

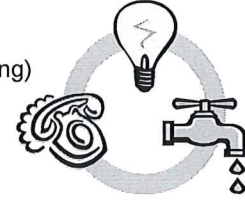
INDUSTRY PUBLIC UTILITIES COMMISSION CITY OF INDUSTRY

SPECIAL MEETING AGENDA
SEPTEMBER 28, 2017 8:30 A.M.

(Immediately following the conclusion of the Successor
Agency to the Industry Urban-Development Agency Meeting)



President Mark D. Radecki
Commissioner Abraham N. Cruz
Commissioner Catherine Marcucci
Commissioner Cory C. Moss
Commissioner Newell W. Ruggles



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

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 Assignment and Amendment No. 1 to the Maintenance Services Agreement with Pacific Utility Installation, Inc., to include Electric Distribution Cable Replacement and WDAT Maintenance Inspection, Relays, and Breaker Test for the Anaheim-Puente WDAT, in an amount not-to-exceed \$270,000.00

RECOMMENDED ACTION: Approve the Assignment and Amendment No. 1.

6. Adjournment. Next regular meeting: Thursday, October 19, 2017 at 9:00 a.m.

CITY COUNCIL


ITEM NO. 5.1




INDUSTRY PUBLIC UTILITIES COMMISSION

MEMORANDUM

TO: Honorable President Radecki and Commission Board Members

FROM: Paul J. Philips, Public Utilities Director 

STAFF: Henry Martinez, Senior Vice President, Cordoba Corporation
Candra Jolly, Field Engineer, Cordoba Corporation 

DATE: September 28, 2017

SUBJECT: Consideration of Assignment and Amendment No. 1 to the Maintenance Services Agreement with Pacific Utility Installation, Inc., to include Electric Distribution Cable Replacement and WDAT Maintenance Inspection, Relays, and Breaker Test for the Anaheim-Puente WDAT in an amount not to exceed \$270,000.00

Industry Public Utilities Commission (IPUC) staff is requesting the authorization of an amendment for \$270,000 to the Maintenance Services Agreement with Pacific Utility Installation, Inc. (PUI) to include:

- Modification of existing Electric Distribution Cable from the Anaheim-Puente WDAT to an existing IPUC structure (structure no. C.I. 102) to accommodate load growth.
- Wholesale Distribution Service (WDAT) Maintenance Inspection, Relays, and Breaker Test for the City of Industry's Anaheim-Puente WDAT.

Amendment modifications are being requested to the following sections:

3.52.030 Public projects – Defined.

- A. For purpose of this code, “public project” means any of the following:
3. In the case of a publicly owned utility system, “public project” includes only the construction, erection, improvement or repair of dams, reservoirs, power plants and electrical transmission lines of two hundred thirty thousand volts and higher.

This project is for electrical distribution lines of twelve thousand volts which is below the threshold of electrical transmission lines of two hundred thirty thousand volts; therefore, it is not defined as a public project.

3.52.115 Exemption – Municipal utility protects.

- A. Notwithstanding Section 3.52.030 (A)(3), when exigent circumstances require the prompt and immediate construction, expansion, improvement,

modification or extension of a public utility facility, or the transmission or distribution system thereof, the city council may proceed at once with such public utility process without adopting plans, specification, working details or giving notice for bids to let contracts.

Exigent circumstances exist due to the IPUC requirement to provide electrical service to a new customer load of five buildings for the Azusa-Chestnut Project (Project No. JN 9198). The customer has requested to be energized on or before November 1, 2017.

Fiscal Impact:

Appropriate \$270,000 from Electric Utility Reserves to the Electric Utility Fund Budget – Repair and Maintenance Equipment (Account No. 161-300-5550). The current Maintenance Services Agreement with Pacific Utility Installations, Inc. is for \$150,000 over three years. This request will amend the Agreement to include the additional work in the amount of \$270,000 for a total Agreement amount not to exceed \$420,000.

Recommendation:

- 1.) It is hereby recommended that the IPUC approve an Assignment of the PUI Maintenance Services Agreement from the City of Industry to the IPUC;
- 2.) Amend the Maintenance Services Agreement with PUI to include Electric Distribution Cable Replacement and WDAT Maintenance Inspection, Relays, and Breaker Test for the Anaheim-Puente WDAT; and
- 3.) Appropriate \$270,000 from Electric Utility Reserves to the Electric Utility Fund Budget – Repair and Maintenance Equipment (Account No. 161-300-5550).

Exhibits:

- A. Assignment of the Pacific Utility Installation, Inc., Maintenance Services Agreement from the City of Industry to the Industry Public Utilities Commission
- B. Amendment No. 1 to the Maintenance Services Agreement with Pacific Utility Installation, Inc., dated September 28, 2017
- C. Maintenance Services Agreement with Pacific Utility Installation, Inc., dated September 8, 2016

PJP/CJ

EXHIBIT A

Assignment of the Pacific Utility Installation, Inc., Maintenance Services Agreement
from the City of Industry to the Industry Public Utilities Commission

ASSIGNMENT AND ASSUMPTION OF MAINTENANCE SERVICES AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF MAINTENANCE SERVICES AGREEMENT (“**Assignment**”) is made as of September 28, 2017 (“**Effective Date**”), by and between the CITY OF INDUSTRY, a Municipal corporation (“**Assignor**”), and the INDUSTRY PUBLIC UTILITIES COMMISSION, a public body (“**Assignee**”).

RECITALS

A. Assignor, as “**City**”, and Pacific Utility Installation, Inc., a California corporation, as “**Consultant**”, executed that certain Maintenance Services Agreement, dated as of September 8, 2016 (the “**Agreement**”). Unless otherwise indicated, all capitalized terms used in this Assignment shall have the meanings ascribed to them in the Agreement.

B. Assignor desires to assign its rights and delegate its duties under the Agreement to Assignee, and Assignee desires to assume such rights and obligations, on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, incorporating and in consideration of the foregoing recitals and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment and Assumption. As of the Effective Date, Assignor hereby assigns to Assignee all of Assignor’s right, title and interest in and to the Agreement, and Assignee shall be entitled to the benefit of and may enforce Consultant’s agreements, covenants, representations and warranties under the Agreement regardless of whether such matters arose before or after the Effective Date as if Assignee were the original party named “**City**” to the Agreement. As of the Effective Date, Assignee hereby accepts the foregoing assignment, and agrees to assume all of Assignor’s duties and obligations as the “**City**” under the Agreement, regardless of whether such matters arose before or after the Effective Date or whether Assignee is aware thereof, as if Assignee were the original party named “**City**” under the Agreement. From and after the Effective Date, Assignor shall not have any rights under the Agreement (all of which shall be exercised by Assignee).

2. Representations and Warranties. Assignor hereby represents and warrants to Assignee as follows (which shall survive the consummation of the transaction contemplated herein): (a) Assignor has delivered to Assignee a true, correct and complete copy of the Agreement; (b) Assignor has delivered to Assignee a true, correct and complete copy of all invoices delivered to Assignor through the Effective Date and either copies or an accurate accounting of all payments made pursuant to the Agreement through the Effective Date; (c) the Agreement is unmodified and is in full force and effect; (d) Assignor has not received or given any written notice alleging the existence of any uncured defaults of any party to the Agreement; and (e) Assignor has not previously transferred its interest in and to the Agreement to any other person or entity. Assignor and Assignee hereby represent and warrant to each other that (i) it has the legal power, right and authority to enter into this Assignment, (ii) it has taken all requisite action (municipal, corporate, trust, partnership, membership, or otherwise) in connection with the entering into this Assignment, (iii) no consent of any party, body, partner, shareholder, creditor, investor, member that is required (including, without limitation, with respect to Assignor, the Consultant under the Agreement) has not been obtained in connection with the transaction being consummated by this Assignment, (iv) the individuals executing this Assignment and the instruments referenced herein on its behalf have the legal power, right, and actual authority to bind it to the terms and conditions hereof and thereof, and (v) this

Assignment and all documents required hereby to be executed by it are and shall be valid, legally binding obligations of and enforceable against it in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium laws or similar laws or equitable principles affecting or limiting the rights of contracting parties generally.

3. Miscellaneous. This Assignment shall be construed under and enforced in accordance with the laws of the State of California. The parties hereto each agree to execute and deliver to the other party, upon demand, such further documents, instruments and conveyances, and shall take such further actions, as are necessary or desirable to effectuate this Assignment. Assignor and Assignee acknowledge and agree that Assignor is an affiliate of Assignee. Other than Consultant, who is an intended third party beneficiary of this Assignment for the limited purposes of Paragraphs 1 and 4 of this Assignment, there are no third party beneficiaries to this Assignment. This Assignment may be executed in one or more counterparts, which, taken together, shall constitute a single instrument. Copies of this Assignment bearing signatures shall be as binding as originals. Should any party to this Assignment institute any action or proceeding to enforce any provision of this Assignment or for damages by reason of an alleged breach of any provision hereof, the prevailing party shall be entitled to recover from the party not prevailing all costs and expenses (including reasonable attorney's fees) incurred by such prevailing party in connection with such action or proceeding. A party entitled to recover costs and expenses under this Section shall also be entitled to recover all costs and expenses (including reasonable attorneys' fees) incurred in the enforcement of any judgment or settlement obtained in such action or proceeding (and in any such judgment provision shall be made for the recovery of such post-judgment costs and expenses). This Assignment constitutes the entire agreement between Assignor and Assignee pertaining to the subject matter hereof and supersedes all prior agreements, understandings and representations of the Parties with respect to the subject matter hereof. This Assignment may not be modified, amended, supplemented or otherwise changed, except by a writing executed by all parties.

4. Notice. Assignor and Assignee hereby direct Consultant to (a) provide all insurance required under the Agreement for the benefit of Assignor and Assignee, and (b), henceforth, to (i) only accept notices from and performance by Assignee as the "City" under the Agreement, and (ii) deliver all notices to "City" under the Agreement only to each of the following parties:

To City: Industry Public Utilities Commission
15625 E. Stafford, Suite 100
City of Industry, CA 91744
Attention: Executive Director

with a copy to: Anthony S. Bouza, Esq., General Counsel
Bouza Law Firm
3250 Ocean Park Boulevard, Suite 355
Santa Monica, CA 90405

Delivery of an executed copy of this Assignment to Consultant shall constitute notice of the assignment of the Agreement from Assignor to Assignee pursuant to the Agreement.

[Balance of page intentionally left blank. Signatures appear on next page.]

IN WITNESS WHEREOF, this Assignment has been executed as of the day and year first above written.

“ASSIGNOR”

CITY OF INDUSTRY,
a Municipal corporation

By: _____
Paul J. Philips, City Manager

Attest:

By: _____
Diane M. Schlichting,
Assistant Secretary

Approved as to form:

By: _____
James M. Casso, City Attorney

“ASSIGNEE”

INDUSTRY PUBLIC UTILITIES
COMMISSION, a public body

By: _____
Paul J. Philips, Executive Director

Attest:

By: _____
Diane M. Schlichting,
Assistant Secretary

Approved as to form:

By: _____
Anthony S. Bouza, General Counsel

EXHIBIT B

Amendment No. 1 to the Maintenance Services Agreement
with Pacific Utility Installation, Inc., dated September 28, 2017

**AMENDMENT NO. 1
TO MAINTENANCE SERVICES AGREEMENT**

THIS AMENDMENT NO. 1 TO THE AGREEMENT FOR MAINTENANCE SERVICES (“**First Amendment**”), is made and entered into this 28th day of September, 2017, (“**Effective Date**”) by and between the INDUSTRY PUBLIC UTILITIES COMMISSION, a public body (“**IPUC**”), and PACIFIC UTILITY INSTALLATION, INC., a California corporation (“**Consultant**”).

RECITALS

WHEREAS, on or about September 8, 2016, the City of Industry, a municipal corporation (“**City**”), entered into a Maintenance Services Agreement with Pacific Utilities Installation, Inc., to provide Services (as defined in the Agreement);

WHEREAS, immediately before entering into this First Amendment, the City, as “**Assignor**”, and the IPUC, as “**Assignee**”, entered into that certain Assignment and Assumption of Maintenance Services Agreement (“**Assignment**”), with respect to the Agreement, whereby Assignor assigned all its rights and delegated all its duties under the Agreement to Assignee, and Assignee accepted such assignment and delegation;

WHEREAS, the Parties desire to enter into this First Amendment to modify the Agreement to (a) confirm the effect of the Assignment, (b) expand the Services, (d) increase the aggregate limit on payments to Consultant, and (d) make various other changes to the Agreement.

AGREEMENT

NOW, THEREFORE, incorporating the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto hereby agree as follows.

1. **Definitions**. Unless otherwise indicated, all capitalized terms used in this First Amendment shall have the meanings ascribed to them in the Agreement. In the event of any conflict or inconsistency between the terms of the Agreement and this First Amendment, the terms of this First Amendment shall control. Except as set forth in this First Amendment, the Agreement shall remain in effect without any modification.

2. **Assignment**. Consultant acknowledges and agrees that, as the result of the Assignment, City has no rights or obligations under the Agreement, all of which have been assigned to IPUC.

3. **References to City**. All references in the Agreement to “**City**” shall be deemed to mean and refer to “**IPUC**”.

4. **Notices to IPUC**. All notices to IPUC under the Agreement or this First

Amendment shall be sent to the following parties (until further notice):

To IPUC: Industry Public Utilities Commission
15625 E. Stafford, Suite 100
City of Industry, CA 91744
Attention: Executive Director

with a copy to: Anthony S. Bouza, Esq., General Counsel
Bouza Law Firm
3250 Ocean Park Boulevard, Suite 355
Santa Monica, CA 90405

5. Expanded Services. The Services are hereby expanded to include the items set forth on **Exhibit A** attached hereto.

6. Increased Aggregate Fees. The second sentence of Section 4(a) of the Agreement is hereby deleted and replace with the following: "This amount shall not exceed Four Hundred Twenty Thousand Dollars (\$420,00.00) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement."

7. Authority. IPUC and Consultant represent and warrant to each other that (a) it has the legal power, right and authority to enter into this First Amendment, (b) it has taken all requisite action (membership, corporate, trust, partnership or otherwise) in connection with the entering into this First Amendment and the Agreement, and (c) the individual(s) executing this First Amendment on its behalf the behalf of any of its members, partners, officers or trustees have the legal power, right, and actual authority to bind it to the terms and conditions hereof and thereof.

8. Counterparts and Copies. This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, together, shall constitute one and the same instrument. Copies of signed pages of this First Amendment shall be as binding as originals.

[Balance of page intentionally left blank. Signatures appear on next page.]

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the Effective Date.

“IPUC”

INDUSTRY PUBLIC UTILITIES
COMMISSION, a public body

By: _____
Paul J. Philips, Executive Director

“CONSULTANT”

PACIFIC UTILITY INSTALLATION, INC.,
a California corporation

By: _____
William Pfeiffer, President

Attest:

By: _____
Diane M. Schlichting,
Assistant Secretary

Approved as to form:

By: _____
Anthony S. Bouza, General Counsel

EXHIBIT A

(ADDITIONAL) SERVICES

SCOPE OF SERVICES

Consultant shall perform field installation and maintenance services including, but not limited to:

- Modification of existing Electric Distribution Cable from the Anaheim-Puente WDAT to an existing IPUC structure (structure no. C.I. 102) to accommodate load growth.
- Wholesale Distribution Service (WDAT) Maintenance Inspection, Relays, and Breaker Test for the City of Industry's Anaheim-Puente WDAT.

EXHIBIT C

Maintenance Services Agreement with Pacific Utility Installation, Inc.,
dated September 8, 2016

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.

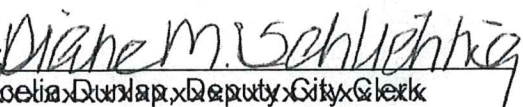
"CITY"
City of Industry

"CONSULTANT"
Pacific Utility Installation, Inc.

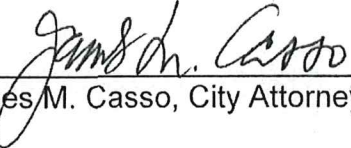
By: 
Paul Phillips, City Manager

By: 
Bill Pfeifer, President/CEO

Attest:

By: 
~~Cecelia Dunlap, Deputy City Clerk~~
Diane M. Schlichting, Chief 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	1	\$ 110.00	\$ 156.00
2	Cable Splicer Foreman	1	\$ 105.00	\$ 149.00
3	Cable Splicer/Lineman	1	\$ 95.00	\$ 132.00
4	Groundman/Cable Splicer Helper	1	\$ 68.00	\$ 93.00
5	Senior Test Tech or Electrical Engineer	1	\$ 166.00	N/A
6	Test Technician	1	\$ 151.00	N/A
7	Backhoe Equipment and Operator	1	\$ 162.00	\$ 198.00
8	Splicing Truck & Tools	1	\$ 52.00	N/A
9	Pick Up Truck	1	\$ 35.00	N/A
10	Heavy Duty Equipment (Line Truck, Boom Truck, Bucket Truck)	1	\$ 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 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.

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