

PROFESSIONAL CONSULTANT SERVICES

AGREEMENT BURNS & MCDONNELL ENGINEERING COMPANY, INC.

Smart Grid Communication System

THIS PROFESSIONAL CONSULTANT SERVICES AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 20 ____ ("Effective Date"), by and between the CITY OF RIVERSIDE ("City"), a California charter city and municipal corporation and BURNS & MCDONNELL ENGINEERING COMPANY, INC., a *Missouri corporation*, ("Consultant").

1. **Scope of Services.** City agrees to retain and does hereby retain Consultant and Consultant agrees to provide the services more particularly described in Exhibit "A," "Scope of Services" ("Services"), attached hereto and incorporated herein by reference, in conjunction with Smart Grid Communication System ("Project").

2. **Term.** This Agreement shall be effective on the date first written above and shall remain in effect until *June 30, 2020*, unless otherwise terminated pursuant to the provisions herein.

3. **Compensation/Payment.** Consultant shall perform the Services under this Agreement for the total sum not to exceed *One Hundred Ninety Eight Thousand* (\$198,000) payable in accordance with the terms set forth in Exhibit "B." Said payment shall be made in accordance with City's usual accounting procedures upon receipt and approval of an itemized invoice setting forth the services performed. The invoices shall be delivered to City at the address set forth in Section 4 hereof.

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

To City

Riverside Public Utilities
City of Riverside
Attn: Ed Cortez
3750 University Ave, 4th floor
Riverside, CA 92501

To Consultant

Burns & McDonnell Engineering
Company, Inc.
Attn: Mike Mahoney, PE PMP
9300 Ward Parkway
Kansas City, MO 64114

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

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

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

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

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

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

11. Indemnification.

11.1 Design Professional Defined. For purposes of this Agreement, "Design Professional" includes the following:

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

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

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

relate to the negligence, recklessness or willful misconduct of Consultant, or anyone employed by or working under the Consultant or for services rendered to the Consultant in the performance of the Agreement, notwithstanding that the City may have benefited from its work or services and whether or not caused in part by the negligence of an Indemnified Party.

11.4 Defense Obligation For Other Than Design Professional Liability.

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

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

12. Insurance.

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

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

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

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

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

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

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

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

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

not less than \$1,000,000. All of Consultant's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with Consultant's performance of this Agreement, which vehicles shall include, but are not limited to, Consultant owned vehicles, Consultant leased vehicles, Consultant's employee vehicles, non-Consultant owned vehicles and hired vehicles.

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

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

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

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

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

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

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

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

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

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

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

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

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

identification of authorship and any and all rights of approval, restriction or limitation on use or subsequent modifications.

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

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

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

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

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

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

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

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

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

25.2.2 City decides to abandon or postpone the Project.

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

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

28. **Venue.** Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in 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. In the event either party hereto shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition of this Agreement, it is mutually agreed that each party will bear their own attorney's fees and costs.

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

30. **Severability.** Each provision, term, condition, covenant and/or restriction, in whole and in part, of this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, of this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this

Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement, and the remainder of the Agreement shall continue in full force and effect.

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

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

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

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

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

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

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

Exhibit "A" - Scope of Services

Exhibit "B" - Compensation

Exhibit "C" - Key Personnel

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

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

BURNS & MCDONNELL ENGINEERING
COMPANY, INC., a Missouri Company

By: _____
_____ City Manager

Attest: _____
City Clerk

Certified as to Availability of Funds:

By: _____
Finance Director

By: John Olander
[Printed Name]
Group President
[Title]

By: Dennis W Scott
CFO
[Title]

Approved as to Form:

By: Susan Wilson
Deputy City Attorney

Master Template
Rev: 02/05/16

EXHIBIT "A"
SCOPE OF SERVICES

EXHIBIT A
Scope of Services

City and Consultant have agreed to modify the Agreement as follows:

3. Compensation/Payment

Insert the following before the last sentence of Article 3:

Said payment to Consultant shall be made no later than forty-five days after City's receipt of an invoice.

4. Notices

The parties may also provide notice through email, either by emailing City at [City Email] or Consultant at mtmahoney@burnsmcd.com.

7. Standard of Performance

Delete Article 7 in its entirety and replace with:

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 judgment while exercising its professional skill.

If the Consultant fails to meet the foregoing standard, Consultant will perform at its own cost, and without reimbursement from City, the Services necessary to correct errors and omissions which are caused by Consultant's failure to comply with above standard, and which are reported to Consultant within one year from the completion of Consultant's Services for the Project. The obligations and representations contained in this Section 7 are Consultant's sole obligation and City's exclusive remedy with respect to defects in the quality of Services. No warranty, express or implied, is included in this Agreement or regarding any drawing, specification, or other work product or instrument of service or oral or written representation by Consultant or its employees or consultants.

11. Indemnification

Delete Sections 11.2 through 11.5 in their entirety and replace with:

11.2 Defense Obligation For Design Professional Liability. Consultant agrees, at its cost and expense, to promptly defend the City, and the City's employees, officers, managers, 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 for bodily injury, death, and third party property damage to the extent caused by the negligence, recklessness or willful misconduct of Consultant (or of anyone employed by or working under the Consultant) or to the extent caused by negligent Services rendered to the Consultant in the performance of the Agreement, notwithstanding that the City may have benefited from its Services. Consultant agrees to provide this defense promptly upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel. This obligation to defend as set forth herein is binding on the successors, assigns and heirs of Consultant and shall survive the termination of Consultant's Services under this Agreement.

11.3 Indemnity For Design Professional Liability. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify and hold harmless the City and the City's employees, officers, managers, 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 reasonable counsel and expert fees), judgment, civil fines and penalties, liabilities or losses, for bodily injury, death, and third party property damage to the extent caused by the negligence, recklessness or willful misconduct of Consultant (or anyone employed by or working under the Consultant) or to the extent caused by negligent Services rendered to the Consultant in the performance of the Agreement, notwithstanding that the City may have benefited from its Services.

11.4 Defense Obligation For Other Than Design Professional Liability. Consultant agrees, at its cost and expense, to promptly defend the City, and the City's employees, officers, managers, 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 caused by Consultant's negligent performance of Services, or to the extent caused by the negligence of anyone employed by or working under 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 promptly upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel. This obligation to defend as set forth herein is binding on the successors, assigns and heirs of Consultant and shall survive the termination of Consultant's Services under this Agreement.

11.5 Indemnity For Other Than Design Professional Liability. Except to the extent caused by the negligence or intentional misconduct of the City, Consultant agrees to indemnify 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 reasonable counsel and expert fees), judgment, civil fine and penalties, liabilities or losses, for bodily injury, death, and third party property damage to the extent caused by the negligent performance of the Services of the Consultant (or anyone employed by or working under the Consultant) or to the extent caused by negligent Services rendered to Consultant in the performance of this Agreement, notwithstanding that the City may have benefited from its Services. This indemnification provision shall apply to any negligent acts or omissions, recklessness, or intentional misconduct, whether active or passive, on the part of the Consultant or anyone employed or working under the Consultant.

12. Insurance

Delete the first sentence of 12.1 and replace with:

12.1 Prior to the City's execution of this Agreement, Consultant shall provide reasonably satisfactory evidence of, and shall thereafter maintain during the term of this Agreement, such insurance policies and coverages in the types, limits, and ratings required herein.

Delete Section 12.1.1 in its and replace with:

12.1.1 These amounts of coverage required herein shall not be construed as sufficient to protect Consultant or subconsultants from liability during the performance of this Agreement.

Delete Section 12.1.3 in its entirety and replace with:

12.1.3 The policies shall not be canceled unless thirty (30) days' prior written notification of intended cancellation has been given to City.

Delete the first sentence of 12.2 and replace with:

12.2 By executing this Agreement, Consultant agrees 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.

Delete the last sentence of 12.2 and replace with:

12.2 Any certificate filed with City shall provide that City will be given ten (10) days' prior written notice before cancellation thereof. Worker's Compensation policy shall be endorsed with a waiver of subrogation as against City of Riverside.

Delete Section 12.3 in its entirety and replace with:

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

Delete Section 12.3.1, and replace with:

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

Delete Section 12.3.2, and replace with:

12.3.2 Consultant's automobile liability policy shall cover both bodily injury and property damage with a combined single limit of \$1,000,000 per accident. All of Consultant's automobile 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.

Delete Sections 12.3.3 and 12.3.4 in their entirety and replace with:

12.3.3 Prior to City's execution of this Agreement, copies of insurance certificates along with the additional insured and waiver of subrogation endorsements reasonably acceptable to the City evidencing the coverage required by this Agreement, for both commercial general and automobile liability insurance, shall be filed with City and shall include the City and its officers, and employees, as additional insureds. Said policies shall be in the usual ISO 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, and employees, are added as additional insureds under this policy, solely for work done by and on behalf of the named insured for the City of Riverside.

12.3.4 The general liability and automobile liability 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, and officers 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.

c. The policy shall specify that the insurance provided by Consultant will be considered primary and not contributory to any other insurance available to the City and Endorsement No. CG 20010413 shall be provided to the City.

Delete Section 12.4 in its entirety and replace with:

12.4 Prior to City's execution of this Agreement, Consultant shall obtain, and shall thereafter maintain during the term of this Agreement, errors and omissions professional liability insurance in the amount of \$1,000,000 per claim and in the aggregate to protect from claims caused by the Consultant's negligent acts, errors, and omissions while performing professional services.

Delete Sections 12.6 and 12.7 in their entirety and replace with:

12.6 Consultant and City mutually waive and release their rights to recovery for property loss or damage for their insured property, and further waive their respective property insurer's right to subrogate against the other, for loss or damage occurring both during and after the completion or termination of Consultant's Services.

12.7 Should the deliverables or Services of Consultant result in construction, the construction contractor shall be required to identify and name City and Consultant in any construction contract as an indemnitee and additional insured and the beneficiary of any waiver of subrogation, with such benefits and protections afforded to Consultant in the same manner and to the same extent as afforded to City.

14. Time of Essence

Delete Article 14 in its entirety and replace with:

14. **Time of Essence.** Time is of the essence for major project milestones set forth in the schedule.

17. Confidentiality

Insert the following sentence to the end of Article 17:

Consultant may disclose confidential information if required by subpoena, provided that Consultant shall provide prompt written notice to the City of such subpoena, and it shall use commercially reasonable efforts to cooperate with City's efforts toward obtaining a protective order.

18. Ownership of Documents

Delete Articles 18 and 19 in their entirety and replace with:

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

Notwithstanding the foregoing, Consultant retains ownership of all of its intellectual property in such deliverables. Upon full and final payment, Consultant grants City a worldwide, royalty-free license to use the intellectual property embedded in the deliverables for purposes of operating, maintaining, and constructing the Project. Such deliverables are not intended or represented to be suitable for reuse by City or others on extensions of the Project or on any other project. Any reuse by City other than for the specific purpose intended will be at City's sole risk and without liability or legal exposure to Consultant or to Consultant's independent professional associates or consultants, and City shall indemnify and hold harmless Consultant and Consultant's independent professional associates and consultants from and against all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.

22. General Compliance With Laws

Delete Article 22 in its entirety and replace with:

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

25. Termination

Delete Article 25 in its entirety and replace with:

25. Termination. City, by notifying Consultant in writing, shall have the right to terminate any or all of Consultant's services and work covered by this Agreement at any time. In the event of such termination, Consultant may submit Consultant's final written statement of the amount of Consultant's Services as of the date of such termination based upon the Services performed by the Consultant, subject to the City's rights under Sections 15 and 26 hereof.

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

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

25.2.1 Consultant substantially fails to perform or materially breaches the Agreement and fails to cure such breach during such fifteen (15) day notice period; or

25.2.2 City decides to abandon or postpone the Project.

26. Offsets

Insert the following sentence to the end of Article 26:

Any offset provided in this Article 26 shall only offset fees under this Agreement and shall not in any way apply to any other agreement.

35. On-Site Services

Insert the following Section after Section 34:

35.1 Project site visits by Consultant during investigation, observation, construction or equipment installation, or the furnishing of Project representatives shall not make Consultant responsible for construction means, methods, techniques, sequences, or procedures; for construction safety precautions or programs; or for any construction contractor(s') failure to perform its work in accordance with the contract documents.

35.2 City shall disclose to Consultant the location and types of any known or suspected toxic, hazardous, or chemical materials or wastes existing on or near the premises upon which work is to be performed by Consultant employees or subcontractors. If any hazardous wastes not identified by City are discovered after a Project is undertaken, City and Consultant agree that the scope of services, schedule, and compensation may be adjusted accordingly. City agrees to release Consultant from all damages related to any pre-existing pollutant, contaminant, toxic, or hazardous substance at the site.

36. Limitation of Liability

Insert the following Section after Section 35:

36.1 In no event will Consultant be liable for any special, indirect, or consequential damages including, without limitation, damages or losses in the nature of increased Project costs, loss of revenue or profit, lost production, claims by customers of City, and/or governmental fines or penalties.

36.2 To the fullest extent permissible by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Consultant, its officers, directors, shareholders, employees, agents, and consultants, and any of them, to City and anyone claiming by, through or under City, for any and all claims, losses, liabilities, costs or damages whatsoever

arising out of, resulting from or in any way related to the Project or this Agreement from any form of negligence, professional errors or omissions (including breach of contract or warranty) of Consultant, its officers, directors, employees, agents or consultants, or any of them, SHALL NOT EXCEED the greater of the total compensation actually received by Consultant under this Agreement or Four Hundred Thousand Dollars (\$400,000). The parties agree that specific consideration has been given by Consultant for this limitation and that it is deemed adequate.

1) Existing Communication Systems Evaluation and Assessment:

- Assess existing communication infrastructure based on the available documents, reports, site visits and discussions with RPU staff
- Assess existing legacy interface for Relay Protection, SCADA System, Electronic Security System, 2 wire Private Line, 4 wire Private Line, Serial data Connection, Transmission System 1 (T1), Ethernet Connection and any other existing types of communication interface on RPU system.
- Identify applicable new technologies suitable for legacy replacement
- Identify services and use scenarios - ways to improve efficiency of existing Communication system.

2) Smart Grid Communication System requirements:

- Meet with RPU staff to create Smart Grid Communication Technologies requirements
- Collect and aggregate requirements to create a report Providing
 - RPU's present and future needs
 - Recommend suitable new technologies for replacing legacy interfaces and future needs
 - List pros and cons of alternate technologies
 - Develop decision register for RPU to select preferred technologies

3) Technology Solution Testing and Evaluation:

- Develop application solution architectures (Present / future state)
- NERC CIP assessments for new network technologies
- Low latency services testing and evaluation (system protection)
- High availability services testing for network resiliency (SCADA)
- Network management platforms assessment and integration with existing NOC processes
- Develop network test plans (like for like)
- Set up Test laboratories for testing and evaluating recommended / selected Technologies
- Coordinate network testing with utility staff for technology evaluations
- Capture test results, develop test reports and decision records
- Quality of Service policy development and testing

4) RFP Development and Vendor Selection:

Develop vendor agnostic Request For Proposal (RFP) document based on RPU's standard RFP template to Procure, Install, Configure, Test and Commission

- Smart Grid Communications System
- Services and Application
- Implement Quality of Service (QoS) models and Application hierarchy
- Create Security posture and templates
- Factory / Site acceptance Testing Plan
- Assist with Pre and post RFP questions / answers
- Vendor selection and project kickoff

5) Low-Level Communication Network Design:

Participate as owner's engineer to assist with following system requirements as applicable:

- Select specific off the shelf interfaces to existing (legacy) transport network along with

- new packet based traffic routing
- Develop standard site hardware models - cookie cutter, common designs based on facility criticality.
- routing / label distribution protocols
- Border Gateway Protocol design
- IPv4 and IPv6 addressing and planning
- Develop low-level converged network design accommodating existing Layer 1, and future requirements
- Installation and configuration of Network Management systems
 - VMware servers, stand up and administration
 - Linux OS configurations and ongoing support
 - Virtual router integration and simulations
- Bill of Materials (BOM) development
- Complete documentation, system software etc. including but not limited to Drawings, Database, Spread Sheets etc. for RPU's construction / installation records, system maintenance, system upgrades, system trouble shooting, system restoration as needed for management and operations

6) Communication Network Migration Services:

Participate as owner's engineer to assist with following system requirements as applicable:

- Router / switch base configurations for base routing / control plane connectivity
- Secure network management and encryption (SNMPv3 and transport encryption)
- Security implementation (network filters and router lockdown)
- Integration with network management systems
- Equipment staging and construction / Installation
- Field Pilots and Functional Testing
- Outage planning and coordination with RPU
- Circuit order fulfillment and network provisioning
- Services performance tuning and troubleshooting

7) Staff Training:

Provide complete training to staff so that RPU can independently own, operate, upgrade, maintain, trouble shoot and perform any other necessary functions with Smart Grid Communications System

RPU staff will include Engineers, Network Architects, Field Staff / Technicians etc.

Training services shall include both theory and practical with Test equipment (Laboratory Boot camp) for modern networks.

EXHIBIT "B"
COMPENSATION

Pricing



The total payment for the scope of services described herein is estimated to be \$198,000. This amount shall not be exceeded without prior written consent of Riverside Public Utilities. The compensation structure shall be time-and-expense-based. Monthly statements shall be submitted by Burns & McDonnell to RPU covering services performed and expenses incurred during preceding month. Statements will set forth: hours worked by each person, total hours worked and total labor billing, and a summary of expenses and charges. Upon request, documentation of reimbursable expenses included in the statement will be provided.

Name of Service	Compensation
Existing Communication Systems Evaluation and Assessment	\$36,510.00
Smart Grid Communication System requirements	\$9,390.00
Technology Solution Testing and Evaluation / RFP Development	\$34,900.00
Low-Level Communication Network Design	\$41,790.00
Communication Network Migration Services	\$22,120.00
Staff Training	\$13,670.00
PM Functions	\$16,120.00
Travel	\$23,500.00
Total	\$198,000.00

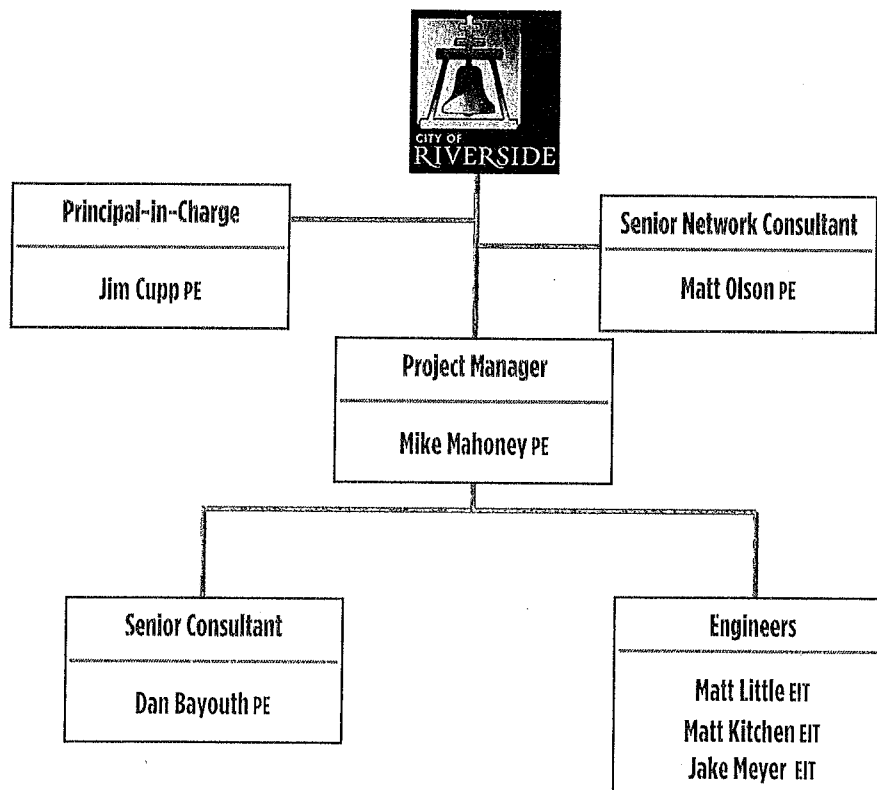
EXHIBIT "C"
KEY PERSONNEL

Company Personnel



Our team is comprised of a highly skilled group with experience working on smart grid and utility networking projects. Jim Cupp, PE will oversee the proposed team and brings more than 30 years of experience in management and directorship. Michael (Mike) Mahoney, PE, our project manager, has worked on multiple smart grid projects, seeing them to successful completion. Your project deserves the resources and attention that our team can give you to for success.

Organizational Chart





Our proposed team is available to you for any needs that arise and can be accessed via phone or email. We are here to get your project completed. Full resumes for all team members are located in Appendix A.

<i>Team Member/ Registrations</i>	<i>Role</i>	<i>Contact Numbers Emails</i>	<i>Experience</i>
James Cupp, PE	Principal-in-Charge	(816) 822-3472 jcupp@burnsmcd.com	Telecommunications systems and utility automation director of Burns & McDonnell's telecommunication practice Relevant experience: More than 30 years of experience in telecommunication systems; utility automation, supervisory control, and data acquisition.
Matt Olson, PE	Senior Network Advisor	(816) 349-6608 molson@burnsmcd.com	Wireless telecommunications system, enterprise/ carrier network design: Relevant experience: Specializes in telecommunication systems, enterprise and carrier network design, converged network architecture and network management systems (NMS)
Michael Mahoney, PE	Project Manager	(913)707-1882 mmahoney@burns.mcd.com	Telecommunications and network engineering; design and deployment of grid communication systems Relevant experience: More than 16 years of experience specializing in telecommunications and network engineering
Dan Bayouth, PE	Senior Consultant	(816) 349-6883 dbayouth@burnsmcd.com	Telecommunications and network engineer: Relevant experience: Specializes in telecommunications and network engineering, including MPLS WAN, substation IEC 61850 and SONET network design and implementation
Matt Kitchen, EIT	Engineer	(916) 627-4760 mkithcen@burnsmcd.com	Telecommunications and network systems: Relevant experience: Specializes in telecommunications and network systems, network management staging, troubleshooting, and network transformation design
Jake Meyer, EIT	Engineer	(816) 844-4624 jmeyer@burnsmcd.com	Telecommunications and network Relevant experience: Skilled in technical design, process improvement, technical documentation, and implementation of new systems
Matt Little, EIT	Engineer	(858) 320-2952 mlittle@burnsmcd.com	Telecommunications Relevant experience: Network design and network facilities, defining network topologies, and physical layouts