

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

Energy Delivery Consultant Panel

HDR Engineering, Inc.

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation, hereinafter referred to as "City", and HDR Engineering, Inc., a Nebraska corporation authorized to do business in California, hereinafter referred to as "Consultant", with respect to the following facts:

RECITALS

WHEREAS, the City requires the services of a consultant that is experienced in all aspects of the electrical facilities including street lighting, generation, substations, communication, SCADA, transmission and distribution systems included but not limited to: architectural, electrical, civil, mechanical, structural, geotechnical, environmental, and communications engineering; systems operations and maintenance, construction and project management functions for various projects for the City's Public Utilities Department, Electric Division; and

WHEREAS, City issued a Request for Proposals for purposes of establishing a panel of consultants experienced in providing such professional services, and to use such panels for various projects for the City's Public Utilities Department, Electric Division; and

WHEREAS, Consultant has the necessary experience in providing such professional consulting services and advice on various issues; and

WHEREAS, selection of Consultant is expected to achieve the desired results in an expedited fashion; and

WHEREAS, Consultant has submitted a Proposal to City and has affirmed its willingness and ability to perform such work.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by this reference, City and Consultant agree as follows:

1. SCOPE OF SERVICES.

1.1 Retention of Consultant. City hereby retains Consultant to perform, and Consultant agrees to render, technical and professional services, including labor, material, equipment, supervision and expertise for various projects for the City's Public Utilities Department, Electric Division. Services rendered under this Agreement, shall be administered by the City's Public Utilities Department, Electric Division (the "Department") for various capital improvement projects.

1.2 Assigned Project. During the term of this Agreement, Consultant shall have the opportunity to submit proposals for various capital improvement projects ("Assigned Project"). The scope of work for the project will be defined in a Request for Proposals issued by City. All proposals submitted shall be reviewed by the City, and a single consultant will be selected to perform the services for the project. Acceptance of Consultant's proposal shall be made in the form of a Supplemental Agreement for Assigned Project, a sample of which is attached hereto as Attachment I.

Execution of this Agreement by Consultant and/or the submission of proposals for City Assigned Projects does not guarantee the award of a Supplement Agreement.

2. PERSONNEL.

2.1 Consultant's Representative. Fernando Garcia shall be Consultant's Project Representative who shall coordinate all aspects of each Assigned Project. Consultant's Project Representative shall be available to City at all reasonable times. Consultant may appoint another person as Project Representative upon written notice to City.

2.2 Substitution of Key Personnel. The key personnel for performance of this Agreement are: Giovanni Gonzalez. Consultant has represented to City that the key personnel will perform the Services under this Agreement. Should one or more such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval by City. In the event that City and Consultant cannot agree as to the substitution of the key personnel, City shall be entitled to terminate this Agreement, pursuant to the applicable provisions of this Agreement.

2.3 Project Manager. For each Assigned Project, the City shall designate a representative who shall act as the City's Project Manager ("Project Manager"). The Project

Manager shall have authority to act on behalf of City for each Assigned Project. City shall provide written notice to Consultant of any change in Project Manager for an Assigned Project.

3. **TERM.** The term of this Agreement shall become effective on the date first written above and shall remain in effect through the later of:

a. June 30, 2019; or

b. The required date for completion of an assigned project, provided that such project was assigned prior to June 30, 2019.

4. **CONSULTANT'S COMPENSATION.**

4.1 Services. Consultant shall receive compensation for all services rendered under this Agreement at the rates negotiated for the Assigned Project, and set forth in the Supplemental Agreement for Assigned Project. Without prior approval of the City Council, the total amount to be paid to Consultant over the term of this Agreement for all Assigned Projects shall not exceed Two Million Dollars (\$2,000,000).

4.2 Extra Services. Payment for Extra Services shall be negotiated between City and Consultant on the basis of the Professional Hourly Rates schedule negotiated for the Assigned Project.

5. **PAYMENTS TO CONSULTANT.**

5.1 Basic Services.

a. Partial payments shall be made in accordance with the Payment Schedule section of the Request for Proposals for each Assigned Project. Payments shall be processed no more than once per month.

b. City shall pay Consultant all undisputed balances on invoices within 60 days of receipt, and shall notify consultant of any disputed amounts within thirty (30) days of receipt.

5.2 Extra Services. Payments for approved Extra Services provided under Article 10 shall be made monthly as Extra Services are rendered and expenses incurred.

5.3 Reimbursements. Reimbursement for costs incurred and other expenses shall be made to Consultant within 60 days of City's receipt and approval of invoices.

5.4 Limitation. No payment for any work or services performed by Consultant shall exceed the limits established in Section 4 herein.

6. PROJECT PERFORMANCE.

6.1 Commencement of Services. Consultant shall commence the services for each Assigned Project on the date specified in a Notice to Proceed, which shall be issued by the Project Manager within fifteen (15) calendar days after the assignment of a given project.

6.2 Time of Completion:

- a. Time is of the essence for each and every provision of this Agreement.
- b. The project completion time will be as designated in the Notice to Proceed for each Assigned
- c. Consultant shall have all plans and/or documents one hundred percent (100%) complete and ready for City's review within the number of calendar days specified in the Notice to Proceed for any given Assigned Project.

6.3 Failure to Perform. Failure of Consultant to complete the services within the time allowed and in the manner herein provided may result in the Agreement being immediately terminated by City.

6.4 Standard of Care. 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 Consultant's professional skill and expertise. Consultant represents and maintains that Consultant is skilled in the technical calling necessary to perform all services, duties and obligations required by this Agreement and to fully and adequately complete each Assigned Project.

7. BASIC SERVICES OF CONSULTANT. The scope of services to be provided for a given project shall be defined for each Assigned Project. Any changes to the scope of services must be authorized by the Department's Director or Project Manager, and shall be made in writing.

7.1 Right to Preliminary Review. All work prepared by Consultant shall be subject to the approval of the Project Manager. Consultant shall allow Project Manager to inspect and review Consultant's work in progress at any reasonable time. All reports, working papers, and similar work products prepared for submission in the course of providing services under this Agreement, or any Supplement Agreement, shall be submitted to the Project Manager in draft form. In the event that Project Manager, in his or her sole discretion, determines the formally

submitted work product to be inadequate, Consultant may be required to revise and resubmit the work at no additional cost to City. Should Consultant fail to make requested corrections in a timely manner, such corrections may be made by City, and the cost thereof charged to Consultant.

7.2 Monthly Progress Reports. On a monthly basis, Consultant shall submit a written progress report, in a form determined by City, which shall indicate the progress achieved during the previous month in relation to the Project Schedule for the Assigned Project. The timely submission to the Project Manager of up-to-date monthly progress reports by Consultant shall be a condition precedent to receipt of any payments otherwise due from City.

7.3 Appearance at Hearings. If and when required by City, Consultant shall render assistance at public hearings or other meetings related to the review and approval of the Assigned Project, or as necessary to perform the services.

8. **INDEPENDENT CONTRACTOR.** At all times during the performance of the services, Consultant and Consultant's agents and employees shall act in an independent capacity and not as officers, employees or agents of City. Consultant's employees and agents shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Consultant. City retains Consultant on an independent contractor basis. Consultant is not an employee of City.

8.1 Control and Payment of Subordinates. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant 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. Consultant shall be responsible for all reports and obligations respecting such personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, and worker's compensation insurance.

8.2 Subordinates and Subconsultants. Consultant shall employ, at Consultant's own expense, technicians and professionals properly skilled in the various aspects of the design and construction of facilities required. If subconsultants are engaged for any portions of the services, Consultant shall advise the Project Manager in writing of their selection prior to their

performance of work. The Project Manager shall have the authority to approve or reject the use of any subconsultant for any of the services.

9. LICENSES.

9.1 State Professional Licenses. Consultant represents and warrants to City that Consultant and all subconsultants have all licenses, permits, qualifications and approvals of whatever nature which are legally required to practice its profession. Consultant further represents that Consultant shall maintain all such licenses and approvals in full effect during the term of this Agreement.

a. Civil/Structural Engineer. Consultant shall maintain a valid, current license to practice Civil/Structural Engineering in the State of California during the entire period of the Agreement, and failure to do so shall be grounds for City's termination of the Agreement. Consultant shall comply with the requirements for Professional Engineers (California Business and Professions Code, Section 6700 et seq.).

b. Subconsultants, Consultant shall ensure that all subconsultants who perform portions of the services under this Agreement shall be properly licensed to perform their respective portions of the work and shall maintain current California licenses in their respective fields.

9.2 Local Licenses. Consultant and all subconsultants shall secure a local business license (Business Tax Registration) to operate in the City of Riverside.

10. EXTRA SERVICES OF CONSULTANT. At any time during the term of this Agreement, City may request that Consultant perform Extra Services. Consultant shall not perform Extra Services until receiving written authorization from the Project Manager. Any work which is determined by City to be necessary for the proper completion of the Assigned Project, but which neither Consultant nor City reasonably anticipated would be necessary when the scope of services for the Assigned Project was developed, and for which the fees and time of completion for such services were negotiated in advance of the work, shall be paid for by City as "Extra Services" provided that the Extra Services are authorized in writing by the Project Manager prior to Consultant's commencement thereof.

11. DISPUTED WORK. In any case where Consultant believes that necessary work or services are not clearly covered in this Agreement, or any Supplement Agreement, or have not

been ordered in writing by the Project Manager as Extra Services, Consultant shall immediately notify the Project Manager in writing of Consultant's belief that the work or services should be paid for as Extra Services before Consultant begins the work or services. If such notification is not given, or if the Project Manager is not afforded an opportunity to negotiate the appropriate fee for such Extra Services, then Consultant shall be deemed to have agreed to perform the work or services without any additional charges to City therefor. Such notice by Consultant to the Project Manager shall not in any way be construed as proving that the work or services in question are Extra Services. The notice must be approved or rejected by the Project Manager, and if the Project Manager determines that Consultant is correct, the work or services shall be allowed and paid for as Extra Services.

12. **UNAUTHORIZED WORK.** Any work done or services performed without written authority from the Project Manager shall be considered unauthorized and shall not be paid for by City.

13. **TERMINATION OF AGREEMENT.**

13.1 Termination. This Agreement may be terminated for any reason by either party upon 30 days prior written notice to the other party, or if City should decide to abandon or postpone the project indefinitely. In the event Consultant fails to substantially perform the services, City may terminate this Agreement immediately upon written notice.

13.2 Payment upon Termination. In the event of such termination, City shall determine and pay to Consultant, as full payment for all City-approved work performed and all expenses incurred under this Agreement, or any Supplemental Agreement, the amount which bears the same ratio to the total fee which would have been paid for the full performance of the services as the ratio of work actually rendered bears to the services which would have been necessary for full performance of this Agreement, or any Supplemental Agreement, plus any sums due Consultant for Extra Services or reimbursements. In ascertaining the work actually rendered prior to the date of termination of the Agreement, consideration shall be given to both completed work and work in progress and to all drawings and other documents, whether completed or incomplete, provided that they are delivered to City.

13.3 Recommencement. If the City should determine to complete an Assigned Project, or a substantially similar project, following termination of this Agreement, City shall have the right to utilize any of the drawings, specifications, Opinions of Probable Project

Construction Costs and other construction bid documents prepared under this Agreement, or any Supplemental Agreement, by Consultant without additional compensation to Consultant, provided that prior to such utilization all reference to Consultant is removed from said documents.

14. **PROJECT SCHEDULE.** Consultant shall prepare and submit an estimated time schedule for all major phases of each Assigned Project to the City within fifteen (15) calendar days following City's issuance of a Notice to Proceed for said project. This schedule shall reflect the project completion time allowed and the overall schedule included in the Consultant's proposal. The schedule will be subject to revision for delays caused by conditions beyond the control of Consultant, and delays which Consultant cannot reasonably foresee. The Project Manager shall be promptly notified of all delays. Should Consultant determine that a schedule modification is necessary, Consultant shall promptly submit a revised Project Schedule for Project Manager's review and approval of the anticipated delay.

15. **ACCOUNTING RECORDS OF CONSULTANT.** Records of Consultant's direct personnel, reimbursable expenses pertaining to any Extra Services, and records of accounts between City and Consultant shall be made and kept by Consultant on a generally recognized accounting basis and shall be made available to City or its authorized representatives at all reasonable times for inspection and copying.

16. **INDEMNIFICATION.**

16.1 Design Professional Defined. For purposes of this Agreement, "Design Professional" includes

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.

16.2 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 this Agreement and any Supplemental Agreement hereto, 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. 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.

16.3 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 this Agreement and any Supplemental Agreement hereto, 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.

16.4 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 Contract 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.

16.5 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 and any Supplemental Agreement hereto, 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.

17. INSURANCE.

17.1 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.

17.1.1 Limitations. These minimum amounts of coverage shall not constitute any limitation or cap on Consultant's indemnification obligations herein.

17.1.2 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.

17.1.3 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.

17.1.4 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.

17.2 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.

17.3 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.

17.3.1 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.

17.3.2 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.

17.3.3 Prior to City's execution of this Agreement, copies of insurance policies or original certificates and additional insured endorsements 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 services performed by and on behalf of the named insured for the City of Riverside.

17.3.4 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.

17.4 Errors and Omissions Insurance. Prior to City's execution of this Agreement, Consultant shall obtain, and shall thereafter maintain in force during the term of this Agreement, professional liability or errors and omissions liability insurance in the minimum amount of \$1,000,000, unless otherwise waived by the City's Risk Manager. Coverage as required in this Section shall apply to liability for a professional error, act, or omission arising out of the scope of Consultant's services as defined in this Agreement and/or any Supplemental Agreement.

18. **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 services and activities provided in furtherance of this Agreement and any Supplemental Agreement hereto, 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.

19. **REPRODUCTION OF DOCUMENTS.**

19.1 Review Documents. Consultant shall provide City, in the number reasonably required by City, Consultant's proposed final construction bid documents for the review and approval by the public agencies having jurisdiction over the Assigned Project.

19.2 Final Approved Construction Documents. Consultant shall furnish the City the number of reproductions of the final approved construction bid documents necessary

for use by City in obtaining construction bids and completing construction of the Assigned Project.

20. OWNERSHIP OF DOCUMENTS.

20.1 Ownership of Documents. All work and contract deliverables prepared pursuant to this Agreement by Consultant including, but not limited to, drawings, specifications, sketches, calculations, estimates, data, charts, models, reports, maps, computer programs, software or other contract deliverables, whether in written form, electronic, digital or otherwise ("Project Documents"), shall be and remain the property of City and shall be delivered to City whenever requested. Consultant shall not release to others information furnished by City without prior express written approval of City.

20.2 Work-For-Hire; Ownership of Copyrights. Consultant agrees that any work prepared for City that is eligible for copyright protection in the United States or elsewhere shall be a "work made for hire" as that term is used in the laws of the United States regarding copyrights. Consultant understands that the City shall be deemed the author of any and all such work, the City may register copyrights in the City's name, and the work made for hire is the exclusive property of the City. Consultant agrees to sign upon request any documents affirming that work created by Consultant at the direction of the City is work made for hire and belongs exclusively to the City. 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.

21. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon City and its successors and upon Consultant and Consultant's successors and assigns. Neither this Agreement, nor any part hereof, nor any monies due or to become due hereunder may be assigned by Consultant without the prior written consent of City, which consent shall not be unreasonably withheld.

22. **NONDISCRIMINATION.** During Consultant's performance of this Agreement and/or any Supplemental Agreement, Consultant and Consultant's subconsultants shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, physical handicap, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, age, sex or sexual orientation in the selection and retention of employees and subconsultants and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Consultant shall also comply with the Americans with Disabilities Act.

23. **FULL COMPENSATION.** The consideration payable to Consultant as provided herein shall be compensation in full for all of Consultant's services and expenses incurred in the performance of the services, including travel and per diem, unless otherwise expressly provided.

24. **MODIFICATIONS.** No alteration or variation of the terms of the Agreement shall be valid except as follows:

24.1 Changes relating to time, money or scope of work shall be made by formal written amendment to the Agreement and shall be executed by both parties.

24.2 Minor alterations of terms or covenants may be formalized by letter from the Public Utilities General Manager or his designee.

25. **PREVAILING WAGE.** If applicable, Consultant and all subconsultants 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 ascertained, determined and specified in both of those documents are referred to and made a part hereof as though fully set forth herein.

26. **FEDERALLY FUNDED ASSIGNED PROJECTS.** In the event Consultant is awarded an Assigned Project which is federally funded, Consultant shall comply with all the following requirements:

26.1 Disadvantaged Business Enterprise (DBE):

a. DBE Participation Requirements and Regulations. The DBE participation goal for federally-funded Assigned Projects will be determined by the City. The Consultant shall

carry out applicable requirements of 49 CFR, Part 26, of the Code of Federal Regulations, entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," in the award and administration of federally funded Assigned Projects. The regulations in their entirety are incorporated herein by this reference. The Consultant shall not discriminate on the basis of race color, national origin or sex in the performance of this Agreement, or any Supplemental Agreement.

Noncompliance by the Consultant with the requirements of the regulations is a material breach of this Agreement and may result in termination of the Agreement, or other such remedy as the City deems appropriate.

The Consultant shall include the following in each subconsultant contract:

- i) A subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement.
- ii) The subconsultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this Agreement.
- iii) Language providing for the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.

b. Performance of DBE Subconsultants. DBE subconsultants shall perform the work for which they have been listed in the Consultant's proposal, unless the Consultant has received prior written authorization to perform the work with other forces as set forth in subparagraph g., "DBE Substitution and Additions", of this Agreement.

c. Prompt Payment to DBE and Non-DBE Consultants. The Consultant shall not be entitled to any payment for the work, unless it is performed by the listed subconsultants (DBE or non-DBE), or by the Consultant's own forces, pursuant to prior written authorization of the Project Manager. This is the case even if other contract work is not completed and has not been accepted in conformance with the terms of the Agreement or any Supplemental Agreement by the City.

d. Prompt Payment Progress Pay Retention to DBE and Non-DBE Subconsultants. The Consultant shall return all moneys withheld in retention from the subconsultant within 30 days after receiving payment for work satisfactorily completed, even if other work is not completed and has not been accepted in conformance with the terms of this Agreement or any Supplemental Agreement. This requirement shall not be construed to limit or

impair any contractual, administrative, or judicial remedies otherwise available to the Consultant or subconsultant in the event of a dispute involving late payment or nonpayment to the Consultant or deficient subcontract performance or noncompliance by a subconsultant.

e. DBE and Non-DBE Subconsultant Payment Records. The Consultant in addition to maintaining records showing the name and business address of each first tier subconsultant, shall also show the name and business address of every DBE regardless of tier. The records shall show the date of payment and the total dollar figure paid to all DBE firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of work. Upon completion of a federally funded Assigned Project, a Final Report for Utilization of DBE Subconsultants shall be prepared and certified correct by the Consultant or the Consultant's authorized representative, and shall be furnished to the Project Manager. The report shall be furnished to the Project Manager with the final invoice. Failure to provide the report with the final invoice will result in the invoice being in dispute until the report is received.

f. Penalty Assessed for Failure to Provide Subconsultant Payment Records. The sum of \$10,000 will be withheld from payment if a Final Report for Utilization of DBE Subconsultants is not submitted. The amount will be paid to the Consultant when the form is submitted.

g. DBE Substitutions or Additions. The Consultant may not substitute, or terminate for convenience a subconsultant listed in the original proposal without the prior written approval of the Project Manager. However, the Consultant may add a firm to perform work originally planned to be done by the Consultant's own forces. The Consultant must make an adequate good faith effort to find another certified DBE subconsultant to substitute for the original DBE. The Consultant will be required to make good faith efforts to replace the original DBE subconsultant with another DBE subconsultant to the extent needed to meet the contract goal.

The requirement that DBEs must be certified by the proposal submittal date does not apply to DBE substitutions or additions after award of a federally funded Assigned Project. DBEs must be certified at the time of the substitution or addition. Consultants shall submit requests for substitution in writing to the Project Manager. Authorization to use other subconsultants or suppliers may be requested for the following reasons:

- i) The listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract with Consultant, when such contract, based upon the general terms and conditions of this Agreement, or any Supplemental Agreement, or on the terms of such subconsultant's written proposal, is presented to Consultant.
- ii) The listed DBE becomes bankrupt or insolvent.
- iii) The listed DBE fails or refuses to perform the subcontract.
- iv) The Consultant stipulated that a bond was a condition of executing a subcontract and the listed DBE subconsultant failed or refuses to meet the bond requirements of the contract.
- v) The listed DBE was the result of an inadvertent clerical error. The Consultant must have asserted a claim of inadvertent clerical error in listing the subconsultant within two working days after the proposal submittal and copies of that notice to both the subconsultant he or she claims to have listed in error and intended subconsultant who had submitted a proposal to the Consultant prior to proposal submittal.
- vi) The listed DBE was not licensed as required by the State of California Consultant's Licensing Board or failed to have the required permits or licenses as required by Federal, State or Local governmental jurisdictions.
- vii) The work performed by the listed subconsultant is substantially unsatisfactory and is not in substantial conformance with the scope of work to be performed, or the subconsultant is substantially delaying or disrupting the progress of the work.
- viii) When the listed DBE is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- ix) When it is in the best interest of the City.

Prior to approval of the Consultant's request for substitution to the Project Manager, the Consultant shall give notice in writing to the listed DBE subconsultant of the Consultant's

request to substitute and the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subconsultant. The listed subconsultant who has been so notified, shall have five working days within which to submit written objections to the substitution to the Project Manager. Failure to respond to a written objection shall constitute the listed subconsultant's consent to the substitution.

h. Termination of a DBE. In conformance with Federal DBE regulation 49 CFR Part 26, Sections 26.53(f)(1) and 26.53(f)(2), the Consultant shall not:

- i) Terminate for convenience a listed DBE subconsultant and then perform that work with its own forces (personnel), or those of an affiliate, unless the Consultant has received prior written authorization from the Project Manager to perform the work with other forces.
- ii) If a DBE subconsultant is terminated or fails to complete its work for any reason, the Consultant will be required to make good faith efforts to replace the original DBE subconsultant with another DBE subconsultant to the extent needed to meet the contract goal.

i. DBE Certification Status. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify the Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the contract, the subconsultant shall notify the Consultant in writing with the date of certification. Upon completion of the federally funded Assigned Project, the Consultant shall complete a Final Report for Utilization of DBE Subconsultants indicating the DBEs certification status and shall be signed and certified correct by the Consultant. The certified form shall be furnished to the Project Manager within 30 days from the date of completion of the federally funded Assigned Project.

j. DBE Eligibility toward Goal. The dollar value of work performed by a DBE is credited/counted toward the goal only after the DBE has been paid.

26.2 Prevailing Wage. If applicable to the services being provided in connection with a federally funded Assigned Project, Consultant and all subconsultants shall pay the higher of federally established prevailing wage rates or California general prevailing wage rates of per diem wages and overtime and holiday wages as determined by the U.S. Department of Labor.

26.3 **Record Retention.** Contractor shall maintain all books, documents, papers and records of Consultant's operations and financial activities directly pertinent to the federally funded Assigned Project in accordance with the requirements of the Federal granting agency and the regulations promulgated by or for it. Such books, documents, papers and records shall be open for inspection, audit, examination, excerpt and transcription by the authorized representatives of City, the Federal granting agency and the Controller General of the United States during regular working hours. Consultant shall keep and maintain said books, documents, papers and records for at least three years after the City makes final payments pursuant to the contract and all other pending matters are closed or such greater period of time as may be required by the Federal granting agency.

27. **NOTICES.** Service of any notices, bills, invoices or other documents required or permitted by this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

CITY
Public Utilities Department
Attn: Energy Delivery Engineering
3750 University Avenue, 3rd Floor
Riverside, CA 92501

CONSULTANT
HDR Engineering, Inc.
Attn: Fernando Garcia
3230 El Camino Real Suite 200
Irvine, CA 92602

28. **JURISDICTION/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 a court of competent jurisdiction in the 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.

29. **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, or any Supplemental Agreement. Consultant shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of Consultant's services with all applicable laws, ordinances and regulations. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code section 1775.

The Consultant agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments are subject to repayment by Consultant to City. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.

30. **SEVERABILITY.** Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement or, any Supplemental Agreement, shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in 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 this 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. **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.

33. **CONFLICT OF INTEREST.** Consultant, for itself and on behalf of its key personnel, represents and warrants that by the execution of this Agreement, they have no interest, present or contemplated, in the Assigned Projects affected by the above- described services. Consultant further warrants that neither Consultant, nor its key personnel 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.

34. **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.

35. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are not representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to the subject matter contained in this Agreement which are not fully expressed herein.

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

CITY OF RIVERSIDE, a California
charter city and municipal corporation

HDR Engineering, Inc.,

a Nebraska corporation authorized to
do business in California

By: _____
City Manager

By: Scott Hereim

Attest: _____
City Clerk

Scott Hereim, Sr. VP
[Printed Name and Title]

Certified as to Availability of Funds:

By: Bonnie J. Kudron

By: David J. Astor
CFO/Treasurer

Bonnie J. Kudron - Asst. Secretary
[Printed Name and Title]

Approved as to Form:

By: 
Assistant City Attorney

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WORKERS' COMPENSATION CERTIFICATION

I am aware of the provisions of Section 3700 of the 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 I will comply with such provisions before commencing the performance of the work of this contract.

Dated: _____

HDR Engineering, Inc.

By: Scott H.

Scott Hereim, Sr. VP
[Printed Name and Title]

(This form may be used in lieu of a standard corporate resolution)

CORPORATE RESOLUTION CERTIFICATE

I, HEREBY CERTIFY that during a meeting of the Board of Directors of the _____, a corporation existing under the laws of the State of _____, held on _____, 20____, the following resolution was duly passed and adopted:

“RESOLVED, that _____, as _____ of the Corporation, be and is hereby authorized to execute the Agreement for _____ between the City of Riverside and this corporation, and that his/her execution thereof shall be the official act and deed of this Corporation.”

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this _____, day of _____, 20_____.

Secretary

SUPPLEMENTAL AGREEMENT FOR ASSIGNED PROJECT

Consultant: _____

Project Name: _____

The Project Narrative for [name of project] ("Project"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, and Consultant's proposal dated [date of proposal], a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference, shall constitute a supplement to the Professional Consultant Services Agreement Energy Delivery Consultant Panel, by and between City and Consultant, dated [date of executed master agreement] ("Agreement"). Consultant agrees to perform the services described in the Project Narrative within the time set forth in the Notice to Proceed for an amount not to exceed [written amount] **Dollars (\$0)**. Performance of the services shall be subject to the terms and conditions contained in the Agreement.

Dated this ____ day of _____, 2016.

CITY OF RIVERSIDE, a California
charter city and a municipal corporation

CONSULTANT NAME,
[legal business entity, e.g. a sole proprietor,
California corporation, etc.)

By: _____
City Manager

By: _____

Title: _____

Attest: _____
City Clerk

By: _____

Title: _____

Certified as to Availability of Funds:

By: _____
CFO/Treasurer

Approved as to form:

By: _____
Assistant City Attorney

EXHIBIT "A"

Project Narrative

EXHIBIT "B"

Consultant's Proposal

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

Energy Delivery Consultant Panel

KOURY ENGINEERING & TESTING, INC.

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation, hereinafter referred to as "City", and KOURY ENGINEERING & TESTING, INC., a California corporation, hereinafter referred to as "Consultant", with respect to the following facts:

RECITALS

WHEREAS, the City requires the services of a consultant that is experienced in all aspects of the electrical facilities including street lighting, generation, substations, communication, SCADA, transmission and distribution systems included but not limited to: architectural, electrical, civil, mechanical, structural, geotechnical, environmental, and communications engineering; systems operations and maintenance, construction and project management functions for various projects for the City's Public Utilities Department, Electric Division; and

WHEREAS, City issued a Request for Proposals for purposes of establishing a panel of consultants experienced in providing such professional services, and to use such panels for various projects for the City's Public Utilities Department, Electric Division; and

WHEREAS, Consultant has the necessary experience in providing such professional consulting services and advice on various issues; and

WHEREAS, selection of Consultant is expected to achieve the desired results in an expedited fashion; and

WHEREAS, Consultant has submitted a Proposal to City and has affirmed its willingness and ability to perform such work.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by this reference, City and Consultant agree as follows:

1. SCOPE OF SERVICES.

1.1 Retention of Consultant. City hereby retains Consultant to perform, and Consultant agrees to render, technical and professional services, including labor, material,

equipment, supervision and expertise for various projects for the City's Public Utilities Department, Electric Division. Services rendered under this Agreement, shall be administered by the City's Public Utilities Department, Electric Division (the "Department") for various capital improvement projects.

1.2 Assigned Project. During the term of this Agreement, Consultant shall have the opportunity to submit proposals for various capital improvement projects ("Assigned Project"). The scope of work for the project will be defined in a Request for Proposals issued by City. All proposals submitted shall be reviewed by the City, and a single consultant will be selected to perform the services for the project. Acceptance of Consultant's proposal shall be made in the form of a Supplemental Agreement for Assigned Project, a sample of which is attached hereto as Attachment I.

Execution of this Agreement by Consultant and/or the submission of proposals for City Assigned Projects does not guarantee the award of a Supplement Agreement.

2. PERSONNEL.

2.1 Consultant's Representative. Richard Koury shall be Consultant's Project Representative who shall coordinate all aspects of each Assigned Project. Consultant's Project Representative shall be available to City at all reasonable times. Consultant may appoint another person as Project Representative upon written notice to City.

2.2 Substitution of Key Personnel. The key personnel for performance of this Agreement is: Dave Menefee. Consultant has represented to City that the key personnel will perform the Services under this Agreement. Should one or more such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval by City. In the event that City and Consultant cannot agree as to the substitution of the key personnel, City shall be entitled to terminate this Agreement, pursuant to the applicable provisions of this Agreement.

2.3 Project Manager. For each Assigned Project, the City shall designate a representative who shall act as the City's Project Manager ("Project Manager"). The Project Manager shall have authority to act on behalf of City for each Assigned Project. City shall provide written notice to Consultant of any change in Project Manager for an Assigned Project.

3. **TERM.** The term of this Agreement shall become effective on the date first written above and shall remain in effect through the later of:

- a. June 30, 2019; or
- b. The required date for completion of an assigned project, provided that such project was assigned prior to June 30, 2019.

4. CONSULTANT'S COMPENSATION.

4.1 Services. Consultant shall receive compensation for all services rendered under this Agreement at the rates negotiated for the Assigned Project, and set forth in the Supplemental Agreement for Assigned Project. Without prior approval of the City Council, the total amount to be paid to Consultant over the term of this Agreement for all Assigned Projects shall not exceed Two Million Dollars (\$2,000,000).

4.2 Extra Services. Payment for Extra Services shall be negotiated between City and Consultant on the basis of the Professional Hourly Rates schedule negotiated for the Assigned Project.

5. PAYMENTS TO CONSULTANT.

5.1 Basic Services.

a. Partial payments shall be made in accordance with the Payment Schedule section of the Request for Proposals for each Assigned Project. Payments shall be processed no more than once per month.

b. City shall pay Consultant all undisputed balances on invoices within 60 days of receipt, and shall notify consultant of any disputed amounts within thirty (30) days of receipt.

5.2 Extra Services. Payments for approved Extra Services provided under Article 10 shall be made monthly as Extra Services are rendered and expenses incurred.

5.3 Reimbursements. Reimbursement for costs incurred and other expenses shall be made to Consultant within 60 days of City's receipt and approval of invoices.

5.4 Limitation. No payment for any work or services performed by Consultant shall exceed the limits established in Section 4 herein.

6. PROJECT PERFORMANCE.

6.1 Commencement of Services. Consultant shall commence the services for each Assigned Project on the date specified in a Notice to Proceed, which shall be issued by the Project Manager within fifteen (15) calendar days after the assignment of a given project.

6.2 Time of Completion:

- a. Time is of the essence for each and every provision of this Agreement.
- b. The project completion time will be as designated in the Notice to Proceed for each Assigned
- c. Consultant shall have all plans and/or documents one hundred percent (100%) complete and ready for City's review within the number of calendar days specified in the Notice to Proceed for any given Assigned Project.

6.3 Failure to Perform. Failure of Consultant to complete the services within the time allowed and in the manner herein provided may result in the Agreement being immediately terminated by City.

6.4 Standard of Care. 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 Consultant's professional skill and expertise. Consultant represents and maintains that Consultant is skilled in the technical calling necessary to perform all services, duties and obligations required by this Agreement and to fully and adequately complete each Assigned Project.

7. **BASIC SERVICES OF CONSULTANT.** The scope of services to be provided for a given project shall be defined for each Assigned Project. Any changes to the scope of services must be authorized by the Department's Director or Project Manager, and shall be made in writing.

7.1 Right to Preliminary Review. All work prepared by Consultant shall be subject to the approval of the Project Manager. Consultant shall allow Project Manager to inspect and review Consultant's work in progress at any reasonable time. All reports, working papers, and similar work products prepared for submission in the course of providing services under this Agreement, or any Supplement Agreement, shall be submitted to the Project Manager in draft form. In the event that Project Manager, in his or her sole discretion, determines the formally submitted work product to be inadequate, Consultant may be required to revise and resubmit the work at no additional cost to City. Should Consultant fail to make requested corrections in a

timely manner, such corrections may be made by City, and the cost thereof charged to Consultant.

7.2 Monthly Progress Reports. On a monthly basis, Consultant shall submit a written progress report, in a form determined by City, which shall indicate the progress achieved during the previous month in relation to the Project Schedule for the Assigned Project. The timely submission to the Project Manager of up- to-date monthly progress reports by Consultant shall be a condition precedent to receipt of any payments otherwise due from City.

7.3 Appearance at Hearings. If and when required by City, Consultant shall render assistance at public hearings or other meetings related to the review and approval of the Assigned Project, or as necessary to perform the services.

8. **INDEPENDENT CONTRACTOR.** At all times during the performance of the services, Consultant and Consultant's agents and employees shall act in an independent capacity and not as officers, employees or agents of City. Consultant's employees and agents shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Consultant. City retains Consultant on an independent contractor basis. Consultant is not an employee of City.

8.1 Control and Payment of Subordinates. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant 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. Consultant shall be responsible for all reports and obligations respecting such personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, and worker's compensation insurance.

8.2 Subordinates and Subconsultants. Consultant shall employ, at Consultant's own expense, technicians and professionals properly skilled in the various aspects of the design and construction of facilities required. If subconsultants are engaged for any portions of the services, Consultant shall advise the Project Manager in writing of their selection prior to their performance of work. The Project Manager shall have the authority to approve or reject the use of any subconsultant for any of the services.

9. **LICENSES.**

9.1 State Professional Licenses. Consultant represents and warrants to City that Consultant and all subconsultants have all licenses, permits, qualifications and approvals of whatever nature which are legally required to practice its profession. Consultant further represents that Consultant shall maintain all such licenses and approvals in full effect during the term of this Agreement.

a. Civil/Structural Engineer. Consultant shall maintain a valid, current license to practice Civil/Structural Engineering in the State of California during the entire period of the Agreement, and failure to do so shall be grounds for City's termination of the Agreement. Consultant shall comply with the requirements for Professional Engineers (California Business and Professions Code, Section 6700 et seq.).

b. Subconsultants, Consultant shall ensure that all subconsultants who perform portions of the services under this Agreement shall be properly licensed to perform their respective portions of the work and shall maintain current California licenses in their respective fields.

9.2 Local Licenses. Consultant and all subconsultants shall secure a local business license (Business Tax Registration) to operate in the City of Riverside.

10. **EXTRA SERVICES OF CONSULTANT.** At any time during the term of this Agreement, City may request that Consultant perform Extra Services. Consultant shall not perform Extra Services until receiving written authorization from the Project Manager. Any work which is determined by City to be necessary for the proper completion of the Assigned Project, but which neither Consultant nor City reasonably anticipated would be necessary when the scope of services for the Assigned Project was developed, and for which the fees and time of completion for such services were negotiated in advance of the work, shall be paid for by City as "Extra Services" provided that the Extra Services are authorized in writing by the Project Manager prior to Consultant's commencement thereof.

11. **DISPUTED WORK.** In any case where Consultant believes that necessary work or services are not clearly covered in this Agreement, or any Supplement Agreement, or have not been ordered in writing by the Project Manager as Extra Services, Consultant shall immediately notify the Project Manager in writing of Consultant's belief that the work or services should be paid for as Extra Services before Consultant begins the work or services. If such notification is not given, or if the Project Manager is not afforded an opportunity to negotiate the appropriate

fee for such Extra Services, then Consultant shall be deemed to have agreed to perform the work or services without any additional charges to City therefor. Such notice by Consultant to the Project Manager shall not in any way be construed as proving that the work or services in question are Extra Services. The notice must be approved or rejected by the Project Manager, and if the Project Manager determines that Consultant is correct, the work or services shall be allowed and paid for as Extra Services.

12. **UNAUTHORIZED WORK.** Any work done or services performed without written authority from the Project Manager shall be considered unauthorized and shall not be paid for by City.

13. **TERMINATION OF AGREEMENT.**

13.1 Termination. This Agreement may be terminated for any reason by either party upon 30 days prior written notice to the other party, or if City should decide to abandon or postpone the project indefinitely. In the event Consultant fails to substantially perform the services, City may terminate this Agreement immediately upon written notice.

13.2 Payment upon Termination. In the event of such termination, City shall determine and pay to Consultant, as full payment for all City-approved work performed and all expenses incurred under this Agreement, or any Supplemental Agreement, the amount which bears the same ratio to the total fee which would have been paid for the full performance of the services as the ratio of work actually rendered bears to the services which would have been necessary for full performance of this Agreement, or any Supplemental Agreement, plus any sums due Consultant for Extra Services or reimbursements. In ascertaining the work actually rendered prior to the date of termination of the Agreement, consideration shall be given to both completed work and work in progress and to all drawings and other documents, whether completed or incomplete, provided that they are delivered to City.

13.3 Recommendation. If the City should determine to complete an Assigned Project, or a substantially similar project, following termination of this Agreement, City shall have the right to utilize any of the drawings, specifications, Opinions of Probable Project Construction Costs and other construction bid documents prepared under this Agreement, or any Supplemental Agreement, by Consultant without additional compensation to Consultant, provided that prior to such utilization all reference to Consultant is removed from said documents.

14. **PROJECT SCHEDULE.** Consultant shall prepare and submit an estimated time schedule for all major phases of each Assigned Project to the City within fifteen (15) calendar days following City's issuance of a Notice to Proceed for said project. This schedule shall reflect the project completion time allowed and the overall schedule included in the Consultant's proposal. The schedule will be subject to revision for delays caused by conditions beyond the control of Consultant, and delays which Consultant cannot reasonably foresee. The Project Manager shall be promptly notified of all delays. Should Consultant determine that a schedule modification is necessary, Consultant shall promptly submit a revised Project Schedule for Project Manager's review and approval of the anticipated delay.

15. **ACCOUNTING RECORDS OF CONSULTANT.** Records of Consultant's direct personnel, reimbursable expenses pertaining to any Extra Services, and records of accounts between City and Consultant shall be made and kept by Consultant on a generally recognized accounting basis and shall be made available to City or its authorized representatives at all reasonable times for inspection and copying.

16. **INDEMNIFICATION.**

16.1 Design Professional Defined. For purposes of this Agreement, "Design Professional" includes

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.

16.2 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 this Agreement and any Supplemental Agreement hereto, 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. 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.

16.3 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 this Agreement and any Supplemental Agreement hereto, 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.

16.4 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 Contract 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.

16.5 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 and any Supplemental Agreement hereto, 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.

17. INSURANCE.

17.1 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.

17.1.1 Limitations. These minimum amounts of coverage shall not constitute any limitation or cap on Consultant's indemnification obligations herein.

17.1.2 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.

17.1.3 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.

17.1.4 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.

17.2 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.

17.3 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.

17.3.1 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.

17.3.2 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.

17.3.3 Prior to City's execution of this Agreement, copies of insurance policies or original certificates and additional insured endorsements 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 services performed by and on behalf of the named insured for the City of Riverside.

17.3.4 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.

17.4 Errors and Omissions Insurance. Prior to City's execution of this Agreement, Consultant shall obtain, and shall thereafter maintain in force during the term of this Agreement, professional liability or errors and omissions liability insurance in the minimum amount of \$1,000,000, unless otherwise waived by the City's Risk Manager. Coverage as required in this Section shall apply to liability for a professional error, act, or omission arising out of the scope of Consultant's services as defined in this Agreement and/or any Supplemental Agreement.

18. **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 services and activities provided in furtherance of this Agreement and any Supplemental Agreement hereto, 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.

19. **REPRODUCTION OF DOCUMENTS.**

19.1 Review Documents. Consultant shall provide City, in the number reasonably required by City, Consultant's proposed final construction bid documents for the review and approval by the public agencies having jurisdiction over the Assigned Project.

19.2 Final Approved Construction Documents. Consultant shall furnish the City the number of reproductions of the final approved construction bid documents necessary for use by City in obtaining construction bids and completing construction of the Assigned Project.

20. OWNERSHIP OF DOCUMENTS.

20.1 Ownership of Documents. All work and contract deliverables prepared pursuant to this Agreement by Consultant including, but not limited to, drawings, specifications, sketches, calculations, estimates, data, charts, models, reports, maps, computer programs, software or other contract deliverables, whether in written form, electronic, digital or otherwise ("Project Documents"), shall be and remain the property of City and shall be delivered to City whenever requested. Consultant shall not release to others information furnished by City without prior express written approval of City.

20.2 Work-For-Hire; Ownership of Copyrights. Consultant agrees that any work prepared for City that is eligible for copyright protection in the United States or elsewhere shall be a "work made for hire" as that term is used in the laws of the United States regarding copyrights. Consultant understands that the City shall be deemed the author of any and all such work, the City may register copyrights in the City's name, and the work made for hire is the exclusive property of the City. Consultant agrees to sign upon request any documents affirming that work created by Consultant at the direction of the City is work made for hire and belongs exclusively to the City. 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.

21. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon City and its successors and upon Consultant and Consultant's successors and assigns. Neither this Agreement, nor any part hereof, nor any monies due or to become due hereunder may be assigned by Consultant without the prior written consent of City, which consent shall not be unreasonably withheld.

22. NONDISCRIMINATION. During Consultant's performance of this Agreement and/or any Supplemental Agreement, Consultant and Consultant's subconsultants shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, physical handicap,

medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, age, sex or sexual orientation in the selection and retention of employees and subconsultants and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Consultant shall also comply with the Americans with Disabilities Act.

23. **FULL COMPENSATION.** The consideration payable to Consultant as provided herein shall be compensation in full for all of Consultant's services and expenses incurred in the performance of the services, including travel and per diem, unless otherwise expressly provided.

24. **MODIFICATIONS.** No alteration or variation of the terms of the Agreement shall be valid except as follows:

24.1 Changes relating to time, money or scope of work shall be made by formal written amendment to the Agreement and shall be executed by both parties.

24.2 Minor alterations of terms or covenants may be formalized by letter from the Public Utilities General Manager or his designee.

25. **PREVAILING WAGE.** If applicable, Consultant and all subconsultants 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 ascertained, determined and specified in both of those documents are referred to and made a part hereof as though fully set forth herein.

26. **FEDERALLY FUNDED ASSIGNED PROJECTS.** In the event Consultant is awarded an Assigned Project which is federally funded, Consultant shall comply with all the following requirements:

26.1 Disadvantaged Business Enterprise (DBE):

a. DBE Participation Requirements and Regulations. The DBE participation goal for federally-funded Assigned Projects will be determined by the City. The Consultant shall carry out applicable requirements of 49 CFR, Part 26, of the Code of Federal Regulations, entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," in the award and administration of federally funded Assigned

Projects. The regulations in their entirety are incorporated herein by this reference. The Consultant shall not discriminate on the basis of race color, national origin or sex in the performance of this Agreement, or any Supplemental Agreement.

Noncompliance by the Consultant with the requirements of the regulations is a material breach of this Agreement and may result in termination of the Agreement, or other such remedy as the City deems appropriate.

The Consultant shall include the following in each subconsultant contract:

- i) A subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement.
- ii) The subconsultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this Agreement.
- iii) Language providing for the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.

b. Performance of DBE Subconsultants. DBE subconsultants shall perform the work for which they have been listed in the Consultant's proposal, unless the Consultant has received prior written authorization to perform the work with other forces as set forth in subparagraph g., "DBE Substitution and Additions", of this Agreement.

c. Prompt Payment to DBE and Non-DBE Consultants. The Consultant shall not be entitled to any payment for the work, unless it is performed by the listed subconsultants (DBE or non-DBE), or by the Consultant's own forces, pursuant to prior written authorization of the Project Manager. This is the case even if other contract work is not completed and has not been accepted in conformance with the terms of the Agreement or any Supplemental Agreement by the City.

d. Prompt Payment Progress Pay Retention to DBE and Non-DBE Subconsultants. The Consultant shall return all moneys withheld in retention from the subconsultant within 30 days after receiving payment for work satisfactorily completed, even if other work is not completed and has not been accepted in conformance with the terms of this Agreement or any Supplemental Agreement. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Consultant or subconsultant in the event of a dispute involving late payment or nonpayment to the Consultant or deficient subcontract performance or noncompliance by a subconsultant.

e. DBE and Non-DBE Subconsultant Payment Records. The Consultant in addition to maintaining records showing the name and business address of each first tier subconsultant, shall also show the name and business address of every DBE regardless of tier. The records shall show the date of payment and the total dollar figure paid to all DBE firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of work. Upon completion of a federally funded Assigned Project, a Final Report for Utilization of DBE Subconsultants shall be prepared and certified correct by the Consultant or the Consultant's authorized representative, and shall be furnished to the Project Manager. The report shall be furnished to the Project Manager with the final invoice. Failure to provide the report with the final invoice will result in the invoice being in dispute until the report is received.

f. Penalty Assessed for Failure to Provide Subconsultant Payment Records. The sum of \$10,000 will be withheld from payment if a Final Report for Utilization of DBE Subconsultants is not submitted. The amount will be paid to the Consultant when the form is submitted.

g. DBE Substitutions or Additions. The Consultant may not substitute, or terminate for convenience a subconsultant listed in the original proposal without the prior written approval of the Project Manager. However, the Consultant may add a firm to perform work originally planned to be done by the Consultant's own forces. The Consultant must make an adequate good faith effort to find another certified DBE subconsultant to substitute for the original DBE. The Consultant will be required to make good faith efforts to replace the original DBE subconsultant with another DBE subconsultant to the extent needed to meet the contract goal.

The requirement that DBEs must be certified by the proposal submittal date does not apply to DBE substitutions or additions after award of a federally funded Assigned Project. DBEs must be certified at the time of the substitution or addition. Consultants shall submit requests for substitution in writing to the Project Manager. Authorization to use other subconsultants or suppliers may be requested for the following reasons:

- i) The listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract with Consultant, when such contract, based upon the general terms and conditions

of this Agreement, or any Supplemental Agreement, or on the terms of such subconsultant's written proposal, is presented to Consultant.

- ii) The listed DBE becomes bankrupt or insolvent.
- iii) The listed DBE fails or refuses to perform the subcontract.
- iv) The Consultant stipulated that a bond was a condition of executing a subcontract and the listed DBE subconsultant failed or refuses to meet the bond requirements of the contract.
- v) The listed DBE was the result of an inadvertent clerical error. The Consultant must have asserted a claim of inadvertent clerical error in listing the subconsultant within two working days after the proposal submittal and copies of that notice to both the subconsultant he or she claims to have listed in error and intended subconsultant who had submitted a proposal to the Consultant prior to proposal submittal.
- vi) The listed DBE was not licensed as required by the State of California Consultant's Licensing Board or failed to have the required permits or licenses as required by Federal, State or Local governmental jurisdictions.
- vii) The work performed by the listed subconsultant is substantially unsatisfactory and is not in substantial conformance with the scope of work to be performed, or the subconsultant is substantially delaying or disrupting the progress of the work.
- viii) When the listed DBE is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- ix) When it is in the best interest of the City.

Prior to approval of the Consultant's request for substitution to the Project Manager, the Consultant shall give notice in writing to the listed DBE subconsultant of the Consultant's request to substitute and the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subconsultant. The listed subconsultant who has been so notified, shall have five working days within which to submit written objections to the

substitution to the Project Manager. Failure to respond to a written objection shall constitute the listed subconsultant's consent to the substitution.

h. Termination of a DBE. In conformance with Federal DBE regulation 49 CFR Part 26, Sections 26.53(f)(1) and 26.53(f)(2), the Consultant shall not:

- i) Terminate for convenience a listed DBE subconsultant and then perform that work with its own forces (personnel), or those of an affiliate, unless the Consultant has received prior written authorization from the Project Manager to perform the work with other forces.
- ii) If a DBE subconsultant is terminated or fails to complete its work for any reason, the Consultant will be required to make good faith efforts to replace the original DBE subconsultant with another DBE subconsultant to the extent needed to meet the contract goal.

i. DBE Certification Status. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify the Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the contract, the subconsultant shall notify the Consultant in writing with the date of certification. Upon completion of the federally funded Assigned Project, the Consultant shall complete a Final Report for Utilization of DBE Subconsultants indicating the DBEs certification status and shall be signed and certified correct by the Consultant. The certified form shall be furnished to the Project Manager within 30 days from the date of completion of the federally funded Assigned Project.

j. DBE Eligibility toward Goal. The dollar value of work performed by a DBE is credited/counted toward the goal only after the DBE has been paid.

26.2 Prevailing Wage. If applicable to the services being provided in connection with a federally funded Assigned Project, Consultant and all subconsultants shall pay the higher of federally established prevailing wage rates or California general prevailing wage rates of per diem wages and overtime and holiday wages as determined by the U.S. Department of Labor.

26.3 Record Retention. Contractor shall maintain all books, documents, papers and records of Consultant's operations and financial activities directly pertinent to the federally funded Assigned Project in accordance with the requirements of the Federal granting agency and

the regulations promulgated by or for it. Such books, documents, papers and records shall be open for inspection, audit, examination, excerpt and transcription by the authorized representatives of City, the Federal granting agency and the Controller General of the United States during regular working hours. Consultant shall keep and maintain said books, documents, papers and records for at least three years after the City makes final payments pursuant to the contract and all other pending matters are closed or such greater period of time as may be required by the Federal granting agency.

27. **NOTICES.** Service of any notices, bills, invoices or other documents required or permitted by this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

CITY
Public Utilities Department
Attn: Energy Delivery Engineering
3750 University Avenue, 3rd Floor
Riverside, CA 92501

CONSULTANT
Koury Engineering & Testing, Inc.
Attn: Richard Koury
14280 Euclid Avenue
Chino, CA 91710

28. **JURISDICTION/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 a court of competent jurisdiction in the 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.

29. **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, or any Supplemental Agreement. Consultant shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of Consultant's services with all applicable laws, ordinances and regulations. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code section 1775.

The Consultant agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments are subject to repayment by Consultant to City. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.

30. **SEVERABILITY.** Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement or, any Supplemental Agreement, shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in 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 this 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. **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.

33. **CONFLICT OF INTEREST.** Consultant, for itself and on behalf of its key personnel, represents and warrants that by the execution of this Agreement, they have no interest, present or contemplated, in the Assigned Projects affected by the above- described services. Consultant further warrants that neither Consultant, nor its key personnel 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.

34. **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.

35. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are not representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to the subject matter contained in this Agreement which are not fully expressed herein.

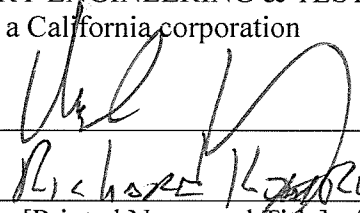
IN WITNESS WHEREOF, City and Consultant have executed this Agreement the day and year first above written.

CITY OF RIVERSIDE, a California
charter city and municipal corporation

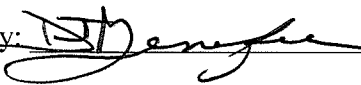
By: _____
City Manager

Attest: _____
City Clerk

KOURY ENGINEERING & TESTING,
INC., a California corporation

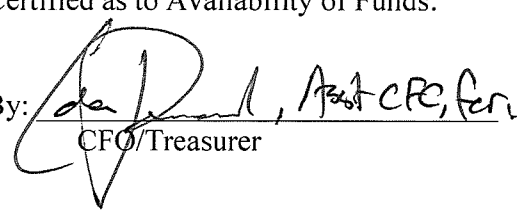
By: 

[Printed Name and Title]

By: 

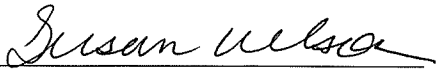
[Printed Name and Title]

Certified as to Availability of Funds:

By: 

CFO/Treasurer

Approved as to Form:

By: 
Assistant City Attorney

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WORKERS' COMPENSATION CERTIFICATION

I am aware of the provisions of Section 3700 of the 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 I will comply with such provisions before commencing the performance of the work of this contract.

Dated: 10/26/16

KOURY ENGINEERING & TESTING, INC.

By: _____

Richard Koury / CEO
[Printed Name and Title]

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

Energy Delivery Consultant Panel

LEIDOS ENGINEERING, LLC

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation, hereinafter referred to as "City", and LEIDOS ENGINEERING, LLC., a Delaware corporation authorized to do business in California, hereinafter referred to as "Consultant", with respect to the following facts:

RECITALS

WHEREAS, the City requires the services of a consultant that is experienced in all aspects of the electrical facilities including street lighting, generation, substations, communication, SCADA, transmission and distribution systems included but not limited to: architectural, electrical, civil, mechanical, structural, geotechnical, environmental, and communications engineering; systems operations and maintenance, construction and project management functions for various projects for the City's Public Utilities Department, Electric Division; and

WHEREAS, City issued a Request for Proposals for purposes of establishing a panel of consultants experienced in providing such professional services, and to use such panels for various projects for the City's Public Utilities Department, Electric Division; and

WHEREAS, Consultant has the necessary experience in providing such professional consulting services and advice on various issues; and

WHEREAS, selection of Consultant is expected to achieve the desired results in an expedited fashion; and

WHEREAS, Consultant has submitted a Proposal to City and has affirmed its willingness and ability to perform such work.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by this reference, City and Consultant agree as follows:

1. SCOPE OF SERVICES.

1.1 Retention of Consultant. City hereby retains Consultant to perform, and Consultant agrees to render, technical and professional services, including labor, material,

equipment, supervision and expertise for various projects for the City's Public Utilities Department, Electric Division. Services rendered under this Agreement, shall be administered by the City's Public Utilities Department, Electric Division (the "Department") for various capital improvement projects.

1.2 Assigned Project. During the term of this Agreement, Consultant shall have the opportunity to submit proposals for various capital improvement projects ("Assigned Project"). The scope of work for the project will be defined in a Request for Proposals issued by City. All proposals submitted shall be reviewed by the City, and a single consultant will be selected to perform the services for the project. Acceptance of Consultant's proposal shall be made in the form of a Supplemental Agreement for Assigned Project, a sample of which is attached hereto as Attachment I.

Execution of this Agreement by Consultant and/or the submission of proposals for City Assigned Projects does not guarantee the award of a Supplement Agreement.

2. **PERSONNEL.**

2.1 Consultant's Representative. Steve Rupp shall be Consultant's Project Representative who shall coordinate all aspects of each Assigned Project. Consultant's Project Representative shall be available to City at all reasonable times. Consultant may appoint another person as Project Representative upon written notice to City.

2.2 Substitution of Key Personnel. The key personnel for performance of this Agreement are: Baldwin Yeung, Adam Stevenson, and Nick Miller. Consultant has represented to City that the key personnel will perform the Services under this Agreement. Should one or more such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval by City. In the event that City and Consultant cannot agree as to the substitution of the key personnel, City shall be entitled to terminate this Agreement, pursuant to the applicable provisions of this Agreement.

2.3 Project Manager. For each Assigned Project, the City shall designate a representative who shall act as the City's Project Manager ("Project Manager"). The Project Manager shall have authority to act on behalf of City for each Assigned Project. City shall provide written notice to Consultant of any change in Project Manager for an Assigned Project.

3. **TERM.** The term of this Agreement shall become effective on the date first written above and shall remain in effect through the later of:

- a. June 30, 2019; or
- b. The required date for completion of an assigned project, provided that such project was assigned prior to June 30, 2019.

4. CONSULTANT'S COMPENSATION.

4.1 Services. Consultant shall receive compensation for all services rendered under this Agreement at the rates negotiated for the Assigned Project, and set forth in the Supplemental Agreement for Assigned Project. Without prior approval of the City Council, the total amount to be paid to Consultant over the term of this Agreement for all Assigned Projects shall not exceed Two Million Dollars (\$2,000,000).

4.2 Extra Services. Payment for Extra Services shall be negotiated between City and Consultant on the basis of the Professional Hourly Rates schedule negotiated for the Assigned Project.

5. PAYMENTS TO CONSULTANT.

5.1 Basic Services.

a. Partial payments shall be made in accordance with the Payment Schedule section of the Request for Proposals for each Assigned Project. Payments shall be processed no more than once per month.

b. City shall pay Consultant all undisputed balances on invoices within 60 days of receipt, and shall notify consultant of any disputed amounts within thirty (30) days of receipt.

5.2 Extra Services. Payments for approved Extra Services provided under Article 10 shall be made monthly as Extra Services are rendered and expenses incurred.

5.3 Reimbursements. Reimbursement for costs incurred and other expenses shall be made to Consultant within 60 days of City's receipt and approval of invoices.

5.4 Limitation. No payment for any work or services performed by Consultant shall exceed the limits established in Section 4 herein.

6. PROJECT PERFORMANCE.

6.1 Commencement of Services. Consultant shall commence the services for each Assigned Project on the date specified in a Notice to Proceed, which shall be issued by the Project Manager within fifteen (15) calendar days after the assignment of a given project.

6.2 Time of Completion:

- a. Time is of the essence for each and every provision of this Agreement.
- b. The project completion time will be as designated in the Notice to Proceed for each Assigned
- c. Consultant shall have all plans and/or documents one hundred percent (100%) complete and ready for City's review within the number of calendar days specified in the Notice to Proceed for any given Assigned Project.

6.3 Failure to Perform. Failure of Consultant to complete the services within the time allowed and in the manner herein provided may result in the Agreement being immediately terminated by City.

6.4 Standard of Care. 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 Consultant's professional skill and expertise. Consultant represents and maintains that Consultant is skilled in the technical calling necessary to perform all services, duties and obligations required by this Agreement and to fully and adequately complete each Assigned Project.

7. **BASIC SERVICES OF CONSULTANT.** The scope of services to be provided for a given project shall be defined for each Assigned Project. Any changes to the scope of services must be authorized by the Department's Director or Project Manager, and shall be made in writing.

7.1 Right to Preliminary Review. All work prepared by Consultant shall be subject to the approval of the Project Manager. Consultant shall allow Project Manager to inspect and review Consultant's work in progress at any reasonable time. All reports, working papers, and similar work products prepared for submission in the course of providing services under this Agreement, or any Supplement Agreement, shall be submitted to the Project Manager in draft form. In the event that Project Manager, in his or her sole discretion, determines the formally submitted work product to be inadequate, Consultant may be required to revise and resubmit the work at no additional cost to City. Should Consultant fail to make requested corrections in a timely manner, such corrections may be made by City, and the cost thereof charged to Consultant.

7.2 Monthly Progress Reports. On a monthly basis, Consultant shall submit a written progress report, in a form determined by City, which shall indicate the progress achieved during the previous month in relation to the Project Schedule for the Assigned Project. The timely submission to the Project Manager of up- to-date monthly progress reports by Consultant shall be a condition precedent to receipt of any payments otherwise due from City.

7.3 Appearance at Hearings. If and when required by City, Consultant shall render assistance at public hearings or other meetings related to the review and approval of the Assigned Project, or as necessary to perform the services.

8. **INDEPENDENT CONTRACTOR.** At all times during the performance of the services, Consultant and Consultant's agents and employees shall act in an independent capacity and not as officers, employees or agents of City. Consultant's employees and agents shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Consultant. City retains Consultant on an independent contractor basis. Consultant is not an employee of City.

8.1 Control and Payment of Subordinates. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant 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. Consultant shall be responsible for all reports and obligations respecting such personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, and worker's compensation insurance.

8.2 Subordinates and Subconsultants. Consultant shall employ, at Consultant's own expense, technicians and professionals properly skilled in the various aspects of the design and construction of facilities required. If subconsultants are engaged for any portions of the services, Consultant shall advise the Project Manager in writing of their selection prior to their performance of work. The Project Manager shall have the authority to approve or reject the use of any subconsultant for any of the services.

9. **LICENSES.**

9.1 State Professional Licenses. Consultant represents and warrants to City that Consultant and all subconsultants have all licenses, permits, qualifications and approvals of

whatever nature which are legally required to practice its profession. Consultant further represents that Consultant shall maintain all such licenses and approvals in full effect during the term of this Agreement.

a. Civil/Structural Engineer. Consultant shall maintain a valid, current license to practice Civil/Structural Engineering in the State of California during the entire period of the Agreement, and failure to do so shall be grounds for City's termination of the Agreement. Consultant shall comply with the requirements for Professional Engineers (California Business and Professions Code, Section 6700 et seq.).

b. Subconsultants, Consultant shall ensure that all subconsultants who perform portions of the services under this Agreement shall be properly licensed to perform their respective portions of the work and shall maintain current California licenses in their respective fields.

9.2 Local Licenses. Consultant and all subconsultants shall secure a local business license (Business Tax Registration) to operate in the City of Riverside.

10. **EXTRA SERVICES OF CONSULTANT.** At any time during the term of this Agreement, City may request that Consultant perform Extra Services. Consultant shall not perform Extra Services until receiving written authorization from the Project Manager. Any work which is determined by City to be necessary for the proper completion of the Assigned Project, but which neither Consultant nor City reasonably anticipated would be necessary when the scope of services for the Assigned Project was developed, and for which the fees and time of completion for such services were negotiated in advance of the work, shall be paid for by City as "Extra Services" provided that the Extra Services are authorized in writing by the Project Manager prior to Consultant's commencement thereof.

11. **DISPUTED WORK.** In any case where Consultant believes that necessary work or services are not clearly covered in this Agreement, or any Supplement Agreement, or have not been ordered in writing by the Project Manager as Extra Services, Consultant shall immediately notify the Project Manager in writing of Consultant's belief that the work or services should be paid for as Extra Services before Consultant begins the work or services. If such notification is not given, or if the Project Manager is not afforded an opportunity to negotiate the appropriate fee for such Extra Services, then Consultant shall be deemed to have agreed to perform the work or services without any additional charges to City therefor. Such notice by Consultant to the

Project Manager shall not in any way be construed as proving that the work or services in question are Extra Services. The notice must be approved or rejected by the Project Manager, and if the Project Manager determines that Consultant is correct, the work or services shall be allowed and paid for as Extra Services.

12. **UNAUTHORIZED WORK.** Any work done or services performed without written authority from the Project Manager shall be considered unauthorized and shall not be paid for by City.

13. **TERMINATION OF AGREEMENT.**

13.1 Termination. This Agreement may be terminated for any reason by either party upon 30 days prior written notice to the other party, or if City should decide to abandon or postpone the project indefinitely. In the event Consultant fails to substantially perform the services, City may terminate this Agreement immediately upon written notice.

13.2 Payment upon Termination. In the event of such termination, City shall determine and pay to Consultant, as full payment for all City-approved work performed and all expenses incurred under this Agreement, or any Supplemental Agreement, the amount which bears the same ratio to the total fee which would have been paid for the full performance of the services as the ratio of work actually rendered bears to the services which would have been necessary for full performance of this Agreement, or any Supplemental Agreement, plus any sums due Consultant for Extra Services or reimbursements. In ascertaining the work actually rendered prior to the date of termination of the Agreement, consideration shall be given to both completed work and work in progress and to all drawings and other documents, whether completed or incomplete, provided that they are delivered to City.

13.3 Recommencement. If the City should determine to complete an Assigned Project, or a substantially similar project, following termination of this Agreement, City shall have the right to utilize any of the drawings, specifications, Opinions of Probable Project Construction Costs and other construction bid documents prepared under this Agreement, or any Supplemental Agreement, by Consultant without additional compensation to Consultant, provided that prior to such utilization all reference to Consultant is removed from said documents.

14. **PROJECT SCHEDULE.** Consultant shall prepare and submit an estimated time schedule for all major phases of each Assigned Project to the City within fifteen (15) calendar

days following City's issuance of a Notice to Proceed for said project. This schedule shall reflect the project completion time allowed and the overall schedule included in the Consultant's proposal. The schedule will be subject to revision for delays caused by conditions beyond the control of Consultant, and delays which Consultant cannot reasonably foresee. The Project Manager shall be promptly notified of all delays. Should Consultant determine that a schedule modification is necessary, Consultant shall promptly submit a revised Project Schedule for Project Manager's review and approval of the anticipated delay.

15. ACCOUNTING RECORDS OF CONSULTANT. Records of Consultant's direct personnel, reimbursable expenses pertaining to any Extra Services, and records of accounts between City and Consultant shall be made and kept by Consultant on a generally recognized accounting basis and shall be made available to City or its authorized representatives at all reasonable times for inspection and copying.

16. INDEMNIFICATION.

16.1 Design Professional Defined. For purposes of this Agreement, "Design Professional" includes

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.

16.2 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 this Agreement and any Supplemental Agreement hereto, 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. 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.

16.3 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 this Agreement and any Supplemental Agreement hereto, 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.

16.4 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

Contract 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.

16.5 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 and any Supplemental Agreement hereto, 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.

17. INSURANCE.

17.1 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.

17.1.1 Limitations. These minimum amounts of coverage shall not constitute any limitation or cap on Consultant's indemnification obligations herein.

17.1.2 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.

17.1.3 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.

17.1.4 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.

17.2 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.

17.3 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.

17.3.1 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.

17.3.2 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.

17.3.3 Prior to City's execution of this Agreement, copies of insurance policies or original certificates and additional insured endorsements 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 services performed by and on behalf of the named insured for the City of Riverside.

17.3.4 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.

17.4 Errors and Omissions Insurance. Prior to City's execution of this Agreement, Consultant shall obtain, and shall thereafter maintain in force during the term of this Agreement, professional liability or errors and omissions liability insurance in the minimum amount of \$1,000,000, unless otherwise waived by the City's Risk Manager. Coverage as required in this Section shall apply to liability for a professional error, act, or omission arising out of the scope of Consultant's services as defined in this Agreement and/or any Supplemental Agreement.

18. **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 services and activities provided in furtherance of this Agreement and any Supplemental Agreement hereto, 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.

19. **REPRODUCTION OF DOCUMENTS.**

19.1 Review Documents. Consultant shall provide City, in the number reasonably required by City, Consultant's proposed final construction bid documents for the review and approval by the public agencies having jurisdiction over the Assigned Project.

19.2 Final Approved Construction Documents. Consultant shall furnish the City the number of reproductions of the final approved construction bid documents necessary for use by City in obtaining construction bids and completing construction of the Assigned Project.

20. **OWNERSHIP OF DOCUMENTS.**

20.1 Ownership of Documents. All work and contract deliverables prepared pursuant to this Agreement by Consultant including, but not limited to, drawings,

specifications, sketches, calculations, estimates, data, charts, models, reports, maps, computer programs, software or other contract deliverables, whether in written form, electronic, digital or otherwise ("Project Documents"), shall be and remain the property of City and shall be delivered to City whenever requested. Consultant shall not release to others information furnished by City without prior express written approval of City.

20.2 Work-For-Hire; Ownership of Copyrights. Consultant agrees that any work prepared for City that is eligible for copyright protection in the United States or elsewhere shall be a "work made for hire" as that term is used in the laws of the United States regarding copyrights. Consultant understands that the City shall be deemed the author of any and all such work, the City may register copyrights in the City's name, and the work made for hire is the exclusive property of the City. Consultant agrees to sign upon request any documents affirming that work created by Consultant at the direction of the City is work made for hire and belongs exclusively to the City. 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.

21. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon City and its successors and upon Consultant and Consultant's successors and assigns. Neither this Agreement, nor any part hereof, nor any monies due or to become due hereunder may be assigned by Consultant without the prior written consent of City, which consent shall not be unreasonably withheld.

22. **NONDISCRIMINATION.** During Consultant's performance of this Agreement and/or any Supplemental Agreement, Consultant and Consultant's subconsultants shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, physical handicap, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, age, sex or sexual orientation in the selection and retention of employees and subconsultants and the procurement of materials and

equipment, except as provided in Section 12940 of the California Government Code. Consultant shall also comply with the Americans with Disabilities Act.

23. **FULL COMPENSATION.** The consideration payable to Consultant as provided herein shall be compensation in full for all of Consultant's services and expenses incurred in the performance of the services, including travel and per diem, unless otherwise expressly provided.

24. **MODIFICATIONS.** No alteration or variation of the terms of the Agreement shall be valid except as follows:

24.1 Changes relating to time, money or scope of work shall be made by formal written amendment to the Agreement and shall be executed by both parties.

24.2 Minor alterations of terms or covenants may be formalized by letter from the Public Utilities General Manager or his designee.

25. **PREVAILING WAGE.** If applicable, Consultant and all subconsultants 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 ascertained, determined and specified in both of those documents are referred to and made a part hereof as though fully set forth herein.

26. **FEDERALLY FUNDED ASSIGNED PROJECTS.** In the event Consultant is awarded an Assigned Project which is federally funded, Consultant shall comply with all the following requirements:

26.1 Disadvantaged Business Enterprise (DBE):

a. DBE Participation Requirements and Regulations. The DBE participation goal for federally-funded Assigned Projects will be determined by the City. The Consultant shall carry out applicable requirements of 49 CFR, Part 26, of the Code of Federal Regulations, entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," in the award and administration of federally funded Assigned Projects. The regulations in their entirety are incorporated herein by this reference. The Consultant shall not discriminate on the basis of race color, national origin or sex in the performance of this Agreement, or any Supplemental Agreement.

Noncompliance by the Consultant with the requirements of the regulations is a material breach of this Agreement and may result in termination of the Agreement, or other such remedy as the City deems appropriate.

The Consultant shall include the following in each subconsultant contract:

- i) A subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement.
- ii) The subconsultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this Agreement.
- iii) Language providing for the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.

b. Performance of DBE Subconsultants. DBE subconsultants shall perform the work for which they have been listed in the Consultant's proposal, unless the Consultant has received prior written authorization to perform the work with other forces as set forth in subparagraph g., "DBE Substitution and Additions", of this Agreement.

c. Prompt Payment to DBE and Non-DBE Consultants. The Consultant shall not be entitled to any payment for the work, unless it is performed by the listed subconsultants (DBE or non-DBE), or by the Consultant's own forces, pursuant to prior written authorization of the Project Manager. This is the case even if other contract work is not completed and has not been accepted in conformance with the terms of the Agreement or any Supplemental Agreement by the City.

d. Prompt Payment Progress Pay Retention to DBE and Non-DBE Subconsultants. The Consultant shall return all moneys withheld in retention from the subconsultant within 30 days after receiving payment for work satisfactorily completed, even if other work is not completed and has not been accepted in conformance with the terms of this Agreement or any Supplemental Agreement. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Consultant or subconsultant in the event of a dispute involving late payment or nonpayment to the Consultant or deficient subcontract performance or noncompliance by a subconsultant.

e. DBE and Non-DBE Subconsultant Payment Records. The Consultant in addition to maintaining records showing the name and business address of each first tier subconsultant, shall also show the name and business address of every DBE regardless of tier.

The records shall show the date of payment and the total dollar figure paid to all DBE firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of work. Upon completion of a federally funded Assigned Project, a Final Report for Utilization of DBE Subconsultants shall be prepared and certified correct by the Consultant or the Consultant's authorized representative, and shall be furnished to the Project Manager. The report shall be furnished to the Project Manager with the final invoice. Failure to provide the report with the final invoice will result in the invoice being in dispute until the report is received.

f. Penalty Assessed for Failure to Provide Subconsultant Payment Records.

The sum of \$10,000 will be withheld from payment if a Final Report for Utilization of DBE Subconsultants is not submitted. The amount will be paid to the Consultant when the form is submitted.

g. DBE Substitutions or Additions. The Consultant may not substitute, or terminate for convenience a subconsultant listed in the original proposal without the prior written approval of the Project Manager. However, the Consultant may add a firm to perform work originally planned to be done by the Consultant's own forces. The Consultant must make an adequate good faith effort to find another certified DBE subconsultant to substitute for the original DBE. The Consultant will be required to make good faith efforts to replace the original DBE subconsultant with another DBE subconsultant to the extent needed to meet the contract goal.

The requirement that DBEs must be certified by the proposal submittal date does not apply to DBE substitutions or additions after award of a federally funded Assigned Project. DBEs must be certified at the time of the substitution or addition. Consultants shall submit requests for substitution in writing to the Project Manager. Authorization to use other subconsultants or suppliers may be requested for the following reasons:

- i) The listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract with Consultant, when such contract, based upon the general terms and conditions of this Agreement, or any Supplemental Agreement, or on the terms of such subconsultant's written proposal, is presented to Consultant.

- ii) The listed DBE becomes bankrupt or insolvent.
- iii) The listed DBE fails or refuses to perform the subcontract.
- iv) The Consultant stipulated that a bond was a condition of executing a subcontract and the listed DBE subconsultant failed or refuses to meet the bond requirements of the contract.
- v) The listed DBE was the result of an inadvertent clerical error. The Consultant must have asserted a claim of inadvertent clerical error in listing the subconsultant within two working days after the proposal submittal and copies of that notice to both the subconsultant he or she claims to have listed in error and intended subconsultant who had submitted a proposal to the Consultant prior to proposal submittal.
- vi) The listed DBE was not licensed as required by the State of California Consultant's Licensing Board or failed to have the required permits or licenses as required by Federal, State or Local governmental jurisdictions.
- vii) The work performed by the listed subconsultant is substantially unsatisfactory and is not in substantial conformance with the scope of work to be performed, or the subconsultant is substantially delaying or disrupting the progress of the work.
- viii) When the listed DBE is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- ix) When it is in the best interest of the City.

Prior to approval of the Consultant's request for substitution to the Project Manager, the Consultant shall give notice in writing to the listed DBE subconsultant of the Consultant's request to substitute and the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subconsultant. The listed subconsultant who has been so notified, shall have five working days within which to submit written objections to the substitution to the Project Manager. Failure to respond to a written objection shall constitute the listed subconsultant's consent to the substitution.

h. Termination of a DBE. In conformance with Federal DBE regulation 49 CFR Part 26, Sections 26.53(f)(1) and 26.53(f)(2), the Consultant shall not:

- i) Terminate for convenience a listed DBE subconsultant and then perform that work with its own forces (personnel), or those of an affiliate, unless the Consultant has received prior written authorization from the Project Manager to perform the work with other forces.
- ii) If a DBE subconsultant is terminated or fails to complete its work for any reason, the Consultant will be required to make good faith efforts to replace the original DBE subconsultant with another DBE subconsultant to the extent needed to meet the contract goal.

i. DBE Certification Status. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify the Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the contract, the subconsultant shall notify the Consultant in writing with the date of certification. Upon completion of the federally funded Assigned Project, the Consultant shall complete a Final Report for Utilization of DBE Subconsultants indicating the DBEs certification status and shall be signed and certified correct by the Consultant. The certified form shall be furnished to the Project Manager within 30 days from the date of completion of the federally funded Assigned Project.

j. DBE Eligibility toward Goal. The dollar value of work performed by a DBE is credited/counted toward the goal only after the DBE has been paid.

26.2 Prevailing Wage. If applicable to the services being provided in connection with a federally funded Assigned Project, Consultant and all subconsultants shall pay the higher of federally established prevailing wage rates or California general prevailing wage rates of per diem wages and overtime and holiday wages as determined by the U.S. Department of Labor.

26.3 Record Retention. Contractor shall maintain all books, documents, papers and records of Consultant's operations and financial activities directly pertinent to the federally funded Assigned Project in accordance with the requirements of the Federal granting agency and the regulations promulgated by or for it. Such books, documents, papers and records shall be open for inspection, audit, examination, excerpt and transcription by the authorized

representatives of City, the Federal granting agency and the Controller General of the United States during regular working hours. Consultant shall keep and maintain said books, documents, papers and records for at least three years after the City makes final payments pursuant to the contract and all other pending matters are closed or such greater period of time as may be required by the Federal granting agency.

27. **NOTICES.** Service of any notices, bills, invoices or other documents required or permitted by this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

CITY
Public Utilities Department
Attn: Energy Delivery Engineering
3750 University Avenue, 3rd Floor
Riverside, CA 92501

CONSULTANT
Leidos Engineering, LLC.
Attn: Steve Rupp
131 Saundersville Road Ste. 300
Hendersonville, TN 37075

28. **JURISDICTION/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 a court of competent jurisdiction in the 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.

29. **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, or any Supplemental Agreement. Consultant shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of Consultant's services with all applicable laws, ordinances and regulations. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code section 1775.

The Consultant agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., or 49 CFR, Part 18, Uniform Administrative

Requirements for Grants and Cooperative Agreements to State and Local Governments are subject to repayment by Consultant to City. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.

30. **SEVERABILITY.** Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement or, any Supplemental Agreement, shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in 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 this 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. **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.

33. **CONFLICT OF INTEREST.** Consultant, for itself and on behalf of its key personnel, represents and warrants that by the execution of this Agreement, they have no interest, present or contemplated, in the Assigned Projects affected by the above- described services. Consultant further warrants that neither Consultant, nor its key personnel 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.

34. **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.

35. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are not representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to the subject matter contained in this Agreement which are not fully expressed herein.

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

CITY OF RIVERSIDE, a California
charter city and municipal corporation

LEIDOS ENGINEERING, LLC., a
Delaware corporation authorized to do
business in California

By: _____
City Manager

By: Keith Deaton
Keith Deaton, Vice President
[Printed Name and Title]

Attest: _____
City Clerk

By: Samantha Prociv
Samantha Prociv, Assistant Secretary
[Printed Name and Title]

Certified as to Availability of Funds:

By: [Signature] Asst CFO, Rev:
CFO/Treasurer

Approved as to Form:

By: 
Assistant City Attorney

16-1452 SW 10/17/16

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WORKERS' COMPENSATION CERTIFICATION

I am aware of the provisions of Section 3700 of the 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 I will comply with such provisions before commencing the performance of the work of this contract.

Dated: 11/7/16

LEIDOS ENGINEERING, LLC.

By: Keith Deaton

Vice President

[Printed Name and Title]

(This form may be used in lieu of a standard corporate resolution)

CORPORATE RESOLUTION CERTIFICATE

I, HEREBY CERTIFY that during a meeting of the Board of Directors of the _____, a corporation existing under the laws of the State of _____, held on _____, 20____, the following resolution was duly passed and adopted:

“RESOLVED, that _____, as _____ of the Corporation, be and is hereby authorized to execute the Agreement for _____ between the City of Riverside and this corporation, and that his/her execution thereof shall be the official act and deed of this Corporation.”

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this _____, day of _____, 20_____.

Secretary

ATTACHMENT I
Sample Supplemental Agreement

SUPPLEMENTAL AGREEMENT FOR ASSIGNED PROJECT

Consultant: _____

Project Name: _____

The Project Narrative for [name of project] ("Project"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, and Consultant's proposal dated [date of proposal], a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference, shall constitute a supplement to the Professional Consultant Services Agreement Energy Delivery Consultant Panel, by and between City and Consultant, dated [date of executed master agreement] ("Agreement"). Consultant agrees to perform the services described in the Project Narrative within the time set forth in the Notice to Proceed for an amount not to exceed **[written amount] Dollars (\$0)**. Performance of the services shall be subject to the terms and conditions contained in the Agreement.

Dated this ____ day of _____, 2016.

CITY OF RIVERSIDE, a California
charter city and a municipal corporation

CONSULTANT NAME,
[legal business entity, e.g. a sole proprietor,
California corporation, etc.)

By: _____
City Manager

By: _____

Title: _____

Attest: _____
City Clerk

By: _____

Title: _____

Certified as to Availability of Funds:

By: _____
CFO/Treasurer

Approved as to form:

By: _____
Assistant City Attorney

EXHIBIT “A”

Project Narrative

EXHIBIT “B”

Consultant’s Proposal

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

Energy Delivery Consultant Panel

MASTEK, INC.

THIS AGREEMENT is made and entered into this 15 day of DECEMBER 2016, by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation, hereinafter referred to as "City", and MASTEK, INC., a California corporation, hereinafter referred to as "Consultant", with respect to the following facts:

RECITALS

WHEREAS, the City requires the services of a consultant that is experienced in all aspects of the electrical facilities including street lighting, generation, substations, communication, SCADA, transmission and distribution systems included but not limited to: architectural, electrical, civil, mechanical, structural, geotechnical, environmental, and communications engineering; systems operations and maintenance, construction and project management functions for various projects for the City's Public Utilities Department, Electric Division; and

WHEREAS, City issued a Request for Proposals for purposes of establishing a panel of consultants experienced in providing such professional services, and to use such panels for various projects for the City's Public Utilities Department, Electric Division; and

WHEREAS, Consultant has the necessary experience in providing such professional consulting services and advice on various issues; and

WHEREAS, selection of Consultant is expected to achieve the desired results in an expedited fashion; and

WHEREAS, Consultant has submitted a Proposal to City and has affirmed its willingness and ability to perform such work.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by this reference, City and Consultant agree as follows:

1. SCOPE OF SERVICES.

1.1 Retention of Consultant. City hereby retains Consultant to perform, and Consultant agrees to render, technical and professional services, including labor, material, equipment, supervision and expertise for various projects for the City's Public Utilities

Department, Electric Division. Services rendered under this Agreement, shall be administered by the City's Public Utilities Department, Electric Division (the "Department") for various capital improvement projects.

1.2 Assigned Project. During the term of this Agreement, Consultant shall have the opportunity to submit proposals for various capital improvement projects ("Assigned Project"). The scope of work for the project will be defined in a Request for Proposals issued by City. All proposals submitted shall be reviewed by the City, and a single consultant will be selected to perform the services for the project. Acceptance of Consultant's proposal shall be made in the form of a Supplemental Agreement for Assigned Project, a sample of which is attached hereto as Attachment I.

Execution of this Agreement by Consultant and/or the submission of proposals for City Assigned Projects does not guarantee the award of a Supplement Agreement.

2. **PERSONNEL.**

2.1 Consultant's Representative. Miguel Soto shall be Consultant's Project Representative who shall coordinate all aspects of each Assigned Project. Consultant's Project Representative shall be available to City at all reasonable times. Consultant may appoint another person as Project Representative upon written notice to City.

2.2 Substitution of Key Personnel. The key personnel for performance of this Agreement is: Miguel Guerrero. Consultant has represented to City that the key personnel will perform the Services under this Agreement. Should one or more such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval by City. In the event that City and Consultant cannot agree as to the substitution of the key personnel, City shall be entitled to terminate this Agreement, pursuant to the applicable provisions of this Agreement.

2.3 Project Manager. For each Assigned Project, the City shall designate a representative who shall act as the City's Project Manager ("Project Manager"). The Project Manager shall have authority to act on behalf of City for each Assigned Project. City shall provide written notice to Consultant of any change in Project Manager for an Assigned Project.

3. **TERM**. The term of this Agreement shall become effective on the date first written above and shall remain in effect through the later of:

- a. June 30, 2019; or
- b. The required date for completion of an assigned project, provided that such project was assigned prior to June 30, 2019.

4. CONSULTANT'S COMPENSATION.

4.1 Services. Consultant shall receive compensation for all services rendered under this Agreement at the rates negotiated for the Assigned Project, and set forth in the Supplemental Agreement for Assigned Project. Without prior approval of the City Council, the total amount to be paid to Consultant over the term of this Agreement for all Assigned Projects shall not exceed Two Million Dollars (\$2,000,000).

4.2 Extra Services. Payment for Extra Services shall be negotiated between City and Consultant on the basis of the Professional Hourly Rates schedule negotiated for the Assigned Project.

5. PAYMENTS TO CONSULTANT.

5.1 Basic Services.

a. Partial payments shall be made in accordance with the Payment Schedule section of the Request for Proposals for each Assigned Project. Payments shall be processed no more than once per month.

b. City shall pay Consultant all undisputed balances on invoices within 60 days of receipt, and shall notify consultant of any disputed amounts within thirty (30) days of receipt.

5.2 Extra Services. Payments for approved Extra Services provided under Article 10 shall be made monthly as Extra Services are rendered and expenses incurred.

5.3 Reimbursements. Reimbursement for costs incurred and other expenses shall be made to Consultant within 60 days of City's receipt and approval of invoices.

5.4 Limitation. No payment for any work or services performed by Consultant shall exceed the limits established in Section 4 herein.

6. PROJECT PERFORMANCE.

6.1 Commencement of Services. Consultant shall commence the services for each Assigned Project on the date specified in a Notice to Proceed, which shall be issued by the Project Manager within fifteen (15) calendar days after the assignment of a given project.

6.2 Time of Completion:

- a. Time is of the essence for each and every provision of this Agreement.
- b. The project completion time will be as designated in the Notice to Proceed for each Assigned
- c. Consultant shall have all plans and/or documents one hundred percent (100%) complete and ready for City's review within the number of calendar days specified in the Notice to Proceed for any given Assigned Project.

6.3 Failure to Perform. Failure of Consultant to complete the services within the time allowed and in the manner herein provided may result in the Agreement being immediately terminated by City.

6.4 Standard of Care. 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 Consultant's professional skill and expertise. Consultant represents and maintains that Consultant is skilled in the technical calling necessary to perform all services, duties and obligations required by this Agreement and to fully and adequately complete each Assigned Project.

7. **BASIC SERVICES OF CONSULTANT.** The scope of services to be provided for a given project shall be defined for each Assigned Project. Any changes to the scope of services must be authorized by the Department's Director or Project Manager, and shall be made in writing.

7.1 Right to Preliminary Review. All work prepared by Consultant shall be subject to the approval of the Project Manager. Consultant shall allow Project Manager to inspect and review Consultant's work in progress at any reasonable time. All reports, working papers, and similar work products prepared for submission in the course of providing services under this Agreement, or any Supplement Agreement, shall be submitted to the Project Manager in draft form. In the event that Project Manager, in his or her sole discretion, determines the formally submitted work product to be inadequate, Consultant may be required to revise and resubmit the work at no additional cost to City. Should Consultant fail to make requested corrections in a timely manner, such corrections may be made by City, and the cost thereof charged to Consultant.

7.2 Monthly Progress Reports. On a monthly basis, Consultant shall submit a written progress report, in a form determined by City, which shall indicate the progress achieved during the previous month in relation to the Project Schedule for the Assigned Project. The timely submission to the Project Manager of up- to-date monthly progress reports by Consultant shall be a condition precedent to receipt of any payments otherwise due from City.

7.3 Appearance at Hearings. If and when required by City, Consultant shall render assistance at public hearings or other meetings related to the review and approval of the Assigned Project, or as necessary to perform the services.

8. **INDEPENDENT CONTRACTOR.** At all times during the performance of the services, Consultant and Consultant's agents and employees shall act in an independent capacity and not as officers, employees or agents of City. Consultant's employees and agents shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Consultant. City retains Consultant on an independent contractor basis. Consultant is not an employee of City.

8.1 Control and Payment of Subordinates. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant 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. Consultant shall be responsible for all reports and obligations respecting such personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, and worker's compensation insurance.

8.2 Subordinates and Subconsultants. Consultant shall employ, at Consultant's own expense, technicians and professionals properly skilled in the various aspects of the design and construction of facilities required. If subconsultants are engaged for any portions of the services, Consultant shall advise the Project Manager in writing of their selection prior to their performance of work. The Project Manager shall have the authority to approve or reject the use of any subconsultant for any of the services.

9. **LICENSES.**

9.1 State Professional Licenses. Consultant represents and warrants to City that Consultant and all subconsultants have all licenses, permits, qualifications and approvals of

whatever nature which are legally required to practice its profession. Consultant further represents that Consultant shall maintain all such licenses and approvals in full effect during the term of this Agreement.

a. Civil/Structural Engineer. Consultant shall maintain a valid, current license to practice Civil/Structural Engineering in the State of California during the entire period of the Agreement, and failure to do so shall be grounds for City's termination of the Agreement. Consultant shall comply with the requirements for Professional Engineers (California Business and Professions Code, Section 6700 et seq.).

b. Subconsultants, Consultant shall ensure that all subconsultants who perform portions of the services under this Agreement shall be properly licensed to perform their respective portions of the work and shall maintain current California licenses in their respective fields.

9.2 Local Licenses. Consultant and all subconsultants shall secure a local business license (Business Tax Registration) to operate in the City of Riverside.

10. **EXTRA SERVICES OF CONSULTANT.** At any time during the term of this Agreement, City may request that Consultant perform Extra Services. Consultant shall not perform Extra Services until receiving written authorization from the Project Manager. Any work which is determined by City to be necessary for the proper completion of the Assigned Project, but which neither Consultant nor City reasonably anticipated would be necessary when the scope of services for the Assigned Project was developed, and for which the fees and time of completion for such services were negotiated in advance of the work, shall be paid for by City as "Extra Services" provided that the Extra Services are authorized in writing by the Project Manager prior to Consultant's commencement thereof.

11. **DISPUTED WORK.** In any case where Consultant believes that necessary work or services are not clearly covered in this Agreement, or any Supplement Agreement, or have not been ordered in writing by the Project Manager as Extra Services, Consultant shall immediately notify the Project Manager in writing of Consultant's belief that the work or services should be paid for as Extra Services before Consultant begins the work or services. If such notification is not given, or if the Project Manager is not afforded an opportunity to negotiate the appropriate fee for such Extra Services, then Consultant shall be deemed to have agreed to perform the work or services without any additional charges to City therefor. Such notice by Consultant to the

Project Manager shall not in any way be construed as proving that the work or services in question are Extra Services. The notice must be approved or rejected by the Project Manager, and if the Project Manager determines that Consultant is correct, the work or services shall be allowed and paid for as Extra Services.

12. **UNAUTHORIZED WORK.** Any work done or services performed without written authority from the Project Manager shall be considered unauthorized and shall not be paid for by City.

13. **TERMINATION OF AGREEMENT.**

13.1 Termination. This Agreement may be terminated for any reason by either party upon 30 days prior written notice to the other party, or if City should decide to abandon or postpone the project indefinitely. In the event Consultant fails to substantially perform the services, City may terminate this Agreement immediately upon written notice.

13.2 Payment upon Termination. In the event of such termination, City shall determine and pay to Consultant, as full payment for all City-approved work performed and all expenses incurred under this Agreement, or any Supplemental Agreement, the amount which bears the same ratio to the total fee which would have been paid for the full performance of the services as the ratio of work actually rendered bears to the services which would have been necessary for full performance of this Agreement, or any Supplemental Agreement, plus any sums due Consultant for Extra Services or reimbursements. In ascertaining the work actually rendered prior to the date of termination of the Agreement, consideration shall be given to both completed work and work in progress and to all drawings and other documents, whether completed or incomplete, provided that they are delivered to City.

13.3 Recommencement. If the City should determine to complete an Assigned Project, or a substantially similar project, following termination of this Agreement, City shall have the right to utilize any of the drawings, specifications, Opinions of Probable Project Construction Costs and other construction bid documents prepared under this Agreement, or any Supplemental Agreement, by Consultant without additional compensation to Consultant, provided that prior to such utilization all reference to Consultant is removed from said documents.

14. **PROJECT SCHEDULE.** Consultant shall prepare and submit an estimated time schedule for all major phases of each Assigned Project to the City within fifteen (15) calendar

days following City's issuance of a Notice to Proceed for said project. This schedule shall reflect the project completion time allowed and the overall schedule included in the Consultant's proposal. The schedule will be subject to revision for delays caused by conditions beyond the control of Consultant, and delays which Consultant cannot reasonably foresee. The Project Manager shall be promptly notified of all delays. Should Consultant determine that a schedule modification is necessary, Consultant shall promptly submit a revised Project Schedule for Project Manager's review and approval of the anticipated delay.

15. **ACCOUNTING RECORDS OF CONSULTANT.** Records of Consultant's direct personnel, reimbursable expenses pertaining to any Extra Services, and records of accounts between City and Consultant shall be made and kept by Consultant on a generally recognized accounting basis and shall be made available to City or its authorized representatives at all reasonable times for inspection and copying.

16. **INDEMNIFICATION.**

16.1 Design Professional Defined. For purposes of this Agreement, "Design Professional" includes

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.

16.2 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 this Agreement and any Supplemental Agreement hereto, 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. 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.

16.3 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 this Agreement and any Supplemental Agreement hereto, 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.

16.4 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

Contract 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.

16.5 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 and any Supplemental Agreement hereto, 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.

17. INSURANCE.

17.1 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.

17.1.1 Limitations. These minimum amounts of coverage shall not constitute any limitation or cap on Consultant's indemnification obligations herein.

17.1.2 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.

17.1.3 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.

17.1.4 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.

17.2 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.

17.3 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.

17.3.1 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.

17.3.2 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.

17.3.3 Prior to City's execution of this Agreement, copies of insurance policies or original certificates and additional insured endorsements 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 services performed by and on behalf of the named insured for the City of Riverside.

17.3.4 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.

17.4 Errors and Omissions Insurance. Prior to City's execution of this Agreement, Consultant shall obtain, and shall thereafter maintain in force during the term of this Agreement, professional liability or errors and omissions liability insurance in the minimum amount of \$1,000,000, unless otherwise waived by the City's Risk Manager. Coverage as required in this Section shall apply to liability for a professional error, act, or omission arising out of the scope of Consultant's services as defined in this Agreement and/or any Supplemental Agreement.

18. **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 services and activities provided in furtherance of this Agreement and any Supplemental Agreement hereto, 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.

19. **REPRODUCTION OF DOCUMENTS**.

19.1 Review Documents. Consultant shall provide City, in the number reasonably required by City, Consultant's proposed final construction bid documents for the review and approval by the public agencies having jurisdiction over the Assigned Project.

19.2 Final Approved Construction Documents. Consultant shall furnish the City the number of reproductions of the final approved construction bid documents necessary for use by City in obtaining construction bids and completing construction of the Assigned Project.

20. **OWNERSHIP OF DOCUMENTS**.

20.1 Ownership of Documents. All work and contract deliverables prepared pursuant to this Agreement by Consultant including, but not limited to, drawings,

specifications, sketches, calculations, estimates, data, charts, models, reports, maps, computer programs, software or other contract deliverables, whether in written form, electronic, digital or otherwise ("Project Documents"), shall be and remain the property of City and shall be delivered to City whenever requested. Consultant shall not release to others information furnished by City without prior express written approval of City.

20.2 Work-For-Hire; Ownership of Copyrights. Consultant agrees that any work prepared for City that is eligible for copyright protection in the United States or elsewhere shall be a "work made for hire" as that term is used in the laws of the United States regarding copyrights. Consultant understands that the City shall be deemed the author of any and all such work, the City may register copyrights in the City's name, and the work made for hire is the exclusive property of the City. Consultant agrees to sign upon request any documents affirming that work created by Consultant at the direction of the City is work made for hire and belongs exclusively to the City. 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.

21. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon City and its successors and upon Consultant and Consultant's successors and assigns. Neither this Agreement, nor any part hereof, nor any monies due or to become due hereunder may be assigned by Consultant without the prior written consent of City, which consent shall not be unreasonably withheld.

22. **NONDISCRIMINATION.** During Consultant's performance of this Agreement and/or any Supplemental Agreement, Consultant and Consultant's subconsultants shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, physical handicap, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, age, sex or sexual orientation in the selection and retention of employees and subconsultants and the procurement of materials and

equipment, except as provided in Section 12940 of the California Government Code. Consultant shall also comply with the Americans with Disabilities Act.

23. **FULL COMPENSATION.** The consideration payable to Consultant as provided herein shall be compensation in full for all of Consultant's services and expenses incurred in the performance of the services, including travel and per diem, unless otherwise expressly provided.

24. **MODIFICATIONS.** No alteration or variation of the terms of the Agreement shall be valid except as follows:

24.1 Changes relating to time, money or scope of work shall be made by formal written amendment to the Agreement and shall be executed by both parties.

24.2 Minor alterations of terms or covenants may be formalized by letter from the Public Utilities General Manager or his designee.

25. **PREVAILING WAGE.** If applicable, Consultant and all subconsultants 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 ascertained, determined and specified in both of those documents are referred to and made a part hereof as though fully set forth herein.

26. **FEDERALLY FUNDED ASSIGNED PROJECTS.** In the event Consultant is awarded an Assigned Project which is federally funded, Consultant shall comply with all the following requirements:

26.1 Disadvantaged Business Enterprise (DBE):

a. DBE Participation Requirements and Regulations. The DBE participation goal for federally-funded Assigned Projects will be determined by the City. The Consultant shall carry out applicable requirements of 49 CFR, Part 26, of the Code of Federal Regulations, entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," in the award and administration of federally funded Assigned Projects. The regulations in their entirety are incorporated herein by this reference. The Consultant shall not discriminate on the basis of race color, national origin or sex in the performance of this Agreement, or any Supplemental Agreement.

Noncompliance by the Consultant with the requirements of the regulations is a material breach of this Agreement and may result in termination of the Agreement, or other such remedy as the City deems appropriate.

The Consultant shall include the following in each subconsultant contract:

- i) A subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement.
- ii) The subconsultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this Agreement.
- iii) Language providing for the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.

b. Performance of DBE Subconsultants. DBE subconsultants shall perform the work for which they have been listed in the Consultant's proposal, unless the Consultant has received prior written authorization to perform the work with other forces as set forth in subparagraph g., "DBE Substitution and Additions", of this Agreement.

c. Prompt Payment to DBE and Non-DBE Consultants. The Consultant shall not be entitled to any payment for the work, unless it is performed by the listed subconsultants (DBE or non-DBE), or by the Consultant's own forces, pursuant to prior written authorization of the Project Manager. This is the case even if other contract work is not completed and has not been accepted in conformance with the terms of the Agreement or any Supplemental Agreement by the City.

d. Prompt Payment Progress Pay Retention to DBE and Non-DBE Subconsultants. The Consultant shall return all moneys withheld in retention from the subconsultant within 30 days after receiving payment for work satisfactorily completed, even if other work is not completed and has not been accepted in conformance with the terms of this Agreement or any Supplemental Agreement. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Consultant or subconsultant in the event of a dispute involving late payment or nonpayment to the Consultant or deficient subcontract performance or noncompliance by a subconsultant.

e. DBE and Non-DBE Subconsultant Payment Records. The Consultant in addition to maintaining records showing the name and business address of each first tier subconsultant, shall also show the name and business address of every DBE regardless of tier.

The records shall show the date of payment and the total dollar figure paid to all DBE firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of work. Upon completion of a federally funded Assigned Project, a Final Report for Utilization of DBE Subconsultants shall be prepared and certified correct by the Consultant or the Consultant's authorized representative, and shall be furnished to the Project Manager. The report shall be furnished to the Project Manager with the final invoice. Failure to provide the report with the final invoice will result in the invoice being in dispute until the report is received.

f. Penalty Assessed for Failure to Provide Subconsultant Payment Records.

The sum of \$10,000 will be withheld from payment if a Final Report for Utilization of DBE Subconsultants is not submitted. The amount will be paid to the Consultant when the form is submitted.

g. DBE Substitutions or Additions. The Consultant may not substitute, or terminate for convenience a subconsultant listed in the original proposal without the prior written approval of the Project Manager. However, the Consultant may add a firm to perform work originally planned to be done by the Consultant's own forces. The Consultant must make an adequate good faith effort to find another certified DBE subconsultant to substitute for the original DBE. The Consultant will be required to make good faith efforts to replace the original DBE subconsultant with another DBE subconsultant to the extent needed to meet the contract goal.

The requirement that DBEs must be certified by the proposal submittal date does not apply to DBE substitutions or additions after award of a federally funded Assigned Project. DBEs must be certified at the time of the substitution or addition. Consultants shall submit requests for substitution in writing to the Project Manager. Authorization to use other subconsultants or suppliers may be requested for the following reasons:

- i) The listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract with Consultant, when such contract, based upon the general terms and conditions of this Agreement, or any Supplemental Agreement, or on the terms of such subconsultant's written proposal, is presented to Consultant.

- ii) The listed DBE becomes bankrupt or insolvent.
- iii) The listed DBE fails or refuses to perform the subcontract.
- iv) The Consultant stipulated that a bond was a condition of executing a subcontract and the listed DBE subconsultant failed or refuses to meet the bond requirements of the contract.
- v) The listed DBE was the result of an inadvertent clerical error. The Consultant must have asserted a claim of inadvertent clerical error in listing the subconsultant within two working days after the proposal submittal and copies of that notice to both the subconsultant he or she claims to have listed in error and intended subconsultant who had submitted a proposal to the Consultant prior to proposal submittal.
- vi) The listed DBE was not licensed as required by the State of California Consultant's Licensing Board or failed to have the required permits or licenses as required by Federal, State or Local governmental jurisdictions.
- vii) The work performed by the listed subconsultant is substantially unsatisfactory and is not in substantial conformance with the scope of work to be performed, or the subconsultant is substantially delaying or disrupting the progress of the work.
- viii) When the listed DBE is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- ix) When it is in the best interest of the City.

Prior to approval of the Consultant's request for substitution to the Project Manager, the Consultant shall give notice in writing to the listed DBE subconsultant of the Consultant's request to substitute and the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subconsultant. The listed subconsultant who has been so notified, shall have five working days within which to submit written objections to the substitution to the Project Manager. Failure to respond to a written objection shall constitute the listed subconsultant's consent to the substitution.

h. Termination of a DBE. In conformance with Federal DBE regulation 49 CFR Part 26, Sections 26.53(f)(1) and 26.53(f)(2), the Consultant shall not:

- i) Terminate for convenience a listed DBE subconsultant and then perform that work with its own forces (personnel), or those of an affiliate, unless the Consultant has received prior written authorization from the Project Manager to perform the work with other forces.
- ii) If a DBE subconsultant is terminated or fails to complete its work for any reason, the Consultant will be required to make good faith efforts to replace the original DBE subconsultant with another DBE subconsultant to the extent needed to meet the contract goal.

i. DBE Certification Status. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify the Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the contract, the subconsultant shall notify the Consultant in writing with the date of certification. Upon completion of the federally funded Assigned Project, the Consultant shall complete a Final Report for Utilization of DBE Subconsultants indicating the DBEs certification status and shall be signed and certified correct by the Consultant. The certified form shall be furnished to the Project Manager within 30 days from the date of completion of the federally funded Assigned Project.

j. DBE Eligibility toward Goal. The dollar value of work performed by a DBE is credited/counted toward the goal only after the DBE has been paid.

26.2 Prevailing Wage. If applicable to the services being provided in connection with a federally funded Assigned Project, Consultant and all subconsultants shall pay the higher of federally established prevailing wage rates or California general prevailing wage rates of per diem wages and overtime and holiday wages as determined by the U.S. Department of Labor.

26.3 Record Retention. Contractor shall maintain all books, documents, papers and records of Consultant's operations and financial activities directly pertinent to the federally funded Assigned Project in accordance with the requirements of the Federal granting agency and the regulations promulgated by or for it. Such books, documents, papers and records shall be open for inspection, audit, examination, excerpt and transcription by the authorized

representatives of City, the Federal granting agency and the Controller General of the United States during regular working hours. Consultant shall keep and maintain said books, documents, papers and records for at least three years after the City makes final payments pursuant to the contract and all other pending matters are closed or such greater period of time as may be required by the Federal granting agency.

27. **NOTICES.** Service of any notices, bills, invoices or other documents required or permitted by this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

CITY
Public Utilities Department
Attn: Energy Delivery Engineering
3750 University Avenue, 3rd Floor
Riverside, CA 92501

CONSULTANT
Mastek, Inc.
Attn: Miguel Soto
1255 Corporate Center Drive, Ste. 203
Monterey, CA 91754

28. **JURISDICTION/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 a court of competent jurisdiction in the 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.

29. **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, or any Supplemental Agreement. Consultant shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of Consultant's services with all applicable laws, ordinances and regulations. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code section 1775.

The Consultant agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State

and Local Governments. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments are subject to repayment by Consultant to City. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.

30. **SEVERABILITY.** Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement or, any Supplemental Agreement, shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in 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 this 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. **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.

33. **CONFLICT OF INTEREST.** Consultant, for itself and on behalf of its key personnel, represents and warrants that by the execution of this Agreement, they have no interest, present or contemplated, in the Assigned Projects affected by the above- described services. Consultant further warrants that neither Consultant, nor its key personnel 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.

34. **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.

35. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are not representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to the subject matter contained in this Agreement which are not fully expressed herein.

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

CITY OF RIVERSIDE, a California
charter city and municipal corporation

By: _____
City Manager

Attest: _____
City Clerk

MASTEK, INC., a California corporation

By: _____
Miguel A. Soto President
[Printed Name and Title]

By: _____
Patricia Soto - Secretary
[Printed Name and Title]

Certified as to Availability of Funds:

By: _____, Asst CFO, Per.
CFO/Treasurer

Approved as to Form:

By: *Susan Mha*
Assistant City Attorney

16-1458 SW 10/17/16
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WORKERS' COMPENSATION CERTIFICATION

I am aware of the provisions of Section 3700 of the 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 I will comply with such provisions before commencing the performance of the work of this contract.

Dated: 12/13/16

MASTEK, INC.

By: _____

Miguel A. Soto - President

[Printed Name and Title]

(This form may be used in lieu of a standard corporate resolution)

CORPORATE RESOLUTION CERTIFICATE

I, HEREBY CERTIFY that during a meeting of the Board of Directors of the
MASTER INC, a corporation existing under the laws of the
State of CALIFORNIA, held on MAY 1, 2006, the following
resolution was duly passed and adopted:

“RESOLVED, that MIGUEL A. SOTO, as PRESIDENT of the
Corporation, be and is hereby authorized to execute the Agreement for
MASTER INC between the City of Riverside
and this corporation, and that his/her execution thereof shall be the official act and
deed of this Corporation.”

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 13, day of
DECEMBER, 2016.



Secretary

ATTACHMENT I
Sample Supplemental Agreement

SUPPLEMENTAL AGREEMENT FOR ASSIGNED PROJECT

Consultant: MASTER INC

Project Name: RFP 1602 ENERGY DELIVERY

The Project Narrative for [name of project] ("Project"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, and Consultant's proposal dated [date of proposal], a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference, shall constitute a supplement to the Professional Consultant Services Agreement Energy Delivery Consultant Panel, by and between City and Consultant, dated [date of executed master agreement] ("Agreement"). Consultant agrees to perform the services described in the Project Narrative within the time set forth in the Notice to Proceed for an amount not to exceed **[written amount] Dollars (\$0)**. Performance of the services shall be subject to the terms and conditions contained in the Agreement.

Dated this _____ day of _____, 2016.

CITY OF RIVERSIDE, a California
charter city and a municipal corporation

By: _____
City Manager

Attest: _____
City Clerk

Certified as to Availability of Funds:

By: _____
CFO/Treasurer

Approved as to form:

By: Grisan Wilson
Assistant City Attorney

CONSULTANT NAME,
[legal business entity, e.g. a sole proprietor,
California corporation, etc.]

By: Miguel A. Soto

Title: PRESIDENT

By: Patricia A. Soto

Title: Secretary

EXHIBIT “A”

Project Narrative

EXHIBIT “B”

Consultant’s Proposal

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

Energy Delivery Consultant Panel

POWER ENGINEERS, INCORPORATED.

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation, hereinafter referred to as "City", and POWER ENGINEERS INCORPORATED, an Idaho corporation authorized to do business in California, hereinafter referred to as "Consultant", with respect to the following facts:

RECITALS

WHEREAS, the City requires the services of a consultant that is experienced in all aspects of the electrical facilities including street lighting, generation, substations, communication, SCADA, transmission and distribution systems included but not limited to: architectural, electrical, civil, mechanical, structural, geotechnical, environmental, and communications engineering; systems operations and maintenance, construction and project management functions for various projects for the City's Public Utilities Department, Electric Division; and

WHEREAS, City issued a Request for Proposals for purposes of establishing a panel of consultants experienced in providing such professional services, and to use such panels for various projects for the City's Public Utilities Department, Electric Division; and

WHEREAS, Consultant has the necessary experience in providing such professional consulting services and advice on various issues; and

WHEREAS, selection of Consultant is expected to achieve the desired results in an expedited fashion; and

WHEREAS, Consultant has submitted a Proposal to City and has affirmed its willingness and ability to perform such work.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by this reference, City and Consultant agree as follows:

1. SCOPE OF SERVICES.

1.1 Retention of Consultant. City hereby retains Consultant to perform, and Consultant agrees to render, technical and professional services, including labor, material, equipment, supervision and expertise for various projects for the City's Public Utilities Department, Electric Division. Services rendered under this Agreement, shall be administered by the City's Public Utilities Department, Electric Division (the "Department") for various capital improvement projects.

1.2 Assigned Project. During the term of this Agreement, Consultant shall have the opportunity to submit proposals for various capital improvement projects ("Assigned Project"). The scope of work for the project will be defined in a Request for Proposals issued by City. All proposals submitted shall be reviewed by the City, and a single consultant will be selected to perform the services for the project. Acceptance of Consultant's proposal shall be made in the form of a Supplemental Agreement for Assigned Project, a sample of which is attached hereto as Attachment I.

Execution of this Agreement by Consultant and/or the submission of proposals for City Assigned Projects does not guarantee the award of a Supplement Agreement.

2. PERSONNEL.

2.1 Consultant's Representative. Kerry Lynch, shall be Consultant's Project Representative who shall coordinate all aspects of each Assigned Project. Consultant's Project Representative shall be available to City at all reasonable times. Consultant may appoint another person as Project Representative upon written notice to City.

2.2 Substitution of Key Personnel. The key personnel for performance of this Agreement is: Kerry Lynch. Consultant has represented to City that the key personnel will perform the Services under this Agreement. Should one or more such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval by City. In the event that City and Consultant cannot agree as to the substitution of the key personnel, City shall be entitled to terminate this Agreement, pursuant to the applicable provisions of this Agreement.

2.3 Project Manager. For each Assigned Project, the City shall designate a representative who shall act as the City's Project Manager ("Project Manager"). The Project Manager shall have authority to act on behalf of City for each Assigned Project. City shall provide written notice to Consultant of any change in Project Manager for an Assigned Project.

3. **TERM.** The term of this Agreement shall become effective on the date first written above and shall remain in effect through the later of:

- a. June 30, 2019; or
- b. The required date for completion of an assigned project, provided that such project was assigned prior to June 30, 2019.

4. **CONSULTANT'S COMPENSATION.**

4.1 Services. Consultant shall receive compensation for all services rendered under this Agreement at the rates negotiated for the Assigned Project, and set forth in the Supplemental Agreement for Assigned Project. Without prior approval of the City Council, the total amount to be paid to Consultant over the term of this Agreement for all Assigned Projects shall not exceed Two Million Dollars (\$2,000,000). ✓

4.2 Extra Services. Payment for Extra Services shall be negotiated between City and Consultant on the basis of the Professional Hourly Rates schedule negotiated for the Assigned Project.

5. **PAYMENTS TO CONSULTANT.**

5.1 Basic Services.

a. Partial payments shall be made in accordance with the Payment Schedule section of the Request for Proposals for each Assigned Project. Payments shall be processed no more than once per month.

b. City shall pay Consultant all undisputed balances on invoices within 60 days of receipt, and shall notify consultant of any disputed amounts within thirty (30) days of receipt.

5.2 Extra Services. Payments for approved Extra Services provided under Article 10 shall be made monthly as Extra Services are rendered and expenses incurred.

5.3 Reimbursements. Reimbursement for costs incurred and other expenses shall be made to Consultant within 60 days of City's receipt and approval of invoices.

5.4 Limitation. No payment for any work or services performed by Consultant shall exceed the limits established in Section 4 herein.

6. **PROJECT PERFORMANCE.**

6.1 Commencement of Services. Consultant shall commence the services for each Assigned Project on the date specified in a Notice to Proceed, which shall be issued by the Project Manager within fifteen (15) calendar days after the assignment of a given project.

6.2 Time of Completion:

- a. Time is of the essence for each and every provision of this Agreement.
- b. The project completion time will be as designated in the Notice to Proceed for each Assigned
- c. Consultant shall have all plans and/or documents one hundred percent (100%) complete and ready for City's review within the number of calendar days specified in the Notice to Proceed for any given Assigned Project.

6.3 Failure to Perform. Failure of Consultant to complete the services within the time allowed and in the manner herein provided may result in the Agreement being immediately terminated by City.

6.4 Standard of Care. 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 Consultant's professional skill and expertise. Consultant represents and maintains that Consultant is skilled in the technical calling necessary to perform all services, duties and obligations required by this Agreement and to fully and adequately complete each Assigned Project.

7. **BASIC SERVICES OF CONSULTANT.** The scope of services to be provided for a given project shall be defined for each Assigned Project. Any changes to the scope of services must be authorized by the Department's Director or Project Manager, and shall be made in writing.

7.1 Right to Preliminary Review. All work prepared by Consultant shall be subject to the approval of the Project Manager. Consultant shall allow Project Manager to inspect and review Consultant's work in progress at any reasonable time. All reports, working papers, and similar work products prepared for submission in the course of providing services under this Agreement, or any Supplement Agreement, shall be submitted to the Project Manager in draft form. In the event that Project Manager, in his or her sole discretion, determines the formally

submitted work product to be inadequate, Consultant may be required to revise and resubmit the work at no additional cost to City. Should Consultant fail to make requested corrections in a timely manner, such corrections may be made by City, and the cost thereof charged to Consultant.

7.2 Monthly Progress Reports. On a monthly basis, Consultant shall submit a written progress report, in a form determined by City, which shall indicate the progress achieved during the previous month in relation to the Project Schedule for the Assigned Project. The timely submission to the Project Manager of up- to-date monthly progress reports by Consultant shall be a condition precedent to receipt of any payments otherwise due from City.

7.3 Appearance at Hearings. If and when required by City, Consultant shall render assistance at public hearings or other meetings related to the review and approval of the Assigned Project, or as necessary to perform the services.

8. **INDEPENDENT CONTRACTOR.** At all times during the performance of the services, Consultant and Consultant's agents and employees shall act in an independent capacity and not as officers, employees or agents of City. Consultant's employees and agents shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Consultant. City retains Consultant on an independent contractor basis. Consultant is not an employee of City.

8.1 Control and Payment of Subordinates. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant 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. Consultant shall be responsible for all reports and obligations respecting such personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, and worker's compensation insurance.

8.2 Subordinates and Subconsultants. Consultant shall employ, at Consultant's own expense, technicians and professionals properly skilled in the various aspects of the design and construction of facilities required. If subconsultants are engaged for any portions of the services, Consultant shall advise the Project Manager in writing of their selection prior to their

performance of work. The Project Manager shall have the authority to approve or reject the use of any subconsultant for any of the services.

9. LICENSES.

9.1 State Professional Licenses. Consultant represents and warrants to City that Consultant and all subconsultants have all licenses, permits, qualifications and approvals of whatever nature which are legally required to practice its profession. Consultant further represents that Consultant shall maintain all such licenses and approvals in full effect during the term of this Agreement.

a. Civil/Structural Engineer. Consultant shall maintain a valid, current license to practice Civil/Structural Engineering in the State of California during the entire period of the Agreement, and failure to do so shall be grounds for City's termination of the Agreement. Consultant shall comply with the requirements for Professional Engineers (California Business and Professions Code, Section 6700 et seq.).

b. Subconsultants, Consultant shall ensure that all subconsultants who perform portions of the services under this Agreement shall be properly licensed to perform their respective portions of the work and shall maintain current California licenses in their respective fields.

9.2 Local Licenses. Consultant and all subconsultants shall secure a local business license (Business Tax Registration) to operate in the City of Riverside.

10. EXTRA SERVICES OF CONSULTANT. At any time during the term of this Agreement, City may request that Consultant perform Extra Services. Consultant shall not perform Extra Services until receiving written authorization from the Project Manager. Any work which is determined by City to be necessary for the proper completion of the Assigned Project, but which neither Consultant nor City reasonably anticipated would be necessary when the scope of services for the Assigned Project was developed, and for which the fees and time of completion for such services were negotiated in advance of the work, shall be paid for by City as "Extra Services" provided that the Extra Services are authorized in writing by the Project Manager prior to Consultant's commencement thereof.

11. DISPUTED WORK. In any case where Consultant believes that necessary work or services are not clearly covered in this Agreement, or any Supplement Agreement, or have not been ordered in writing by the Project Manager as Extra Services, Consultant shall immediately

notify the Project Manager in writing of Consultant's belief that the work or services should be paid for as Extra Services before Consultant begins the work or services. If such notification is not given, or if the Project Manager is not afforded an opportunity to negotiate the appropriate fee for such Extra Services, then Consultant shall be deemed to have agreed to perform the work or services without any additional charges to City therefor. Such notice by Consultant to the Project Manager shall not in any way be construed as proving that the work or services in question are Extra Services. The notice must be approved or rejected by the Project Manager, and if the Project Manager determines that Consultant is correct, the work or services shall be allowed and paid for as Extra Services.

12. **UNAUTHORIZED WORK.** Any work done or services performed without written authority from the Project Manager shall be considered unauthorized and shall not be paid for by City.

13. **TERMINATION OF AGREEMENT.**

13.1 Termination. This Agreement may be terminated for any reason by either party upon 30 days prior written notice to the other party, or if City should decide to abandon or postpone the project indefinitely. In the event Consultant fails to substantially perform the services, City may terminate this Agreement immediately upon written notice.

13.2 Payment upon Termination. In the event of such termination, City shall determine and pay to Consultant, as full payment for all City-approved work performed and all expenses incurred under this Agreement, or any Supplemental Agreement, the amount which bears the same ratio to the total fee which would have been paid for the full performance of the services as the ratio of work actually rendered bears to the services which would have been necessary for full performance of this Agreement, or any Supplemental Agreement, plus any sums due Consultant for Extra Services or reimbursements. In ascertaining the work actually rendered prior to the date of termination of the Agreement, consideration shall be given to both completed work and work in progress and to all drawings and other documents, whether completed or incomplete, provided that they are delivered to City.

13.3 Recommencement. If the City should determine to complete an Assigned Project, or a substantially similar project, following termination of this Agreement, City shall have the right to utilize any of the drawings, specifications, Opinions of Probable Project Construction Costs and other construction bid documents prepared under this Agreement, or

any Supplemental Agreement, by Consultant without additional compensation to Consultant, provided that prior to such utilization all reference to Consultant is removed from said documents.

14. **PROJECT SCHEDULE.** Consultant shall prepare and submit an estimated time schedule for all major phases of each Assigned Project to the City within fifteen (15) calendar days following City's issuance of a Notice to Proceed for said project. This schedule shall reflect the project completion time allowed and the overall schedule included in the Consultant's proposal. The schedule will be subject to revision for delays caused by conditions beyond the control of Consultant, and delays which Consultant cannot reasonably foresee. The Project Manager shall be promptly notified of all delays. Should Consultant determine that a schedule modification is necessary, Consultant shall promptly submit a revised Project Schedule for Project Manager's review and approval of the anticipated delay.

15. **ACCOUNTING RECORDS OF CONSULTANT.** Records of Consultant's direct personnel, reimbursable expenses pertaining to any Extra Services, and records of accounts between City and Consultant shall be made and kept by Consultant on a generally recognized accounting basis and shall be made available to City or its authorized representatives at all reasonable times for inspection and copying.

16. **INDEMNIFICATION.**

16.1 Design Professional Defined. For purposes of this Agreement, "Design Professional" includes

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.

16.2 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 this Agreement and any Supplemental Agreement hereto, 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. 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.

16.3 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 this Agreement and any Supplemental Agreement hereto, 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.

16.4 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 Contract 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.

16.5 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 and any Supplemental Agreement hereto, 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.

17. INSURANCE.

17.1 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.

17.1.1 Limitations. These minimum amounts of coverage shall not constitute any limitation or cap on Consultant's indemnification obligations herein.

17.1.2 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.

17.1.3 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.

17.1.4 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.

17.2 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.

17.3 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.

17.3.1 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.

17.3.2 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.

17.3.3 Prior to City's execution of this Agreement, copies of insurance policies or original certificates and additional insured endorsements 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 services performed by and on behalf of the named insured for the City of Riverside.

17.3.4 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.

17.4 Errors and Omissions Insurance. Prior to City's execution of this Agreement, Consultant shall obtain, and shall thereafter maintain in force during the term of this Agreement, professional liability or errors and omissions liability insurance in the minimum amount of \$1,000,000, unless otherwise waived by the City's Risk Manager. Coverage as required in this Section shall apply to liability for a professional error, act, or omission arising out of the scope of Consultant's services as defined in this Agreement and/or any Supplemental Agreement.

18. **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 services and activities provided in furtherance of this Agreement and any Supplemental Agreement hereto, 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.

19. **REPRODUCTION OF DOCUMENTS.**

19.1 Review Documents. Consultant shall provide City, in the number reasonably required by City, Consultant's proposed final construction bid documents for the review and approval by the public agencies having jurisdiction over the Assigned Project.

19.2 Final Approved Construction Documents. Consultant shall furnish the City the number of reproductions of the final approved construction bid documents necessary

for use by City in obtaining construction bids and completing construction of the Assigned Project.

20. OWNERSHIP OF DOCUMENTS.

20.1 Ownership of Documents. All work and contract deliverables prepared pursuant to this Agreement by Consultant including, but not limited to, drawings, specifications, sketches, calculations, estimates, data, charts, models, reports, maps, computer programs, software or other contract deliverables, whether in written form, electronic, digital or otherwise (“Project Documents”), shall be and remain the property of City and shall be delivered to City whenever requested. Consultant shall not release to others information furnished by City without prior express written approval of City.

20.2 Work-For-Hire; Ownership of Copyrights. Consultant agrees that any work prepared for City that is eligible for copyright protection in the United States or elsewhere shall be a “work made for hire” as that term is used in the laws of the United States regarding copyrights. Consultant understands that the City shall be deemed the author of any and all such work, the City may register copyrights in the City’s name, and the work made for hire is the exclusive property of the City. Consultant agrees to sign upon request any documents affirming that work created by Consultant at the direction of the City is work made for hire and belongs exclusively to the City. 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.

21. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon City and its successors and upon Consultant and Consultant’s successors and assigns. Neither this Agreement, nor any part hereof, nor any monies due or to become due hereunder may be assigned by Consultant without the prior written consent of City, which consent shall not be unreasonably withheld.

22. **NONDISCRIMINATION.** During Consultant's performance of this Agreement and/or any Supplemental Agreement, Consultant and Consultant's subconsultants shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, physical handicap, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, age, sex or sexual orientation in the selection and retention of employees and subconsultants and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Consultant shall also comply with the Americans with Disabilities Act.

23. **FULL COMPENSATION.** The consideration payable to Consultant as provided herein shall be compensation in full for all of Consultant's services and expenses incurred in the performance of the services, including travel and per diem, unless otherwise expressly provided.

24. **MODIFICATIONS.** No alteration or variation of the terms of the Agreement shall be valid except as follows:

24.1 Changes relating to time, money or scope of work shall be made by formal written amendment to the Agreement and shall be executed by both parties.

24.2 Minor alterations of terms or covenants may be formalized by letter from the Public Utilities General Manager or his designee.

25. **PREVAILING WAGE.** If applicable, Consultant and all subconsultants 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 ascertained, determined and specified in both of those documents are referred to and made a part hereof as though fully set forth herein.

26. **FEDERALLY FUNDED ASSIGNED PROJECTS.** In the event Consultant is awarded an Assigned Project which is federally funded, Consultant shall comply with all the following requirements:

26.1 Disadvantaged Business Enterprise (DBE):

a. DBE Participation Requirements and Regulations. The DBE participation goal for federally-funded Assigned Projects will be determined by the City. The Consultant shall

carry out applicable requirements of 49 CFR, Part 26, of the Code of Federal Regulations, entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” in the award and administration of federally funded Assigned Projects. The regulations in their entirety are incorporated herein by this reference. The Consultant shall not discriminate on the basis of race color, national origin or sex in the performance of this Agreement, or any Supplemental Agreement.

Noncompliance by the Consultant with the requirements of the regulations is a material breach of this Agreement and may result in termination of the Agreement, or other such remedy as the City deems appropriate.

The Consultant shall include the following in each subconsultant contract:

- i) A subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement.
- ii) The subconsultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this Agreement.
- iii) Language providing for the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.

b. Performance of DBE Subconsultants. DBE subconsultants shall perform the work for which they have been listed in the Consultant’s proposal, unless the Consultant has received prior written authorization to perform the work with other forces as set forth in subparagraph g., “DBE Substitution and Additions”, of this Agreement.

c. Prompt Payment to DBE and Non-DBE Consultants. The Consultant shall not be entitled to any payment for the work, unless it is performed by the listed subconsultants (DBE or non-DBE), or by the Consultant’s own forces, pursuant to prior written authorization of the Project Manager. This is the case even if other contract work is not completed and has not been accepted in conformance with the terms of the Agreement or any Supplemental Agreement by the City.

d. Prompt Payment Progress Pay Retention to DBE and Non-DBE Subconsultants. The Consultant shall return all moneys withheld in retention from the subconsultant within 30 days after receiving payment for work satisfactorily completed, even if other work is not completed and has not been accepted in conformance with the terms of this Agreement or any Supplemental Agreement. This requirement shall not be construed to limit or

impair any contractual, administrative, or judicial remedies otherwise available to the Consultant or subconsultant in the event of a dispute involving late payment or nonpayment to the Consultant or deficient subcontract performance or noncompliance by a subconsultant.

e. DBE and Non-DBE Subconsultant Payment Records. The Consultant in addition to maintaining records showing the name and business address of each first tier subconsultant, shall also show the name and business address of every DBE regardless of tier. The records shall show the date of payment and the total dollar figure paid to all DBE firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of work. Upon completion of a federally funded Assigned Project, a Final Report for Utilization of DBE Subconsultants shall be prepared and certified correct by the Consultant or the Consultant's authorized representative, and shall be furnished to the Project Manager. The report shall be furnished to the Project Manager with the final invoice. Failure to provide the report with the final invoice will result in the invoice being in dispute until the report is received.

f. Penalty Assessed for Failure to Provide Subconsultant Payment Records. The sum of \$10,000 will be withheld from payment if a Final Report for Utilization of DBE Subconsultants is not submitted. The amount will be paid to the Consultant when the form is submitted.

g. DBE Substitutions or Additions. The Consultant may not substitute, or terminate for convenience a subconsultant listed in the original proposal without the prior written approval of the Project Manager. However, the Consultant may add a firm to perform work originally planned to be done by the Consultant's own forces. The Consultant must make an adequate good faith effort to find another certified DBE subconsultant to substitute for the original DBE. The Consultant will be required to make good faith efforts to replace the original DBE subconsultant with another DBE subconsultant to the extent needed to meet the contract goal.

The requirement that DBEs must be certified by the proposal submittal date does not apply to DBE substitutions or additions after award of a federally funded Assigned Project. DBEs must be certified at the time of the substitution or addition. Consultants shall submit requests for substitution in writing to the Project Manager. Authorization to use other subconsultants or suppliers may be requested for the following reasons:

- i) The listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract with Consultant, when such contract, based upon the general terms and conditions of this Agreement, or any Supplemental Agreement, or on the terms of such subconsultant's written proposal, is presented to Consultant.
- ii) The listed DBE becomes bankrupt or insolvent.
- iii) The listed DBE fails or refuses to perform the subcontract.
- iv) The Consultant stipulated that a bond was a condition of executing a subcontract and the listed DBE subconsultant failed or refuses to meet the bond requirements of the contract.
- v) The listed DBE was the result of an inadvertent clerical error. The Consultant must have asserted a claim of inadvertent clerical error in listing the subconsultant within two working days after the proposal submittal and copies of that notice to both the subconsultant he or she claims to have listed in error and intended subconsultant who had submitted a proposal to the Consultant prior to proposal submittal.
- vi) The listed DBE was not licensed as required by the State of California Consultant's Licensing Board or failed to have the required permits or licenses as required by Federal, State or Local governmental jurisdictions.
- vii) The work performed by the listed subconsultant is substantially unsatisfactory and is not in substantial conformance with the scope of work to be performed, or the subconsultant is substantially delaying or disrupting the progress of the work.
- viii) When the listed DBE is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- ix) When it is in the best interest of the City.

Prior to approval of the Consultant's request for substitution to the Project Manager, the Consultant shall give notice in writing to the listed DBE subconsultant of the Consultant's

request to substitute and the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subconsultant. The listed subconsultant who has been so notified, shall have five working days within which to submit written objections to the substitution to the Project Manager. Failure to respond to a written objection shall constitute the listed subconsultant's consent to the substitution.

h. Termination of a DBE. In conformance with Federal DBE regulation 49 CFR Part 26, Sections 26.53(f)(1) and 26.53(f)(2), the Consultant shall not:

- i) Terminate for convenience a listed DBE subconsultant and then perform that work with its own forces (personnel), or those of an affiliate, unless the Consultant has received prior written authorization from the Project Manager to perform the work with other forces.
- ii) If a DBE subconsultant is terminated or fails to complete its work for any reason, the Consultant will be required to make good faith efforts to replace the original DBE subconsultant with another DBE subconsultant to the extent needed to meet the contract goal.

i. DBE Certification Status. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify the Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the contract, the subconsultant shall notify the Consultant in writing with the date of certification. Upon completion of the federally funded Assigned Project, the Consultant shall complete a Final Report for Utilization of DBE Subconsultants indicating the DBEs certification status and shall be signed and certified correct by the Consultant. The certified form shall be furnished to the Project Manager within 30 days from the date of completion of the federally funded Assigned Project.

j. DBE Eligibility toward Goal. The dollar value of work performed by a DBE is credited/counted toward the goal only after the DBE has been paid.

26.2 Prevailing Wage. If applicable to the services being provided in connection with a federally funded Assigned Project, Consultant and all subconsultants shall pay the higher of federally established prevailing wage rates or California general prevailing wage rates of per diem wages and overtime and holiday wages as determined by the U.S. Department of Labor.

26.3 Record Retention. Contractor shall maintain all books, documents, papers and records of Consultant's operations and financial activities directly pertinent to the federally funded Assigned Project in accordance with the requirements of the Federal granting agency and the regulations promulgated by or for it. Such books, documents, papers and records shall be open for inspection, audit, examination, excerpt and transcription by the authorized representatives of City, the Federal granting agency and the Controller General of the United States during regular working hours. Consultant shall keep and maintain said books, documents, papers and records for at least three years after the City makes final payments pursuant to the contract and all other pending matters are closed or such greater period of time as may be required by the Federal granting agency.

27. **NOTICES.** Service of any notices, bills, invoices or other documents required or permitted by this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

CITY
Public Utilities Department
Attn: Energy Delivery Engineering
3750 University Avenue, 3rd Floor
Riverside, CA 92501

CONSULTANT
Power Engineers, Incorporated
Attn: Kerry Lynch
731 East Ball Road
Anaheim, CA 92805

28. **JURISDICTION/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 a court of competent jurisdiction in the 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.

29. **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, or any Supplemental Agreement. Consultant shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for

the compliance of Consultant's services with all applicable laws, ordinances and regulations. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code section 1775.

The Consultant agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments are subject to repayment by Consultant to City. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.

30. **SEVERABILITY.** Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement or, any Supplemental Agreement, shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in 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 this 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. **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.

33. **CONFLICT OF INTEREST.** Consultant, for itself and on behalf of its key personnel, represents and warrants that by the execution of this Agreement, they have no interest, present or

contemplated, in the Assigned Projects affected by the above- described services. Consultant further warrants that neither Consultant, nor its key personnel 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.

34. **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.

35. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are not representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to the subject matter contained in this Agreement which are not fully expressed herein.

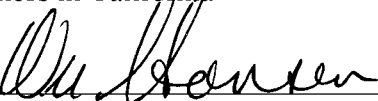
IN WITNESS WHEREOF, City and Consultant have executed this Agreement the day and year first above written.


CITY OF RIVERSIDE, a California
charter city and municipal corporation

By: _____
City Manager

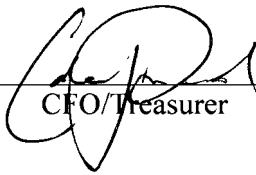
Attest: _____
City Clerk

POWER ENGINEERS, INCORPORATED,
an Idaho corporation authorized to do
business in California

By: 
WILLIAM HANSEN EUP
[Printed Name and Title]

By: 
BARRY NEWBERT, SECRETARY
[Printed Name and Title]

Certified as to Availability of Funds:

By: , Asst CFO/Per.
CFO/Treasurer

Approved as to Form:

By: 
Assistant City Attorney

16-1457 SW 10/17/16
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WORKERS' COMPENSATION CERTIFICATION

I am aware of the provisions of Section 3700 of the 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 I will comply with such provisions before commencing the performance of the work of this contract.

Dated: _____

POWER ENGINEERS, INCORPORATED

By: 

WILLIAM HANSEN EUP
[Printed Name and Title]

(This form may be used in lieu of a standard corporate resolution)

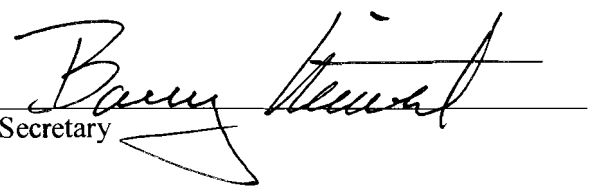
CORPORATE RESOLUTION CERTIFICATE

I, HEREBY CERTIFY that during a meeting of the Board of Directors of the POWER ENGINEERS, INC., a corporation existing under the laws of the State of IDAHO, held on NOVEMBER 11, 2015, the following resolution was duly passed and adopted:

“RESOLVED, that WILLIAM HANSEN, as ~~EXECUTIVE VICE-PRESIDENT~~ of the Corporation, be and is hereby authorized to execute the Agreement for POWER ENGINEERS, INC. between the City of Riverside and this corporation, and that his/her execution thereof shall be the official act and deed of this Corporation.”

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 12, day of DECEMBER, 2016.


Secretary

ATTACHMENT I
Sample Supplemental Agreement

SUPPLEMENTAL AGREEMENT FOR ASSIGNED PROJECT

Consultant: _____

Project Name: _____

The Project Narrative for [name of project] ("Project"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, and Consultant's proposal dated [date of proposal], a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference, shall constitute a supplement to the Professional Consultant Services Agreement Energy Delivery Consultant Panel, by and between City and Consultant, dated [date of executed master agreement] ("Agreement"). Consultant agrees to perform the services described in the Project Narrative within the time set forth in the Notice to Proceed for an amount not to exceed **[written amount] Dollars (\$0)**. Performance of the services shall be subject to the terms and conditions contained in the Agreement.

Dated this ____ day of _____, 2016.

CITY OF RIVERSIDE, a California
charter city and a municipal corporation

CONSULTANT NAME,
[legal business entity, e.g. a sole proprietor,
California corporation, etc.)

By: _____
City Manager

By: _____

Title: _____

Attest: _____
City Clerk

By: _____

Title: _____

Certified as to Availability of Funds:

By: _____
CFO/Treasurer

Approved as to form:

By: _____
Assistant City Attorney

EXHIBIT “A”

Project Narrative

EXHIBIT “B”

Consultant’s Proposal

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

Energy Delivery Consultant Panel

NV5, INC.

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation, hereinafter referred to as "City", and NV5, INC., a California corporation, hereinafter referred to as "Consultant", with respect to the following facts:

RECITALS

WHEREAS, the City requires the services of a consultant that is experienced in all aspects of the electrical facilities including street lighting, generation, substations, communication, SCADA, transmission and distribution systems included but not limited to: architectural, electrical, civil, mechanical, structural, geotechnical, environmental, and communications engineering; systems operations and maintenance, construction and project management functions for various projects for the City's Public Utilities Department, Electric Division; and

WHEREAS, City issued a Request for Proposals for purposes of establishing a panel of consultants experienced in providing such professional services, and to use such panels for various projects for the City's Public Utilities Department, Electric Division; and

WHEREAS, Consultant has the necessary experience in providing such professional consulting services and advice on various issues; and

WHEREAS, selection of Consultant is expected to achieve the desired results in an expedited fashion; and

WHEREAS, Consultant has submitted a Proposal to City and has affirmed its willingness and ability to perform such work.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by this reference, City and Consultant agree as follows:

1. SCOPE OF SERVICES.

1.1 Retention of Consultant. City hereby retains Consultant to perform, and Consultant agrees to render, technical and professional services, including labor, material, equipment, supervision and expertise for various projects for the City's Public Utilities

Department, Electric Division. Services rendered under this Agreement, shall be administered by the City's Public Utilities Department, Electric Division (the "Department") for various capital improvement projects.

1.2 Assigned Project. During the term of this Agreement, Consultant shall have the opportunity to submit proposals for various capital improvement projects ("Assigned Project"). The scope of work for the project will be defined in a Request for Proposals issued by City. All proposals submitted shall be reviewed by the City, and a single consultant will be selected to perform the services for the project. Acceptance of Consultant's proposal shall be made in the form of a Supplemental Agreement for Assigned Project, a sample of which is attached hereto as Attachment I.

Execution of this Agreement by Consultant and/or the submission of proposals for City Assigned Projects does not guarantee the award of a Supplement Agreement.

2. **PERSONNEL.**

2.1 Consultant's Representative. Gary Clark shall be Consultant's Project Representative who shall coordinate all aspects of each Assigned Project. Consultant's Project Representative shall be available to City at all reasonable times. Consultant may appoint another person as Project Representative upon written notice to City.

2.2 Substitution of Key Personnel. The key personnel for performance of this Agreement is: Gary Clark. Consultant has represented to City that the key personnel will perform the Services under this Agreement. Should one or more such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval by City. In the event that City and Consultant cannot agree as to the substitution of the key personnel, City shall be entitled to terminate this Agreement, pursuant to the applicable provisions of this Agreement.

2.3 Project Manager. For each Assigned Project, the City shall designate a representative who shall act as the City's Project Manager ("Project Manager"). The Project Manager shall have authority to act on behalf of City for each Assigned Project. City shall provide written notice to Consultant of any change in Project Manager for an Assigned Project.

3. **TERM**. The term of this Agreement shall become effective on the date first written above and shall remain in effect through the later of:

- a. June 30, 2019; or
- b. The required date for completion of an assigned project, provided that such project was assigned prior to June 30, 2019.

4. CONSULTANT'S COMPENSATION.

4.1 Services. Consultant shall receive compensation for all services rendered under this Agreement at the rates negotiated for the Assigned Project, and set forth in the Supplemental Agreement for Assigned Project. Without prior approval of the City Council, the total amount to be paid to Consultant over the term of this Agreement for all Assigned Projects shall not exceed Two Million Dollars (\$2,000,000.00).

4.2 Extra Services. Payment for Extra Services shall be negotiated between City and Consultant on the basis of the Professional Hourly Rates schedule negotiated for the Assigned Project.

5. PAYMENTS TO CONSULTANT.

5.1 Basic Services.

a. Partial payments shall be made in accordance with the Payment Schedule section of the Request for Proposals for each Assigned Project. Payments shall be processed no more than once per month.

b. City shall pay Consultant all undisputed balances on invoices within 60 days of receipt, and shall notify consultant of any disputed amounts within thirty (30) days of receipt.

5.2 Extra Services. Payments for approved Extra Services provided under Article 10 shall be made monthly as Extra Services are rendered and expenses incurred.

5.3 Reimbursements. Reimbursement for costs incurred and other expenses shall be made to Consultant within 60 days of City's receipt and approval of invoices.

5.4 Limitation. No payment for any work or services performed by Consultant shall exceed the limits established in Section 4 herein.

6. PROJECT PERFORMANCE.

6.1 Commencement of Services. Consultant shall commence the services for each Assigned Project on the date specified in a Notice to Proceed, which shall be issued by the Project Manager within fifteen (15) calendar days after the assignment of a given project.

6.2 Time of Completion:

- a. Time is of the essence for each and every provision of this Agreement.
- b. The project completion time will be as designated in the Notice to Proceed for each Assigned
- c. Consultant shall have all plans and/or documents one hundred percent (100%) complete and ready for City's review within the number of calendar days specified in the Notice to Proceed for any given Assigned Project.

6.3 Failure to Perform. Failure of Consultant to complete the services within the time allowed and in the manner herein provided may result in the Agreement being immediately terminated by City.

6.4 Standard of Care. 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 Consultant's professional skill and expertise. Consultant represents and maintains that Consultant is skilled in the technical calling necessary to perform all services, duties and obligations required by this Agreement and to fully and adequately complete each Assigned Project.

7. **BASIC SERVICES OF CONSULTANT.** The scope of services to be provided for a given project shall be defined for each Assigned Project. Any changes to the scope of services must be authorized by the Department's Director or Project Manager, and shall be made in writing.

7.1 Right to Preliminary Review. All work prepared by Consultant shall be subject to the approval of the Project Manager. Consultant shall allow Project Manager to inspect and review Consultant's work in progress at any reasonable time. All reports, working papers, and similar work products prepared for submission in the course of providing services under this Agreement, or any Supplement Agreement, shall be submitted to the Project Manager in draft form. In the event that Project Manager, in his or her sole discretion, determines the formally submitted work product to be inadequate, Consultant may be required to revise and resubmit the work at no additional cost to City. Should Consultant fail to make requested corrections in a timely manner, such corrections may be made by City, and the cost thereof charged to Consultant.

7.2 Monthly Progress Reports. On a monthly basis, Consultant shall submit a written progress report, in a form determined by City, which shall indicate the progress achieved during the previous month in relation to the Project Schedule for the Assigned Project. The timely submission to the Project Manager of up- to-date monthly progress reports by Consultant shall be a condition precedent to receipt of any payments otherwise due from City.

7.3 Appearance at Hearings. If and when required by City, Consultant shall render assistance at public hearings or other meetings related to the review and approval of the Assigned Project, or as necessary to perform the services.

8. **INDEPENDENT CONTRACTOR.** At all times during the performance of the services, Consultant and Consultant's agents and employees shall act in an independent capacity and not as officers, employees or agents of City. Consultant's employees and agents shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Consultant. City retains Consultant on an independent contractor basis. Consultant is not an employee of City.

8.1 Control and Payment of Subordinates. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant 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. Consultant shall be responsible for all reports and obligations respecting such personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, and worker's compensation insurance.

8.2 Subordinates and Subconsultants. Consultant shall employ, at Consultant's own expense, technicians and professionals properly skilled in the various aspects of the design and construction of facilities required. If subconsultants are engaged for any portions of the services, Consultant shall advise the Project Manager in writing of their selection prior to their performance of work. The Project Manager shall have the authority to approve or reject the use of any subconsultant for any of the services.

9. **LICENSES.**

9.1 State Professional Licenses. Consultant represents and warrants to City that Consultant and all subconsultants have all licenses, permits, qualifications and approvals of

whatever nature which are legally required to practice its profession. Consultant further represents that Consultant shall maintain all such licenses and approvals in full effect during the term of this Agreement.

a. Civil/Structural Engineer. Consultant shall maintain a valid, current license to practice Civil/Structural Engineering in the State of California during the entire period of the Agreement, and failure to do so shall be grounds for City's termination of the Agreement. Consultant shall comply with the requirements for Professional Engineers (California Business and Professions Code, Section 6700 et seq.).

b. Subconsultants, Consultant shall ensure that all subconsultants who perform portions of the services under this Agreement shall be properly licensed to perform their respective portions of the work and shall maintain current California licenses in their respective fields.

9.2 Local Licenses. Consultant and all subconsultants shall secure a local business license (Business Tax Registration) to operate in the City of Riverside.

10. **EXTRA SERVICES OF CONSULTANT.** At any time during the term of this Agreement, City may request that Consultant perform Extra Services. Consultant shall not perform Extra Services until receiving written authorization from the Project Manager. Any work which is determined by City to be necessary for the proper completion of the Assigned Project, but which neither Consultant nor City reasonably anticipated would be necessary when the scope of services for the Assigned Project was developed, and for which the fees and time of completion for such services were negotiated in advance of the work, shall be paid for by City as "Extra Services" provided that the Extra Services are authorized in writing by the Project Manager prior to Consultant's commencement thereof.

11. **DISPUTED WORK.** In any case where Consultant believes that necessary work or services are not clearly covered in this Agreement, or any Supplement Agreement, or have not been ordered in writing by the Project Manager as Extra Services, Consultant shall immediately notify the Project Manager in writing of Consultant's belief that the work or services should be paid for as Extra Services before Consultant begins the work or services. If such notification is not given, or if the Project Manager is not afforded an opportunity to negotiate the appropriate fee for such Extra Services, then Consultant shall be deemed to have agreed to perform the work or services without any additional charges to City therefor. Such notice by Consultant to the

Project Manager shall not in any way be construed as proving that the work or services in question are Extra Services. The notice must be approved or rejected by the Project Manager, and if the Project Manager determines that Consultant is correct, the work or services shall be allowed and paid for as Extra Services.

12. **UNAUTHORIZED WORK.** Any work done or services performed without written authority from the Project Manager shall be considered unauthorized and shall not be paid for by City.

13. **TERMINATION OF AGREEMENT.**

13.1 Termination. This Agreement may be terminated for any reason by either party upon 30 days prior written notice to the other party, or if City should decide to abandon or postpone the project indefinitely. In the event Consultant fails to substantially perform the services, City may terminate this Agreement immediately upon written notice.

13.2 Payment upon Termination. In the event of such termination, City shall determine and pay to Consultant, as full payment for all City-approved work performed and all expenses incurred under this Agreement, or any Supplemental Agreement, the amount which bears the same ratio to the total fee which would have been paid for the full performance of the services as the ratio of work actually rendered bears to the services which would have been necessary for full performance of this Agreement, or any Supplemental Agreement, plus any sums due Consultant for Extra Services or reimbursements. In ascertaining the work actually rendered prior to the date of termination of the Agreement, consideration shall be given to both completed work and work in progress and to all drawings and other documents, whether completed or incomplete, provided that they are delivered to City.

13.3 Recommencement. If the City should determine to complete an Assigned Project, or a substantially similar project, following termination of this Agreement, City shall have the right to utilize any of the drawings, specifications, Opinions of Probable Project Construction Costs and other construction bid documents prepared under this Agreement, or any Supplemental Agreement, by Consultant without additional compensation to Consultant, provided that prior to such utilization all reference to Consultant is removed from said documents.

14. **PROJECT SCHEDULE.** Consultant shall prepare and submit an estimated time schedule for all major phases of each Assigned Project to the City within fifteen (15) calendar

days following City's issuance of a Notice to Proceed for said project. This schedule shall reflect the project completion time allowed and the overall schedule included in the Consultant's proposal. The schedule will be subject to revision for delays caused by conditions beyond the control of Consultant, and delays which Consultant cannot reasonably foresee. The Project Manager shall be promptly notified of all delays. Should Consultant determine that a schedule modification is necessary, Consultant shall promptly submit a revised Project Schedule for Project Manager's review and approval of the anticipated delay.

15. **ACCOUNTING RECORDS OF CONSULTANT.** Records of Consultant's direct personnel, reimbursable expenses pertaining to any Extra Services, and records of accounts between City and Consultant shall be made and kept by Consultant on a generally recognized accounting basis and shall be made available to City or its authorized representatives at all reasonable times for inspection and copying.

16. **INDEMNIFICATION.**

16.1 Design Professional Defined. For purposes of this Agreement, "Design Professional" includes

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.

16.2 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 this Agreement and any Supplemental Agreement hereto, 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. 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.

16.3 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 this Agreement and any Supplemental Agreement hereto, 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.

16.4 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

Contract 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.

16.5 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 and any Supplemental Agreement hereto, 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.

17. INSURANCE.

17.1 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.

17.1.1 Limitations. These minimum amounts of coverage shall not constitute any limitation or cap on Consultant's indemnification obligations herein.

17.1.2 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.

17.1.3 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.

17.1.4 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.

17.2 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.

17.3 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.

17.3.1 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.

17.3.2 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.

17.3.3 Prior to City's execution of this Agreement, copies of insurance policies or original certificates and additional insured endorsements 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 services performed by and on behalf of the named insured for the City of Riverside.

17.3.4 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.

17.4 Errors and Omissions Insurance. Prior to City's execution of this Agreement, Consultant shall obtain, and shall thereafter maintain in force during the term of this Agreement, professional liability or errors and omissions liability insurance in the minimum amount of \$1,000,000, unless otherwise waived by the City's Risk Manager. Coverage as required in this Section shall apply to liability for a professional error, act, or omission arising out of the scope of Consultant's services as defined in this Agreement and/or any Supplemental Agreement.

18. **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 services and activities provided in furtherance of this Agreement and any Supplemental Agreement hereto, 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.

19. **REPRODUCTION OF DOCUMENTS.**

19.1 Review Documents. Consultant shall provide City, in the number reasonably required by City, Consultant's proposed final construction bid documents for the review and approval by the public agencies having jurisdiction over the Assigned Project.

19.2 Final Approved Construction Documents. Consultant shall furnish the City the number of reproductions of the final approved construction bid documents necessary for use by City in obtaining construction bids and completing construction of the Assigned Project.

20. **OWNERSHIP OF DOCUMENTS.**

20.1 Ownership of Documents. All work and contract deliverables prepared pursuant to this Agreement by Consultant including, but not limited to, drawings,

specifications, sketches, calculations, estimates, data, charts, models, reports, maps, computer programs, software or other contract deliverables, whether in written form, electronic, digital or otherwise ("Project Documents"), shall be and remain the property of City and shall be delivered to City whenever requested. Consultant shall not release to others information furnished by City without prior express written approval of City.

20.2 Work-For-Hire; Ownership of Copyrights. Consultant agrees that any work prepared for City that is eligible for copyright protection in the United States or elsewhere shall be a "work made for hire" as that term is used in the laws of the United States regarding copyrights. Consultant understands that the City shall be deemed the author of any and all such work, the City may register copyrights in the City's name, and the work made for hire is the exclusive property of the City. Consultant agrees to sign upon request any documents affirming that work created by Consultant at the direction of the City is work made for hire and belongs exclusively to the City. 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.

21. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon City and its successors and upon Consultant and Consultant's successors and assigns. Neither this Agreement, nor any part hereof, nor any monies due or to become due hereunder may be assigned by Consultant without the prior written consent of City, which consent shall not be unreasonably withheld.

22. **NONDISCRIMINATION.** During Consultant's performance of this Agreement and/or any Supplemental Agreement, Consultant and Consultant's subconsultants shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, physical handicap, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, age, sex or sexual orientation in the selection and retention of employees and subconsultants and the procurement of materials and

equipment, except as provided in Section 12940 of the California Government Code. Consultant shall also comply with the Americans with Disabilities Act.

23. **FULL COMPENSATION.** The consideration payable to Consultant as provided herein shall be compensation in full for all of Consultant's services and expenses incurred in the performance of the services, including travel and per diem, unless otherwise expressly provided.

24. **MODIFICATIONS.** No alteration or variation of the terms of the Agreement shall be valid except as follows:

24.1 Changes relating to time, money or scope of work shall be made by formal written amendment to the Agreement and shall be executed by both parties.

24.2 Minor alterations of terms or covenants may be formalized by letter from the Public Utilities General Manager or his designee.

25. **PREVAILING WAGE.** If applicable, Consultant and all subconsultants 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 ascertained, determined and specified in both of those documents are referred to and made a part hereof as though fully set forth herein.

26. **FEDERALLY FUNDED ASSIGNED PROJECTS.** In the event Consultant is awarded an Assigned Project which is federally funded, Consultant shall comply with all the following requirements:

26.1 Disadvantaged Business Enterprise (DBE):

a. DBE Participation Requirements and Regulations. The DBE participation goal for federally-funded Assigned Projects will be determined by the City. The Consultant shall carry out applicable requirements of 49 CFR, Part 26, of the Code of Federal Regulations, entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," in the award and administration of federally funded Assigned Projects. The regulations in their entirety are incorporated herein by this reference. The Consultant shall not discriminate on the basis of race color, national origin or sex in the performance of this Agreement, or any Supplemental Agreement.

Noncompliance by the Consultant with the requirements of the regulations is a material breach of this Agreement and may result in termination of the Agreement, or other such remedy as the City deems appropriate.

The Consultant shall include the following in each subconsultant contract:

- i) A subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement.
- ii) The subconsultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this Agreement.
- iii) Language providing for the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.

b. Performance of DBE Subconsultants. DBE subconsultants shall perform the work for which they have been listed in the Consultant's proposal, unless the Consultant has received prior written authorization to perform the work with other forces as set forth in subparagraph g., "DBE Substitution and Additions", of this Agreement.

c. Prompt Payment to DBE and Non-DBE Consultants. The Consultant shall not be entitled to any payment for the work, unless it is performed by the listed subconsultants (DBE or non-DBE), or by the Consultant's own forces, pursuant to prior written authorization of the Project Manager. This is the case even if other contract work is not completed and has not been accepted in conformance with the terms of the Agreement or any Supplemental Agreement by the City.

d. Prompt Payment Progress Pay Retention to DBE and Non-DBE Subconsultants. The Consultant shall return all moneys withheld in retention from the subconsultant within 30 days after receiving payment for work satisfactorily completed, even if other work is not completed and has not been accepted in conformance with the terms of this Agreement or any Supplemental Agreement. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Consultant or subconsultant in the event of a dispute involving late payment or nonpayment to the Consultant or deficient subcontract performance or noncompliance by a subconsultant.

e. DBE and Non-DBE Subconsultant Payment Records. The Consultant in addition to maintaining records showing the name and business address of each first tier subconsultant, shall also show the name and business address of every DBE regardless of tier.

The records shall show the date of payment and the total dollar figure paid to all DBE firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of work. Upon completion of a federally funded Assigned Project, a Final Report for Utilization of DBE Subconsultants shall be prepared and certified correct by the Consultant or the Consultant's authorized representative, and shall be furnished to the Project Manager. The report shall be furnished to the Project Manager with the final invoice. Failure to provide the report with the final invoice will result in the invoice being in dispute until the report is received.

f. Penalty Assessed for Failure to Provide Subconsultant Payment Records.

The sum of \$10,000 will be withheld from payment if a Final Report for Utilization of DBE Subconsultants is not submitted. The amount will be paid to the Consultant when the form is submitted.

g. DBE Substitutions or Additions. The Consultant may not substitute, or terminate for convenience a subconsultant listed in the original proposal without the prior written approval of the Project Manager. However, the Consultant may add a firm to perform work originally planned to be done by the Consultant's own forces. The Consultant must make an adequate good faith effort to find another certified DBE subconsultant to substitute for the original DBE. The Consultant will be required to make good faith efforts to replace the original DBE subconsultant with another DBE subconsultant to the extent needed to meet the contract goal.

The requirement that DBEs must be certified by the proposal submittal date does not apply to DBE substitutions or additions after award of a federally funded Assigned Project. DBEs must be certified at the time of the substitution or addition. Consultants shall submit requests for substitution in writing to the Project Manager. Authorization to use other subconsultants or suppliers may be requested for the following reasons:

- i) The listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract with Consultant, when such contract, based upon the general terms and conditions of this Agreement, or any Supplemental Agreement, or on the terms of such subconsultant's written proposal, is presented to Consultant.

- ii) The listed DBE becomes bankrupt or insolvent.
- iii) The listed DBE fails or refuses to perform the subcontract.
- iv) The Consultant stipulated that a bond was a condition of executing a subcontract and the listed DBE subconsultant failed or refuses to meet the bond requirements of the contract.
- v) The listed DBE was the result of an inadvertent clerical error. The Consultant must have asserted a claim of inadvertent clerical error in listing the subconsultant within two working days after the proposal submittal and copies of that notice to both the subconsultant he or she claims to have listed in error and intended subconsultant who had submitted a proposal to the Consultant prior to proposal submittal.
- vi) The listed DBE was not licensed as required by the State of California Consultant's Licensing Board or failed to have the required permits or licenses as required by Federal, State or Local governmental jurisdictions.
- vii) The work performed by the listed subconsultant is substantially unsatisfactory and is not in substantial conformance with the scope of work to be performed, or the subconsultant is substantially delaying or disrupting the progress of the work.
- viii) When the listed DBE is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- ix) When it is in the best interest of the City.

Prior to approval of the Consultant's request for substitution to the Project Manager, the Consultant shall give notice in writing to the listed DBE subconsultant of the Consultant's request to substitute and the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subconsultant. The listed subconsultant who has been so notified, shall have five working days within which to submit written objections to the substitution to the Project Manager. Failure to respond to a written objection shall constitute the listed subconsultant's consent to the substitution.

h. Termination of a DBE. In conformance with Federal DBE regulation 49 CFR Part 26, Sections 26.53(f)(1) and 26.53(f)(2), the Consultant shall not:

- i) Terminate for convenience a listed DBE subconsultant and then perform that work with its own forces (personnel), or those of an affiliate, unless the Consultant has received prior written authorization from the Project Manager to perform the work with other forces.
- ii) If a DBE subconsultant is terminated or fails to complete its work for any reason, the Consultant will be required to make good faith efforts to replace the original DBE subconsultant with another DBE subconsultant to the extent needed to meet the contract goal.

i. DBE Certification Status. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify the Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the contract, the subconsultant shall notify the Consultant in writing with the date of certification. Upon completion of the federally funded Assigned Project, the Consultant shall complete a Final Report for Utilization of DBE Subconsultants indicating the DBEs certification status and shall be signed and certified correct by the Consultant. The certified form shall be furnished to the Project Manager within 30 days from the date of completion of the federally funded Assigned Project.

j. DBE Eligibility toward Goal. The dollar value of work performed by a DBE is credited/counted toward the goal only after the DBE has been paid.

26.2 Prevailing Wage. If applicable to the services being provided in connection with a federally funded Assigned Project, Consultant and all subconsultants shall pay the higher of federally established prevailing wage rates or California general prevailing wage rates of per diem wages and overtime and holiday wages as determined by the U.S. Department of Labor.

26.3 Record Retention. Contractor shall maintain all books, documents, papers and records of Consultant's operations and financial activities directly pertinent to the federally funded Assigned Project in accordance with the requirements of the Federal granting agency and the regulations promulgated by or for it. Such books, documents, papers and records shall be open for inspection, audit, examination, excerpt and transcription by the authorized

representatives of City, the Federal granting agency and the Controller General of the United States during regular working hours. Consultant shall keep and maintain said books, documents, papers and records for at least three years after the City makes final payments pursuant to the contract and all other pending matters are closed or such greater period of time as may be required by the Federal granting agency.

27. **NOTICES.** Service of any notices, bills, invoices or other documents required or permitted by this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

CITY
Public Utilities Department
Attn: Energy Delivery Engineering
3750 University Avenue, 3rd Floor
Riverside, CA 92501

CONSULTANT
NV5, Inc.
Attn: Gary Clark
15092 Avenue of Science, Ste. 200
San Diego, CA 92128

28. **JURISDICTION/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 a court of competent jurisdiction in the 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.

29. **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, or any Supplemental Agreement. Consultant shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of Consultant's services with all applicable laws, ordinances and regulations. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code section 1775.

The Consultant agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State

and Local Governments. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments are subject to repayment by Consultant to City. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.

30. **SEVERABILITY.** Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement or, any Supplemental Agreement, shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in 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 this 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. **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.

33. **CONFLICT OF INTEREST.** Consultant, for itself and on behalf of its key personnel, represents and warrants that by the execution of this Agreement, they have no interest, present or contemplated, in the Assigned Projects affected by the above- described services. Consultant further warrants that neither Consultant, nor its key personnel 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.

34. **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.

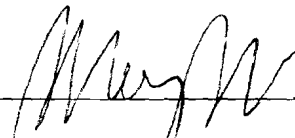
35. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are not representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to the subject matter contained in this Agreement which are not fully expressed herein.

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

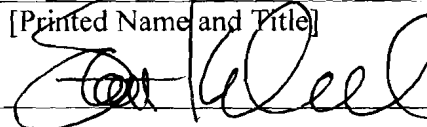
CITY OF RIVERSIDE, a California
charter city and municipal corporation

NV5, INC., a California corporation

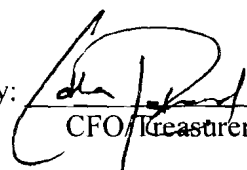
By: _____
City Manager

By:  _____
MaryJo O'Brien, Secretary
[Printed Name and Title]

Attest: _____
City Clerk

By:  _____
Scott Kvandal - COO
[Printed Name and Title]

Certified as to Availability of Funds:

By:  _____, Asst CFO, for.
CFO/Treasurer

Approved as to Form:

By: *Susan Nelson*
Assistant City Attorney

16-1456 SW 10/17/16
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WORKERS' COMPENSATION CERTIFICATION

I am aware of the provisions of Section 3700 of the 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 I will comply with such provisions before commencing the performance of the work of this contract.

Dated: 10-21-16

NV5, INC

By: 

MaryJo O'Brien - Secretary

[Printed Name and Title]

(This form may be used in lieu of a standard corporate resolution)

CORPORATE RESOLUTION CERTIFICATE

I, HEREBY CERTIFY that during a meeting of the Board of Directors of the _____, a corporation existing under the laws of the State of _____, held on _____, 20____, the following resolution was duly passed and adopted:

“RESOLVED, that _____, as _____ of the Corporation, be and is hereby authorized to execute the Agreement for _____ between the City of Riverside and this corporation, and that his/her execution thereof shall be the official act and deed of this Corporation.”

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this _____, day of _____, 20_____.

Secretary

ATTACHMENT I
Sample Supplemental Agreement

SUPPLEMENTAL AGREEMENT FOR ASSIGNED PROJECT

Consultant: _____

Project Name: _____

The Project Narrative for [name of project] ("Project"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, and Consultant's proposal dated [date of proposal], a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference, shall constitute a supplement to the Professional Consultant Services Agreement Energy Delivery Consultant Panel, by and between City and Consultant, dated [date of executed master agreement] ("Agreement"). Consultant agrees to perform the services described in the Project Narrative within the time set forth in the Notice to Proceed for an amount not to exceed **[written amount] Dollars (\$0)**. Performance of the services shall be subject to the terms and conditions contained in the Agreement.

Dated this _____ day of _____, 2016.

CITY OF RIVERSIDE, a California
charter city and a municipal corporation

CONSULTANT NAME,
[legal business entity, e.g. a sole proprietor,
California corporation, etc.)

By: _____
City Manager

By: _____

Title: _____

Attest: _____
City Clerk

By: _____

Title: _____

Certified as to Availability of Funds:

By: _____
CFO/Treasurer

Approved as to form:

By: _____
Assistant City Attorney

EXHIBIT “A”

Project Narrative

EXHIBIT “B”

Consultant’s Proposal

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

Energy Delivery Consultant Panel

POWER-TECH ENGINEERS, INC.

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation, hereinafter referred to as "City", and POWER-TECH ENGINEERS, INC., a Nevada corporation authorized to do business in California, hereinafter referred to as "Consultant", with respect to the following facts:

RECITALS

WHEREAS, the City requires the services of a consultant that is experienced in all aspects of the electrical facilities including street lighting, generation, substations, communication, SCADA, transmission and distribution systems included but not limited to: architectural, electrical, civil, mechanical, structural, geotechnical, environmental, and communications engineering; systems operations and maintenance, construction and project management functions for various projects for the City's Public Utilities Department. Electric Division; and

WHEREAS, City issued a Request for Proposals for purposes of establishing a panel of consultants experienced in providing such professional services, and to use such panels for various projects for the City's Public Utilities Department. Electric Division; and

WHEREAS, Consultant has the necessary experience in providing such professional consulting services and advice on various issues; and

WHEREAS, selection of Consultant is expected to achieve the desired results in an expedited fashion; and

WHEREAS, Consultant has submitted a Proposal to City and has affirmed its willingness and ability to perform such work.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by this reference, City and Consultant agree as follows:

1. SCOPE OF SERVICES.

1.1 Retention of Consultant. City hereby retains Consultant to perform, and Consultant agrees to render, technical and professional services, including labor, material,

equipment, supervision and expertise for various projects for the City's Public Utilities Department, Electric Division. Services rendered under this Agreement, shall be administered by the City's Public Utilities Department, Electric Division (the "Department") for various capital improvement projects.

1.2 Assigned Project. During the term of this Agreement, Consultant shall have the opportunity to submit proposals for various capital improvement projects ("Assigned Project"). The scope of work for the project will be defined in a Request for Proposals issued by City. All proposals submitted shall be reviewed by the City, and a single consultant will be selected to perform the services for the project. Acceptance of Consultant's proposal shall be made in the form of a Supplemental Agreement for Assigned Project, a sample of which is attached hereto as Attachment I.

Execution of this Agreement by Consultant and/or the submission of proposals for City Assigned Projects does not guarantee the award of a Supplement Agreement.

2. **PERSONNEL.**

2.1 Consultant's Representative. Victor Rojas shall be Consultant's Project Representative who shall coordinate all aspects of each Assigned Project. Consultant's Project Representative shall be available to City at all reasonable times. Consultant may appoint another person as Project Representative upon written notice to City.

2.2 Substitution of Key Personnel. The key personnel for performance of this Agreement is: Gary Rose. Consultant has represented to City that the key personnel will perform the Services under this Agreement. Should one or more such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval by City. In the event that City and Consultant cannot agree as to the substitution of the key personnel, City shall be entitled to terminate this Agreement, pursuant to the applicable provisions of this Agreement.

2.3 Project Manager. For each Assigned Project, the City shall designate a representative who shall act as the City's Project Manager ("Project Manager"). The Project Manager shall have authority to act on behalf of City for each Assigned Project. City shall provide written notice to Consultant of any change in Project Manager for an Assigned Project.

3. **TERM**. The term of this Agreement shall become effective on the date first written above and shall remain in effect through the later of:

a. June 30, 2019; or

b. The required date for completion of an assigned project, provided that such project was assigned prior to June 30, 2019.

4. CONSULTANT'S COMPENSATION.

4.1 Services. Consultant shall receive compensation for all services rendered under this Agreement at the rates negotiated for the Assigned Project, and set forth in the Supplemental Agreement for Assigned Project. Without prior approval of the City Council, the total amount to be paid to Consultant over the term of this Agreement for all Assigned Projects shall not exceed Two Million Dollars (\$2,000,000).

4.2 Extra Services. Payment for Extra Services shall be negotiated between City and Consultant on the basis of the Professional Hourly Rates schedule negotiated for the Assigned Project.

5. PAYMENTS TO CONSULTANT.

5.1 Basic Services.

a. Partial payments shall be made in accordance with the Payment Schedule section of the Request for Proposals for each Assigned Project. Payments shall be processed no more than once per month.

b. City shall pay Consultant all undisputed balances on invoices within 60 days of receipt, and shall notify consultant of any disputed amounts within thirty (30) days of receipt.

5.2 Extra Services. Payments for approved Extra Services provided under Article 10 shall be made monthly as Extra Services are rendered and expenses incurred.

5.3 Reimbursements. Reimbursement for costs incurred and other expenses shall be made to Consultant within 60 days of City's receipt and approval of invoices.

5.4 Limitation. No payment for any work or services performed by Consultant shall exceed the limits established in Section 4 herein.

6. PROJECT PERFORMANCE.

6.1 Commencement of Services. Consultant shall commence the services for each Assigned Project on the date specified in a Notice to Proceed, which shall be issued by the Project Manager within fifteen (15) calendar days after the assignment of a given project.

6.2 Time of Completion:

- a. Time is of the essence for each and every provision of this Agreement.
- b. The project completion time will be as designated in the Notice to Proceed for each Assigned
- c. Consultant shall have all plans and/or documents one hundred percent (100%) complete and ready for City's review within the number of calendar days specified in the Notice to Proceed for any given Assigned Project.

6.3 Failure to Perform. Failure of Consultant to complete the services within the time allowed and in the manner herein provided may result in the Agreement being immediately terminated by City.

6.4 Standard of Care. 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 Consultant's professional skill and expertise. Consultant represents and maintains that Consultant is skilled in the technical calling necessary to perform all services, duties and obligations required by this Agreement and to fully and adequately complete each Assigned Project.

7. **BASIC SERVICES OF CONSULTANT.** The scope of services to be provided for a given project shall be defined for each Assigned Project. Any changes to the scope of services must be authorized by the Department's Director or Project Manager, and shall be made in writing.

7.1 Right to Preliminary Review. All work prepared by Consultant shall be subject to the approval of the Project Manager. Consultant shall allow Project Manager to inspect and review Consultant's work in progress at any reasonable time. All reports, working papers, and similar work products prepared for submission in the course of providing services under this Agreement, or any Supplement Agreement, shall be submitted to the Project Manager in draft form. In the event that Project Manager, in his or her sole discretion, determines the formally submitted work product to be inadequate, Consultant may be required to revise and resubmit the work at no additional cost to City. Should Consultant fail to make requested corrections in a

timely manner, such corrections may be made by City, and the cost thereof charged to Consultant.

7.2 Monthly Progress Reports. On a monthly basis, Consultant shall submit a written progress report, in a form determined by City, which shall indicate the progress achieved during the previous month in relation to the Project Schedule for the Assigned Project. The timely submission to the Project Manager of up- to-date monthly progress reports by Consultant shall be a condition precedent to receipt of any payments otherwise due from City.

7.3 Appearance at Hearings. If and when required by City, Consultant shall render assistance at public hearings or other meetings related to the review and approval of the Assigned Project, or as necessary to perform the services.

8. **INDEPENDENT CONTRACTOR.** At all times during the performance of the services, Consultant and Consultant's agents and employees shall act in an independent capacity and not as officers, employees or agents of City. Consultant's employees and agents shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Consultant. City retains Consultant on an independent contractor basis. Consultant is not an employee of City.

8.1 Control and Payment of Subordinates. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant 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. Consultant shall be responsible for all reports and obligations respecting such personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, and worker's compensation insurance.

8.2 Subordinates and Subconsultants. Consultant shall employ, at Consultant's own expense, technicians and professionals properly skilled in the various aspects of the design and construction of facilities required. If subconsultants are engaged for any portions of the services, Consultant shall advise the Project Manager in writing of their selection prior to their performance of work. The Project Manager shall have the authority to approve or reject the use of any subconsultant for any of the services.

9. **LICENSES.**

9.1 State Professional Licenses. Consultant represents and warrants to City that Consultant and all subconsultants have all licenses, permits, qualifications and approvals of whatever nature which are legally required to practice its profession. Consultant further represents that Consultant shall maintain all such licenses and approvals in full effect during the term of this Agreement.

a. Civil/Structural Engineer. Consultant shall maintain a valid, current license to practice Civil/Structural Engineering in the State of California during the entire period of the Agreement, and failure to do so shall be grounds for City's termination of the Agreement. Consultant shall comply with the requirements for Professional Engineers (California Business and Professions Code, Section 6700 et seq.).

b. Subconsultants, Consultant shall ensure that all subconsultants who perform portions of the services under this Agreement shall be properly licensed to perform their respective portions of the work and shall maintain current California licenses in their respective fields.

9.2 Local Licenses. Consultant and all subconsultants shall secure a local business license (Business Tax Registration) to operate in the City of Riverside.

10. **EXTRA SERVICES OF CONSULTANT.** At any time during the term of this Agreement, City may request that Consultant perform Extra Services. Consultant shall not perform Extra Services until receiving written authorization from the Project Manager. Any work which is determined by City to be necessary for the proper completion of the Assigned Project, but which neither Consultant nor City reasonably anticipated would be necessary when the scope of services for the Assigned Project was developed, and for which the fees and time of completion for such services were negotiated in advance of the work, shall be paid for by City as "Extra Services" provided that the Extra Services are authorized in writing by the Project Manager prior to Consultant's commencement thereof.

11. **DISPUTED WORK.** In any case where Consultant believes that necessary work or services are not clearly covered in this Agreement, or any Supplement Agreement, or have not been ordered in writing by the Project Manager as Extra Services, Consultant shall immediately notify the Project Manager in writing of Consultant's belief that the work or services should be paid for as Extra Services before Consultant begins the work or services. If such notification is not given, or if the Project Manager is not afforded an opportunity to negotiate the appropriate

fee for such Extra Services, then Consultant shall be deemed to have agreed to perform the work or services without any additional charges to City therefor. Such notice by Consultant to the Project Manager shall not in any way be construed as proving that the work or services in question are Extra Services. The notice must be approved or rejected by the Project Manager, and if the Project Manager determines that Consultant is correct, the work or services shall be allowed and paid for as Extra Services.

12. **UNAUTHORIZED WORK.** Any work done or services performed without written authority from the Project Manager shall be considered unauthorized and shall not be paid for by City.

13. **TERMINATION OF AGREEMENT.**

13.1 Termination. This Agreement may be terminated for any reason by either party upon 30 days prior written notice to the other party, or if City should decide to abandon or postpone the project indefinitely. In the event Consultant fails to substantially perform the services, City may terminate this Agreement immediately upon written notice.

13.2 Payment upon Termination. In the event of such termination, City shall determine and pay to Consultant, as full payment for all City-approved work performed and all expenses incurred under this Agreement, or any Supplemental Agreement, the amount which bears the same ratio to the total fee which would have been paid for the full performance of the services as the ratio of work actually rendered bears to the services which would have been necessary for full performance of this Agreement, or any Supplemental Agreement, plus any sums due Consultant for Extra Services or reimbursements. In ascertaining the work actually rendered prior to the date of termination of the Agreement, consideration shall be given to both completed work and work in progress and to all drawings and other documents, whether completed or incomplete, provided that they are delivered to City.

13.3 Recommencement. If the City should determine to complete an Assigned Project, or a substantially similar project, following termination of this Agreement, City shall have the right to utilize any of the drawings, specifications, Opinions of Probable Project Construction Costs and other construction bid documents prepared under this Agreement, or any Supplemental Agreement, by Consultant without additional compensation to Consultant, provided that prior to such utilization all reference to Consultant is removed from said documents.

14. **PROJECT SCHEDULE.** Consultant shall prepare and submit an estimated time schedule for all major phases of each Assigned Project to the City within fifteen (15) calendar days following City's issuance of a Notice to Proceed for said project. This schedule shall reflect the project completion time allowed and the overall schedule included in the Consultant's proposal. The schedule will be subject to revision for delays caused by conditions beyond the control of Consultant, and delays which Consultant cannot reasonably foresee. The Project Manager shall be promptly notified of all delays. Should Consultant determine that a schedule modification is necessary, Consultant shall promptly submit a revised Project Schedule for Project Manager's review and approval of the anticipated delay.

15. **ACCOUNTING RECORDS OF CONSULTANT.** Records of Consultant's direct personnel, reimbursable expenses pertaining to any Extra Services, and records of accounts between City and Consultant shall be made and kept by Consultant on a generally recognized accounting basis and shall be made available to City or its authorized representatives at all reasonable times for inspection and copying.

16. **INDEMNIFICATION.**

16.1 Design Professional Defined. For purposes of this Agreement, "Design Professional" includes

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.

16.2 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 this Agreement and any Supplemental Agreement hereto, 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. 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.

16.3 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 this Agreement and any Supplemental Agreement hereto, 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.

16.4 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 Contract 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.

16.5 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 and any Supplemental Agreement hereto, 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.

17. INSURANCE.

17.1 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.

17.1.1 Limitations. These minimum amounts of coverage shall not constitute any limitation or cap on Consultant's indemnification obligations herein.

17.1.2 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.

17.1.3 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.

17.1.4 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.

17.2 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.

17.3 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.

17.3.1 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.

17.3.2 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.

17.3.3 Prior to City's execution of this Agreement, copies of insurance policies or original certificates and additional insured endorsements 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 services performed by and on behalf of the named insured for the City of Riverside.

17.3.4 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.

17.4 Errors and Omissions Insurance. Prior to City's execution of this Agreement, Consultant shall obtain, and shall thereafter maintain in force during the term of this Agreement, professional liability or errors and omissions liability insurance in the minimum amount of \$1,000,000, unless otherwise waived by the City's Risk Manager. Coverage as required in this Section shall apply to liability for a professional error, act, or omission arising out of the scope of Consultant's services as defined in this Agreement and/or any Supplemental Agreement.

18. **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 services and activities provided in furtherance of this Agreement and any Supplemental Agreement hereto, 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.

19. **REPRODUCTION OF DOCUMENTS.**

19.1 Review Documents. Consultant shall provide City, in the number reasonably required by City, Consultant's proposed final construction bid documents for the review and approval by the public agencies having jurisdiction over the Assigned Project.

19.2 Final Approved Construction Documents. Consultant shall furnish the City the number of reproductions of the final approved construction bid documents necessary for use by City in obtaining construction bids and completing construction of the Assigned Project.

20. OWNERSHIP OF DOCUMENTS.

20.1 Ownership of Documents. All work and contract deliverables prepared pursuant to this Agreement by Consultant including, but not limited to, drawings, specifications, sketches, calculations, estimates, data, charts, models, reports, maps, computer programs, software or other contract deliverables, whether in written form, electronic, digital or otherwise ("Project Documents"), shall be and remain the property of City and shall be delivered to City whenever requested. Consultant shall not release to others information furnished by City without prior express written approval of City.

20.2 Work-For-Hire; Ownership of Copyrights. Consultant agrees that any work prepared for City that is eligible for copyright protection in the United States or elsewhere shall be a "work made for hire" as that term is used in the laws of the United States regarding copyrights. Consultant understands that the City shall be deemed the author of any and all such work, the City may register copyrights in the City's name, and the work made for hire is the exclusive property of the City. Consultant agrees to sign upon request any documents affirming that work created by Consultant at the direction of the City is work made for hire and belongs exclusively to the City. 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.

21. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon City and its successors and upon Consultant and Consultant's successors and assigns. Neither this Agreement, nor any part hereof, nor any monies due or to become due hereunder may be assigned by Consultant without the prior written consent of City, which consent shall not be unreasonably withheld.

22. **NONDISCRIMINATION.** During Consultant's performance of this Agreement and/or any Supplemental Agreement, Consultant and Consultant's subconsultants shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, physical handicap,

medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, age, sex or sexual orientation in the selection and retention of employees and subconsultants and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Consultant shall also comply with the Americans with Disabilities Act.

23. **FULL COMPENSATION.** The consideration payable to Consultant as provided herein shall be compensation in full for all of Consultant's services and expenses incurred in the performance of the services, including travel and per diem, unless otherwise expressly provided.

24. **MODIFICATIONS.** No alteration or variation of the terms of the Agreement shall be valid except as follows:

24.1 Changes relating to time, money or scope of work shall be made by formal written amendment to the Agreement and shall be executed by both parties.

24.2 Minor alterations of terms or covenants may be formalized by letter from the Public Utilities General Manager or his designee.

25. **PREVAILING WAGE.** If applicable, Consultant and all subconsultants 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 ascertained, determined and specified in both of those documents are referred to and made a part hereof as though fully set forth herein.

26. **FEDERALLY FUNDED ASSIGNED PROJECTS.** In the event Consultant is awarded an Assigned Project which is federally funded, Consultant shall comply with all the following requirements:

26.1 Disadvantaged Business Enterprise (DBE):

a. DBE Participation Requirements and Regulations. The DBE participation goal for federally-funded Assigned Projects will be determined by the City. The Consultant shall carry out applicable requirements of 49 CFR, Part 26, of the Code of Federal Regulations, entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." in the award and administration of federally funded Assigned

Projects. The regulations in their entirety are incorporated herein by this reference. The Consultant shall not discriminate on the basis of race color, national origin or sex in the performance of this Agreement, or any Supplemental Agreement.

Noncompliance by the Consultant with the requirements of the regulations is a material breach of this Agreement and may result in termination of the Agreement, or other such remedy as the City deems appropriate.

The Consultant shall include the following in each subconsultant contract:

- i) A subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement.
- ii) The subconsultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this Agreement.
- iii) Language providing for the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.

b. Performance of DBE Subconsultants. DBE subconsultants shall perform the work for which they have been listed in the Consultant's proposal, unless the Consultant has received prior written authorization to perform the work with other forces as set forth in subparagraph g., "DBE Substitution and Additions", of this Agreement.

c. Prompt Payment to DBE and Non-DBE Consultants. The Consultant shall not be entitled to any payment for the work, unless it is performed by the listed subconsultants (DBE or non-DBE), or by the Consultant's own forces, pursuant to prior written authorization of the Project Manager. This is the case even if other contract work is not completed and has not been accepted in conformance with the terms of the Agreement or any Supplemental Agreement by the City.

d. Prompt Payment Progress Pay Retention to DBE and Non-DBE Subconsultants. The Consultant shall return all moneys withheld in retention from the subconsultant within 30 days after receiving payment for work satisfactorily completed, even if other work is not completed and has not been accepted in conformance with the terms of this Agreement or any Supplemental Agreement. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Consultant or subconsultant in the event of a dispute involving late payment or nonpayment to the Consultant or deficient subcontract performance or noncompliance by a subconsultant.

e. DBE and Non-DBE Subconsultant Payment Records. The Consultant in addition to maintaining records showing the name and business address of each first tier subconsultant, shall also show the name and business address of every DBE regardless of tier. The records shall show the date of payment and the total dollar figure paid to all DBE firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of work. Upon completion of a federally funded Assigned Project, a Final Report for Utilization of DBE Subconsultants shall be prepared and certified correct by the Consultant or the Consultant's authorized representative, and shall be furnished to the Project Manager. The report shall be furnished to the Project Manager with the final invoice. Failure to provide the report with the final invoice will result in the invoice being in dispute until the report is received.

f. Penalty Assessed for Failure to Provide Subconsultant Payment Records. The sum of \$10,000 will be withheld from payment if a Final Report for Utilization of DBE Subconsultants is not submitted. The amount will be paid to the Consultant when the form is submitted.

g. DBE Substitutions or Additions. The Consultant may not substitute, or terminate for convenience a subconsultant listed in the original proposal without the prior written approval of the Project Manager. However, the Consultant may add a firm to perform work originally planned to be done by the Consultant's own forces. The Consultant must make an adequate good faith effort to find another certified DBE subconsultant to substitute for the original DBE. The Consultant will be required to make good faith efforts to replace the original DBE subconsultant with another DBE subconsultant to the extent needed to meet the contract goal.

The requirement that DBEs must be certified by the proposal submittal date does not apply to DBE substitutions or additions after award of a federally funded Assigned Project. DBEs must be certified at the time of the substitution or addition. Consultants shall submit requests for substitution in writing to the Project Manager. Authorization to use other subconsultants or suppliers may be requested for the following reasons:

- i) The listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract with Consultant, when such contract, based upon the general terms and conditions

of this Agreement, or any Supplemental Agreement, or on the terms of such subconsultant's written proposal, is presented to Consultant.

- ii) The listed DBE becomes bankrupt or insolvent.
- iii) The listed DBE fails or refuses to perform the subcontract.
- iv) The Consultant stipulated that a bond was a condition of executing a subcontract and the listed DBE subconsultant failed or refuses to meet the bond requirements of the contract.
- v) The listed DBE was the result of an inadvertent clerical error. The Consultant must have asserted a claim of inadvertent clerical error in listing the subconsultant within two working days after the proposal submittal and copies of that notice to both the subconsultant he or she claims to have listed in error and intended subconsultant who had submitted a proposal to the Consultant prior to proposal submittal.
- vi) The listed DBE was not licensed as required by the State of California Consultant's Licensing Board or failed to have the required permits or licenses as required by Federal, State or Local governmental jurisdictions.
- vii) The work performed by the listed subconsultant is substantially unsatisfactory and is not in substantial conformance with the scope of work to be performed, or the subconsultant is substantially delaying or disrupting the progress of the work.
- viii) When the listed DBE is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- ix) When it is in the best interest of the City.

Prior to approval of the Consultant's request for substitution to the Project Manager, the Consultant shall give notice in writing to the listed DBE subconsultant of the Consultant's request to substitute and the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subconsultant. The listed subconsultant who has been so notified, shall have five working days within which to submit written objections to the

substitution to the Project Manager. Failure to respond to a written objection shall constitute the listed subconsultant's consent to the substitution.

h. Termination of a DBE. In conformance with Federal DBE regulation 49 CFR Part 26, Sections 26.53(f)(1) and 26.53(f)(2), the Consultant shall not:

- i) Terminate for convenience a listed DBE subconsultant and then perform that work with its own forces (personnel), or those of an affiliate, unless the Consultant has received prior written authorization from the Project Manager to perform the work with other forces.
- ii) If a DBE subconsultant is terminated or fails to complete its work for any reason, the Consultant will be required to make good faith efforts to replace the original DBE subconsultant with another DBE subconsultant to the extent needed to meet the contract goal.

i. DBE Certification Status. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify the Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the contract, the subconsultant shall notify the Consultant in writing with the date of certification. Upon completion of the federally funded Assigned Project, the Consultant shall complete a Final Report for Utilization of DBE Subconsultants indicating the DBEs certification status and shall be signed and certified correct by the Consultant. The certified form shall be furnished to the Project Manager within 30 days from the date of completion of the federally funded Assigned Project.

j. DBE Eligibility toward Goal. The dollar value of work performed by a DBE is credited/counted toward the goal only after the DBE has been paid.

26.2 Prevailing Wage. If applicable to the services being provided in connection with a federally funded Assigned Project, Consultant and all subconsultants shall pay the higher of federally established prevailing wage rates or California general prevailing wage rates of per diem wages and overtime and holiday wages as determined by the U.S. Department of Labor.

26.3 Record Retention. Contractor shall maintain all books, documents, papers and records of Consultant's operations and financial activities directly pertinent to the federally funded Assigned Project in accordance with the requirements of the Federal granting agency and

the regulations promulgated by or for it. Such books, documents, papers and records shall be open for inspection, audit, examination, excerpt and transcription by the authorized representatives of City, the Federal granting agency and the Controller General of the United States during regular working hours. Consultant shall keep and maintain said books, documents, papers and records for at least three years after the City makes final payments pursuant to the contract and all other pending matters are closed or such greater period of time as may be required by the Federal granting agency.

27. **NOTICES.** Service of any notices, bills, invoices or other documents required or permitted by this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

CITY
Public Utilities Department
Attn: Energy Delivery Engineering
3750 University Avenue, 3rd Floor
Riverside, CA 92501

CONSULTANT
Power-Tech Engineers, Inc.
Attn: Victor Rojas
355 S. Lemon Avenue, Suite A
Walnut, CA 91789

28. **JURISDICTION/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 a court of competent jurisdiction in the 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.

29. **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, or any Supplemental Agreement. Consultant shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of Consultant's services with all applicable laws, ordinances and regulations. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code section 1775.

The Consultant agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments are subject to repayment by Consultant to City. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.

30. **SEVERABILITY.** Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement or, any Supplemental Agreement, shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in 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 this 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. **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.

33. **CONFLICT OF INTEREST.** Consultant, for itself and on behalf of its key personnel, represents and warrants that by the execution of this Agreement, they have no interest, present or contemplated, in the Assigned Projects affected by the above- described services. Consultant further warrants that neither Consultant, nor its key personnel 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.

34. **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.

35. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are not representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to the subject matter contained in this Agreement which are not fully expressed herein.

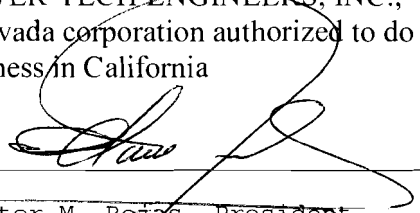
IN WITNESS WHEREOF, City and Consultant have executed this Agreement the day and year first above written.

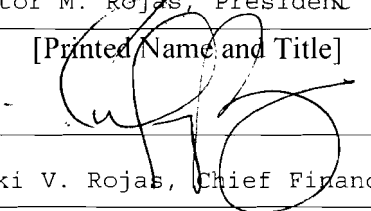
CITY OF RIVERSIDE, a California
charter city and municipal corporation

By: _____
City Manager

Attest: _____
City Clerk

POWER-TECH ENGINEERS, INC.,
a Nevada corporation authorized to do
business in California


By:  _____
Victor M. Rojas, President
[Printed Name and Title]

By:  _____
Vicki V. Rojas, Chief Financial Officer
[Printed Name and Title]

Certified as to Availability of Funds:

By: _____
CFO/Treasurer

Approved as to Form:

By: 
Assistant City Attorney

16-1449 SW 10/05/16
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WORKERS' COMPENSATION CERTIFICATION

I am aware of the provisions of Section 3700 of the 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 I will comply with such provisions before commencing the performance of the work of this contract.

Dated: _____

POWER-TECH ENGINEERS, INC.

By: _____

Victor M. Rojas, President

[Printed Name and Title]

(This form may be used in lieu of a standard corporate resolution)

CORPORATE RESOLUTION CERTIFICATE

I, HEREBY CERTIFY that during a meeting of the Board of Directors of the _____, a corporation existing under the laws of the State of _____, held on _____, 20____, the following resolution was duly passed and adopted:

“RESOLVED, that _____, as _____ of the Corporation, be and is hereby authorized to execute the Agreement for _____ between the City of Riverside and this corporation, and that his/her execution thereof shall be the official act and deed of this Corporation.”

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this _____, day of _____, 20____.

Secretary

ATTACHMENT I
Sample Supplemental Agreement

SUPPLEMENTAL AGREEMENT FOR ASSIGNED PROJECT

Consultant: Power-Tech Engineers, Inc.

Project Name: _____

The Project Narrative for [name of project] ("Project"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, and Consultant's proposal dated [date of proposal], a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference, shall constitute a supplement to the Professional Consultant Services Agreement Energy Delivery Consultant Panel, by and between City and Consultant, dated [date of executed master agreement] ("Agreement"). Consultant agrees to perform the services described in the Project Narrative within the time set forth in the Notice to Proceed for an amount not to exceed **[written amount] Dollars (\$0)**. Performance of the services shall be subject to the terms and conditions contained in the Agreement.

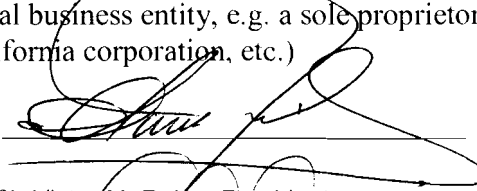
Dated this _____ day of _____, 2016.

CITY OF RIVERSIDE, a California
charter city and a municipal corporation

By: _____
City Manager

Attest: _____
City Clerk

CONSULTANT NAME,
[legal business entity, e.g. a sole proprietor,
California corporation, etc.)

By:  _____

Title: Victor M. Rojas, President

By:  _____

Title: Vicki V. Rojas, Chief Financial Officer

Certified as to Availability of Funds:

By: _____
CFO/Treasurer

Approved as to form:

By: _____
Assistant City Attorney

EXHIBIT “A”

Project Narrative

EXHIBIT “B”

Consultant’s Proposal

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

Energy Delivery Consultant Panel

SEGA, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS STEAM & ELECTRIC GENERATIONS APPLICATIONS, INC.

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation, hereinafter referred to as "City", and SEGA, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS STEAM & ELECTRIC GENERATIONS APPLICATIONS, a Kansas corporation authorized to do business in California, hereinafter referred to as "Consultant", with respect to the following facts:

RECITALS

WHEREAS, the City requires the services of a consultant that is experienced in all aspects of the electrical facilities including street lighting, generation, substations, communication, SCADA, transmission and distribution systems included but not limited to: architectural, electrical, civil, mechanical, structural, geotechnical, environmental, and communications engineering; systems operations and maintenance, construction and project management functions for various projects for the City's Public Utilities Department, Electric Division; and

WHEREAS, City issued a Request for Proposals for purposes of establishing a panel of consultants experienced in providing such professional services, and to use such panels for various projects for the City's Public Utilities Department, Electric Division; and

WHEREAS, Consultant has the necessary experience in providing such professional consulting services and advice on various issues; and

WHEREAS, selection of Consultant is expected to achieve the desired results in an expedited fashion; and

WHEREAS, Consultant has submitted a Proposal to City and has affirmed its willingness and ability to perform such work.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by this reference, City and Consultant agree as follows:

1. SCOPE OF SERVICES.

1.1 Retention of Consultant. City hereby retains Consultant to perform, and Consultant agrees to render, technical and professional services, including labor, material, equipment, supervision and expertise for various projects for the City's Public Utilities Department, Electric Division. Services rendered under this Agreement, shall be administered by the City's Public Utilities Department, Electric Division (the "Department") for various capital improvement projects.

1.2 Assigned Project. During the term of this Agreement, Consultant shall have the opportunity to submit proposals for various capital improvement projects ("Assigned Project"). The scope of work for the project will be defined in a Request for Proposals issued by City. All proposals submitted shall be reviewed by the City, and a single consultant will be selected to perform the services for the project. Acceptance of Consultant's proposal shall be made in the form of a Supplemental Agreement for Assigned Project, a sample of which is attached hereto as Attachment I.

Execution of this Agreement by Consultant and/or the submission of proposals for City Assigned Projects does not guarantee the award of a Supplement Agreement.

2. PERSONNEL.

2.1 Consultant's Representative. John Clayton shall be Consultant's Project Representative who shall coordinate all aspects of each Assigned Project. Consultant's Project Representative shall be available to City at all reasonable times. Consultant may appoint another person as Project Representative upon written notice to City.

2.2 Substitution of Key Personnel. The key personnel for performance of this Agreement is: John Clayton. Consultant has represented to City that the key personnel will perform the Services under this Agreement. Should one or more such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval by City. In the event that City and Consultant cannot agree as to the substitution of the key personnel, City shall be entitled to terminate this Agreement, pursuant to the applicable provisions of this Agreement.

2.3 Project Manager. For each Assigned Project, the City shall designate a representative who shall act as the City's Project Manager ("Project Manager"). The Project

Manager shall have authority to act on behalf of City for each Assigned Project. City shall provide written notice to Consultant of any change in Project Manager for an Assigned Project.

3. **TERM.** The term of this Agreement shall become effective on the date first written above and shall remain in effect through the later of:

- a. June 30, 2019; or
- b. The required date for completion of an assigned project, provided that such project was assigned prior to June 30, 2019.

4. **CONSULTANT'S COMPENSATION.**

4.1 Services. Consultant shall receive compensation for all services rendered under this Agreement at the rates negotiated for the Assigned Project, and set forth in the Supplemental Agreement for Assigned Project. Without prior approval of the City Council, the total amount to be paid to Consultant over the term of this Agreement for all Assigned Projects shall not exceed Two Million Dollars (\$2,000,000).

4.2 Extra Services. Payment for Extra Services shall be negotiated between City and Consultant on the basis of the Professional Hourly Rates schedule negotiated for the Assigned Project.

5. **PAYMENTS TO CONSULTANT.**

5.1 Basic Services.

a. Partial payments shall be made in accordance with the Payment Schedule section of the Request for Proposals for each Assigned Project. Payments shall be processed no more than once per month.

b. City shall pay Consultant all undisputed balances on invoices within 60 days of receipt, and shall notify consultant of any disputed amounts within thirty (30) days of receipt.

5.2 Extra Services. Payments for approved Extra Services provided under Article 10 shall be made monthly as Extra Services are rendered and expenses incurred.

5.3 Reimbursements. Reimbursement for costs incurred and other expenses shall be made to Consultant within 60 days of City's receipt and approval of invoices.

5.4 Limitation. No payment for any work or services performed by Consultant shall exceed the limits established in Section 4 herein.

6. PROJECT PERFORMANCE.

6.1 Commencement of Services. Consultant shall commence the services for each Assigned Project on the date specified in a Notice to Proceed, which shall be issued by the Project Manager within fifteen (15) calendar days after the assignment of a given project.

6.2 Time of Completion:

- a. Time is of the essence for each and every provision of this Agreement.
- b. The project completion time will be as designated in the Notice to Proceed for each Assigned
- c. Consultant shall have all plans and/or documents one hundred percent (100%) complete and ready for City's review within the number of calendar days specified in the Notice to Proceed for any given Assigned Project.

6.3 Failure to Perform. Failure of Consultant to complete the services within the time allowed and in the manner herein provided may result in the Agreement being immediately terminated by City.

6.4 Standard of Care. 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 Consultant's professional skill and expertise. Consultant represents and maintains that Consultant is skilled in the technical calling necessary to perform all services, duties and obligations required by this Agreement and to fully and adequately complete each Assigned Project.

7. BASIC SERVICES OF CONSULTANT. The scope of services to be provided for a given project shall be defined for each Assigned Project. Any changes to the scope of services must be authorized by the Department's Director or Project Manager, and shall be made in writing.

7.1 Right to Preliminary Review. All work prepared by Consultant shall be subject to the approval of the Project Manager. Consultant shall allow Project Manager to inspect and review Consultant's work in progress at any reasonable time. All reports, working papers, and similar work products prepared for submission in the course of providing services under this Agreement, or any Supplement Agreement, shall be submitted to the Project Manager in draft form. In the event that Project Manager, in his or her sole discretion, determines the formally

submitted work product to be inadequate, Consultant may be required to revise and resubmit the work at no additional cost to City. Should Consultant fail to make requested corrections in a timely manner, such corrections may be made by City, and the cost thereof charged to Consultant.

7.2 Monthly Progress Reports. On a monthly basis, Consultant shall submit a written progress report, in a form determined by City, which shall indicate the progress achieved during the previous month in relation to the Project Schedule for the Assigned Project. The timely submission to the Project Manager of up- to-date monthly progress reports by Consultant shall be a condition precedent to receipt of any payments otherwise due from City.

7.3 Appearance at Hearings. If and when required by City, Consultant shall render assistance at public hearings or other meetings related to the review and approval of the Assigned Project, or as necessary to perform the services.

8. **INDEPENDENT CONTRACTOR.** At all times during the performance of the services, Consultant and Consultant's agents and employees shall act in an independent capacity and not as officers, employees or agents of City. Consultant's employees and agents shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Consultant. City retains Consultant on an independent contractor basis. Consultant is not an employee of City.

8.1 Control and Payment of Subordinates. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant 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. Consultant shall be responsible for all reports and obligations respecting such personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, and worker's compensation insurance.

8.2 Subordinates and Subconsultants. Consultant shall employ, at Consultant's own expense, technicians and professionals properly skilled in the various aspects of the design and construction of facilities required. If subconsultants are engaged for any portions of the services, Consultant shall advise the Project Manager in writing of their selection prior to their

performance of work. The Project Manager shall have the authority to approve or reject the use of any subconsultant for any of the services.

9. LICENSES.

9.1 State Professional Licenses. Consultant represents and warrants to City that Consultant and all subconsultants have all licenses, permits, qualifications and approvals of whatever nature which are legally required to practice its profession. Consultant further represents that Consultant shall maintain all such licenses and approvals in full effect during the term of this Agreement.

a. Civil/Structural Engineer. Consultant shall maintain a valid, current license to practice Civil/Structural Engineering in the State of California during the entire period of the Agreement, and failure to do so shall be grounds for City's termination of the Agreement. Consultant shall comply with the requirements for Professional Engineers (California Business and Professions Code, Section 6700 et seq.).

b. Subconsultants, Consultant shall ensure that all subconsultants who perform portions of the services under this Agreement shall be properly licensed to perform their respective portions of the work and shall maintain current California licenses in their respective fields.

9.2 Local Licenses. Consultant and all subconsultants shall secure a local business license (Business Tax Registration) to operate in the City of Riverside.

10. EXTRA SERVICES OF CONSULTANT. At any time during the term of this Agreement, City may request that Consultant perform Extra Services. Consultant shall not perform Extra Services until receiving written authorization from the Project Manager. Any work which is determined by City to be necessary for the proper completion of the Assigned Project, but which neither Consultant nor City reasonably anticipated would be necessary when the scope of services for the Assigned Project was developed, and for which the fees and time of completion for such services were negotiated in advance of the work, shall be paid for by City as "Extra Services" provided that the Extra Services are authorized in writing by the Project Manager prior to Consultant's commencement thereof.

11. DISPUTED WORK. In any case where Consultant believes that necessary work or services are not clearly covered in this Agreement, or any Supplement Agreement, or have not

been ordered in writing by the Project Manager as Extra Services, Consultant shall immediately notify the Project Manager in writing of Consultant's belief that the work or services should be paid for as Extra Services before Consultant begins the work or services. If such notification is not given, or if the Project Manager is not afforded an opportunity to negotiate the appropriate fee for such Extra Services, then Consultant shall be deemed to have agreed to perform the work or services without any additional charges to City therefor. Such notice by Consultant to the Project Manager shall not in any way be construed as proving that the work or services in question are Extra Services. The notice must be approved or rejected by the Project Manager, and if the Project Manager determines that Consultant is correct, the work or services shall be allowed and paid for as Extra Services.

12. **UNAUTHORIZED WORK.** Any work done or services performed without written authority from the Project Manager shall be considered unauthorized and shall not be paid for by City.

13. **TERMINATION OF AGREEMENT.**

13.1 Termination. This Agreement may be terminated for any reason by either party upon 30 days prior written notice to the other party, or if City should decide to abandon or postpone the project indefinitely. In the event Consultant fails to substantially perform the services, City may terminate this Agreement immediately upon written notice.

13.2 Payment upon Termination. In the event of such termination, City shall determine and pay to Consultant, as full payment for all City-approved work performed and all expenses incurred under this Agreement, or any Supplemental Agreement, the amount which bears the same ratio to the total fee which would have been paid for the full performance of the services as the ratio of work actually rendered bears to the services which would have been necessary for full performance of this Agreement, or any Supplemental Agreement, plus any sums due Consultant for Extra Services or reimbursements. In ascertaining the work actually rendered prior to the date of termination of the Agreement, consideration shall be given to both completed work and work in progress and to all drawings and other documents, whether completed or incomplete, provided that they are delivered to City.

13.3 Recommencement. If the City should determine to complete an Assigned Project, or a substantially similar project, following termination of this Agreement, City shall have the right to utilize any of the drawings, specifications, Opinions of Probable Project

Construction Costs and other construction bid documents prepared under this Agreement, or any Supplemental Agreement, by Consultant without additional compensation to Consultant, provided that prior to such utilization all reference to Consultant is removed from said documents.

14. **PROJECT SCHEDULE.** Consultant shall prepare and submit an estimated time schedule for all major phases of each Assigned Project to the City within fifteen (15) calendar days following City's issuance of a Notice to Proceed for said project. This schedule shall reflect the project completion time allowed and the overall schedule included in the Consultant's proposal. The schedule will be subject to revision for delays caused by conditions beyond the control of Consultant, and delays which Consultant cannot reasonably foresee. The Project Manager shall be promptly notified of all delays. Should Consultant determine that a schedule modification is necessary, Consultant shall promptly submit a revised Project Schedule for Project Manager's review and approval of the anticipated delay.

15. **ACCOUNTING RECORDS OF CONSULTANT.** Records of Consultant's direct personnel, reimbursable expenses pertaining to any Extra Services, and records of accounts between City and Consultant shall be made and kept by Consultant on a generally recognized accounting basis and shall be made available to City or its authorized representatives at all reasonable times for inspection and copying.

16. **INDEMNIFICATION.**

16.1 Design Professional Defined. For purposes of this Agreement, "Design Professional" includes

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.

16.2 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 this Agreement and any Supplemental Agreement hereto, 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. 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.

16.3 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 this Agreement and any Supplemental Agreement hereto, 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.

16.4 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 Contract 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.

16.5 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 and any Supplemental Agreement hereto, 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.

17. INSURANCE.

17.1 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.

17.1.1 Limitations. These minimum amounts of coverage shall not constitute any limitation or cap on Consultant's indemnification obligations herein.

17.1.2 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.

17.1.3 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.

17.1.4 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.

17.2 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.

17.3 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.

17.3.1 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.

17.3.2 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.

17.3.3 Prior to City's execution of this Agreement, copies of insurance policies or original certificates and additional insured endorsements 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 services performed by and on behalf of the named insured for the City of Riverside.

17.3.4 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.

17.4 Errors and Omissions Insurance. Prior to City's execution of this Agreement, Consultant shall obtain, and shall thereafter maintain in force during the term of this Agreement, professional liability or errors and omissions liability insurance in the minimum amount of \$1,000,000, unless otherwise waived by the City's Risk Manager. Coverage as required in this Section shall apply to liability for a professional error, act, or omission arising out of the scope of Consultant's services as defined in this Agreement and/or any Supplemental Agreement.

18. **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 services and activities provided in furtherance of this Agreement and any Supplemental Agreement hereto, 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.

19. **REPRODUCTION OF DOCUMENTS.**

19.1 Review Documents. Consultant shall provide City, in the number reasonably required by City, Consultant's proposed final construction bid documents for the review and approval by the public agencies having jurisdiction over the Assigned Project.

19.2 Final Approved Construction Documents. Consultant shall furnish the City the number of reproductions of the final approved construction bid documents necessary

for use by City in obtaining construction bids and completing construction of the Assigned Project.

20. OWNERSHIP OF DOCUMENTS.

20.1 Ownership of Documents. All work and contract deliverables prepared pursuant to this Agreement by Consultant including, but not limited to, drawings, specifications, sketches, calculations, estimates, data, charts, models, reports, maps, computer programs, software or other contract deliverables, whether in written form, electronic, digital or otherwise (“Project Documents”), shall be and remain the property of City and shall be delivered to City whenever requested. Consultant shall not release to others information furnished by City without prior express written approval of City.

20.2 Work-For-Hire; Ownership of Copyrights. Consultant agrees that any work prepared for City that is eligible for copyright protection in the United States or elsewhere shall be a “work made for hire” as that term is used in the laws of the United States regarding copyrights. Consultant understands that the City shall be deemed the author of any and all such work, the City may register copyrights in the City’s name, and the work made for hire is the exclusive property of the City. Consultant agrees to sign upon request any documents affirming that work created by Consultant at the direction of the City is work made for hire and belongs exclusively to the City. 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.

21. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon City and its successors and upon Consultant and Consultant's successors and assigns. Neither this Agreement, nor any part hereof, nor any monies due or to become due hereunder may be assigned by Consultant without the prior written consent of City, which consent shall not be unreasonably withheld.

22. **NONDISCRIMINATION.** During Consultant's performance of this Agreement and/or any Supplemental Agreement, Consultant and Consultant's subconsultants shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, physical handicap, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, age, sex or sexual orientation in the selection and retention of employees and subconsultants and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Consultant shall also comply with the Americans with Disabilities Act.

23. **FULL COMPENSATION.** The consideration payable to Consultant as provided herein shall be compensation in full for all of Consultant's services and expenses incurred in the performance of the services, including travel and per diem, unless otherwise expressly provided.

24. **MODIFICATIONS.** No alteration or variation of the terms of the Agreement shall be valid except as follows:

24.1 Changes relating to time, money or scope of work shall be made by formal written amendment to the Agreement and shall be executed by both parties.

24.2 Minor alterations of terms or covenants may be formalized by letter from the Public Utilities General Manager or his designee.

25. **PREVAILING WAGE.** If applicable, Consultant and all subconsultants 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 ascertained, determined and specified in both of those documents are referred to and made a part hereof as though fully set forth herein.

26. **FEDERALLY FUNDED ASSIGNED PROJECTS.** In the event Consultant is awarded an Assigned Project which is federally funded, Consultant shall comply with all the following requirements:

26.1 Disadvantaged Business Enterprise (DBE):

a. DBE Participation Requirements and Regulations. The DBE participation goal for federally-funded Assigned Projects will be determined by the City. The Consultant shall

carry out applicable requirements of 49 CFR, Part 26, of the Code of Federal Regulations, entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," in the award and administration of federally funded Assigned Projects. The regulations in their entirety are incorporated herein by this reference. The Consultant shall not discriminate on the basis of race color, national origin or sex in the performance of this Agreement, or any Supplemental Agreement.

Noncompliance by the Consultant with the requirements of the regulations is a material breach of this Agreement and may result in termination of the Agreement, or other such remedy as the City deems appropriate.

The Consultant shall include the following in each subconsultant contract:

- i) A subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement.
- ii) The subconsultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this Agreement.
- iii) Language providing for the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.

b. Performance of DBE Subconsultants. DBE subconsultants shall perform the work for which they have been listed in the Consultant's proposal, unless the Consultant has received prior written authorization to perform the work with other forces as set forth in subparagraph g., "DBE Substitution and Additions", of this Agreement.

c. Prompt Payment to DBE and Non-DBE Consultants. The Consultant shall not be entitled to any payment for the work, unless it is performed by the listed subconsultants (DBE or non-DBE), or by the Consultant's own forces, pursuant to prior written authorization of the Project Manager. This is the case even if other contract work is not completed and has not been accepted in conformance with the terms of the Agreement or any Supplemental Agreement by the City.

d. Prompt Payment Progress Pay Retention to DBE and Non-DBE Subconsultants. The Consultant shall return all moneys withheld in retention from the subconsultant within 30 days after receiving payment for work satisfactorily completed, even if other work is not completed and has not been accepted in conformance with the terms of this Agreement or any Supplemental Agreement. This requirement shall not be construed to limit or

impair any contractual, administrative, or judicial remedies otherwise available to the Consultant or subconsultant in the event of a dispute involving late payment or nonpayment to the Consultant or deficient subcontract performance or noncompliance by a subconsultant.

e. DBE and Non-DBE Subconsultant Payment Records. The Consultant in addition to maintaining records showing the name and business address of each first tier subconsultant, shall also show the name and business address of every DBE regardless of tier. The records shall show the date of payment and the total dollar figure paid to all DBE firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of work. Upon completion of a federally funded Assigned Project, a Final Report for Utilization of DBE Subconsultants shall be prepared and certified correct by the Consultant or the Consultant's authorized representative, and shall be furnished to the Project Manager. The report shall be furnished to the Project Manager with the final invoice. Failure to provide the report with the final invoice will result in the invoice being in dispute until the report is received.

f. Penalty Assessed for Failure to Provide Subconsultant Payment Records. The sum of \$10,000 will be withheld from payment if a Final Report for Utilization of DBE Subconsultants is not submitted. The amount will be paid to the Consultant when the form is submitted.

g. DBE Substitutions or Additions. The Consultant may not substitute, or terminate for convenience a subconsultant listed in the original proposal without the prior written approval of the Project Manager. However, the Consultant may add a firm to perform work originally planned to be done by the Consultant's own forces. The Consultant must make an adequate good faith effort to find another certified DBE subconsultant to substitute for the original DBE. The Consultant will be required to make good faith efforts to replace the original DBE subconsultant with another DBE subconsultant to the extent needed to meet the contract goal.

The requirement that DBEs must be certified by the proposal submittal date does not apply to DBE substitutions or additions after award of a federally funded Assigned Project. DBEs must be certified at the time of the substitution or addition. Consultants shall submit requests for substitution in writing to the Project Manager. Authorization to use other subconsultants or suppliers may be requested for the following reasons:

- i) The listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract with Consultant, when such contract, based upon the general terms and conditions of this Agreement, or any Supplemental Agreement, or on the terms of such subconsultant's written proposal, is presented to Consultant.
- ii) The listed DBE becomes bankrupt or insolvent.
- iii) The listed DBE fails or refuses to perform the subcontract.
- iv) The Consultant stipulated that a bond was a condition of executing a subcontract and the listed DBE subconsultant failed or refuses to meet the bond requirements of the contract.
- v) The listed DBE was the result of an inadvertent clerical error. The Consultant must have asserted a claim of inadvertent clerical error in listing the subconsultant within two working days after the proposal submittal and copies of that notice to both the subconsultant he or she claims to have listed in error and intended subconsultant who had submitted a proposal to the Consultant prior to proposal submittal.
- vi) The listed DBE was not licensed as required by the State of California Consultant's Licensing Board or failed to have the required permits or licenses as required by Federal, State or Local governmental jurisdictions.
- vii) The work performed by the listed subconsultant is substantially unsatisfactory and is not in substantial conformance with the scope of work to be performed, or the subconsultant is substantially delaying or disrupting the progress of the work.
- viii) When the listed DBE is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- ix) When it is in the best interest of the City.

Prior to approval of the Consultant's request for substitution to the Project Manager, the Consultant shall give notice in writing to the listed DBE subconsultant of the Consultant's

request to substitute and the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subconsultant. The listed subconsultant who has been so notified, shall have five working days within which to submit written objections to the substitution to the Project Manager. Failure to respond to a written objection shall constitute the listed subconsultant's consent to the substitution.

h. Termination of a DBE. In conformance with Federal DBE regulation 49 CFR Part 26, Sections 26.53(f)(1) and 26.53(f)(2), the Consultant shall not:

- i) Terminate for convenience a listed DBE subconsultant and then perform that work with its own forces (personnel), or those of an affiliate, unless the Consultant has received prior written authorization from the Project Manager to perform the work with other forces.
- ii) If a DBE subconsultant is terminated or fails to complete its work for any reason, the Consultant will be required to make good faith efforts to replace the original DBE subconsultant with another DBE subconsultant to the extent needed to meet the contract goal.

i. DBE Certification Status. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify the Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the contract, the subconsultant shall notify the Consultant in writing with the date of certification. Upon completion of the federally funded Assigned Project, the Consultant shall complete a Final Report for Utilization of DBE Subconsultants indicating the DBEs certification status and shall be signed and certified correct by the Consultant. The certified form shall be furnished to the Project Manager within 30 days from the date of completion of the federally funded Assigned Project.

j. DBE Eligibility toward Goal. The dollar value of work performed by a DBE is credited/counted toward the goal only after the DBE has been paid.

26.2 Prevailing Wage. If applicable to the services being provided in connection with a federally funded Assigned Project, Consultant and all subconsultants shall pay the higher of federally established prevailing wage rates or California general prevailing wage rates of per diem wages and overtime and holiday wages as determined by the U.S. Department of Labor.

26.3 Record Retention. Contractor shall maintain all books, documents, papers and records of Consultant's operations and financial activities directly pertinent to the federally funded Assigned Project in accordance with the requirements of the Federal granting agency and the regulations promulgated by or for it. Such books, documents, papers and records shall be open for inspection, audit, examination, excerpt and transcription by the authorized representatives of City, the Federal granting agency and the Controller General of the United States during regular working hours. Consultant shall keep and maintain said books, documents, papers and records for at least three years after the City makes final payments pursuant to the contract and all other pending matters are closed or such greater period of time as may be required by the Federal granting agency.

27. **NOTICES**. Service of any notices, bills, invoices or other documents required or permitted by this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

CITY
Public Utilities Department
Attn: Energy Delivery Engineering
3750 University Avenue, 3rd Floor
Riverside, CA 92501

CONSULTANT
Sega, Inc.
Attn: John Clayton
PO Box 1000
Overland Park, KS 66085

28. **JURISDICTION/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 a court of competent jurisdiction in the 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.

29. **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, or any Supplemental Agreement. Consultant shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of Consultant's services with all applicable laws, ordinances and regulations. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code section 1775.

The Consultant agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments are subject to repayment by Consultant to City. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.

30. **SEVERABILITY.** Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement or, any Supplemental Agreement, shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in 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 this 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. **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.

33. **CONFLICT OF INTEREST.** Consultant, for itself and on behalf of its key personnel, represents and warrants that by the execution of this Agreement, they have no interest, present or contemplated, in the Assigned Projects affected by the above- described services. Consultant further warrants that neither Consultant, nor its key personnel 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.

34. **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.

35. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are not representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to the subject matter contained in this Agreement which are not fully expressed herein.

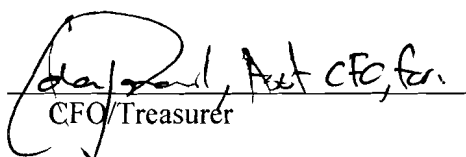
IN WITNESS WHEREOF, City and Consultant have executed this Agreement the day and year first above written.

CITY OF RIVERSIDE, a California
city and municipal corporation


By: _____
City Manager

Attest: _____
City Clerk

Certified as to Availability of Funds:

By: 
CFO/Treasurer

SEGA, INC., WHICH WILL DO charter
BUSINESS IN CALIFORNIA AS STEAM
& ELECTRIC GENERATIONS
APPLICATIONS, INC.

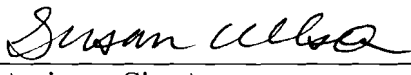
By: 

John R. Clayton Vice President
[Printed Name and Title]

By: 

Judith A. Dennis, Secretary
[Printed Name and Title]

Approved as to Form:

By: 
Assistant City Attorney

16-1454 SW 1017/16

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WORKERS' COMPENSATION CERTIFICATION

I am aware of the provisions of Section 3700 of the 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 I will comply with such provisions before commencing the performance of the work of this contract.

Dated: 10/21/2016

**SEGA, INC. WHICH WILL DO BUSINESS IN
CALIFORNIA AS STEAM & ELECTRIC
GENERATIONS APPLICATIONS**

By: John R. Clayton

John R. Clayton, Vice President
[Printed Name and Title]

(This form may be used in lieu of a standard corporate resolution)

CORPORATE RESOLUTION CERTIFICATE

I, HEREBY CERTIFY that during a meeting of the Board of Directors of the _____, a corporation existing under the laws of the State of _____, held on _____, 20____, the following resolution was duly passed and adopted:

“RESOLVED, that _____, as _____ of the Corporation, be and is hereby authorized to execute the Agreement for _____ between the City of Riverside and this corporation, and that his/her execution thereof shall be the official act and deed of this Corporation.”

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this _____, day of _____, 20_____.

Secretary

ATTACHMENT I
Sample Supplemental Agreement

SUPPLEMENTAL AGREEMENT FOR ASSIGNED PROJECT

Consultant: _____

Project Name: _____

The Project Narrative for [name of project] ("Project"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, and Consultant's proposal dated [date of proposal], a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference, shall constitute a supplement to the Professional Consultant Services Agreement Energy Delivery Consultant Panel, by and between City and Consultant, dated [date of executed master agreement] ("Agreement"). Consultant agrees to perform the services described in the Project Narrative within the time set forth in the Notice to Proceed for an amount not to exceed **[written amount] Dollars (\$0)**. Performance of the services shall be subject to the terms and conditions contained in the Agreement.

Dated this ____ day of _____, 2016.

CITY OF RIVERSIDE, a California
charter city and a municipal corporation

CONSULTANT NAME,
[legal business entity, e.g. a sole proprietor,
California corporation, etc.)

By: _____
City Manager

By: _____

Title: _____

Attest: _____
City Clerk

By: _____

Title: _____

Certified as to Availability of Funds:

By: _____
CFO/Treasurer

Approved as to form:

By: _____
Assistant City Attorney

EXHIBIT “A”

Project Narrative

EXHIBIT “B”

Consultant’s Proposal

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

Energy Delivery Consultant Panel

TETRA TECH, INC.

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation, hereinafter referred to as "City", and TETRA TECH, INC., a Delaware corporation authorized to do business in California, hereinafter referred to as "Consultant", with respect to the following facts:

RECITALS

WHEREAS, the City requires the services of a consultant that is experienced in all aspects of the electrical facilities including street lighting, generation, substations, communication, SCADA, transmission and distribution systems included but not limited to: architectural, electrical, civil, mechanical, structural, geotechnical, environmental, and communications engineering; systems operations and maintenance, construction and project management functions for various projects for the City's Public Utilities Department, Electric Division; and

WHEREAS, City issued a Request for Proposals for purposes of establishing a panel of consultants experienced in providing such professional services, and to use such panels for various projects for the City's Public Utilities Department, Electric Division; and

WHEREAS, Consultant has the necessary experience in providing such professional consulting services and advice on various issues; and

WHEREAS, selection of Consultant is expected to achieve the desired results in an expedited fashion; and

WHEREAS, Consultant has submitted a Proposal to City and has affirmed its willingness and ability to perform such work.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by this reference, City and Consultant agree as follows:

1. SCOPE OF SERVICES.

1.1 Retention of Consultant. City hereby retains Consultant to perform, and Consultant agrees to render, technical and professional services, including labor, material, equipment, supervision and expertise for various projects for the City's Public Utilities

equipment, supervision and expertise for various projects for the City's Public Utilities Department, Electric Division. Services rendered under this Agreement, shall be administered by the City's Public Utilities Department, Electric Division (the "Department") for various capital improvement projects.

1.2 Assigned Project. During the term of this Agreement, Consultant shall have the opportunity to submit proposals for various capital improvement projects ("Assigned Project"). The scope of work for the project will be defined in a Request for Proposals issued by City. All proposals submitted shall be reviewed by the City, and a single consultant will be selected to perform the services for the project. Acceptance of Consultant's proposal shall be made in the form of a Supplemental Agreement for Assigned Project, a sample of which is attached hereto as Attachment I.

Execution of this Agreement by Consultant and/or the submission of proposals for City Assigned Projects does not guarantee the award of a Supplement Agreement.

2. **PERSONNEL.**

2.1 Consultant's Representative. Ron Systma shall be Consultant's Project Representative who shall coordinate all aspects of each Assigned Project. Consultant's Project Representative shall be available to City at all reasonable times. Consultant may appoint another person as Project Representative upon written notice to City.

2.2 Substitution of Key Personnel. The key personnel for performance of this Agreement are: David Cheever and Kandus MacMillan. Consultant has represented to City that the key personnel will perform the Services under this Agreement. Should one or more such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval by City. In the event that City and Consultant cannot agree as to the substitution of the key personnel, City shall be entitled to terminate this Agreement, pursuant to the applicable provisions of this Agreement.

2.3 Project Manager. For each Assigned Project, the City shall designate a representative who shall act as the City's Project Manager ("Project Manager"). The Project Manager shall have authority to act on behalf of City for each Assigned Project. City shall provide written notice to Consultant of any change in Project Manager for an Assigned Project.

3. **TERM**. The term of this Agreement shall become effective on the date first written above and shall remain in effect through the later of:

- a. June 30, 2019; or
- b. The required date for completion of an assigned project, provided that such project was assigned prior to June 30, 2019.

4. CONSULTANT'S COMPENSATION.

4.1 Services. Consultant shall receive compensation for all services rendered under this Agreement at the rates negotiated for the Assigned Project, and set forth in the Supplemental Agreement for Assigned Project. Without prior approval of the City Council, the total amount to be paid to Consultant over the term of this Agreement for all Assigned Projects shall not exceed Two Million Dollars (\$2,000,000).

4.2 Extra Services. Payment for Extra Services shall be negotiated between City and Consultant on the basis of the Professional Hourly Rates schedule negotiated for the Assigned Project.

5. PAYMENTS TO CONSULTANT.

5.1 Basic Services.

a. Partial payments shall be made in accordance with the Payment Schedule section of the Request for Proposals for each Assigned Project. Payments shall be processed no more than once per month.

b. City shall pay Consultant all undisputed balances on invoices within 60 days of receipt, and shall notify consultant of any disputed amounts within thirty (30) days of receipt.

5.2 Extra Services. Payments for approved Extra Services provided under Article 10 shall be made monthly as Extra Services are rendered and expenses incurred.

5.3 Reimbursements. Reimbursement for costs incurred and other expenses shall be made to Consultant within 60 days of City's receipt and approval of invoices.

5.4 Limitation. No payment for any work or services performed by Consultant shall exceed the limits established in Section 4 herein.

6. PROJECT PERFORMANCE.

6.1 Commencement of Services. Consultant shall commence the services for each Assigned Project on the date specified in a Notice to Proceed, which shall be issued by the Project Manager within fifteen (15) calendar days after the assignment of a given project.

6.2 Time of Completion:

- a. Time is of the essence for each and every provision of this Agreement.
- b. The project completion time will be as designated in the Notice to Proceed for each Assigned
- c. Consultant shall have all plans and/or documents one hundred percent (100%) complete and ready for City's review within the number of calendar days specified in the Notice to Proceed for any given Assigned Project.

6.3 Failure to Perform. Failure of Consultant to complete the services within the time allowed and in the manner herein provided may result in the Agreement being immediately terminated by City.

6.4 Standard of Care. 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 Consultant's professional skill and expertise. Consultant represents and maintains that Consultant is skilled in the technical calling necessary to perform all services, duties and obligations required by this Agreement and to fully and adequately complete each Assigned Project.

7. **BASIC SERVICES OF CONSULTANT.** The scope of services to be provided for a given project shall be defined for each Assigned Project. Any changes to the scope of services must be authorized by the Department's Director or Project Manager, and shall be made in writing.

7.1 Right to Preliminary Review. All work prepared by Consultant shall be subject to the approval of the Project Manager. Consultant shall allow Project Manager to inspect and review Consultant's work in progress at any reasonable time. All reports, working papers, and similar work products prepared for submission in the course of providing services under this Agreement, or any Supplement Agreement, shall be submitted to the Project Manager in draft form. In the event that Project Manager, in his or her sole discretion, determines the formally submitted work product to be inadequate, Consultant may be required to revise and resubmit the work at no additional cost to City. Should Consultant fail to make requested corrections in a

timely manner, such corrections may be made by City, and the cost thereof charged to Consultant.

7.2 Monthly Progress Reports. On a monthly basis, Consultant shall submit a written progress report, in a form determined by City, which shall indicate the progress achieved during the previous month in relation to the Project Schedule for the Assigned Project. The timely submission to the Project Manager of up- to-date monthly progress reports by Consultant shall be a condition precedent to receipt of any payments otherwise due from City.

7.3 Appearance at Hearings. If and when required by City, Consultant shall render assistance at public hearings or other meetings related to the review and approval of the Assigned Project, or as necessary to perform the services.

8. **INDEPENDENT CONTRACTOR.** At all times during the performance of the services, Consultant and Consultant's agents and employees shall act in an independent capacity and not as officers, employees or agents of City. Consultant's employees and agents shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Consultant. City retains Consultant on an independent contractor basis. Consultant is not an employee of City.

8.1 Control and Payment of Subordinates. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant 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. Consultant shall be responsible for all reports and obligations respecting such personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, and worker's compensation insurance.

8.2 Subordinates and Subconsultants. Consultant shall employ, at Consultant's own expense, technicians and professionals properly skilled in the various aspects of the design and construction of facilities required. If subconsultants are engaged for any portions of the services, Consultant shall advise the Project Manager in writing of their selection prior to their performance of work. The Project Manager shall have the authority to approve or reject the use of any subconsultant for any of the services.

9. **LICENSES.**

9.1 State Professional Licenses. Consultant represents and warrants to City that Consultant and all subconsultants have all licenses, permits, qualifications and approvals of whatever nature which are legally required to practice its profession. Consultant further represents that Consultant shall maintain all such licenses and approvals in full effect during the term of this Agreement.

a. Civil/Structural Engineer. Consultant shall maintain a valid, current license to practice Civil/Structural Engineering in the State of California during the entire period of the Agreement, and failure to do so shall be grounds for City's termination of the Agreement. Consultant shall comply with the requirements for Professional Engineers (California Business and Professions Code, Section 6700 et seq.).

b. Subconsultants, Consultant shall ensure that all subconsultants who perform portions of the services under this Agreement shall be properly licensed to perform their respective portions of the work and shall maintain current California licenses in their respective fields.

9.2 Local Licenses. Consultant and all subconsultants shall secure a local business license (Business Tax Registration) to operate in the City of Riverside.

10. **EXTRA SERVICES OF CONSULTANT.** At any time during the term of this Agreement, City may request that Consultant perform Extra Services. Consultant shall not perform Extra Services until receiving written authorization from the Project Manager. Any work which is determined by City to be necessary for the proper completion of the Assigned Project, but which neither Consultant nor City reasonably anticipated would be necessary when the scope of services for the Assigned Project was developed, and for which the fees and time of completion for such services were negotiated in advance of the work, shall be paid for by City as "Extra Services" provided that the Extra Services are authorized in writing by the Project Manager prior to Consultant's commencement thereof.

11. **DISPUTED WORK.** In any case where Consultant believes that necessary work or services are not clearly covered in this Agreement, or any Supplement Agreement, or have not been ordered in writing by the Project Manager as Extra Services, Consultant shall immediately notify the Project Manager in writing of Consultant's belief that the work or services should be paid for as Extra Services before Consultant begins the work or services. If such notification is not given, or if the Project Manager is not afforded an opportunity to negotiate the appropriate

fee for such Extra Services, then Consultant shall be deemed to have agreed to perform the work or services without any additional charges to City therefor. Such notice by Consultant to the Project Manager shall not in any way be construed as proving that the work or services in question are Extra Services. The notice must be approved or rejected by the Project Manager, and if the Project Manager determines that Consultant is correct, the work or services shall be allowed and paid for as Extra Services.

12. **UNAUTHORIZED WORK.** Any work done or services performed without written authority from the Project Manager shall be considered unauthorized and shall not be paid for by City.

13. **TERMINATION OF AGREEMENT.**

13.1 Termination. This Agreement may be terminated for any reason by either party upon 30 days prior written notice to the other party, or if City should decide to abandon or postpone the project indefinitely. In the event Consultant fails to substantially perform the services, City may terminate this Agreement immediately upon written notice.

13.2 Payment upon Termination. In the event of such termination, City shall determine and pay to Consultant, as full payment for all City-approved work performed and all expenses incurred under this Agreement, or any Supplemental Agreement, the amount which bears the same ratio to the total fee which would have been paid for the full performance of the services as the ratio of work actually rendered bears to the services which would have been necessary for full performance of this Agreement, or any Supplemental Agreement, plus any sums due Consultant for Extra Services or reimbursements. In ascertaining the work actually rendered prior to the date of termination of the Agreement, consideration shall be given to both completed work and work in progress and to all drawings and other documents, whether completed or incomplete, provided that they are delivered to City.

13.3 Recommencement. If the City should determine to complete an Assigned Project, or a substantially similar project, following termination of this Agreement, City shall have the right to utilize any of the drawings, specifications, Opinions of Probable Project Construction Costs and other construction bid documents prepared under this Agreement, or any Supplemental Agreement, by Consultant without additional compensation to Consultant, provided that prior to such utilization all reference to Consultant is removed from said documents.

14. **PROJECT SCHEDULE.** Consultant shall prepare and submit an estimated time schedule for all major phases of each Assigned Project to the City within fifteen (15) calendar days following City's issuance of a Notice to Proceed for said project. This schedule shall reflect the project completion time allowed and the overall schedule included in the Consultant's proposal. The schedule will be subject to revision for delays caused by conditions beyond the control of Consultant, and delays which Consultant cannot reasonably foresee. The Project Manager shall be promptly notified of all delays. Should Consultant determine that a schedule modification is necessary, Consultant shall promptly submit a revised Project Schedule for Project Manager's review and approval of the anticipated delay.

15. **ACCOUNTING RECORDS OF CONSULTANT.** Records of Consultant's direct personnel, reimbursable expenses pertaining to any Extra Services, and records of accounts between City and Consultant shall be made and kept by Consultant on a generally recognized accounting basis and shall be made available to City or its authorized representatives at all reasonable times for inspection and copying.

16. **INDEMNIFICATION.**

16.1 Design Professional Defined. For purposes of this Agreement, "Design Professional" includes

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.

16.2 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 this Agreement and any Supplemental Agreement hereto, 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. 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.

16.3 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 this Agreement and any Supplemental Agreement hereto, 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.

16.4 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 Contract 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.

16.5 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 and any Supplemental Agreement hereto, 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.

17. INSURANCE.

17.1 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.

17.1.1 Limitations. These minimum amounts of coverage shall not constitute any limitation or cap on Consultant's indemnification obligations herein.

17.1.2 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.

17.1.3 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.

17.1.4 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.

17.2 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.

17.3 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.

17.3.1 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.

17.3.2 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.

17.3.3 Prior to City's execution of this Agreement, copies of insurance policies or original certificates and additional insured endorsements 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 services performed by and on behalf of the named insured for the City of Riverside.

17.3.4 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.

17.4 Errors and Omissions Insurance. Prior to City's execution of this Agreement, Consultant shall obtain, and shall thereafter maintain in force during the term of this Agreement, professional liability or errors and omissions liability insurance in the minimum amount of \$1,000,000, unless otherwise waived by the City's Risk Manager. Coverage as required in this Section shall apply to liability for a professional error, act, or omission arising out of the scope of Consultant's services as defined in this Agreement and/or any Supplemental Agreement.

18. **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 services and activities provided in furtherance of this Agreement and any Supplemental Agreement hereto, 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.

19. **REPRODUCTION OF DOCUMENTS.**

19.1 Review Documents. Consultant shall provide City, in the number reasonably required by City, Consultant's proposed final construction bid documents for the review and approval by the public agencies having jurisdiction over the Assigned Project.

19.2 Final Approved Construction Documents. Consultant shall furnish the City the number of reproductions of the final approved construction bid documents necessary for use by City in obtaining construction bids and completing construction of the Assigned Project.

20. OWNERSHIP OF DOCUMENTS.

20.1 Ownership of Documents. All work and contract deliverables prepared pursuant to this Agreement by Consultant including, but not limited to, drawings, specifications, sketches, calculations, estimates, data, charts, models, reports, maps, computer programs, software or other contract deliverables, whether in written form, electronic, digital or otherwise ("Project Documents"), shall be and remain the property of City and shall be delivered to City whenever requested. Consultant shall not release to others information furnished by City without prior express written approval of City.

20.2 Work-For-Hire; Ownership of Copyrights. Consultant agrees that any work prepared for City that is eligible for copyright protection in the United States or elsewhere shall be a "work made for hire" as that term is used in the laws of the United States regarding copyrights. Consultant understands that the City shall be deemed the author of any and all such work, the City may register copyrights in the City's name, and the work made for hire is the exclusive property of the City. Consultant agrees to sign upon request any documents affirming that work created by Consultant at the direction of the City is work made for hire and belongs exclusively to the City. 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.

21. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon City and its successors and upon Consultant and Consultant's successors and assigns. Neither this Agreement, nor any part hereof, nor any monies due or to become due hereunder may be assigned by Consultant without the prior written consent of City, which consent shall not be unreasonably withheld.

22. **NONDISCRIMINATION.** During Consultant's performance of this Agreement and/or any Supplemental Agreement, Consultant and Consultant's subconsultants shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, physical handicap,

medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, age, sex or sexual orientation in the selection and retention of employees and subconsultants and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Consultant shall also comply with the Americans with Disabilities Act.

23. **FULL COMPENSATION.** The consideration payable to Consultant as provided herein shall be compensation in full for all of Consultant's services and expenses incurred in the performance of the services, including travel and per diem, unless otherwise expressly provided.

24. **MODIFICATIONS.** No alteration or variation of the terms of the Agreement shall be valid except as follows:

24.1 Changes relating to time, money or scope of work shall be made by formal written amendment to the Agreement and shall be executed by both parties.

24.2 Minor alterations of terms or covenants may be formalized by letter from the Public Utilities General Manager or his designee.

25. **PREVAILING WAGE.** If applicable, Consultant and all subconsultants 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 ascertained, determined and specified in both of those documents are referred to and made a part hereof as though fully set forth herein.

26. **FEDERALLY FUNDED ASSIGNED PROJECTS.** In the event Consultant is awarded an Assigned Project which is federally funded, Consultant shall comply with all the following requirements:

26.1 Disadvantaged Business Enterprise (DBE):

a. DBE Participation Requirements and Regulations. The DBE participation goal for federally-funded Assigned Projects will be determined by the City. The Consultant shall carry out applicable requirements of 49 CFR, Part 26, of the Code of Federal Regulations, entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," in the award and administration of federally funded Assigned

Projects. The regulations in their entirety are incorporated herein by this reference. The Consultant shall not discriminate on the basis of race color, national origin or sex in the performance of this Agreement, or any Supplemental Agreement.

Noncompliance by the Consultant with the requirements of the regulations is a material breach of this Agreement and may result in termination of the Agreement, or other such remedy as the City deems appropriate.

The Consultant shall include the following in each subconsultant contract:

- i) A subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement.
- ii) The subconsultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this Agreement.
- iii) Language providing for the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.

b. Performance of DBE Subconsultants. DBE subconsultants shall perform the work for which they have been listed in the Consultant's proposal, unless the Consultant has received prior written authorization to perform the work with other forces as set forth in subparagraph g., "DBE Substitution and Additions", of this Agreement.

c. Prompt Payment to DBE and Non-DBE Consultants. The Consultant shall not be entitled to any payment for the work, unless it is performed by the listed subconsultants (DBE or non-DBE), or by the Consultant's own forces, pursuant to prior written authorization of the Project Manager. This is the case even if other contract work is not completed and has not been accepted in conformance with the terms of the Agreement or any Supplemental Agreement by the City.

d. Prompt Payment Progress Pay Retention to DBE and Non-DBE Subconsultants. The Consultant shall return all moneys withheld in retention from the subconsultant within 30 days after receiving payment for work satisfactorily completed, even if other work is not completed and has not been accepted in conformance with the terms of this Agreement or any Supplemental Agreement. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Consultant or subconsultant in the event of a dispute involving late payment or nonpayment to the Consultant or deficient subcontract performance or noncompliance by a subconsultant.

e. DBE and Non-DBE Subconsultant Payment Records. The Consultant in addition to maintaining records showing the name and business address of each first tier subconsultant, shall also show the name and business address of every DBE regardless of tier. The records shall show the date of payment and the total dollar figure paid to all DBE firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of work. Upon completion of a federally funded Assigned Project, a Final Report for Utilization of DBE Subconsultants shall be prepared and certified correct by the Consultant or the Consultant's authorized representative, and shall be furnished to the Project Manager. The report shall be furnished to the Project Manager with the final invoice. Failure to provide the report with the final invoice will result in the invoice being in dispute until the report is received.

f. Penalty Assessed for Failure to Provide Subconsultant Payment Records. The sum of \$10,000 will be withheld from payment if a Final Report for Utilization of DBE Subconsultants is not submitted. The amount will be paid to the Consultant when the form is submitted.

g. DBE Substitutions or Additions. The Consultant may not substitute, or terminate for convenience a subconsultant listed in the original proposal without the prior written approval of the Project Manager. However, the Consultant may add a firm to perform work originally planned to be done by the Consultant's own forces. The Consultant must make an adequate good faith effort to find another certified DBE subconsultant to substitute for the original DBE. The Consultant will be required to make good faith efforts to replace the original DBE subconsultant with another DBE subconsultant to the extent needed to meet the contract goal.

The requirement that DBEs must be certified by the proposal submittal date does not apply to DBE substitutions or additions after award of a federally funded Assigned Project. DBEs must be certified at the time of the substitution or addition. Consultants shall submit requests for substitution in writing to the Project Manager. Authorization to use other subconsultants or suppliers may be requested for the following reasons:

- i) The listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract with Consultant, when such contract, based upon the general terms and conditions

of this Agreement, or any Supplemental Agreement, or on the terms of such subconsultant's written proposal, is presented to Consultant.

- ii) The listed DBE becomes bankrupt or insolvent.
- iii) The listed DBE fails or refuses to perform the subcontract.
- iv) The Consultant stipulated that a bond was a condition of executing a subcontract and the listed DBE subconsultant failed or refuses to meet the bond requirements of the contract.
- v) The listed DBE was the result of an inadvertent clerical error. The Consultant must have asserted a claim of inadvertent clerical error in listing the subconsultant within two working days after the proposal submittal and copies of that notice to both the subconsultant he or she claims to have listed in error and intended subconsultant who had submitted a proposal to the Consultant prior to proposal submittal.
- vi) The listed DBE was not licensed as required by the State of California Consultant's Licensing Board or failed to have the required permits or licenses as required by Federal, State or Local governmental jurisdictions.
- vii) The work performed by the listed subconsultant is substantially unsatisfactory and is not in substantial conformance with the scope of work to be performed, or the subconsultant is substantially delaying or disrupting the progress of the work.
- viii) When the listed DBE is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- ix) When it is in the best interest of the City.

Prior to approval of the Consultant's request for substitution to the Project Manager, the Consultant shall give notice in writing to the listed DBE subconsultant of the Consultant's request to substitute and the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subconsultant. The listed subconsultant who has been so notified, shall have five working days within which to submit written objections to the

substitution to the Project Manager. Failure to respond to a written objection shall constitute the listed subconsultant's consent to the substitution.

h. Termination of a DBE. In conformance with Federal DBE regulation 49 CFR Part 26, Sections 26.53(f)(1) and 26.53(f)(2), the Consultant shall not:

- i) Terminate for convenience a listed DBE subconsultant and then perform that work with its own forces (personnel), or those of an affiliate, unless the Consultant has received prior written authorization from the Project Manager to perform the work with other forces.
- ii) If a DBE subconsultant is terminated or fails to complete its work for any reason, the Consultant will be required to make good faith efforts to replace the original DBE subconsultant with another DBE subconsultant to the extent needed to meet the contract goal.

i. DBE Certification Status. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify the Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the contract, the subconsultant shall notify the Consultant in writing with the date of certification. Upon completion of the federally funded Assigned Project, the Consultant shall complete a Final Report for Utilization of DBE Subconsultants indicating the DBEs certification status and shall be signed and certified correct by the Consultant. The certified form shall be furnished to the Project Manager within 30 days from the date of completion of the federally funded Assigned Project.

j. DBE Eligibility toward Goal. The dollar value of work performed by a DBE is credited/counted toward the goal only after the DBE has been paid.

26.2 Prevailing Wage. If applicable to the services being provided in connection with a federally funded Assigned Project, Consultant and all subconsultants shall pay the higher of federally established prevailing wage rates or California general prevailing wage rates of per diem wages and overtime and holiday wages as determined by the U.S. Department of Labor.

26.3 Record Retention. Contractor shall maintain all books, documents, papers and records of Consultant's operations and financial activities directly pertinent to the federally funded Assigned Project in accordance with the requirements of the Federal granting agency and

the regulations promulgated by or for it. Such books, documents, papers and records shall be open for inspection, audit, examination, excerpt and transcription by the authorized representatives of City, the Federal granting agency and the Controller General of the United States during regular working hours. Consultant shall keep and maintain said books, documents, papers and records for at least three years after the City makes final payments pursuant to the contract and all other pending matters are closed or such greater period of time as may be required by the Federal granting agency.

27. **NOTICES.** Service of any notices, bills, invoices or other documents required or permitted by this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

CITY
Public Utilities Department
Attn: Energy Delivery Engineering
3750 University Avenue, 3rd Floor
Riverside, CA 92501

CONSULTANT
Tetra Tech, Inc.
Attn: Ron Systma
350 Indiana Street, Ste 500
Golden, CO 80401

28. **JURISDICTION/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 a court of competent jurisdiction in the 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.

29. **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, or any Supplemental Agreement. Consultant shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of Consultant's services with all applicable laws, ordinances and regulations. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code section 1775.

The Consultant agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments are subject to repayment by Consultant to City. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.

30. **SEVERABILITY.** Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement or, any Supplemental Agreement, shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in 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 this 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. **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.

33. **CONFLICT OF INTEREST.** Consultant, for itself and on behalf of its key personnel, represents and warrants that by the execution of this Agreement, they have no interest, present or contemplated, in the Assigned Projects affected by the above- described services. Consultant further warrants that neither Consultant, nor its key personnel 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.

34. **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.

35. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are not representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to the subject matter contained in this Agreement which are not fully expressed herein.

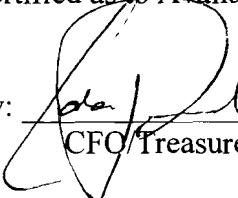
IN WITNESS WHEREOF, City and Consultant have executed this Agreement the day and year first above written.

CITY OF RIVERSIDE, a California
charter city and municipal corporation

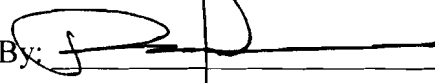
By: _____
City Manager

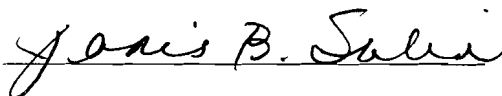
Attest: _____
City Clerk

Certified as to Availability of Funds:

By:  _____
CFO/Treasurer

TETRA TECH, INC.,
a Delaware corporation authorized to do
business in California

By:  _____
Richard Alemmon SVP
[Printed Name and Title]

By:  _____
JANIS B. JALIN
[Printed Name and Title]
SVP, General Counsel

Approved as to Form:


By: 
Assistant City Attorney

16-1453 SW 10/17/16
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WORKERS' COMPENSATION CERTIFICATION

I am aware of the provisions of Section 3700 of the 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 I will comply with such provisions before commencing the performance of the work of this contract.

Dated: 11/22/16

TETRA TECH, INC.
By: 
Richard Alemman SVP
[Printed Name and Title]

(This form may be used in lieu of a standard corporate resolution)

CORPORATE RESOLUTION CERTIFICATE

I, HEREBY CERTIFY that during a meeting of the Board of Directors of the _____, a corporation existing under the laws of the State of _____, held on _____, 20____, the following resolution was duly passed and adopted:

“RESOLVED, that _____, as _____ of the Corporation, be and is hereby authorized to execute the Agreement for _____ between the City of Riverside and this corporation, and that his/her execution thereof shall be the official act and deed of this Corporation.”

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this _____, day of _____, 20____.

Secretary

ATTACHMENT I
Sample Supplemental Agreement

SUPPLEMENTAL AGREEMENT FOR ASSIGNED PROJECT

Consultant: _____

Project Name: _____

The Project Narrative for [name of project] ("Project"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, and Consultant's proposal dated [date of proposal], a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference, shall constitute a supplement to the Professional Consultant Services Agreement Energy Delivery Consultant Panel, by and between City and Consultant, dated [date of executed master agreement] ("Agreement"). Consultant agrees to perform the services described in the Project Narrative within the time set forth in the Notice to Proceed for an amount not to exceed **[written amount] Dollars (\$0)**. Performance of the services shall be subject to the terms and conditions contained in the Agreement.

Dated this _____ day of _____, 2016.

CITY OF RIVERSIDE, a California
charter city and a municipal corporation

CONSULTANT NAME,
[legal business entity, e.g. a sole proprietor,
California corporation, etc.)

By: _____
City Manager

By: _____

Title: _____

Attest: _____
City Clerk

By: _____

Title: _____

Certified as to Availability of Funds:

By: _____
CFO/Treasurer

Approved as to form:

By: _____
Assistant City Attorney

EXHIBIT “A”

Project Narrative

EXHIBIT “B”

Consultant’s Proposal

The applicant represents that the above statements and facts are true and that no material facts have been omitted or misstated.

APPLICANT [Signature]
(signature of officer of corporation)

DATE 11-22-16

APPLICANT Richard Lemmon, SVP
(print name & title)

BROKER Aon Risk Insurance Services West DATE _____
(print name of firm)

707 Wilshire Blvd., Ste. 2600
(address of brokerage firm)

Micah Chen, 213-630-1321 or micah.chen@aon.com
(contact person & telephone number)

0363334
(agent license number)

PLEASE READ THE FOLLOWING STATEMENT CAREFULLY AND SIGN BELOW WHERE INDICATED. IF A POLICY IS ISSUED THIS SIGNED STATEMENT WILL BE ATTACHED TO THE POLICY.

The Insured hereby acknowledges that he/she/it is aware that the limit of liability contained in the E&O, CPL or COPS policy shall be reduced, and may be completely exhausted, by the costs of legal defense and, in such event, the Company shall not be liable for the costs of legal defense or for the amount of any judgment or settlement or cleanup costs to the extent that such exceeds the limit of liability of this policy.

The Insured hereby further acknowledges that he/she/it is aware that legal defense costs that are incurred shall be applied against the deductible amount.

Signed: [Signature]
(signature of partner or officer)

Richard A Lemmon
(print name and title)

Date: 11/22/16



PROFESSIONAL CONSULTANT SERVICES AGREEMENT

Energy Delivery Consultant Panel

TRC SOLUTIONS, INC.

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation, hereinafter referred to as "City", and TRC SOLUTIONS, INC., a California corporation, hereinafter referred to as "Consultant", with respect to the following facts:

RECITALS

WHEREAS, the City requires the services of a consultant that is experienced in all aspects of the electrical facilities including street lighting, generation, substations, communication, SCADA, transmission and distribution systems included but not limited to: architectural, electrical, civil, mechanical, structural, geotechnical, environmental, and communications engineering; systems operations and maintenance, construction and project management functions for various projects for the City's Public Utilities Department, Electric Division; and

WHEREAS, City issued a Request for Proposals for purposes of establishing a panel of consultants experienced in providing such professional services, and to use such panels for various projects for the City's Public Utilities Department, Electric Division; and

WHEREAS, Consultant has the necessary experience in providing such professional consulting services and advice on various issues; and

WHEREAS, selection of Consultant is expected to achieve the desired results in an expedited fashion; and

WHEREAS, Consultant has submitted a Proposal to City and has affirmed its willingness and ability to perform such work.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by this reference, City and Consultant agree as follows:

1. SCOPE OF SERVICES.

1.1 Retention of Consultant. City hereby retains Consultant to perform, and Consultant agrees to render, technical and professional services, including labor, material, equipment, supervision and expertise for various projects for the City's Public Utilities

Department, Electric Division. Services rendered under this Agreement, shall be administered by the City's Public Utilities Department, Electric Division (the "Department") for various capital improvement projects.

1.2 Assigned Project. During the term of this Agreement, Consultant shall have the opportunity to submit proposals for various capital improvement projects ("Assigned Project"). The scope of work for the project will be defined in a Request for Proposals issued by City. All proposals submitted shall be reviewed by the City, and a single consultant will be selected to perform the services for the project. Acceptance of Consultant's proposal shall be made in the form of a Supplemental Agreement for Assigned Project, a sample of which is attached hereto as Attachment I.

Execution of this Agreement by Consultant and/or the submission of proposals for City Assigned Projects does not guarantee the award of a Supplement Agreement.

2. **PERSONNEL.**

2.1 Consultant's Representative. Eleanor Wright shall be Consultant's Project Representative who shall coordinate all aspects of each Assigned Project. Consultant's Project Representative shall be available to City at all reasonable times. Consultant may appoint another person as Project Representative upon written notice to City.

2.2 Substitution of Key Personnel. The key personnel for performance of this Agreement is: Michael Gargano. Consultant has represented to City that the key personnel will perform the Services under this Agreement. Should one or more such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval by City. In the event that City and Consultant cannot agree as to the substitution of the key personnel, City shall be entitled to terminate this Agreement, pursuant to the applicable provisions of this Agreement.

2.3 Project Manager. For each Assigned Project, the City shall designate a representative who shall act as the City's Project Manager ("Project Manager"). The Project Manager shall have authority to act on behalf of City for each Assigned Project. City shall provide written notice to Consultant of any change in Project Manager for an Assigned Project.

3. **TERM**. The term of this Agreement shall become effective on the date first written above and shall remain in effect through the later of:

- a. June 30, 2019; or
- b. The required date for completion of an assigned project, provided that such project was assigned prior to June 30, 2019.

4. CONSULTANT'S COMPENSATION.

4.1 Services. Consultant shall receive compensation for all services rendered under this Agreement at the rates negotiated for the Assigned Project, and set forth in the Supplemental Agreement for Assigned Project. Without prior approval of the City Council, the total amount to be paid to Consultant over the term of this Agreement for all Assigned Projects shall not exceed Two Million Dollars (\$2,000,000).

4.2 Extra Services. Payment for Extra Services shall be negotiated between City and Consultant on the basis of the Professional Hourly Rates schedule negotiated for the Assigned Project.

5. PAYMENTS TO CONSULTANT.

5.1 Basic Services.

a. Partial payments shall be made in accordance with the Payment Schedule section of the Request for Proposals for each Assigned Project. Payments shall be processed no more than once per month.

b. City shall pay Consultant all undisputed balances on invoices within 60 days of receipt, and shall notify consultant of any disputed amounts within thirty (30) days of receipt.

5.2 Extra Services. Payments for approved Extra Services provided under Article 10 shall be made monthly as Extra Services are rendered and expenses incurred.

5.3 Reimbursements. Reimbursement for costs incurred and other expenses shall be made to Consultant within 60 days of City's receipt and approval of invoices.

5.4 Limitation. No payment for any work or services performed by Consultant shall exceed the limits established in Section 4 herein.

6. PROJECT PERFORMANCE.

6.1 Commencement of Services. Consultant shall commence the services for each Assigned Project on the date specified in a Notice to Proceed, which shall be issued by the Project Manager within fifteen (15) calendar days after the assignment of a given project.

6.2 Time of Completion:

- a. Time is of the essence for each and every provision of this Agreement.
- b. The project completion time will be as designated in the Notice to Proceed for each Assigned
- c. Consultant shall have all plans and/or documents one hundred percent (100%) complete and ready for City's review within the number of calendar days specified in the Notice to Proceed for any given Assigned Project.

6.3 Failure to Perform. Failure of Consultant to complete the services within the time allowed and in the manner herein provided may result in the Agreement being immediately terminated by City.

6.4 Standard of Care. 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 Consultant's professional skill and expertise. Consultant represents and maintains that Consultant is skilled in the technical calling necessary to perform all services, duties and obligations required by this Agreement and to fully and adequately complete each Assigned Project.

7. **BASIC SERVICES OF CONSULTANT.** The scope of services to be provided for a given project shall be defined for each Assigned Project. Any changes to the scope of services must be authorized by the Department's Director or Project Manager, and shall be made in writing.

7.1 Right to Preliminary Review. All work prepared by Consultant shall be subject to the approval of the Project Manager. Consultant shall allow Project Manager to inspect and review Consultant's work in progress at any reasonable time. All reports, working papers, and similar work products prepared for submission in the course of providing services under this Agreement, or any Supplement Agreement, shall be submitted to the Project Manager in draft form. In the event that Project Manager, in his or her sole discretion, determines the formally submitted work product to be inadequate, Consultant may be required to revise and resubmit the work at no additional cost to City. Should Consultant fail to make requested corrections in a timely manner, such corrections may be made by City, and the cost thereof charged to Consultant.

7.2 Monthly Progress Reports. On a monthly basis, Consultant shall submit a written progress report, in a form determined by City, which shall indicate the progress achieved during the previous month in relation to the Project Schedule for the Assigned Project. The timely submission to the Project Manager of up- to-date monthly progress reports by Consultant shall be a condition precedent to receipt of any payments otherwise due from City.

7.3 Appearance at Hearings. If and when required by City, Consultant shall render assistance at public hearings or other meetings related to the review and approval of the Assigned Project, or as necessary to perform the services.

8. **INDEPENDENT CONTRACTOR.** At all times during the performance of the services, Consultant and Consultant's agents and employees shall act in an independent capacity and not as officers, employees or agents of City. Consultant's employees and agents shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Consultant. City retains Consultant on an independent contractor basis. Consultant is not an employee of City.

8.1 Control and Payment of Subordinates. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant 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. Consultant shall be responsible for all reports and obligations respecting such personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, and worker's compensation insurance.

8.2 Subordinates and Subconsultants. Consultant shall employ, at Consultant's own expense, technicians and professionals properly skilled in the various aspects of the design and construction of facilities required. If subconsultants are engaged for any portions of the services, Consultant shall advise the Project Manager in writing of their selection prior to their performance of work. The Project Manager shall have the authority to approve or reject the use of any subconsultant for any of the services.

9. **LICENSES.**

9.1 State Professional Licenses. Consultant represents and warrants to City that Consultant and all subconsultants have all licenses, permits, qualifications and approvals of

whatever nature which are legally required to practice its profession. Consultant further represents that Consultant shall maintain all such licenses and approvals in full effect during the term of this Agreement.

a. Civil/Structural Engineer. Consultant shall maintain a valid, current license to practice Civil/Structural Engineering in the State of California during the entire period of the Agreement, and failure to do so shall be grounds for City's termination of the Agreement. Consultant shall comply with the requirements for Professional Engineers (California Business and Professions Code, Section 6700 et seq.).

b. Subconsultants, Consultant shall ensure that all subconsultants who perform portions of the services under this Agreement shall be properly licensed to perform their respective portions of the work and shall maintain current California licenses in their respective fields.

9.2 Local Licenses. Consultant and all subconsultants shall secure a local business license (Business Tax Registration) to operate in the City of Riverside.

10. **EXTRA SERVICES OF CONSULTANT.** At any time during the term of this Agreement, City may request that Consultant perform Extra Services. Consultant shall not perform Extra Services until receiving written authorization from the Project Manager. Any work which is determined by City to be necessary for the proper completion of the Assigned Project, but which neither Consultant nor City reasonably anticipated would be necessary when the scope of services for the Assigned Project was developed, and for which the fees and time of completion for such services were negotiated in advance of the work, shall be paid for by City as "Extra Services" provided that the Extra Services are authorized in writing by the Project Manager prior to Consultant's commencement thereof.

11. **DISPUTED WORK.** In any case where Consultant believes that necessary work or services are not clearly covered in this Agreement, or any Supplement Agreement, or have not been ordered in writing by the Project Manager as Extra Services, Consultant shall immediately notify the Project Manager in writing of Consultant's belief that the work or services should be paid for as Extra Services before Consultant begins the work or services. If such notification is not given, or if the Project Manager is not afforded an opportunity to negotiate the appropriate fee for such Extra Services, then Consultant shall be deemed to have agreed to perform the work or services without any additional charges to City therefor. Such notice by Consultant to the

Project Manager shall not in any way be construed as proving that the work or services in question are Extra Services. The notice must be approved or rejected by the Project Manager, and if the Project Manager determines that Consultant is correct, the work or services shall be allowed and paid for as Extra Services.

12. **UNAUTHORIZED WORK.** Any work done or services performed without written authority from the Project Manager shall be considered unauthorized and shall not be paid for by City.

13. **TERMINATION OF AGREEMENT.**

13.1 Termination. This Agreement may be terminated for any reason by either party upon 30 days prior written notice to the other party, or if City should decide to abandon or postpone the project indefinitely. In the event Consultant fails to substantially perform the services, City may terminate this Agreement immediately upon written notice.

13.2 Payment upon Termination. In the event of such termination, City shall determine and pay to Consultant, as full payment for all City-approved work performed and all expenses incurred under this Agreement, or any Supplemental Agreement, the amount which bears the same ratio to the total fee which would have been paid for the full performance of the services as the ratio of work actually rendered bears to the services which would have been necessary for full performance of this Agreement, or any Supplemental Agreement, plus any sums due Consultant for Extra Services or reimbursements. In ascertaining the work actually rendered prior to the date of termination of the Agreement, consideration shall be given to both completed work and work in progress and to all drawings and other documents, whether completed or incomplete, provided that they are delivered to City.

13.3 Recommencement. If the City should determine to complete an Assigned Project, or a substantially similar project, following termination of this Agreement, City shall have the right to utilize any of the drawings, specifications, Opinions of Probable Project Construction Costs and other construction bid documents prepared under this Agreement, or any Supplemental Agreement, by Consultant without additional compensation to Consultant, provided that prior to such utilization all reference to Consultant is removed from said documents.

14. **PROJECT SCHEDULE.** Consultant shall prepare and submit an estimated time schedule for all major phases of each Assigned Project to the City within fifteen (15) calendar

days following City's issuance of a Notice to Proceed for said project. This schedule shall reflect the project completion time allowed and the overall schedule included in the Consultant's proposal. The schedule will be subject to revision for delays caused by conditions beyond the control of Consultant, and delays which Consultant cannot reasonably foresee. The Project Manager shall be promptly notified of all delays. Should Consultant determine that a schedule modification is necessary, Consultant shall promptly submit a revised Project Schedule for Project Manager's review and approval of the anticipated delay.

15. **ACCOUNTING RECORDS OF CONSULTANT.** Records of Consultant's direct personnel, reimbursable expenses pertaining to any Extra Services, and records of accounts between City and Consultant shall be made and kept by Consultant on a generally recognized accounting basis and shall be made available to City or its authorized representatives at all reasonable times for inspection and copying.

16. **INDEMNIFICATION.**

16.1 Design Professional Defined. For purposes of this Agreement, "Design Professional" includes

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.

16.2 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 this Agreement and any Supplemental Agreement hereto, 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. 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.

16.3 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 this Agreement and any Supplemental Agreement hereto, 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.

16.4 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

Contract 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.

16.5 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 and any Supplemental Agreement hereto, 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.

17. INSURANCE.

17.1 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.

17.1.1 Limitations. These minimum amounts of coverage shall not constitute any limitation or cap on Consultant's indemnification obligations herein.

17.1.2 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.

17.1.3 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.

17.1.4 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.

17.2 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.

17.3 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.

17.3.1 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.

17.3.2 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.

17.3.3 Prior to City's execution of this Agreement, copies of insurance policies or original certificates and additional insured endorsements 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 services performed by and on behalf of the named insured for the City of Riverside.

17.3.4 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.

17.4 Errors and Omissions Insurance. Prior to City's execution of this Agreement, Consultant shall obtain, and shall thereafter maintain in force during the term of this Agreement, professional liability or errors and omissions liability insurance in the minimum amount of \$1,000,000, unless otherwise waived by the City's Risk Manager. Coverage as required in this Section shall apply to liability for a professional error, act, or omission arising out of the scope of Consultant's services as defined in this Agreement and/or any Supplemental Agreement.

18. **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 services and activities provided in furtherance of this Agreement and any Supplemental Agreement hereto, 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.

19. **REPRODUCTION OF DOCUMENTS.**

19.1 Review Documents. Consultant shall provide City, in the number reasonably required by City, Consultant's proposed final construction bid documents for the review and approval by the public agencies having jurisdiction over the Assigned Project.

19.2 Final Approved Construction Documents. Consultant shall furnish the City the number of reproductions of the final approved construction bid documents necessary for use by City in obtaining construction bids and completing construction of the Assigned Project.

20. **OWNERSHIP OF DOCUMENTS.**

20.1 Ownership of Documents. All work and contract deliverables prepared pursuant to this Agreement by Consultant including, but not limited to, drawings,

specifications, sketches, calculations, estimates, data, charts, models, reports, maps, computer programs, software or other contract deliverables, whether in written form, electronic, digital or otherwise ("Project Documents"), shall be and remain the property of City and shall be delivered to City whenever requested. Consultant shall not release to others information furnished by City without prior express written approval of City.

20.2 Work-For-Hire; Ownership of Copyrights. Consultant agrees that any work prepared for City that is eligible for copyright protection in the United States or elsewhere shall be a "work made for hire" as that term is used in the laws of the United States regarding copyrights. Consultant understands that the City shall be deemed the author of any and all such work, the City may register copyrights in the City's name, and the work made for hire is the exclusive property of the City. Consultant agrees to sign upon request any documents affirming that work created by Consultant at the direction of the City is work made for hire and belongs exclusively to the City. 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.

21. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon City and its successors and upon Consultant and Consultant's successors and assigns. Neither this Agreement, nor any part hereof, nor any monies due or to become due hereunder may be assigned by Consultant without the prior written consent of City, which consent shall not be unreasonably withheld.

22. **NONDISCRIMINATION.** During Consultant's performance of this Agreement and/or any Supplemental Agreement, Consultant and Consultant's subconsultants shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, physical handicap, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, age, sex or sexual orientation in the selection and retention of employees and subconsultants and the procurement of materials and

equipment, except as provided in Section 12940 of the California Government Code. Consultant shall also comply with the Americans with Disabilities Act.

23. **FULL COMPENSATION.** The consideration payable to Consultant as provided herein shall be compensation in full for all of Consultant's services and expenses incurred in the performance of the services, including travel and per diem, unless otherwise expressly provided.

24. **MODIFICATIONS.** No alteration or variation of the terms of the Agreement shall be valid except as follows:

24.1 Changes relating to time, money or scope of work shall be made by formal written amendment to the Agreement and shall be executed by both parties.

24.2 Minor alterations of terms or covenants may be formalized by letter from the Public Utilities General Manager or his designee.

25. **PREVAILING WAGE.** If applicable, Consultant and all subconsultants 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 ascertained, determined and specified in both of those documents are referred to and made a part hereof as though fully set forth herein.

26. **FEDERALLY FUNDED ASSIGNED PROJECTS.** In the event Consultant is awarded an Assigned Project which is federally funded, Consultant shall comply with all the following requirements:

26.1 Disadvantaged Business Enterprise (DBE):

a. DBE Participation Requirements and Regulations. The DBE participation goal for federally-funded Assigned Projects will be determined by the City. The Consultant shall carry out applicable requirements of 49 CFR, Part 26, of the Code of Federal Regulations, entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," in the award and administration of federally funded Assigned Projects. The regulations in their entirety are incorporated herein by this reference. The Consultant shall not discriminate on the basis of race color, national origin or sex in the performance of this Agreement, or any Supplemental Agreement.

Noncompliance by the Consultant with the requirements of the regulations is a material breach of this Agreement and may result in termination of the Agreement, or other such remedy as the City deems appropriate.

The Consultant shall include the following in each subconsultant contract:

- i) A subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement.
- ii) The subconsultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this Agreement.
- iii) Language providing for the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.

b. Performance of DBE Subconsultants. DBE subconsultants shall perform the work for which they have been listed in the Consultant's proposal, unless the Consultant has received prior written authorization to perform the work with other forces as set forth in subparagraph g., "DBE Substitution and Additions", of this Agreement.

c. Prompt Payment to DBE and Non-DBE Consultants. The Consultant shall not be entitled to any payment for the work, unless it is performed by the listed subconsultants (DBE or non-DBE), or by the Consultant's own forces, pursuant to prior written authorization of the Project Manager. This is the case even if other contract work is not completed and has not been accepted in conformance with the terms of the Agreement or any Supplemental Agreement by the City.

d. Prompt Payment Progress Pay Retention to DBE and Non-DBE Subconsultants. The Consultant shall return all moneys withheld in retention from the subconsultant within 30 days after receiving payment for work satisfactorily completed, even if other work is not completed and has not been accepted in conformance with the terms of this Agreement or any Supplemental Agreement. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Consultant or subconsultant in the event of a dispute involving late payment or nonpayment to the Consultant or deficient subcontract performance or noncompliance by a subconsultant.

e. DBE and Non-DBE Subconsultant Payment Records. The Consultant in addition to maintaining records showing the name and business address of each first tier subconsultant, shall also show the name and business address of every DBE regardless of tier.

The records shall show the date of payment and the total dollar figure paid to all DBE firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of work. Upon completion of a federally funded Assigned Project, a Final Report for Utilization of DBE Subconsultants shall be prepared and certified correct by the Consultant or the Consultant's authorized representative, and shall be furnished to the Project Manager. The report shall be furnished to the Project Manager with the final invoice. Failure to provide the report with the final invoice will result in the invoice being in dispute until the report is received.

f. Penalty Assessed for Failure to Provide Subconsultant Payment Records.

The sum of \$10,000 will be withheld from payment if a Final Report for Utilization of DBE Subconsultants is not submitted. The amount will be paid to the Consultant when the form is submitted.

g. DBE Substitutions or Additions. The Consultant may not substitute, or terminate for convenience a subconsultant listed in the original proposal without the prior written approval of the Project Manager. However, the Consultant may add a firm to perform work originally planned to be done by the Consultant's own forces. The Consultant must make an adequate good faith effort to find another certified DBE subconsultant to substitute for the original DBE. The Consultant will be required to make good faith efforts to replace the original DBE subconsultant with another DBE subconsultant to the extent needed to meet the contract goal.

The requirement that DBEs must be certified by the proposal submittal date does not apply to DBE substitutions or additions after award of a federally funded Assigned Project. DBEs must be certified at the time of the substitution or addition. Consultants shall submit requests for substitution in writing to the Project Manager. Authorization to use other subconsultants or suppliers may be requested for the following reasons:

- i) The listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract with Consultant, when such contract, based upon the general terms and conditions of this Agreement, or any Supplemental Agreement, or on the terms of such subconsultant's written proposal, is presented to Consultant.

- ii) The listed DBE becomes bankrupt or insolvent.
- iii) The listed DBE fails or refuses to perform the subcontract.
- iv) The Consultant stipulated that a bond was a condition of executing a subcontract and the listed DBE subconsultant failed or refuses to meet the bond requirements of the contract.
- v) The listed DBE was the result of an inadvertent clerical error. The Consultant must have asserted a claim of inadvertent clerical error in listing the subconsultant within two working days after the proposal submittal and copies of that notice to both the subconsultant he or she claims to have listed in error and intended subconsultant who had submitted a proposal to the Consultant prior to proposal submittal.
- vi) The listed DBE was not licensed as required by the State of California Consultant's Licensing Board or failed to have the required permits or licenses as required by Federal, State or Local governmental jurisdictions.
- vii) The work performed by the listed subconsultant is substantially unsatisfactory and is not in substantial conformance with the scope of work to be performed, or the subconsultant is substantially delaying or disrupting the progress of the work.
- viii) When the listed DBE is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- ix) When it is in the best interest of the City.

Prior to approval of the Consultant's request for substitution to the Project Manager, the Consultant shall give notice in writing to the listed DBE subconsultant of the Consultant's request to substitute and the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subconsultant. The listed subconsultant who has been so notified, shall have five working days within which to submit written objections to the substitution to the Project Manager. Failure to respond to a written objection shall constitute the listed subconsultant's consent to the substitution.

h. Termination of a DBE. In conformance with Federal DBE regulation 49 CFR Part 26, Sections 26.53(f)(1) and 26.53(f)(2), the Consultant shall not:

- i) Terminate for convenience a listed DBE subconsultant and then perform that work with its own forces (personnel), or those of an affiliate, unless the Consultant has received prior written authorization from the Project Manager to perform the work with other forces.
- ii) If a DBE subconsultant is terminated or fails to complete its work for any reason, the Consultant will be required to make good faith efforts to replace the original DBE subconsultant with another DBE subconsultant to the extent needed to meet the contract goal.

i. DBE Certification Status. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify the Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the contract, the subconsultant shall notify the Consultant in writing with the date of certification. Upon completion of the federally funded Assigned Project, the Consultant shall complete a Final Report for Utilization of DBE Subconsultants indicating the DBEs certification status and shall be signed and certified correct by the Consultant. The certified form shall be furnished to the Project Manager within 30 days from the date of completion of the federally funded Assigned Project.

j. DBE Eligibility toward Goal. The dollar value of work performed by a DBE is credited/counted toward the goal only after the DBE has been paid.

26.2 Prevailing Wage. If applicable to the services being provided in connection with a federally funded Assigned Project, Consultant and all subconsultants shall pay the higher of federally established prevailing wage rates or California general prevailing wage rates of per diem wages and overtime and holiday wages as determined by the U.S. Department of Labor.

26.3 Record Retention. Contractor shall maintain all books, documents, papers and records of Consultant's operations and financial activities directly pertinent to the federally funded Assigned Project in accordance with the requirements of the Federal granting agency and the regulations promulgated by or for it. Such books, documents, papers and records shall be open for inspection, audit, examination, excerpt and transcription by the authorized

representatives of City, the Federal granting agency and the Controller General of the United States during regular working hours. Consultant shall keep and maintain said books, documents, papers and records for at least three years after the City makes final payments pursuant to the contract and all other pending matters are closed or such greater period of time as may be required by the Federal granting agency.

27. **NOTICES.** Service of any notices, bills, invoices or other documents required or permitted by this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

CITY
Public Utilities Department
Attn: Energy Delivery Engineering
3750 University Avenue, 3rd Floor
Riverside, CA 92501

CONSULTANT
TRC Solutions, Inc.
Attn: Eleanor Wright
9685 Research Drive
Irvine, CA 92618

28. **JURISDICTION/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 a court of competent jurisdiction in the 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.

29. **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, or any Supplemental Agreement. Consultant shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of Consultant's services with all applicable laws, ordinances and regulations. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code section 1775.

The Consultant agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State

and Local Governments. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments are subject to repayment by Consultant to City. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.

30. **SEVERABILITY.** Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement or, any Supplemental Agreement, shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in 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 this 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. **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.

33. **CONFLICT OF INTEREST.** Consultant, for itself and on behalf of its key personnel, represents and warrants that by the execution of this Agreement, they have no interest, present or contemplated, in the Assigned Projects affected by the above- described services. Consultant further warrants that neither Consultant, nor its key personnel 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.

34. **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.

35. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are not representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to the subject matter contained in this Agreement which are not fully expressed herein.

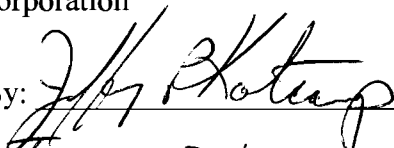
IN WITNESS WHEREOF, City and Consultant have executed this Agreement the day and year first above written.


CITY OF RIVERSIDE, a California
charter city and municipal corporation

By: _____
City Manager

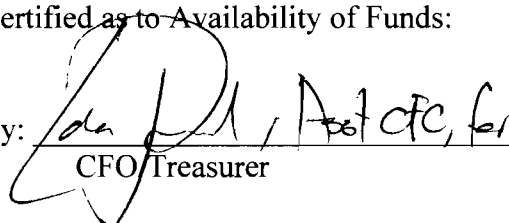
Attest: _____
City Clerk

TRC SOLUTIONS, INC., a California
corporation

By: 
JEFFREY P. KOTKAMP - SVP
[Printed Name and Title]

By: 
Martin H. Dodd Secretary
[Printed Name and Title]

Certified as to Availability of Funds:

By: 
CFO/Treasurer

Approved as to Form:

By: 
Assistant City Attorney

16-1450 SW 10/17/16
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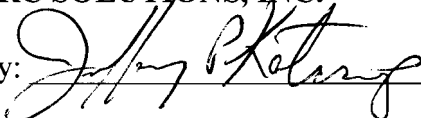
WORKERS' COMPENSATION CERTIFICATION

I am aware of the provisions of Section 3700 of the 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 I will comply with such provisions before commencing the performance of the work of this contract.

Dated: 10-24-2016

TRC SOLUTIONS, INC.

By:


JEFFREY P KOTCAMP - SVP
[Printed Name and Title]

(This form may be used in lieu of a standard corporate resolution)

CORPORATE RESOLUTION CERTIFICATE

I, HEREBY CERTIFY that during a meeting of the Board of Directors of the TRC Solutions Inc, a corporation existing under the laws of the State of California, held on August 23, 2016, the following resolution was duly passed and adopted:

“RESOLVED, that Jeffrey Kotkamp as S Vice President of the Corporation, be and is hereby authorized to execute the Agreement for Professional Consulting Service Agreement between the City of Riverside and this corporation, and that his/her execution thereof shall be the official act and deed of this Corporation.”

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 31ST, day of October, 2016.

M H Dore
Secretary

ATTACHMENT I
Sample Supplemental Agreement

SUPPLEMENTAL AGREEMENT FOR ASSIGNED PROJECT

Consultant: _____

Project Name: _____

The Project Narrative for [name of project] ("Project"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, and Consultant's proposal dated [date of proposal], a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference, shall constitute a supplement to the Professional Consultant Services Agreement Energy Delivery Consultant Panel, by and between City and Consultant, dated [date of executed master agreement] ("Agreement"). Consultant agrees to perform the services described in the Project Narrative within the time set forth in the Notice to Proceed for an amount not to exceed **[written amount] Dollars (\$0)**. Performance of the services shall be subject to the terms and conditions contained in the Agreement.

Dated this ____ day of _____, 2016.

CITY OF RIVERSIDE, a California
charter city and a municipal corporation

CONSULTANT NAME,
[legal business entity, e.g. a sole proprietor,
California corporation, etc.)

By: _____
City Manager

By: _____

Title: _____

Attest: _____
City Clerk

By: _____

Title: _____

Certified as to Availability of Funds:

By: _____
CFO/Treasurer

Approved as to form:

By: _____
Assistant City Attorney

EXHIBIT “A”

Project Narrative

EXHIBIT “B”

Consultant’s Proposal