

**PROFESSIONAL SERVICES AGREEMENT
CROSS-CONNECTION CONTROL PLAN & HAZARD ASSESSMENTS
RFP PWD 24.202**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into this ___ day of October 2024, between the **CITY OF PLEASANTON**, a municipal corporation (“City”), and **XXX (consultant name)**, whose address is XXX, XX, CA 945XX and telephone number is 925.XXX.XXXX (“Consultant”).

RECITALS

A. Consultant is qualified to and experienced to provide consulting services for Compliance with Cross-Connection Control Plan and Hazard Assessments in accordance with the State regulations, for the purposes specified in this Agreement.

B. City finds it necessary and advisable to use the services of the Consultant for the purposes provided in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions in this Agreement, City and Consultant agree as follows:

1. **Consultant’s Services**. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in **Exhibit A**. Consultant shall provide said services at that time, place and in the manner specified in **Exhibit B**.
2. **City Assistance, Facilities, Equipment and Clerical Support**. Except as set forth in **Exhibit A**, Consultant shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. City shall furnish to Consultant only the facilities and equipment listed in **Exhibit A** according to the terms and conditions set forth in **Exhibit A**.
3. **Terms**. This contract shall commence on the date written above and will expire three years from the date written above. The parties may extend this Agreement, by Amendment, for additional two (2), one-year terms, not to exceed five years for the total Agreement. The rates shall remain firm during the initial term of the Agreement, for the fourth or subsequent years of the Agreement, the cost of each one-year term may increase only by the change in the consumer price index for the San Francisco-Oakland-San Jose Metropolitan Area (all items index; all urban consumers) for the twelve-month period ending in August each year as published by the Bureau of Labor Statistics, U.S. Department of Labor. It is the sole responsibility of the contractor to provide the City with their new calculated rate sheet(s).
4. **Compensation**. City shall pay Consultant for services rendered pursuant to this Agreement as described more particularly in **Exhibit B**. The payments shall be made on a monthly basis upon receipt and approval of Consultant’s invoice. Compensation for services and reimbursement for costs shall not exceed \$XXX,XXX for the term of this Agreement, which includes a 15% contingency for unforeseen circumstances and related extra services as determined necessary by the City. Payment of such contingency funds is not guaranteed to Consultant unless the City requests such extra services.

a. Invoices submitted to City must contain a brief description of work performed, with identified task if applicable, time used, personnel performing services and City reference number. Also included with the invoices is a tracking mechanism of the percentage of task completed in comparison to the available allocated dollar amounts per task. Rates included on the invoice must match the Fee Schedule/Rate Sheet on file with this Agreement. For all markups, all receipts and invoices must be submitted with invoice for reimbursement. Upon completion of work and acceptance by City, Consultant shall submit final invoice for payment.

b. Upon completion of work and acceptance by City, Consultant shall have sixty (60) days in which to submit final invoicing for payment. An extension may be granted by City upon receiving a written request thirty (30) days in advance of said time limitation. The City shall have no obligation or liability to pay any invoice for work performed which the Consultant fails or neglects to submit within sixty (60) days, or any extension thereof granted by the City, after the work is accepted by the City.

5. **Sufficiency of Consultant's Work.** All work product and all other documents prepared by Consultant shall be adequate and sufficient to meet the purposes for which they are prepared.

6. **Ownership of Work.** Both Consultant and City shall jointly own any and all work product created by the Consultant on behalf of City pursuant to this Agreement. Nothing herein shall result in the transfer of any ownership rights from Consultant to City for any previously created and/or copyrighted material owned by Consultant. To the extent that the work product created by Consultant for City incorporates any such previously created and/or copyrighted material into such work product, Consultant grants to City an irrevocable and unrestricted license to use such previously created and/or copyrighted material for City's internal use. The City shall ensure that these editable materials, including MS Word training PowerPoint presentations, are used only for City's internal use and, unless required by law, not released or made available via internet, on disk, or otherwise to anyone outside the City business operations.

7. **Changes.** City may request changes in the scope of services to be provided by Consultant. Any changes and related fees shall be mutually agreed upon between the parties and subject to a written amendment to this Agreement.

8. **Consultant's Status.** In performing the obligations set forth in this Agreement, Consultant shall have the status of an independent contractor and Consultant shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Consultant are its agents and employees and are not agents or employees of City.

9. **Termination for Convenience of City.** The City may terminate this Agreement at any time by mailing a notice in writing to Consultant. The Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the work actually completed at the time the notice of termination is received.

10. **Non-Assignability.** The Consultant shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing. Consultant shall be solely responsible for reimbursing subcontractors.

11. **Indemnity and Hold Harmless.** Consultant shall defend, indemnify, and hold harmless, the City and its officers, agents and employees from and against all claims, losses, damage, injury, and liability for damages arising from, or alleged to have arisen from, errors, omissions, negligent or wrongful acts of the Consultant in the performance of its services under this Agreement, regardless of whether the City has reviewed or approved the work or services which has given rise to the claim, loss, damage, injury or liability for damages. This indemnification shall extend for a reasonable period of time after completion of the project as well as during the period of actual performance of services under this Agreement. The City's acceptance of the insurance certificates required under this Agreement does not relieve the Consultant from its obligation under this paragraph.

12. **Insurance.** During the term of this Agreement, Consultant shall maintain in full force and effect, at its own cost and expense, insurance coverages with insurers with an A.M. Best's rating of no less than A:VII. Contractor shall have the obligation to furnish City, as additional insured, the minimum coverages identified below, or such greater or broader coverage for City, if available in the Contractor's policies:

- a. **General Liability and Bodily Injury Insurance.** Commercial general liability insurance with limits of at least \$2,000,000 combined limit for bodily injury and property damage that provides that the City, its officers, employees and agents are named as additional insureds under the policy as evidenced by an additional insured endorsement satisfactory to the City Attorney. The policy shall state in writing either on the Certificate of Insurance or attached rider that this insurance will operate as primary insurance for work performed by Consultant and its subconsultants, and that no other insurance effected by City or other named insured will be called on to cover a loss.
- b. **Automobile Liability Insurance.** Automobile liability insurance with limits not less than \$2,000,000 per person/per occurrence.
- c. **Workers' Compensation Insurance.** Workers' Compensation Insurance for all of Consultant's employees, in strict compliance with State laws, including a waiver of subrogation and Employer's Liability Insurance with limits of at least \$1,000,000.
- d. **Professional Liability Insurance.** Professional liability insurance in the amount of \$2,000,000.
- e. **Certificate of Insurance.** Consultant shall file a certificate of insurance with the City prior to the City's execution of this Agreement, and prior to engaging in any operation or activity set forth in this Agreement. The Certificate of Insurance shall provide in writing that the insurance afforded by this Certificate shall not be suspended, voided, canceled, reduced in coverage or in limits without providing notice to the City in accordance with California Insurance Code section 677.2 which requires the notice of cancellation to: 1) include the

effective date of the cancellation; 2) include the reasons for the cancellation; and 3) be given at least 30 days prior to the effective date of the cancellation, except that in the case of cancellation for nonpayment of premiums or for fraud, the notice shall be given no less than 10 days prior to the effective date of the cancellation. Notice shall be sent by certified mail, return receipt requested. In addition, the insured shall provide thirty (30) days prior written notice to the City of any cancellation, suspension, reduction of coverage or in limits, or voiding of the insurance coverage required by this agreement. The City reserves the right to require complete certified copies of policies.

- f. Waiver of Subrogation. The insurer agrees to waive all rights of subrogation against the City, its officers, employees and agents.
- g. Defense Costs. Coverage shall be provided on a “pay on behalf of” basis, with defense costs payable in addition to policy limits. There shall be no cross-liability exclusions.
- h. Subcontractors. Consultant shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited naming additional insureds.

13. **Notices**. All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

To Consultant: _____

To City: City Manager
City of Pleasanton
P.O. Box 520
Pleasanton, CA 94566

14. **Conformance to Applicable Laws**. Consultant shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Consultant shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

15. **Licenses, Certifications and Permits**. Prior to the City’s execution of this Agreement and prior to the Consultant’s engaging in any operation or activity set forth in this Agreement, Consultant shall obtain a City of Pleasanton business license, which must be kept in effect during the term of this Agreement. Consultant covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement.

16. **Records and Audits**. Consultant shall maintain all records regarding this Agreement and the services performed for a period of three years from the date that final payment is made. At any time during normal business hours, the records shall be made available to the City to inspect and audit.

17. **Confidentiality**. Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

18. **Conflicts of Interest.** Consultant covenants that other than this Agreement, Consultant has no financial interest with any official, employee or other representative of the City. Consultant and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner of degree by the performance of Consultant’s services under this Agreement. If such an interest arises, Consultant will immediately notify the City.

19. **Waiver.** In the event either City or Consultant at any time waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation.

20. **Governing Law.** California law shall govern any legal action pursuant to this Agreement with venue in the applicable court or forum for Alameda County.

21. **No Personal Liability.** No official or employee of City shall be personally liable to Consultant in the event of any default or breach by the City or for any amount due Consultant.

22. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

23. **Counterparts and Electronic Signatures.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with U.S. federal E-Sign Act of 2000 (15 U.S. Code §7001 et seq.), California Uniform Electronic Transactions Act (Cal. Civil Code §1633.1 et seq.), or other applicable law) or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

24. **Scope of Agreement.** This writing constitutes the entire Agreement between the parties. Any modification to the Agreement shall be in writing and signed by both parties.

THIS AGREEMENT executed the date and year first above written.

CITY OF PLEASANTON

CONSULTANT

Gerry Beaudin, City Manager

By: _____
Signature

ATTEST:

Print name

Jocelyn Kwong, City Clerk

Its: _____
Title

APPROVED AS TO FORM:

Daniel G. Sodergren, City Attorney