

**CITY OF PALO ALTO CONTRACT NO. C25193590A**

**AGREEMENT FOR PROFESSIONAL SERVICES**

**BETWEEN THE CITY OF PALO ALTO AND 4LEAF, INC.**

This Agreement for Professional Services (this “Agreement”) is entered into as of the 17<sup>th</sup> day of March, 2025 (the “Effective Date”), by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and 4LEAF, INC., a corporation, located at 2126 Rheem Drive, Pleasanton, CA 94588 (“CONSULTANT”).

The following recitals are a substantive portion of this Agreement and are fully incorporated herein by this reference:

**RECITALS**

A. CITY intends to support Utilities Department capital projects for its Electric and Fiber Engineering Division (the “Project”) and desires to engage a consultant to provide field inspections and construction management services on an on-call, as-needed, time-limited basis in connection with the Project (the “Services”, as detailed more fully in Exhibit A).

B. CONSULTANT represents that it, its employees and subconsultants, if any, possess the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C. CITY, in reliance on these representations, desires to engage CONSULTANT to provide the Services as more fully described in Exhibit A, entitled “SCOPE OF SERVICES”.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, in this Agreement, the parties agree as follows:

**SECTION 1. SCOPE OF SERVICES.** CONSULTANT shall perform the Services described in Exhibit A in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

☒ **Optional On-Call Provision** (This provision only applies if checked and only applies to on-call agreements.)

CITY may elect to, but is not required to, authorize on-call Services up to the maximum compensation amount set forth in Section 4 (Not to Exceed Compensation). CONSULTANT shall provide on-call Services only by advance, written authorization from CITY as detailed in this Section. On-call Services, if any, shall be authorized by CITY, as needed, with a Task Order assigned and approved by CITY’s Project Manager, as identified in Section 13 (Project Management). Each Task Order shall be in substantially the same form as Exhibit A-1 entitled “PROFESSIONAL SERVICES TASK ORDER”. Each Task Order shall contain a specific scope of services, schedule of performance and maximum compensation amount, in accordance with the provisions of this Agreement. Compensation for on-call Services shall be specified by CITY in the Task Order, based on

whichever is lowest: the compensation structure set forth in Exhibit C, the hourly rates set forth in Exhibit C-1, or a negotiated lump sum.

To accept a Task Order, CONSULTANT shall sign the Task Order and return it to CITY's Project Manager within the time specified by the Project Manager, and upon authorization by CITY (defined as counter-signature by the CITY Project Manager), the fully executed Task Order shall become part of this Agreement. The cumulative total compensation due to CONSULTANT for all Task Orders issued under this Agreement shall not exceed the amount of compensation set forth in Section 4. CONSULTANT shall only be compensated for on-call Services performed under an authorized Task Order and only up to the maximum compensation amount set forth in Section 4. Performance of and payment for any on-call Services are subject to all requirements and restrictions in this Agreement.

## **SECTION 2. TERM.**

The term of this Agreement shall be from the date of its full execution through March 16, 2028 unless terminated earlier pursuant to Section 19 (Termination) of this Agreement.

**SECTION 3. SCHEDULE OF PERFORMANCE.** Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit B, entitled "SCHEDULE OF PERFORMANCE". Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY's agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

**SECTION 4. NOT TO EXCEED COMPENSATION.** The CITY is engaging multiple consultants, none of whom, including the CONSULTANT under this Agreement, is guaranteed or assured of any minimum quantity of work to be performed. If work is performed by any one or more such consultants, CITY will ensure that **total compensation to all such consultants will not exceed an aggregate of Six Million Dollars (\$6,000,000.00) among all consultants over the three-year Term** of this Agreement.

The compensation to be paid to CONSULTANT, if selected for performance of the Services, shall be based on the compensation structure detailed in one or more Task Order(s) in the format of Exhibit A-1, based on hourly schedule of rates set out in Exhibit C-1, entitled "SCHEDULE OF RATES." Any work performed or expenses incurred for which payment has not been expressly set forth in the rate schedule and/or a Task Order shall be at no cost to the CITY.

☐ **Optional Additional Services Provision** (This provision applies only if checked and a not-to-exceed compensation amount for Additional Services is allocated below under this Section 4.)

In addition to the not-to-exceed compensation specified above, CITY has set aside the not-to-exceed compensation amount of **Dollars (\$ )** for the performance of Additional Services (as defined below). The total compensation for performance of the Services, Additional Services and any reimbursable expenses specified in Exhibit C, shall not exceed **Dollars (\$ )**, as detailed in Exhibit C.

“Additional Services” means any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described at Exhibit A. CITY may elect to, but is not required to, authorize Additional Services up to the maximum amount of compensation set forth for Additional Services in this Section 4. CONSULTANT shall provide Additional Services only by advanced, written authorization from CITY as detailed in this Section. Additional Services, if any, shall be authorized by CITY with a Task Order assigned and authorized by CITY’s Project Manager, as identified in Section 13 (Project Management). Each Task Order shall be in substantially the same form as Exhibit A-1, entitled “PROFESSIONAL SERVICES TASK ORDER”. Each Task Order shall contain a specific scope of services, schedule of performance and maximum compensation amount, in accordance with the provisions of this Agreement. Compensation for Additional Services shall be specified by CITY in the Task Order, based on whichever is lowest: the compensation structure set forth in Exhibit C, the hourly rates set forth in Exhibit C-1, or a negotiated lump sum.

To accept a Task Order, CONSULTANT shall sign the Task Order and return it to CITY’s Project Manager within the time specified by the Project Manager, and upon authorization by CITY (defined as counter-signature by the CITY Project Manager), the fully executed Task Order shall become part of this Agreement. The cumulative total compensation to CONSULTANT for all Task Orders authorized under this Agreement shall not exceed the amount of compensation set forth for Additional Services in this Section 4. CONSULTANT shall only be compensated for Additional Services performed under an authorized Task Order and only up to the maximum amount of compensation set forth for Additional Services in this Section 4. Performance of and payment for any Additional Services are subject to all requirements and restrictions in this Agreement.

**SECTION 5. INVOICES.** In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the Services performed and the applicable charges (including, if applicable, an identification of personnel who performed the Services, hours worked, hourly rates, and reimbursable expenses), based upon Exhibit C or, as applicable, CONSULTANT’s schedule of rates set forth in Exhibit C-1. If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT’s invoices shall be subject to verification by CITY. CONSULTANT shall send all invoices to CITY’s Project Manager at the address specified in Section 13 (Project Management) below. CITY will generally process and pay invoices within thirty (30) days of receipt of an acceptable invoice.

**SECTION 6. QUALIFICATIONS/STANDARD OF CARE.** All Services shall be performed by CONSULTANT or under CONSULTANT’s supervision. CONSULTANT represents that it, its employees and subcontractors, if any, possess the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subcontractors, if any, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services. All Services to be furnished by CONSULTANT under this Agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

**SECTION 7. COMPLIANCE WITH LAWS.** CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement, as amended from time to time. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

**SECTION 8. ERRORS/OMISSIONS.** CONSULTANT is solely responsible for costs, including, but not limited to, increases in the cost of Services, arising from or caused by CONSULTANT's errors and omissions, including, but not limited to, the costs of corrections such errors and omissions, any change order markup costs, or costs arising from delay caused by the errors and omissions or unreasonable delay in correcting the errors and omissions.

**SECTION 9. COST ESTIMATES.** If this Agreement pertains to the design of a public works project, CONSULTANT shall submit estimates of probable construction costs at each phase of design submittal. If the total estimated construction cost at any submittal exceeds the CITY's stated construction budget by ten percent (10%) or more, CONSULTANT shall make recommendations to CITY for aligning the Project design with the budget, incorporate CITY approved recommendations, and revise the design to meet the Project budget, at no additional cost to CITY.

**SECTION 10. INDEPENDENT CONTRACTOR.** CONSULTANT acknowledges and agrees that CONSULTANT and any agent or employee of CONSULTANT will act as and shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which CONSULTANT performs the Services requested by CITY under this Agreement. CONSULTANT and any agent or employee of CONSULTANT will not have employee status with CITY, nor be entitled to participate in any plans, arrangements, or distributions by CITY pertaining to or in connection with any retirement, health or other benefits that CITY may offer its employees. CONSULTANT will be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, workers' compensation, unemployment compensation, insurance, and other similar responsibilities related to CONSULTANT's performance of the Services, or any agent or employee of CONSULTANT providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between CITY and CONSULTANT or any agent or employee of CONSULTANT. Any terms in this Agreement referring to direction from CITY shall be construed as providing for direction as to policy and the result of CONSULTANT's provision of the Services only, and not as to the means by which such a result is obtained.

**SECTION 11. ASSIGNMENT.** The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT's obligations hereunder without the prior written approval of the City Manager. Any purported assignment made without the prior written approval of the City Manager will be void and without effect. Subject to the foregoing, the covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators and assignees of the parties.

**SECTION 12. SUBCONTRACTING.**

☒ **Option A: No Subcontractor:** CONSULTANT shall not subcontract any portion of the Services to be performed under this Agreement without the prior written authorization of the City Manager or designee. In the event CONSULTANT does subcontract any portion of the work to be performed under this Agreement, CONSULTANT shall be fully responsible for all acts and omissions of subcontractors.

☐ **Option B: Subcontracts Authorized:** Notwithstanding Section 11 (Assignment) above, CITY agrees that subcontractors may be used to complete the Services. The subcontractors authorized by CITY to perform work on this Project are:

CONSULTANT shall be responsible for directing the work of any subcontractors and for any compensation due to subcontractors. CITY assumes no responsibility whatsoever concerning compensation of subcontractors. CONSULTANT shall be fully responsible to CITY for all acts and omissions of subcontractors. CONSULTANT shall change or add subcontractors only with the prior written approval of the City Manager or designee.

**SECTION 13. PROJECT MANAGEMENT.** CONSULTANT will assign Gene Barry, P.E., Telephone: 925-462-5959, Email: [gbarry@4leafinc.com](mailto:gbarry@4leafinc.com) as the CONSULTANT's Project Manager to have supervisory responsibility for the performance, progress, and execution of the Services and represent CONSULTANT during the day-to-day performance of the Services. If circumstances cause the substitution of the CONSULTANT's Project Manager or any other of CONSULTANT's key personnel for any reason, the appointment of a substitute Project Manager and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY's Project Manager. CONSULTANT, at CITY's request, shall promptly remove CONSULTANT personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Services or a threat to the safety of persons or property.

CITY's Project Manager is Mohammad Fattah, Utilities Department, Electric and Fiber Engineering Division, 1007 Elwell Court, Palo Alto, CA, 94303, Telephone: 650-329-2385, Email: [Mohammad.Fattah@CityofPaloAlto.org](mailto:Mohammad.Fattah@CityofPaloAlto.org). CITY's Project Manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. CITY may designate an alternate Project Manager from time to time.

**SECTION 14. OWNERSHIP OF MATERIALS.** All work product, including without limitation, all writings, drawings, studies, sketches, photographs, plans, reports, specifications, computations, models, recordings, data, documents, and other materials and copyright interests developed under this Agreement, in any form or media, shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work product pursuant to this Agreement are vested in CITY, and CONSULTANT hereby waives and relinquishes all claims to copyright or other intellectual property rights in favor of CITY. Neither CONSULTANT nor its subcontractors, if any, shall make any of such work product available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the

## Scope of Services.

**SECTION 15. AUDITS.** CONSULTANT agrees to permit CITY and its authorized representatives to audit, at any reasonable time during the term of this Agreement and for four (4) years from the date of final payment, CONSULTANT's records pertaining to matters covered by this Agreement, including without limitation records demonstrating compliance with the requirements of Section 10 (Independent Contractor). CONSULTANT further agrees to maintain and retain accurate books and records in accordance with generally accepted accounting principles for at least four (4) years after the expiration or earlier termination of this Agreement or the completion of any audit hereunder, whichever is later.

## **SECTION 16. INDEMNITY.**

16.1. To the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all third party demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorney's fees, experts fees, court costs and disbursements ("Claims") to the extent that such Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party. CITY will reimburse CONSULTANT for the proportionate percentage of defense costs exceeding CONSULTANT's proportionate percentage of fault as determined by the final judgment of a court of competent jurisdiction.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from a Claim arising from the active negligence or willful misconduct of an Indemnified Party that is not contributed to by any act of, or by any omission to perform a duty imposed by law or agreement by, CONSULTANT, its officers, employees, agents or contractors under this Agreement.

16.3. The acceptance of CONSULTANT's Services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

**SECTION 17. WAIVERS.** No waiver of a condition or nonperformance of an obligation under this Agreement is effective unless it is in writing in accordance with Section 29.4 of this Agreement. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted shall apply solely to the specific instance expressly stated. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

## **SECTION 18. INSURANCE.**

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit D, entitled "INSURANCE REQUIREMENTS". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or

automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A-VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification. If the insurer cancels or modifies the insurance and provides less than thirty (30) days' notice to CONSULTANT, CONSULTANT shall provide the Purchasing Manager written notice of the cancellation or modification within two (2) business days of the CONSULTANT's receipt of such notice. CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Chief Procurement Officer during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

## **SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.**

19.1. The City Manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. If CONSULTANT fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided under this Agreement or at law, the City Manager may terminate this Agreement sooner upon written notice of termination. Upon receipt of any notice of suspension or termination, CONSULTANT will discontinue its performance of the Services on the effective date in the notice of suspension or termination.

19.2. In event of suspension or termination, CONSULTANT will deliver to the City Manager on or before the effective date in the notice of suspension or termination, any and all work product, as detailed in Section 14 (Ownership of Materials), whether or not completed, prepared by CONSULTANT or its contractors, if any, in the performance of this Agreement. Such work product is the property of CITY, as detailed in Section 14 (Ownership of Materials).

19.3. In event of suspension or termination, CONSULTANT will be paid for the Services rendered and work products delivered to CITY in accordance with the Scope of Services up to the effective date in the notice of suspension or termination; provided, however, if this

Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT's Services provided in material conformity with this Agreement as such determination is made by the City Manager acting in the reasonable exercise of his/her discretion. The following Sections will survive any expiration or termination of this Agreement: 14, 15, 16, 17, 19.2, 19.3, 19.4, 20, 25, 27, 28, 29 and 30.

19.4. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement, unless made in accordance with Section 17 (Waivers).

## **SECTION 20. NOTICES.**

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY:                      Office of the City Clerk  
                                    City of Palo Alto  
                                    Post Office Box 10250  
                                    Palo Alto, CA 94303

With a copy to the Purchasing Manager

To CONSULTANT: Attention of the Project Manager at the address of  
CONSULTANT recited on the first page of this Agreement.

CONSULTANT shall provide written notice to CITY of any change of address.

## **SECTION 21. CONFLICT OF INTEREST.**

21.1. In executing this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subcontractors or other persons or parties having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California, as amended from time to time. CONSULTANT agrees to notify CITY if any conflict arises.

21.3. If the CONSULTANT meets the definition of a "Consultant" as defined by the Regulations of the Fair Political Practices Commission, CONSULTANT will file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act of 1974, as amended from time to time.

## **SECTION 22. NONDISCRIMINATION; COMPLIANCE WITH ADA.**



22.1. As set forth in Palo Alto Municipal Code Section 2.30.510, as amended from time to time, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person due to that person's race, skin color, gender, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

22.2. CONSULTANT understands and agrees that pursuant to the Americans Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor or subcontractor, are required to be accessible to the disabled public. CONSULTANT will provide the Services specified in this Agreement in a manner that complies with the ADA and any other applicable federal, state and local disability rights laws and regulations, as amended from time to time. CONSULTANT will not discriminate against persons with disabilities in the provision of services, benefits or activities provided under this Agreement.

**SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS.** CONSULTANT shall comply with the CITY's Environmentally Preferred Purchasing policies which are available at CITY's Purchasing Department, hereby incorporated by reference and as amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of CITY's Zero Waste Program. Zero Waste best practices include, first, minimizing and reducing waste; second, reusing waste; and, third, recycling or composting waste. In particular, CONSULTANT shall comply with the following Zero Waste requirements:

(a) All printed materials provided by CONSULTANT to CITY generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by CITY's Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable-based inks.

(b) Goods purchased by CONSULTANT on behalf of CITY shall be purchased in accordance with CITY's Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Department's office.

(c) Reusable/returnable pallets shall be taken back by CONSULTANT, at no additional cost to CITY, for reuse or recycling. CONSULTANT shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

**SECTION 24. COMPLIANCE WITH PALO ALTO MINIMUM WAGE ORDINANCE.** CONSULTANT shall comply with all requirements of the Palo Alto Municipal Code Chapter 4.62 (Citywide Minimum Wage), as amended from time to time. In particular, for any employee otherwise entitled to the State minimum wage, who performs at least two (2) hours of work in a calendar week within the geographic boundaries of the City, CONSULTANT shall pay such employees no less than the minimum wage set forth in Palo Alto Municipal Code Section 4.62.030

for each hour worked within the geographic boundaries of the City of Palo Alto. In addition, CONSULTANT shall post notices regarding the Palo Alto Minimum Wage Ordinance in accordance with Palo Alto Municipal Code Section 4.62.060.

**SECTION 25. NON-APPROPRIATION.** This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code, as amended from time to time. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

**SECTION 26. PREVAILING WAGES AND DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS.**

26.1. **This Project is subject to prevailing wages and related requirements as a “public works” under California Labor Code Sections 1720 et seq. and related regulations. CONSULTANT is required to pay general prevailing wages** as defined in California Labor Code Section 1773.1 and Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq., as amended from time to time. Pursuant to Labor Code Section 1773, the CITY has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to execute the contract for this Project from the State of California Department of Industrial Relations (“DIR”). Copies of these rates may be obtained at the CITY’s Purchasing Department office. The general prevailing wage rates are also available at the DIR, Division of Labor Statistics and Research, web site (see e.g. <http://www.dir.ca.gov/DLSR/PWD/index.htm>) as amended from time to time. CONSULTANT shall post a copy of the general prevailing wage rates at all Project job sites and shall pay the adopted prevailing wage rates as a minimum. CONSULTANT shall comply with all applicable provisions of Division 2, Part 7, Chapter 1 of the California Labor Code (Labor Code Section 1720 et seq.), including but not limited to Sections 1725.5, 1771, 1771.1, 1771.4, 1773.2, 1774, 1775, 1776, 1777.5, 1782, 1810, 1813 and 1815, and all applicable implementing regulations, including but not limited to Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq. (8 CCR Section 16000 et seq.), as amended from time to time. CONSULTANT shall comply with the requirements of Exhibit E, entitled “DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS”, for any contract for public works construction, alteration, demolition, repair or maintenance, including but not limited to the obligations to register with, and furnish certified payroll records directly to, DIR.

**SECTION 27. CLAIMS PROCEDURE FOR “9204 PUBLIC WORKS PROJECTS”.** For purposes of this Section 27, a “9204 Public Works Project” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind. (Cal. Pub. Cont. Code § 9204.) Per California Public Contract Code Section 9204, for Public Works Projects, certain claims procedures shall apply, as set forth in Exhibit F, entitled “Claims for Public Contract Code Section 9204 Public Works Projects”.

☒ **This Project is a 9204 Public Works Project** and is required to comply with the claims procedures set forth in Exhibit F, entitled “Claims for Public Contract Code Section 9204 Public Works Projects”.

## **SECTION 28. CONFIDENTIAL INFORMATION.**

28.1. In the performance of this Agreement, CONSULTANT may have access to CITY's Confidential Information (defined below). CONSULTANT will hold Confidential Information in strict confidence, not disclose it to any third party, and will use it only for the performance of its obligations to CITY under this Agreement and for no other purpose. CONSULTANT will maintain reasonable and appropriate administrative, technical and physical safeguards to ensure the security, confidentiality and integrity of the Confidential Information. Notwithstanding the foregoing, CONSULTANT may disclose Confidential Information to its employees, agents and subcontractors, if any, to the extent they have a need to know in order to perform CONSULTANT's obligations to CITY under this Agreement and for no other purpose, provided that the CONSULTANT informs them of, and requires them to follow, the confidentiality and security obligations of this Agreement.

28.2. "Confidential Information" means all data, information (including without limitation "Personal Information" about a California resident as defined in Civil Code Section 1798 et seq., as amended from time to time) and materials, in any form or media, tangible or intangible, provided or otherwise made available to CONSULTANT by CITY, directly or indirectly, pursuant to this Agreement. Confidential Information excludes information that CONSULTANT can show by appropriate documentation: (i) was publicly known at the time it was provided or has subsequently become publicly known other than by a breach of this Agreement; (ii) was rightfully in CONSULTANT's possession free of any obligation of confidence prior to receipt of Confidential Information; (iii) is rightfully obtained by CONSULTANT from a third party without breach of any confidentiality obligation; (iv) is independently developed by employees of CONSULTANT without any use of or access to the Confidential Information; or (v) CONSULTANT has written consent to disclose signed by an authorized representative of CITY.

28.3. Notwithstanding the foregoing, CONSULTANT may disclose Confidential Information to the extent required by order of a court of competent jurisdiction or governmental body, provided that CONSULTANT will notify CITY in writing of such order immediately upon receipt and prior to any such disclosure (unless CONSULTANT is prohibited by law from doing so), to give CITY an opportunity to oppose or otherwise respond to such order.

28.4. CONSULTANT will notify City promptly upon learning of any breach in the security of its systems or unauthorized disclosure of, or access to, Confidential Information in its possession or control, and if such Confidential Information consists of Personal Information, CONSULTANT will provide information to CITY sufficient to meet the notice requirements of Civil Code Section 1798 et seq., as applicable, as amended from time to time.

28.5. Prior to or upon termination or expiration of this Agreement, CONSULTANT will honor any request from the CITY to return or securely destroy all copies of Confidential Information. All Confidential Information is and will remain the property of the CITY and nothing contained in this Agreement grants or confers any rights to such Confidential Information on CONSULTANT.

28.6. If selected in Section 30 (Exhibits), this Agreement is also subject to the

terms and conditions of the Information Privacy Policy and Cybersecurity Terms and Conditions.

**SECTION 29. MISCELLANEOUS PROVISIONS.**

29.1. This Agreement will be governed by California law, without regard to its conflict of law provisions.

29.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

29.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

29.4. This Agreement, including all exhibits, constitutes the entire and integrated agreement between the parties with respect to the subject matter of this Agreement, and supersedes all prior agreements, negotiations, representations, statements and undertakings, either oral or written. This Agreement may be amended only by a written instrument, which is signed by the authorized representatives of the parties and approved as required under Palo Alto Municipal Code, as amended from time to time.

29.5. If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the unaffected provisions of this Agreement will remain in full force and effect.

29.6. In the event of a conflict between the terms of this Agreement and the exhibits hereto (per Section 30) or CONSULTANT's proposal (if any), the Agreement shall control. In the event of a conflict between the exhibits hereto and CONSULTANT's proposal (if any), the exhibits shall control.

29.7. The provisions of all checked boxes in this Agreement shall apply to this Agreement; the provisions of any unchecked boxes shall not apply to this Agreement.

29.8. All section headings contained in this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision of this Agreement.

29.9. This Agreement may be signed in multiple counterparts, which, when executed by the authorized representatives of the parties, shall together constitute a single binding agreement.

**SECTION 30. EXHIBITS.** Each of the following exhibits, if the check box for such exhibit is selected below, is hereby attached and incorporated into this Agreement by reference as though fully set forth herein:

- ☒ EXHIBIT A: SCOPE OF SERVICES
- ☒ EXHIBIT A-1 PROFESSIONAL SERVICES TASK ORDER
- ☒ EXHIBIT B: SCHEDULE OF PERFORMANCE
- ☒ EXHIBIT C: COMPENSATION
- ☒ EXHIBIT C-1: SCHEDULE OF RATES
- ☒ EXHIBIT D: INSURANCE REQUIREMENTS
- ☒ EXHIBIT E: DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS
- ☒ EXHIBIT F: CLAIMS FOR PUBLIC CONTRACT CODE SECTION 9204  
PUBLIC WORKS PROJECTS

***THIS AGREEMENT IS NOT COMPLETE UNLESS ALL SELECTED EXHIBITS  
ARE ATTACHED.***

**CONTRACT NO. C25193590A SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement as of the date first above written.

**CITY OF PALO ALTO**

\_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney or designee

**4LEAF, INC.**

DocuSigned by:  
By: Gene Barry  
F39C2ACA1C3D430...  
Name: Gene Barry  
Title: Vice President

DocuSigned by:  
By: Kevin Duggan  
813734D554DD4B5...  
Name: Kevin Duggan  
Title: President

## **EXHIBIT A SCOPE OF SERVICES**

CONSULTANT shall provide the Services detailed in this Exhibit A, entitled “SCOPE OF SERVICES”. Notwithstanding any provision herein to the contrary, CONSULTANT’s duties and services described in this Scope of Services shall not include preparing or assisting CITY with any portion of CITY’s preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with CITY. CITY shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. CONSULTANT’s participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. CONSULTANT shall cooperate with CITY to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by CONSULTANT pursuant to this Scope of Services.

### **A. Governing Construction General Standards:**

Standards and references listed below shall be applicable to Task Orders I, II, and III;

#### **Electric/Fiber Optic:**

The Field Inspection & Construction Project Manager shall perform services in accordance with the most recent City of Palo Alto Utilities (CPAU) Electric Construction Standards manual; CPAU Electric Service Requirements manual; CPAU Safety Rules manual; CPAU plans, Permits and other documents governing the construction of the project; California Public Utilities Commission (CPUC) General Orders 95, 128 & 165, rules for construction and maintenance of overhead and underground electric supply and communication systems; and pollution prevention practices outlined in Stormwater Pollution Prevention Plan (SWPPP).

### **B. Governing Qualifications:**

The standards and references listed below shall be applicable to Services described in Sections I, II, and III below.

Personnel qualifications and staffing levels for City projects shall be subject to the approval of the City’s specific Project Engineer assigned, and as set forth in a Task Order for the specific utility project. It is expected the Consultant provide appropriately experienced personnel corresponding to the utility project inspection request. The City’s Project Engineer shall reserve the right to review the resume and interview any new proposed consultant personnel for City projects. References of prior inspection experience shall be available for all Consultant staff and may be requested by City at any time during the Contract.

#### **Electric/Fiber Optic:**

The Consultant Electrical/Fiber Optic Field Inspector assigned to work on CPAU’s Projects shall have a minimum of 10 years’ experience working for an Investor-Owned Electric Utility and/or a Municipal Public Utility in the areas of overhead and underground construction, maintenance, and inspection with a working knowledge of CPUC General Orders 95, 128, &

Exhibit: Claims for PCC Section 9204 Public Works Projects  
Rev. Dec. 15,2020

168. The Field Inspector shall have the ability to make sound decisions, to communicate with others, and to assimilate and understand information in a manner consistent with the essential job functions. The Consultant's personnel shall maintain the physical condition appropriate to the performance of the assigned duties which may include walking or standing for extended periods of time.

Additionally, Consultant Construction Managers must possess a B.S. in Construction Management, Electrical Engineering, or another relevant field.

## **I. CONSULTANT TO PROVIDE CONSTRUCTION FIELD INSPECTION:**

### **A. Construction Inspection Services Overview**

Consultant shall provide professional services for field inspection of City's capital improvement projects and/or private development projects. Projects will involve overhead/underground electrical, and fiber optic utilities. Examples of general duties: oversight of utility infrastructure installation by various methods per design drawings, specifications, and utility standards; construction management; project or schedule coordination; compliance to safety requirements and approved traffic control plans; communication with City staff, contractor, customers, and the public; preparation of record drawings, construction daily reports, and other pertinent documents; etc. The consultant shall furnish personnel with a strong background and experience (with the assigned utility) in electric and fiber optic construction practices and standards.

Inspection services will be provided on an "as requested" basis. It is expected that the inspector(s) will be responsible for successfully completing a background check (Live Scan) within 5 business days from the request for services. Upon successful completion of the background check, it is expected the inspector(s) will be available on-site in Palo Alto within 48 hours after successful completion of a background check. Inspection services will be required during regular working hours Monday through Friday between 8am-6pm; however, work may be needed night and/or day, on weekends, holidays and/or on a split shift basis. Workweeks may be more than or less than the standard 40-hour work week. The work schedule will be specified at the beginning of each project and documented in each Task Order (Exhibit A-1).

### **B. General Work Description**

The Consultant Field Inspector shall inspect new overhead and underground utility installations, alterations, and repairs to ensure compliance with plans, specifications, standards, and codes.

The Field Inspector's responsibilities may include, but are not limited to the following:

1. Performs duties described in CPAU Inspector Checklist.
2. Maintains a daily log of construction project activity, incidents, tracks job status.
3. Complete, sign, and submit progress daily reports for approval of the City Project Manager.
4. Ensures that all applicable utility rules, codes and safety regulations are complied with.



5. Ensures all material used and facilities constructed are in accordance with approved submittals, applicable plans, specifications, and CPAU Utility Standards.
6. Notifies contractors and the City's project Engineer/Construction Project Engineer of non-compliance with the contract plans, specifications, and CPAU Utility Standards in a timely manner.
7. Reports and documents safety, compliance infractions, and unsafe work procedures.
8. Prepares inspection documentation for the development of progress payments for the project construction contractor.
9. Assists in preparing punch lists of uncompleted work, non-conformance reports, and deficiency notices.
10. Certifies as to the acceptability of each project upon its completion.
11. Conducts and generates agenda minutes of weekly field meetings.
12. Documents installed work on the as-built/record drawings daily (this may include the use of GPS equipment for data acquisition) and submits documentation as requested.
13. Documents project status with photographs and keeps project folders updated.
14. The consultant shall conduct Site Safety Inspections and work with the construction contractor at the start of projects on an "as-needed" basis.
15. Acts as the liaison between City staff, construction contractor, utility customers, and the public.
16. Coordinates the schedule between the construction contractor and Operations staff if needed.
17. Complete appropriate City required training/certification.
18. Quantify and confirm the good condition of materials provided by City from MSC/warehouse.
19. Enforce applicable permit requirements to the project construction contractor.

### C. Documentation & Deliverables

The Consultant Field Inspector shall maintain a daily journal/diary for each day the inspector performs work on the project. The contents of the diary shall consist of brief, accurate statements of progress and conditions encountered during the prosecution of the work. A construction daily report shall be given daily to the City's assigned Project Engineer and will become a part of the permanent project record. The Field Inspector shall document field as-built drawings/notes daily and transfer the field as-built drawings/notes to a final as-built set daily or weekly. The final as-built drawings must be reviewed by the City Project Engineer weekly. Field inspection photos, incident reports, and sewer lateral inspection reports must be completed and submitted to City as required.

Any safety violations and inspection infractions found are to be communicated to the City and construction contractor in real-time as they are discovered.

Once a month, an electronic effort summary report (web-based or in MS Word or MS Excel format) shall be sent to the City Project Engineer summarizing job highlights related to the consultant's work hours, as well as the equipment inspected, and any infractions found.

## II. CONSULTANT TO PROVIDE CONSTRUCTION MANAGEMENT:

## **A. Construction Management Overview**

Consultant shall provide professional services for construction management of the City's capital improvement projects and/or private development projects. Projects will involve overhead/underground electrical and fiber optic utilities. Examples of general duties:

- Construction management of utility infrastructure installation by various methods per design drawings, specifications, and utility standards;
- Communication with City staff, construction contractor, customers, and the public;
- Prepare and lead online/field weekly construction meetings;
- Track, plan, and coordinate construction or project schedule with City staff and City's Project Manager; preparation and processing of field orders, change orders, request for information, permits, invoices, etc.;
- Review, check, and process approval of Contractor submittals;
- Review and check Contractor-submitted construction GPS points and sewer lateral video inspections;

The consultant shall furnish personnel with a strong background and experience (with the assigned utility) in electric and fiber optic construction practices and standards.

Construction management services will be provided on an "as requested" basis. It is expected that the consultant construction manager(s) will be responsible for successfully completing a background check (Live Scan) within 5 business days from the request for services. Upon successful completion of the background check, it is expected the construction project manager(s) will be available on-site in Palo Alto within 48 hours of the after successful completion of a background check. Construction management services will be required during regular working hours Monday through Friday between 8am-6pm; however, work may be needed night and/or day, on weekends, holidays and/or on a split shift basis. Workweeks may be more than or less than the standard 40-hour work week. The work schedule will be specified at the beginning of each City project and documented in each Task Order (Exhibit A-1).

## **B. General Work Description**

The Construction Project Manager shall manage new underground utility installations, alterations, and repairs to ensure compliance with plans, specifications, standards, and codes.

The Construction Project Manager's responsibilities may include, but are not limited to the following duties:

1. Ensure project coordination and be the primary point of contact with all parties on the construction project. Coordination will include work coordination among the City Project Manager, assigned project field inspector, City Staff, the public, contractor, other City Divisions/Departments & working Groups, third-party specialty inspectors, etc.
2. Coordinate with City internal divisions (ex. City Public Works for street paving and painting requirements, City Traffic Engineer for review and approval of traffic plans).
3. Manage, coordinate, and complete permits and enforce permitting requirements from other City of Palo Alto Departments and external agencies. Review, quantify, and

- coordinate release of materials provided by the City from MSC/warehouse for the project.
- 4. Organize pictures taken per location and activity (tie-ins, conduit, electric vaults, and electric manhole installations, meter transfers, etc.) before submitting to City Project Manager.
- 5. Prepare the agenda and facilitate the preconstruction meeting, weekly progress meetings, and all other construction meetings required during the project.
- 6. Receive, and review Change Order Requests with City Project Engineer.
- 7. Receive and evaluate all requests for information. Route RFIs when applicable to design teams and respond or review responses to RFI. Transmit RFI responses to the contractor.
- 8. Provide assistance in collection of field data (This may include the use of GPS equipment for data acquisition) and submit documentation as requested.
- 9. Receive and review progress payments and process for payment.
- 10. Receive, review, and approve Contractor submittals and shop drawings. Transmit reviews to and from design teams and contractor, as needed.
- 11. Request and process soil compaction testing for backfill.
- 12. Track project progress and schedule using Microsoft Project.
- 13. Attend and provide project updates in City meetings.
- 14. Review and check Contractor-submitted construction GPS points.
- 15. Monitor all applicable utility rules, codes, and safety regulations are complied with and enforce compliance as needed.
- 16. Read and review daily inspection reports.
- 17. Direct field inspector as needed.
- 18. Perform intermittent field observations
- 19. Ensure all facilities are constructed in accordance with applicable plans, specifications, and CPAU Utility Standards.
- 20. Receive and respond to public comments and inquiries.
- 21. Manage complex public complaints and potential claims.
- 22. Perform or manage field investigations or field measurements of quantities and prepare field orders and contract modifications, as needed. Coordinate revisions with design team.
- 23. Prepare and review change orders with executive project manager.
- 24. Monitor performance of the work and prepares and issues notices of defective work and enforces compliance with the construction project documents. Reviews daily inspection reports and photos for non-conformance work.
- 25. Prepare punch lists and facilitates punch list walks and corrections.
- 26. Assist with the completion of documents.
- 27. Document work installed on the as-built/record drawings and submit documentation daily, weekly, monthly or as requested (This may include the use of GPS equipment for data acquisition using City-provided equipment).
- 28. Manage, coordinate, and complete permits required for the project.

**Tasks specific to Electric/Fiber:**

- 1. Manage and review the preparation of project procedures of proposed overhead and underground electric/fiber infrastructures, power poles, and electric substations.
- 2. Plan and schedule installation/maintenance/repair of overhead and underground electric/fiber infrastructure, power poles and electric substations.

**C. Documentation & Deliverables**

The Construction Project Manager shall maintain project tracking documents, logs, and

filing systems at all times. The contents of the diary shall consist of brief, accurate statements of progress and conditions encountered during the prosecution of the work. A construction daily report shall be given daily to the City's assigned City Project Manager and will become a part of the permanent project record. The Construction Project Manager shall keep track of submitted as-builts, photos, and sewer lateral reports submitted by the Inspector.

Once a month an electronic effort summary report (web-based or in MS Word or MS Excel format) shall be sent to the City Project Manager summarizing job highlights to the consultant's work hours, the equipment inspected, and any infractions found.

### **III. ELECTRIC AND FIBER OPTIC SPECIAL SERVICES EMPLOYEE**

#### **A. Construction Management Overview and Description**

The City may require that Consultant provide employees, including specialized contract employees, for projects requiring special experience or knowledge, who would be onboarded by the Consultant's company if not a Consultant employee. Such onboarding by the Consultant shall occur within 10 business days from the date the City agrees to staffing a Consultant contract employee.

Consultant's contract employee's positions and tasks are not limited to field inspection, construction management, consultation services, estimation, design, labor work, training, etc. The employee must be assigned to the appointed City project.

## EXHIBIT A-1 PROFESSIONAL SERVICES TASK ORDER

CONSULTANT shall perform the Services detailed below in accordance with all the terms and conditions of the Agreement referenced in Item 1A below. All exhibits referenced in Item 8 are incorporated into this Task Order by this reference. CONSULTANT shall furnish the necessary facilities, professional, technical and supporting personnel required by this Task Order as described below.

---

CONTRACT NO.

OR PURCHASE ORDER REQUISITION NO. (AS APPLICABLE)

- 1A. MASTER AGREEMENT NO. (MAY BE SAME AS CONTRACT / P.O. NO. ABOVE):
  - 1B. TASK ORDER NO.:
  2. CONSULTANT NAME:
  3. PERIOD OF PERFORMANCE: START: COMPLETION:
  4. TOTAL TASK ORDER PRICE: \$ \_\_\_\_\_  
BALANCE REMAINING IN MASTER AGREEMENT/CONTRACT \$ \_\_\_\_\_
  5. BUDGET CODE \_\_\_\_\_  
COST CENTER \_\_\_\_\_  
COST ELEMENT \_\_\_\_\_  
WBS/CIP \_\_\_\_\_  
PHASE \_\_\_\_\_
  6. CITY PROJECT MANAGER'S NAME & DEPARTMENT: \_\_\_\_\_
  7. DESCRIPTION OF SCOPE OF SERVICES (Attachment A)  
MUST INCLUDE:
    - SERVICES AND DELIVERABLES TO BE PROVIDED
    - SCHEDULE OF PERFORMANCE
    - MAXIMUM COMPENSATION AMOUNT AND RATE SCHEDULE (as applicable)
    - REIMBURSABLE EXPENSES, if any (with "not to exceed" amount)
  8. ATTACHMENTS: A: Task Order Scope of Services B (if any): \_\_\_\_\_
- 

**I hereby authorize the performance of the work described in this Task Order.**

**I hereby acknowledge receipt and acceptance of this Task Order and warrant that I have authority to sign on behalf of Consultant.**

**APPROVED:**  
CITY OF PALO ALTO

**APPROVED:**  
COMPANY NAME: \_\_\_\_\_

BY: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

BY: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

## **EXHIBIT B SCHEDULE OF PERFORMANCE**

CONSULTANT shall perform the Services so as to complete each milestone within the number of days/weeks specified below. The time to complete each milestone may be increased or decreased by mutual written agreement of the Project Managers for CONSULTANT and CITY so long as all work is completed within the term of the Agreement. CONSULTANT shall provide a detailed schedule of work consistent with the schedule below within 2 weeks of receipt of the notice to proceed (“NTP”) from the CITY.

☒ Optional Schedule of Performance Provision for On-Call or Additional Services Agreements.  
(This provision only applies if checked and only applies to on-call agreements per Section 1 or agreements with Additional Services per Section 4.)

The schedule of performance shall be as provided in the approved Task Order, as detailed in Section 1 (Scope of Services) in the case of on-call Services, or as detailed in Section 4 in the case of Additional Services, provided in all cases that the schedule of performance shall fall within the term as provided in Section 2 (Term) of this Agreement.

## **EXHIBIT C COMPENSATION**

CITY agrees to compensate CONSULTANT for on-call, as-needed, time-limited project support services performed in accordance with the terms and conditions of this Agreement, and as set forth in a specific Task Order budget schedule. Compensation shall be calculated based on the rate schedule attached as Exhibit C-1 up to the not to exceed budget amount for each task set forth in a specific Task Order.

CITY's Project Manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed within a specific Task Order, provided that the total compensation for the Services, including any specified reimbursable expenses, and the total compensation for Additional Services (if any, per Section 4 of the Agreement) do not exceed the amounts set forth in Consultant's Task Orders issued under this Agreement.

CONSULTANT agrees to complete all Services, any specified reimbursable expenses, and Additional Services (if any, per Section 4), within this/these amount(s). Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth in the Task Orders issued to Consultant under this Agreement shall be at no cost to the CITY.

The consultant will be compensated for the actual hours worked on construction site as requested by each Project Manager/Engineer, within the Task Order budget estimate prepared by City. The work hours in the electronic effort summary report will be used as a basis for compensation; Any revisions to the Task Order budget will require a written amendment signed by authorized representatives of the Parties.

The City makes no guarantee as to the actual amount of services to be requested under any Task Order.

### **REIMBURSABLE EXPENSES**

CONSULTANT'S ordinary business expenses, such as administrative, overhead, administrative support time/overtime, information systems, software and hardware, photocopying, telecommunications (telephone, internet), in-house printing, insurance and other ordinary business expenses, are included within the scope of payment for Services and are not reimbursable expenses hereunder.

Reimbursable expenses, if any are specified as reimbursable under this section, will be reimbursed at actual cost. The expenses (by type, e.g. travel) for which CONSULTANT will be reimbursed are: **NONE** up to the not-to-exceed amount of: **\$0.00**.

## EXHIBIT C-1 SCHEDULE OF RATES

CONSULTANT's schedule of rates is as follows:

Scope	Source of Services <sup>(c)</sup>	Work Hours <sup>(d)</sup>	Employee Hourly Rate <sup>(e)</sup>	Extended Rate <sup>(f)</sup>	Total <sup>(g)</sup>
<b>Task I – On-call Field Inspector for Electric/Fiber</b>	<input checked="" type="checkbox"/> <b>Main</b>	Regular time	\$71.33	\$90.17	\$161.50/hr
		Night Time	\$79.95	\$101.05	\$181.00/hr
	<input type="checkbox"/> <b>Sub</b>	Overtime	\$105.79	\$133.71	\$239.50/hr
		Double Time	\$140.24	\$177.26	\$317.50/hr
<b>Task II – On-call Construction Project Managers for Electric/Fiber</b>	<input checked="" type="checkbox"/> <b>Main</b>	Regular time	\$79.73	\$100.77	\$180.50/hr
		Night Time	\$89.39	\$112.99	\$202.38/hr
	<input type="checkbox"/> <b>Sub</b>	Overtime	\$118.38	\$149.62	\$268.00/hr
		Double Time	\$157.02	\$198.48	\$355.50/hr
<b>Task III – Electric/Fiber Special Services Employee</b>	<b>NA</b>	Regular time	TBD	(e) x 1.264	(e+f)
		Night Time	TBD	(e) x 1.264	(e+f)
		Overtime	TBD	(e) x 1.264	(e+f)
		Double Time	TBD	(e) x 1.264	(e+f)

**Total Two Million Dollars (\$2,000,000.00) per year with a total contract amount not to exceed Six Million Dollars (\$6,000,000.00) among all Consultants over the three-year term.**

**Maximum Annual Price Escalator:**

**Year 2: 3%                      Year 3: 3%**

Notes:

- (a) The number of hours for the various tasks cannot be estimated at this time for an on-call contract, they will be included in a Task Order budget prepared by City at the time services are requested.
- (b) Rates for prevailing wage categories are subject to annual escalations in accordance with the bi-annual wage determinations from the California DIR. Rates based on California DIR's wage determinations dated September 2023 (Inspectors).
- (c) [Omitted intentionally]
- (d) Nighttime – Work begun after 5 PM or before 6 AM (1.125 x hourly rate).  
Overtime – Work over 8 hours Monday – Friday or 1<sup>st</sup> 8 hours on Saturdays (1.5 x hourly rate).  
Double Time – Work over 8 hours on Saturdays or all hours on Sundays and Holidays (2 x hourly rate).
- (e) Hourly rates are inclusive of travel time and no travel time will be billed by staff for daily travel to the project site.
- (f) Rate including Contractor expenses (ex. benefits, vehicle, cell phone, laptops, PPE, tools, etc.) to be added to Employee hourly rates
- (g) Employee Hourly Rate + Extended Rate



## EXHIBIT D INSURANCE REQUIREMENTS

CONSULTANTS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS AS SPECIFIED HEREIN.

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY	STATUTORY	STATUTORY
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	\$1,000,000	
YES	<b>THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED:</b> CONSULTANT, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONSULTANT AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, <b>NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.</b>			

I. INSURANCE COVERAGE MUST INCLUDE:

- A. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONSULTANT'S AGREEMENT TO INDEMNIFY CITY.

II. THE CONSULTANT MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE AT THE FOLLOWING EMAIL: [PURCHASINGSUPPORT@CITYOFPALOALTO.ORG](mailto:PURCHASINGSUPPORT@CITYOFPALOALTO.ORG)

III. ENDORSEMENT PROVISIONS WITH RESPECT TO THE INSURANCE AFFORDED TO ADDITIONAL INSUREDS:

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSURED, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

**EVIDENCE OF INSURANCE AND OTHER RELATED NOTICES ARE REQUIRED TO BE  
FILED WITH THE CITY OF PALO ALTO SENT TO THE FOLLOWING EMAIL:  
[PURCHASINGSUPPORT@CITYOFPALOALTO.ORG](mailto:PURCHASINGSUPPORT@CITYOFPALOALTO.ORG)**

## **EXHIBIT E**

### **DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS**

This Exhibit shall apply only to a contract for public works construction, alteration, demolition, repair or maintenance work, CITY will not accept a bid proposal from or enter into this Agreement with CONSULTANT without proof that CONSULTANT and its listed subcontractors are registered with the California Department of Industrial Relations (“DIR”) to perform public work, subject to limited exceptions. City requires CONSULTANT and its listed subcontractors, if any, to comply with all applicable requirements of the California Labor Code including but not limited to Labor Code Sections 1720 through 1861, and all applicable related regulations, including but not limited to Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq., as amended from time to time. This Exhibit E applies in addition to the provisions of Section 26 (Prevailing Wages and DIR Registration for Public Works Contracts) of the Agreement.

CITY provides notice to CONSULTANT of the requirements of California Labor Code Section 1771.1(a), which reads:

“A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

This Project is subject to compliance monitoring and enforcement by DIR. All contractors must be registered with DIR per Labor Code Section 1725.5 in order to submit a bid. All subcontractors must also be registered with DIR. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with DIR. Additional information regarding public works and prevailing wage requirements is available on the DIR web site (see e.g. <http://www.dir.ca.gov>) as amended from time to time.

CITY gives notice to CONSULTANT and its listed subcontractors that CONSULTANT is required to post all job site notices prescribed by law or regulation.

CONSULTANT shall furnish certified payroll records directly to the Labor Commissioner (DIR) in accordance with Subchapter 3, Title 8 of the California Code of Regulations Section 16461 (8 CCR Section 16461).

CITY requires CONSULTANT and its listed subcontractors to comply with the requirements of Labor Code Section 1776, including but not limited to:

Keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by, respectively, CONSULTANT and its listed subcontractors, in connection with the Project.

The payroll records shall be verified as true and correct and shall be certified and made available for inspection at all reasonable hours at the principal office of CONSULTANT and its listed subcontractors, respectively.

At the request of CITY, acting by its Project Manager, CONSULTANT and its listed subcontractors shall make the certified payroll records available for inspection or furnished upon request to the CITY Project Manager within ten (10) days of receipt of CITY's request.

☐ CITY requests CONSULTANT and its listed subcontractors to submit the certified payroll records to CITY's Project Manager at the end of each week during the Project.

If the certified payroll records are not provided as required within the 10-day period, then CONSULTANT and its listed subcontractors shall be subject to a penalty of one hundred dollars (\$100.00) per calendar day, or portion thereof, for each worker, and CITY shall withhold the sum total of penalties from the progress payment(s) then due and payable to CONSULTANT.

Inform CITY's Project Manager of the location of CONSULTANT's and its listed subcontractors' payroll records (street address, city and county) at the commencement of the Project, and also provide notice to CITY's Project Manager within five (5) business days of any change of location of those payroll records.

Eight (8) hours labor constitutes a legal day's work. CONSULTANT shall forfeit as a penalty to CITY, \$25.00 for each worker employed in the execution of the Agreement by CONSULTANT or any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day or forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular, Sections 1810 through 1815 thereof, except that work performed by employees of CONSULTANT or any subcontractor in excess of eight (8) hours per day, or forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day, or forty (40) hours per week, at not less than one and one-half (1&1/2) times the basic rate of pay, as provided in Section 1815.

CONSULTANT shall secure the payment of workers' compensation to its employees as provided in Labor Code Sections 1860 and 3700 (Labor Code 1861). CONSULTANT shall sign and file with the CITY a statutorily prescribed statement acknowledging its obligation to secure the payment of workers' compensation to its employees before beginning work (Labor Code 1861). CONSULTANT shall post job site notices per regulation (Labor Code 1771.4(a)(2)).

CONSULTANT shall comply with the statutory requirements regarding employment of apprentices including without limitation Labor Code Section 1777.5. The statutory provisions will be enforced for penalties for failure to pay prevailing wages and for failure to comply with wage and hour laws.

## EXHIBIT F

### Claims for Public Contract Code Section 9204 Public Works Projects

The provisions of this Exhibit are provided in compliance with Public Contract Code Section 9204; they provide the exclusive procedures for any claims pursuant to Public Contract Code Section 9204 related to the Services performed under this Agreement.

**1. Claim Definition.** “Claim” means a separate demand by the Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

- (A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by the City.
- (B) Payment by the City of money or damages arising from the Services performed by, or on behalf of, the Contractor pursuant to the Agreement and payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled.
- (C) Payment of an amount that is disputed by the City.

**2. Claim Process.**

(A) Timing. Any Claim must be submitted to City in compliance with the requirements of this Exhibit no later than fourteen (14) days following the event or occurrence giving rise to the Claim. This time requirement is mandatory; failure to submit a Claim within fourteen (14) days will result in its being deemed waived.

(B) Submission. The Claim must be submitted to City in writing, clearly identified as a “Claim” submitted pursuant to this Exhibit, and must include reasonable documentation substantiating the Claim. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Agreement, and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with schedule analysis and narrative depicting and explaining claimed time impacts.

(C) Review. Upon receipt of a Claim in compliance with this Exhibit, the City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days from receipt, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the City and Contractor may, by mutual agreement, extend the time period provided in this paragraph 2.

(D) If City Council Approval Required. If the City needs approval from the City Council to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the City Council does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three days following the next duly publicly noticed meeting of the City Council after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

(E) Payment. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the City issues its written statement. If the City fails to issue a written statement, paragraph 3, below, shall apply.

### **3. Disputed Claims**

(A) Meet and Confer. If the Contractor disputes the City's written response, or if the City fails to respond to a Claim submitted pursuant to this Exhibit within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the City issues its written statement.

(B) Mediation. Any remaining disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing by the Contractor. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to any other remedies authorized by the Agreement and laws.

(i) For purposes of this paragraph 3.B, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(ii) Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation, if any, under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

**4. City's Failure to Respond**. Failure by the City to respond to a Claim from the Contractor within the time periods described in this Exhibit or to otherwise meet the time requirements of this Exhibit shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of the City's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this Exhibit, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the Contractor.

**5. Interest**. Amounts not paid in a timely manner as required by this section shall bear interest at seven (7) percent per annum.

**6. Approved Subcontractor Claims.** If an approved subcontractor or a lower tier subcontractor lacks legal standing to assert a Claim against the City because privity of contract does not exist, the Contractor may present to the City a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a Claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to the City shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Contractor shall notify the subcontractor in writing as to whether the Contractor presented the claim to the City and, if the Contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

**7. Waiver of Provisions.** A waiver of the rights granted by Public Contract Code Section 9204 is void and contrary to public policy, provided, however, that (1) upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) the City may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of Public Contract Code Section 9204, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.