

AS-NEEDED MAINTENANCE AND TRADE SERVICES AGREEMENT  
FOR XXX(SERVICES) #PWD 24-XXX

THIS AGREEMENT is made and entered into this first day of July 2024 between XXX ("Contractor"), a California Corporation, whose address is XXX and the CITY OF PLEASANTON, a municipal corporation ("City").

**RECITALS**

- A. Contractor has submitted a proposal in response to the City of Pleasanton's Request for Bids (RFB) #PWD 24-XXX and is qualified and experienced in providing XXX (Services) the work or services set forth in Exhibit A of this Agreement.
- B. City finds it necessary and advisable to obtain work or services from Contractor on both a scheduled basis as set forth in RFB #PWD 24-XXX, as well as on an as-needed basis for potential unscheduled work, including but not limited to urgent requests by the City or a declaration of an emergency by local or state officials, described therein.

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

- 1. **Term**. The term of this Agreement commences on the date written above and will expire on June 30, 2027 unless the parties agree to extend the Agreement for an additional two (2) one-year terms, not to exceed five (5) years total for this Agreement.
- 2. **Services to be performed**. Contractor shall perform, or cause to be performed, the work or services described in Exhibit A. This Agreement does not obligate the City to utilize Contractor exclusively for such work or services.
  - a. **Task Authorization** - When services are estimated to be over \$60,000, Contractor will submit a written estimate detailing the cost to perform the requested work or services, the City will then issue a Task Authorization letter as a guide for reimbursement once the scheduled work is completed and to the satisfaction of the City. If authorized work exceeds the initial estimate or City requests additional services, Contractor is to notify the City of the additional cost and the City will provide an amended Task Authorization. No work shall be performed unless approved by the City's designated project manager.
- 3. **Compensation**. Total compensation pursuant to this Agreement shall not exceed \$XXX,000 per fiscal year and \$XXX for the Term. Rates shall be as set forth in Exhibit A. For the second 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 May each year as published by the Bureau of Labor Statistics, U.S. Department of Labor.

- a. Payment shall be made within thirty (30) days of receipt of Contractor's invoice and approval by City.
  - b. If the prevailing wage for crafts or classifications subject to this Agreement change during the term of this Agreement, the City will accept corresponding increases in Contractor's hourly rates when sufficient documentation is received from the Contractor and verified with the Department of Industrial Relations.
4. **Indemnification.** Contractor shall hold harmless, defend, and indemnify the City, its officers, agents and employees ("Indemnities"), against any and all claims, costs, demands, causes of action, suits, losses, expenses, attorney's fees, or liability, arising from or in any manner related to Contractor's (includes Contractor's employees, agents, or subcontractors) negligent act or omission, whether alleged or actual, regarding the work or services performed or caused to be performed pursuant to this Agreement and any amendments thereto. Contractor shall not, however, be obligated to indemnify Indemnities from claims arising from the sole negligence or willful misconduct of Indemnities. This indemnification includes any claim that the materials or equipment provided under this Agreement, or any tool, article or process used, constitutes an infringement of any patent issued by the United States. This indemnification provision shall survive termination or cancellation of the Agreement.
5. **Insurance.** During the term of this Agreement, Contractor shall maintain at its own cost and expense the following insurance coverage with insurers with an A.M. Best's rating of no less than A:VII:
- 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 additional insured's under the policy as evidenced by an additional insured endorsement satisfactory to the City Attorney. The policy shall further state in writing either on the Certificate of Insurance or attached rider that this insurance will operate as primary insurance for work performed by Contractor and its subcontractors, 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 Contractor's employees shall be in strict compliance with State laws, including a waiver of subrogation and Employer's Liability Insurance with limits of at least \$1,000,000.

For work or services deemed public works, by signing this Agreement, Contractor is certifying, pursuant to Section 1861 of the California Labor Code, that: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract."

- d. Certificate of Insurance. Contractor 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.
  - e. Subcontractors. Contractor 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 to naming additional insureds.
  - 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.
6. **Independent Contractor.** The Contractor is an independent contractor retained by the City. All personnel employed by the Contractor, including subcontractors, and personnel of subcontractors, are not and shall not be employees of the City.
7. **Contractor's Warranty.** Contractor shall bear the risk of loss or damage to any goods associated with the services until delivered to and accepted by City. Contractor further warrants that all work done and goods provided under this Agreement shall: a) meet all conditions of the Agreement; b) shall be free from all defects in design, material and workmanship; and 3) shall be fit for the purposes intended. If any defects occur within the 12 months following acceptance, Contractor shall be solely responsible for the correction of those defects.
8. **Labor Code/Prevailing Wages.** The work performed under this Agreement is a "public work" and prevailing wage laws shall apply. No less than the general prevailing rate of per diem wages, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the work under this Agreement shall be paid to all workers, laborers and mechanics employed in the execution of the work by the Contractor or any subcontractor doing or contracting to do any part of the work. The appropriate determination of the Director of the California Department of Industrial Relations shall be

available for inspection. Contractor shall post, at each job site, a copy of the prevailing rate of per diem wages.

To the extent applicable, Contractor shall comply with all requirements of the California Labor Code, including but not limited to, Labor Code sections: 1773.2 (regarding posting wage determinations at each job site); section 1776 (regarding the certification, maintenance, and availability for inspection of payroll records); section 1777.5 (regarding employment of apprentices); section 1810 (regarding a legal day's work as 8 hours of labor); and section 1775 (regarding penalties for violations). The Contractor shall forfeit fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for any public work done under the Agreement by it or by any subcontractor under Contractor.

9. **Notices.** All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

To Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

10. **Conflict of Interest.** In accepting this Agreement, Contractor 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 this Agreement. Contractor further covenants that, in the performance of this Agreement, it will not employ any person having such an interest. Contractor certifies that no City officer, employee, or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor agrees to advise City if any conflicts arise.

11. **Miscellaneous Provisions.**

- a. City may terminate this Agreement at any time by mailing a notice to Contractor. Contractor shall be paid for that portion of work or services already completed by Contractor as approved by City.
- b. Contractor acknowledges that time is of the essence regarding the performance of this Agreement.
- c. Contractor shall not assign or transfer this Agreement.
- d. If either City or Contractor waives a breach of this Agreement, such waiver shall not constitute a waiver of other or succeeding breaches of this Agreement.
- e. This Agreement constitutes the entire understanding of the parties.
- f. This Agreement may only be modified by a writing signed by the authorized representative of both parties.

- g. Contractor covenants that it has obtained and will keep in effect during the term of the Agreement all certificates, licenses, including a City Business License, permits or the like required by any federal, state or local regulatory agency in order to perform the work under this Agreement.
- h. Contractor shall comply with all federal, state and local laws, regulations and rules, including but not limited to applicable safety and environmental laws. Contractor shall bear full and exclusive responsibility for any release of hazardous or non-hazardous substances and disposal of hazardous wastes.
- i. The Contractor will permit the City to audit, examine and make copies of all contracts, invoices, payrolls and other documents or data relating to this Agreement. Such records shall be maintained for three years from the date of final payment under this Agreement.
- j. 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.
- k. This Agreement shall be governed by the laws of the State of California, with venue for any action under this Agreement in Alameda County, California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

**CITY OF PLEASANTON**

**CONTRACTOR**

\_\_\_\_\_  
Gerry Beaudin, City Manager

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

ATTEST:

Title: \_\_\_\_\_

\_\_\_\_\_  
Jocelyn Kwong, City Clerk

*[If Contractor is a corporation, signatures must comply with California Corporations Code §313]*

APPROVED AS TO FORM:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Daniel Sodergren, City Attorney

\_\_\_\_\_  
Print name

Title: \_\_\_\_\_