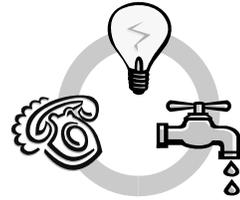


# INDUSTRY PUBLIC UTILITIES COMMISSION CITY OF INDUSTRY

SPECIAL MEETING AGENDA  
SEPTEMBER 8, 2016 8:00 A.M.



President Mark D. Radecki  
Commissioner Abraham N. Cruz  
Commissioner Roy Haber, III  
Commissioner Cory C. Moss  
Commissioner Newell W. Ruggles



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*Location: City Council Chamber, 15651 East Stafford Street, City of Industry, California*

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## **Addressing the Commission:**

- ▶ **Agenda Items:** Members of the public may address the Commission on any matter listed on the Agenda. Anyone wishing to speak to the Commission is asked to complete a Speaker's Card which can be found at the back of the room and at the podium. The completed form should be submitted to the City Clerk prior to the Agenda item being called and prior to the individual being heard by the Commission.
- ▶ **Public Comments (Agenda Items Only):** During public comments, if you wish to address the Commission during this Special Meeting, under Government Code Section 54954.3(a), you may only address the Commission concerning any item that has been described in the notice for the Special Meeting.

## **Americans with Disabilities Act:**

- ▶ In compliance with the ADA, if you need special assistance to participate in any City meeting (including assisted listening devices), please contact the City Clerk's Office (626) 333-2211. Notification of at least 48 hours prior to the meeting will assist staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting.

## **Agendas and other writings:**

- ▶ In compliance with SB 343, staff reports and other public records permissible for disclosure related to open session agenda items are available at City Hall, 15625 East Stafford Street, Suite 100, City of Industry, California, at the office of the City Clerk during regular business hours, Monday through Friday 9:00 a.m. to 5:00 p.m. Any person with a question concerning any agenda item may call the City Clerk's Office at (626) 333-2211.

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1. Call to Order
  2. Flag Salute
  3. Roll Call
  4. Public Comments

5. **BOARD MATTERS**

- 5.1 Consideration of the minutes of the March 21, 2016 special meeting and April 21, 2016 regular meeting

*RECOMMENDED ACTION: Approve as submitted.*

- 5.2 Consideration of a Professional Services Agreement between the City of Industry and Butsko Utility Design, Inc., for utility engineering services for an amount not to exceed \$375,000.00 from September 8, 2016 – September 8, 2019

*RECOMMENDED ACTION: Forward the Professional Services Agreement to the City Council with the recommendation to approve.*

- 5.3 Consideration of a Maintenance Services Agreement between the City of Industry and Pacific Utility Installation, Inc., for utility operations and maintenance services for an amount not to exceed \$150,000.00 from September 8, 2016 – September 8, 2019

*RECOMMENDED ACTION: Forward the Maintenance Services Agreement to the City Council with the recommendation to approve.*

- 5.4 Consideration of a Maintenance Services Agreement between the City of Industry and Applied Metering Technologies, Inc., for utility operations and maintenance services for an amount not to exceed \$15,000.00 from September 8, 2016 – September 8, 2019

*RECOMMENDED ACTION: Forward the Maintenance Services Agreement to the City Council with the recommendation to approve.*

- 5.5 Consideration of Resolution No. CC 2016-63 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF INDUSTRY, CALIFORNIA, TO AMEND THE FISCAL YEAR 2016-2017 ELECTRIC UTILITY FUND BUDGET TO REFLECT AN APPROPRIATION OF \$1,280,000.00 FROM AVAILABLE ELECTRIC UTILITY RESERVES FUND AND INCREASING THE ELECTRIC UTILITY FUND – PROFESSIONAL SERVICES (ACCOUNT NO. 161-300-5120.01) IN THE AMOUNT OF \$1,225,000 FOR UTILITY ADMINISTRATION SERVICES AND THE ELECTRIC UTILITY FUND – REPAIR AND MAINTENANCE EQUIPMENT (ACCOUNT NO. 161-300-5550) IN THE AMOUNT OF \$55,000.00 FOR EXPENDITURES

*RECOMMENDED ACTION: Forward Resolution No. CC 2016-63 to the City Council with the recommendation to adopt.*

- 5.6 Consideration of authorization for the Public Utilities Director or designee to purchase Renewable Energy Credits for the City of Industry by December 31, 2016 in the amount of \$200,000.00

*RECOMMENDED ACTION: Provide recommendation to the City Council to authorize the Public Utilities Director or designee to purchase Renewable Energy Credits in the amount \$200,000.00.*

- 5.7 Consideration of a Contract for an Extension of Electric Distribution Line at the Industry Business Center between the Successor Agency to the Industry-Urban Development Agency and the Industry Public Utilities Commission for an amount not to exceed \$10,750,000.00

*RECOMMENDED ACTION: Forward the Contract for an Extension of Electric Distribution Line to the City Council with the recommendation to approve.*

- 5.8 Consideration to appoint Anthony Bouza, Esq., as Special Counsel to the Industry Public Utilities Commission

*RECOMMENDED ACTION: Approve the appointment.*

6. Adjournment. Next regular meeting: Thursday, September 15, 2016 at 9:00 a.m.

*INDUSTRY PUBLIC UTILITIES COMMISSION*

ITEM NO. 5.1

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INDUSTRY PUBLIC UTILITIES COMMISSION AND CITY COUNCIL  
SPECIAL MEETING MINUTES  
CITY OF INDUSTRY, CALIFORNIA  
MARCH 21, 2016  
PAGE 1

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**CALL TO ORDER**

The Special Meeting of the Industry Public Utilities Commission and the City Council of the City of Industry, California, was called to order by President/Mayor Mark D. Radecki at 9:00 a.m. in the City of Industry Council Chamber, 15651 East Stafford Street, California.

**FLAG SALUTE**

The flag salute was led by President/Mayor Mark D. Radecki.

**ROLL CALL**

PRESENT: Mark D. Radecki, President/Mayor  
Cory C. Moss, Commissioner/Mayor Pro Tem  
Abraham N. Cruz, Commissioner/Council Member  
Newell W. Ruggles, Commissioner/Council Member

ABSENT: Roy Haber, Commissioner/Council Member

STAFF PRESENT: Paul J. Philips, Public Utilities Director/City Manager; James M. Casso, General Counsel/City Attorney; and Cecelia Dunlap, Assistant Secretary/Deputy City Clerk.

**PUBLIC COMMENTS**

There were no public comments.

**DISCUSSION AND DIRECTION REGARDING STRATEGIC INITIATIVES, AND A PROPOSAL FOR SERVICES SUBMITTED BY CORDOBA CORPORATION FOR THE INDUSTRY PUBLIC UTILITIY**

Public Utilities Director Philips presented a staff report to the Commission.

MOTION BY COMMISSIONER MOSS, AND SECOND BY COMMISSIONER CRUZ TO DIRECT THE PUBLIC UTILITIES DIRECTOR TO PROCEED AS OUTLINED IN THE PROPOSAL. MOTION CARRIED 4-0, BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS: CRUZ, RUGGLES, MOSS, RADECKI

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INDUSTRY PUBLIC UTILITIES COMMISSION AND CITY COUNCIL  
SPECIAL MEETING MINUTES  
CITY OF INDUSTRY, CALIFORNIA  
MARCH 21, 2016  
PAGE 2

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NOES: COMMISSIONERS: NONE  
ABSENT: COMMISSIONERS: HABER  
ABSTAIN: COMMISSIONERS: NONE

**CLOSED SESSION**

Assistant Secretary Dunlap announced there was a need for Closed Session under the Industry Public Utilities Commission agenda as follows:

- A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2): One Potential Case.

Deputy City Clerk Dunlap announced there was a need for Closed Session under the City Council agenda as follows:

- A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2): One Potential Case.

There were no public comments on the Closed Session items.

President/Mayor Radecki recessed the Industry Public Utilities Commission and City Council meetings into Closed Session at 9:05 a.m.

**RECONVENE INDUSTRY PUBLIC UTILITIES COMMISSION AND THE CITY COUNCIL MEETINGS**

President/Mayor Radecki reconvened the meetings at 9:55 a.m. All members of the Industry Public Utilities Commission/City Council were present, except for Commissioner/Council Member Haber, who was absent. General Counsel/City Attorney Casso reported out of Closed Session.

With regard to Closed Session item A, Industry Public Utilities Commission, the Commission provided direction to the Public Utilities Director, and took no reportable action.

With regard to Closed Session item A, City Council, the City Council provided direction to the City Manager, and took no reportable action.

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INDUSTRY PUBLIC UTILITIES COMMISSION AND CITY COUNCIL  
SPECIAL MEETING MINUTES  
CITY OF INDUSTRY, CALIFORNIA  
MARCH 21, 2016  
PAGE 3

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**ADJOURNMENT**

There being no further business, the Industry Public Utilities Commission and the City Council adjourned at 9:56 a.m.

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MARK D. RADECKI  
PRESIDENT/MAYOR

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CECELIA DUNLAP  
ASSISTANT SECRETARY  
DEPUTY CITY CLERK

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INDUSTRY PUBLIC UTILITIES COMMISSION  
REGULAR MEETING MINUTES  
CITY OF INDUSTRY, CALIFORNIA  
APRIL 21, 2016  
PAGE 1

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**CALL TO ORDER**

The Regular Meeting of the Industry Public Utilities Commission of the City of Industry, California, was called to order by President Mark D. Radecki at 9:01 a.m. in the City of Industry Council Chamber, 15651 East Stafford Street, California.

**FLAG SALUTE**

The flag salute was led by President Mark D. Radecki.

**ROLL CALL**

PRESENT: Mark D. Radecki, President  
Abraham N. Cruz, Commissioner  
Cory C. Moss, Commissioner  
Newell W. Ruggles, Commissioner

ABSENT: Roy Haber, Commissioner

STAFF PRESENT: Paul J. Philips, Public Utilities Director; Bianca Sparks, Deputy General Counsel; and Cecelia Dunlap, Assistant Secretary.

**PUBLIC COMMENTS**

There were no public comments.

**CONSIDERATION OF REGISTER OF DEMANDS**

MOTION BY COMMISSIONER MOSS, AND SECOND BY COMMISSIONER CRUZ TO APPROVE THE REGISTER OF DEMANDS AND AUTHORIZE THE APPROPRIATE CITY OFFICIALS TO PAY THE BILLS. MOTION CARRIED 4-0, BY THE FOLLOWING VOTE:

|          |                |                              |
|----------|----------------|------------------------------|
| AYES:    | COMMISSIONERS: | CRUZ, RUGGLES, MOSS, RADECKI |
| NOES:    | COMMISSIONERS: | NONE                         |
| ABSENT:  | COMMISSIONERS: | HABER                        |
| ABSTAIN: | COMMISSIONERS: | NONE                         |

**CONSIDERATION OF THE MINUTES OF THE DECEMBER 10, 2015 REGULAR**

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INDUSTRY PUBLIC UTILITIES COMMISSION  
REGULAR MEETING MINUTES  
CITY OF INDUSTRY, CALIFORNIA  
APRIL 21, 2016  
PAGE 2

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**MEETING**

MOTION BY COMMISSIONER RUGGLES, AND SECOND BY COMMISSIONER MOSS TO APPROVE THE MINUTES AS SUBMITTED. MOTION CARRIED 4-0, BY THE FOLLOWING VOTE:

|          |                |                              |
|----------|----------------|------------------------------|
| AYES:    | COMMISSIONERS: | CRUZ, RUGGLES, MOSS, RADECKI |
| NOES:    | COMMISSIONERS: | NONE                         |
| ABSENT:  | COMMISSIONERS: | HABER                        |
| ABSTAIN: | COMMISSIONERS: | NONE                         |

**DISCUSSION AND DIRECTION REGARDING THE AUTHORIZATION OF THE LA PUENTE VALLEY COUNTY WATER DISTRICT'S GENERAL MANAGER TO PROCEED WITH THE PURCHASE OF MATERIALS FOR PHASE 2 OF THE 16-INCH WATERLINE RELOCATION AT VALLEY BOULEVARD AND WORKMAN MILL ROAD IN SUPPORT OF THE ALAMEDA CORRIDOR-EAST CONSTRUCTION AUTHORITY'S PUENTE AVENUE GRADE SEPARATION PROJECT**

General Manager Galindo presented a report to the Commission.

MOTION BY COMMISSIONER CRUZ, AND SECOND BY COMMISSIONER MOSS TO AUTHORIZE LA PUENTE VALLEY COUNTY WATER DISTRICT'S GENERAL MANAGER TO PROCEED WITH THE PURCHASE OF MATERIALS AND SERVICES, FOR AN ESTIMATED AMOUNT NOT TO EXCEED \$43,000.00. MOTION CARRIED 4-0, BY THE FOLLOWING VOTE:

|          |                |                              |
|----------|----------------|------------------------------|
| AYES:    | COMMISSIONERS: | CRUZ, RUGGLES, MOSS, RADECKI |
| NOES:    | COMMISSIONERS: | NONE                         |
| ABSENT:  | COMMISSIONERS: | HABER                        |
| ABSTAIN: | COMMISSIONERS: | NONE                         |

**REPORT FROM GENERAL MANAGER FOR THE LA PUENTE VALLEY COUNTY WATER DISTRICT**

General Manager Galindo presented a report to the Commission.

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INDUSTRY PUBLIC UTILITIES COMMISSION  
REGULAR MEETING MINUTES  
CITY OF INDUSTRY, CALIFORNIA  
APRIL 21, 2016  
PAGE 3

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MOTION BY COMMISSIONER MOSS, AND SECOND BY COMMISSIONER CRUZ TO RECEIVE AND FILE THE REPORT. MOTION CARRIED 4-0, BY THE FOLLOWING VOTE:

|          |                |                              |
|----------|----------------|------------------------------|
| AYES:    | COMMISSIONERS: | CRUZ, RUGGLES, MOSS, RADECKI |
| NOES:    | COMMISSIONERS: | NONE                         |
| ABSENT:  | COMMISSIONERS: | HABER                        |
| ABSTAIN: | COMMISSIONERS: | NONE                         |

**ADJOURNMENT**

There being no further business, the Industry Public Utilities Commission adjourned at 9:17 a.m.

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MARK D. RADECKI  
PRESIDENT

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CECELIA DUNLAP  
ASSISTANT SECRETARY

*INDUSTRY PUBLIC UTILITIES COMMISSION*

ITEM NO. 5.2



# INDUSTRY PUBLIC UTILITIES COMMISSION

P.O. BOX 3366 • CITY OF INDUSTRY • CALIFORNIA 91744  
(626) 333-2211 • Fax (626) 961-6795 • www.cityofindustry.org

Mark D. Radecki, President  
Abraham N. Cruz, Commissioner  
Roy M. Haber, III, Commissioner  
Cory C. Moss, Commissioner  
Newell W. Ruggles, Commissioner

Paul J. Philips, Public Utilities Director  
James M. Casso, General Counsel  
Cecelia Dunlap, Assistant Secretary

## MEMORANDUM

To: Honorable President and Commission Board Members

From: Paul J. Philips, Public Utilities Director *Paul J. Philips*

Staff: Alex Gonzalez, Director of Development Services and Administration *AG*  
Kristen Weger, Administrative Analyst *KW*

Date: September 8, 2016

**SUBJECT: Consideration of a Professional Services Agreement with Butsko Utility Design, Inc. for Utility Engineering Services in an Amount not to exceed \$375,000 from September 8, 2016 to September 8, 2019**

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On June 16, 2016, the Industry Public Utilities Commission ("IPUC") directed staff to issue a Request for Qualifications ("RFQ") for Electric Utility Services Bench. The RFQ was posted in the City's PlanetBids™ vendor portal and an email notification was sent out to all registered vendors. The appropriate trade journals were notified and included Bid America, Southern California Builders Association, Construction Bidboard and Dodge Data & Analytics on June 16, 2016. The RFQ was advertised on Tuesday, June 21, 2016 and Tuesday, June 28, 2016 in the San Gabriel Valley Tribune. Qualifications were received up until July 7, 2016 at 1:00 pm.

The selection panel evaluated the qualifications received by each contractor based on the following criteria:

- A. Contractor is experienced operating and managing an electric utility;
- B. The contractor described how they can provide professional, first-class service; and
- C. The account manager and team members assigned to the project have prior experience in similar programs and activities.

An RFQ Bench allows for evaluators to determine if multiple contractors are qualified to perform work. Price is not a determining factor in a Request for Qualifications. Proposers submitted a separate electronic document in PlanetBids™ with labor rates, and those documents were not opened until the IPUC board provided recommendations to staff. Proposers who were not chosen did not have their price proposals viewed by staff. Based on the Statement of Qualifications submitted, the selection panel determined the following categories were reasonable and appropriate for electric utility services.

The following tables summarize the statement of qualification rankings.

**Table 1 – Summary of Utility Engineering Rankings**

| <b>Firm</b>                 | <b>Rank</b> |
|-----------------------------|-------------|
| Butsko Utility Design, Inc. | 1           |

Based on the rankings, staff recommended to the IPUC that Butsko Utility Design, Inc. (“Butsko”) be awarded a Professional Services Agreement for Utility Engineering Services.

On July 11, 2016 the IPUC directed staff to enter into negotiations with Butsko for Utility Engineering Services. Staff negotiated a Professional Services Agreement with Butsko.

Fiscal Impact

For consideration on the September 8, 2016 consent calendar is Resolution No. CC 2016-63 appropriating \$375,000 from Electric Utility Reserves to the Electric Utility Fund Budget – Professional Services (Account no. 161-300-5120.01) for the Professional Services Agreement.

Staff recommends that Butsko Utility Design, Inc. (“Butsko”) be awarded a Professional Services Agreement for Utility Engineering Services.

Exhibit

- A. Professional Services Agreement with Butsko Utility Design, Inc. for Utility Engineering Services

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PJP:AG:kw

**EXHIBIT A**

**Professional Services Agreement with Butsko Utility Design, Inc. for  
Utility Engineering Services**

[Attached]

## CITY OF INDUSTRY

### PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of September 8, 2016 ("Effective Date"), between the City of Industry, a municipal corporation ("City") and Butsko Utility Design, Inc., a California corporation ("Consultant"). The City and Consultant are hereinafter collectively referred to as the "Parties".

#### RECITALS

**WHEREAS**, City desires to engage Consultant to perform the services described herein, and Consultant desires to perform such services in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

#### 1. TERM

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until tasks described herein are completed, but in no event later than September 8, 2019, unless sooner terminated pursuant to the provisions of this Agreement.

#### 2. SERVICES

(a) Consultant shall perform the tasks ("Services") described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. ("Scope of Services"). Tasks other than those specifically described in the Scope of Services shall not be performed without prior written approval of the City. The Services shall be performed by Consultant, unless prior written approval is first obtained from the City. In the event of conflict or inconsistency between the terms of this Agreement and Exhibit A, the terms of this Agreement shall prevail.

(b) City shall have the right to request, in writing, changes to the Services. Any such changes mutually agreed upon by the Parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

(c) Consultant shall perform all Services in a manner reasonably satisfactory to the City and in a first-class manner in conformance with the standards of quality normally observed by an entity providing utility engineering services, serving a municipal agency.

(d) Consultant shall comply with all applicable federal, state, and local laws, regulations and ordinances in the performance of this Agreement, including but not limited to, the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*). During the term of this

Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working on the Effective Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute or law; and (ii) City has not consented in writing to Consultant's performance of such work. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et. seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

(e) Consultant represents that it has, or will secure at its own expense, all licensed personnel required to perform the Services. All Services shall be performed by Consultant or under its supervision, and all personnel engaged in the Services shall be qualified and licensed to perform such services.

### **3. MANAGEMENT**

City's City Manager, or his designee, shall represent the City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but shall have no authority to modify the Services or the compensation due to Consultant.

### **4. PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B ("Rate Schedule"), attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Three Hundred Seventy-Five Thousand Dollars (\$375,000.00) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

(c) Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within 45 days of receipt of an invoice therefore.

## **5. LABOR CODE AND PREVAILING WAGES**

(a) Consultant represents and warrants that it is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 16000, *et seq.*, ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$15,000.00 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and any location where the Services are performed. Consultant shall indemnify, defend and hold harmless, the City, its elected officials, officers, employees and agents, from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, Consultant's or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant, failure or alleged failure to comply with Prevailing Wage Laws.

(b) In accordance with the requirements of Labor Code Section 1776, Consultant shall keep accurate payroll records which are either on forms provided by the Division of Labor Standards Enforcement or which contain the same information required by such forms. Consultant shall make all such records available for inspection at all reasonable hours.

(c) To the extent applicable, Consultant shall comply with the provisions of Section 1777.5 of the Labor Code with respect to the employment of properly registered apprentices upon public works.

(d) Consultant shall comply with the legal days work and overtime requirements of Sections 1813 and 1815 of the Labor Code.

(e) If the Services are being performed as part of an applicable Public works or Maintenance project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Agreement and require the same of any subconsultants, as applicable. This Services set forth in this Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

## **6. SUSPENSION OR TERMINATION OF AGREEMENT**

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant shall submit an invoice to the City pursuant to Section 5 of this Agreement.

## **7. OWNERSHIP OF DOCUMENTS**

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to review such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office, and upon reasonable written request by the City, the necessary

computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. Consultant hereby grants to City all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the services under this Agreement. All reports, documents, or other written material developed by Consultant in the performance of the Services pursuant to this Agreement, shall be and remain the property of the City.

## **8. INDEMNIFICATION**

### (a) Indemnity for professional liability

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless the City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or Subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

### (b) Indemnity for other than professional liability

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

(c) DUTY TO DEFEND. In the event the City, its officers, employees, agents and/or volunteers are made a party to any action, claim, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by City, Consultant shall have an immediate duty to defend the City at Consultant's cost or at City's option, to reimburse the City for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters.

Payment by City is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Consultant and City, as to whether liability arises from the sole negligence of the City or its officers, employees, or agents, Consultant will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating the City as solely negligent. Consultant will not be entitled in the absence of such a

determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

## **9. INSURANCE**

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached hereto and incorporated herein by reference.

## **10. INDEPENDENT CONSULTANT**

(a) Consultant is and shall at all times remain as to the City a wholly independent consultant and/or independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against the City, or bind the City in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

## **11. LEGAL RESPONSIBILITIES**

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

## **12. UNDUE INFLUENCE**

Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

**13. NO BENEFIT TO ARISE TO LOCAL OFFICERS AND EMPLOYEES**

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

**14. RELEASE OF INFORMATION/CONFLICTS OF INTEREST**

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City, unless otherwise required by law or court order. (b) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the City, unless Consultant is prohibited by law from informing the City of such Discovery, court order or subpoena. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless City is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to Consultant in such proceeding, Consultant agrees to cooperate fully with the City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

**15. NOTICES**

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: City of Industry  
15625 E. Stafford, Suite 100  
City of Industry, CA 91744

Attention: City Manager

With a Copy To: James M. Casso, City Attorney

Casso & Sparks, LLP  
13200 Crossroads Parkway North, Suite 345  
City of Industry, CA 91746

To Consultant:

Gregg A. Butsko, President  
Butsko Utility Design, Inc.  
8470 Redwood Creek Lane, Suite 200  
San Diego, CA 92126

**16. ASSIGNMENT**

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

Before retaining or contracting with any subconsultant for any services under this Agreement, Consultant shall provide City with the identity of the proposed subconsultant, a copy of the proposed written contract between Consultant and such subconsultant which shall include an indemnity provision similar to the one provided herein and identifying City as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subconsultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from the City for such insurance.

Notwithstanding Consultant's use of any subconsultant, Consultant shall be responsible to the City for the performance of its subconsultant as it would be if Consultant had performed the Services itself. Nothing in this Agreement shall be deemed or construed to create a contractual relationship between the City and any subconsultant employed by Consultant. Consultant shall be solely responsible for payments to any subconsultants. Consultant shall indemnify, defend and hold harmless the Indemnified Parties for any claims arising from, or related to, the services performed by a subconsultant under this Agreement.

**17. GOVERNING LAW/ATTORNEYS' FEES**

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court in Los Angeles County, California. If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of or relating to the Services provided by Consultant under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled.

**18. ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous

agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

#### **19. SEVERABILITY**

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

#### **20. COUNTERPARTS**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

#### **21. CAPTIONS**

The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and shall have no significance in the interpretation of this Agreement.

#### **22. WAIVER**

The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

#### **23. REMEDIES**

Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies.

**24. AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

**“CITY”**  
**City of Industry**

**“CONSULTANT”**  
Butsko Utility Design, Inc.

By: \_\_\_\_\_  
Paul Phillips, City Manager

By:  \_\_\_\_\_  
Gregg A. Butsko, President

**Attest:**

By: \_\_\_\_\_  
Cecelia Dunlap, Deputy City Clerk

**Approved as to form:**

By: \_\_\_\_\_  
James M. Casso, City Attorney

|              |           |                        |
|--------------|-----------|------------------------|
| Attachments: | Exhibit A | Scope of Services      |
|              | Exhibit B | Rate Schedule          |
|              | Exhibit C | Insurance Requirements |

## EXHIBIT A

### SCOPE OF SERVICES

Consultant shall perform utility engineering services, which shall include, but are not limited to, the following:

#### **Utility Design and Engineering**

Master planning, design, and electrical engineering services for underground and overhead electric distribution system, private telecommunications substructure system design, electric distribution circuit planning and design, substation planning, mapping and records keeping. Services also included providing budget cost estimates and project feasibility studies, bid packages, and material summaries. Circuit modeling, load flow analysis, fault current studies, interface with Industry Public Utilities Commission ("IPUC") customers and their engineers, and Transformer Load Management Studies.

#### **24 Hour Utility Operations and Management Support**

Preparing for and responding to planned and unplanned outages, emergency events, overseeing IPUC contract crews, communicating with City personnel, customers, and emergency responders.

#### **SCE Emergency Coordination and Utility Interface**

Coordinating and responding to inter utility outages and events that are at times experienced between utilities and Wholesale Distribution Access Tariff ("WDAT") customers at both the distribution and transmission levels. This includes providing work clearances, switching procedures, and scheduling coordination for utility operation and maintenance activities.

#### **Underground Utility Mark Outs and Map Requests**

Serve as the IPUC representative to the USA/Dig Alert System and providing IPUC mark outs of IPUC's existing underground utility infrastructure. This also includes joint meeting with contractors working in close proximity to IPUC infrastructure, work inspections, emergency locations, responding to 48 hour mark out requests, and requests for IPUC infrastructure maps.

#### **Metering Specifications, Meter Set Orders, and County of LA Inspection Release Processing**

Specifying the utility metering requirements for installation at each facility. Specifying the metering, current transformers, voltage transformers, test switch and test block requirements. Upon final County of Los Angeles Building and Safety inspection releases, Consultant issue meter set orders and notifications to turn on electric service to a premise.

#### **GO 165 Maintenance Coordination**

Schedule routine maintenance inspections of IPUC's infrastructure in conformance with California Public Utilities Commission General Order ("CPUC GO") 165.

**Field, Customer, and IPUC Contractor Inspections**

Inspecting IPUC contractors' work and as built drawings as required. In addition, includes substructure inspections of developer provided substructure installations (i.e. trench, conduit, vaults/pads) and utility inspections of the City's main electrical switchgear.

EXHIBIT B

RATE SCHEDULE

|                     |                    |
|---------------------|--------------------|
| Principal in Charge | \$ 210.00 per hour |
| Engineer            | \$ 200.00 per hour |
| Designer            | \$ 170.00 per hour |
| Project Coordinator | \$ 110.00 per hour |
| Associate Designer  | \$ 115.00 per hour |
| Inspector           | \$ 170.00 per hour |

City shall reimburse Contractor its actual costs for all photocopying and postage, upon submittal of evidence of said costs along with the monthly invoice, as set forth in the Agreement.

## EXHIBIT C

### INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of City, and prior to commencement of the Services, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to Agency.

**General liability insurance.** Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

**Automobile liability insurance.** Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000.00 combined single limit for each accident.

**Professional liability (errors & omissions) insurance.** Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

**Workers' compensation insurance.** Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000.00).

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Agency, its officers, agents, employees and volunteers.

**Proof of insurance.** Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

**Duration of coverage.** Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may

arise from or in connection with the performance of the Services hereunder by Consultant, his agents, representatives, employees or subconsultants.

**Primary/noncontributing.** Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

**City's rights of enforcement.** In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant, or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

**Acceptable insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

**Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

**Enforcement of contract provisions (non estoppel).** Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the Agency nor does it waive any rights hereunder.

**Requirements not limiting.** Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

**Additional insured status.** General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

**Prohibition of undisclosed coverage limitations.** None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

**Separation of Insureds.** A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

**Pass Through Clause.** Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

**City's right to revise specifications.** The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

**Self-insured retentions.** Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City.

**Timely notice of claims.** Consultant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

**Additional insurance.** Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

*INDUSTRY PUBLIC UTILITIES COMMISSION*

ITEM NO. 5.3



# INDUSTRY PUBLIC UTILITIES COMMISSION

P.O. BOX 3366 • CITY OF INDUSTRY • CALIFORNIA 91744  
(626) 333-2211 • Fax (626) 961-6795 • www.cityofindustry.org

Mark D. Radecki, President  
Abraham N. Cruz, Commissioner  
Roy M. Haber, III, Commissioner  
Cory C. Moss, Commissioner  
Newell W. Ruggles, Commissioner

Paul J. Philips, Public Utilities Director  
James M. Casso, General Counsel  
Cecelia Dunlap, Assistant Secretary

## MEMORANDUM

To: Honorable President and Commission Board Members

From: Paul J. Philips, Public Utilities Director *Paul J. Philips*

Staff: Alex Gonzalez, Director of Development Services and Administration *AG*  
Kristen Weger, Administrative Analyst *KW*

Date: September 8, 2016

**SUBJECT: Consideration of a Maintenance Services Agreement with Pacific Utility Installation, Inc. for Utility Operations and Maintenance Services in an Amount not to exceed \$150,000 from September 8, 2016 to September 8, 2019**

On June 16, 2016, the Industry Public Utilities Commission ("IPUC") directed staff to issue a Request for Qualifications ("RFQ") for Electric Utility Services Bench. The RFQ was posted in the City's PlanetBids™ vendor portal, and an email notification was sent out to all registered vendors. The appropriate trade journals were notified and included Bid America, Southern California Builders Association, Construction Bidboard and Dodge Data & Analytics on June 16, 2016. The RFQ was advertised on Tuesday, June 21, 2016 and Tuesday, June 28, 2016 in the San Gabriel Valley Tribune. Qualifications were received up until July 7, 2016 at 1:00 pm.

The selection panel evaluated the qualifications received by each contractor based on the following criteria:

- A. Contractor is experienced operating and managing an electric utility;
- B. The contractor described how they can provide professional, first-class service; and
- C. The account manager and team members assigned to the project have prior experience in similar programs and activities.

An RFQ Bench allows for evaluators to determine if multiple contractors are qualified to perform work. Price is not a determining factor in a Request for Qualifications. Proposers submitted a separate electronic document in PlanetBids™ with labor rates, and those documents were not opened until the IPUC board provided recommendations to staff. Proposers who were not chosen did not have their price proposals viewed by staff. Based on the Statement of Qualifications submitted, the selection panel determined the following categories were reasonable and appropriate for electric utility services.

The following tables summarize the statement of qualification rankings.

**Table 1 – Summary of Operations & Maintenance (“O&M”) Rankings**

| <b>Firm</b>                         | <b>Rank</b> |
|-------------------------------------|-------------|
| Pacific Utility Installation, Inc.  | 1           |
| Applied Metering Technologies, Inc. | 2           |
| Snowden Electric Company, Inc.      | 3           |
| Borrego Solar Systems, Inc.         | 4           |

Based on the rankings, staff recommended to the IPUC that Pacific Utility Installation, Inc., (“Pacific”) and Applied Metering Technologies both be awarded Agreements to provide Operations and Maintenance (“O&M”) services.

On July 11, 2016 the IPUC directed staff to enter into negotiations with Pacific for operations and maintenance services. Staff negotiated a Maintenance Services Agreement with Pacific.

Fiscal Impact

For consideration on the September 8, 2016 Consent Calendar, is Resolution No. CC 2016-63 appropriating \$150,000 from Electric Utility Reserves to the Electric Utility Fund Budget – Repair and Maintenance Equipment (Account no. 161-300-5550) for the Maintenance Services Agreement.

Staff recommends that Pacific Utility Installation, Inc., be awarded a Maintenance Services Agreement to perform utility operations and maintenance services.

Exhibit

- A. Maintenance Services Agreement with Pacific Utility Installation, Inc. for Utility Operations and Maintenance Services

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PJP:AG:KW:mk

**EXHIBIT A**

**Maintenance Services Agreement with Pacific Utility Installation, Inc. for Utility  
Operations and Maintenance Services**

[Attached]

## CITY OF INDUSTRY

### MAINTENANCE SERVICES AGREEMENT

This MAINTENANCE SERVICES AGREEMENT ("Agreement"), is made and effective as of September 8, 2016 ("Effective Date"), between the City of Industry, a municipal corporation ("City") and Pacific Utility Installation, Inc., a California corporation ("Consultant"). The City and Consultant are hereinafter collectively referred to as the "Parties".

#### RECITALS

**WHEREAS**, City desires to engage Consultant to perform the services described herein, and Consultant desires to perform such services in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

#### 1. TERM

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until tasks described herein are completed, but in no event later than September 8, 2019, unless sooner terminated pursuant to the provisions of this Agreement.

#### 2. SERVICES

(a) Consultant shall perform the tasks ("Services") described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. ("Scope of Services"). Tasks other than those specifically described in the Scope of Services shall not be performed without prior written approval of the City. The Services shall be performed by Consultant, unless prior written approval is first obtained from the City. In the event of conflict or inconsistency between the terms of this Agreement and Exhibit A, the terms of this Agreement shall prevail.

(b) City shall have the right to request, in writing, changes to the Services. Any such changes mutually agreed upon by the Parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

(c) Consultant shall perform all Services in a manner reasonably satisfactory to the City and in a first-class manner in conformance with the standards of quality normally observed by an entity providing underground electric distribution line extension services, serving a municipal agency.

(d) Consultant shall comply with all applicable federal, state, and local laws, regulations and ordinances in the performance of this Agreement, including but not limited to, all labor laws, including any and all Cal/OSHA requirements, and the conflict

of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*). During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working on the Effective Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute or law; and (ii) City has not consented in writing to Consultant's performance of such work. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

(e) Consultant represents that it has, or will secure at its own expense, all licensed personnel required to perform the Services. This includes qualified electrical workers, in accordance with Cal/OSHA guidelines, for all work on energized conductors or equipment connected to energized High-Voltage Systems ("defined as electrical conductors and equipment operating at or intended to operate at a sustained voltage of more than 600 volts between conductors"). All Services shall be performed by Consultant, and all personnel engaged in the Services shall be qualified and licensed to perform such services. In addition, a proven record of work safety must be provided and maintained by the Consultant, with records made available to the City upon request.

### **3. MANAGEMENT**

City's City Manager, or his designee, shall represent the City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but shall have no authority to modify the Services or the compensation due to Consultant.

### **4. PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B ("Rate Schedule"), attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

(c) Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within 45 days of receipt of an invoice therefore.

## **5. LABOR CODE AND PREVAILING WAGES**

(a) Consultant represents and warrants that it is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 16000, *et seq.*, ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$15,000.00 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and any location where the Services are performed. Consultant shall indemnify, defend and hold harmless, the City, its elected officials, officers, employees and agents, from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, Consultant's or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant, failure or alleged failure to comply with Prevailing Wage Laws.

(b) In accordance with the requirements of Labor Code Section 1776, Consultant shall keep accurate payroll records which are either on forms provided by the Division of Labor Standards Enforcement or which contain the same information required by such forms. Consultant shall make all such records available for inspection at all reasonable hours.

(c) To the extent applicable, Consultant shall comply with the provisions of Section 1777.5 of the Labor Code with respect to the employment of properly registered apprentices upon public works.

(d) Consultant shall comply with the legal days work and overtime requirements of Sections 1813 and 1815 of the Labor Code.

(e) If the Services are being performed as part of an applicable Public works or Maintenance project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Agreement and require the same of any subconsultants, as applicable. This Services set forth in this Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

## **6. SUSPENSION OR TERMINATION OF AGREEMENT**

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant shall submit an invoice to the City pursuant to Section 5 of this Agreement.

## **7. OWNERSHIP OF DOCUMENTS**

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to review such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office, and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. Consultant hereby grants to City all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the services under this Agreement. All reports, documents, or other written material developed by Consultant in the performance of the Services pursuant to this Agreement, shall be and remain the property of the City.

## 8. INDEMNIFICATION

### (a) Indemnity for professional liability

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless the City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or Subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

### (b) Indemnity for other than professional liability

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

(c) DUTY TO DEFEND. In the event the City, its officers, employees, agents and/or volunteers are made a party to any action, claim, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by City, Consultant shall have an immediate duty to defend the City at Consultant's cost or at City's option, to reimburse the City for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters.

Payment by City is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Consultant and City, as to whether liability arises from the sole negligence of the City or its officers, employees, or agents, Consultant will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating the City as solely negligent. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

#### **9. INSURANCE**

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached hereto and incorporated herein by reference.

#### **10. INDEPENDENT CONSULTANT**

(a) Consultant is and shall at all times remain as to the City a wholly independent consultant and/or independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultants exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against the City, or bind the City in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

#### **11. LEGAL RESPONSIBILITIES**

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

#### **12. UNDUE INFLUENCE**

Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee

or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

**13. NO BENEFIT TO ARISE TO LOCAL OFFICERS AND EMPLOYEES**

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

**14. RELEASE OF INFORMATION/CONFLICTS OF INTEREST**

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City, unless otherwise required by law or court order. (b) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the City, unless Consultant is prohibited by law from informing the City of such Discovery, court order or subpoena. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless City is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to Consultant in such proceeding, Consultant agrees to cooperate fully with the City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

**15. NOTICES**

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City:

City of Industry  
15625 E. Stafford, Suite 100  
City of Industry, CA 91744

Attention: City Manager

With a Copy To:

James M. Casso, City Attorney  
P.O. Box 4131  
West Covina, CA 91791

To Consultant:

Bill Pfeifer, President/CEO  
Pacific Utility Installation, Inc.  
1585 Harmony Circle  
Anaheim, CA 92807

**16. ASSIGNMENT**

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

Before retaining or contracting with any subconsultant for any services under this Agreement, Consultant shall provide City with the identity of the proposed subconsultant, a copy of the proposed written contract between Consultant and such subconsultant which shall include an indemnity provision similar to the one provided herein and identifying City as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subconsultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from the City for such insurance.

Notwithstanding Consultant's use of any subconsultant, Consultant shall be responsible to the City for the performance of its subconsultant as it would be if Consultant had performed the Services itself. Nothing in this Agreement shall be deemed or construed to create a contractual relationship between the City and any subconsultant employed by Consultant. Consultant shall be solely responsible for payments to any subconsultants. Consultant shall indemnify, defend and hold harmless the Indemnified Parties for any claims arising from, or related to, the services performed by a subconsultant under this Agreement.

**17. GOVERNING LAW/ATTORNEYS' FEES**

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court in Los Angeles County, California. If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of or relating to the Services provided by Consultant under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled.

**18. ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**19. SEVERABILITY**

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**20. COUNTERPARTS**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**21. CAPTIONS**

The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and shall have no significance in the interpretation of this Agreement.

**22. WAIVER**

The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

**23. REMEDIES**

Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of

all of such other rights, powers or remedies.

24. **AUTHORITY TO EXECUTE THIS AGREEMENT**

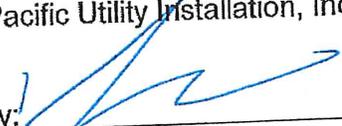
The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

**"CITY"**  
**City of Industry**

By: \_\_\_\_\_  
Paul Philips, City Manager

**"CONSULTANT"**  
Pacific Utility Installation, Inc.

By:  \_\_\_\_\_  
Bill Pfeifer, President/CEO

**Attest:**

By: \_\_\_\_\_  
Cecelia Dunlap, Deputy City Clerk

**Approved as to form:**

By: \_\_\_\_\_  
James M. Casso, City Attorney

|              |           |                        |
|--------------|-----------|------------------------|
| Attachments: | Exhibit A | Scope of Services      |
|              | Exhibit B | Rate Schedule          |
|              | Exhibit C | Insurance Requirements |

## EXHIBIT A

### SCOPE OF SERVICES

Consultant shall perform emergency and scheduled field operations and maintenance ("O&M") including, but not limited to:

- Cabling;
- Splicing;
- Procuring equipment for operations and maintenance repairs;
- Troubleshooting issues out in the field;
- Streetlight replacement;
- Inspections;
- Switching procedures and energizing; and
- Maintain an inventory of parts and equipment necessary to support and execute the scope of services, as detail in Exhibit D.

EXHIBIT B

RATE SCHEDULE

Contractor shall charge the City the following hourly rates for services rendered pursuant to the Scope of Services ("Exhibit A") set forth herein.

| Item No. | Description   | Hourly Rate | Straight Time Shift: 1 thru 8 Hours | Premium Time Shift: Over 8 Hours |
|----------|---|-------------|-------------------------------------|----------------------------------|
| 1        | General Foreman   |             | \$ 110.00                           | \$ 156.00                        |
| 2        | Cable Splicer Foreman                                       |             | \$ 105.00                           | \$ 149.00                        |
| 3        | Cable Splicer/Lineman                                       |             | \$ 95.00                            | \$ 132.00                        |
| 4        | Groundman/Cable Splicer Helper                              |             | \$ 68.00                            | \$ 93.00                         |
| 5        | Senior Test Tech or Electrical Engineer                     |             | \$ 166.00                           | N/A                              |
| 6        | Test Technician   |             | \$ 151.00                           | N/A                              |
| 7        | Backhoe Equipment and Operator                              |             | \$ 162.00                           | \$ 198.00                        |
| 8        | Splicing Truck & Tools                                      |             | \$ 52.00                            | N/A                              |
| 9        | Pick Up Truck   |             | \$ 35.00                            | N/A                              |
| 10       | Heavy Duty Equipment (Line Truck, Boom Truck, Bucket Truck) |             | \$ 73.00                            | N/A                              |
| 11       | Delivery and Pickup Charge for Heavy Equipment (each way)   |             | \$325.00                            |                                  |

## EXHIBIT C

### INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of City, and prior to commencement of the Services, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to Agency.

**General liability insurance.** Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

**Automobile liability insurance.** Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000.00 combined single limit for each accident.

**Professional liability (errors & omissions) insurance.** Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

**Workers' compensation insurance.** Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000.00).

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Agency, its officers, agents, employees and volunteers.

**Proof of insurance.** Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

**Duration of coverage.** Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may

arise from or in connection with the performance of the Services hereunder by Consultant, his agents, representatives, employees or subconsultants.

**Primary/noncontributing.** Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

**City's rights of enforcement.** In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant, or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

**Acceptable insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

**Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

**Enforcement of contract provisions (non estoppel).** Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the Agency nor does it waive any rights hereunder.

**Requirements not limiting.** Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

**Additional insured status.** General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

**Prohibition of undisclosed coverage limitations.** None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

**Separation of Insureds.** A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

**Pass Through Clause.** Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverages and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

**City's right to revise specifications.** The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

**Self-insured retentions.** Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City.

**Timely notice of claims.** Consultant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

**Additional insurance.** Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

EXHIBIT D

INVENTORY LIST - PARTS AND EQUIPMENT

Splicing Equipment

200 amp components  
600 amp components

Emergency Transformers

75kVa 6.9 Transformer

Emergency Generator

150 kVA Standby Generator

Cabling

1/0 600V to 700MCM  
12 kV

*INDUSTRY PUBLIC UTILITIES COMMISSION*

ITEM NO. 5.4



# INDUSTRY PUBLIC UTILITIES COMMISSION

P.O. BOX 3366 • CITY OF INDUSTRY • CALIFORNIA 91744  
(626) 333-2211 • Fax (626) 961-6795 • www.cityofindustry.org

Mark D. Radecki, President  
Abraham N. Cruz, Commissioner  
Roy M. Haber, III, Commissioner  
Cory C. Moss, Commissioner  
Newell W. Ruggles, Commissioner

Paul J. Philips, Public Utilities Director  
James M. Casso, General Counsel  
Cecelia Dunlap, Assistant Secretary

## MEMORANDUM

To: Honorable President and Commission Board Members

From: Paul J. Philips, Public Utilities Director 

Staff: Alex Gonzalez, Director of Development Services and Administration *ag*  
Kristen Weger, Administrative Analyst *kw*

Date: September 8, 2016

**SUBJECT: Consideration of a Maintenance Services Agreement with Applied Metering Technologies, Inc. for Utility Operations and Maintenance Services in an Amount not to exceed \$15,000 from September 8, 2016 to September 8, 2019**

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On June 16, 2016, the Industry Public Utilities Commission ("IPUC") directed staff to issue a Request for Qualifications ("RFQ") for Electric Utility Services Bench. The RFQ was posted in the City's PlanetBids™ vendor portal, and an email notification was sent out to all registered vendors. The appropriate trade journals were notified and included Bid America, Southern California Builders Association, Construction Bidboard and Dodge Data & Analytics on June 16, 2016. The RFQ was advertised on Tuesday, June 21, 2016 and Tuesday, June 28, 2016 in the San Gabriel Valley Tribune. Qualifications were received up until July 7, 2016 at 1:00 pm.

The selection panel evaluated the qualifications received by each contractor based on the following criteria:

- A. Contractor is experienced operating and managing an electric utility;
- B. The contractor described how they can provide professional, first-class service; and
- C. The account manager and team members assigned to the project have prior experience in similar programs and activities.

An RFQ Bench allows for evaluators to determine if multiple contractors are qualified to perform work. Price is not a determining factor in a Request for Qualifications. Proposers submitted a separate electronic document in PlanetBids™ with labor rates, and those documents were not opened until the IPUC board provided recommendations to staff. Proposers who were not chosen did not have their price proposals viewed by staff. Based on the Statement of Qualifications submitted, the selection panel determined the following categories were reasonable and appropriate for electric utility services.

The following tables summarize the statement of qualification rankings.

**Table 1 – Summary of Operations & Maintenance (“O&M”) Rankings**

| <b>Firm</b>                         | <b>Rank</b> |
|-------------------------------------|-------------|
| Pacific Utility Installation, Inc.  | 1           |
| Applied Metering Technologies, Inc. | 2           |
| Snowden Electric Company, Inc.      | 3           |
| Borrego Solar Systems, Inc.         | 4           |

Based on the rankings, staff recommended to the IPUC that Pacific Utility Installation, Inc., and Applied Metering Technologies both be awarded Maintenance Service Agreements to provide Operations and Maintenance (“O&M”) services.

On July 11, 2016, the IPUC directed staff to enter into negotiations with AMT for Operations and Maintenance Services. Staff negotiated a Maintenance Services Agreement with AMT.

Fiscal Impact

For consideration on the September 8, 2016 Consent Calendar, is Resolution No. CC 2016-63 appropriating \$15,000 from Electric Utility Reserves to the Electric Utility Fund Budget – Repair and Maintenance Equipment (Account no. 161-300-5550) for the Maintenance Services Agreement.

Staff recommends that Applied Metering Technologies, Inc., be awarded the Maintenance Services Agreement to perform Utility Operations and Maintenance Services.

Exhibit

- A. Maintenance Services Agreement with Applied Metering Technologies, Inc. for Utility Operations and Maintenance Services

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PJP:AG:KW:mk

**EXHIBIT A**

Maintenance Services Agreement with Applied Metering Technologies, Inc. for Utility  
Operations and Maintenance Services

[Attached]

## CITY OF INDUSTRY

### MAINTENANCE SERVICES AGREEMENT

This MAINTENANCE SERVICES AGREEMENT ("Agreement"), is made and effective as of September 8, 2016 ("Effective Date"), between the City of Industry, a municipal corporation ("City") and Applied Metering Technologies, Inc., a California corporation ("Consultant"). The City and Consultant are hereinafter collectively referred to as the "Parties".

#### RECITALS

**WHEREAS**, City desires to engage Consultant to perform the services described herein, and Consultant desires to perform such services in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

#### 1. TERM

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until tasks described herein are completed, but in no event later than September 8, 2019, unless sooner terminated pursuant to the provisions of this Agreement.

#### 2. SERVICES

(a) Consultant shall perform the tasks ("Services") described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. ("Scope of Services"). Tasks other than those specifically described in the Scope of Services shall not be performed without prior written approval of the City. The Services shall be performed by Consultant, unless prior written approval is first obtained from the City. In the event of conflict or inconsistency between the terms of this Agreement and Exhibit A, the terms of this Agreement shall prevail.

(b) City shall have the right to request, in writing, changes to the Services. Any such changes mutually agreed upon by the Parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

(c) Consultant shall perform all Services in a manner reasonably satisfactory to the City and in a first-class manner in conformance with the standards of quality normally observed by an entity providing electric meter installation and maintenance services, serving a municipal agency.

(d) Consultant shall comply with all applicable federal, state, and local laws, regulations and ordinances in the performance of this Agreement, including but not limited to, all labor laws, including any and all Cal/OSHA requirements, and the conflict

of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*). During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working on the Effective Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute or law; and (ii) City has not consented in writing to Consultant's performance of such work. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

(e) Consultant represents that it has, or will secure at its own expense, all licensed personnel required to perform the Services. This includes qualified electrical workers, in accordance with Cal/OSHA guidelines, for all work on energized conductors or equipment connected to energized high-voltage systems. All Services shall be performed by Consultant, and all personnel engaged in the Services shall be qualified and licensed to perform such services. In addition, a proven record of work safety must be provided and maintained by the Consultant, with records made available to the City upon request.

### **3. MANAGEMENT**

City's City Manager, or his designee, shall represent the City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but shall have no authority to modify the Services or the compensation due to Consultant.

### **4. PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B ("Rate Schedule"), attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Fifteen Thousand Dollars (\$15,000.00) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

(c) Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within 45 days of receipt of an invoice therefore.

## **5. LABOR CODE AND PREVAILING WAGES**

(a) Consultant represents and warrants that it is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 16000, *et seq.*, ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$15,000.00 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and any location where the Services are performed. Consultant shall indemnify, defend and hold harmless, the City, its elected officials, officers, employees and agents, from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, Consultant's or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant, failure or alleged failure to comply with Prevailing Wage Laws.

(b) In accordance with the requirements of Labor Code Section 1776, Consultant shall keep accurate payroll records which are either on forms provided by the Division of Labor Standards Enforcement or which contain the same information required by such forms. Consultant shall make all such records available for inspection at all reasonable hours.

(c) To the extent applicable, Consultant shall comply with the provisions of Section 1777.5 of the Labor Code with respect to the employment of properly registered apprentices upon public works.

(d) Consultant shall comply with the legal days work and overtime requirements of Sections 1813 and 1815 of the Labor Code.

(e) If the Services are being performed as part of an applicable Public works or Maintenance project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Agreement and require the same of any subconsultants, as applicable. This Services set forth in this Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

## **5. SUSPENSION OR TERMINATION OF AGREEMENT**

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant shall submit an invoice to the City pursuant to Section 5 of this Agreement.

## **6. OWNERSHIP OF DOCUMENTS**

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to review such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office, and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. Consultant hereby grants to City all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the services under this Agreement. All reports, documents, or other written material developed by Consultant in the performance of the Services pursuant to this Agreement, shall be and remain the property of the City.

## **7. INDEMNIFICATION**

### **(a) Indemnity for professional liability**

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless the City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or Subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

### **(b) Indemnity for other than professional liability**

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

(c) DUTY TO DEFEND. In the event the City, its officers, employees, agents and/or volunteers are made a party to any action, claim, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by City, Consultant shall have an immediate duty to defend the City at Consultant's cost or at City's option, to reimburse the City for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters.

Payment by City is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Consultant and City, as to whether liability arises from the sole negligence of the City or its officers, employees, or agents, Consultant will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating the City as solely negligent. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

## **8. INSURANCE**

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached hereto and incorporated herein by reference.

## **9. INDEPENDENT CONSULTANT**

(a) Consultant is and shall at all times remain as to the City a wholly independent consultant and/or independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultants exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against the City, or bind the City in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

## **10. LEGAL RESPONSIBILITIES**

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

## **11. UNDUE INFLUENCE**

Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential

financial arrangement, or financial inducement. No officer or employee of the City has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

## **12. NO BENEFIT TO ARISE TO LOCAL OFFICERS AND EMPLOYEES**

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

## **13. RELEASE OF INFORMATION/CONFLICTS OF INTEREST**

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City, unless otherwise required by law or court order. (b) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the City, unless Consultant is prohibited by law from informing the City of such Discovery, court order or subpoena. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless City is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to Consultant in such proceeding, Consultant agrees to cooperate fully with the City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **14. NOTICES**

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: City of Industry  
15625 E. Stafford, Suite 100  
City of Industry, CA 91744

Attention: City Manager

With a Copy To: James M. Casso, City Attorney  
Casso & Sparks, LLP  
13200 Crossroads Parkway North, Suite 345  
City of Industry, CA 91746

To Consultant: Mario Natividad, President/CEO  
Applied Metering Technologies, Inc.  
9244 Bermudez Street  
Pico Rivera, CA 90660

#### **15. ASSIGNMENT**

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

Before retaining or contracting with any subconsultant for any services under this Agreement, Consultant shall provide City with the identity of the proposed subconsultant, a copy of the proposed written contract between Consultant and such subconsultant which shall include and indemnity provision similar to the one provided herein and identifying City as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subconsultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from the City for such insurance.

Notwithstanding Consultant's use of any subconsultant, Consultant shall be responsible to the City for the performance of its subconsultant as it would be if Consultant had performed the Services itself. Nothing in this Agreement shall be deemed or construed to create a contractual relationship between the City and any subconsultant employed by Consultant. Consultant shall be solely responsible for payments to any subconsultants. Consultant shall indemnify, defend and hold harmless the Indemnified Parties for any claims arising from, or related to, the services performed by a subconsultant under this Agreement.

#### **16. GOVERNING LAW/ATTORNEYS' FEES**

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court in Los Angeles County, California. If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of or relating to the Services provided by Consultant under this Agreement, the prevailing party shall be entitled to reasonable

attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled.

**17. ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**18. SEVERABILITY**

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**19. COUNTERPARTS**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**20. CAPTIONS**

The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and shall have no significance in the interpretation of this Agreement.

**21. WAIVER**

The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

**22. REMEDIES**

Each right, power and remedy provided for herein or now or hereafter existing at law, in

equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies.

**23. AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

**“CITY”**  
City of Industry

**“CONSULTANT”**  
Applied Metering Technologies, Inc.

By: \_\_\_\_\_  
Paul Philips, City Manager

By:  \_\_\_\_\_  
Mario Natividad, President/CEO

**Attest:**

By: \_\_\_\_\_  
Cecelia Dunlap, Deputy City Clerk

**Approved as to form:**

By: \_\_\_\_\_  
James M. Casso, City Attorney

- |              |           |                        |
|--------------|-----------|------------------------|
| Attachments: | Exhibit A | Scope of Services      |
|              | Exhibit B | Rate Schedule          |
|              | Exhibit C | Insurance Requirements |

## EXHIBIT A

### SCOPE OF SERVICES

Consultant shall perform electric meter installation and maintenance metering services, which shall include, but is not limited to:

- Instrument Current Transformers (“CTs”) and Potential Transformer (“PTs”), all secondary wiring from meter to CTs and test switches;
- Coordinate with the City’s Utility Operations Management and City’s engineering and construction contractors to ensure the City’s meter system is accurate, reliable and functioning properly;
- New electric meter installation including CTs, test switches, and secondary wiring;
- Replacement of defective meters and CTs with new on emergency repairs or regular maintenance;
- Turn-offs / turn-ons for non-payment, if needed;
- Meter programming and commissioning;
- Meter testing for accuracy to ensure proper billing;
- Service investigations, troubleshooting meter issues and reported problems;
- Generation and build of programs for new meter rates;
- Meter engineering support;
- California Independent System Operator (“ISO”) meter certification, testing, and programming support.
- Maintain an inventory of parts and equipment necessary to support and execute the scope of services, as detail in Exhibit D.

### Meter Reading Services

Consultant shall provide all labor, materials, supervision, software, tools and transportation to deliver meter reading services to the City. Consultant shall provide the following meter reading services:

- Hand read meter data and process for billing;
- Download meter data and process for billing;

- Maintain hourly data for three (3) interconnect meters on server that can be remotely accessed by IPUC; and
- Prepare Line Loss Reports Monthly.

Consultant shall provide customized formatting of statements & invoices to include customer account information, meters, accounts receivables, billing, payment plans, transaction history and general ledger activity. Specialty reports shall include meter block consumption, standard consumption analysis and reports on rate tier levels.

Consultant shall comply with all Payment Card Industry (PCI) Data Security Standards through its interactions with credit card processors, such as authorize.net, and financial institutions, such as Bank of America.

### **Response Time**

Service call schedules will be available on Thursday, the week prior to service. End-customer appointments will be made, if required and the City furnishes the customer name and contact information. Emergency service calls shall be responded to within two (2) hours. Normal service hours shall be considered Monday – Friday from 8:00 am – 4:30 pm. In the event of an emergency, Mario Natividad, President/CEO is available 24/7 and can be contacted directly at (562) 505-9000.

EXHIBIT B

RATE SCHEDULE

Contractor shall charge the City the following hourly rates for services rendered pursuant to the Scope of Services ("Exhibit A") set forth herein.

| Service   | Cost                     |
|---|--------------------------|
| Meter Technician  | \$ <u>140</u> /hour      |
| CA-ISO Meter Technician   | \$ <u>160</u> /hour      |
| Overtime, Meter Technician<br>(Saturdays and weekdays over 8hrs)      | \$ <u>210</u> /hour      |
| Double Time, Meter Technician<br>(Sundays and weekdays over 12 hours) | \$ <u>280</u> /hour      |
| Engineering Services  | \$ <u>210</u> /hour      |
| Comm Cable Extensions,<br>6' - 200', up to 10' high                   | \$ <u>225</u> /extension |
| Com Cable Extensions,<br>201' - 400', up to 10' high                  | \$ <u>290</u> /extension |
| Comm Cable Extensions,<br>6' - 200', 11' to 30' high                  | \$ <u>320</u> /extension |
| Comm Cable Extensions,<br>201' - 400', 11' to 30' high                | \$ <u>390</u> /extension |

City shall reimburse Consultant its actual costs for all meters, metering equipment and shipping costs, upon submittal of evidence of said costs along with the monthly invoice, as set forth in the Agreement. In no event shall the City reimburse Consultant for travel time related to the work performed under this Agreement. The above Rate Schedule shall include the costs of all equipment necessary to perform the Scope of Services. In the event Consultant requires additional equipment, outside of the customary equipment used to

perform the Scope of Services, said equipment rental shall be approved by the City, and shall be reimbursed at the actual cost, without mark-up.

## EXHIBIT C

### INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of City, and prior to commencement of the Services, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to Agency.

**General liability insurance.** Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

**Automobile liability insurance.** Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000.00 combined single limit for each accident.

**Professional liability (errors & omissions) insurance.** Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

**Workers' compensation insurance.** Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000.00).

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Agency, its officers, agents, employees and volunteers.

**Proof of insurance.** Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

**Duration of coverage.** Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may

arise from or in connection with the performance of the Services hereunder by Consultant, his agents, representatives, employees or subconsultants.

**Primary/noncontributing.** Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

**City's rights of enforcement.** In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant, or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

**Acceptable insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

**Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

**Enforcement of contract provisions (non estoppel).** Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the Agency nor does it waive any rights hereunder.

**Requirements not limiting.** Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

**Additional insured status.** General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

**Prohibition of undisclosed coverage limitations.** None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

**Separation of Insureds.** A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

**Pass Through Clause.** Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

**City's right to revise specifications.** The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

**Self-insured retentions.** Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City.

**Timely notice of claims.** Consultant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

**Additional insurance.** Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

*INDUSTRY PUBLIC UTILITIES COMMISSION*

ITEM NO. 5.5



# INDUSTRY PUBLIC UTILITIES COMMISSION

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Mark D. Radecki, President  
Abraham N. Cruz, Commissioner  
Roy M. Haber, III, Commissioner  
Cory C. Moss, Commissioner  
Newell W. Ruggles, Commissioner

Paul J. Philips, Public Utilities Director  
James M. Casso, General Counsel  
Cecelia Dunlap, Assistant Secretary

## MEMORANDUM

To: Honorable President and Commission Board Members

From: Paul J. Philips, Public Utilities Director *Paul J. Philips*

Staff: Susan Paragas, Controller  
Alex Gonzalez, Director of Development Services and Administration *AG*  
Steven Avalos, Administrative Analyst *SA*  
Kristen Weger, Administrative Analyst *KW*

Date: September 8, 2016

**SUBJECT: Consideration of Resolution No. CC 2016-63 of the City of Industry, California, to Amend the Fiscal Year 2016-2017 Electric Utility Fund Budget to Reflect an Appropriation of \$1,280,000 from Available Electric Utility Reserves Fund and Increasing the Electric Utility Fund – Professional Services (Account No. 161-300-5120.01) in the Amount of \$1,225,000 for Utility Administration Services and the Electric Utility Fund – Repair and Maintenance Equipment (Account No. 161-300-5550) in the Amount of \$55,000 for Expenditures**

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### **BACKGROUND:**

On June 16, 2016, the Industry Public Utilities Commission (“IPUC”) directed staff to issue a Request for Qualifications (“RFQ”) for Electric Utility Services Bench.

As a result of the RFQ process, staff recommended on July 11, 2016, to the Industry Public Utilities Commission (“IPUC”) that several contractors be awarded contracts for utility administration, operations and maintenance, utility engineering and utility billing services. The IPUC directed staff to enter into negotiations with the following contractors for service: Cordoba Corporation, Pacific Utility Installation, Inc., Applied Metering Technologies, Inc., Butsko Utility Design, Inc., and ENCO Utility Services.

For consideration on the September 8, 2016 Consent Calendar, City Council reviewed contracts with Cordoba Corporation, Pacific Utility Installation, Inc., Applied Metering Technologies, Inc., and Butsko Utility Design, Inc.

The ENCO Utility Services contract will be presented at a future City Council meeting for consideration as that contract is still under review by City staff and a resolution with an appropriation request will be presented at that time.

**FISCAL IMPACT:**

The recommended actions will authorize the amount of \$1,280,000 from the Electric Utility Reserves Fund be appropriated to the Electric Utility Fund – Professional Services (Account no. 161-300-5120.01) in the amount of \$1,225,000 and the Electric Utility Fund – Repair and Maintenance (Account No. 161-300-5550) in the amount of \$55,000.

**RECOMMENDED ACTION:**

Staff recommends the IPUC direct the City Council to adopt:

- a) Resolution No. CC 2016-63 of the City of Industry, California, to Amend the Fiscal Year 2016-2017 Electric Utility Fund Budget to Reflect an Appropriation of \$1,280,000 from Available Electric Utility Reserves Fund and Increasing the Electric Utility Fund – Professional Services (Account No. 161-300-5120.01) in the Amount of \$1,225,000 for Utility Administration Services and the Electric Utility Fund – Repair and Maintenance Equipment (Account No. 161-300-5550) in the Amount of \$55,000 for Expenditures

Exhibit

A. Resolution No. CC 2016-63

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PJP:SP:AG:SA:KW:jd

**EXHIBIT A**

Resolution No. CC 2016-63

[Attached]

**RESOLUTION NO. CC 2016-63**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF INDUSTRY, CALIFORNIA, TO AMEND THE FISCAL YEAR 2016-2017 ELECTRIC UTILITY FUND BUDGET TO REFLECT AN APPROPRIATION OF \$1,280,000 FROM AVAILABLE ELECTRIC UTILITY RESERVES FUND AND INCREASING THE ELECTRIC UTILITY FUND – PROFESSIONAL SERVICES (ACCOUNT NO. 161-300-5120.01) IN THE AMOUNT OF \$1,225,000 FOR UTILITY ADMINISTRATION SERVICES AND THE ELECTRIC UTILITY FUND – REPAIR AND MAINTENANCE EQUIPMENT (ACCOUNT NO. 161-300-5550) IN THE AMOUNT OF \$55,000 FOR EXPENDITURES**

**WHEREAS**, the City of Industry's Operating Budget was adopted on June 9, 2016;  
and

**WHEREAS**, on June 16, 2016 the Industry Public Utilities Commission ("IPUC") directed staff to issue a Request for Qualifications ("RFQ") for Electric Utility Services Bench;

**WHEREAS**, staff released the RFQ for Electric Utility Services Bench on June 16, 2016;

**WHEREAS**, the Electric Utility Services Bench was competitively procured and staff presented the results of the RFQ process to the Industry Public Utilities Commission ("IPUC") for consideration;

**WHEREAS**, the IPUC directed staff on July 11, 2016 to enter into negotiations with Cordoba Corporation, Pacific Utility Installation, Inc., Applied Metering Technologies, Inc., Butsko Utility Design, Inc., and ENCO Utility Services for three (3) year contracts;

**WHEREAS**, the City entered into Professional Services Agreements and Maintenance Services Agreements with contractors for service;

**WHEREAS**, City Council approved the Professional Services Agreements and Maintenance Services Agreements at the City Council meeting of September 8, 2016;

**WHEREAS**, it is now necessary to amend the Electric Utility Fund Budget with Resolution No. CC 2016-63 to increase the annual budget Electric Utility Fund Budget for Fiscal Year 2016-17.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF INDUSTRY DOES HEREBY RESOLVE AS FOLLOWS:**

**SECTION 1.** The above recitals are true and correct and are incorporated herein by reference.

**SECTION 2.** Amend the fiscal year 2016-2017 Electric Utility Fund Budget as follows:

1. Appropriate \$1,280,000 from Available Electric Utility Reserves Fund) and Increasing the Electric Utility Fund – Professional Services (Account no. 161-300-5120.01) in the amount of \$1,225,000 for Utility Administration Services and the Electric Utility Fund – Repair and Maintenance Equipment (Account No. 161-300-5550) in the amount of \$55,000 for expenditures.

**SECTION 3.** The City Manager is hereby authorized to take such further actions as may be necessary to carry out the obligations set forth in this Resolution.

**SECTION 4.** The provisions of this Resolution are severable and if any provision, clause, sentence, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts thereof of the Resolution or their applicability to other persons or circumstances.

**SECTION 5. Certification.** The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

**SECTION 6. Effective Date.** This Resolution shall take effect immediately upon adoption.

**PASSED, APPROVED and ADOPTED** by the City Council of the City of Industry at a regular meeting held on September 8, 2016 by the following vote:

|          |                  |
|----------|------------------|
| AYES:    | COUNCIL MEMBERS: |
| NOES:    | COUNCIL MEMBERS: |
| ABSTAIN: | COUNCIL MEMBERS: |
| ABSENT:  | COUNCIL MEMBERS: |

\_\_\_\_\_  
Mark D. Radecki, Mayor

**ATTEST:**

\_\_\_\_\_  
Cecelia Dunlap, Deputy City Clerk

*INDUSTRY PUBLIC UTILITIES COMMISSION*

ITEM NO. 5.6



# INDUSTRY PUBLIC UTILITIES COMMISSION

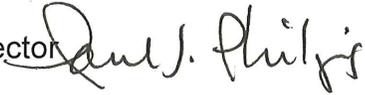
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Mark D. Radecki, President  
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Roy M. Haber, III, Commissioner  
Cory C. Moss, Commissioner  
Newell W. Ruggles, Commissioner

Paul J. Philips, Public Utilities Director  
James M. Casso, General Counsel  
Cecelia Dunlap, Assistant Secretary

## MEMORANDUM

To: Honorable President and Commission Board Members

From: Paul J. Philips, Public Utilities Director 

Staff: Henry Martinez, Senior Vice President, Cordoba Corporation  
Clement N. Calvillo, City Engineer, CNC Engineering  
Joshua Nelson, Deputy City Engineer, CNC Engineering

Date: September 8, 2016

**SUBJECT: Consideration to Authorize the Public Utilities Director or Designee to Purchase Renewable Energy Credits for the City of Industry by December 31, 2016, and Appropriate \$200,000 to the Electric Utility Fiscal Year 2016-2017 Budget**

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On July 11, 2013, the City of Industry ("CITY"), adopted a Renewable Energy Resources Procurement Plan & Enforcement Program (SBX1 2). The Industry Public Utilities Commission ("IPUC"), under Renewable Portfolio Standards set by the California Energy Commission (CEC), is required to meet obligations for renewable energy usage for the period from 2014 to 2016. The plan adopted by the City is structured in a way that directs purchasing of Renewable Energy Credits ("RECs") by the IPUC in order to fulfill all of its obligations. If these obligations are not met, strict penalties may be imposed on the IPUC.

### FISCAL IMPACT:

The recommended action will require an appropriation from Electric Utility Reserves to Electric Utility – Miscellaneous (account no. 161-300-5025) in the amount of \$200,000 for the purchase of Renewable Energy Credits.

### RECOMMENDATIONS:

Staff is requesting at this time that the Public Utilities Director, or his Designee, purchase REC's on the City's behalf as needed to fulfill the City's Renewable Energy Portfolio obligations.

### Exhibit

- A. City of Industry Renewable Energy Resources Procurement Plan & Enforcement Program (SBX1 2), adopted by City Council July 11, 2013

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PJP:HM:CC:JN:jd

**EXHIBIT A**

**City of Industry Renewable Energy Resources Procurement Plan & Enforcement  
Program, adopted July 11, 2013**

[Attached]

**CITY OF INDUSTRY**  
**RENEWABLE ENERGY RESOURCES PROCUREMENT PLAN**  
**& ENFORCEMENT PROGRAM (SBX1 2)**

**1. POLICY STATEMENT**

California's Renewable Portfolio Standard (RPS) requirements for publically owned utilities (POU) such as the City of Industry (the "City" or "COI"), has been established through dynamic and meaningful legislative and regulatory change over the past ten years. The current law, the California Renewable Energy Resources Act, Senate Bill 2 1st Ex Session ("SBX1 2") requires utilities to achieve 33% RPS by 2020, with interim targets of an average of 20% through 2011-2013 and 25% by 2016 and 33% by 2020. SBX1 2 requires POUs to prepare a renewable energy resources procurement plan and gives the California Energy Commission (CEC) new oversight responsibilities with respect to POUs.

The City of Industry shall work with the CEC to develop a renewable energy resources procurement plan that meets California's legislative intent while taking into consideration the burdensome changes imposed by the most recent legislation, market limitations for small utilities, the impact of RPS on rates and COI's financial resources. The City shall comply with the intent of the statute, some of which are open to interpretation in order to help POUs address their unique circumstances. The governing board's reasonable interpretation of the statute is provided herein. As long as COI's electric utility ("IPUC") acts in accordance with its governing board's reasonable interpretation, CEC should hold IPUC in compliance with SBX1 2.

This document describes IPUC's renewable energy resources procurement plan and enforcement program as required by PUC §399.30(e). The City Council is IPUC's governing board, responsible for adopting, implementing and enforcing the renewable energy resources plan and enforcement program.

## **2. IPUC RENEWABLE ENERGY RESOURCES PROCUREMENT PLAN**

### **2.1 Renewable Portfolio Standard (RPS) Minimum Targets**

Pursuant to SBX1 2 and codified under PUC §399.30, IPUC shall adopt and implement a renewable energy resources procurement plan to procure a minimum quantity of electricity products from eligible renewable energy resources, including renewable energy credits or RECs. The City Council requires IPUC to meet the overall RPS compliance targets specified under PUC §399.30(c)(1&2) for each compliance period. In meeting the targets, IPUC will contract for eligible renewable energy resources on a least cost, best fit basis that takes into account availability of resources, financial feasibility, transmission availability, competitive market availability and other relevant considerations.

IPUC has taken proactive steps to achieve and maintain RPS targets established by prior legislation SB1078 and SB 107. Due to the change in the eligibility of renewable energy caused by SBX1 2, IPUC shall be exempt from the specific portfolio content category percentages defined by PUC §399.16(c) for Compliance Period 1. Consistent with PUC §399.15(b)(5), the legislation authorizes IPUC's governing board, the City Council, to waive specific compliance requirements caused by conditions beyond the control of IPUC. IPUC will however, be required to attain its RPS minimum targets with reasonable progress which IPUC interprets as taking proactive steps in achieving and maintaining the RPS percentage targets required under SBX1 2.

### **2.2 Reasonable Progress in Renewable Energy Resources Procurement**

The original 2002 RPS legislation gave POUs broad flexibility with RPS. Since 2005, the City has initiated broad efforts to procure renewable energy resources including acquiring an ownership interest and developing California based renewable energy resources:

- In December 2005, the City entered into an MOU to acquire a 2 MW interest in a Tehachepi wind energy resource from an independent power producer (IPP). The 2 MW wind resource could meet 20% of IPUC's retail sales. The City was unable to procure the resource due to interconnection issues, inadequate transmission capacity and inability to dynamically schedule 2 MW from an intermittent resource within the CAISO to the City's Point of Receipt.
- In 2009, the City began development of a 2 MW solar carport and electric vehicle (EV) charging project at the Industry MetroLink station. The renewable resource was planned to interconnect within the City's electric distribution system.
- On January 1, 2010, IPUC entered into a 5-year contract with Shell Energy Trading. The power content label of the Shell power supply contains 20% "Eligible Renewable" energy resources, 19% from wind and 1% from small hydroelectric. For

a small utility such as the City whose peak load is approximately 8 MW, the integration of renewable resources within its wholesale power block was the most feasible RPS resource procurement option.

- Because the City had already contracted for 20% of its renewable requirement in its 5-year wholesale contract, on July 26, 2010, the City entered into a 20-year PPA with SCE (RAP ID# 5371) and began selling 100% of the 2 MW solar output to SCE beginning March 2012. At the end of contract term, the IPUC will take the 3,000 MWh/yr RPS supply. The project's EV Charging facilities are energized and an EV Lease Program for commuters shall commence in 2013. Given the explicit flexibility provided by RPS legislation prior to SB 2 (1X), the City's strategy is to reduce its carbon footprint by promoting EV transportation and has invested significant financial resources to install an EV charging infrastructure at MetroLink.

### **2.3 Grandfathering of Resource**

By contracting for "eligible renewable" resources integrated as part of IPUC's power supply until 2015, the City procured the least-cost and best-fit electricity product consistent with PUC §399.16(b). The contracts are renewable and deemed to be eligible for grandfathering. As the grandfathered resources count toward IPUC's RPS targets, they do not need to be consistent with the portfolio content category percentages described in Section 2.4. As content categories had been established after IPUC had contracted for its RPS resources through 2015, for Compliance Period 1, IPUC's RPS procurement is exempt from portfolio content category percentages in Compliance Period 1 consistent with noncompliance waivers set forth in Section 3.2. IPUC must however procure the minimum quantity of eligible renewable energy resources for each compliance period as set forth in PUC §399.15(b)(2)(B). Eligible Renewable Energy Resources ("ERR") shall be certified by the CEC and are defined in PUC §399.12. IPUC must also participate in and comply with the verification and audit process administered by the Energy Commission PUC §399.30(i)(2).

### **2.4 Portfolio Content Categories ("Buckets")**

SB 2 (1X) imposes a "loading order" that requires each provider to acquire a portfolio of renewables comprised of three categories. The three categories of renewable resources (referred to as "buckets") are defined in PUC §399.16(c). The City is a uniquely small POU who cannot access all three categories. To accommodate its market limitations, for the purposes of compliance, the portfolio content categories are defined as follows:

- i) Category 1 - Direct connection to a California balancing authority, scheduling without substitution and dynamically transferred energy. "California Content" (ex. MetroLink PV delivering to CAISO grid at SCE's Walnut substation, scheduled by SCE and integrated in the CAISO markets.)
- ii) Category 2 - Firmed and shaped energy or RECs from eligible resources providing

incremental electricity and scheduled into a CA balancing authority. (ex. Northwest wind power shaped by Bonneville Power Administration delivered to CAISO grid at the California Oregon Border or COB)<sup>1</sup>.

- iii) Category 3 – All other renewable resources including unbundled renewable energy credits (RECs) referred to as the “REC Content”.

## 2.5 Compliance Requirements [PUC§399.30]

IPUC does not establish annual compliance obligations for any specific year within Compliance Periods 1, 2 and 3. However, IPUC has set annual procurement targets that will be used to determine the total Compliance Period Requirements for each Compliance Period. Consistent with PUC §399.30(c)(1&2), IPUC’s RPS procurement requirements for each compliance period are summarized as follows:

### 2.5.1 Total Compliance Period Requirements

- Compliance Period 1: January 1, 2011 through December 31, 2013. Required to procure 20% of average retail sales throughout the period from eligible renewable energy resources without regard to the categories defined by PUC §399.16(c) and described in Section 2.4 herein.
- Compliance Period 2: January 1, 2014 through December 31, 2016. Required to procure 25% of average retail sales from eligible renewable energy resources by December 31, 2016.
- Compliance Period 3: January 1, 2017 through December 31, 2020. Required to procure 33% of average retail sales from eligible renewable energy resources by December 31, 2020.

### 2.5.2 Portfolio Content Category Compliance Requirements

IPUC has defined the portfolio content categories specified in PUC §399.16(c) in Section 2.4 of the enclosed Renewable Energy Resources Procurement Plan. Subject to Section 2.4 herein, IPUC shall meet the limits on procurement for the portfolio content categories as described in the table below. IPUC’s governing board may adjust the percentage limitations specified in PUC §399.16(c) for procurement in each category in order to comply with the obligation for a compliance period in which the conditions for waiving compliance established in Section 3.1 would otherwise be invoked. Additionally, IPUC shall determine to which category each procured resource belongs.

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<sup>1</sup> BPA integrates highly variable wind energy generated from Northwest wind resources into its Federal Columbia River Hydroelectric System so that a firm, shaped power supply (ex. constant 25 MW power supplied for 16 On-Peak hours per day) can be scheduled in advance and delivered to COB. Here a buyer can procure in advance a firm block of wind energy, despite the highly variable manner that wind energy is actually generated.

**IPUC RPS Compliance Requirements**

| Compl. Period | % Retail Sales | Category 1         | Category 2 | Category 3 |
|---------------|----------------|--------------------|------------|------------|
| 2011 - 2013   | 20% average    | (see §2.3)         | 25%        | 75%        |
| 2014 - 2016   | 25% at YE16    | ≥ 65% <sup>1</sup> | ≤20%       | ≤15%       |
| 2017 - 2020   | 33% at YE20    | ≥ 75% <sup>1</sup> | ≤15%       | ≤10%       |

<sup>1</sup> IPUC initial Category 1 RPS Compliance Requirement set equal to Category 1 content requirement set forth in PUC §399.16(c)(1).

**2.6 IPUC RPS Procurement Plan Elements**

To comply with PUC §399.30(c)(2), IPUC intends to demonstrate reasonable progress in attaining the goals of SBX1 2. IPUC has and will continue its extensive efforts to procure or develop renewable resources. When reviewing its RPS procurement needs, IPUC conducts an assessment of its supply and demand. Each year, IPUC prepares a Power Supply Forecast, which is a forward projection of supply and demand. IPUC's RPS procurement requirements are estimated from the Power Supply Forecast and are summarized in the follow table:

**Table 1: IPUC RPS Procurement Requirements**

| Compl. Period | Year | Peak Demand | Retail Sales | RPS Target |            |
|---------------|------|-------------|--------------|------------|------------|
|               |      | MW          | MWHs         | MWHs       | Note       |
|               | 2010 | 7.20        | 27,306       |            |            |
| 1             | 2011 | 7.26        | 27,679       |            | 3-yr total |
|               | 2012 | 7.32        | 27,304       | 16,512     |            |
|               | 2013 | 7.39        | 27,577       |            |            |
| 2             | 2014 | 7.46        | 27,853       | 6,963      |            |
|               | 2015 | 7.54        | 28,131       | 7,033      |            |
|               | 2016 | 7.61        | 28,413       | 7,103      | YE-2016    |
| 3             | 2017 | 7.69        | 28,697       | 9,470      |            |
|               | 2018 | 7.77        | 28,984       | 9,565      |            |
|               | 2019 | 7.84        | 29,274       | 9,660      |            |
|               | 2020 | 7.92        | 29,566       | 9,757      | YE-2020    |

IPUC's RPS procurement is calculated on a calendar year basis. The RPS percent is calculated based on the total MWHs of renewable resources (procured, contracted or in development) for a calendar year divided by calendar year retail sales. As shown in the above table, the RPS Target for Compliance Period 1 is calculated using the summation of 2011, 2012 and 2013 forecasted retail sales, while the RPS Target for Compliance Period 2 & 3 is calculated annually based on forecasted retail sales.

Attached below is IPUC's most recent "Resource Procurement Plan". Pursuant to §399.30(g), IPUC will provide the City Council with an updated "Resource Procurement Plan," annually.

**Table 2: IPUC Resource Procurement Plan Summary**

| Period | Year | Retail Sales |             | Non RPS Purchases   |                  | RPS Target |       |        |
|--------|------|--------------|-------------|---------------------|------------------|------------|-------|--------|
|        |      | Pk Dmd MW    | Energy MWHs | Forward MWHs per Yr | Spot MWHs per Yr | Cat 1      | Cat 2 | Cat 3  |
| 1      | 2013 | 7.39         | 27,577      | 14,750              | 12,827           |            |       | 15,000 |
|        | 2014 | 7.46         | 27,853      | 14,750              | 8,577            | 4,526      | 1,393 | 1,044  |
| 2      | 2015 | 7.54         | 28,131      | 14,750              | 8,810            | 4,571      | 1,407 | 1,055  |
|        | 2016 | 7.61         | 28,413      | 12,500              | 11,296           | 4,617      | 1,421 | 1,065  |
| 3      | 2017 | 7.69         | 28,697      | 12,500              | 10,905           | 5,292      | 1,420 | 2,757  |
|        | 2018 | 7.77         | 28,984      | 12,500              | 10,516           | 5,967      | 1,435 | 2,163  |
|        | 2019 | 7.84         | 29,274      | 12,500              | 10,131           | 6,643      | 1,449 | 1,569  |
|        | 2020 | 7.92         | 29,566      | 12,500              | 9,749            | 7,318      | 1,464 | 976    |

IPUC has comprehensively reviewed options to meet its RPS targets. For Compliance Period 1, IPUC's options to procure renewable resources have been limited. Procuring Category 1 ("Cat 1") renewable resources has been particularly problematic due to the small quantities required by IPUC, the dynamic scheduling requirement and regulatory uncertainty in characterizing specifications for Category 1 & 2. In Compliance Period 1 the minimum purchase volume for Cat 1 was found to be 25,000 MWHs, 3 times greater than IPUC's aggregate Cat 1 RPS target for years 2011-13. Contracting for Category 1 resources in the emerging renewable market of Compliance Period 1 has been prohibitively expensive, and would negatively impact rate payers. Similarly, IPUC had contracted to competitively procure Category 2, but the supplier cancelled the supplies negotiated in a term sheet, citing regulatory uncertainty. Category 3 renewable resources are currently available for the small quantities required by IPUC and their pricing is such that they are currently financially viable for the City's rate payers. Consistent with the noncompliance provisions set forth in §3.2 of this Plan, IPUC has met its RPS Target via Cat 3 purchases for Compliance Period 1 as provided in Table 2.

Looking ahead to Compliance Periods 2 & 3, IPUC believes that it has sufficient time to procure its RPS content category amounts as set forth in PUC §399.16(c). To address its small quantities, IPUC is currently negotiating the procurement for its full period compliance volume, which are closer to minimum RPS transaction volumes required in the marketplace. Concurrent with IPUC's ongoing solicitation for Category 1, Category 2 and Category 3 renewable resources, IPUC shall work closely with the Southern California Public Power Authority (SCPPA) Renewable Resources Working Group in their

bid solicitation (RFP) process for securing renewable resources. Several times a year, The SCPPA Renewable Resources Working Group sends out RFPs for long term renewable resources. One of the potential SCPPA projects is the development of Tehachapi wind assets, which the City has already initiated discussions and has completed a preliminary review of. IPUC has also initiated efforts to develop rooftop PV on buildings within its service territory and a ground mount PV project located on a parcel that could be interconnected directly with the City's distribution facilities. All PV projects would deliver energy directly to IPUC's distribution facilities.

IPUC shall continue to conduct a thorough analysis of the risk of delay or failure associated with renewable resources contracted or projects under development. Its integrated resource planning (IRP) group shall discuss on a regular basis the viability of contracts or projects.

#### **2.7 Reporting Requirements**

Per SBX1 2, IPUC will provide the CEC documentation and reports, as required in PUC §399.30(g) and PUC §399.30(i).

#### **2.8 Banking**

Due to minimum RPS contract sizes in the current market relative to IPUC's RPS requirements, IPUC shall likely procure excess RPS resources in order to comply within a particular compliance period. Pursuant to PUC §399.13(a)(4)(B), IPUC can accumulate excess procurement of eligible resources in one compliance period to be applied to any subsequent compliance period.

#### **2.8 Cost Limitations and Constraints [PUC§399.30(d)(3)]**

IPUC shall establish specific cost limitations on procurement to ensure that compliance with the RPS standards does not materially increase rates as IPUC has limited ability to raise rates. Before raising rates, IPUC staff reviews the competitiveness of its rates, the rate impact on its customers and obtains input from the public (via sufficient public notice and rate workshops). Only the City Council is authorized to raise rates, who, consistent with PUC §399.15(c), may establish cost limitations for procurement expenditures.

### **3. ENFORCEMENT PROGRAM**

#### **3.1 Enforcement Action**

Subject to the conditions for waiving compliance, the City Council may take enforcement action if IPUC fails to meet the compliance obligation for a compliance period as set forth in Section 2.5. In the event that an enforcement action is required, the City Council shall direct the City Engineer to develop and present a plan within 6 months to bring IPUC into compliance.

#### **3.2 Waiver for Noncompliance**

IPUC's Governing Board may waive enforcement of a Compliance Period Requirements for a particular compliance period if any of the following conditions occur that prevent compliance and it is demonstrated that IPUC took reasonable actions to comply and the conditions were beyond the control of IPUC:

- Legislative or regulatory actions that change the eligibility of energy already procured or contracted for;
- Permitting, interconnection, or other circumstances that delay procured eligible renewable energy resource projects;
- Inadequate transmission capacity to allow for sufficient electricity to be delivered;
- Unanticipated curtailment of eligible renewable energy resources that limit renewable energy deliveries to IPUC;
- Contract failures or other circumstances that delay procured eligible renewable energy resource projects.
- An insufficient supply of eligible renewable energy available within the cost limitations set forth in Section 2.8.

IPUC intends to comply with SBX1 2. However, as listed above, there may be circumstances that will prohibit IPUC from procuring renewable resources to meet the targets in SBX1 2. In such an instance, IPOUC will request the City Council authority to approve a waiver of compliance, consistent with PUC §399.15(b)(5).

*INDUSTRY PUBLIC UTILITIES COMMISSION*

ITEM NO. 5.7



# INDUSTRY PUBLIC UTILITIES COMMISSION

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Paul J. Philips, Public Utilities Director  
James M. Casso, General Counsel  
Cecelia Dunlap, Assistant Secretary

## MEMORANDUM

To: Honorable President and Commission Board Members

From: Paul J. Philips, Public Utilities Director *Paul J. Philips*

Staff: Henry Martinez, Senior Vice President, Cordoba Corporation  
Clement N. Calvillo, City Engineer, CNC Engineering  
Joshua Nelson, Deputy City Engineer, CNC Engineering

Date: September 8, 2016

**SUBJECT: Consideration of a Contract for Extension of Electric Distribution Line between the Successor Agency to the Industry Urban-Development Agency and Industry Public Utilities Commission in an amount not to exceed \$10,750,000**

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The Industry Business Center ("IBC") covers roughly six-hundred acres on the eastern and western sides of Grand Avenue, North of the California State Route 57 (SR57) and California State Route (SR60) Freeway. The Successor Agency to the Industry Urban-Development Agency ("Agency") is the applicant for the IBC Electric Distribution Line.

The Industry Public Utilities Commission ("IPUC") is the electric utility service provider for that area. In order for the area to be serviced with electric utilities, it requires an agreement between the Successor Agency and IPUC to pay the costs associated with building the infrastructure and extending the electric distribution lines.

In order to expand the electric utilities into the IBC project area, it requires a Contract for Extension of Electric Distribution Line between the Successor Agency and IPUC. On June 9, 2016, the IPUC Commission approved the updates to the Industry electric utility customer services rules and rates, which included the Contract for Extension of Electric Distribution Line.

### **FISCAL IMPACT:**

The recommended action will require a \$10,750,000 payment from the Successor Agency to the IPUC for electric line and infrastructure construction. The item is listed in the Recognized Obligation Payment Schedule ("ROPS") under line number 206.

Staff recommends the IPUC to recommend to the City Council the approval of the Contract for Extension of Electric Distribution Line between the Successor Agency and IPUC so the electric utility can be expanded into the IBC area.

Exhibit

A: Contract for Extension of Electric Distribution Line dated September 8, 2016

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HM:CC:JN:mk

**EXHIBIT A**

**Contract for Extension of Electric Distribution Line dated September 8, 2016**

[Attached]

**CONTRACT FOR EXTENSION OF ELECTRIC DISTRIBUTION LINE**  
**RULE 15**

**1. PARTIES**

This Contract for Extension of Electric Distribution Line ("Contract") is issued this 8<sup>th</sup> day of September, 2016.

The Parties to this Contract are:

Successor Agency to the Industry Urban-Development Agency  
("Applicant")

and Industry Public Utility Commission ("IPUC"). Applicant and IPUC are referred to individually as "Party" and collectively as "Parties".

**2. RECITALS**

Applicant has requested IPUC, pursuant to IPUC's Rule 15 and Rule 16, Distribution Line Extensions and Service Extensions, to install an electric Distribution Line Extension to the location or locations described as follows:

Project known as the Industry Business Center, roughly 600 acres on the eastern and western sides of Grand Avenue, North of the SR57/S60 Freeway.

(Hereinafter referred to as "Project")

**3. AGREEMENT**

**3.1 Responsibilities of Applicant**

**Construction**

Applicant shall, in accordance with IPUC's specifications and timing requirements for the Project:

- o Perform route clearing, tree trimming, trenching, excavating, and backfilling and compacting;
- o Furnish imported backfill material and dispose of trench spoil as required;
- o Furnish, install and transfer ownership to IPUC any substructures, conduit, and protective structures required;
- o Obtain any necessary construction permits for all work performed by Applicant under this Contract.

If Applicant elects to have IPUC perform any part of this work, Applicant shall pay to IPUC, as specified herein and before the start of construction, IPUC's estimated-installed costs thereof.

## **Rights of Way**

Applicant hereby grants to IPUC the rights of way and easements for the Distribution Line Extension over the shortest, most practical, available, and acceptable route within Applicant's property for the purpose of making delivery of electric service hereunder. Such easement shall include the right of access and right to trim trees as necessary. Where formal rights of way, easements, land leases, or permits are required by IPUC for installation of facilities on or over Applicant's property, or the property of others, Applicant understands and agrees that IPUC shall not be obligated to install the Distribution Line Extension for the Project unless and until any necessary permanent rights of way, easements, land leases, and permits, satisfactory to IPUC, are granted to or obtained for IPUC without cost to or condemnation by IPUC.

## **Payments**

Applicant shall pay, before the start of construction, the non-refundable amounts as set forth in Appendix A to this Contract. This includes the costs for substructures and conduits which IPUC had previously installed at its expense in anticipation of the current Distribution Line Extension. Any necessary riser conduit, conduit covering, and miscellaneous riser material required for the Distribution Line Extension shall be furnished or paid for by Applicant and shall be installed by IPUC.

Joint Applicants. The total contribution or advance from joint Applicants will be apportioned by IPUC among the members of the group in such manner as Applicants mutually agree.

## **3.2 Responsibilities of IPUC**

### **Construction**

IPUC shall install, own, operate, and maintain the Distribution Line Extension to serve the Project. IPUC will install only those facilities that, in IPUC's judgment, will be used within a reasonable time to serve permanent loads.

## **3.3 Ownership of Facilities**

Title to and ownership of the Distribution Line Extension shall vest in IPUC. Applicant does hereby agree that upon completion and acceptance by IPUC of any Applicant-installed facilities, title to each and every component part thereof shall immediately pass to IPUC free and clear of all liens and encumbrances.

### **3.4 Service Facilities**

Service extensions shall be installed pursuant to IPUC's Rule 16, Service Extensions.

### **3.5 Street Lighting Facilities**

Street lighting and Distribution Line Extensions within the Project solely for service to street lighting equipment shall be installed in accordance with the appropriate street light tariff schedule. Street light revenues are not applicable toward allowances or refunds for Distribution Line Extensions. Electroliers shall be located at points determined by the governmental agency having jurisdiction over streets to be dedicated to that agency or by Applicant for privately owned and maintained streets open to and used by the general public.

### **3.6 Delays in Construction**

**Force Majeure.** IPUC shall not be responsible for any delay in the installation or completion of the facilities by IPUC resulting from the late performance of Applicant's responsibilities under this Contract, shortage of labor or material, strike, labor disturbance, war, riot, weather conditions, governmental rule, regulation or order, including orders or judgements of any court or commission, delay in obtaining necessary land rights, act of God, or any other cause or condition beyond the control of IPUC.

**Resources.** IPUC shall have the right, in the event it is unable to obtain sufficient supplies, materials, or labor for all of its construction requirements, to allocate materials and labor to construction projects which it deems, in its sole discretion, most important to serve the needs of its customers. Any delay in construction hereunder resulting from such allocation shall be deemed to be cause beyond IPUC's control.

**Contract Revision.** If Applicant does not commence installation of any facilities which are Applicant's responsibility or IPUC is prevented from commencing the installation of the facilities for causes beyond its reasonable control within one year from the effective date of this Contract, IPUC may, in its discretion, revise its cost estimate and recalculate the amounts set forth herein. IPUC will notify Applicant of such increased costs and give the option to either terminate this Contract or pay IPUC the additional charges.

### **3.7 Contract Termination**

If at any time during the term of this Contract, IPUC is not the sole deliverer of electrical requirements for the Project, this Contract may be terminated. Upon termination of the Contract, Applicant agrees to forfeit that portion of the advance paid to IPUC for its expenses covering any engineering, surveying, right of way acquisition and other associated work incurred by IPUC.

### **3.8 Indemnification**

Applicant shall, at its own cost, defend, indemnify, and hold harmless IPUC, its officers, agents, employees, assigns, and successors in interest from and against any and all liability, damages, losses, claims, demands, actions, causes of action, costs including attorney's fees and expenses, or any of them, resulting from the death or injury to any person or damages to any property caused by Applicant or its contractor and employees, officers or agents of either Applicant or its contractor, or any of them, and arising out of the performance or nonperformance of their obligations under this Contract.

**3.9 Assignment of Contract**

Applicant may assign this Contract, in whole or in part, only if IPUC consents in writing and the party to whom the Contract is assigned agrees in writing, to perform the obligations of Applicant hereunder. Assignment of the Contract shall not release Applicant from any of the obligations under this Contract unless otherwise provided therein.

**3.10 Joint and Several Liability**

Where two or more individuals or entities are joint Applicants under this Contract, all Applicants shall be jointly and severally liable to comply with all terms and conditions herein.

**3.11 Warranty**

Applicant warrants that all work and/or equipment furnished or installed by Applicant or its contractor shall be free of defects in workmanship and material. The warranty period shall begin from the date of final acceptance by IPUC and extend for one (1) year. Should the work develop defects during that period, IPUC, at its election, shall either (a) repair or replace the defective work and/or equipment, or (b) demand that Applicant repair or replace the defective work and/or equipment and, in either event, Applicant shall be liable for all costs associated with such repair and/or replacement. Applicant upon demand by IPUC, shall promptly correct, to IPUC's satisfaction and that of any governmental agency having jurisdiction, any breach of any warranty.

**3.12 Contract Effective Date**

This Contract shall not be effective unless it is (1) executed and delivered by Applicant to IPUC together with payment required hereunder within ninety (90) days of the date in Paragraph 1 of this Contract and (2) accepted by IPUC. This Contract shall then be effective on the date executed by IPUC and shall take effect without further notice to Applicant.

**3.13 Commission Jurisdiction**

This Contract is subject to the applicable provisions of IPUC's tariffs, including Rule 15 and Rule 16, filed and authorized by the Industry Public Utilities Commission.

This Contract shall, at all times, be subject to such changes or modifications by the Industry Public Utilities Commission, as said Commission may, from time to time, direct in the exercise of its jurisdiction.

**3.14 Completion Date**

The completion date requested by Applicant is December 31, 2019

**4. SIGNATURE CLAUSE**

The signatories hereto represent that they have been appropriately authorized to enter into this Contract on behalf of the party for whom they sign.

**APPLICANT(S)**

CORPORATION, PARTNERSHIP, OR DBA: Successor Agency to the Industry Urban-Development Agency

NAME OF AUTHORIZED INDIVIDUAL: Mark D. Radecki

SIGNATURE: \_\_\_\_\_

TITLE: Chairman

MAILING ADDRESS: 15625 Stafford Street Suite 100 Industry, CA 91744

TELEPHONE: 626-333-2211

**ADDITIONAL SIGNATURES FOR JOINT APPLICANTS**

NAME OF AUTHORIZED INDIVIDUAL: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

NAME OF AUTHORIZED INDIVIDUAL: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

**APPORTIONMENT OF ADVANCE AMONG JOINT APPLICANTS:**

\_\_\_\_\_  
\_\_\_\_\_

**INDUSTRY PUBLIC UTILITY COMMISSION**

NAME OF AUTHORIZED INDIVIDUAL: Mark D. Radecki

SIGNATURE: \_\_\_\_\_

TITLE: President \_\_\_\_\_

DATE EXECUTED: September 8<sup>th</sup> 2016

DATE IPUC FIRST READY TO SERVE: TBD \_\_\_\_\_

WORK ORDER NO. \_\_\_\_\_

ASSOCIATED WORK ORDER NOS. N/A

*INDUSTRY PUBLIC UTILITIES COMMISSION*

ITEM NO. 5.8



# INDUSTRY PUBLIC UTILITIES COMMISSION

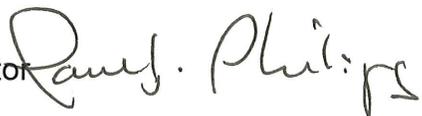
P.O. BOX 3366 • CITY OF INDUSTRY • CALIFORNIA 91744  
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Mark D. Radecki, President  
Abraham N. Cruz, Commissioner  
Roy M. Haber, III, Commissioner  
Cory C. Moss, Commissioner  
Newell W. Ruggles, Commissioner

Paul J. Philips, Public Utilities Director  
James M. Casso, General Counsel  
Cecelia Dunlap, Assistant Secretary

## MEMORANDUM

**TO:** The Honorable President and Commission Board Members of the Industry Public Utilities Commission

**FROM:** Paul J. Philips, Public Utilities Director 

**DATE:** September 7, 2016

**SUBJECT:** Affirming Anthony Bouza, Esq., as Special Counsel to the Industry Public Utilities Commission

IT IS RECOMMENDED that the Industry Public Utilities Commission appoint Anthony Bouza, Esq., as Special Counsel to the Commission.