

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
PROENERGY SERVICES, LLC**

1. PARTIES AND DATE.

This Agreement is made and entered into on the date last signed by the Parties (the “Effective Date”) by and between the City of Santa Clara, a municipal corporation organized under the laws of the State of California with its principal place of business at 1500 Warburton Avenue, Santa Clara, CA, 95050, State of California (“City”) and **ProEnergy Services, LLC**, a Missouri limited liability company, **with its principal place of business at 2001 Pro Energy Boulevard, Sedalia, Missouri 65301** (“Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing /maintenance services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that is familiar with the plans of City. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

2.2 Project.

City desires to engage Contractor to perform as-needed field and depot services and repairs (“Services”), as well as supply of equipment, parts, and materials (“Equipment”), for gas turbine engines at Donald Von Raesfeld (DVR) Power Plant as set forth in this Agreement.

3. TERMS.

3.1 Purchase Orders; Order of Precedence.

From time to time during the Term, City may issue Purchase Orders for Services contemplated by this Agreement. Each Purchase Order accepted by Contractor shall be

deemed incorporated into and governed by this Agreement. This Agreement, together with its exhibits and any amendments thereto, shall exclusively govern all Purchase Orders issued by City and accepted by Contractor.

Any terms or conditions contained in any Purchase Order, request for services, work order, procurement document, invoice, acknowledgment, online portal, or other document that are different from, inconsistent with, or in addition to the terms of this Agreement are hereby rejected and shall be void and of no force or effect unless expressly accepted in a written amendment executed by authorized representatives of both Parties.

Nothing in this Agreement shall obligate Contractor to accept any minimum number of Purchase Orders or any particular Purchase Order issued by City. Contractor shall have sole discretion to accept or reject any Purchase Order. No Purchase Order shall be binding upon Contractor unless accepted in writing by Contractor or by Contractor's commencement of performance of the Services described therein.

3.2 Scope of Services and Term.

3.2.1 General Scope of Services. Contractor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional maintenance services necessary to perform the Services and supply the Equipment. The Services and Equipment are more particularly described in Exhibit "A" and the following Exhibits. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. This Agreement includes the following Exhibits:

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees and Payment Provisions

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance

Exhibit E – Contract Modifications

3.2.2 Term. Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by written amendment to this Agreement, the term of this Agreement shall begin on **September 1, 2026** and terminate on **September 30, 2031** ("Initial Term").

After the Initial Term, City reserves the right, at its sole discretion, to extend the term of this Agreement for up to five (5) additional years through **September 30, 2036** ("Option Periods") in such increments as determined by City. The Option Periods shall be authorized through an Amendment to this Agreement executed by the Parties. The Initial Term and Option Periods shall collectively be referred to as "Term".

3.3 Responsibilities of Contractor.

3.3.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.3.2 Schedule of Services. Contractor shall perform the Services within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services and supply the Equipment in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.3.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

3.3.4 City's Representative. The City hereby designates Nico Procos, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.3.5 Contractor's Representative. Contractor hereby designates Clint Jungerman, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.3.6 Coordination of Services and Equipment. Contractor agrees to work closely with City staff in the performance of Services and supply of Equipment and shall

be available to City's staff, consultants and other staff at reasonable times during working hours.

3.3.7 Standard of Care; Performance of Employees. Contractor 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. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any employee of the Contractor or its sub-contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed by the Contractor and shall not be re-employed to perform any of the Services.

3.3.8 Period of Performance. Contractor shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Contractor shall perform the Services in strict accordance with any completion schedule or milestones described in Exhibits "A" or "B" attached hereto, or which may be provided separately in writing to the Contractor in the applicable Purchase Order. Contractor agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such completion schedule or milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage.

3.3.9 Disputes. Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the size of any payment to Contractor during the performance of this Contract, Contractor shall continue to perform the Work while said dispute is mutually decided by the Parties. If the Parties cannot reach an amicable decision, either Party shall have such remedies as may be provided by law.

3.3.10 Laws and Regulations; Employee/Labor Certifications. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and will be complied with. These include but

are not limited to the payment of prevailing wages, the stipulation that eight (8) hours' labor shall constitute a legal day's work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.3.10.1 Employment Eligibility; Contractor. By executing this Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Contractor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for in Section 3.2.10 or any of its sub-sections.

3.3.10.2 Employment Eligibility; Subcontractors, Sub-subcontractors and Consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any work relating to the Services or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.10.1.

3.3.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Contractor verifies that they are a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in Sections 3.2.10.1 or 3.2.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Contractor under Section 3.2.10.2); or (3) failure to immediately remove from the performance of the Services any person found not to be in compliance with such requirements.

3.3.10.4 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to

undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.3.10.5 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.3.10.6 Air Quality. To the extent applicable, Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the Bay Area Air Quality Management District (BAAQMD). Although the BAAQMD limits and requirements are more broad, Contractor shall specifically be aware of their application to "portable equipment", which definition is considered by BAAQMD to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by BAAQMD or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.3.10.7 Water Quality.

(A) **Management and Compliance.** To the extent applicable, Contractor's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); laws, rules and regulations of the Environmental Protection Agency and the State Water Resources Control Board and the Santa Ana Regional Water Quality Control Board; the City's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

(B) **Liability for Non-Compliance.** Failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Contractor or City to penalties, fines, or additional regulatory requirements. Contractor shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from and against any and all fines, penalties, claims or other regulatory requirements imposed to City as a result of Contractor's non-compliance with the laws, regulations and policies described in this Section, unless such non-compliance is the result of the sole established negligence, willful misconduct or active negligence of

the City, its officials, officers, agents, employees or authorized volunteers.

(C) Training. In addition to any other standard of care requirements set forth in this Agreement, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in this Section as they may relate to the Services provided under this Agreement. Upon request, City will provide Contractor with a list of training programs that meet the requirements of this paragraph.

3.3.11 Insurance.

3.3.11.1 Time for Compliance. Contractor shall not commence the Services until it has provided evidence satisfactory to the City that it has secured all insurance requirements set forth in Exhibit C.

3.3.12 Accounting Records. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.3.13 Work Sites.

3.3.13.1 Inspection Of Site. If required, Contractor shall visit sites where Services are to be performed and shall become acquainted with all conditions affecting the Services prior to commencing the Services. Contractor shall make such examinations as it deems necessary to determine the condition of the work sites, its accessibility to materials, workmen and equipment, and to determine Contractor's ability to protect existing surface and subsurface improvements. No claim for allowances—time or money—will be allowed as to such matters after commencement of the Services.

3.3.13.2 Field Measurements. If required, Contractor shall make field measurements, verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents, including any plans, specifications, or scope of work before commencing Services. Errors, inconsistencies or omissions discovered shall be reported to the City immediately and prior to performing any Services or altering the condition.

3.3.14 Warranty. Contractor warrants all Services provided and Equipment supplied under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or

faulty material and workmanship. The warranty term for all Equipment supplied under the applicable Purchase Order shall be for a period of twelve (12) months from the first use or eighteen months from the delivery date of the Equipment to a City-designated site, and for all Services provided by Contractor under the Purchase Order shall be for a period of twelve (12) months from the date Contractor has performed said Services. Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Services or Equipment or non-conformance of the Services or Equipment to the Agreement and Purchase Order, commence and prosecute with due diligence all Services or Equipment necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the work (or work of other contractors) damaged by its defective Services (or Equipment) or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for the remainder of the original warranty term or 120 days from the rework completion, whichever is longer.

Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All warranted repairs and replacements (other than Services performed at site) shall be made Ex-Works Contractor's designated facility (per Incoterms, latest version) unless otherwise agreed in writing. Notwithstanding the foregoing, all transportation costs associated with such corrective actions and testing of the Equipment, shall be the sole responsibility of the Contractor; provided, however, that if the applicable warranty claim is ultimately determined not to constitute a warrantable defect attributable to Contractor, Owner shall be responsible for all transportation, testing, inspection, removal, installation, and related costs associated with such claim. Removal and installation costs associated with the corrective actions shall be included in Contractor's warranty responsibility if removal and installation was part of the Services included and described in the applicable Purchase Order. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement; provided, however, that Contractor shall use commercially reasonable efforts to obtain and assign to the City those warranties and guarantees that are assignable and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City, to the extent such warranties and guarantees are not assigned to the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Services (or Equipment) and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. The duties, liabilities and obligations of Contractor hereunder do not extend to any repairs, adjustments, alterations, replacements or maintenance that may be required as a result of normal wear and tear, normal degradation in the

Equipment (including Services provided) or as a result of (a) improper repair or alteration by City or other persons, (b) misuse, negligence or damage by City or other persons, and (c) failure of City to materially comply with the Contractor's or the manufacturer's written instructions regarding the operation or maintenance of the Equipment. The warranty and remedies are further conditioned upon (i) the proper storage, installation, operation and maintenance of the Equipment and conformance with the operation and instruction manuals provided by the suppliers and manufacturers and (ii) repair or modification pursuant to the instructions of the suppliers and manufacturers and as otherwise directed by Contractor.

This section of the Agreement sets forth the exclusive remedies for all warranty claims based on failure of or defect in the equipment (including services provided) whether the failure arises before, during or after the warranty period. NO IMPLIED, STATUTORY, OR COMMON LAW WARRANTY OF ANY KIND, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY.

3.4 Fees and Payments.

3.4.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The maximum compensation of this Agreement is **Ten Million Dollars (\$10,000,000)**, 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 Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance without written approval of the City Manager or City Council, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.4.2 Payment of Compensation. Contractor shall submit invoices according to Exhibit B. Unless otherwise agreed, payment shall be made net thirty (30) days after receipt of invoice.

3.4.3 Deductions. City may in good faith deduct or withhold, as applicable, from each progress payment an amount necessary to protect City from loss because of: (1) stop payment notices as allowed by state law; (2) failure to prosecute the Services in accordance with the requirements of this Agreement or the applicable Purchase Order by Contractor; (3) sums representing expenses, losses, or damages as determined by the City, incurred by the City for which Contractor is liable under the Agreement; and (4) any other sums which the City is entitled to recover from Contractor under the terms of the Agreement or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

3.4.4 Reimbursement for Expenses. Contractor shall submit reimbursable

expenses according to Exhibit B.

3.4.5 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Services, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.4.6 Prevailing Wages. In the event the Services require payment of prevailing wage, Contractor shall comply, and ensure its subcontractors comply with Exhibit D.

3.4.7 Contractor 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, Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure by Contractor or its employees, agents, contractors, and subcontractors to comply with the prevailing wage laws.

3.5 Termination of Agreement.

3.5.1 Termination for Convenience. City may, by written notice to Contractor, terminate the whole or any part of an applicable Purchase Order) at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. In the event of a termination for convenience, Contractor shall immediately cease the affected Services in an orderly manner and take commercially reasonable steps to mitigate costs. City shall pay Contractor: (i) for all Services properly performed under the Purchase Order through the effective date of termination(ii) for all reasonable and documented costs and expenses incurred prior to the effective date of termination in connection with commitments, purchase orders, subcontracts, materials, equipment, and other obligations entered into by Contractor in furtherance of the Services that cannot be cancelled, returned, reassigned, mitigated, or otherwise reasonably reused by Contractor; and (iiiv) all reasonable and documented demobilization, subcontractor closeout, and termination-related costs actually incurred by Contractor as a result of such termination. Notwithstanding the foregoing, these termination costs cannot the maximum compensation amount set forth in the applicable Purchase Order.

3.5.2 Termination for Cause. Either City or Contractor may terminate the Agreement (or applicable Purchase Order) for cause if the other party materially breaches its obligations under the Agreement (or applicable Purchase Order). The non-breaching party shall provide written notice specifying the nature of the breach in reasonable detail, and the breaching party shall have thirty (30) days after receipt of such notice to cure the breach; provided, however, that if the breach is not reasonably capable of being cured within such thirty (30)-day period, the breaching party shall have such additional period as is reasonably necessary to complete the cure, so long as it promptly commences and diligently pursues such cure.

If the breaching party fails to cure the breach within the applicable cure period, the non-breaching party may terminate the Agreement (or applicable Purchase Order) for cause upon ten (10) days' prior written notice.

Termination for cause shall be in addition to, and not in lieu of, any other rights or remedies available to the non-breaching party at law or in equity arising from such breach. Subject to the terms of this Agreement and applicable law, the non-breaching party may pursue all remedies available as a result of the uncured breach. Notwithstanding the foregoing, in the event City terminates the Agreement (or a Purchase Order) for cause, Contractor shall remain entitled to payment for all undisputed amounts due for Services properly performed prior to the effective date of termination.

3.6 General Provisions.

3.6.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Contractor:

ProEnergy Services,
LLC 2001 ProEnergy
Blvd
Sedalia, Missouri 65301
Attn: Jeff Canon

City:

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

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.6.2 Indemnification.

3.6.2.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, employees, agents and authorized volunteers free and harmless from any and all third-party claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity,

regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Services or this Agreement, including without limitation the payment of all expert witness fees, attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole or active negligence or willful misconduct of the City or the City's agents, servants, or independent contractors who are directly responsible to the City, or for defects in design furnished by those persons.

3.6.2.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense and risk, any and all third-party Claims covered by this section that may be brought or instituted against City or its officials, employees, agents and authorized volunteers. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, employees, agents and authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its officials, employees, agents and authorized volunteers.

3.6.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

3.6.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6.5 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with the Services.

3.6.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.6.7 Assignment or Transfer. Neither Party shall assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the other Party. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.6.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.6.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.6.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.6.11 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 3.5.7, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.6.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.6.13 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the

term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.6.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.6.15 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.6.16 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6.17 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.6.18 Exhibit E. Exhibit E modifies the terms of the Agreement, attached hereto and incorporated herein by reference.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE FOR AGREEMENT FOR SERVICES
BETWEEN THE CITY OF SANA CLARA
AND PROENERGY SERVICES, LLC.**

IN WITNESS WHEREOF, the Parties have entered into this Agreement on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

GLEN R. GOOGINS
City Attorney

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

PROENERGY SERVICES, LLC
a Missouri limited liability corporation

Dated: _____

By (Signature): _____

Name: Lance Herrington

Title: VP Commercial Operations

Principal Place of
Business Address: 2001 ProEnergy Boulevard, Sedalia, MO 65301

Email Address: lherrington@proenergyservices.com

Telephone: 660-829-5100

EXHIBIT A
SCOPE OF SERVICES

TABLE OF CONTENTS

SECTION 1.	GENERAL	17
SECTION 2.	SERVICES TO BE PERFORMED	17
SECTION 3.	SPECIFIC REQUIREMENTS	19
SECTION 4.	REPORTS	20
SECTION 5.	COMPLETION OF SERVICES	21
SECTION 6.	SCHEDULING AND PLANNING	21
SECTION 7.	SERVICE REQUEST	21
SECTION 8.	WORKMANSHIP	24
SECTION 9.	PERMITS AND LICENSES	24
SECTION 10.	CITY FURNISHED MATERIALS	24
SECTION 11.	WORK AREA	24
SECTION 12.	CONTRACTOR'S EQUIPMENT, TOOLS, AND MATERIALS	25
SECTION 13.	DISPOSAL OF WASTE AND SCRAPS	25
SECTION 14.	SAFETY	26
SECTION 15.	INJURY/PROPERTY DAMAGE	27
SECTION 16.	CONTRACTOR PERSONNEL	27
SECTION 17.	E-BUILDER	28
SECTION 18.	TRANSPORTATION, SHIPPING AND FREIGHT	29

SECTION 1. GENERAL

- 1.1** Contractor shall provide all necessary supervision, labor, tools, equipment, materials, and supplies required to perform Field and Depot Services, including Parts and Repairs, for Gas Turbine Engines ("Services") at the Donald Von Raesfeld (DVR) Power Plant for Silicon Valley Electric, the Electric Utility of the City of Santa Clara (hereinafter "City" or "SVP").
- 1.2** Contractor 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** Contractor will primarily perform Services in City of Santa Clara limits.
- 1.4** Contractor will primarily perform Services on SVP's General Electric or GE Vernova (GE) LM6000PC gas turbine engines, either onsite at the DVR Power Plant within the City of Santa Clara or at Contractor's depot facility.

SECTION 2. SERVICES TO BE PERFORMED

2.1 Field Support Services – Contractor shall:

2.1.1 Provide scheduled maintenance activities including, but not limited to:

2.1.1.1 Semi-annual routine inspections

2.1.1.1.1 Conduct approximately every 4,000 operating hours or based on engine condition determined by semi-annual inspections

2.1.1.1.2 Perform borescope examination, visual inspection, full system checks, and calibration of critical components to ensure reliable performance

2.1.1.1.3 Review borescope results and plan for next borescope or any required maintenance.

2.1.1.2 Hot section rotatable exchange services

2.1.1.2.1 Perform onsite during a planned outage every 14,000-16,000 hours of gas fuel operation or based on engine condition determined by semi-annual inspections

2.1.1.2.2 Replace the hot section components with refurbished or new portable parts to maintain efficiency and reduce downtime

2.1.1.3 Overhaul major gas turbine engine

- 2.1.1.3.1** Perform complete overhauls approximately every 50,000 hours or based on engine condition determined by semi-annual inspections at an overhaul depot.
- 2.1.1.3.2** Conduct complete disassembly and detailed engine inspections
- 2.1.1.3.3** Reassemble using a combination of new, refurbished, and serviceable components
- 2.1.1.3.4** Perform testing in a controlled test cell environment and post-overhaul function checks

2.1.2 Provide on-site services, including but not limited to:

- 2.1.2.1** Review latest recommendations, improvements, and technical information letters and recommend which should be implemented.
- 2.1.2.2** Perform a full borescope inspection, package inspection, controls inspections and calibrations as needed
- 2.1.2.3** Implementation of product bulletins, service bulletins, and other OEM recommendations
- 2.1.2.4** Perform preventive and corrective maintenance and inspections perform on the exterior of installed gas turbine
- 2.1.2.5** Remove and install gas turbines
- 2.1.2.6** Separation of generator and power turbine
- 2.1.2.7** Turbine preservation and shipping
- 2.1.2.8** Verify full alignments
- 2.1.2.9** Troubleshoot all aspects of package and engine problems
- 2.1.2.10** Perform repairs and remedial measures identified during inspection and maintenance including but not limited to on-site Level 1 or 2 maintenance work packages if needed.

2.2 Depot Services - Contractor shall:

- 2.2.1** Complete disassembly and assembly of modules down to individual piece parts
- 2.2.2** Repair, recondition, and replace of piece parts and accessories

2.2.3 Gas generator, gas turbine and/or power turbine testing in test cell as per GEK 112163.

2.2.4 Repair and replace high and low pressure compressor (HPC/LPC) components

2.2.5 Replace hot section and combustor components

2.2.6 Replace internal engine components

2.2.7 Transport equipment from the City to Contractor's depot facility

2.2.8 Provide inspections services, including but not be limited to:

2.2.8.1 Review latest recommendations, improvements, and technical information letters and advice on implementation

2.2.8.2 Review borescope results and plan subsequent borescope inspections or required maintenance

2.2.9 Remedial measures

2.2.9.1 Address issues discovered during turbine inspections

2.2.9.2 Restore gas turbine system to optimal operating condition

2.3 Other as-needed services

2.3.1 Develop and implement routine, preventive and condition-based maintenance programs

2.3.2 Institute comprehensive reporting procedures to ensure close communication with City staff

2.3.3 Supply parts as required to maintain, repair, and perform services

2.3.4 Provide rental of temporary engines and related equipment as needed to support engine functionality during maintenance and repairs

2.3.5 Provide miscellaneous field support and depot services

SECTION 3. SPECIFIC REQUIREMENTS

3.1 Contractor 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 management
- 3.1.5** On-site certified forklift operator
- 3.1.6** Expedited procurement and transportation of materials, parts, and equipment when requested by the City.

SECTION 4. REPORTS

4.1 Service Reports

4.1.1 Within seven (7) days after written final acceptance by the City of Services, Contractor shall provide a report to the City, which shall include the following information:

- 4.1.1.1** Description of the Services performed
- 4.1.1.2** Summary of existing conditions
- 4.1.1.3** Description of noted issues/deficiencies (including photos, where applicable) and recommended corrective action
- 4.1.1.4** Summary of parts and materials provided by Contractor, including serial number of all parts removed and installed
- 4.1.1.5** Any information that may be requested by the City

4.1.2 For Borescope service finding reports, Contractor shall communicate to the City as follows:

- 4.1.2.1** Verbally on the same day or within 12 hours
- 4.1.2.2** Within 24 hours, send an email with photos, location, dimensions, and other information describing the finding.
- 4.1.2.3** Within 72 hours, send photos, location, dimensions, measurements and engineering disposition.
- 4.1.2.4** Within 7 calendar days, send a full report in electronic format (e.g., PDF, Word).

4.2 Status Reports

4.2.1 Contractor shall provide regular cost, schedule, and status updates on Services performed throughout the Term, as requested by City.

4.2.2 City may, at its sole discretion, require Contractor to provide status updates daily (for work performed at DVR), weekly, or monthly at the direction of City.

4.3 Contractor shall provide all reports in electronic format if requested by the City.

SECTION 5. COMPLETION OF SERVICES

Contractor shall perform and complete the Services in a timely, efficient manner, Contractor shall also (1) ensure the site is restored to its condition at the issuance of the applicable Purchase Order, and (2) equipment and/or system is operational as soon as possible.

SECTION 6. SCHEDULING AND PLANNING

6.1 Contractor shall coordinate with City to schedule the performance of Services including, if applicable, scheduling outages. When requested by City, Contractor shall plan, staff and execute scheduled Services according to a mutually agreed upon schedule.

6.2 Contractor will generally perform the Services during the City's regular business hours, Monday through Friday, excluding City holidays, unless otherwise approved by the City in writing. City may, at its discretion, authorize or required Contractor to perform Services during non-business hours.

6.3 Contractor shall provide a response no more than 48 hours during standard working hours to a request made by the City for technical support. . Contractor shall provide an emergency contact phone number at which an individual can be reached at any time. Contractor shall respond via phone or email to an emergency request within 24 hours of the City's notification. Contractor and City shall mutually agree on scheduling the required emergency service.

6.3.1 Contractor shall make reasonable efforts to be on-site within 48 hours of notification to perform the Services.

6.3.2 Contractor shall repair the affected equipment or resolve the emergency as soon as reasonably possibly but in no event later than seven (7) business days from notification, unless a later timeframe is mutually agreed upon by the Parties in writing. If Contractor immediately notifies City that it cannot complete the foregoing within this timeline, Contractor shall provide the City within three (3) business days (or such additional time period as City may authorize in writing) a written plan and schedule for completion.

SECTION 7. SERVICE REQUEST

7.1 Contractor acknowledges that Contractor 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 7. The City does not guarantee that any specific service

will be authorized under this Agreement. This Section 7 contains the process for awarding Services under a master agreement process.

- 7.2** When the City requires services, City will notify contractor(s) under contract to provide a written proposal. City will provide a description of the Services required and any other pertinent information (Work Request).
- 7.3** Contractor shall prepare and submit a written proposal (Proposal). Contractor'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.
- 7.4** The City will review the Proposal, and may elect to approve it, reject it, or use it as a basis for further negotiations with Contractor, including negotiate the scope, schedule, staffing, and pricing.

7.5 Authorization of Work; Issuance of Purchase Order

- 7.5.1** If there are multiple firms, the City will select a contractor proposal based on evaluation/award criteria established by the City. If City accepts Contractor's proposal, 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.
- 7.5.2** Each Purchase Order shall incorporate, as applicable, the Proposal approved by the City.
- 7.5.3** Contractor 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 Contractor elects not to perform the Services. If Contractor (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 Contractor 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.

7.6 Additional Services or Modifications

- 7.6.1** Contractor 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. Contractor shall provide the reason for the change specific to each Purchase Order. Contractor 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, Contractor shall submit justification demonstrating that changes in cost are associated with changes in scope.

- 7.6.2** 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.
- 7.6.3** 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 7.2.
- 7.6.4** Contractor 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.

7.7 Immediate Need / Interim Work Orders

- 7.7.1** The City may authorize Contractor 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:
 - 7.7.1.1** 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.
 - 7.7.1.2** In the event work is required to maintain a critical City function or project schedule.
- 7.7.2** Each interim authorization shall at a minimum identify the specific scope of services, a maximum compensation, and such other information the City may require.
- 7.7.3** Following issuance of an interim authorization, Contractor 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.
- 7.7.4** 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.

- 7.8** A Purchase Order must be consistent with – and cannot alter - the terms and conditions of this Agreement. The terms and conditions of this Agreement shall prevail over any and all terms and conditions contained in a Proposal or Purchase Order, even if the Proposal or Purchase Order expressly states that it is intended to control. Any conflicting terms and conditions in a Proposal or Purchase Order are invalid and unenforceable. The order of

precedence is as follows: (1) Agreement and any exhibits or amendments thereto, (2) Purchase Order, and (3) Proposal.

- 7.9** The City may terminate a Purchase Order for convenience with ten (10) days prior written notice to Contractor. In such event, the Contractor shall have no further rights hereunder, except that Contractor 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 8. WORKMANSHIP

- 8.1** All parts and/or components replaced or newly installed in the system shall be factory new and free of defects in title, materials and workmanship at the time of their delivery and installation. However, if approved by the City in writing including as part of a Purchase Order, Contractor may use rebuilt parts or new parts from another manufacturer if such alternate parts and/or components are approved by the original manufacturer and/or City for use in the specific piece of equipment of the system.
- 8.2** Poor or inferior workmanship, as determined at the sole discretion of the City, shall be removed and replaced to conform to the quality standards of the industry, or otherwise corrected to the City's satisfaction, at Contractor's sole expense.
- 8.3** City reserves the right to inspect any Services performed by Contractor and its subcontractors. If, upon inspection, the City determines that there is any unsatisfactory or defective Services, the Contractor must correct the Services at no additional cost to the City.

SECTION 9. PERMITS AND LICENSES

- 9.1** Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates required by any statute, ordinance, rule, or regulation in order to perform the Services.
- 9.2** Contractor is responsible for obtaining an 811-dig permit for any Services that require digging.

SECTION 10. CITY FURNISHED MATERIALS

Contractor shall credit the City for any City-furnished materials that are used, lost, stolen, damaged or rendered unusable by actions of Contractor.

SECTION 11. WORK AREA

- 11.1** Contractor 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 Contractor's performance of Services. Upon completion of the scheduled Services or at

the end of each day, whichever comes first, Contractor 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.

- 11.2** Contractor shall comply with all City requests regarding cleanup both during the course of and upon completion of Services. If Contractor fails to clean the work area within forty-eight hours (48) after demand by the City, City may charge Contractor for any costs of clean-up or other services required to adequately protect City property or restore work area to a safe condition. City may invoice Contractor or deduct costs from Contractor's invoice at City's sole discretion.
- 11.3** Where applicable, Contractor must provide work and traffic control signage to warn pedestrians and vehicular traffic of work in progress. Contractor 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.
- 11.4** Contractor shall make all reasonable efforts to minimize obstructions and inconvenience to City operations, employees, and the public during the performance of Services.

SECTION 12. CONTRACTOR'S EQUIPMENT, TOOLS, AND MATERIALS

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

- 12.1** Contractor 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 Contractor. Neither Contractor nor its workers shall attempt to borrow tools or other materials from City personnel.
- 12.2** Contractor 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.
- 12.3** Contractor shall safely store and secure tools, equipment, and vehicles under lock and key when not in use. Contractor will not leave keys in any vehicles or equipment when not in use. Contractor shall promptly report to the City any loss or damage to tools, equipment, or vehicles.
- 12.4** City will not be responsible for the loss of tools, equipment, or materials.

SECTION 13. DISPOSAL OF WASTE AND SCRAPS

- 13.1** 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. Contractor is

solely responsible for arranging and implementing proper handling, management, storage, transport, and disposal of all wastes including any hazardous materials.

- 13.2** Contractor 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.
- 13.3** Contractor shall recycle or salvage all materials, where feasible, and shall credit the value of any recycled or salvaged materials to the City.

SECTION 14. SAFETY

- 14.1** Safety must always be the top priority. Contractor shall take all necessary precautions for the safety of all persons, property, and the public during the performance of Services. Contractor 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.
- 14.2** Where applicable, Contractor 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.
- 14.3** If required by applicable law due to the nature of the Services, Contractor 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. Contractor shall make a copy available to the City upon request and shall keep a copy accessible at the work site.
- 14.4** As applicable, Contractor 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 Contractor during these inspections.
- 14.5** Where applicable, Contractor must comply with all site-specific safety requirements and procedures, including but not limited to Lockout/Tagout (LOTO), Energy Isolation, Confined Space, Fall Protection, Chemical Safety, Hazardous Waste, and Personnel Protective Equipment (PPE). Contractor must comply with SVP's clearance program for equipment safety requirements. City will provide the clearance program to the Contractor.
- 14.6** Where applicable, Contractor's employees (including any subcontractors) 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 Contractor.
- 14.7** When requested by the City, Contractor 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 Contractor Project Manager/On-Site Supervisor (as defined in Section 17) and Contractor employees.

SECTION 15. INJURY/PROPERTY DAMAGE

Contractor shall notify the City immediately in the event of an injury or property damage that occurs during the performance of Services. Contractor shall investigate the reported injury or damage upon request from City and provide City with regular updates including all accident reports until the investigation is resolved. City reserves the right to perform its own investigation. Should City choose to conduct its own investigation, Contractor shall assist as required.

SECTION 16. CONTRACTOR PERSONNEL

16.1 Project Manager/On-Site Supervisor

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

16.2 Staffing

16.2.1 Contractor shall be responsible for its employees' professional and technical competence and will select appropriate individuals who are qualified, certified, and/or licensed to perform the assigned task.

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

16.2.3 Contractor shall inform City immediately of any change in key personnel assigned to this agreement. Contractor shall submit the resumes and other qualifications of the proposed replacement employee(s) to City for review and approval.

16.2.4 City may reasonably request reassignment of key staff, including the Project Manager. In the event of a request, Contractor shall submit the resumes and other qualifications of proposed replacement employee(s) to City for review and approval.

16.3 Employee Training

16.3.1 At Contractor's sole cost and expense, Contractor shall provide recurring, periodic (no less than annual) training to its employees (including subcontractors) appropriate to the duties and responsibilities of each employee.

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

16.3.3 Contractor's training program shall follow Contractor's standard policies and procedures and shall be in compliance with all applicable federal, state, and local laws, including but not limited to safety and injury prevention training requirements contained in the OSHA standards.

16.3.4 Contractor 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.

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

16.4 Standards of Conduct

16.4.1 Contractor 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. Contractor shall ensure that while on or about the work site, its employees do not:

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

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

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

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

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

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

SECTION 17. E-BUILDER

17.1 Use of e-Builder. When required by City, Contractor 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.

SECTION 18. TRANSPORTATION, SHIPPING AND FREIGHT

- 18.1** Contractor shall be responsible for shipment and delivery of all required products, parts, materials, and equipment to City. Contractor will pay all freight charges which may be reimbursed subject to the terms of this Agreement. All products, parts, materials, and equipment shall be entirely at Contractor's risk from the time they are placed in possession of the carrier for shipment to/from City until final acceptance by the City.
- 18.2** Contractor will pack and ship all products, parts, materials, and equipment in accordance with good commercial practices.
- 18.3** Contractor shall ensure that products, parts, materials, and equipment are insured against "all risks" from the time the products, materials, and equipment are placed in the possession of the carrier for shipment to/from the City until received by the City at the location set forth in the applicable Purchase Order.
- 18.4** Contractor shall notify City at least sixty (60) minutes prior to arrival of any deliveries to City. City will provide a contact name and phone number to the Contractor.

EXHIBIT B
SCHEDULE OF FEES AND PAYMENT PROVISIONS

SECTION 1. MAXIMUM COMPENSATION

- 1.1** The maximum compensation payable to Contractor 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, Contractor 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. Contractor 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. Contractor shall submit any proposed rate adjustments in writing to the City at least ninety (90) days prior to the requested effective date. Any proposed rate adjustments are subject to approval by the City and must be substantiated by the Contractor to the satisfaction of the City.

2.5 Labor Union or Prevailing Wage Adjustments

If Contractor'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, Contractor 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

Contractor 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) Contractor submits sufficient documentation to City that the expenses were directly incurred in providing the required Services, (2) Contractor demonstrates that such expenses are not already included in the hourly rates or unit prices, where applicable, (3) such expenses were approved by the City in advance pursuant to Section 7.3 of Exhibit A, including issuance of a Purchase Order, (4) Contractor 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 subcontractor fees, equipment, rental equipment, materials, and facilities not furnished directly by Contractor).	Not to exceed 10 %
4.	Contractor may charge allowable mileage at the prevailing IRS rate per mile for business related travel. However, Contractor 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 Contractor (and any subcontractors) 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	No Markup

Reimbursable Expense Schedule	Mark Up
reimbursed at economy rates. Meals: Contractor 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 Contractor pays its employees a per diem rate lower than the GSA rate, the Contractor 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. If Contractor elects to use corporate housing, a personal residence, or a relative's home in lieu of commercial lodging during the project engagement, written authorization from the City is required. Upon such authorization, the City shall reimburse Contractor for housing costs up to fifty percent (50%) of the applicable GSA lodging per diem rate for the project location. This reimbursement shall be provided in lieu of hotel lodging costs and shall not exceed the actual amount incurred, if any. Contractor shall certify in writing that no other lodging reimbursement is being claimed for the same period.	
6. Other travel expenses such as taxi, parking, and tolls.	No Markup
7. Contractor 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. Any non-customary gratuities or tips exceeding this cap shall be the sole responsibility of the Contractor	No Markup

Reimbursable Expense Schedule		Mark Up
	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, Contractor 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, Contractor 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** Contractor shall not invoice labor costs subject to prevailing wages in advance of performing the applicable Services.
- 4.2.3** With regard to milestone payments, Contractor shall invoice each milestone payment in full. Contractor 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 Contractor beginning the Services.

4.4 Payment Limited to Satisfactory Work.

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

4.5 Certified Payroll

When applicable, Contractor and all subcontractors 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 Contractor for correction and resubmittal before payment can be processed. Contractor 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 Contractor has submitted all required certified payroll, City shall process the invoice for payment.

4.8 Confidential

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

APPENDIX B1 TO EXHIBIT B RATE SCHEDULE

SECTION 1. RATES

Contractor shall charge, and the City shall pay for actual Services rendered and authorized according to the process outlined in Section 7 of Exhibit A. The rates applicable for the Services are listed below in Table B1 and Table B2.

Table B1 – LABOR RATES

LABOR CLASSIFICATION	STRAIGHT TIME HOURLY RATE	OVERTIME / HOLIDAY LABOR HOURLY RATE
Sr. Aero Field Technician	\$246.00	\$329.00
Sr. Aero Field Technician I&C	\$246.00	\$329.00
Mapper	\$362.50	\$486.00
Aero Field Technician	\$229.00	\$314.00
Technician I&C	\$229.00	\$314.00
Technician – LM Depot	\$125.00	\$146.00
Travel	At Straight Time Rate	

TABLE B2 – SERVICE RATES

SERVICE	UOM	RATE
Inspection Services (includes equipment)		
Borescope Inspection (BSI)	One (1)	\$6,035
Semi-Annual Inspection	Per Event Gas Turbine	\$13,450
Annual Inspection (BSI, Package Inspection, Controls Calibration)	Per Event Per Gas Turbine	\$23,835
Advanced Monitoring And Predictive Solutions (AMPS)	Per Quarter	\$20,000
Planned Maintenance (includes equipment)		
Hot Section Exchange (HSE) With Combustor Exchange With Assumed Fallout Rates Outlined In Attachment E Inclusive Of Field Services	Per Gas Turbine	\$2,510,000

Major Overhaul (Moh) With Assumed Fallout Rates Outlined In Attachment E For Lpc, Hpc, Hpt And Lpt Blades, Vanes, Nozzles And Shrouds. Inclusive Of Field Services	Per Gas Turbine	\$5,720,000
Variable Stator Vanes (Vsv) Bushing Replacement	Per Event Per Gas Turbine	\$82,850
Fuel Nozzle Overhaul/Exchange	Per Event Per Gas Turbine	\$55,625
Sprint Nozzle Overhaul/Exchange	Per Event Per Gas Turbine	\$90,595

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

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:

\$2,000,000 Each occurrence
\$4,000,000 General aggregate
\$4,000,000 Products/Completed Operations aggregate
\$2,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:

- 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, non-owned and hired autos.

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 Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. 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. 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 Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
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 D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

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

G. EVIDENCE OF COMPLIANCE

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

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 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.

I. Prevailing Wage Requirements

1. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate, which can be found at www.dir.ca.gov and are on file with the City Clerk's office, which shall be available to any interested party upon request. Contractor is also required to have a copy of the applicable wage determination posted and/or available at each job site.
2. Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime must be paid for work in excess of 8 hours per day or 40 hours per week pursuant to Labor Code Section 1811-1813.
3. Special prevailing wage rates generally apply to work performed on weekends, holidays and for certain shift work. Depending on the location of the project and the amount of travel incurred by workers on the project, certain travel and subsistence payments may also be required. Contractors and subcontractors are on notice that information about such special rates, holidays, premium pay, shift work and travel and subsistence requirements can be found at www.dir.ca.gov.
4. Only bona fide apprentices actively enrolled in a California Division of Apprenticeship Standards approved program may be employed on the project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are not properly supervised and employed in the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.
5. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, Contractor agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. Contractors shall submit certified payroll through LCP Tracker or similar system as directed by the City. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 *et seq.*, as well as any additional documentation requested by the City or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage

statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.

6. In addition to submitting the certified payrolls and related documentation to City, Contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and/or final payment.
7. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
8. No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered "public works contractor" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
9. All contractors/subcontractors and related construction services subject to prevailing wage, including but not limited to: trucking, surveying and inspection work must be registered with the Department of Industrial Relations as a "public works contractor". Those you fail to register and maintain their status as a public works contractor shall not be permitted to perform work on the project.
10. Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the City for any fines assessed by the California Department of Industrial Relations against the City for such violation, including all staff costs and attorney's fee relating to such fine.
11. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

J. 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 Contractor's address indicated for receipt of notices in this Agreement.

K. Enforcement

1. City shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., City may continue to hold sufficient funds to cover estimated wages and penalties under the Agreement.
2. Based on State funding sources, this project may be subject to special labor compliance requirements of Proposition 84.
3. The City is not obligated to make any payment due to Contractor until Contractor has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of this Exhibit.
4. City or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violation identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation each job site.
5. Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime must be paid for work in excess of 8 hours per day or 40 hours per week pursuant to Labor Code Section 1811-1813.
6. Special prevailing wage rates generally apply to work performed on weekends, holidays and for certain shift work. Depending on the location of the project and the amount of travel incurred by workers on the project, certain travel and subsistence payments may also be required. Contractors and subcontractors are on notice that information about such special rates, holidays, premium pay, shift work and travel and subsistence requirements can be found at www.dir.ca.gov.
7. 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.

8. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, Contractor agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. Contractors 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.
9. In addition to submitting the certified payrolls and related documentation to City, Contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and/or final payment.
10. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
11. No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered "public works contractor" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
12. All contractors/subcontractors and related construction services subject to prevailing wage, including but not limited to: trucking, surveying and inspection work must be registered with the Department of Industrial Relations as a "public works contractor". Those you fail to register and maintain their status as a public works contractor shall not be permitted to perform work on the project.
13. Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the City for any fines assessed by the California Department of Industrial Relations against the City for such violation, including all staff costs and attorney's fee relating to such fine.
14. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

L. 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 Contractor's address indicated for receipt of notices in this Agreement.

M. Enforcement

1. City shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., City may continue to hold sufficient funds to cover estimated wages and penalties under the Agreement.
2. Based on State funding sources, this project may be subject to special labor compliance requirements of Proposition 84.
3. The City is not obligated to make any payment due to Contractor until Contractor has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of this Exhibit.
4. City or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violation identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.

EXHIBIT E

CONTRACT MODIFICATIONS

Section 3.3.15 is hereby added to the Agreement to read as follows:

3.3.15 Bond Provisions. Should, in City's sole and reasonable opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

Section 3.3.13.1 is amended to read as follows:

3.3.13.1 Inspection of Site. Contractor shall visit sites where Services are to be performed and shall become acquainted with all conditions affecting the Services prior to commencing the Services. Contractor shall make such examinations as it deems necessary to determine the condition of the work sites, its accessibility to materials, workmen and equipment, and to determine Contractor's ability to protect existing surface and subsurface improvements. Following a site visit Contractor shall issue a written report to the City which will include a list of any conditions that may impact the schedule or cost in Contractor performing its Work. No claim for allowances—time or money—will be allowed as to such matters that could have been reasonably discovered or foreseen as part of any such site visit if the site visit occurs prior to the parties executing the contract.

Section 3.6.3 is amended to read as follows:

3.6.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in the State and Federal courts of California located in Santa Clara County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit

based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

Section 3.6.4 is amended to read as follows:

3.6.4 Time. Time is an important and material term for each and every provision of this Agreement. If Contractor is delayed in the performance or progress of the Work by a Force Majeure Event (as defined herein), then the Contractor shall be entitled to a time extension, which shall be equal to the period of time lost by the delay plus such additional time reasonably necessary to overcome the delay as agreed to by City and Contractor. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays and the Contractor will not receive an adjustment to the Total Contract Price or any other compensation.

A Force Majeure Event shall mean an event that materially affects a party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the project site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the work); (4) pandemics, epidemics or quarantine restrictions; and (5) strikes and other organized labor action occurring at the project site and the effects thereof on the work, only to the extent such strikes and other organized labor action are beyond the control of Contractor and its subcontractors, of every tier, and to the extent the effects thereof cannot be avoided by use of replacement workers. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of the City in its capacity as a municipal authority.

Section 3.6.15 is amended to read as follows:

3.6.15 Authority to Enter Agreement. Contractor and City each has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

Section 3.6.17 Entire Agreement is amended to read as follows:

3.6.17 Entire Agreement: This Agreement, including the Exhibits hereto, contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified in writing and signed by both parties. The parties have agreed to modify certain provisions in the Agreement as set forth in Exhibit E. In the event of any conflict between the terms set forth in Exhibit E and the Agreement, or any other Exhibits hereto, the terms in Exhibit E shall control.

Section 3.6.19 is added to the Agreement to read as follows:

3.6.19 Limitation of Liability. The total liability of Contractor for all claims of any kind, whether based on contract, warranty, tort (including negligence), indemnity, strict liability or otherwise, for any loss or damage arising out of, connected with, or resulting from this Agreement, the applicable Purchase Order or its work shall in no case exceed the total contract price set forth in section 3.4.1 plus any insurance proceeds recovered under the coverages furnished by Contractor under the Agreement. Notwithstanding the foregoing, the foregoing liability limitation shall not apply in cases of (a) Contractor's indemnification or hold harmless obligation, and (b) employee claims, personal injury to a third party or damage to property of a third party..

Section 3.56.20 is added to the Agreement to read as follows:

3.6.20 Waiver of Consequential Damages. Notwithstanding anything in this Agreement or at law to the contrary, Contractor shall in no event be liable for exemplary, special, incidental, indirect or consequential damages of any kind including, but not limited to, loss of use, profits or revenue. Contractor shall have no liability for its competent performance of instructions given by City or its personnel or representatives in the event such instructions prove to be defective.