreement or prevailing wage determination that results in an increase in mandatory labor wages during the term

of the Agreement, Consultant may request a corresponding rate adjustment. Any such request shall include documentation substantiating the applicable labor agreement or prevailing wage determination, the effective date and percentage of the wage increase, and a demonstration of how the increase impacts the rates in Appendix B1.

SECTION 3. REIMBURSABLE EXPENSES

Consultant may pass through certain costs such as, but not limited to printing, materials, equipment, and travel as listed in the Reimbursable Expenses Schedule in this Section. Expenses shall be reimbursable only to the extent that (1) Consultant submits sufficient documentation to City that the expenses were directly incurred in providing the required Services, (2) Consultant demonstrates that such expenses are not already included in the hourly rates or unit prices, where applicable, (3) such expenses were approved by the City in advance pursuant to Section 6.3 of Exhibit A, including issuance of a Purchase Order, (4) Consultant submits itemized receipts, invoices, or other supporting documentation demonstrating that such reimbursable costs were incurred, and (5) any Mark Up conforms with the Reimbursable Expense Schedule below.

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 parts, materials, equipment, and services (including subconsultant fees, equipment, rental equipment, materials, and facilities not furnished directly by Consultant).	Not to exceed 10%
4.	Consultant may charge allowable mileage at the prevailing IRS rate per mile for business related travel. However, Consultant must submit backup documentation that includes the travel start and end locations, travel dates, and corresponding mileage cost. Mileage is not applicable to rental cars. Rental cars are reimbursed at actual fuel cost only.	No Markup
5.	Unless approved in writing (e-mail acceptable) in advance, reimbursement to Consultant (and any subconsultants) for meals, lodging, and related per diem will not exceed the rates outlined by United States General Services Administration (GSA) https://www.gsa.gov/travel-resources. Airfare and Rental Car: Airfare and rental car expenses, where applicable shall be reimbursed at economy rates.	No Markup

Reimbursable Expense Schedule		Mark Up
	Meals: Consultant may request reimbursement either as a meal per diem or for actual meal expenses, up to the applicable GSA per diem rate. When claiming per diem, receipts are not required. However, when claiming actual meal expenses, itemized receipts are required, and reimbursement shall not exceed the applicable GSA rate for each meal. If the Consultant pays its employees a per diem rate lower than the GSA rate, the Consultant may not charge the City for any difference between the amount paid and the GSA rate. Lodging: Lodging costs shall be reimbursed at actual cost, not to exceed the applicable GSA lodging rate. Itemized lodging receipts are required for reimbursement. Housing Allowance in Lieu of Meal and Lodging Per Diem: Consultants who are required to stay at the project site for more than ten (10) business days may elect to receive a housing allowance in lieu of the standard meal and lodging per diem. If Consultant elects to use corporate housing, a personal residence, or a relative's home in lieu of commercial lodging during the project engagement, written work authorization from the City is required. Upon such authorization, the City shall reimburse Consultant at a daily rate equal to the applicable GSA lodging per diem rate for the project location. This reimbursement shall be provided in lieu of both hotel lodging costs and meal per diem. Consultant shall certify that no other lodging or meal reimbursements are being claimed for the same period. Receipts are not required for Consultant electing this housing option."	
6.	Other travel expenses such as taxi, parking, and tolls.	No Markup
7.	Consultant may provide tips or gratuities only in accordance with standard business practices and in amounts not to exceed twenty percent (20%) of the applicable charge. Any gratuities provided must be customary to the industry and shall not be charged to the City unless expressly authorized in writing.	No Markup

Reimbursable Expense Schedule		Mark Up
	Any non-customary gratuities or tips exceeding this cap shall be the sole responsibility of the Consultant and shall not be reimbursable by the City.	
8.	Other reimbursable expenses with prior written approval from the City.	No Markup

SECTION 4. PAYMENT PROVISIONS

4.1 Time and Materials

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

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

4.2 Fixed Price

For Services authorized to be paid on a fixed price basis, Consultant shall base the invoice on either (a) the percentage of Services completed during the previous month or (b) a lump sum amount upon the completion of deliverable(s) and subject to the following:

- 4.2.1** Invoices must include the following information:
 - 4.2.1.1** Invoice Number, Purchase Order Number, and Invoice Period.
 - 4.2.1.2** Detailed information on the Services performed on each deliverable or task completed on each project, as applicable.
- 4.2.2** Consultant shall not invoice labor costs subject to prevailing wages in advance of performing the applicable Services.
- 4.2.3** With regard to milestone payments, Consultant shall invoice each milestone payment in full. Consultant shall not separate milestone payments into multiple invoices.

4.3 Pre-Payment

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

4.4 Payment Limited to Satisfactory Work.

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

4.5 Certified Payroll

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

4.6 Accurate Invoice

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

4.7 Payment

If there are no discrepancies or deficiencies in the submitted invoice and Consultant has submitted all required certified payroll, City shall process the invoice for payment. City will pay Consultant within thirty (30) days of City's approval of Consultant's invoice.

4.8 Confidential

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

**APPENDIX B1 TO EXHIBIT B
RATE SCHEDULE**

LABOR CLASSIFICATION	FULLY BURDENED HOURLY RATES
Engineering Management	
Senior Project Manager II	\$282
Senior Project Manager I	\$255
Project Manager II	\$226
Project Manager I	\$205
Environmental Project Manager II	\$219
Environmental Project Manager I	\$178
Senior Engineer II	\$258
Senior Engineer I	\$221
Senior Project Supervisor	\$211
Project Supervisor	\$165
Project Engineer II	\$188
Project Engineer I	\$177
Associate Engineer II	\$185
Associate Engineer I	\$173
Design Engineer III	\$155
Design Engineer II	\$143
Design Engineer I	\$135
Engineering Intern	\$ 94
Senior Designer II	\$185
Senior Designer I	\$172
Designer III	\$152
Designer II	\$131
Designer I	\$112
Program Management / Support Staff	
Project Controls Coordinator	\$232
Project Controls Specialist III	\$180
Project Controls Specialist II	\$141
Project Controls Specialist I	\$117
Senior Drafter II	\$130
Senior Drafter I	\$125
Drafter III	\$114

Drafter II	\$111
Drafter I	\$ 98
Administrative Executive	\$147
Administrative Assistant	\$ 83
Survey / Real Estate	
Senior Surveyor	\$197
Surveyor II	\$160
Surveyor I	\$134
Survey Technician II	\$114
Survey Technician I	\$ 84
Senior Real Estate Specialist	\$186
Real Estate Specialist II	\$157
Real Estate Specialist I	\$105
CONSTRUCTION / FIELD TESTING²³⁷	
Senior P&C Technician	\$243
Protection & Controls (P&C) Technician	\$181
Construction Project Manager	\$247
Field Construction Manager	\$236
Technician III / Inspector III	\$174
Technician II / Inspector II	\$150
Technician I / Inspector I	\$100
Safety Specialist	\$179
Corporate Project Management / Technical Oversight	
Principal	\$289
Director / PhD	\$289

EXHIBIT C INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant 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 Consultant's insurance. The minimum coverages, provisions and endorsements are as follows:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each

insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

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

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Consultant and/or its subconsultants involved in such activities shall provide coverage with a limit of one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Consultant 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 Consultant or any subconsultant under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. 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 Consultant. 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 one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

E. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Consultant's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Consultant 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 indemnitied 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 Consultant's insurance.
3. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written

notice shall be given at least ten (10) days prior to the effective date of non-renewal.

- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

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 A through E of this Attachment E, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and City agree as follows:

1. Consultant agrees to ensure that subconsultants, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant 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. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subconsultants and others engaged in the project will be submitted to City for review.
2. Consultant 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 Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect

thereto.

3. The City reserves the right to withhold payments from the Consultant in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Consultant, and each and every subconsultant (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. Consultant 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.

H. EVIDENCE OF COMPLIANCE

Consultant 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, Consultant 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 mailed to:

EBIX Inc.
City of Santa Clara Electric Department
P.O. Box 100085 – S2 or 1 Ebix Way
Duluth, GA 30096 John's Creek, GA 30097

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Consultant shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its 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. Consultant shall be obligated to pay not less than the General Prevailing Wage Rate, which can be found at www.dir.ca.gov and are on file with the City Clerk's office, which shall be available to any interested party upon request. Consultant is also required to have a copy of the applicable wage determination posted and/or available at each job site.
2. Specifically, Consultant shall comply with 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. Consultants, subconsultants, and subconsultants 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.
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, Consultant agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subconsultants or subcontractors) for the time period covering such payment request. Consultants 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, Consultant, all subconsultants 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 consultant, contractor, subconsultant, 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 consultant, contractor, subconsultant, 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. Consultant 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 consultants/subconsultants/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 consultant, subconsultant, contractor or subcontractors not be a registered public works contractor and perform work on the project, Consultant 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 Exhibit shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City

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 Consultant'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 Consultant until Consultant has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Consultant until all required documentation is submitted. Any payment by the City despite Consultant's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of this Exhibit.
4. City or the California Department of Industrial Relations may impose penalties upon consultants and subconsultants 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.