EBIX Insurance No. S200005423

AGREEMENT FOR SERVICES BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA, AND ADVANCED LIGHTING SERVICES, INC.

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Advanced Lighting Services, 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 B1 – Compensation

Exhibit B2 – Rate Schedule

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum

Exhibit E – Notices of Exercise of Option Extend Agreement Form

Exhibit F – Work Authorization Form

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 on July 17, 2024 and terminate on July 31, 2026.

B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for up to one (1) additional one-year term through July 31, 2027 ("Option Period"), subject to the budget appropriation. See Exhibit E 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

Contractor shall be paid in accordance with Exhibits B1 ("COMPENSATION") and B2 ("RATE SCHEDULE").

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 Department of Public Works - Facilities
Attention: Ken Winland
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at kwinland@santaclaraca.gov

And to Contractor addressed as follows:

Advanced Lighting Services, Inc.
Attention: David Taylor
6681 Sierra Lane
Suite A
Dublin, CA 94568
and by e-mail at admin@advancedlightingservices.com

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:

GLEN R. GOOGINS
City Attorney

Dated: 7/24/24

JOVAN D. GROGAN
City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

ADVANCED LIGHTING SERVICES, INC.
a California corporation

Dated:
By (Signature):
Name: B. David Taylor
Title: President
Principal Place of Business Address: 6681 Sierra Lane
Suite A
Dublin, CA 94568
Email Address: admin@advancedlightingservices.com
Telephone: (925) 829-7801 / (510) 773-8973
Fax: (925) 829-7805

"CONTRACTOR"

EXHIBIT A
SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are set forth below.

The Scope of Services, including Exhibit A, Contractor's proposal response dated April 12, 2024 provide context, supplemental information, and are incorporated by reference to the extent not inconsistent with the Agreement.

1. GENERAL

1.1. Contractors shall provide light-emitting diode (LED) lighting retrofit or replacement services for buildings citywide, including all labor, materials, equipment, and tools required, in support of the Department of Public Works Facilities Division (Facilities).

1.2. Contractor shall work corroboratively with staff to plan and implement the retrofit or replacement schedule. The City may add or remove buildings or areas at its discretion.

2. BACKGROUND

2.1. California Bill AB2208, signed into law in September 2022, bans the sale and distribution of fluorescent bulbs in California starting from January 1, 2024. The bill specifically targets screw or *bayonet base type compact fluorescent lamps, with a phase-out of pin-base type compact fluorescent lamps starting from January 1, 2025.

2.2. The City has numerous office buildings with 2', 4' and 8' fluorescent t-8 fixtures that will need to be retrofitted or replaced. These buildings such as City Hall, Libraries, Police Department, Senior Center, Corporation Yard, etc. will include some public areas and some office areas.

3. GENERAL SCOPE REQUIREMENTS

3.1. Contractor shall provide services to (1) retrofit existing fixtures with LED or (2) replace fixture with new LED fixture that is like size, shape, and finish. All lighting must be an equivalent or greater than existing lighting output.

3.2. Upon execution of contract Contractor shall schedule a project kickoff meeting with the City Project Manager, which will include the following at a minimum:

3.2.1. Project plan review

3.2.2. Meeting schedule for project

3.2.3. Identify all key project personnel for Contractor and City

3.2.4. Establish lines of communication

3.2.5. Schedule time for site walks to complete and provide an assessment of lighting fixtures at City sites to confirm light retrofit and/or light fixture replacement count data. The assessment shall be completed and approved by the City prior to work commencing.

3.3. Contractor shall coordinate all activities regarding rebates with Silicon Valley Power.

3.4. The City will **not pay for trip charges or fuel surcharges**.

3.5. Contractor shall comply with all applicable federal, state, and local statutes, instructions, guidelines, regulations, policies, and rules (including all changes and amendments), related to services specified herein.

3.6. All work shall be performed in a professional manner within the standards of the industry and original equipment manufacturer of equipment, using proper equipment, methods, materials, and personnel. Damage to City property resulting from the services provided shall be repaired or items replaced by Contractor to the satisfaction of the City at no expense to the City in a timely manner.

3.7. Contractor shall be responsible for all training and certification of their staff engaged in the performance of the services specified herein.

3.8. All contractor vehicles shall contain signage that includes contractor's company name on both left and right sides of each vehicle. The markings shall be sufficient for City staff to clearly identify contractor when they are on City property.

3.9. Contractor shall adhere to all applicable local, state, and federal health and safety polices and regulations when performing services for the City of Santa Clara.

4. WORK AUTHORIZATION PROCESS

Contractor acknowledges that Contractor is one of two firms selected to the perform the Services, pursuant to two (2) separate agreements (collectively, the "LED Lighting Retrofit and Replacement Project Agreements"). Specific will be assigned as set forth below.

4.1. Assessment and Proposal: After completion of a site assessment Contractor shall prepare and provide to the City Project Manager a site assessment report and proposal to complete the work. The proposal shall include:

4.1.1. A work plan that includes a detailed description by task of the services to be performed including a breakout of fixtures that require replacement or retrofit,

4.1.2. A project timeline/schedule with discussion on any activities that may impact the project timeline/schedule.

4.1.3. A list of City responsibilities.

4.1.4. A final acceptance criteria.

4.1.5. An itemized cost proposal showing:

4.1.5.1. Hours and hourly rates as listed in Exhibit B2.

4.1.5.2. Bulbs

4.1.5.3. Fixtures

4.1.5.4. Miscellaneous parts/materials

4.1.6. All submitted pricing shall be in accordance with the prices/rates authorized in Exhibit B2 of this Agreement and the Proposal shall include sufficient information for the City to determine the rates are in accordance with the Agreement.

4.1.7. Costs for any additional equipment, parts, or services required for the completion of the work as detailed in Contractor's proposal but not reflected in the Contractor's cost proposal shall be the responsibility of the Contractor and at no additional cost to the City.

4.2. Award of Work:

4.2.1. The City will review proposals received from both Contractors awarded LED Lighting Retrofit and Replacement Project Agreements.

4.2.2. Award will be based on the lowest total cost and most advantageous project timeline.

4.3. Work Authorization

4.3.1. If the completion of the work in the Proposal will not result in total costs (including all previously authorized work) exceeding the maximum compensation in Section 1 of Exhibit B1 of the Agreement, services may be authorized as set forth in this Section.

4.3.2. Work Authorization shall be issued in substantially the same format as Exhibit F. Each Work Authorization shall describe the work and deliverables the Contractor must provide, the time limit within the

Contractor must complete the work and deliverables, the completion acceptance criteria, warranty provisions, and the compensation total for the work.

4.3.3. Subject to the terms and conditions of this Agreement Contractor and City will negotiate the specific scope and requirements of each Work Authorization. Upon execution by the Parties, the Work Authorization shall become an Approved Work Authorization.

4.3.4. Each Approved Work Authorization shall have a purchase order attached to it.

4.3.5. Only the City's Facilities Manager, Assistant Director of Public Works, or Director of Public Works may, on behalf of the City, execute a Work Authorization. Purchase orders are issued by the Finance Department.

4.3.6. Contractor shall not begin work and the City will not compensate the Contractor until the City has executed the Work Authorization for such work where applicable ("Approved Work Authorization") and issued a purchase order.

4.3.7. An Approved Work Authorization must be consistent with – and cannot alter – the terms and conditions of this Agreement. The terms and conditions of this Agreement shall prevail over any and all terms and conditions contained in an Approved Work Authorization – even if the Approved Work Authorization expressly states that it is intended to control. Any conflicting terms and conditions in an Approved Work Authorization are invalid and unenforceable.

4.4. Changes to Work Authorization

4.4.1. Contractor shall notify the City immediately when a situation occurs that may result in a change to the total project cost specific line items in an Approved Work Authorization or purchase order. Contractor shall provide the reason for the change specific to each Approved Work Authorization or purchase order.

4.4.2. If Contractor requires changes to a fixed price Work Authorization, Contractor shall only be permitted to request changes with justification such as additional scope requested by City or unanticipated field conditions. For such changes, Contractor shall submit justification demonstrating that changes in cost are associated with changes in scope. Contractor shall not be entitled to additional compensation for issues such as errors in calculation of original pricing, changes in staff, or other changes that are not directly related to changes requested by the City.

4.4.3. In the event that unanticipated site conditions or other issues result in costs that exceed the Approved Work Authorization or changes to line items in an Approved Work Authorization or purchase order, Contractor shall submit to the City an updated Proposal for review and approval from the City in advance of performing the work. The City will issue a new or amended Work Authorization or purchase order (as applicable) to authorize such additional Services. Each changed Work Authorization and purchase order shall amend the Services and be incorporated into the Services by reference.

4.5. Each Approved Work Authorization and purchase order shall be incorporated into the Agreement by reference and subject to the terms and conditions and the Services contained therein shall be included within the Services.

4.6. Proposals, pricing, and quotes are not confidential and will not be treated as confidential even if marked confidential when submitted.

4.7. Contractor shall not initiate work before a Work Authorization has been approved and/or a purchase order has been issued and the City has directed Contractor to perform Services.

5. STAFF QUALIFICATIONS

5.1. Contractor shall designate a project manager and an onsite supervisor to be assigned to the City and be available during the entire length of the contract. The project manager shall serve as the City's main point of contact for all matters and shall obtain the City's Project Manager to use personnel that were not submitted. The City also reserves the right to request a different project manager and/or Contractor's personnel to be assigned at any time during the length of the contract.

5.2. All Contractor's personnel shall be fully trained and qualified to perform the services specified herein.

5.3. City reserves the right to conduct background checks on all employee's assigned to the City.

5.3.1. Additionally, there will be a separate background check for Contractor's employees assigned to sites for the Santa Clara Police Department (SCPD). This background check will be conducted by SCPD.

6. STORAGE FACILITIES, EQUIPMENT, AND SPARE MATERIALS

Contractor shall maintain adequate storage at their own facilities to perform this contract, including a sufficient stock of materials required to complete the project. The City will work with Contractor on potential storage solutions.

7. MEETINGS

Contractor shall be available to meet, when deemed necessary, with City staff at a mutually agreed upon time and place to review and discuss any items related to all work performed under this contract.

8. GENERAL REQUIREMENTS

Contractor shall provide services to (1) retrofit existing fixtures with LED (this option includes disconnecting the existing ballast) or (2) replace fixture with new LED fixture that is like size, shape, and finish. All lighting must be an equivalent or greater than existing lighting output.

9. WORKMANSHIP/PERFORMANCE

9.1. Contractor shall warrant all work provided against any defects in workmanship or product and shall satisfactorily correct, at no cost to the City, any such defect that may become apparent within a period of one year after completion of work. The warranty period shall commence upon date of acceptance by the City.

9.1.1. In the event of failure, Contractor shall respond within 24 hours of City contacting Contractor.

9.1.2. Warranty shall cover all labor, travel, parts, shipping, etc.

10. WARRANTY REQUIREMENTS FOR PRODUCTS

10.1. The warranty period for all products shall be for a period of one (1) year, or within the manufacturers' warranty, whichever is the later period. The warranty period shall commence upon date of acceptance by the City.

10.2. Warranty shall cover all parts, shipping, travel, and labor. Warranty response and correction shall be a priority for the Contractor and issues addressed and completed within a reasonable time frame as agreed to by the City and Contractor.

11. REPORTING REQUIREMENTS

Contractors shall submit to the City a monthly activity report identifying all work completed and the locations of the work. The City may change reporting frequency, at its discretion.

EXHIBIT B1
COMPENSATION

1. MAXIMUM COMPENSATION

1.1. The maximum compensation shall be as set forth in each Approved Work Authorization (Maximum Work Authorization Compensation). No services will be performed unless both Parties execute an Approved Work Authorization outlining the services requested and the compensation agreed for such services.

1.2. Contractor shall fully complete all work required by the Approved Work Authorization for no more than the maximum work authorization compensation.

1.3. City shall only be liable for charges expressly authorized in the Approved Work Authorization.

1.4. As specified in Section 4 of Exhibit A ("SCOPE OF SERVICES"), Contractor is one of two firms selected to perform the Services, pursuant to two (2) separate agreements (collectively, the "LED Lighting Retrofit and Replacement Project Agreements"). Under no circumstance shall the total compensation for all Approved Work Authorizations to both firms exceed the total compensation of $500,000 approved by City Council on July 16, 2024.

2. RATES

Compensation under each Work Authorization and/or purchase order shall be in accordance with the rates set forth herein.

2.1. Contractor shall submit proposals/invoice for all Services at the rates listed in Exhibit B2 ("Rate Schedule") herein.

2.2. Rates listed in Exhibit B2 are fully burdened and will remain fixed for the initial two-year term of the Agreement.

2.3. Rate Increase: Rate adjustments may be requested prior to one-year option to renew the contract after the initial term. Rate increase requests must be tied to prevailing wage, CPI, PPI, or relevant industry specific index. Rate adjustments are subject to City's approval.

3. INVOICE REQUIREMENTS

3.1. Contractor shall invoice the City at the completion of each project and in a format approved by the City. City shall pay Contractor within thirty (30) days of City's receipt of an approved invoice.

3.2. Invoice shall include at a minimum the following:

3.2.1. Approved Work Authorization Number

3.2.2. Date of Service

3.2.3. Project/Service Description

3.2.4. Address of Serviced Location

3.2.5. Part Description

3.2.6. Unit Price/Hourly Rate

3.2.7. Quantity/Number of Hours

3.2.8. Etc.

EXHIBIT B2

RATE SCHEDULE

1. RATES

1.1. Contractor shall charge, and the City shall pay for actual services rendered and authorized according to the process outlined in Section 4 of Exhibit A. The rates applicable for the services are listed below in Table B2-1.

1.2. In cases where services are required but not listed below, Contractor shall submit rates for approval but the City in advance, in writing before performing services. For avoidance of doubt, any changes to the rates in Table B2-1 must be authorized in accordance with Section 2.2 of Exhibit B1. Rate changes are not permitted as part of the Work Authorization process.

Table B2-1: Rates

Labor Cost for Lamp Retrofit	
Description	**Labor Rate Per Bulb**
2' Bulb	$18.50
2' Bulb U Bend Bulb	$18.50
3' Bulb	$18.50
4' Bulb	$18.50
8' Bulb	$18.50
Labor Cost for Fixture Replacement	
Description	**Labor Rate Per Bulb/Fixture**
2' - 1 Bulb	$165.00
2' - 2 Bulb	$165.00
2' - 2 U Bend Bulb	$165.00
3' - 1 Bulb	$165.00
4' - 1 Bulb	$165.00
4' - 2 Bulb	$165.00
4' - 3 Bulb	$165.00
4' - 4 Bulb	$165.00
8' - 2 Bulb	$165.00
Price for Bulbs and Other Items	
Description	**Unit Price**
2' Bulb	$6.30
2' Bulb U Bend Bulb	$29.50
3' Bulb	$6.35
4' Bulb	$5.85
8' Bulb	$17.50
Sockets/Lamp Holders	$2.80
2' Bulb Lamp Recycling Fee	$0.38

Description	Unit Price
2' Bulb U Bend Bulb Lamp Recycling Fee	$1.75
3' Bulb Lamp Recycling Fee	$0.55
4' Bulb Lamp Recycling Fee	$0.75
8' Bulb Lamp Recycling Fee	$1.75
Keystone 2' Fixture Strip	$38.00
Keystone 2' Fixture 2x2 U Bend	$54.00
3' Fixture Strip	$38.00
4' Fixture Strip 1x4	$58.00
8' Fixture Strip	$74.00
Cost Markup % Miscellaneous Materials/Hardware	
Description	**Markup %**
Miscellaneous Hardware	15%
Miscellaneous Materials	10%
Hourly Rate for As-Needed Services	
Description	**Hourly Rate**
Standard Rate	$198.00

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:

   $1,000,000 Each Occurrence
   $2,000,000 General Aggregate
   $2,000,000 Products/Completed Operations Aggregate
   $1,000,000 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. 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. 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.

4. 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.

E. 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.

F. 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.

G. 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 emailed to:

ctsantaclara@ebix.com

Or mailed to:

EBIX Inc.
City of Santa Clara Department of Public Works – Facilities Division
P.O. Box 100085 – S2
Duluth, GA 30096

Telephone number: 951-766-2280
Fax number: 770-325-0409

H. 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
LABOR COMPLIANCE ADDENDUM

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.

I. 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 and are on file with the City Clerk's office, 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. 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 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 you 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.

J. 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.

K. 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. The 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 the 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.

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.

EXHIBIT E
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE:	
CONTRACTOR:	
DATE:	

Pursuant to Section __ 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:

_____
GLEN R. GOOGINS
City Attorney

_____
JŌVAN D. GROGAN
City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

EXHIBIT F
SAMPLE WORK AUTHORIZATION FORM

This work authorization ("Work Authorization") is made pursuant to the Agreement for Service between the City of Santa Clara and Advanced Lighting Services, Inc. ("Agreement"). This Work Authorization is governed by the provisions of the Agreement and is hereby incorporated into that Agreement by reference. All Services shall be using the terms and rates included in the Agreement. In the event of any inconsistency between the terms and conditions of the Work Authorization and the Agreement, the terms and conditions of the Agreement shall govern and control.

PART A: GENERAL INFORMATION

WORK AUTHORIZATION NUMBER:		☐ Original ☐ First Revised ☐ Second Revised ☐ Other_____
Contract No.		
Contractor Name/Address:		
Expiration Date of Agreement:		
Contractor's Project Manager:	**Name:**	**Email:**
City's Project Manager	**Name:**	**Email:**
Period of Performance for this Work Order:	**Start Date:**	**Expected Completion Date:**
Maximum Compensation for this Work Authorization		
Contractor Representative Name (Print)		
Contractor Representative Signature		
Contractor Representative Signature Date		
City Project Manager Name (Print)		
Authorized City Representative (Print)		
City Representative Signature		
City Representative Signature Date		
** Authorized City Representatives include Public Works Facilities Manager, Public Works Director*		

PART B: SERVICES TO BE PERFORMED

1. REVISED WORK AUTHORIZATION

☐ No

☐ If yes, provide a brief description of the change(s).

2. SCOPE OF SERVICES TO BE PERFORMED

The Contractor shall perform the service(s) described below in accordance with all of the terms and conditions of the Agreement. (Insert a detailed Scope of Services below or attach as a separate file.) Scope of Services and cost proposal shall meet all of the provisions of Exhibit A and Exhibits B1 and B2.

3. COMPENSATION

a. **Basis of Compensation:** ☐ Time & Materials ☐ Fixed Fee

b. **Payment Schedule:**
☐ Monthly ☐ Completion of Deliverable/Milestone ☒ Completion of Services

c. **Payment Terms.** See Exhibit B1 for payment of terms.

4. ACCEPTANCE CERTIFICATE

☐ Acceptance Certificate not required.

☐ Acceptance Certificate required.

EBIX Insurance No. S200005416

AGREEMENT FOR SERVICES BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA, AND AMERICAN POWER SOLUTIONS, INC.

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and American Power Solutions, 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 B1 – Compensation

Exhibit B2 – Rate Schedule

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum

Exhibit E – Notice of Exercise of Option to Extend Agreement Form

Exhibit F – Work Authorization Form

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 Initial Term of this Agreement shall begin on July 17, 2024 and terminate on July 31, 2026.

B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for up to one (1) additional one-year term through July 31, 2027 ("Option Period"), subject to the budget appropriation. See Exhibit E 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 and 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

Contractor shall be paid in accordance with Exhibits B1 ("COMPENSATION") and B2 ("RATE SCHEDULE").

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 Department of Public Works - Facilities
Attention: Ken Winland
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at kwinland@santaclaraca.gov

And to Contractor addressed as follows:

American Power Solutions
Attention: Charleen White
14355 Industry Circle
La Mirada, CA 90638
and by e-mail at charleen@americanpowersolutions.com

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:

GLEN R. GOOGINS
City Attorney

Dated: 7/24/24

JŌVAN D. GROGAN
City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

AMERICAN POWER SOLUTIONS, INC.
a California corporation

Dated: 07/16/2024
By (Signature):
Name: Peter Yoon
Title: President
Principal Place of Business Address: 14355 Industry Circle
La Mirada, CA 90638
Email Address: peter@americanpowersolutions.com
Telephone: (714) 626-0300
Fax: (714) 626-0200

"CONTRACTOR"

EXHIBIT A
SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are set forth below.

The Scope of Services, including Exhibit A, Contractor's proposal response dated April 5, 2024 provide context, supplemental information, and are incorporated by reference to the extent not inconsistent with the Agreement.

1. GENERAL

1.1. Contractors shall provide light-emitting diode (LED) lighting retrofit or replacement services for buildings citywide, including all labor, materials, equipment, and tools required, in support of the Department of Public Works Facilities Division (Facilities).

1.2. Contractor shall work with City staff to plan and implement the retrofit or replacement schedule. The City may add or remove buildings or areas at its discretion.

2. BACKGROUND

2.1. California Bill AB2208, signed into law in September 2022, bans the sale and distribution of fluorescent bulbs in California starting from January 1, 2024. The bill specifically targets screw or *bayonet base type compact fluorescent lamps, with a phase-out of pin-base type compact fluorescent lamps starting from January 1, 2025.

2.2. The City has numerous office buildings with 2', 4' and 8' fluorescent t-8 fixtures that will need to be retrofitted or replaced. These buildings such as City Hall, Libraries, Police Department, Senior Center, Corporation Yard, etc. will include some public areas and some office areas.

3. GENERAL SCOPE REQUIREMENTS

3.1. Contractor shall provide services to (1) retrofit existing fixtures with LED or (2) replace fixture with new LED fixture that is like size, shape, and finish. All lighting must be an equivalent or greater than existing lighting output.

3.2. Upon execution of contract Contractor shall schedule a project kickoff meeting with the City Project Manager, which will include the following at a minimum:

3.2.1. Project plan review

3.2.2. Meeting schedule for project

3.2.3. Identify all key project personnel for Contractor and City

3.2.4. Establish lines of communication

3.2.5. Schedule time for site walks to complete and provide an assessment of lighting fixtures City sites to confirm light retrofit and/or light fixture replacement count data. The assessment shall be completed and approved by the City prior to work commencing.

3.3. Contractor shall coordinate all activities regarding rebates with Silicon Valley Power.

3.4. The City will **not pay for trip charges or fuel surcharges**.

3.5. Contractor shall comply with all applicable federal, state, and local statutes, instructions, guidelines, regulations, policies, and rules (including all changes and amendments), related to services specified herein.

3.6. All work shall be performed in a professional manner within the standards of the industry and original equipment manufacturer of equipment, using proper equipment, methods, materials, and personnel. Damage to City property resulting from the services provided shall be repaired or items replaced by Contractor to the satisfaction of the City at no expense to the City in a timely manner.

3.7. Contractor shall be responsible for all training and certification of their staff engaged in the performance of the services specified herein.

3.8. All contractor vehicles shall contain signage that includes contractor's company name on both left and right sides of each vehicle. The markings shall be sufficient for City staff to clearly identify contractor when they are on City property.

3.9. Contractor shall adhere to all applicable local, state, and federal health and safety polices and regulations when performing services for the City of Santa Clara.

4. WORK AUTHORIZATION PROCESS

Contractor acknowledges that Contractor is one of two firms selected to the perform the Services, pursuant to two (2) separate agreements (collectively, the "LED Lighting Retrofit and Replacement Project Agreements"). Specific will be assigned as set forth below.

4.1. Assessment and Proposal: After completion of a site assessment Contractor shall prepare and provide to the City Project Manager a site assessment report and proposal to complete the work. The proposal shall include:

4.1.1. A work plan that includes a detailed description by task of the services to be performed including a breakout of fixtures that require replacement or retrofit,

4.1.2. A project timeline/schedule with discussion on any activities that may impact the project timeline/schedule.

4.1.3. A list of City responsibilities.

4.1.4. A final acceptance criteria.

4.1.5. An itemized cost proposal showing:

4.1.5.1. Hours and hourly rates as listed in Exhibit B2.

4.1.5.2. Bulbs

4.1.5.3. Fixtures

4.1.5.4. Miscellaneous parts/materials

4.1.6. All submitted pricing shall be in accordance with the prices/rates authorized in Exhibit B2 of this Agreement and the Proposal shall include sufficient information for the City to determine the rates are in accordance with the Agreement.

4.1.7. Costs for any additional equipment, parts, or services required for the completion of the work as detailed in Contractor's proposal but not reflected in the Contractor's cost proposal shall be the responsibility of the Contractor and at no additional cost to the City.

4.2. Award of Work:

4.2.1.1. The City will review proposals received from both Contractors awarded LED Lighting Retrofit and Replacement Project Agreements.

4.2.1.2. Award will be based on the lowest total cost and most advantageous project timeline.

4.3. Work Authorization

4.3.1. If the completion of the work in the Proposal will not result in total costs (including all previously authorized work) exceeding the maximum compensation in Section 1 of Exhibit B1 of the Agreement, services may be authorized as set forth in this Section.

4.3.2. Work Authorization shall be issued in substantially the same format as Exhibit F. Each Work Authorization shall describe the work and

deliverables the Contractor must provide, the time limit within the Contractor must complete the work and deliverables, the completion acceptance criteria, warranty provisions, and the compensation total for the work.

4.3.3. Subject to the terms and conditions of this Agreement Contractor and City will negotiate the specific scope and requirements of each Work Authorization. Upon execution by the Parties, the Work Authorization shall become an Approved Work Authorization.

4.3.4. Each Approved Work Authorization shall have a purchase order attached to it.

4.3.5. Only the City's Facilities Manager, Assistant Director of Public Works, or Director of Public Works may, on behalf of the City, execute a Work Authorization. Purchase orders are issued by the Finance Department.

4.3.6. Contractor shall not begin work and the City will not compensate the Contractor until the City has executed the Work Authorization for such work where applicable ("Approved Work Authorization") and issued a purchase order.

4.3.7. An Approved Work Authorization must be consistent with – and cannot alter – the terms and conditions of this Agreement. The terms and conditions of this Agreement shall prevail over any and all terms and conditions contained in an Approved Work Authorization – even if the Approved Work Authorization expressly states that it is intended to control. Any conflicting terms and conditions in an Approved Work Authorization are invalid and unenforceable.

4.4. Changes to Work Authorization

4.4.1. Contractor shall notify the City immediately when a situation occurs that may result in a change to the total project cost specific line items in an Approved Work Authorization or purchase order. Contractor shall provide the reason for the change specific to each Approved Work Authorization or purchase order.

4.4.2. If Contractor requires changes to a fixed price Work Authorization, Contractor shall only be permitted to request changes with justification such as additional scope requested by City or unanticipated field conditions. For such changes, Contractor shall submit justification demonstrating that changes in cost are associated with changes in scope. Contractor shall not be entitled to additional compensation for issues such as errors in calculation of original pricing, changes in staff, or other changes that are not directly related to changes requested by the City.

4.4.3. In the event that unanticipated site conditions or other issues result in costs that exceed the Approved Work Authorization or changes to line items in an Approved Work Authorization or purchase order, Contractor shall submit to the City an updated Proposal for review and approval from the City in advance of performing the work. The City will issue a new or amended Work Authorization or purchase order (as applicable) to authorize such additional Services. Each changed Work Authorization and purchase order shall amend the Services and be incorporated into the Services by reference.

4.5. Each Approved Work Authorization and purchase order shall be incorporated into the Agreement by reference and subject to the terms and conditions and the Services contained therein shall be included within the Services.

4.6. Proposals, pricing, and quotes are not confidential and will not be treated as confidential even if marked confidential when submitted.

4.7. Contractor shall not initiate work before a Work Authorization has been approved and/or a purchase order has been issued and the City has directed Contractor to perform Services.

5. STAFF QUALIFICATIONS

5.1. Contractor shall designate a project manager and an onsite supervisor to be assigned to the City and be available during the entire length of the contract. The project manager shall serve as the City's main point of contact for all matters and shall obtain the City's Project Manager to use personnel that were not submitted. The City also reserves the right to request a different project manager and/or Contractor's personnel to be assigned at any time during the length of the contract.

5.2. All Contractor's personnel shall be fully trained and qualified to perform the services specified herein.

5.3. City reserves the right to conduct background checks on all employee's assigned to the City.

5.3.1. Additionally, there will be a separate background check for Contractor's employees assigned to sites for the Santa Clara Police Department (SCPD). This background check will be conducted by SCPD.

6. STORAGE FACILITIES, EQUIPMENT, AND SPARE MATERIALS

Contractor shall maintain adequate storage at their own facilities to perform this contract, including a sufficient stock of materials required to complete the project. The City will work with Contractor on potential storage solutions.

7. MEETINGS

Contractor shall be available to meet, when deemed necessary, with City staff at a mutually agreed upon time and place to review and discuss any items related to all work performed under this contract.

8. GENERAL REQUIREMENTS

Contractor shall provide services to (1) retrofit existing fixtures with LED (this option includes disconnecting the existing ballast) or (2) replace fixture with new LED fixture that is like size, shape, and finish. All lighting must be an equivalent or greater than existing lighting output.

9. WORKMANSHIP/PERFORMANCE

9.1. Contractor shall warrant all work provided against any defects in workmanship or product and shall satisfactorily correct, at no cost to the City, any such defect that may become apparent within a period of one year after completion of work. The warranty period shall commence upon date of acceptance by the City.

9.1.1. In the event of failure, Contractor shall respond within 24 hours of City contacting Contractor.

9.1.2. Warranty shall cover all labor, travel, parts, shipping, etc.

10. WARRANTY REQUIREMENTS FOR PRODUCTS

10.1. The warranty period for all products shall be for a period of one (1) year, or within the manufacturers' warranty, whichever is the later period. The warranty period shall commence upon date of acceptance by the City.

10.2. Warranty shall cover all parts, shipping, travel, and labor. Warranty response and correction shall be a priority for the Contractor and issues addressed and completed within a reasonable time frame as agreed to by the City and Contractor.

11. REPORTING REQUIREMENTS

Contractors shall submit to the City a monthly activity report identifying all work completed and the locations of the work. The City may change reporting frequency, at its discretion.

EXHIBIT B1
COMPENSATION

1. MAXIMUM COMPENSATION

1.1. The maximum compensation shall be as set forth in each Approved Work Authorization (Maximum Work Authorization Compensation). No services will be performed unless both Parties execute an Approved Work Authorization outlining the services requested and the compensation agreed for such services.

1.2. Contractor shall fully complete all work required by the Approved Work Authorization for no more than the maximum work authorization compensation.

1.3. City shall only be liable for charges expressly authorized in the Approved Work Authorization.

1.4. As specified in Section 4 of Exhibit A ("SCOPE OF SERVICES"), Contractor is one of two firms selected to perform the Services, pursuant to two (2) separate agreements (collectively, the "LED Lighting Retrofit and Replacement Project Agreements"). Under no circumstance shall the total compensation for all Approved Work Authorizations to both firms exceed the total compensation of $500,000 approved by City Council on July 16, 2024.

2. RATES

Compensation under each Work Authorization and/or purchase order shall be in accordance with the rates set forth herein.

2.1. Contractor shall submit Proposals invoice all Services at the rates listed in Exhibit B2 ("Rate Schedule") herein.

2.2. Rates listed in Exhibit B2 are fully burdened and will remain fixed for the initial two-year term of the Agreement.

2.3. Rate Increase: Rate adjustments may be requested prior to one-year option to renew the contract after the initial term. Rate increase requests must be tied to prevailing wage, CPI, PPI, or relevant industry specific index. Rate adjustments are subject to City's approval.

3. INVOICE REQUIREMENTS

3.1. Contractor shall invoice the City at the completion of each project and in a format approved by the City. City shall pay Contractor within thirty (30) days of City's receipt of an approved invoice.

3.2. Invoice shall include at a minimum the following:

3.2.1. Approved Work Authorization Number

3.2.2. Date of Service

3.2.3. Project/Service Description

3.2.4. Address of Serviced Location

3.2.5. Part Description

3.2.6. Unit Price/Hourly Rate

3.2.7. Quantity/Number of Hours

3.2.8. Etc.

EXHIBIT B2
RATE SCHEDULE

1. RATES

1.1. Contractor shall charge, and the City shall pay for actual services rendered and authorized according to the process outlined in Section 4 of Exhibit A. The rates applicable for the services are listed below in Table B2-1.

1.2. In cases where services are required but not listed below, Contractor shall submit rates for approval but the City in advance, in writing before performing services. For avoidance of doubt, any changes to the rates in Table B2-1 must be authorized in accordance with Section 2.2 of Exhibit B1. Rate changes are not permitted as part of the Work Authorization process.

Table B2-1: Rates

Labor Cost for Lamp Retrofit			
Description	**Labor Rate Per Bulb**		
2' Bulb			$14.63
2' Bulb U Bend Bulb			$34.44
3' Bulb			$14.63
4' Bulb			$13.85
8' Bulb			$71.60
Labor Cost for Fixture Replacement			
Description	**Fixture Type**	**Fixture Cost**	**Labor Rate Per Bulb/Fixture**
2' - 1 Bulb	2ft Linear Strip	$87.75	$80.82
2' - 2 Bulb	2ft Vapor tight	$106.60	$92.50
2' - 2 Bulb	2ft Linear Strip	$87.75	$80.82
2' - 2 Bulb	2x2 Troffer	$85.35	$102.79
2' - 2 U Bend Bulb	2x2 Troffer	$85.35	$102.79
3' - 1 Bulb	3ft Linear Strip	$92.95	$82.89
4' - 1 Bulb	4ft Linear Strip	$76.25	$76.24
4' - 2 Bulb	4ft Linear Strip	$76.25	$76.24
4' - 2 Bulb	4ft Vapor Tight	$110.50	$94.06
4' - 2 Bulb	4ft Linear Wrap	$96.20	$88.36
4' - 2 Bulb	2x4 Troffer	$97.05	$107.45
4' - 3 Bulb	2x4 Troffer	$97.05	$107.45
4' - 4 Bulb	2x4 Troffer	$97.05	$107.45
8' - 2 Bulb	8ft Linear Strip	$128.25	$129.71
Price for Bulbs and Other Items			
Description	**Unit Price**		
2' Bulb			$9.10
2' Bulb U Bend Bulb			$15.60
3' Bulb			$9.10

Description	Unit Price
4' Bulb	$7.15
8' Bulb	$41.60
Cost Markup % Miscellaneous Materials	
Description	**Markup %**
Cost Markup $ for Miscellaneous Materials	20%
Hourly Rate for As-Needed Services	
Description	**Hourly Rate**
Standard Rate	$250.00

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:

   $1,000,000 Each Occurrence
   $2,000,000 General Aggregate
   $2,000,000 Products/Completed Operations Aggregate
   $1,000,000 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. 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. 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.

4. 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.

E. 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.

F. 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.

G. 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 emailed to:

ctsantaclara@ebix.com

Or mailed to:

EBIX Inc.
City of Santa Clara Department of Public Works – Facilities Division
P.O. Box 100085 – S2
Duluth, GA 30096

Telephone number: 951-766-2280
Fax number: 770-325-0409

H. 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
LABOR COMPLIANCE ADDENDUM

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.

I. 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 and are on file with the City Clerk's office, 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. 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 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 you 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.

J. 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.

K. 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. The 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 the 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.

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.

EXHIBIT E
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE:	
CONTRACTOR:	
DATE:	

Pursuant to Section __ 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:

GLEN R. GOOGINS
City Attorney

JŌVAN D. GROGAN
City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

EXHIBIT F
SAMPLE WORK AUTHORIZATION FORM

This work authorization ("Work Authorization") is made pursuant to the Agreement for Service between the City of Santa Clara and American Power Solutions, Inc. ("Agreement"). This Work Authorization is governed by the provisions of the Agreement and is hereby incorporated into that Agreement by reference. All Services shall be using the terms and rates included in the Agreement. In the event of any inconsistency between the terms and conditions of the Work Authorization and the Agreement, the terms and conditions of the Agreement shall govern and control.

PART A: GENERAL INFORMATION

WORK AUTHORIZATION NUMBER:		☐ Original ☐ First Revised ☐ Second Revised ☐ Other_____
Contract No.		
Contractor Name/Address:		
Expiration Date of Agreement:		
Contractor's Project Manager:	**Name:**	**Email:**
City's Project Manager	**Name:**	**Email:**
Period of Performance for this Work Order:	**Start Date:**	**Expected Completion Date:**
Maximum Compensation for this Work Authorization		
Contractor Representative Name (Print)		
Contractor Representative Signature		
Contractor Representative Signature Date		
City Project Manager Name (Print)		
Authorized City Representative (Print)		
City Representative Signature		
City Representative Signature Date		
** Authorized City Representatives include Public Works Facilities Manager, Public Works Deputy Director*		

PART B: SERVICES TO BE PERFORMED

1. REVISED WORK AUTHORIZATION

☐ No

☐ If yes, provide a brief description of the change(s).

2. SCOPE OF SERVICES TO BE PERFORMED

The Contractor shall perform the service(s) described below in accordance with all of the terms and conditions of the Agreement. (Insert a detailed Scope of Services below or attach as a separate file.) Scope of Services and cost proposal shall meet all of the provisions of Exhibit A and Exhibits B1 and B2.

3. COMPENSATION

a. **Basis of Compensation:** ☐ Time & Materials ☐ Fixed Fee

b. **Payment Schedule:**
☐ Monthly ☐ Completion of Deliverable/Milestone ☒ Completion of Services

c. **Payment Terms.** See Exhibit B1 for payment of terms.

4. ACCEPTANCE CERTIFICATE

☐ Acceptance Certificate not required.

☐ Acceptance Certificate required.

24-252 **Agenda Date: 7/16/2024**

REPORT TO COUNCIL

SUBJECT
Action on Agreements with Advanced Lighting Services Inc. and American Power Solutions Inc. for Citywide LED Lighting Retrofit and Replacement for City Facilities and As-Needed Services

COUNCIL PILLAR
Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND
The Department of Public Works (DPW) Facilities Division (Facilities) oversees maintenance and repairs for approximately 1,100,000 square feet of buildings throughout the City. To provide services in a timely and efficient manner, Facilities periodically uses various vendors to assist with the workload.

California Assembly Bill 2208 (AB 2208) was signed into law in September 2022 and phases in a ban that will prohibit the sale of fluorescent bulbs in California. Fluorescent light bulbs, including compact and linear types, contain mercury which poses both environmental and health concerns. AB 2208 is being implemented in two phases.

Phase 1: Beginning January 2024, screw or bayonet base type compact fluorescent lamps will be prohibited for sale or distribution in California.

Phase 2: Beginning January 2025, pin-base type compact fluorescent lamps will be prohibited for sale and distribution in California.

Many City buildings utilize pin-base type compact fluorescent lamps. To comply with AB 2208, the City will need to begin retrofitting or replacing fixtures to LED throughout City buildings. Energy savings rebates and potential loans are being considered in partnership with Silicon Valley Power (SVP) to help offset the expenses related to AB 2208.

The scope of services for the LED Lighting Retrofit and Replacement Project (Project) will include a site survey of numerous City buildings to determine the best course of action and then replacing or retrofitting linear fluorescent fixtures with LED fixtures. The project will be implemented based on available funding in the budget, with work commencing in the largest buildings such as City Hall, the Police Department, libraries, the Senior Center, the Community Recreation Center, and others.

DISCUSSION
Pursuant to City Code Section 2.105.140(c), a formal Request for Proposals (RFP) was conducted, with the award recommendation based on “best value.” On March 13, 2024, staff published the RFP for the LED Lighting Retrofit and Replacement Project on the City’s e-procurement platform. A total of

nine proposals were received from the following firms:

1. Advanced Lighting Services Inc.
2. American Power Solutions Inc.
3. American Wholesale Lighting Inc.
4. Brighton Energy Inc.
5. Cupertino Electric Inc.
6. Everwatt Lights LLC
7. MM Energy and Lighting
8. Sactown Contractors Corp
9. Star Energy Management Inc.

Proposals were independently reviewed by a three-member evaluation team made up of DPW representatives. Advanced Lighting Services Inc., American Power Solutions Inc., American Wholesale Lighting Inc., and Star Energy Management Inc. were asked to participate in oral interviews.

Staff recommends awarding agreements to Advanced Lighting Services Inc. (ALS) and American Power Solutions Inc. (APS) for having submitted the best value proposals. Both companies have committed enough resources for the initial phase of the Project. Work in this phase is scheduled to begin in Summer 2024, with an estimated completion date of early 2025. Staff will then evaluate funding options to complete additional City buildings. It is anticipated that additional funding will also be requested during the budget process in future years.

Under the proposed agreements, ALS and APS will provide citywide LED retrofit and replacement services on a per-building request basis. For each building, both contractors will provide an assessment, which will include a count of retrofits or replacements, and a proposal to perform the work based on the hourly rates and pricing for the bulbs and fixtures established in the agreements. The contractor with the lowest total cost and most advantageous project timeline will be awarded the work for that designated building.

Rates are fixed for the initial two-year term and are subject to price adjustments thereafter. Contractors' requests for rate increases must be tied to a relevant market index and are subject to the City's approval. After the initial term, the City has a one-year option to extend the term of the agreements. Prevailing wages are included in these agreements.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

FISCAL IMPACT

The amount to be paid to ALS and APS for the initial two-year term shall not exceed a combined aggregate amount of $500,000. In the Adopted FY 2024/25 and FY 2025/26 Capital Improvement Program Budget, funding is budgeted in the City Buildings - Upgrade Lighting to LED Project in FY 2024/25 for anticipated LED retrofit and replacement services. Costs beyond FY 2024/25 are subject to appropriation of funds by the City Council.

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COORDINATION
This report has been coordinated with the Finance Department and the City Attorney's Office.

PUBLIC CONTACT
Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <mailto:clerk@santaclaraca.gov> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION
1. Authorize the City Manager to negotiate and execute agreements with Advanced Lighting Services Inc. and American Power Solutions Inc. to provide Citywide LED Lighting Retrofit and Replacement Services for an initial two-year term starting on or around July 15, 2024 and ending on or around July 14, 2026, with an aggregate maximum compensation not-to-exceed $500,000, in final forms approved by the City Attorney; and
2. Authorize the City Manager to execute amendments to the agreement to make minor modifications and to extend the term up to one year after the initial term, subject to the appropriation of funds and in final forms approved by the City Attorney.

Reviewed by: Craig Mobeck, Director of Public Works
Approved by: Jovan D. Grogan, City Manager

ATTACHMENTS
1. Draft Agreement with Advanced Lighting Services Inc.
2. Draft Agreement with American Power Solutions Inc.