EBIX Insurance No. *S200004843

# AGREEMENT FOR SERVICES BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA AND MESA ENERGY SYSTEMS, INC.

## PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Mesa Energy Systems, Inc., a California Corporation (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

## RECITALS

A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";

B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,

C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

## AGREEMENT TERMS AND CONDITIONS

### 1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D - Notice of Exercise of Option to Extend Agreement Form

Exhibit E – Labor Compliance Addendum

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

## 2. TERM OF AGREEMENT

A. Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin December 15, 2021 and expire December 31, 2026 ("Initial Term").

B. After the Initial Term, City reserves the right, at its sole discretion, to extend the term of this Agreement for up to five (5) additional one-year terms through December 31, 2031 ("Option Periods"). City shall provide Contractor with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement. See Exhibit D for Notice of Exercise of Option to Extend Agreement Form.

## 3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence.

## 4. WARRANTY

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

## 5. QUALIFICATIONS OF CONTRACTOR- STANDARD OF CARE

Contractor represents and maintains that it has the expertise in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such Services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

## 6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES AND PAYMENT PROVISIONS." The Maximum Compensation of this Agreement during the Initial Term is seven hundred fifty thousand dollars ($750,000), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the Maximum Compensation shall be at Contractor's expense. City does not guarantee any minimum compensation under this Agreement. Contractor shall not be entitled to any payment above the Maximum Compensation under any circumstance.

## 7. TERMINATION

A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor.

B. Termination for Default. If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor.

C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession.

## 8. ASSIGNMENT AND SUBCONTRACTING

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

## 9. NO THIRD-PARTY BENEFICIARY

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

## 10. INDEPENDENT CONTRACTOR

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

## 11. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

## 12. OWNERSHIP OF MATERIAL

All material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

## 13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees

to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

## 14. HOLD HARMLESS/INDEMNIFICATION

A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.

B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

## 15. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit C.

## 16. WAIVER

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement

shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

## 17. NOTICES

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

City of Santa Clara
Attention: Silicon Valley Power
1500 Warburton Avenue
Santa Clara, CA 95050
svpcontracts@santaclaraca.gov, jcoleman@santaclaraca.gov, and manager@santaclaraca.gov

And to Contractor addressed as follows:

Mesa Energy Systems, Inc.
14450 Doolittle Drive
San Leandro, CA 94577
Phone: (510) 381-6651
ATTN: Adam Ellis, Service Account Manager
Email: aellis@emcor.net

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

## 18. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Contractor's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Contractor has read and agrees to comply with City's Ethical Standards (http://santaclaraca.gov/home/showdocument?id=58299).

## 19. CONFLICTS OF INTEREST

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and

following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

## 20. FAIR EMPLOYMENT

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

## 21. NO USE OF CITY NAME OR EMBLEM

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

## 22. GOVERNING LAW AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

## 23. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

## 24. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

## 25. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

**CITY OF SANTA CLARA, CALIFORNIA**
a chartered California municipal corporation

Approved as to Form:

Digitally signed by Caio Arellano
Date: 2022.01.27 16:31:47
-08'00'

Office of the City Attorney
City of Santa Clara

Dated: 2/1/2022

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

"CITY"

**MESA ENERGY SYSTEMS, INC.**
A California Corporation

Dated: 12-1-2021

By (Signature): Mark L Collins

Name: Mark L Collins

Title: SVP/GM

Principal Place of Business Address: 14450 Doolittle Drive
San Leandro, CA 94577

Email Address: mcollins@emcor.net

Telephone: 510-670-1690

Fax: 510-670-1698

"CONTRACTOR"

## 25. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

**CITY OF SANTA CLARA, CALIFORNIA**
a chartered California municipal corporation

Approved as to Form: Dated: _____

_____
Office of the City Attorney
City of Santa Clara

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

"CITY"

**MESA ENERGY SYSTEMS, INC.**
A California Corporation

Dated: 12-1-2021
By (Signature): Mark L Collins
Name: Mark L Collins
Title: SVP/GM
Principal Place of Business Address: 14450 Doolittle Drive
San Leandro, CA 94577
Email Address: mcollins@emcor.net
Telephone: 510-670-1690
Fax: 510-670-1698

"CONTRACTOR"

## EXHIBIT A
## SCOPE OF SERVICES

### 1 GENERAL

**1.1** Contractor shall furnish all labor, materials, tools, and equipment necessary to provide as-needed heating, ventilation and air conditioner (HVAC), and chiller inspection, repair, and maintenance services, in support of Silicon Valley Power (SVP).

**1.2** The Contractor shall possess all licenses and/or certifications necessary to perform the services described in this Exhibit A. Contractor shall also secure all permits necessary (including payment of any charges and fees) to perform the required services.

**1.3** Contractor shall perform the services in accordance with generally accepted industry best practices, and all applicable federal, state, or local regulations.

**1.4** Contractor shall be responsible for disposing of all waste and hazardous material generated as a result of the performance of services.

**1.5** Contractor shall only use Original Equipment Manufacturers (OEM) parts.

**1.6** Contractor shall recycle all material scrap and credit the value to SVP.

**1.7** Contractor shall keep follow and assist SVP in complying with SVP's refrigerant management program.

**1.8** SVP may participate in or observe any inspection.

### 2 HVAC INSPECTION AND MAINTENANCE SERVICES

**2.1** Contractor shall perform quarterly and annual HVAC inspection and maintenance services. Contractor shall perform tasks based on contractor, industry and manufacture best practices and such tasks shall include but are not limited to the following:

**2.1.1** Quarterly heat pump inspection and maintenance services including, at a minimum, the following tasks.

**2.1.1.1.** Check with appropriate SVP representative for operational deficiencies.

**2.1.1.2.** Check system pressures and temperatures.

**2.1.1.3.** Check refrigerant charge.

**2.1.1.4.** Check compressor oil level(s).

**2.1.1.5.** Inspect starter.

**2.1.1.6.** Check crankcase heater.

**2.1.1.7.** Visually inspect for refrigerant and oil leaks.

**2.1.1.8.** Check condition of condenser coils.

**2.1.1.9.** Check operation of reversing valve.

**2.1.1.10.** Check condenser fan blades and motors.

**2.1.1.11.** Check for proper condenser fan rotation.

**2.1.1.12.** Check condition of evaporator coils.

**2.1.1.13.** Check belt(s).

**2.1.1.14.** Check filter(s).

**2.1.1.15.** Check for proper fan operation.

**2.1.1.16.** Check for unusual noise and vibration.

**2.1.1.17.** Check overall condition of unit.

**2.1.1.18.** Clean area around equipment.

**2.1.1.19.** Complete any required maintenance checklists, report observations to appropriate SVP representative.

**2.1.2** Annual heat pump inspection and maintenance services including, at a minimum, the following tasks.

**2.1.2.1.** All of the tasks listed in Section 2.1.1. above.

**2.1.2.2.** Clean condensate drain (if accessible).

**2.1.2.3.** Check backup heat.

**2.1.2.4.** Check defrost controls.

**2.1.2.5.** Check for unusual noise and vibration.

**2.1.3** Air Handling Units (AHU) quarterly inspections and maintenance services including, at a minimum, the following tasks.

**2.1.3.1.** Check with appropriate SVP representative for operational deficiencies.

**2.1.3.2.** Check belt(s).

**2.1.3.3.** Check coil conditions.

**2.1.3.4.** Check condensate pan and drain (if accessible).

**2.1.3.5.** Check filter condition.

**2.1.3.6.** Visually inspect damper(s).

**2.1.3.7.** Check for proper fan operation.

**2.1.3.8.** Check for unusual noises, vibration and wear. Report recommendations.

**2.1.3.9.** Check overall condition of unit.

**2.1.3.10.** Clean area around equipment.

**2.1.3.11.** Complete any required maintenance checklists, report observations to appropriate SVP representative.

**2.1.4** AHU annual inspections and maintenance services including, at a minimum, the following tasks.

**2.1.4.1.** All tasks listed in Section 2.1.3 above.

**2.1.4.2.** Check starter/contactor.

**2.1.4.3.** Check and tighten electrical connections.

**2.1.4.4.** Check and clean condensate pan and drain (if accessible).

**2.1.4.5.** Check safety control set points.

**2.1.4.6.** Check damper operation and lubricate as required.

**2.1.4.7.** Check valve(s).

**2.1.4.8.** Check and lubricate fan and motor bearings.

**2.1.4.9.** Check condition of blower assembly.

**2.1.5** Annual and quarterly inspections shall meet OEM specifications for heat pumps, air conditioners and AHU.

**2.1.6** Contractor shall verify their inspection and maintenance processes meet the minimum requirements for the OEMs equipment.

**2.1.7** Contractor shall apply applicable portions of heat pump inspections and maintenance to air conditioners.

## 3 CHILLER INSPECTION AND MAINTENANCE SERVICES

**3.1.** Contractor shall perform the following chiller inspection and maintenance services at the Donald Von Raesfeld Power Plant. Contractor shall perform tasks based on contractor, industry and manufacture best practices and such tasks shall include but are not limited to the following

**3.1.1.** General Assembly

**3.1.1.1.** Check and record refrigerant.

**3.1.1.2.** Inspect for leaks and report leak results.

**3.1.1.3.** Check vanes for free and smooth operation.

**3.1.1.4.** Check mechanical linkages for wear.

**3.1.1.5.** Check condition of insulation.

**3.1.1.6.** Brush clean condenser tubes and replace gasket if needed.

**3.1.2.** Controls and Safeties

**3.1.2.1.** Verify all settings in the control panel.

**3.1.2.2.** Inspect the control panel for cleanliness.

**3.1.2.3.** Inspect wiring and connections for tightness and signs for overheating and discoloration.

**3.1.2.4.** Report wiring and connection issues.

**3.1.2.5.** Verify the operation of the vane control system.

**3.1.2.6.** Verify the working condition of all indicator alarm lights and LED I LCD displays.

**3.1.2.7.** Verify the operation of the oil sump temperature control device.

**3.1.2.8.** Verify the high condenser pressure safety device is operating/set correctly. Calibrate if applicable and record setting.

**3.1.2.9.** Verify the low evaporator temperature safety device. Calibrate if applicable and record setting.

**3.1.2.10.** Verify the low oil pressure safety device. Calibrate if applicable and record setting.

**3.1.2.11.** Verify the high motor temperature safety device. Calibrate if applicable and record.

**3.1.2.12.** Verify the operation of chilled water pump and condenser water pump starter auxiliary contacts.

**3.1.2.13.** Clean contacts as needed.

**3.1.3.** Lubrication System

**3.1.3.1.** Pull oil sample for spectroscopic analysis. Make recommendations to SVP based on the results of the test.

**3.1.3.2.** Measure and record the oil pump voltage and amperage.

**3.1.3.3.** Verify the operation of the oil heater. Measure amps and compare readings with the watt rating of the heater. Record heater set points.

**3.1.3.4.** Change the oil filter.

**3.1.3.5.** Verify the oil level.

**3.1.3.6.** Check seal pressure.

**3.1.4.** Motor and Starter

**3.1.4.1.** Clean the starter and cabinet.

**3.1.4.2.** Inspect wiring and connections for tightness and signs of overheating and discoloration.

**3.1.4.3.** Report issues with wiring and connections.

**3.1.4.4.** Check condition of the contacts for wear and pitting.

**3.1.4.5.** Clean contacts as needed.

**3.1.4.6.** Check contactors and mechanical linkages for free and smooth operation.

**3.1.4.7.** Check tightness of the motor terminal connections.

**3.1.4.8.** Megger the motor and record reading.

**3.1.4.9.** Verify the operation of the electrical interlocks.

**3.1.5.** Contractor shall perform quarterly inspections, to include but not be limited to the following tasks.

**3.1.5.1.** Record and report abnormal conditions, measurements taken, etc.

**3.1.5.2.** Check general operation of unit.

**3.1.5.3.** Log operating temperatures, pressure voltages and amperages.

**3.1.5.4.** Check the operation of the control circuit.

**3.1.5.5.** Check the operation of the lubrication system.

**3.1.5.6.** Check the operation of the motor and starter.

**3.1.5.7.** Review logs with SVP for operational problems, trends and compare to design conditions.

**3.1.5.8.** Provide an electronic report of completed work, written operating log, and indicate any deficiencies detected.

**3.1.5.9.** Review operating procedures with SVP staff.

**3.1.6.** Contractor shall record and report abnormal conditions, measurements taken, etc.

**3.1.7.** Contractor shall review SVP logs with SVP for operational problems, trends and compare to design conditions.

**3.1.8.** Contractor shall provide an electronic report of completed work, written operating log, and indicate any deficiencies detected.

## 4 ADDITIONAL SERVICES

**4.1.** Contractor shall perform additional HVAC and chiller support services, as needed. Additional services may include, but shall not be limited to the following.

**4.1.1.** Repair of HVAC systems, associated ducting and control equipment;

**4.1.1.1.** Contractor shall repair HVAC systems with equivalent systems.

**4.1.1.2.** Contractor shall get approval from SVP prior to changing the type of HVAC system or components prior to repair or replacement.

**4.1.2.** Replacement of HVAC and/or chiller refrigerant;

**4.1.3.** Repair and replacement of chiller systems, associated piping and control equipment;

**4.1.4.** Replacement of electrical components supporting HVAC and chiller systems;

**4.1.5.** Supply of all types of HVAC and chiller products and materials;

**4.1.6.** Removal and installation of steam turbine insulation blankets;

**4.1.7.** Removal of replaced HVAC systems;

**4.1.8.** Installation and commissioning of new HVAC units;

**4.1.9.** Upgrade of chiller control units;

**4.1.10.** Other miscellaneous HVAC or chiller work; and

**4.1.11.** Emergency services.

**4.2.** Project Quotes and Authorization of Work

**4.2.1.** Projects (services, materials and/or equipment) with a value that exceeds the City's competitive threshold, and/or are subject to the State of California's Public Contract Code or City of Santa Clara Charter Section 1310 may require a separate competitive process.

**4.2.2.** Contractor shall not initiate any project assignment that will result in costs exceeding the compensation in the Agreement or are anticipated to extend past the term of this Agreement.

**4.2.3.** When additional services are required by the City, Contractor shall submit a quote for the required services <u>in advance</u> of commencing work, with the exception of emergency services as described in the Emergency Services section 4.2.9 or in the event described in Section 4.2.10.3.

**4.2.4.** Contractor's quote shall include the following details.

**4.2.4.1.** The specific service(s) to be performed;

**4.2.4.2.** Location where services will be performed;

**4.2.4.3.** The project schedule as determined by SVP;

**4.2.4.3.1.** The project schedule shall point out any activities and/or products or materials that may impact the project timeline, including but not limited to, lead time(s) for material sourcing; shipping and receiving delays; and any other delays.

**4.2.4.4.** Estimated cost for the requested services, including the following. Items not specified are assumed to be included in the hourly rate.

**4.2.4.4.1.** Labor costs (prevailing wage and non-prevailing wage);

**4.2.4.4.2.** Tools and materials;

**4.2.4.4.3.** Equipment;

**4.2.4.4.4.** Any additional costs including taxes and or fees where applicable; and

**4.2.4.4.5.** Total not to exceed price.

**4.2.4.5.** DIR number for any subcontractors

**4.2.5.** Items not included in the quote are assumed to be included in the hourly rate.

**4.2.6.** Where the terms of any quote are in conflict with this Agreement, the terms of this Agreement shall prevail.

**4.2.7.** All submitted pricing shall be in accordance with the rates authorized in Exhibit B of this Agreement.

**4.2.8.** The City shall review the submitted quote and, if there are no issues or concerns, approve the quote and provide written authorization (approval) for Contractor to begin work. Written authorization may only be provided by a Division Manager, Senior Division Manager, Assistant Director of the Electric Utility, Electric Utility Chief Operating Officer, or Chief Electric Utility Officer (e-mail is acceptable).

**4.2.9.** Emergency Services

**4.2.8.1.** An emergency service shall be defined as an unforeseen event, circumstance, or combination thereof that the City reasonably determines to require immediate action, presents an ongoing danger to public health and safety, and/or imperils SVP facilities and equipment.

**4.2.8.2.** Emergency services may only be authorized, in writing by an Assistant Director of the Electric Utility, Electric Utility Chief Operating Officer, or Chief Electric Utility Officer (e-mail is acceptable).

**4.2.8.3.** Emergency services may be approved verbally, where appropriate, only by the SVP staff identified above. When verbal authorization is given, Contractor shall follow up with City for written confirmation within three (3) days.

**4.2.8.4.** When emergency services are required, Contractor shall send a quote to City for the required services as soon as possible, but no later than within three (3) business days of

starting work. The quote shall be detailed in accordance with this Section 3, and shall also include any completed work.

**4.2.9.** Changes

**4.2.9.1.** Contractor shall notify the City immediately when a situation occurs that may result in a change to the quoted project cost. Contractor shall provide reason for the change specific to each work authorization.

**4.2.9.2.** In the event that unanticipated site conditions or other issues result in costs that exceed the approved quote, Contractor shall submit to the City an updated quote for review and approval from the City in advance of performing the work. Written authorization may only be provided by a Division Manager, Senior Division Manager, Assistant Director of the Electric Utility, Electric Utility Chief Operating Officer, or Chief Electric Utility Officer.

**4.2.9.3.** In the event that issues are identified that can be most efficiently and economically resolved while on site, changes may be approved verbally (in the field), by telephone, or e-mail by the following authorized individuals: Assistant Director of the Electric Utility, Electric Utility Chief Operating Officer, or Chief Electric Utility Officer. Contractor shall provide an updated quote within two (2) business days so that such changes can be documented in a written authorization within four (4) business days.

**4.3.** SVP shall not be required to pay a deposit or any other form of pre-payment prior to the Contractor beginning work.

## 5 LOCATIONS

**5.1.** Contractor shall provide the required HVAC services at the following locations.

**5.1.1.** Donald Von Raesfeld Power Plant (DVR), 850 Duane Ave. Santa Clara, CA 95054;

**5.1.2.** Fuel Gas Compressor Building, 2977 Lafayette St, Santa Clara, CA 95054;

**5.1.3.** Gianera Generating Station, 2339 Gianera St. Santa Clara, CA 95054; and

**5.1.4.** Cogeneration Plant, 524 Robert Ave, Santa Clara, CA 95050.

**5.2.** The City may require Contractor to perform HVAC services at additional City locations including, but not limited to:

**5.2.1.** SVP administrative offices, 881 Martin Avenue, Santa Clara, CA 95050; and

**5.2.2.** SVP Corp Yard, 1705 Martin Avenue, Santa Clara, CA 95050.

**5.3.** Contractor shall sign-in with Donald Von Raesfeld Power Plant control room and obtain safe work permit prior to prior to commencing work and inspections.

**5.4.** Contractor shall also be required to sign-in at the other locations specified above, however Contractor shall also notify the DVR control room staff.

## 6 LIST OF HVAC AND CHILLER EQUIPMENT

**6.1.** Donald Von Raesfeld Power Plant (DVR)

**6.1.1.** 1,170-ton York centrifugal chillers, ancillary devices and controls (2 each);

**6.1.2.** Control Building heat pumps, air handlers, ducting and controls (varying sizes/tonnages) (10 each);

**6.1.3.** Future control building heat pumps, air handlers, ducting and controls (excluded from walk down) (1 each);

**6.1.4.** RO trailer heat pumps, air handlers, ducting and controls (2 each);

**6.1.5.** Auxiliary Power Enclosure (APE) heat pumps, air handlers, ducting and controls (4 each);

**6.1.6.** Continuous Emissions Monitoring System (CEMS) building wall-mounted air conditioners (2 each); and

**6.1.7.** Chemistry lab heat pump, air handler, ducting and controls (1 each).

**6.2.** Fuel Gas Compressor (FGC) Building

**6.2.1.** Heat pumps, air handlers, ducting and controls (2 each).

**6.3.** Gianera

**6.3.1.** Control cab wall-mounted air conditioners (2 each);

**6.3.2.** Office building wall-mounted air conditioners (2 each).

**6.4.** Cogen

**6.4.1.** Control cab wall-mounted air conditioner (1 each);

**6.4.2.** Control room wall-mounted air conditioner (1 each); and

**6.4.3.** Warehouse office heat pump, air handler, ducting and controls (1 each).

## 7 REPORTING AND DOCUMENTATION

**7.1** Contractor shall provide regular status updates on services performed during the term of the agreement. Depending on work activity, status updates may be required daily, weekly, or monthly at the direction of SVP.

**7.2** Required reports may include cost and schedule updates for services Contractor is providing to the City.

7.3 Contractor shall keep records of all refrigerant removals and additions per state of California regulations.

## 8 SCHEDULE OF PERFORMANCE

8.1 Contractor shall coordinate with City staff to establish a schedule for the required HVAC and chiller services.

8.2 Contractor shall be available to provide services within thirty (30) days of request by SVP.

8.3 All services shall be completed in a timely, efficient manner so as to ensure the power plant equipment is operational as soon as possible.

8.4 With the exception of emergency services, Contractor shall perform the required services between 7:00 AM - 7:00 PM, Monday through Friday.

## 9 STAFFING REQUIREMENTS

9.1 The Contractor shall be solely responsible for selecting, hiring, employing, paying, supervising, training and discharging all personnel necessary to perform the required services.

9.2 Contractor shall ensure the following employment standards for all employees (including subcontractors) are complied with and enforced throughout the term of the contract:

9.2.1 United States of America citizenship or verified legal alien status.

9.2.2 At least eighteen (18) years of age.

9.2.3 Sufficiently fluent in English to: (a) comprehend the instructions of Contractor personnel; (b) offer the level of customer service established by the Manager; (c) understand the safety and operating instructions on any equipment used; and (d) communicate with emergency personnel during emergencies;

9.2.4 No known criminal background or record of conviction for other than minor vehicle code/traffic violations. Valets (if applicable) shall have clean driving records without recent moving violations within the last 3 years.

9.2.5 Possession of a current, valid U.S. driver's license permitting operation of a two-axle vehicle.

9.2.6 Ability to perform normal or emergency duties requiring moderate to arduous physical exertion.

9.3 Contractor shall employ only competent craftsmen/skilled workers who are appropriately trained and licensed to perform the required services.

9.4 Contractor shall be responsible for understanding and complying with any training and licensing required for the performance of the services described in this Exhibit A, including but not limited to, DOT requirements for commercial driver's license and required drug testing if applicable.

**9.5** SVP may request verification of the assigned employees' qualifications at any time. Contractor shall promptly provide such verification upon request by SVP.

**9.6** Contractor shall ensure that all its employees and agents abide by established local, state and federal safety rules and regulations.

**9.7** Contractor's employees and any subcontractors shall supply proper identification when requested by SVP.

**9.8** Contractor shall select and hire only persons who are well-qualified to perform the job duties for which they are being hired, who are neat, well-groomed, and courteous, and who can act in the utmost professional manner when interacting with City staff and the general public.

**9.9** Classification and Duties of Employees: The Contractor shall include the classifications of employee positions and the duties of each position in their proposal. Classifications may include, but are not limited to:

**9.9.1** Project Manager/General Manager: Responsible for the day-to-day management and supervision of the required services. On-site responsibilities shall also include, but not be limited to, correcting problems, managing conflicts and complaints, and overseeing work schedules, personnel, and equipment requirements.

**9.9.2** Technical/Field Personnel: Performs the required inspection, maintenance and repair services.

**9.9.3** Administrative Personnel: Assists in the administration and reporting of the required services.

**9.10** Contractor shall inform SVP immediately of any change in key personnel assigned to this project.

**9.10.1** Contractor shall submit the resumes and other qualifications of the proposed replacement employee(s) to SVP for review and approval.

**9.10.2** SVP shall not unreasonably withhold approval.

**9.11** SVP reserves the right to request the removal of any Contractor employee(s) who does not conduct themselves in a courteous, professional manner, or whose actions endanger the safety of people or property. The Contractor shall promptly respond to requests for replacement personnel.

## 10 SAFETY

**10.1** Contractor shall comply with all site-specific safety requirements and procedures including but not limited to Lockout/Tagout (LOTO), Confined Space, Fall Protection, Chemical Safety, Hazardous Waste and Personnel Protective Equipment (PPE).

**10.2** Contractor, its employees, and any subcontractors shall always act in a safe manner while on SVP property.

**10.3** The Contractor shall be responsible for creating a safe work environment for all personnel and City employees as well as for traffic control at the job site.

**10.4** Contractor's safety provisions shall be in accordance with all applicable federal, state, county, and local laws, ordinances and codes.

**10.5** Contractor shall be responsible for remaining up to date on all applicable federal, state, county, and local laws, ordinances and codes in the event they are amended. Where any amended applicable laws or ordinances are in conflict with the City's requirements, the more stringent requirement(s) shall be followed. The Contractor's failure to be thoroughly familiarized with the safety provisions shall not relieve the Contractor from compliance with the obligations and penalties resulting therefrom.

**10.6** Contractor shall provide and maintain an Injury and Illness Prevention Program (IIPP) pursuant to Title 8, Section 3203 of the California Administrative Code. The program shall include, but not be limited to, a safety training program instructing Contractor's employees in general safe work practices and shall include specific instructions with regard to hazards unique to the employee's job assignment. A copy of the Contractor's IIPP shall be submitted to the City prior to the execution of an agreement, and be made available on site upon request.

**10.7** Contractor shall provide safety training records for its employees to the City upon request.

**10.8** Contractor shall schedule periodic safety inspections to identify and correct unsafe conditions and work practices. SVP reserves the right to accompany Contractor during these inspections.

**10.9** Contractor's employees (including any subcontractors) shall not use or possess alcohol, narcotics, firearms, or drugs of any nature other than medical (for which the Contractor's employee has a current doctor's prescription) on City property and while performing services for the City. Employees using prescribed medication will not engage in any work if the medication can potentially impair the employee's ability to perform the work safely.

**10.10** Contractor's employees (including any subcontractors) shall utilize appropriate Personal Protective Equipment (PPE) and Fire Resistant (FR) clothing, as required. Contractor shall provide the required PPE and FR clothing at its own expense.

**10.11** Contractor shall immediately remove any personnel who is acting in an unsafe or dangerous manner.

**10.12** Contractor shall notify the City immediately in event of an injury or property damage that occurs during the performance of the services described in this Exhibit A. Contractor shall investigate the reported injury or damage upon request from SVP, and provide SVP with regular updates until the investigation is resolved. SVP reserves the right to perform its own

investigation. Should SVP choose to conduct its own investigation, Contractor shall assist the City as required.

**10.13** Contractor and its employees shall watch an SVP safety video once per calendar year.

## 11 EMPLOYEE TRAINING

**11.1** Contractor shall train all employees (including subcontractors) assigned to perform the required services.

**11.2** Contractor's employee training shall be at no cost to SVP.

**11.3** Contractor shall ensure that all employees (including subcontractors) who will be involved in the performance of services for SVP understand how to safely inspect, maintain, and repair systems as required for their respective positions.

**11.4** Contractor shall review its training procedures annually, and shall submit any revisions in writing to SVP.

**11.5** Contractor shall provide ongoing training at least once per year. Contractor shall ensure that all assigned employees attend this annual training.

## 12 TOOLS AND EQUIPMENT

**12.1** Contractor is responsible for identifying all tools (including any specialty tooling) and equipment necessary to perform work. SVP will not loan tools or equipment to the Contractor.

**12.2** All equipment shall be operated and well-maintained in a satisfactory condition at all times and in compliance with state and federal regulations including, but not limited to, the Occupational Safety and Health Administration (OSHA).

**12.3** SVP may suspend work where they observe that proper tools and equipment are not being used.

## 13 PROFESSIONAL BEHAVIOR

**13.1** Contractor shall be responsible for the conduct, demeanor and appearance of its employees while on or about the job site or while acting in the course and scope of employment.

**13.2** Contractor's employees shall be neat and clean, and shall act in a courteous and professional manner. No employee shall use improper language or act in a loud, offensive, or otherwise improper manner.

**13.3** Contractor's employees shall be trained as to the requirements of their positions and the importance of performing their jobs according to the SVP's instructions.

**13.4** Contractor's employees shall be all times polite and courteous in their dealings with SVP staff and members of the public, treating them with patience and respect.

**13.5** Contractor's employees shall speak clearly and in a professional manner while interacting with members of the public, offering the assistance needed by each person.

**13.6** Contractor shall submit any complaints received against it to the City immediately.

## 14 WORKMANSHIP

**14.1** The Contractor shall perform the required services in an environmentally responsible manner.

**14.2** Contractor shall assume full responsibility for the protection and safekeeping of material and tools stored at the site, and shall lock all Contractor vehicles when parked and unattended, to prevent unauthorized use. Contractor shall not leave vehicles or equipment unattended with the motor running or the ignition key in place.

**14.3** Contractor shall take all necessary precautions to protect SVP, City and private property from damage during the performance of the required services. Contractor shall be responsible for the repair of any property damaged during the performance of services. Damage to City property that cannot be repaired shall be replaced at the Contractor's sole expense, prior to issuance of payment to the Contractor by SVP. Any expenses incurred by SVP to repair property damage will be deducted from the Contractor's compensation.

**14.4** Contractor will make all reasonable efforts to minimize obstructions and inconvenience to private property owners such as, but not limited to, noise associated with testing.

**14.5** Contractor shall keep their work site(s) free from all surplus material, waste material, dirt and rubbish caused by Contractor's performance of services.

**14.6** Contractor shall leave the work site in a neat and orderly condition. All clean-up work will be done to the satisfaction of the City, and at the sole expense of Contractor.

**14.7** SVP shall have the right to inspect any work performed by the Contractor and any subcontractors. Should the City determine upon inspection any unsatisfactory or defective work, the Contractor shall immediately correct the work at no additional cost to SVP.

**14.8** SVP shall not perform any work for Contractor except in an emergency situation or as determined necessary by the City such as, but not limited to adequately protect the SVP's electrical or other facilities or to restore work area to a safe condition. SVP will be reimbursed for any work done for the Contractor (deduction from the Contract or invoice to Contractor at the sole discretion of SVP). This will include all costs (direct straight time or

overtime wages, all overhead, administration, engineering, vehicle, and equipment costs).

## EXHIBIT B
## SCHEDULE OF FEES AND PAYMENT PROVISIONS

### 1. MAXIMUM COMPENSATION

The maximum amount of compensation to be paid to Contractor during the Initial Term of this Agreement shall not exceed seven hundred fifty thousand dollars ($750,000).

### 2. RATES

**2.1.** Annual HVAC Inspection and Maintenance

**2.1.1.** Contractor shall perform three (3) quarterly HVAC inspections, and one (1) annual HVAC inspection each year.

**2.1.2.** Total annual cost for the inspections is $18,589.

**2.1.3.** Costs shall be billed quarterly after each inspection.

**2.2.** Annual Chiller Inspection and Maintenance

**2.2.1.** Contractor shall perform three (3) quarterly chiller inspections, and one (1) annual chiller inspection each year.

**2.2.2.** Total annual cost for the inspections is $25,582.

**2.2.3.** Costs shall be billed quarterly after each inspection.

**2.3.** Additional Services

**2.3.1.** Any additional services required by the City shall be performed at the hourly rates listed in Table B1 below

Table B1 - Hourly Rates

| Labor | Hourly Rate |
|---|---|
| Standard Time | $207/HR |
| Overtime | $269/HR |
| Double Time and Holidays | $349/HR |

**2.4.** Definitions:

**2.4.1.** Straight time: Monday through Friday, 6 AM – 4 PM (up to eight (8) hours).

**2.4.2.** Overtime:

**2.4.2.1.** Any hours worked above eight (8) straight time hours, Monday – Friday; and

**2.4.2.2.** Any hours worked on Saturdays.

**2.4.3.** Double Time:

**2.4.3.1.** Sundays and holidays (Contractor shall provide its most updated holiday schedule to the City).

## 3. REIMBURSABLE EXPENSES

**3.1.** Contractor may submit invoices for reimbursement of expenses set forth below, subject to the following conditions.

**3.2.** Expenses shall be reimbursable only to the extent that the Contractor submits sufficient documentation to City that the expenses were directly incurred in providing the required services and that such expenses aren't included in fixed or hourly rates.

**3.3.** The following expenses shall be reimbursable by City.

**3.3.1.** Travel-related expenses (mileage, lodging, meals, etc.);

**3.3.1.1.** Unless approved in writing (e-mail acceptable) in advance, meals, lodging, and related Per Diem shall not exceed the rates outlined by United States General Services Administration (GSA).

https://www.gsa.gov/travel-resources

**3.3.1.2.** City shall not reimburse local travel (within Santa Clara County).

**3.3.2.** The rental of any specialized equipment to the extent City has preapproved, in writing, the cost of such rental.

**3.3.3.** The cost of mailing, shipping and/or delivery of any documents or materials on behalf of City.

**3.3.4.** Any other expenses expressly identified as being reimbursable.

**3.4.** Except as specified above, City will reimburse these expenses at actual cost only.

**3.5.** An estimate of reimbursable expenses shall be included in each quote.

## 4. INVOICING

**4.1.** Contractor shall submit an invoice to City upon the completion of services, pursuant to this Agreement.

**4.2.** Each invoice shall include the tasks performed and the costs for each task with sufficient information for the City to verity that services were provided at the rates specified in this Agreement.

**4.3.** If City disputes an expense in an invoice, City may deduct the disputed expense from the payment of that invoice, provided that City submits to Contractor a written explanation of why the expense is being disputed.

## 5. PAYMENT TO CONTRACTOR

**5.1.** City shall review the invoice submitted by Contractor and shall notify Contractor of any discrepancies or deficiencies in said invoice.

**5.2.** If there are no discrepancies or deficiencies in the submitted invoice and Contractor has submitted all required Certified Payroll, City shall process the invoice for payment.

## 6. RENEWAL PERIOD COMPENSATION

**6.1.** Pursuant to Section 2 of this Agreement, City reserves the right to extend the term of this Agreement for five (5) additional one-year terms ("Option Periods").

**6.2.** All pricing shall be firm fixed for the first two (2) years of the Agreement.

**6.3.** Contractor may request adjustments to the compensation rates beginning in year 3 of this Agreement and including option periods.

**6.3.1.** Contractor shall notify City ninety (90) days in advance of any proposed rate increase.

**6.3.2.** The Contractor must demonstrate to the satisfaction of the City that a price increase is warranted.

**6.3.3.** City approval or denial of the requested rate adjustment will be provided in writing (e-mail acceptable).

**6.3.4.** Rate adjustments may be requested no more than once per calendar year.

## EXHIBIT C
## INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

   $2,000,000 each occurrence
   $2,000,000 General aggregate
   $2,000,000 Products/Completed Operations aggregate
   $2,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:

   a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

   b. There shall be no cross-liability exclusion which precludes coverage for claims or suits by one insured against another; and

   c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars ($1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated

wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars ($2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars ($1,000,000) policy limit Bodily Injury by disease, one million dollars ($1,000,000) each accident/Bodily Injury and one million dollars ($1,000,000) each employee Bodily Injury by disease.

2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Contractor. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars ($1,000,000) per claim or two million dollars ($2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85

or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);

4. Cancellation.

   a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

   b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to

limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

| | | |
|---|---|---|
| EBIX Inc.<br>City of Santa Clara<br>P.O. Box 100085 – S2<br>Duluth, GA 30096 | or | 1 Ebix Way<br>John's Creek, GA 30097 |

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

## EXHIBIT D
## NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

| | |
|---|---|
| **AGREEMENT TITLE:** | Agreement for Services Between the City of Santa Clara, and Mesa Energy Systems, Inc. |
| **CONTRACTOR:** | |
| **DATE:** | |

(*Date the notice is sent must be consistent with the time for exercise set forth in Agreement*)

Pursuant to Section 2B of the Agreement referenced above, the City of Santa Clara hereby exercises its option to extend the term under the following provisions:

| | |
|---|---|
| **OPTION NO.** | # of # |

**NEW OPTION TERM**

| | |
|---|---|
| Begin date: | |
| End date: | |

☐ **CHANGES IN RATE OF COMPENSATION**

| | |
|---|---|
| Percentage change in CPI upon which adjustment is based: | |

Pursuant to Section ___ of the Agreement the rates of compensation are hereby adjusted as follows:
(use attachment if necessary)

| | |
|---|---|
| **MAXIMUM COMPENSATION for New Option Term:** | |

For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Santa Clara hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

Dated: _____

Approved as to Form:

_____
City Attorney's Office

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

# LABOR COMPLIANCE ADDENDUM

| | |
|---|---|
| **Agreement Name:** | Agreement for Services Between the City of Santa Clara, and Mesa Energy Systems, Inc. |
| **CONTRACTOR (Supplier) Name and Address** | |

This Agreement is subject to the requirements of California Labor Code section 1720 et seq. requiring the payment of prevailing wages, the training of apprentices, and compliance with other applicable requirements.

## A. PREVAILING WAGE REQUIREMENTS

1. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate, which can be found at www.dir.ca.gov, which shall be available to any interested party upon request. Contractor is also required to have a copy of the applicable wage determination posted and/or available at each job site.

2. Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime must be paid for work in excess of 8 hours per day or 40 hours per week pursuant to Labor Code Section 1811-1813.

3. Special prevailing wage rates generally apply to work performed on weekends, holidays and for certain shift work. Depending on the location of the project and the amount of travel incurred by workers on the project, certain travel and subsistence payments may also be required. Contractors and subcontractors are on notice that information about such special rates, holidays, premium pay, shift work and travel and subsistence requirements can be found at www.dir.ca.gov.

4. Only bona fide apprentices actively enrolled in a California Division of Apprenticeship Standards approved program may be employed on the

project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are not properly supervised and employed in the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.

5. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, Contractor agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. Contractor shall submit certified payroll through LCPTracker or similar system as directed by the City. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by the City or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.

6. In addition to submitting the certified payrolls and related documentation to City, Contractor and all subcontractors shall be required to submit certified payroll records and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and/or final payment.

7. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

8. No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered "public works contractor" with the DIR AT THE TIME OF BID. Where the prime contract is less than $15,000 for maintenance work or less than $25,000 for construction alternation, demolition or repair work, registration is not required.

9. All contractors/subcontractors and related construction services subject to prevailing wage, including but not limited to: trucking, surveying and inspection work must be registered with the Department of Industrial Relations as a "public works contractor". Those who fail to register and maintain their status as a public works contractor shall not be permitted to perform work on the project.

10. Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the City for any fines assessed by the California Department of Industrial Relations against the City for such violation, including all staff costs and attorney's fee relating to such fine.

11. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

## B. AUDIT RIGHTS

All records or documents required to be kept pursuant to this Agreement to verify compliance with this Addendum shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be made available at Contractor's address indicated for receipt of notices in this Agreement.

## C. ENFORCEMENT

1. City shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., City may continue to hold sufficient funds to cover estimated wages and penalties under the Agreement.

2. Based on State funding sources, this project may be subject to special labor compliance requirements of Proposition 84.

3. City is not obligated to make any payment due to Contractor until Contractor has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of this Addendum.

4. City or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to $200 per day per

worker for each wage violation identified; $100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and $25 per day per worker for any overtime violation.