

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

KANA SUBSURFACE ENGINEERING

Locating Subsurface Facilities

THIS PROFESSIONAL CONSULTANT SERVICES AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2021 (“Effective Date”), by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation (“City”), and KANA SUBSURFACE ENGINEERING, a California corporation (“Consultant”).

1. **Scope of Services.** City agrees to retain and does hereby retain Consultant and Consultant agrees to provide the services more particularly described in Exhibit “A,” “Scope of Services” (“Services”), attached hereto and incorporated herein by reference, in conjunction with Locating Subsurface Facilities (“Project”).

2. **Term.** This Agreement shall be effective on the date first written above and shall remain in effect until October 3, 2022, unless otherwise terminated pursuant to the provisions herein.

3. **Compensation/Payment.** Consultant shall perform the Services under this Agreement for the total sum not to exceed One Million Thirty-Three Thousand Six Hundred Dollars (\$1,033,600.00), payable in accordance with the terms set forth in Exhibit “B.” Said payment shall be made in accordance with City’s usual accounting procedures upon receipt and approval of an itemized invoice setting forth the services performed. The invoices shall be delivered to City at the address set forth in Section 4 hereof.

4. **Notices.** Any notices required to be given, hereunder shall be in writing and shall be personally served or given by mail. Any notice given by mail shall be deemed given when deposited in the United States Mail, certified and postage prepaid, addressed to the party to be served as follows:

To City

Public Utilities Department
City of Riverside
Attn: Darlene Elliot
3750 University Avenue, Third Floor
Riverside, CA 92501

To Consultant

Kana Subsurface Facilities
Attn: Erick Castro
12620 Magnolia Avenue
Riverside, CA 92503

5. **Prevailing Wage.** If applicable, Consultant and all subcontractors are required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720 et seq. of the California Labor Code and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination is available on-line at www.dir.ca.gov/dlsr/DPreWageDetermination.htm and is referred to and made a part hereof; the wage rates therein ascertained, determined, and specified are referred to and made a part hereof as though fully set forth herein.

6. **Contract Administration.** A designee of the City will be appointed in writing by the City Manager or Department Director to administer this Agreement on behalf of City and shall be referred to herein as Contract Administrator.

7. **Standard of Performance.** While performing the Services, Consultant shall exercise the reasonable professional care and skill customarily exercised by reputable members of Consultant's profession practicing in the Metropolitan Southern California Area, and shall use reasonable diligence and best judgment while exercising its professional skill and expertise.

8. **Personnel.** Consultant shall furnish all personnel necessary to perform the Services and shall be responsible for their performance and compensation. Consultant recognizes that the qualifications and experience of the personnel to be used are vital to professional and timely completion of the Services. The key personnel listed in Exhibit "C" attached hereto and incorporated herein by this reference and assigned to perform portions of the Services shall remain assigned through completion of the Services, unless otherwise mutually agreed by the parties in writing, or caused by hardship or resignation in which case substitutes shall be subject to City approval.

9. **Assignment and Subcontracting.** Neither party shall assign any right, interest, or obligation in or under this Agreement to any other entity without prior written consent of the other party. In any event, no assignment shall be made unless the assignee expressly assumes the obligations of assignor under this Agreement, in a writing satisfactory to the parties. Consultant acknowledges that any assignment may, at the City's sole discretion, require City Manager and/or City Council approval. Consultant shall not subcontract any portion of the work required by this Agreement without prior written approval by the responsible City Contract Administrator. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including without limitation, the insurance obligations set forth in Section 12. The Consultant acknowledges and agrees that the City is an intended beneficiary of any work performed by any subcontractor for purposes of establishing a duty of care between any subcontractor and the City.

10. **Independent Contractor.** In the performance of this Agreement, Consultant, and Consultant's employees, subcontractors and agents, shall act in an independent capacity as independent contractors, and not as officers or employees of the City of Riverside. Consultant acknowledges and agrees that the City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance to Consultant, or to Consultant's employees, subcontractors and agents. Consultant, as an independent contractor, shall be responsible for any and all taxes that apply to Consultant as an employer.

11. **Indemnification.**

11.1 **Design Professional Defined.** For purposes of this Agreement, “Design Professional” includes the following:

- A. An individual licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, and a business entity offering architectural services in accordance with that chapter.
- B. An individual licensed as a landscape architect pursuant to Chapter 3.5 (commencing with Section 5615) of Division 3 of the Business and Professions Code, and a business entity offering landscape architectural services in accordance with that chapter.
- C. An individual registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, and a business entity offering professional engineering services in accordance with that chapter.
- D. An individual licensed as a professional land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code, and a business entity offering professional land surveying services in accordance with that chapter.

11.2 **Defense Obligation For Design Professional Liability.** Consultant agrees, at its cost and expense, to promptly defend the City, and the City’s employees, officers, managers, agents and council members (collectively the “Parties to be Defended”) from and against any and all claims, allegations, lawsuits, arbitration proceedings, administrative proceedings, regulatory proceedings, or other legal proceedings to the extent the same arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant, or anyone employed by or working under the Consultant or for services rendered to the Consultant in the performance of the Agreement, notwithstanding that the City may have benefited from its work or services and whether or not caused in part by the negligence of an Indemnified Party. Consultant agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel acceptable to City. Consultant will reimburse City for reasonable defense costs for claims arising out of Consultant’s professional negligence based on the percentage of Consultant’s liability. This obligation to defend as set forth herein is binding on the successors, assigns and heirs of Consultant and shall survive the termination of Consultant’s Services under this Agreement.

11.3 **Indemnity For Design Professional Liability.** When the law establishes a professional standard of care for Consultant’s services, to the fullest extent permitted by law, Consultant shall indemnify, protect and hold harmless the City and the City’s employees, officers, managers, agents, and Council Members (“Indemnified Parties”) from and against any and all claim for damage, charge, lawsuit, action, judicial, administrative, regulatory or arbitration proceeding, damage, cost, expense (including counsel and expert fees), judgment, civil fines and penalties,

liabilities or losses of any kind or nature whatsoever to the extent the same arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant, or anyone employed by or working under the Consultant or for services rendered to the Consultant in the performance of the Agreement, notwithstanding that the City may have benefited from its work or services and whether or not caused in part by the negligence of an Indemnified Party.

11.4 Defense Obligation For Other Than Design Professional Liability.

Consultant agrees, at its cost and expense, to promptly defend the City, and the City's employees, officers, managers, agents and council members (collectively the "Parties to be Defended") from and against any and all claims, allegations, lawsuits, arbitration proceedings, administrative proceedings, regulatory proceedings, or other legal proceedings which arise out of, or relate to, or are in any way connected with: 1) the Services, work, activities, operations, or duties of the Consultant, or of anyone employed by or working under the Consultant, or 2) any breach of the Agreement by the Consultant. This duty to defend shall apply whether or not such claims, allegations, lawsuits or proceedings have merit or are meritless, or which involve claims or allegations that any or all of the Parties to be Defended were actively, passively, or concurrently negligent, or which otherwise assert that the Parties to be Defended are responsible, in whole or in part, for any loss, damage or injury. Consultant agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel acceptable to City. This obligation to defend as set forth herein is binding on the successors, assigns and heirs of Consultant and shall survive the termination of Consultant's Services under this Agreement.

11.5 Indemnity For Other Than Design Professional Liability. Except as to the sole negligence or willful misconduct of the City, Consultant agrees to indemnify, protect and hold harmless the Indemnified Parties from and against any claim for damage, charge, lawsuit, action, judicial, administrative, regulatory or arbitration proceeding, damage, cost, expense (including counsel and expert fees), judgment, civil fine and penalties, liabilities or losses of any kind or nature whatsoever whether actual, threatened or alleged, which arise out of, pertain to, or relate to, or are a consequence of, or are attributable to, or are in any manner connected with the performance of the Services, work, activities, operations or duties of the Consultant, or anyone employed by or working under the Consultant or for services rendered to Consultant in the performance of this Agreement, notwithstanding that the City may have benefited from its work or services. This indemnification provision shall apply to any acts, omissions, negligence, recklessness, or willful misconduct, whether active or passive, on the part of the Consultant or anyone employed or working under the Consultant.

12. Insurance.

12.1 General Provisions. Prior to the City's execution of this Agreement, Consultant shall provide satisfactory evidence of, and shall thereafter maintain during the term of this Agreement, such insurance policies and coverages in the types, limits, forms and ratings required herein. The rating and required insurance policies and coverages may be modified in writing by the City's Risk Manager or City Attorney, or a designee, unless such modification is prohibited by law.

12.1.1 Limitations. These minimum amounts of coverage shall not constitute any limitation or cap on Consultant's indemnification obligations under Section 11 hereof.

12.1.2 **Ratings.** Any insurance policy or coverage provided by Consultant or subcontractors as required by this Agreement shall be deemed inadequate and a material breach of this Agreement, unless such policy or coverage is issued by insurance companies authorized to transact insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher.

12.1.3 **Cancellation.** The policies shall not be canceled unless thirty (30) days' prior written notification of intended cancellation has been given to City by certified or registered mail, postage prepaid.

12.1.4 **Adequacy.** The City, its officers, employees and agents make no representation that the types or limits of insurance specified to be carried by Consultant pursuant to this Agreement are adequate to protect Consultant. If Consultant believes that any required insurance coverage is inadequate, Consultant will obtain such additional insurance coverage as Consultant deems adequate, at Consultant's sole expense.

12.2 **Workers' Compensation Insurance.** By executing this Agreement, Consultant certifies that Consultant is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation, or to undertake self-insurance before commencing any of the work. Consultant shall carry the insurance or provide for self-insurance required by California law to protect said Consultant from claims under the Workers' Compensation Act. Prior to City's execution of this Agreement, Consultant shall file with City either 1) a certificate of insurance showing that such insurance is in effect, or that Consultant is self-insured for such coverage, or 2) a certified statement that Consultant has no employees, and acknowledging that if Consultant does employ any person, the necessary certificate of insurance will immediately be filed with City. Any certificate filed with City shall provide that City will be given ten (10) days' prior written notice before modification or cancellation thereof.

12.3 **Commercial General Liability and Automobile Insurance.** Prior to City's execution of this Agreement, Consultant shall obtain, and shall thereafter maintain during the term of this Agreement, commercial general liability insurance and automobile liability insurance as required to insure Consultant against damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from or which may concern operations by anyone directly or indirectly employed by, connected with, or acting for or on behalf of Consultant. The City, and its officers, employees and agents, shall be named as additional insureds under the Consultant's insurance policies.

12.3.1 Consultant's commercial general liability insurance policy shall cover both bodily injury (including death) and property damage (including, but not limited to, premises operations liability, products-completed operations liability, independent contractor's liability, personal injury liability, and contractual liability) in an amount not less than \$1,000,000 per occurrence and a general aggregate limit in the amount of not less than \$2,000,000.

12.3.2 Consultant's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence and an aggregate limit of not less than \$1,000,000. All of Consultant's automobile and/or commercial general liability

insurance policies shall cover all vehicles used in connection with Consultant's performance of this Agreement, which vehicles shall include, but are not limited to, Consultant owned vehicles, Consultant leased vehicles, Consultant's employee vehicles, non-Consultant owned vehicles and hired vehicles.

12.3.3 Prior to City's execution of this Agreement, copies of insurance policies or original certificates along with additional insured endorsements acceptable to the City evidencing the coverage required by this Agreement, for both commercial general and automobile liability insurance, shall be filed with City and shall include the City and its officers, employees and agents, as additional insureds. Said policies shall be in the usual form of commercial general and automobile liability insurance policies, but shall include the following provisions:

It is agreed that the City of Riverside, and its officers, employees and agents, are added as additional insureds under this policy, solely for work done by and on behalf of the named insured for the City of Riverside.

12.3.4 The insurance policy or policies shall also comply with the following provisions:

- a. The policy shall be endorsed to waive any right of subrogation against the City and its sub-consultants, employees, officers and agents for services performed under this Agreement.
- b. If the policy is written on a claims made basis, the certificate should so specify and the policy must continue in force for one year after completion of the services. The retroactive date of coverage must also be listed.
- c. The policy shall specify that the insurance provided by Consultant will be considered primary and not contributory to any other insurance available to the City and Endorsement No. CG 20010413 shall be provided to the City.

12.4 **Errors and Omissions Insurance.** Prior to City's execution of this Agreement, Consultant shall obtain, and shall thereafter maintain during the term of this Agreement, errors and omissions professional liability insurance in the minimum amount of \$1,000,000 to protect the City from claims resulting from the Consultant's activities.

12.5 **Subcontractors' Insurance.** Consultant shall require all of its subcontractors to carry insurance, in an amount sufficient to cover the risk of injury, damage or loss that may be caused by the subcontractors' scope of work and activities provided in furtherance of this Agreement, including, but without limitation, the following coverages: Workers Compensation, Commercial General Liability, Errors and Omissions, and Automobile liability. Upon City's request, Consultant shall provide City with satisfactory evidence that Subcontractors have obtained insurance policies and coverages required by this section.

13. **Business Tax.** Consultant understands that the Services performed under this Agreement constitutes doing business in the City of Riverside, and Consultant agrees that Consultant will register for and pay a business tax pursuant to Chapter 5.04 of the Riverside Municipal Code and keep such tax certificate current during the term of this Agreement.

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

15. **City's Right to Employ Other Consultants.** City reserves the right to employ other Consultants in connection with the Project. If the City is required to employ another consultant to complete Consultant's work, due to the failure of the Consultant to perform, or due to the breach of any of the provisions of this Agreement, the City reserves the right to seek reimbursement from Consultant.

16. **Accounting Records.** Consultant shall maintain complete and accurate records with respect to costs incurred under this Agreement. All such records shall be clearly identifiable. Consultant 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. Consultant 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.

17. **Confidentiality.** All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant, except as otherwise directed by City's Contract Administrator. Nothing furnished to Consultant which is otherwise known to the Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production, website, or other similar medium without the prior written consent of the City.

18. **Ownership of Documents.** All reports, maps, drawings and other contract deliverables prepared under this Agreement by Consultant shall be and remain the property of City. Consultant shall not release to others information furnished by City without prior express written approval of City.

19. **Copyrights.** Consultant agrees that any work prepared for City which is eligible for copyright protection in the United States or elsewhere shall be a work made for hire. If any such work is deemed for any reason not to be a work made for hire, Consultant assigns all right, title and interest in the copyright in such work, and all extensions and renewals thereof, to City, and agrees to provide all assistance reasonably requested by City in the establishment, preservation and enforcement of its copyright in such work, such assistance to be provided at City's expense but without any additional compensation to Consultant. Consultant agrees to waive all moral rights relating to the work developed or produced, including without limitation any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use or subsequent modifications.

20. **Conflict of Interest.** Consultant, for itself and on behalf of the individuals listed in Exhibit "C," represents and warrants that by the execution of this Agreement, they have no interest, present or contemplated, in the Project affected by the above-described Services. Consultant further warrants that neither Consultant, nor the individuals listed in Exhibit "C" have any real property, business interests or income interests that will be affected by this project or, alternatively, that Consultant will file with the City an affidavit disclosing any such interest.

21. **Solicitation.** Consultant warrants that Consultant has not employed or retained any person or agency to solicit or secure this Agreement, nor has it entered into any agreement or understanding for a commission, percentage, brokerage, or contingent fee to be paid to secure this Agreement. For breach of this warranty, City shall have the right to terminate this Agreement without liability and pay Consultant only for the value of work Consultant has actually performed, or, in its sole discretion, to deduct from the Agreement price or otherwise recover from Consultant the full amount of such commission, percentage, brokerage or commission fee. The remedies specified in this section shall be in addition to and not in lieu of those remedies otherwise specified in this Agreement.

22. **General Compliance With Laws.** Consultant shall keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Consultant, or in any way affect the performance of services by Consultant pursuant to this Agreement. Consultant shall at all times observe and comply with all such laws, ordinances and regulations, and shall be solely responsible for any failure to comply with all applicable laws, ordinances and regulations. Consultant represents and warrants that Consultant has obtained all necessary licenses to perform the Scope of Services and that such licenses are in good standing. Consultant further represents and warrants that the services provided herein shall conform to all ordinances, policies and practices of the City of Riverside.

23. **Waiver.** No action or failure to act by the City shall constitute a waiver of any right or duty afforded City under this Agreement, nor shall any such action or failure to act constitute approval of or acquiescence in any breach thereunder, except as may be specifically, provided in this Agreement or as may be otherwise agreed in writing.

24. **Amendments.** This Agreement may be modified or amended only by a written agreement and/or change order executed by the Consultant and City.

25. **Termination.** City, by notifying Consultant in writing, shall have the right to terminate any or all of Consultant's services and work covered by this Agreement at any time. In the event of such termination, Consultant may submit Consultant's final written statement of the amount of Consultant's services as of the date of such termination based upon the ratio that the work completed bears to the total work required to make the report complete, subject to the City's rights under Sections 15 and 26 hereof. In ascertaining the work actually rendered through the termination date, City shall consider completed work, work in progress and complete and incomplete reports and other documents only after delivered to City.

25.1 Other than as stated below, City shall give Consultant thirty (30) days' prior written notice prior to termination.

25.2 City may terminate this Agreement upon fifteen (15) days' written notice to Consultant, in the event:

25.2.1 Consultant substantially fails to perform or materially breaches the Agreement; or

25.2.2 City decides to abandon or postpone the Project.

26. **Offsets.** Consultant acknowledges and agrees that with respect to any business tax or penalties thereon, utility charges, invoiced fee or other debt which Consultant owes or may owe to the City, City reserves the right to withhold and offset said amounts from payments or refunds or reimbursements owed by City to Consultant. Notice of such withholding and offset, shall promptly be given to Consultant by City in writing. In the event of a dispute as to the amount owed or whether such amount is owed to the City, City will hold such disputed amount until either the appropriate appeal process has been completed or until the dispute has been resolved.

27. **Successors and Assigns.** This Agreement shall be binding upon City and its successors and assigns, and upon Consultant and its permitted successors and assigns, and shall not be assigned by Consultant, either in whole or in part, except as otherwise provided in paragraph 9 of this Agreement.

28. **Venue.** Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in the Superior Court, County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county. In the event either party hereto shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition of this Agreement, it is mutually agreed that each party will bear their own attorney's fees and costs.

29. **Nondiscrimination.** During Consultant's performance of this Agreement, Consultant shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, genetic information, gender, gender identity, gender expression, or sexual orientation, military and veteran status, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, Consultant agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

30. **Severability.** Each provision, term, condition, covenant and/or restriction, in whole and in part, of this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, of this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement, and the remainder of the Agreement shall continue in full force and effect.

31. **Authority.** The individuals executing this Agreement and the instruments referenced herein on behalf of Consultant each represent and warrant that they have the legal power, right and actual authority to bind Consultant to the terms and conditions hereof and thereof.

32. **Entire Agreement.** This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings or agreements of the parties. Neither party has been induced to enter into this Agreement by and neither party is relying on, any representation or warranty outside those expressly set forth in this Agreement.

33. **Interpretation.** City and Consultant acknowledge and agree that this Agreement is the product of mutual arms-length negotiations and accordingly, the rule of construction, which provides that the ambiguities in a document shall be construed against the drafter of that document, shall have no application to the interpretation and enforcement of this Agreement.

33.1 Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of the Agreement or any of its terms. Reference to section numbers, are to sections in the Agreement unless expressly stated otherwise.

33.2 This Agreement shall be governed by and construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement.

33.3 In the event of a conflict between the body of this Agreement and Exhibit "A" - Scope of Services hereto, the terms contained in Exhibit "A" shall be controlling.

34. **Exhibits.** The following exhibits attached hereto are incorporated herein to this Agreement by this reference:

- Exhibit "A" - Scope of Services
- Exhibit "B" - Compensation
- Exhibit "C" - Key Personnel

IN WITNESS WHEREOF, City and Consultant have caused this Agreement to be duly executed the day and year first above written.

CITY OF RIVERSIDE, a California charter city and municipal corporation

KANA SUBSURFACE ENGINEERING, a California corporation

By: _____
City Manager

By: EC 10/17/2021
Erick Castro

[Printed Name]
President

[Title]

Attest: _____
City Clerk

Certified as to Availability of Funds:

By: _____

By: [Signature]
Chief Financial Officer

Daniel Locke

[Printed Name]
Secretary

[Title]

Approved as to Form:

By: [Signature]
Assistant City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

EXHIBIT A

Scope of Services

AREAS OF SERVICE

The scope of work (Work) will consist of the Contractor (locating Contractor) receiving the Underground Service Alert (regional notification center) tickets with instructions to locate and mark electric, and sewer facilities owned by the City of Riverside and completing the locates within two (2) working days from receiving the notifications, or earlier under emergent requests. The Contractor shall include furnishing all labor, material, equipment, and any other services necessary to complete the work including the following:

- The geographic areas to locate subsurface facilities for the City of Riverside are depicted on the three maps Exhibit D attached hereto,
- Mark with water-soluble, environmentally approved paint and/or appropriate flags, in delineated areas as described by requesting agent/excavating contractor, City or Riverside underground facilities in conformance to the Government Code Section 4216 using the following colors:
 - Electric - Red
 - Fiber Optics - Orange
 - Water - Blue
- The Contractor shall provide adequate staff and equipment to be able to locate a monthly average monthly 1667 locates for electric operations, 2,114 for water operations, and 875 for sewer operations.
- Provide a vehicle, cell phone, vault entry, traffic control equipment and locating device(s) for the Contractor personnel to locate the designated City of Anaheim facilities. The Contractor's field crew shall have the ability to communicate with the City's Electric/Water/Fiber Optics staff via e-mail, cellular phone, or other means, as directed by City, at any time during the course of work.
- The Contractor shall provide the cost and details per locate request as required by the City.

DEFINITIONS

Identified But Un-locatable Facility. An underground facility whose presence is known but which cannot be field marked with Reasonable Accuracy.

Legal Excavation on a Valid Ticket. Any excavation that is performed in concert with a transmission from the One Call Center, as long as such excavation is: (1) in full conformance with an applicable laws and regulations; (2) entirely within the work area described on the transmission and within pre-marks completed by the excavator prior to the locate; (3) the work that is described on the Ticket; (4) undertaken by the person who, or organization that, called the Ticket into the One Call Center; (5) characterized by hand digging only within the Reasonable Accuracy interval; (6) initiated prior to conclusion of the time interval prescribed by law for the locate to be undertaken; (7) initiated only if contractor has clearly marked any existing facilities

or otherwise communicated with the excavator; and (8) undertaken prior to the expiration of the original Ticket--or a continuation ticket--as prescribed by law.

Locatable Underground Facility. An underground facility that can be field marked with reasonable accuracy by using devices designed to respond to the presence of the City of Riverside's facilities, together with a visual examination of the work site and with records of sufficient accuracy.

Locate Categories:

Emergency Locate Request. A request to locate Underground Facilities when a condition exists that threatens life or property by virtue of escaping substances, public exposure, or interrupted vital services. Contractor will arrive at the excavation site as soon as possible or at the time designated and locate the City of Riverside's facilities as required. During normal business hours, contractor will utilize all reasonable efforts to arrive within one hour.

Locate Request. A request to locate Underground Facilities in a time interval as provided by California Government Code section 4216 et seq. Contractor will respond to the request and complete the locate prior to the excavation start time and date indicated on all Tickets, or make other arrangements with the excavator.

Priority Locate Request. A request to locate Underground Facilities where the excavation start time and date is more than four hours but less than two full business days from the time the One Call Center receives the notice of intent to excavate. Contractor will utilize all reasonable efforts to complete the locate prior to the excavation start time and date indicated.

Short Notice Locate Request. A request to locate Underground Facilities within four hours, but for which an emergency does not exist. Contractor will utilize all reasonable efforts to complete the locate prior to the excavation start time and date indicated.

One Call Center. A centralized call-in and utility locating coordination center through which subscribing contractor members may receive notification of proposed excavations.

Reasonable Accuracy. Locating within twenty-four inches of the outside dimensions of both sides of an underground facility.

Repair Costs. Actual costs incurred by or on behalf of the City of Riverside to repair damage to Underground Facilities resulting from contractor At-Fault Damages, and specifically excluding any Third Party Claims. Repair Costs will include labor, equipment and material, whether Contractor's or the City of Riverside's, necessary to repair the underground facility. Replaced materials will be charged at their depreciated value. The City of Riverside will not change its method of calculating Repair Costs or the value of the cost factors, except after giving contractor thirty days advance written notice of such change.

Site Surveillance (also known as standby protection, watchdog, or bore watcher). To watch over and protect the City of Riverside Underground Facilities during unusual or extensive excavation (e.g., boring, road widening projects, sewer installation projects, etc.) and to provide such

continuous on-site locating services as may be dictated by the nature and scope of the excavation.

Third Party Claims. Any claims for losses, damages, bodily injury, costs, or expenses made by a person or entity not a party to this Agreement arising from damage to an Underground Facility including, but not limited to, claims as a result of: (1) injury to or death of any person; (2) damage to or loss or destruction of any property; or (3) interruption of service.

Ticket. A transmission received from the appropriate One Call Center.

Contractor At-Fault Damages when the contractor has performed its task per contract or standard and the excavator damages utility.

Damage to an Underground Facility caused by an excavator performing a Legal Excavation on a Valid Ticket that occurs with respect to a Locatable Underground Facility and that resulted solely and directly from contractor error.

Unidentifiable Facility. Any Underground Facility that is not apparent on the facility record and/or by a visual examination at the work site.

Underground Facility. Any item buried or placed below the ground for use in connection with the storage or conveyance of water, sewage, electronic telephonic or telegraphic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids or other substances, including without limitation, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and those parts of poles or anchors below ground.

THE CITY OF RIVERSIDE RIGHTS AND RESPONSIBILITIES

The City of Riverside will provide contractor with sufficient quantities of accurate and complete maps and as-builts or other records of its Underground Facilities and provide timely updates at no cost to contractor. Such maps will normally be supplied digitally on DVD in pdf format and replaced annually, or more frequently if needed, due to any changes. Hardcopy maps will be made available as needed for nonstandard situations.

The City of Riverside may make available to contractor required specifications for the execution of work activities as described in this Agreement.

CONTRACTOR RIGHTS AND RESPONSIBILITIES

- Contractor will have data receiving equipment that is compatible with and in compliance with the requirements of the One Call Center.

- Contractor will respond to all excavation notices received by contractor from the One Call Center for excavations within the geographic areas described in Exhibit D.
- Contractor will use standard materials to mark the location of the City of Riverside's Underground Facilities. Contractor will mark the actual path of the facilities on concrete or asphalt surfaces with paint. Contractor may use offset markings as necessary to provide protection when the nature of the work requires or may require the removal of the marked surface, or otherwise impair, hide or cover up the markings. Contractor may use chalk, flags, or stakes to mark landscaped areas (e.g., lawns, gardens, flower beds, decorative rock areas, etc.) or other places where paint may cause harm or permanently damage the existing surface.
- All underground water facilities identified in the City's GIS (Geographic Information System) and maps provided by the City shall be correctly marked. Water facilities include, all water conveyance system, recycled water, and underground power and data lines associated with water facilities. When marking water lines greater than twelve (12) inches in diameter the contractor will mark the outer most edges of the outside walls of the pipe using a single individual line to represent each edge. The edge marking lines will be parallel to the pipe alignment and shall be the best approximation to the outside edges of the pipe. Contractor shall also mark down the diameter of the pipe, in inches, between the two edge lines every twenty (20) feet for lines greater than twelve (12) inches in diameter."
- The location of all markings will be consistent with the requirements and guidelines of the appropriate One Call Center.
- Contractor will endeavor to perform all locates within the response time requirements contained herein for each Locate Category or contact the excavator to make other arrangements. Because neither the City of Riverside nor contractor can control the volume of locate requests on any given day, contractor will perform the locate, even if after the response time requirements contained herein, as long as the excavator has not completed the excavation and the excavator was properly notified by contractor in a timely manner prior to the excavation that the locate had not been performed.
- For Identified But Unlocatable Facilities, and for the City of Riverside facilities to which contractor is unable to gain access, contractor will notify the City of Riverside by phone or in person at a number or address to be provided to contractor by the City of Riverside of its inability to locate such facilities. Contractor will determine the course of action to be taken, after consultation with and the assistance of the City of Riverside. If the course of action is not successful in locating the facilities, contractor shall notify the excavator of the presence of Identified But Unlocatable Facilities and caution the excavator that any location information supplied may not be within the definition of Reasonable Accuracy. Contractor shall not be liable and shall be indemnified and held harmless by the City of Riverside in accordance with the INDEMNIFICATION section herein for any losses and/or damages to such facilities.
- If water in a manhole or other underground structure impedes contractor's ability to perform a quality locate, contractor will notify the City of Riverside. The City of Riverside will pump the water or determine what other actions it will take in order to enable the Locate to be completed.

- The field locator will document the completion of all locates to the contractor branch office, which will maintain a record of this information and provide it to the City of Riverside representatives upon request.
- Contractor will maintain all the City of Riverside maps and the City of Riverside records as confidential information in accordance with the USE OF CONFIDENTIAL INFORMATION section herein. All maps and records will remain the property of the City of Riverside.
- Contractor will return all maps and records not replaced or otherwise disposed of to the City of Riverside upon termination of the work performed under this Agreement.
- Contractor employees will wear appropriate uniforms clearly displaying the contractor name and logo. An owned, leased, or hired vehicles used by contractor will have Contractor's name clearly marked.
- Contractor will provide such office services, forms, and documents as may be required for proper administration of this Agreement.
- Contractor will provide general training and instruction to its personnel as necessary, which will include but not be limited to: use of facility locating equipment, reading of symbols and maps, general safety, One Call Center operations, Tickets, use of gas test kits, etc.
- Contractor will provide specialized training and instruction to its personnel as necessary to comply with local requirements specific to certain geographic territories.

SAFETY

Contractor will operate in compliance with all material Federal, State, and other safety rules, laws, and regulations.

Contractor will comply with the appropriate "Construction Safety Orders", "Trench Construction Safety Orders", or "General Safety Orders", and any other applicable requirements specific to certain geographic territories.

Contractor personnel will not enter manholes or other endorsed spaces containing water or toxic or combustible gasses. If the City of Riverside's inspector is called and finds the presence of contamination, he/she will make appropriate arrangements for pumping at the City of Riverside's election and expense. The City of Riverside, at its own expense, will be solely responsible for proper disposal of any such contamination, together with making all reports, as required by law, ordinance, or regulation. Contractor shall not be responsible and shall be indemnified and held harmless by the City of Riverside in accordance with the INDEMNIFICATION section herein for any losses or damages incurred in connection therewith.

RESPONSE TIME REQUIRED

The Contractor shall complete all locate requests within two working days. In case of an emergency or urgent requests, the Contractor shall be available to respond 24 hours a day, 7 days a week and respond, after being called by the City representative.

After Hours Call Out Rate: Rate applicable for locates performed when contractor responds outside standard hours and/or days as defined above.

Project work, large jobs (e.g., ongoing construction or large geographic areas), and work requiring lane or street closure shall be treated separately from normal locates. Contractor shall keep track of this project work and provide the City of Riverside a periodic listing of the projects underway. Billing methods for long jobs may be: one unit for every 400 linear feet or the appropriate hourly rate, whichever is appropriate.

A request to remark after the start of excavation will be considered an additional Locate Request. If contractor finds the City of Riverside's facilities at a work site covered by a transmission on which the City of Riverside's code is not included, or has been screened by the City of Riverside, contractor will locate and mark those facilities and bill the City of Riverside at the normal rate. Contractor will notify the City of Riverside so that the City of Riverside can ensure future transmissions for that site include its code.

The City of Riverside will pay contractor the total amount due in accordance with the terms of this Agreement within thirty days after receipt of invoice. Any payment not received within thirty days of such due date will be subject to a late payment charge of one percent per month. For certain jobs, progress payments may be agreed upon between contractor and the City of Riverside. The City of Riverside payment process is through an electronic transfer process.

Contractors or Suppliers must be set up for this payment process in order to be compensated for materials and/or services.

Either party may initiate a revision of prices under this Agreement by giving written notice to the other at least ninety days prior to the proposed effective date thereof. Any revision in prices will be determined in good faith by mutual agreement of the parties. The party requesting the change will provide documentation to the other party substantiating that there has been a change in any of the following that would justify a price revision: (1) Contractor's costs associated with providing the services; (2) the laws or the legal requirements applicable to the services; (3) One Call Center policies and practices; or (4) the risks and liabilities associated with the services. Subject to the INDEMNIFICATION section herein, if the parties fail to mutually agree upon revised prices by the proposed effective date, either party may terminate this Agreement, without liability or obligation to the other party directly or indirectly related to such termination, except for completed work, with ninety days prior written notice after the effective date.

BILLING

Contractor will furnish to the City of Riverside a weekly billing covering work completed during the previous week, mailed to:

The City of Riverside – Electric Field c/o Jim King, 2911 Adam Street
Riverside, CA 92504

The Contractor shall use an automated ticket management system providing the City the ability to search for, view, download and printing of real time locating activities, ticket status and read ticket details. The Contractors' comprehensive electronic documentation package shall include time and date, the locate and marking that was completed, ticket number assigned by the One Call Center, GPS generated stamp displaying the exact location of the technician's vehicle of on-

site location, type of markings used, aerial image of locate site with marked infrastructure specifying exact location of utility, photos of markings placed, locators' comments, and the locators' signature.

All locating and marking documentation produced by the Contractor for City use shall be in a verifiable and unalterable electronic form. The City shall have access to the manifest information at all times.

DAMAGE NOTIFICATION AND INVESTIGATION PROCEDURES

The City of Riverside Responsibilities. If the City of Riverside receives notice of a dig-in that has caused any type of damage, or has been reported to have caused any type of damage, to the City of Riverside's Underground Facilities, the City of Riverside will notify contractor within four hours or, if the City of Riverside is notified outside of normal business hours, at the start of the next business day. The City of Riverside will report to contractor:

- Date and time actual dig-in occurred
- Date and time actual dig-in was reported
- Location of reported dig-in
- Any known circumstances surrounding the dig-in
- Name of firm and/or individual reporting damage
- The City of Riverside's estimated time of arrival to begin damage investigation and meet with Contractor's quality assurance representative.

Successful notification requires that the City of Riverside receive from contractor a confirmation number. This ensures that both parties have evidence of the notification, thereby avoiding misunderstandings.

Contractor Responsibilities. Contractor will provide reasonable assistance to the City of Riverside in the investigation of a damage caused by a dig-in. If contractor receives notice of a dig-in that has caused any type of damage, or has been reported to have caused any type of damage, to the City of Riverside's Underground Facilities from any party other than a

representative of the City of Riverside, contractor will notify the City of Riverside within four hours or, if contractor is notified outside of normal business hours, at the start of the next business day. Contractor will report to the City of Riverside:

- Date and time dig-in is believed to have occurred
- Date and time actual dig-in was reported to contractor
- Location of reported dig-in
- Any known circumstances surrounding the dig-in
- Name of firm and/or individual reporting damage
- Contractor's estimated time of arrival to begin damage investigation and meet with the City of Riverside's quality assurance representative.

If the City of Riverside so chooses, the City of Riverside will provide a confirmation number to contractor, ensuring that both parties have evidence of the notification, thereby avoiding misunderstandings.

Representatives of the City of Riverside and contractor will confer on site at the time of damage, if possible, or within two weeks if an on-site meeting did not occur, to discuss the results of each party's damage investigation and determine in good faith the appropriate course of action. The

City of Riverside and contractor will provide the results of their damage investigations to each other within 48 hours of their completion, except for any privileged information. The City of Riverside will provide and update a list of its authorized claims resolution representatives in each geographic area.

Notwithstanding the INDEMNIFICATION section herein, if it is determined by the City of Riverside that a third party is at fault for damages to Underground Facilities, then the City of Riverside will hold contractor harmless for any and all costs, expenses and liabilities resulting from such damage. Contractor agrees to provide reasonable cooperation at the City of Riverside's request to the City of Riverside in this effort.

SUPERVISION AND INSPECTION

Contractor's performance under this Agreement will be subject to the inspection and satisfaction of the City of Riverside, but it is understood that contractor will control all the materials, appliances and labor furnished under this Agreement; the City of Riverside is interested in the results obtained.

Contractor will provide continuous supervision when any work under this Agreement is being performed. The City of Riverside will exercise no supervision over Contractor's employees, agents, or other personnel furnished by contractor for the performance of work hereunder.

USE OF CONFIDENTIAL INFORMATION

As used in this Agreement, the term "Confidential Information" will mean all specifications, drawings, sketches, models, samples, tools, computer programs, technical information, and all written documentation, recorded, machine-readable or other information provided in a tangible form to one party by the other party which is marked "Proprietary" or "Confidential" with the appropriate owner corporation name.

Each party will treat the other party's information in accordance with a standard of care reasonable calculated to prevent inadvertent or accidental disclosure. Nothing herein will be construed as waiving the right of any party to require the other party to execute a written non-disclosure Agreement, containing reasonable additional terms and conditions, prior to the supplying of particular confidential information from time to time.

RIGHT OF ACCESS

Contractor and the City of Riverside will permit reasonable access during normal working hours to its facilities in connection with work hereunder. No charge will be made for such visits. It is agreed that reasonable prior notification will be given when access is required.

PLANT AND WORK RULES

The respective agents and employees of the parties will, while on premises of the other party, comply with all plant rules, regulations and reasonable company standards for security, including

(where required by government regulations) submission of satisfactory clearance from U.S. Department of Defense and other federal authorities concerned.

EXHIBIT "B"
COMPENSATION

EXHIBIT B
The City of Riverside
COMPENSATION SCHEDULE

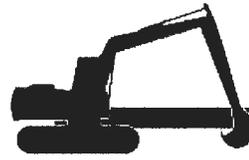
Item	Cost Per Unit
Per Transmission* - Electric	\$21.68
Per Transmission* - Water	\$21.68
Per Transmission* - Sewer Force Main	\$21.68
Office screened ticket requiring interpretation of maps in office only. No Field response.	\$5.44
Referred Ticket requiring Contractor to refer to City Staff to Locate because of limited access to facilities in Energized Facility	\$5.44
After Hourly Rate	\$141.82
Identify any discount(s) for locating multiple utilities at a location. Up to 400 feet of each utility, considered one unit. *Locating more than 400 feet of one utility, it will be considered another ticket.	

Utility	Estimate	Cost
Electric	20,000	\$433,000
Water	25,369	\$550,000
Sewer	2306	\$50,000
	TOTAL COST OF CONTRACT	\$1,033,600

Prices for subsequent terms shall not exceed an amount adjusted in proportion to changes in the Consumer Price Index in Los Angeles-Riverside-Orange County, CA.

EXHIBIT "C"

KEY PERSONNEL



KSE

Disabled Veteran-Owned Construction Company

Underground Utilities

Locating Key Personnel

Locating Manager

Malo Tauaese

Cell 909-767-5315

Office 909-204-5970

mtauaese@kse.construction

Locating Lead

Bruno Chavez

Cell 714-986-6444

bchavez@kse.construction

Project Coordinator

Lisa Alvarez

Office 714-399-2219

lalvarez@kse.construction

Safety Director

Henry Miranda

Cell 714-365-0903

Safety@kseconstruction.com

President

Erick Castro

Cell 714-251-8869

Office 909-204-5987

ecastro@kse.construction

Office

909-204-5987

info@kseconstruction.com