

**MASTER AGREEMENT FOR
ELECTRICAL UTILITY CONSTRUCTION WORK FOR
VARIOUS CITY LOCATIONS ON AN AS-NEEDED BASIS**

[NAME OF CONTRACTOR]

This Master Agreement for Electrical Utility Construction Work at Various City Locations on an As-Needed Basis (“Agreement” or “Master Agreement”), is made and entered into this _____ day of _____, 2018, by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation (“City”), and [NAME OF CONTRACTOR], a [ENTITY DESIGNATION], California State Contractor’s License No. [_____] (“Contractor”), in accordance with the following facts.

RECITALS

A. On [DATE], the City, acting through the Energy Delivery Division of its Public Utilities Department, issued an open Request for Proposals to Provide Construction Services – Electric Utility Work Providing Construction, Maintenance, and Repair of Electric Utility Distribution, Transmission, and Substation Facilities, Including Communications and Control Systems, at Various City Locations on an As-Needed Basis (“RFP”) to contractors for the purpose of creating a panel of qualified contractors (“Energy Delivery Construction Contractors Panel”), who would be readily available to bid on and perform electric and communications facilities work on an as-needed and an emergency basis at various City locations.

B. On [DATE], Contractor submitted a Proposal in response to the RFP demonstrating Contractor’s willingness and qualifications to perform such work.

C. City desires to include Contractor in its Energy Delivery Construction Contractors Panel, who would be then given an opportunity to competitively bid with other panelists for work on Specific Construction Projects, and Contractor desired to be included in such Energy Delivery Construction Contractors Panel.

NOW THEREFORE, in consideration of the foregoing recitals which are incorporated herein to this Agreement, and the following covenants and conditions, the parties agree as follows:

AGREEMENT

1. Contractor’s Duties.

1.1 Work Force and Equipment. Contractor shall at all times maintain a work force and equipment capable of performing the work generally described and in accordance with the Qualifying Work Categories designated in Exhibit A of the Master Agreement, on an as-needed and emergency basis. Contractor may qualify for additional Work Categories when all City requirements are met and an amendment to the Agreement substituting a new Exhibit A is approved and executed by the City Manager and Contractor.

1.2 Bids. Contractor shall use its best efforts to submit competitive Bid Proposals in response to Requests for Bids (“RFB”), as defined in the Special Provisions, issued by City from time to time for Specific Construction Project work on projects as defined in the RFB’s Scope of Work (“Specific Construction Project Work” or “Work”).

1.2.1 Contractor understands and agrees that each award of a contract for Specific Construction Project Work, if awarded, will be to the lowest responsive Bidder in accordance with the Contract Documents.

1.2.2 Contractor further understands and agrees that City may reject any or all Bid Proposals in accordance with the Contract Documents.

1.2.3 City shall not be liable for any expenses or costs incurred by Contractor in preparing its Bid Proposals.

1.3 Insurance. At all times during the term of this Agreement, Contractor shall maintain the insurance required in Sections 15 and 16 of this Agreement.

1.4 Bonds. At all times during the term of this Agreement, Contractor shall maintain the performance and payment bonds required in Section 14 of this Agreement.

1.5 Master Agreement. Contractor understands and agrees that all Contracts for Specific Construction Project Work awarded to Contractor pursuant to the Energy Delivery Construction Contractors Panel Request for Bids process shall be governed by, and Contractor shall perform all Work in accordance with, this Master Agreement and the Contract Documents.

1.6 Contract Documents. Contract Documents for each Contract awarded to Contractor shall consist of the following:

- (1) Permits from the City’s Building, Fire, Planning, Public Works and Public Utilities Departments and similar Governmental Approvals for the Work required by applicable law.
- (2) Change Orders and other Modifications issued after execution of the City Purchase Order for the Specific Construction Project Work.
- (3) City Purchase Order for the Specific Construction Project Work.
- (4) Any Addenda with later Addenda having priority over earlier Addenda issued as follows:

Addendum No. _____, issued _____, 20____, _____ pages.

- (5) Contractor’s Bid Proposal for Specific Construction Contract Work (comprised of documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Bid Award, Notice Inviting Bids, Instructions to

Bidders and attachments, Electronic Bid Schedule of Prices, Electronic List of Subcontractors, Proposal, Signature Certification/Authorization, Bid Guaranty, and where applicable, Contractor Qualification Statement and/or Subcontractor Qualification Statement).

- (6) This Agreement, as signed by the Parties including the Worker's Compensation Certificate, as well as any other exhibits, attachments, and Certificates of Insurance and Additional insured endorsements for Contractor
- (7) Special Provisions and Standard Specifications, including City's Special Provisions For Providing Electrical Utility Construction Work for Various Locations on an As-Needed Basis ("Special Provisions") attached hereto as Exhibit B, and any further Special Provisions issued by City for Specific Construction Project Work.
- (8) The 2012 Edition of the Standard Specifications for Public Works Construction ("Standard Specifications") written by the Joint Cooperative Committee of the Southern California Chapter, American Public Works Association, and the Southern California Districts, Associated General Contractors of California.
- (9) The 2012 Edition of the Standard Specifications for Public Works Construction ("Standard Specifications") written by the Joint Cooperative Committee of the Southern California Chapter, American Public Works Association, and the Southern California Districts, Associated General Contractors of California.
- (10) The City and other agency's Standard Drawings.
- (11) All documents, maps, texts and items referred to in the foregoing documents.

These Contract Documents are intended to be correlative and constitute Contractor's performance obligations.

2. Work. Contractor shall provide all labor, equipment, and materials (when specified in the RFB) for, and shall complete Specific Construction Project Work for all Contracts awarded to Contractor. Contractor understands and agrees that such Specific Construction Project Work may include without limitation new construction, installation, maintenance, repair, modification, and/or extension of electric transmission, distribution, substation, controls, and communications facilities on an as-needed basis, including emergencies. When called upon by City, Contractor shall provide emergency services using the labor and equipment rates attached in Exhibit C as provided for in this agreement.

3. Effective Date. This Agreement shall be effective upon the date first written above.

4. Termination Date. This Agreement shall terminate on [DATE], unless earlier terminated as provided herein, except that or any Contracts for Specific Construction Project

Work that is not completed by the termination date of the Agreement, the terms of the Agreement shall continue in effect until such work is complete for that work only. This Agreement may, subject to mutual consent, be extended for up to three successive one-year terms.

5. Utilization of City's Resources. City reserves the right to reduce bid quantities for any uncompleted Specific Construction Project Work items at any time and to use its own personnel, machinery and equipment, to do any and all Specific Construction Project Work which it deems to be in its best interest to perform.

6. Completion and Acceptance of Work.

6.1 Inspection. The Specific Construction Project Work will be inspected by the Engineer for acceptance, upon receipt of Contractor's written assertion that the Specific Construction Project Work has been completed.

6.2 Contractor's Guarantee. All Specific Construction Project Work shall be guaranteed by the Contractor against defective workmanship and materials furnished by the Contractor for a period of one year from the date the Specific Construction Project Work is completed. The Contractor shall replace or repair any such defective Specific Construction Project Work in a manner satisfactory to the Engineer, after notice to do so from the Engineer, and within the time specified in the notice. If the Contractor fails to make such replacement or repairs within the time specified in the notice, the City may perform this work and Contractor's sureties shall be liable for the cost thereof.

7. Interpretation.

7.1 Capitalized Terms. Except as expressly modified in this Agreement, the capitalized terms used in this Agreement shall have the meanings defined in the Special Provisions.

7.2 Conflict. In the event of any conflict between any of the Contract Documents, the document highest in the order of precedent shall control. The order of precedent shall be the same as that set forth in Section 2.5-2 of the 2012 Edition of the Standard Specifications for Public Works Construction, unless otherwise revised in the Special Provisions.

8. Payment.

8.1 Contract Price. City shall pay Contractor the Contract Price as indicated on the City's Purchase Order for the Specific Construction Project Work issued by City's Purchasing Manager or his designee ("Purchase Order"), which includes all California sales or use tax and County and City taxes, for the performance of all of the Specific Construction Project Work, the completion of the improvements in strict conformity with the provisions hereof, and the guarantee of the Specific Construction Project Work and improvements for the periods set forth in the Contract Documents ("Contract Price"). The Contract Price of each Specific Construction Project Contract under this Master Agreement shall not exceed \$500,000

or the amount authorized by the City for this Master Agreement (“Authorized Not to Exceed Amount”) which the City may from time to time increase or decrease.

8.2 Contractor Certification - Contract Price. Contractor hereby certifies that:

8.2.1 Contractor shall carefully examine the requirements of each Notice Inviting Bids and all accompanying documents, including but not limited to Bid Proposal form, Scope of Work, job site description, Plans and Specifications, Instructions to Bidders and Contract Addenda;

8.2.2 Contractor has examined the requirements of the Specific Construction Project Work specifications;

8.2.3 Contractor understands that all items to be furnished shall be for the Contract Price, as set forth in City’s Purchase Order;

8.2.4 Contractor has checked all figures and acknowledges the understanding that neither the City, nor any officer thereof will be responsible for any errors or omissions in submitting the Contract Price.

8.3 No Additional Compensation to Contractor. Contractor understands and agrees that City shall not be obligated to compensate Contractor for any expenses or costs Contractor may incur in maintaining its status as a member of the Energy Delivery Construction Contractors Panel, including without limitation, Contractor’s cost of maintaining the insurance and Bonds required by this Master Agreement. Contractor’s sole compensation, if any, shall be the Contract Price for any Contract awarded to Contractor.

8.4 Payment of Contract Price. City shall pay Contractor the Contract Price, less five percent (5%), within thirty (30) days of the date City receives Contractor’s invoice for Specific Construction Project Work performed and acceptance of the Specific Construction Project Work, in accordance with the Contract Documents. Each payment shall be subject to this ten percent (10%) retention (“Retention”). The Retention will be based on the invoiced amount. Final payment of all sums invoiced and unpaid, including all Retentions, shall be made within thirty-five (35) days after the Work is fully performed and accepted by the City, and the City files a Notice of Completion, except such sums thereof which are required by law or authorized by the Contract to be further retained.

8.5 Labor and Equipment Rates for Emergency Work. Labor and equipment rates that will be used for billing Emergency Work shall be listed in Exhibit C. The City shall identify what work constitutes “Emergency Work,” in its sole discretion. Listed rates shall include all overhead expenses including reasonable profit. No additional percentages or amounts shall be added to the listed rates for billing. Contractor may increase its rates reflected in Exhibit C, no more frequently than once annually, to reflect changes in Contractor’s labor and equipment costs by sending a letter with the new rates to the City representative designated in this Master Agreement to receive notices, and an amendment to the Agreement substituting a new Exhibit C shall be approved and executed by the City and Contractor.

9. Compensation--Payment of Contractor's Employees. Contractor shall be solely responsible for the payment of its employees assigned to perform Work for City pursuant to this Agreement, including wages, benefits, payroll deductions, unemployment and worker's compensation, as well as the employer's share of Social Security.

9.1 Prevailing Wages. This Project is a public work as defined in California Labor Code Section 1720. Contractor and all subcontractors of any tier are required to pay all workers employed in the execution of the Work not less than the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations ("DIR") 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 of prevailing rates is available on-line at www.dir.ca.gov/dlsr/DPreWageDetermination.htm and is referred to and made a part hereof; the wage rates therein ascertained, determined and specified are referred to and made a part hereof as though fully set forth herein. Per Senate Bill 854 (2014), Contractor and subcontractors shall register with the Department of Industrial Relations (DIR) in order to bid and perform public works projects. Contractors and subcontractors on all public works projects shall submit electronic certified payrolls to the Labor Commissioner and City unless excused from this requirement.

9.2 California Labor Code. Contractor is aware of and stipulates that Contractor will also comply with the following sections of the California Labor Code:

- a. Section 1775 prescribing sanctions for failure to pay prevailing wage rates;
- b. Section 1776 requiring the making, keeping and disclosing of detailed payroll records and prescribing sanctions for failure to do so;
- c. Section 1777.5 prescribing the terms and conditions for employing registered apprentices;
- d. Section 1810 providing that eight hours of labor shall be a day's work; and
- e. Section 1813 prescribing sanctions for violations of the provisions concerning eight-hour work days and forty hour work weeks.
- f. Section 1725.5 and 1771.1 requiring all general contractors and subcontractors to be registered with DIR. Registration can be accomplished through the DIR website by using this link: <http://www.dir.ca.gov/Public-Works/PublicWorks.html>;

10. Licenses, Permits and Business Tax. As a condition of this Agreement, Contractor and all subcontractors shall secure and maintain at all times, a business license to operate in the City of Riverside, and shall also secure and maintain at all times, any other licenses or permits which may be required. Contractor understands that its performance of the services will constitute doing business in the City of Riverside, and it shall, therefore, register for and pay a business tax pursuant to Chapter 5.04 of the Riverside Municipal Code.

11. Business Taxes, Charges or Penalties. Contractor acknowledges and agrees that City shall withhold and offset said amounts from any amounts the City owes to Contractor for unpaid business tax, tax penalties, utility charges, invoiced fees or other outstanding debt under this Agreement. The City shall give Contractor written notice of such withholding and offset. In the event of any dispute as to amounts owed to City, City will hold such disputed amount throughout an appeal process and resolution of the dispute over the amount owed.

12. Consent for Amounts in Excess of Contract Price. Contractor hereby agrees that it shall not be compensated for any extra materials used or time expended, over and above the Contract Price, unless prior written approval for the same has been granted by City.

13. Work Deadline.

13.1 Completion of Work. Contractor hereby agrees that Contractor shall complete all Work as defined in the Contract Documents, within the time frames indicated on the Notice to Proceed issued by the City.

13.2 Liquidated Damages. Failure of Contractor to complete the Work within the time specified in the Contract Documents and the City's Notice to Proceed will result in damages being sustained by City. Such damages are, and will continue to be impracticable and extremely difficult to determine. For each consecutive calendar day in excess of the time specified for the completion of the Work, as adjusted in accordance with Section 6-6 of the Standard Specifications, Contractor shall pay to City, or, at City's sole option, have withheld from monies due Contractor, the sum of **One-Thousand Dollars (\$1,000.00)** per day. Additional Liquidated Damages may be required by City for each Specific Construction Project Work Project and shall be set forth in the Notice Inviting Bids. Execution of this Agreement shall constitute agreement by City and Contractor that said sum is the minimum value of the costs and actual damage caused by the failure of Contractor to complete the Work within the allotted time. Such sum is a liquidated damage and shall not be construed as a penalty, and may be deducted from payments due Contractor if such delay occurs.

Additional liquidated damages shall be assessed in the amount of **One-Thousand Dollars (\$1,000.00) per incident** that the Contractor reduces the traveled way width beyond the hours specified in Section 7-10.1.1 of the Special Provisions. Such sum is liquidated damages and shall not be construed as a penalty, and may be deducted from payments due Contractor if such incidents occur.

Additional liquidated damages shall be assessed in the amount of **One-Thousand Dollars (\$1,000.00) per incident** that the Contractor fails to install the Best Management Practices (BMP's) within 24 hours of notifications as described in Section 7.8.6.1 of the Special Provisions. Such sum is liquidated damages and shall not be construed as a penalty, and may be deducted from payments due Contractor if such incidents occur.

14. Performance and Payment Bonds.

14.1 General. Prior to City's execution of this Agreement, Contractor shall furnish City completed forms of the two surety bonds included within the Request for Proposals, one as security for the faithful performance of the Contract and one as security for the payment of all persons performing labor and furnishing materials in connection with the Contract. Each Bond shall be in the minimum amount of the contractor's bonding capacity up to the Authorized Not to Exceed Amount, and shall be subscribed by a corporate surety that is authorized to transact surety insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or larger. Should any bond or surety become insufficient, Contractor shall furnish City a new bond within ten (10) days after receiving notice from City. No payments will be due or paid under the Contract until any and all bond deficiencies have been remedied.

14.2 Term. Contractor hereby agrees that the Performance Bond and the Payment Bond furnished to the City in connection with this Agreement shall be effective for the full term of the Agreement, unless earlier terminated under any provision herein or extended in accordance with this Agreement.

14.3 Increase to Amount of Bonds. City shall require Contractor to provide Performance and Payment Bonds in excess of the Authorized Not to Exceed Amount, to cover Work for multiple Specific Construction Projects for which the City may contract with Contractor where the cumulative value may be greater than the Authorized Not to Exceed Amount. Additional contracts will not be granted to Contractor until Contractor has furnished sufficient Performance and Payment Bonds for the cumulative value of currently awarded uncompleted work plus proposed Specific Construction Project work described in the Request for Bid. Additional Bonds are required within ten (10) days of the City's notice to Contractor that the existing Bonds are insufficient. Payments for Work performed under any contract shall not be made to Contractor until sufficient Bonds have been submitted to the City.

14.4 Substitution of Securities. In accordance with Section 22300 of the California Public Contract Code, Contractor may substitute securities for any moneys withheld by City to ensure performance of the Contract. Such substitution shall be made at the request and expense of the Contractor. Securities equivalent to the amount withheld may be deposited with the City or with a California or federally chartered bank as escrow agent. Securities eligible for substitution shall include those listed in Section 16430 of the Government Code. Securities must be state or federally insured and within the top three ratings of a nationally recognized rating service.

15. Workers' Compensation Insurance.

15.1 Workers' Compensation Insurance Certificate. By executing this Agreement, Contractor certifies that Contractor 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. Contractor shall comply with Labor Code Section 1861 by signing and filing the workers' compensation certification attached hereto.

15.2 Evidence of Coverage. Prior to the City's execution of this agreement, Contractor shall file with the City either 1) a certificate of insurance or self-insurance evidencing that such insurance is in effect, or that Contractor is self-insured for such coverage; or 2) a certified statement that Contractor has no employees, and acknowledging that if Contractor does employ any person, the necessary certificate of insurance will immediately be filed with City. Any Certificate filed with the City shall provide that City shall be given ten (10) days prior written notice before modification or cancellation thereof.

15.3 Carrier Rating. Contractor's workers' compensation insurance carrier shall be 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 larger.

15.4 Subcontractor Worker's Compensation Insurance. Contractor shall require each of its Subcontractors to obtain and maintain for the duration of this Agreement, complete workers' compensation insurance, meeting or exceeding the coverage's and amounts that California law requires.

16. Contractor's Liability Insurance.

16.1 Minimum Scope. Prior to City's execution of this Agreement, Contractor shall secure, submit proof of and shall thereafter maintain without interruption, until termination of the Agreement, such commercial general and automobile liability insurance as shall protect Contractor, its Subcontractors and the Additional Insured's from any and all claims for damages for personal injury, including accidental death, as well as any and all claims for property damage which may arise from or which may concern operations under the Agreement, whether such operations be by or on behalf of Contractor, any subcontractor or anyone directly or indirectly employed by, connected with or acting for or on behalf of any of them.

16.2 Carrier Ratings. All liability insurance shall be issued by an insurance company or companies authorized to transact liability insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or larger.

16.3 Minimum Limits. Contractor shall maintain minimum limits of insurance as follows:

16.3.1 Commercial General Liability: Contractor'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, an aggregate limit for products/completed operations in the amount not less than \$2,000,000.

16.3.2 Automobile Liability Insurance: Contractor'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 Contractor's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with Contractor's performance of this Agreement, which vehicles shall include, but are not

limited to, Contractor owned vehicles, Contractor leased vehicles, Contractor's employee vehicles, non-Contractor-owned vehicles and hired vehicles.

16.3.3 Installation Floater Insurance. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Agreement, a Builder's Risk Installation Floater for coverage of Contractor's labor, materials and equipment to be used for completion of the work performed under this Agreement. The minimum amount of coverage to be carried shall be equal to the full amount of the Contractor's labor, equipment, materials, or fixtures to be installed, in transit, or stored off-site or on-site during the performance of this Agreement. The policy shall include as loss payee, the City of Riverside, the Contractor, and its sub-contractors as their interest may appear. The City shall not be responsible for the theft of any materials, equipment in the possession and control of Contractor.

16.4 Notice of Cancellation and Renewals. 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 (this obligation may be satisfied in the alternative by requiring such notice to be provided by Contractor's insurance broker and set forth on its Certificate of Insurance provided to City). Contractor agrees that upon receipt of any notice of cancellation or alteration of the policies, Contractor shall procure within five (5) days, other policies of insurance similar in all respects to the policy or policies to be cancelled or altered. Contractor shall furnish to the City copies of any endorsements that are subsequently issued amending coverage or limits within fourteen (14) days of the amendment.

16.5 All Coverage's. The insurance policy or policies shall also comply with the following provisions:

- a. Policies shall include premises/operations, products completed operations, independent contractors, owners and contractors' protection, explosion, collapse, underground hazard, broad form contractual, personal injury with employment exclusion deleted, and broad form property damage.
- b. The policy shall be endorsed to waive any right of subrogation against the City and its subconsultants, employees, officers, agents and directors for work performed under this Agreement.
- c. If policies are written on a claims made basis, the certificate should so specify and the policy must continue in force for **five (5) years** after completion of the Project. The retroactive date of the coverage must also be listed.
- d. The policy shall specify that the insurance provided by Contractor will be considered primary and not contributory to any other insurance available to the City of Riverside. Contractor shall provide Form No. CG 20010413 to City.
- e. All policies of insurance shall name the City as an Additional Insured and shall contain the following language:

“Solely with respect to work done by and on behalf of the name insured for the City of Riverside, it is agreed that the City of Riverside, and its officers and employees are added as additional insureds under this policy.”

16.6 Certificates of Insurance, Additional Insured Endorsements and Deductibles. Prior to execution of the Agreement, and thereafter upon City’s request, Contractor shall furnish City with original certificates of insurance and additional insured endorsements setting forth evidence of all insurance coverage required by this Article. Each certificate and endorsement is to be signed by a person authorized by that insurer to bind coverage on its behalf. The City of Riverside, its City Council and all of its respective officials, officers, directors, employees, managers, commission members, representatives, agents and council members shall be named as additional insured’s under each policy.

16.7 Contractor’s Failure to Provide Required Insurance. Failure to maintain required insurance at all times shall constitute a default and material breach. In such event, Contractor shall immediately notify City and cease all performance under this Contract until further directed by the City. In the absence of satisfactory insurance coverage, City may, at its discretion and sole option: (a) procure insurance with collection rights for premiums, attorneys’ fees and costs against Contractor by way of set-off or recoupment from sums due Contractor; (b) immediately terminate or suspend Contractor’s performance of the Contract; (c) pay Contractor’s premiums for renewal of Contractor’s coverage; or (d) self-insure the risk, with all damages and costs incurred, by judgment, settlement or otherwise, including attorneys’ fees and costs, being collectible from Contractor, by way of set-off or recoupment from any sums due Contractor. Upon demand, Contractor shall repay City for all sums that City paid to obtain, renew, reinstate or replace the insurance, or City may offset the cost against any monies that the City may owe Contractor.

16.8 Verification of Coverage. City shall have the right to obtain complete and certified copies of Contractor’s and Subcontractors’ insurance policies (including, but not limited to, the declarations page, form list and riders), endorsements or certificates required under the Contractor Documents, upon request (including, but not limited to, the declarations page, form list and riders).

16.9 Reassessment of Insurance Requirements. At any time during the duration of this Contract, the City may require that Contractor obtain, pay for, and maintain more or less insurance depending on the City’s assessment of any one or more of the following factors: (1) the City’s risk of liability or exposure arising out of, or in any way connected with, Contractor’s services under this Contract; (2) the nature or number of accidents, claims, or lawsuits arising out of, or in any way connected with, Contractor’s services under this Contract; or (3) the availability, or affordability, or both, of increased liability insurance coverage.

16.10 Contractor’s Insurance for Other Losses. The Contractor and its Subcontractors of every tier shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor’s (or Subcontractors’) employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor’s agents, suppliers or Subcontractors as well as to any temporary structures, scaffolding and protective fences.

16.11 No Limitation. Contractor's maintenance of insurance as required by the Contract Documents shall not be construed to limit the liability of the Contractor or its Subcontractors of any tier to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

16.12 Subcontractors' Insurance. The Contractor shall include in all subcontracts a requirement that the Subcontractors of every tier shall obtain and maintain, at a minimum, all insurance required by Sections 15 and 16 of this Agreement except that the limits of liability and deductibles shall be in amounts determined by the Contractor, based on the degree of hazardous exposure according to the Work performed by each Subcontractor and the size of each subcontract.

Contractor shall ensure that any professional engineer retained on its behalf to provide supplemental plans and engineering calculations required in conjunction with the Work, maintains professional liability insurance during the entire term of this Agreement. Such insurance shall be in the minimum amount of \$1,000,000 to protect City from claims resulting from the engineer(s) activities. This minimum amount of coverage shall not constitute any limitation or cap on Contractor's indemnification obligations set forth herein.

The City reserves the right to request certificates of insurance from the Contractor for each Subcontractor. The Contractor acknowledges that regardless of insurance obtained by its Subcontractors, the Contractor will be responsible to the City for any and all acts of its Subcontractors.

17. Indemnification/Duty to Defend.

17.1. Indemnity. Except as to the sole negligence, active negligence or willful misconduct of the City, Contractor assumes liability for and agrees, at Contractor's sole cost and expense, to promptly and fully indemnify and hold the City, its City Council, and all of its respective officials, officers, directors, employees, managers, commission members, representatives, agents, council members, ("Indemnitees"), harmless from and against any and all loss, damage, claims, allegations, actions, suits, arbitrations, administrative proceedings, regulatory proceedings, or other legal proceedings, causes of action, demands, costs, judgments, liens, stop notices, penalties, damages, losses, anticipated losses of revenue, expenses (including, but not limited to, any fees of accountants, attorneys, experts or other professionals, or investigation expenses), costs, including attorneys' fees, or losses of any kind or nature whatsoever, whether actual, threatened or alleged, arising out of, resulting from or is in any way (either directly or indirectly) related to, or is in any manner connected with, the performance of Work, the Project, activities, operations or duties of Contractor, or anyone employed by or working under Contractor, and from all claims by anyone employed by or working under Contractor for services rendered to Contractor in the performance of this Agreement ("Indemnity Claims"), notwithstanding that the City may have benefited from their services. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Contractor or of anyone employed by or working under Contractor.

The parties expressly agree that any payment, attorneys' fees, costs or expense that the City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this Section, and that this Section shall survive the expiration or early termination of the Agreement.

17.2. Duty to Defend. Contractor agrees, at its sole cost and expense, to promptly defend the Indemnitees from all Indemnity Claims. The duty of the Contractor to indemnify and hold harmless the Indemnitees includes the separate and independent duty to defend the Indemnitees, which duty arises immediately upon receipt by Contractor of the tender of any Indemnity Claim from an Indemnitee. The Contractor's obligation to defend the Indemnitees shall be at Contractor's sole expense, and not be excused because of Contractor's inability to evaluate liability or because the Contractor evaluates liability and determines that the Contractor is not liable. This duty to defend shall apply whether or not an Indemnity Claim has merit or is meritless, or which involves claims or allegations that any or all of the Indemnitees were actively, passively or concurrently negligent, or which otherwise assert that the Indemnitees are responsible, in whole or in part, for any Indemnity Claim. Contractor agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel acceptable to the City.

17.3 Subcontractor Requirements. In addition to the requirements set forth hereinabove, Contractor shall ensure, by written subcontract agreement, that each of Contractor's subcontractors of every tier shall protect, defend, indemnify and hold harmless the Indemnitees with respect to Indemnity Claims arising out of, in connection with, or in any way related to each such Subcontractors' work on the Specific Construction Project Work in the same manner in which Contractor is required to protect, defend, indemnify and hold the Indemnitees harmless. In the event Contractor fails to obtain such defense and indemnity obligations from others as required herein, Contractor agrees to be fully responsible to the Indemnitees according to the terms of this Article.

17.4 No Limitation or Waiver of Rights. Contractor's obligations under this Article are in addition to any other rights or remedies which the Indemnitees may have under the law or under the Contract Documents. Contractor's indemnification and defense obligations set forth in this Article are separate and independent from the insurance provisions set forth in the Agreement and do not limit, in any way, the applicability, scope, or obligations set forth in such insurance provisions. The purchase of insurance by the Contractor with respect to the obligations required herein shall in no event be construed as fulfillment or discharge of such obligations. In any and all claims against the Indemnitees by any employee of the Contractor, any Subcontractor, any supplier of the Contractor or Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the obligations under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor or any supplier of either of them, under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. Failure of the City to monitor compliance with these requirements imposes no additional obligations on the City and will in no way act as a waiver of any rights hereunder.

17.5 Withholding to Secure Obligations. In the event an Indemnity Claim arises prior to final payment to Contractor, the City may, in its sole discretion, reserve, retain or apply any monies due Contractor for the purpose of resolving such Indemnity Claims; provided, however, the City may release such funds if the Contractor provides the City with reasonable assurances of protection of the Indemnitees' interests. The City shall, in its sole discretion, determine whether such assurances are reasonable.

17.6 Survival of Indemnity Obligations. Contractor's obligations under this Article are binding on Contractor's and its Subcontractors' successors, heirs and assigns and shall survive the completion of the Work or termination of the Contractor's performance of the Work.

17.7 Independent Contractor. Contractor shall at all times during its performance of the Work retain its status as an independent contractor. Contractor'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 Contractor or its employees and agents.

18. **City's Right to Access and Audit Contractor's Project Documents.**

18.1 Audit Rights. If the Contractor submits a claim to the City for additional compensation, the City shall have the right, as a condition to considering the claim, and as a basis for evaluation of the claim, and until the claim has been settled, to audit the Contractor's books to the extent they are relevant. This right shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the claim has been submitted. The right to audit shall include the right to inspect the Contractor's plant, or such parts thereof, as may be or have been engaged in the performance of the Work. The Contractor further agrees that the right to audit encompasses all subcontracts and is binding upon subcontractors. The rights to examine and inspect herein provided for shall be exercisable through such representatives as the City deems desirable during the Contractor's normal business hours at the office of the Contractor. The Contractor shall make available to the City for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the City.

18.2 Scope of Audit Rights. The City and/or its authorized auditors or representatives, shall have access to and the right to examine, audit, excerpt, transcribe, and reproduce any of the Contractor's records for a period of at least three (3) years after termination of the Contract and/or Final Payment. Such records include without limitation, journals, ledgers, records of accounts payable and receivable, profit and loss statements, bank statements, invoices, receipts, subcontracts, agreements, notes, correspondence, memoranda, and any documents generated and received in Contractor's performance of this Contract. Upon written notice by the City, Contractor shall promptly make all such records available to Owner and/or its authorized auditors or representatives and cooperate with the Owner and its authorized auditors or representatives in examining, auditing, excerpting, transcribing and reproducing the records.

19. No Estoppel or Waiver by City. No action or failure to act by the City shall constitute a waiver of any right or duty afforded City under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically provided in this Agreement or as may be otherwise agreed in writing. The waiver by the City of any breach or violation of any term, covenant or condition of this Agreement or of any provision, ordinance, or law shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent payment of any monies or fee by the City which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by Contractor or any term, covenant, condition of this Agreement or of any applicable law or ordinance.

20. Non-exclusive Agreement. The City reserves the right to formally bid any Work, enter into Contracts with non-Panel contractors, or have City employees perform the Work, whenever the City deems it to be in the City's best interest.

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

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

<u>City</u>	<u>Contractor</u>
[NAME]	[NAME]
[ADDRESS]	[ADDRESS]

* Or other individual that the City of Riverside Public Utilities General Manager may designate.

23. Severability. Each Agreement provision, term, condition, covenant and/or restriction, in whole and in part, 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 the Agreement shall continue in full force and effect.

24. Authority. The individuals executing this Agreement and the instruments referenced herein on behalf of Contractor each represent and warrant that they have the legal

power, right and actual authority to bind Contractor to the terms and conditions hereof and thereof.

25. Venue and Attorneys' Fees. 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, and Contracts entered into pursuant to 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 of state. In the event either party hereto shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition of this Agreement, it is mutually agreed all parties shall bear their own attorneys' fees.

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

Exhibit A: Qualifying Work Categories
Exhibit B: Special Provisions For Providing Electrical Utility Construction Work for Various Locations on an As-Needed Basis

Exhibit "C": Contractor Labor and equipment rates for Emergency Work

The information contained in any such exhibits may be added to, changed, or amended from time to time on the same terms and conditions as reflected in the Agreement subject to the mutual agreement in writing by the parties.

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

CITY OF RIVERSIDE, a California
charter city and municipal corporation

[NAME OF CONTRACTOR]
[ENTITY DESIGNATION]

By: _____
City Manager

By: _____
[Printed Name and Title]

Attest: _____
City Clerk

By: _____
[Printed Name and Title]

APPROVED AS TO FORM:

By: _____
Assistant City Attorney

(Appropriate Certificate to use if a Corporation)

CERTIFICATE

STATE OF)
) SS:
COUNTY OF)

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 execution thereof and with the Corporate Seal affixed, 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 and affixed the official seal of the corporation this ____ day of _____, 20_____.

Secretary

(SEAL)

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: _____

[NAME OF CONTRACTOR]

By: _____

[Printed Name and Title]

EXHIBIT A

Qualifying Work Categories

Contractor: _____

Accepted by City: _____ Date: _____

<u>Approved Work Categories</u>		
Yes/No	1	<u>Underground Structures</u> : Installation or repair of conduits, vaults, and other underground structures used for electric utility purposes, including excavation and furnishing materials when required.
Yes/No	2	<u>Street lighting</u> : Installation or repair of streetlight standards and all associated low voltage wiring.
Yes/No	3	<u>Underground Electric Equipment</u> : Installation or replacement or repair of communications and electrical cables and equipment in conduits and underground or pad mounted structures. Requires Qualified Electrical Workers when working in structures containing energized high voltage (above 600 volts) cables or equipment.
Yes/No	4	<u>Overhead Electric Facilities</u> : Includes setting poles and installing or repairing all components of overhead utility lines including communications cables and electrical wires up to 69 kV. Requires Qualified Electrical Workers when working on or in the vicinity of energized High Voltage (above 600 volts) lines or equipment.
Yes/No	5	<u>Communications equipment</u> : Includes installation or repair of both wireless and landline communications equipment including the splicing of fiber optic cables
Yes/No	6	<u>Substation Site Preparation and Foundation</u> : Grubbing, grading, excavation, building driveways, fences, and all other required site preparation activities. Also installation of cable pits, trenches, containment facilities, and foundations for structures and substation equipment. May also include the installation, repairs, or modifications of control buildings.
Yes/No	7	<u>Substation Structure and Bus Construction</u> : Erection of all structural components of the substation including bus supports, electrical bus work, mounting of switches, and all other electrical apparatus. May also include the installation of general purpose lighting and control wiring.

Yes/No	8	<u>Control Systems</u> : Installation or repair of relays, controllers, SCADA equipment, and other components of a control system. Control system work may be inside special purpose control buildings but may also be at other locations that include poles, pads, or underground vaults.
Yes/No	9	<u>Detailed Inspections</u> : Will include overhead, underground and infrared scanning on equipment for the Transmission and Distribution system in Compliance with GO 95/128/165.
Yes/No	10	<u>Intrusive Inspections</u> : Will include evaluating the integrity of wood poles for the purpose of measuring their structural condition and determining whether the maximum safe loading capacity complies with the structural requirements under the State of California General Order 95, for the applicable grade of construction.
Yes/No	11	<u>Patrol Inspections</u> : The inspections will include overhead, underground and Street Light facilities in compliance with GO 95/128/165.
Yes/No	12	<u>Wood Pole Reinforcement</u> : Will include methods by which a standing pole that has been weakened due to decay, insects, or mechanical damage can be restored to its original design strength. The reinforcement method may be accomplished by use of fiber Wrap or steel trusses braced around the pole or other method approved by the City.
Yes/No	13	<u>Installation and Replacement of electric Meters and Ancillary Equipment</u> :
Yes/No	14	<u>Rehabilitation or Repair of Substructures</u> : Will include inspection of substructures and related modifications needed to facilitate the rehabilitation or repairs of deteriorated structures.
Yes/No	E	<u>Emergency or Unpredictable Work</u> : During emergencies or where conditions are such that significant unknown or unpredictable job parameters exist making it difficult to define or scope specific work units in advance, or for other situations where Specific Construction Project Work cannot be precisely bid out using standard bidding units, work in approved categories will be performed using hourly labor and equipment rates listed in Exhibit C .
<p>Note: Qualified Electrical workers must perform any work that takes place within 10 feet of exposed high voltage energized lines or components.</p>		

EXHIBIT B

**City's Special Provisions for Providing Electrical Utility Work for
Various Locations on an As-Needed Basis**

EXHIBIT C

**Contractor's Hourly Equipment and
Labor Billing Rates**