



**Date:** October 24, 2017

**To:** City Manager for Council Action

**From:** Chief Electric Utility Officer

**Subject:** Approval of an Electric Service Agreement with Intel Corporation for the Purchase of Electricity on a Long-Term Basis in Exchange for Certain Discounted Rates

### **EXECUTIVE SUMMARY**

Intel Corporation (Intel) is one of the largest customers of Silicon Valley Power (SVP), the City of Santa Clara's Electric Utility, for the purchase of electricity. The City currently has a contract with Intel for the purchase of energy which expires on December 31, 2017. Intel desires to enter into a new long-term agreement for service on and after January 1, 2018. This contract provides for rate discounts commensurate with the type of service to be provided to Intel. It also provides for commensurate changes in rates as rates to other SVP customers are changed. Pursuant to the Public Records Act and pursuant to the Agreement, certain terms of the Agreement must be maintained as confidential. Therefore, while the majority of the Agreement will be maintained as public record, confidential terms are available for Council review in the Office of the City Clerk. A copy of the Electric Service Agreement can be viewed on the City's website and is available in the City Clerk's Office for review during normal business hours.

### **ADVANTAGES AND DISADVANTAGES OF ISSUE**


By entering into this Agreement, SVP will be assured of stable, predictable power sales to this existing customer for an extended time. If the Agreement is not entered into, SVP may lose the opportunity to make future sales of electrical energy to Intel.

### **ECONOMIC/FISCAL IMPACT**

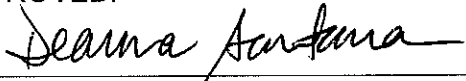
No capital expenditures will result from entering into this contract. Some reduction in revenue will occur from the discounts in return for revenues that will continue to be received from Intel for the life of the agreement.

**RECOMMENDATION**

That the Council approve, and authorize the City Manager to execute, the Electric Service Agreement with Intel Corporation for the purchase of electricity on a long-term basis in exchange for certain discounted rates.

  
\_\_\_\_\_  
John C. Roukema  
Chief Electric Utility Officer

APPROVED:

  
\_\_\_\_\_  
Deanna J. Santana  
City Manager

*Documents Related to this Report:*

- 1) *Electric Service Agreement with Intel Corporation*

**ELECTRIC SERVICE AGREEMENT  
BY AND BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
INTEL CORPORATION**

**PREAMBLE**

This agreement (“Agreement”) is by and between Intel Corporation, a Delaware corporation, with its principal place of business located at 2200 Mission College Boulevard, Santa Clara, California (“Customer” or “Intel”), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050, doing business as Silicon Valley Power (“SVP”). SVP and Customer may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

**RECITALS**

- A. The City of Santa Clara owns and operates an electric utility, doing business as Silicon Valley Power, and currently provides electric service to Customer in Santa Clara, California, pursuant to standard rate schedules authorized by the City Council of the City of Santa Clara;
- B. Customer’s electric service requirements covered by this agreement are those served under SVP’s demand-metered rate schedules (or their successors). Customer is one of SVP’s very largest customers served under SVP’s demand-metered rate schedules;
- C. Customer’s service conditions are not fully accommodated by SVP’s standard demand-metered rate schedules;
- D. Customer has represented to SVP its intention to remain a long-term electric customer, and to continue the operations of its current facilities in the City of Santa Clara during the term of this Agreement;
- E. Customer wishes to receive discounts to the energy rates it currently pays to SVP as consideration for Customer’s long-term commitment;
- F. The ability to attract and to retain very large customers benefits all customers because very large customers provide significant contributions to SVP’s fixed costs related to investments in generation, transmission and distribution facilities;
- G. The cost to serve very large customers is generally lower than for other large customers;
- H. SVP desires to retain a stable, predictable customer base and help keep rates low for all customers by entering into long term contracts with its very largest customers;
- I. SVP is willing to provide discounts to Customer’s electric service accounts in order to retain Customer as an electric customer of SVP, and to provide an incentive for continued growth of Customer’s electrical load in Santa Clara and the resulting benefits to SVP’s electric ratepayers of growth of the local economy; and,

- J. This agreement will not cause rates charged to Customer or other SVP customers to exceed SVP's reasonable costs of providing electric service.

The Parties agree as follows:

## **AGREEMENT PROVISIONS**

### **1. INCORPORATION OF PREAMBLE AND RECITALS**

The Parties to this Agreement agree and attest to the truth and accuracy of the provisions contained in the Preamble and Recitals set forth above. The provisions of the Preamble and Recitals are hereby incorporated and made a part of this Agreement by this reference. The Parties agree that this Agreement has been entered into, at least in part, in consideration of the provisions contained in the Preamble and Recitals, as well as the provisions contained in the balance of this Agreement.

### **2. DEFINITIONS**

Definitions of the terms used in this Agreement are set forth in Exhibit A, attached and incorporated by this reference.

### **3. TERM OF AGREEMENT**

The term of this Agreement is set forth in Exhibit B, attached and incorporated by this reference, and is Confidential Information. After Customer's meters are read at the first regular meter reading following the Effective Date of this Agreement, all terms and provisions of this Agreement shall govern and supersede any and all rates, terms, provisions or contracts previously governing electric service of Customer.

### **4. SCOPE OF AGREEMENT**

This Agreement governs the discount to Customer's electric service charges pursuant to the Applicable Rate as defined in Exhibits A and B hereto, which are attached and incorporated by this reference. Except as otherwise provided in this Agreement and its Exhibits, SVP shall provide electric service to all Accounts within the city limits of the City of Santa Clara, in accordance with SVP's applicable Rate Schedule for electric service (less discounts provided in this Agreement) and Rules and Regulations governing electric utility procedures and Customer practices, as approved by the City Council of the City of Santa Clara from time to time and incorporated by this reference as though set forth in full. This Agreement provides for certain obligations to be undertaken by the Parties, with the intent that SVP will provide Customer with certain discounts on Customer's charges for electric service in consideration of Customer entering into a long term contract with SVP. All of Customer's Accounts in the City of Santa Clara will be subject to the Public Benefits Charge and Independent System Operator charge, and any other federal or state government mandated charges due to restructuring of the electric industry that are generally applicable to SVP's Similar Customers, as such charges are in effect during the term of this Agreement. The Billing Factor used to calculate any state or federally mandated, non-bypassable charge (in existence now or in the future) that is generally applicable to Similar Customers, is not subject to a discount.

**5. BILLING RATE**

The Billing Rate is set forth in Exhibit B, which is Confidential Information.

**6. NO BYPASS OR SUBSTITUTION**

Subject to SVP continuing to supply Customer with electrical service, Customer shall, with respect to all Santa Clara Accounts, take all electric service requirements from SVP. Except as otherwise set forth herein, and except during emergency or outage situations, or for periodic testing of emergency generating equipment, Customer agrees not to generate its own electric power or to purchase or otherwise obtain any portion of its electricity requirement in Santa Clara from any person, firm, or entity other than SVP during the term of this Agreement. Customer further agrees not to substitute any other source of energy for electricity which it currently uses, unless approved by SVP and not inconsistent with the intent of this Agreement; said consent by SVP shall not be unreasonably withheld. If, during the term of this Agreement, changes occur in Customer's operations which require more electricity in Santa Clara, SVP will be the supplier of that electricity. Except as otherwise provided in this paragraph, in no event shall there be any cogeneration, self-generation or electricity wheeled from any other source to be used at any of Customer's locations in Santa Clara. Customer shall not re-sell the electricity sold to it by SVP to any other Party, except that Customer may provide electricity to a sublessee so long as Customer does not charge a profit.

**7. CESSATION OF OPERATIONS**

In the event that Customer reduces its operations of any facility within the City limits of the City of Santa Clara such that Customer's usage of electricity drops below the threshold set forth in Exhibit B, or otherwise wholly or partially ceases to need electric energy from SVP, then the discounts allowed Customer pursuant to this Agreement shall be reduced as set forth in that Exhibit.

**8. RIGHT TO RECEIVE REQUEST FOR PROPOSAL**

For the term of this agreement, SVP shall be included on any list of potential bidders for a Request for Proposal ("RFP") issued by Customer's facilities within Santa Clara city limits relating to the purchase of electricity or Energy Services. Customer shall attempt, in good faith, to provide SVP an equal amount of time to respond to any such RFP issued by Customer, as any other entity responding to the RFP.

**9. RIGHT OF ACCESS**

In addition to and consistent with the rights of access allowed to SVP pursuant to the Rules and Regulations, and subject to SVP signing a reasonable non-disclosure agreement, Customer hereby grants to the City of Santa Clara, its employees, agents and authorized representatives, reasonable accompanied access to the premises of each Account, upon reasonable advance notice, for the purpose of making energy efficiency or other energy service recommendations, advising Customer on available energy conservation options, and determining compliance with the terms of this Agreement.

## **10. FORCE MAJEURE**

Neither Party shall be considered to be in default in performance of any of its obligations under this Agreement when a failure of performance is due to an Uncontrollable Force. The term "Uncontrollable Force" as used in this Agreement, shall mean any cause beyond the reasonable control of the Party affected, and which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefor. Such Uncontrollable Force includes the failure or threat of failure of facilities, Act of God, flood, drought, earthquake, storm, tornado, fire, explosion, lightning, epidemic, public emergency, war, riot, civil disobedience, labor strike, labor dispute, labor or materials shortage (however labor or materials shortage does not include the mere inability to obtain that labor or material at a particular price), sabotage, restraint by court order, restraint by public authority, or action or non-action by governmental authority or accident. No Party shall, however, be relieved of liability for failure of performance if such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to take reasonable efforts to remove or remedy within a reasonable time, or due to mere fluctuations in market prices. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it may be involved. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of an Uncontrollable Force shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.

## **11. NO CONSEQUENTIAL OR INDIRECT DAMAGES**

Neither Party to this Agreement shall be liable to the other Party for indirect or consequential damages.

## **12. COMPLIANCE WITH UTILITY RULES AND REGULATIONS**

All the provisions of the Rules and Regulations governing electric utility procedures and customer practices, as approved by the City Council of the City of Santa Clara from time to time, shall remain in full force and effect and shall apply to the terms and conditions of this Agreement. In the event that the terms of this Agreement conflict with the Rules and Regulations, the provisions of this Agreement shall govern.

## **13. ASSIGNMENTS AND SUCCESSORS IN INTEREST**

SVP and Customer bind themselves, their partners, successors, assigns, executors, and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of the other Party, except that Customer may assign this Agreement to an Affiliate (as defined in Exhibit A) without the consent of SVP; however, said Affiliate will be bound by all obligations hereunder and shall notify SVP of the assignment (and of any change required with regard to the Notice provisions of this Agreement set forth in Article 18) prior to the end of the first Billing Cycle after assignee has received the assignment.

**14. AMENDMENTS**

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties hereto and incorporated into this Agreement.

**15. INTEGRATED DOCUMENT/TOTALITY OF AGREEMENT**

This Agreement, its Exhibits and the City's Rules and Regulations embody the entire agreement between SVP and Customer and its terms and conditions. No other understanding, agreements, or conversations, or otherwise, with any officer, agent, or employee of SVP prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in any document comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding.

**16. NO THIRD PARTY BENEFICIARY**

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third Party or parties, and no third Party or parties shall have any claim or right of action hereunder for any cause whatsoever.

**17. NOTICES**

All notices to the Parties hereto shall, unless otherwise requested in writing, be sent to SVP addressed as follows:

Silicon Valley Power  
City of Santa Clara Electric Department  
Attn: Director of Electric Utility  
1500 Warburton Avenue  
Santa Clara, California 95050

And to Customer addressed as follows:

Intel Corporation  
Attn: Marty Sedler  
4500 S. Dobson Road  
Chandler, AZ 85248

**18. CAPTIONS**

The captions of the various sections, paragraphs and subparagraphs are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

**19. STATUTES AND LAW GOVERNING AGREEMENT**

This Agreement shall be governed and construed in accordance with the statutes and laws of the state of California.

## **20. NON-WAIVER**

No waiver by a Party of all or any of its rights with respect to a condition, default or other matter arising in connection with this Agreement shall constitute or be deemed a waiver by such Party as to any subsequent condition, default or other matter.

## **21. RIGHTS AND REMEDIES**

Duties and obligations imposed by the Agreement and rights and remedies available thereunder shall be in addition to and not in limitation of duties, obligations, rights and remedies imposed by or available at law.

## **22. ALTERNATIVE DISPUTE RESOLUTION**

Customer is bound to exhaust all administrative remedies required by the Rules and Regulations adopted by the City of Santa Clara from time to time, as well as any other administrative remedies required by law. In the event that Customer exhausts all administrative remedies, but continues to dispute items, then, prior to commencing any litigation against the City of Santa Clara or SVP, Customer shall engage in Alternative Dispute Resolution as follows:

- A. Any controversies between Customer and SVP regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request that the Superior Court of Santa Clara County appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- C. The costs of mediation shall be borne by the Parties equally.
- D. Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation, which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorneys fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

## **23. CONFIDENTIALITY**

- A. The Parties to this Agreement agree to maintain as confidential, to the extent permitted by law, that information contained in Exhibit B to this Agreement, as well as any other information exchanged by the Parties and clearly labeled by the Disclosing Party as "Confidential Information."
- B. Customer acknowledges that Santa Clara is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. Santa Clara acknowledges that Customer may submit information to Santa Clara that Customer considers Confidential Information, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civil Code section 3426 et seq.), or otherwise not subject to disclosure pursuant to an



exemption to the California Public Records Act (Government Code section 6254 et seq.) Customer acknowledges that Santa Clara may submit to Customer information that Santa Clara considers Confidential Information or proprietary or not subject to disclosure pursuant to an exemption to the California Public Records Act (Government Code section 6254 et seq.). Upon request or demand of any third person or entity not a Party to this Agreement ("Requestor") for production, inspection and/or copying of information contained in Exhibit B hereto or designated by a Disclosing Party as "Confidential Information," the Receiving Party as soon as practical, but within three (3) days of receipt of the request, shall notify the Disclosing Party that such request has been made by telephone call, letter sent via facsimile and/or by United States Mail to the address and facsimile number listed at the end of the Agreement. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be "Confidential Information" and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

**24. OTHER AGREEMENTS**

This Agreement shall not prevent SVP or Customer from entering into similar agreements with others that do not conflict with the terms hereof.

**25. CONSTRUCTION OF THIS AGREEMENT**

This Agreement, and each of its provisions, terms and conditions, has been reached as a result of negotiations between the Parties. Each Party has been represented by Counsel. Accordingly, each of the Parties expressly acknowledges and agrees that this Agreement shall not be deemed to have been authored by, prepared by, or drafted by, any particular Party, and that the rule of construction to the effect ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or in the resolution of disputes. This Agreement is to be construed to effectuate the normal and reasonable expectations of a sophisticated buyer of utility services and a sophisticated provider of such services and shall not be construed either for or against either Party.

**26. NO PARTNERSHIP**

Neither SVP nor Customer is a partner or joint venturer with the other and nothing in this Agreement may be construed to make them partners or joint venturers or impose any liability as such on either of them.

**27. ENFORCEABILITY**

If any provision of this Agreement is determined to be illegal or unenforceable, such determination will not affect any other provisions of this Agreement and all other provisions will remain in full force and effect.

**28. AFFORDABLE CARE ACT OBLIGATIONS**

To the extent Customer is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal

or state law, Customer warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Customer's responsibilities under the Act.


This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

**CITY OF SANTA CLARA, CALIFORNIA**  
a chartered California municipal corporation  
doing business as Silicon Valley Power

APPROVED AS TO FORM:

  
\_\_\_\_\_  
BRIAN DOYLE  
Interim City Attorney


Dated: 6/27/17  
  
\_\_\_\_\_

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

ATTEST:  
  
\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk

"SVP"

INTEL CORPORATION  
A DELAWARE CORPORATION

Dated: 9/6/2017  
By:   
\_\_\_\_\_  
(Signature of Person executing the Agreement on behalf of Customer)

Name: Marty Sedler  
Title: Director, Global Utilities and Infrastructure

Local Address: 4500 S. Dobson Rd., Chandler, AZ 85248

Email Address: Marty.sedler@intel.com

Telephone: (480)715-0714

Fax: (480)715-7796

"Customer"

**ELECTRIC SERVICE AGREEMENT  
BY AND BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
INTEL CORPORATION**

**EXHIBIT A**

**DEFINITIONS**

Accounts means all currently existing or subsequently established Customer electric service accounts served by SVP, whether owned or leased by Customer.

Advanced Metering means the use of electronic equipment to record and communicate actual electric use during the minutes or hours of each day.

Affiliate means any entity that is directly or indirectly owned or controlled by Customer or its ultimate corporate parent company.

Applicable Rate is (1) any rate in the Rate Schedule that is in effect by reason of its adoption by the City Council of the City of Santa Clara, (2) for which Customer qualifies and (3) which has been chosen by Customer.

Billing Cycle means one of twelve (12) monthly scheduled intervals per calendar year, in which electric meters for all Accounts are read, and for which utility bills are subsequently rendered to Customer.

Billing Factor is an amount expressed as (1) a one time charge, (2) a dollar amount, (3) dollars per kilowatt of demand, (4) dollars per kilowatt-hour or (5) a percentage surcharge, that is applied to the appropriate unit of use and is subject to change in accordance with the law.

Billing Rate means the rate set forth in Exhibit B.

Confidential Information means any information contained in Exhibit B hereto, as well as any information which is of a non-public, proprietary or confidential nature belonging to the Disclosing Party, including without limitation, all reports and analyses, meter data, technical and economic data, studies, forecasts, trade secrets, research or business strategies, financial or contractual information, gas or coal reserve information, customer identity, customer credit history, customer utility usage data, customer contacts, address or telephone numbers, negotiated rates, loads, energy requirements, certain sales market information or other written or oral information. Confidential Information may be in any form whatsoever, including without limitation writings, computer programs, logic diagrams, component specifications, drawings or other media.

Only that information disclosed by a Party and clearly designated in writing as "confidential" shall be deemed to be Confidential Information, provided that the following are considered Confidential Information independent of whether they have been designated in writing as such:

meter data, consumption patterns, load forecasts, or any item developed based upon Customer's meter data, Customer bills and billing information. However aggregate utility statistics that are developed based upon Customer's meter data as well as other SVP customer's meter data, are not Confidential Information. Examples of such aggregate utility statistics are summaries of overall sales, utility program results or overall utility load forecasts that do not identify an individual Customer. Verbal information and other information in an intangible form that is intended to be treated as Confidential Information shall be described in writing and identified as "Confidential Information."

Notwithstanding the foregoing, the term "Confidential Information" shall not include (and neither Party shall be under any obligation to maintain in confidence or not use) any information (or any portion thereof) disclosed to it by the other Party to the extent that such information:

- A. is in the public domain at the time of disclosure; or
- B. at the time of or following disclosure, becomes generally known or available through no act or omission on the part of the Receiving Party; or
- C. is known, or becomes known, to the Receiving Party from a source other than the Disclosing Party or its Representatives (as defined herein), provided that disclosure by such source is not in breach of a confidentiality agreement with the Disclosing Party; or
- D. is independently developed by the Receiving Party without violating any of its obligations under this Agreement; or
- E. is legally required to be disclosed by judicial or other governmental action; provided, however, that prompt notice of such judicial or other governmental action shall have been given to the Disclosing Party and that the Disclosing Party shall be afforded the opportunity (consistent with the terms of this Agreement) to exhaust all reasonable legal remedies to maintain the Confidential Information in confidence, in accordance with this Agreement.

Delivery Point means the point at which Customer's electrical facilities interconnect with SVP's transmission or distribution system, and has the same meaning as "Utility Connection Point" as used in the Rules and Regulations.

Disclosing Party means the Party to whom Confidential Information originally belongs and who (after appropriate notice) shall bear the burden of pursuing legal remedies to retain confidentiality as set forth in the Agreement.

Energy Services means services designed to reduce energy costs through load management or improved energy efficiency. It includes but is not limited to energy retrofits, load profiling software and management, and Advanced Metering.

Independent System Operator Charge means whatever charge is assessed by the Independent System Operator against SVP, currently passed through by SVP in its rates for service as grid management charge, and which SVP in the future passes through to SVP's Similar Customers generally.

Public Benefit Charge means the Public Benefit Charge that is currently assessed pursuant to California Public Utilities Code section 385, and passed through to SVP's Similar Customers generally.

Rate Schedule is the set of rates for electric service adopted by the City Council of the City of Santa Clara from time to time.

Receiving Party means the Party to this Agreement who receives information designated as "Confidential Information" by the Disclosing Party.

Rules and Regulations means those policies governing the operation and service of the City's electric utility known as Silicon Valley Power, and adopted by the City Council of the City of Santa Clara by resolution, from time to time.

Similar Customers means electric energy customers of SVP in Santa Clara with electricity usage characteristics similar to those of Customer. Characteristics evaluated to make this determination may include, without limitation, electricity cost characteristics, load profiles, capacity requirements, energy requirements, and location within SVP's service territory.

Tariff means the (1) Rate Schedule (2) Rules and Regulations and (3) Municipal Fees applicable to the Electric utility, adopted by the City Council of the City of Santa Clara from time to time.

**ELECTRIC SERVICE AGREEMENT  
BY AND BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
INTEL CORPORATION**

**EXHIBIT B**

**TERM OF CONTRACT AND RATES CHARGED**

**CONFIDENTIAL--DO NOT DUPLICATE OR DISCLOSE**