

Standard Professional Services Agreement (“PSA”)

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement ("Agreement"), dated as of <DATE> (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and DC Electric Group, Inc. (hereinafter "Consultant").

R E C I T A L S

WHEREAS, the Consultant represents that it is a duly-qualified electrical contractor, experienced in the maintenance and repair of traffic signals and streetlights and related services;

WHEREAS, in the judgment of the Sonoma County Public Infrastructure, it is necessary and desirable to employ the services of the Consultant for traffic signal and safety lighting maintenance and emergency repair services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

A G R E E M E N T

1. Scope of Services.

1.1. Consultant's Specified Services.

Consultant shall perform the services described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter "Scope of Work"), and within the times or by the dates provided for in Exhibit A and pursuant to Article 7, Prosecution of Work. In the event of a conflict between the body of this Agreement and Exhibit A, the provisions in the body of this Agreement shall control.

1.2. Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3. Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant

hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4. Assigned Personnel.

Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.

Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Timothy Carter, Patrick Madden, Chris Wilson, Jason Filippi, Justin Calkins, Jeff Asch, and Dave D'Elicio.

In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5. Consultant's Reports or Meetings.

Consultant shall submit progress reports at least once a month. The report should be sufficiently detailed for the cost administrator designated by County ("Contract Administrator") to determine, if Consultant is performing to expectations, or is on schedule, to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

Consultant's Project Manager shall meet with the County's Contract Administrator, as needed, to discuss progress on the Agreement.

2. Allowable Costs and Payments.

2.1. Method of Payment.

The method of payment shall be the unit amount specified for each item, as listed in Exhibit A. The specified unit amount shall include full compensation to Consultant for the item as described, including but not limited to, Contractor-owned equipment repairs, maintenance, or insurance; costs of labor, fuel, vehicles and equipment; and travel, and no further compensation will be allowed therefore.

2.2. Work Orders

Work to be completed will be assigned by the County via a verbal or written work order and compensated per the unit amounts/rates in Exhibit A. Response time and completion confirmation procedures are defined in the Scope of Work and Preventative Maintenance Schedule included in Exhibit A.

If specific work to be performed is not listed on the rate sheet, the County will request from the Contractor a written description of work and corresponding cost estimate based on the hourly rates listed in Exhibit A and provide written approval before the work order is issued.

2.3. Progress Payments.

Progress payments may be made monthly in arrears based on the percentage of work completed by Consultant. If Consultant fails to submit the required deliverable items according to the Scope of Work, County shall have the right to delay payment or terminate this Agreement in accordance with the provisions of Article 4 "Termination".

2.4. Notice to Proceed.

Consultant shall not commence performance of work or services until this Agreement has been approved by County and notification to proceed has been issued by County's Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this Agreement.

Invoices.

Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (a) the task(s) performed; (b) the time in quarter hours devoted to the task(s); (c) the hourly rate or rates of the persons performing the task(s); and (d) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to sub-consultants for work required included in the prime consultant's invoice. Consultant shall submit a Subconsultant Payment Declaration with each invoice.

Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County. Invoices shall be sent to County's Contract Administrator at the following addresses:

spi-roads-accounting@sonomacounty.gov

joe.pease@sonomacounty.gov

2.6. Contract Value.

The total amount payable by County shall not exceed **\$1,500,000.00**. There is no guaranteed minimum payment for services provided under this Agreement.

2.7. Taxes.

Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If Consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the Consultant agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

This Agreement shall go into effect on _____ <DATE> _____, contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The Agreement shall end on _____ <DATE> _____ unless extended by contract amendment or terminated earlier in accordance with the provisions of Article 4.

Consultant is advised that any recommendation for contract award is not binding on County until the Agreement is fully executed and approved by County.

County shall have two separate and consecutive options to extend the Term of this Agreement of one year each, upon the same terms and conditions set forth in this Agreement. County's options to extend are exercisable by written notice from the

Director of Public Infrastructure to Consultant, delivery of which shall automatically extend the term by one year without need for counter-signature or contract amendment.

4. Termination.

4.1. Termination Without Cause.

Notwithstanding any other provision of the Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 5 days written notice to Consultant.

4.2. Termination for Cause.

Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3. Delivery of Work Product and Final Payment Upon Termination.

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4. Payment Upon Termination.

Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

4.5. Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Sonoma County Public Infrastructure Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations under this Section apply whether or not there is concurrent or contributory negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. County shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Changes which do not exceed the delegated signature authority of the Department may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors or Purchasing Agent must authorize all other extra or changed work which exceeds the

delegated signature authority of the Department Head. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1. Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2. Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3. No Suspension or Debarment.

Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the County

9.4. Taxes.

Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to

pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

9.5. Records Maintenance.

Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6. Conflict of Interest.

During the term of this Agreement, Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this Agreement or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing County construction project.

Consultant certifies that it has disclosed to County any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement. Consultant agrees to advise County of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Consultant's or such other person's financial interests.

9.7. Statutory Compliance/Living Wage Ordinance.

Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8. Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.9. AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.10. Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.11. Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.12. Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

9.13. Prevailing Wage.

A. No Consultant or subconsultant may be awarded an Agreement containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code § 1725.5. Registration with the DIR must be maintained throughout the entire term of this Agreement, including any subsequent amendments. Consultant shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this Agreement are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer. These wage rates are made a specific part of this Agreement by reference pursuant to Labor Code § 1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at County construction sites, at County facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve County projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov>.

D. Payroll Records.

1. Each Consultant and subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code § 1776 and as defined in 8 CCR § 16000 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 the Consultant or subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (a) The information contained in the payroll record is true and correct' and (b) The employer has complied with the requirements of Labor Code § 1771, § 1811, and § 1815 for any work performed by his or her employees on the public works project.
2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the Consultant under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by County at all reasonable hours at the principal office of Consultant. Consultant shall provide copies of certified payrolls or permit inspection of its records as follows: (a) A certified copy of an

employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request; (b) A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of County, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to County, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by Consultant; (c) The public shall not be given access to certified payroll records by Consultant. Consultant is required to forward any requests for certified payrolls to County by both email and regular mail on the business day following receipt of the request.

3. Consultant shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
 4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by County shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of Consultant or subconsultant performing the work shall not be marked or obliterated.
 5. Consultant shall inform County of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
 6. Consultant or subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event Consultant or subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to County, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties may be withheld by County from payments then due. Consultant is not subject to a penalty assessment pursuant to this section due to the failure of a subconsultant to comply with this section.
- E. When prevailing wage rates apply, Consultant is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by County.
- F. Penalty.
1. Consultant and any of its subconsultants shall comply with Labor Code § 1774 and § 1775. Pursuant to Labor Code § 1775, Consultant and any

subconsultant shall forfeit to County a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under this Agreement by Consultant or by its subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§ 1770 to 1780, inclusive.

2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of Consultant or subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of Consultant or subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the Consultant or subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if Consultant or subconsultant had knowledge of the obligations under the Labor Code. Consultant is responsible for paying the appropriate rate, including any escalations that take place during the term of this Agreement.
3. In addition to the penalty and pursuant to Labor Code § 1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Consultant or subconsultant.
4. If a worker employed by a subconsultant on a public works project is not paid the general prevailing per diem wages by the subconsultant, the prime Consultant of the project is not liable for the penalties described above unless the prime Consultant had knowledge of that failure of the subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime Consultant fails to comply with all of the following requirements: (a) The Agreement executed between the Consultant and the subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815; (b) The Consultant shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the subconsultant; (c) Upon becoming aware of the subconsultant's failure to pay the specified prevailing rate of wages to the subconsultant's workers, Consultant shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project; (d) Prior to making final payment to the subconsultant for work performed on the public works project, the Consultant shall obtain an affidavit signed under penalty of perjury from the subconsultant that the Subconsultant had paid the specified general prevailing rate of per

diem wages to the subconsultant's employees on the public works project and any amounts due pursuant to Labor Code § 1813.

5. Pursuant to Labor Code § 1775, County shall notify Consultant on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
 6. If County determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if County did not retain sufficient money under the Agreement to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, Consultant shall withhold an amount of moneys due the subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by County.
- G. Hours of Labor. Eight (8) hours labor constitutes a legal day's work. Consultant shall forfeit, as a penalty to County, twenty-five dollars (\$25) for each worker employed in the execution of the Agreement by Consultant or any of its subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§ 1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in § 1815.
- H. Employment of Apprentices.
1. Where either this Agreement or any subcontract exceeds thirty thousand dollars (\$30,000), Consultant and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices
 2. Consultant and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, Consultant and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to-apprentice ratios for the Agreement work. Consultant is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

9.14. Retention of Records/Audit.

For the purpose of determining compliance with California Government Code Section 8546.7, Consultant and subconsultants shall maintain and make available for

inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties, including the Consultant's independent certified public accountant, shall make such workpapers and materials available at their respective offices at all reasonable times during the Agreement period and for four (4) years from the date of final payment under the Agreement. County, Caltrans Auditor, FHWA, or any duly authorized representative of the federal government having jurisdiction under federal laws or regulations (including the basis of federal funding in whole or in part) shall have access to any books, records, and documents of Consultant, subconsultants, and Consultant's independent certified public accountant, that are pertinent to the Agreement for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

9.15. Subcontracting.

Nothing contained in this Agreement or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.

Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

Consultant shall pay its subconsultants within fifteen (15) calendar days from receipt of each payment made to Consultant by County.

All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.

Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator in advance of assigning work to the substitute subconsultant.

9.16. Equipment Purchase and Other Capital Expenditures.

Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or

the absence of bidding must be adequately justified.

Any equipment purchased as a result of this Agreement is subject to the following: (1) Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County; and (2) 2 CFR Part 200 requires a credit to federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

9.17. Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the Agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

9.18. Funding Requirements.

It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.

This Agreement is valid and enforceable only, if sufficient funds are made available to County for the purpose of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this Agreement in any manner.

It is mutually agreed that if sufficient funds are not appropriated, this Agreement may be amended to reflect any reduction in funds.

County has the option to terminate the Agreement pursuant to Article 4, or by mutual agreement to amend the Agreement to reflect any reduction of funds.

9.19. Evaluation of Consultant.

Consultant's performance may be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

9.20. Claims Filed By County's Construction Contractor.

If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this Agreement.

Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this Agreement in order to resolve the construction claims.

9.21. National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

9.22. Retention of Funds.

Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

No retainage will be withheld by the County from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies,

otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.

9.23. Contingent Fee.

Consultant warrants, by execution of this Agreement that no person or selling agency has been employed, or retained, to solicit or secure this Agreement upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this Agreement without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

9.24. Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this Agreement; to review and inspect the project activities and files at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

9.25. Safety.

Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

Pursuant to the authority contained in Vehicle Code Section 591, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other

agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

County: Sonoma County Public Infrastructure
Attn: Joe Pease
400 Aviation Boulevard, Suite 100
Santa Rosa, CA 95403
Joe.Pease@sonomacounty.gov
spi-roads-accounting@sonomacounty.gov

Consultant: DC Electric Group, Inc.
PO Box 7525
Cotati, CA 94931
Tim@DCElectricGroup.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1. No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2. Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3. Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4. No Third-Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5. Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6. Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7. Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8. Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9. Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

13.10. Counterpart; Electronic Signatures.

The parties agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and together which when executed by the requisite parties shall be deemed to be a complete original agreement. Counterparts may be delivered via facsimile, electronic mail (including PDF) or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered, be valid and effective for all purposes, and shall have the same legal force and effect as an original document. This Agreement, and any counterpart, may be electronically signed by each or any of the parties through the use of any commercially available digital and/or electronic signature software or other electronic signature method in compliance with the U.S. federal ESIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civil Code § 1633.1 et seq.), or other applicable law. By its use of any electronic signature below, the signing party agrees to have conducted this transaction and to execution of this Agreement by electronic means.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CONSULTANT:

By:

Company:

Name:

Title:

Date:

COUNTY OF SONOMA:

CERTIFICATES OF INSURANCE ON

FILE WITH AND APPROVED AS

TO SUBSTANCE FOR COUNTY:

By:

Engineering Technical Writer

Date: _____

AGREEMENT EXECUTED:

By:

Director of Sonoma County Public
Infrastructure, under authority granted
by Board of Supervisors

Date: _____

APPROVED AS TO FORM FOR
COUNTY:

By:

County Counsel

Date: _____