

CONSULTANT AGREEMENT

THIS AGREEMENT is made this day of 2019, by the CITY OF GARDEN GROVE, a municipal corporation, ("CITY"), and Siemens Mobility, Inc., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove Council authorization dated _____
2. CITY desires to utilize the services of CONSULTANT to provide professional services for the conversion of all city-owned street lights and safety lights from High Pressure Sodium (HPS) to Light Emitting Diode (LED), City Project No. 7284.
3. CONSULTANT is qualified by virtue of experience, training, education and expertise to accomplish services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement:** This Agreement shall cover services rendered from date of this Agreement until CONSULTANT completes the services as outlined in CONSULTANT's proposal, Exhibit "A", unless earlier terminated per Section 3.5
2. **Services to be Provided:** The services to be performed by CONSULTANT shall consist of the services as further specified in CONSULTANT'S proposal attached hereto as Exhibit "A" and incorporated herein by reference. CONSULTANT agrees that is provision of Services under this agreement shall be within accepted accordance with customary and usual practices in CONSULTANT'S profession. By executing this Agreement, CONSULTANT warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this agreement.
3. **Compensation.** CONSULTANT shall be compensated as follows:
 - 3.1 **Amount.** Compensation under this Agreement shall be per the cost schedule included in CONSULTANT's Proposal.
 - 3.2 **Not to Exceed.** Compensation under this Agreement shall not exceed \$458,931.00 (Four Hundred Fifty Eight Thousand Nine Hundred and Thirty One Dollars), as detailed in Appendix A.

- 3.3 Payment. For work under this Agreement, payment shall be made per monthly invoice. For extra work not a part of this Agreement, a written authorization by CITY will be required.
- 3.4 Records of Expenses. CONSULTANT shall keep complete and accurate records of payroll costs, travel and incidental expenses. These records will be made available at reasonable times to CITY.
- 3.5 Termination. CITY and CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty-(30) days written notice of termination to the other party. If CITY terminates the project, then the provisions of paragraph 3 shall apply to that portion of the work completed.

4 **Prevailing Wages.**

The CITY has been advised that the Prevailing Wages Law applies to the work. CONSULTANT and its subcontractors must be registered with the California Department of Industrial Relations pursuant to Labor Code Section 1725.5. This Agreement shall not be effective until CONSULTANT provides proof of registration to the CITY. CONSULTANT shall be responsible for CONSULTANT'S compliance in all respects with the Prevailing Wage Law, including the payment of the prevailing wage rates to all the laborers involved, and with California Labor Code Section 1770 et seq., including the keeping of all records required by the provisions of Labor Code Section 1776 and the implementing administrative regulations. CONSULTANT shall submit payroll records to the Labor Commissioner pursuant to Labor Code section 1771.4(a)(3) and shall comply with the job site notices posting requirements established by the Labor Commissioner pursuant to Title 8, California Code of Regulations Section 16461(e) or other regulation promulgated pursuant to Labor Code Section 1771.4(a)(2). Pursuant to Labor Code Section 1771.4, this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations. The CITY shall be a third party beneficiary of the forgoing covenant with rights to enforce the same as against the CONSULTANT.

5 **Surety Bonds**

CONSULTANT shall, prior to entering into performance of this Agreement, furnish a performance bond, on the CITY's bond form in the amount of one hundred percent (100%) of the contract price, to guarantee the faithful performance of the work, and a payment bond, on the CITY's form in the amount of one hundred percent (100%) of the contract price, to guarantee payment of all claims for labor and materials furnished. Bonds submitted on any form other than the CITY's form will be rejected. The required bonds shall be from a surety licensed to do business in the State of California and with a current A.M. Best's rating of A-, VII. This Agreement shall not become effective until such bonds are supplied and approved by the CITY.

CONSULTANT shall have **ten (10) working days from the award of the Agreement** to execute the contract and supply the CITY with all the documents and required information, including but not limited to, the necessary bonds and insurance certificates and endorsements.

6 Insurance Requirements

6.1 Commencement of Work - CONSULTANT shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance.

6.2 Workers Compensation Insurance - For the duration of this Agreement, CONSULTANT and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable. The insurer shall waive its rights of subrogation against the CITY, its officers, officials, agents, employees, and volunteers.

6.3 Insurance Amounts - CONSULTANT shall maintain the following insurance for the duration of this Agreement:

6.3.1 Commercial general liability in the amount of \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable); Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY;

6.3.2 Automobile liability in the amount of \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable) Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

6.3.3 An Additional Insured Endorsement, **ongoing and completed operations**, for the policy under section 4.3 (a) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONSULTANT. CONSULTANT shall provide to CITY proof of insurance and endorsement forms that conform to city's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, lease, hired, or borrowed by CONSULTANT. CONSULTANT shall provide to CITY proof of insurance and

endorsement forms that conform to CITY's requirements, as approved by the CITY.

For any claims related to this Agreement, CONSULTANT's insurance coverage shall be primary insurance as respects to CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

If CONSULTANT maintains higher insurance limits than the minimums shown above, CONSULTANT shall provide coverage for the higher insurance limits otherwise maintained by the CONSULTANT.

- 7 **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable to CONSULTANT in the event of any default or breach by CITY, or for any amount, which may become due to CONSULTANT.
- 8 **Non-Discrimination.** CONSULTANT covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry, in any activity pursuant to this Agreement.
- 9 **Independent Contractor.** It is understood and agreed that CONSULTANT, including CONSULTANT's employees, shall act and be independent contractor(s) and not agent(s) or employee(s) of CITY, and that no relationship of employer-employee exists between the parties. CONSULTANT's assigned personnel shall not obtain or be entitled to any rights or benefits that accrue to, or are payable to, CITY employees, and CONSULTANT shall so inform each employee organization and each employee who is hired or retained under this Agreement. CITY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of this Agreement, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT hereby expressly assumes all responsibility and liability for the payment of wages and benefits to its assigned personnel, and all related reporting and withholding obligations. CONSULTANT hereby agrees to indemnify and hold CITY harmless from any and all claims or liabilities that CITY may incur arising from any contention by any third party, including, but not limited to, any employee of CONSULTANT or any federal or state agency or other entity, that an employer-employee relationship exists by reason of this Agreement, including, without limitation, claims that CITY is responsible for retirement or other benefits allegedly accruing to CONSULTANT's assigned personnel.
- 10 **Compliance With Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government. CONSULTANT shall comply with, and shall be responsible for causing all contractors and subcontractors performing any of the work pursuant to this Agreement, if any, to comply with, all applicable federal and state labor standards, including, to the extent applicable, the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor. The City makes no warranty or representation concerning whether any of the work performed pursuant to this Agreement constitutes public works subject to the prevailing wage requirements.

- 11 **Disclosure of Documents.** All documents or other information developed or received by CONSULTANT are confidential and shall not be disclosed without authorization by CITY, unless disclosure is required by law.
- 12 **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
- 13 **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
- 14 **Notices.** All notices shall be personally delivered or mailed to the below listed addresses, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process
- (a) Address of CONSULTANT is as follows:
- Siemens Mobility Inc.
1026 E. Lacy Avenue
Anaheim, CA 92805
Attention: Alex Valenti
- (b) Address of CITY is as follows (with a copy to):
- | | |
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| City of Garden Grove
P.O. Box 3070
Garden Grove, CA 92840
Attention: Ana Neal | City of Garden Grove
P.O. Box 3070
Garden Grove, CA 92840
Attention: City Attorney |
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- 15 **CONSULTANT'S Proposal.** This Agreement shall include CONSULTANT'S proposal, Exhibit "A" hereto, which shall be incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
- 16 **Licenses, Permits and Fees.** At its sole expense, CONSULTANT shall obtain a **Garden Grove Business License**, all permits and licenses as may be required by this Agreement.
- 17 **Familiarity With Work.** By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the facilities, difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

- 18 **Time of Essence.** Time is of the essence in the performance of this Agreement.
- 19 **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability and reputation of CONSULTANT, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONSULTANT shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONSULTANT is permitted to subcontract any part of this Agreement, CONSULTANT shall be responsible to CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of CONSULTANT. CITY will deal directly with and will make all payments to CONSULTANT.
- 20 **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
- 21 **Indemnification.** To the fullest extent permitted by law, CONSULTANT agrees to protect, defend, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT in the performance of the Agreement. The only exception to CONSULTANT'S responsibility to protect, defend, and hold harmless CITY, is due to the active negligence, recklessness and/or wrongful conduct of CITY, or any of its elective or appointive boards, officers, agents, or employees.
- This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.
- 22 **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by CITY and CONSULTANT.
- 23 **Waiver.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the CITY and CONSULTANT.

- 24 **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Orange County Superior Court.
- 25 **Interpretation.** This Agreement shall be interpreted as though prepared by both parties
- 26 **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS THEREOF, these parties hereto have caused this Agreement to be executed as of the date set forth opposite the respective signatures.

"CITY"
CITY OF GARDEN GROVE

Dated: _____, 2019

By: _____
City Manager

ATTEST

"CONSULTANT"

City Clerk

By: _____
Title: STEVEN TEAL, DIRECTOR OF SERVICE

Dated: _____, 2019

Dated: July 30th, 2019

APPROVED AS TO FORM:

Omar Landora
Garden Grove City Attorney

Dated: 7.23, 2019

If CONSULTANT/CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY



Appendix A

APPENDIX A- Scope and Price Schedule

GIS Field Audit of City Owned Streetlights

Siemens will provide field inspection of the City-owned streetlights that are HPSV included in the St Lighting Inventory List_2019.xlsx provided by the City. This includes assessing all available system data provided by the City and Southern California Edison (SCE), having a GIS technician visit each streetlight and document associated attributes, and creating a database of all streetlight poles identified in the field. The attributes to be collected are:

- Fixture quantities
- Pole location (nearest street address)
- Pole location (latitude and longitude)
- Pole material type
- Pole condition (Good, Fair, Poor)
- Fixture Type
- Fixture Wattage
- Mast arm length

Siemens will then take the data collected and reconcile with the available SCE billing data. In addition, once the quantities of fixtures are identified then the appropriate materials will be ordered.

LED Conversion, Pole tag installation and fuse inspection

Siemens will provide LED conversion services of the fixtures selected and approved by the City. Once the quantity of material has been selected, Siemens will purchase and install the LED fixtures with Siemens technicians. During the fixture installation Siemens staff will affix a City approved pole tag to the streetlight poles identified by the City and will update the database.

In addition, during the LED fixture installation, Siemens technicians will inspect each streetlight pole and determine if an in-line fuse is present and if it is in good condition. If there are no fuses present, then the appropriate fuses and fuse holders will be installed during the inspection.

For the fixtures located in the underpasses, Siemens is relying on the information provided by the City for the quantity of fixtures to be installed and the location of these fixtures. In addition, existing fixture controls will be utilized, and third party bird spikes will be applied to the fixtures during fixture installation.

For the fixtures located in the 12926 Main St. parking lot, Siemens is relying on the information provided by the City for the quantity of fixtures to be installed. In addition, existing fixture controls will be utilized.

The schedule of values in Table 1 below represents the total cost for LED conversion services, inclusive of labor, material, equipment, sales tax and overhead.

It should be noted that currently the LED fixture market is volatile due to import tariff uncertainty, with anticipated price fluctuations to occur in the near future. Should the material be ordered more than 30 days from contract execution then additional costs may apply.

Table 1. Project Price Schedule

Item	Task	Quantity	Unit Labor	Unit Material	Extended Price
1	GIS audit of Streetlights	665	\$27.00	N/A	\$17,955.00
2	Streetlight audit and fixture installation (GCM2-40F-MV-NW-3-GY-1A-PCR7-WL)	598	\$75.00	\$280.00	\$212,290.00
3	Photocell	598	Included	\$20.00	\$11,960.00
4	Pole Tag Installation	168	\$15.00	\$11.00	\$4,368.00
5	Spare Pole Tags	32	N/A	\$11.00	\$352.00
6	Fuse Check at time of fixture installation	598	\$15.00	N/A	\$8,970.00
7	Fuse installation at time of fixture installation (fee in addition to item #5)	200	\$4.00	\$7.00	\$2,200.00
8	Fuse holder installation at time of fixture installation (fee in addition to item #5)	200	\$12.00	\$38.00	\$10,000.00
9	Underpass light replacement (W4GLED 20C1000 40K T3M MVOLT SPD AO BZSDP)	150	\$160.00	\$520.00	\$102,000.00
10	Underpass light replacement (W4GLED 10C1000 30K T3M MVOLT SPD BZSDP)	6	\$160.00	\$440.00	\$3,600.00
11	Bird Spike Installation	157	\$15.00	\$10.00	\$3,925.00
12	Parking lot fixture (AR13-48N-MV-NW-3-BK-200-PCR7-SP2-WL-RPA-BSK-SC)	3	\$200.00	\$815.00	\$3,045.00
13	Parking lot fixture (AR18-96N-MV-NW-5-BK-220-PCR7-SP2-WL-RPA-BSK-SC)	2	\$200.00	\$940.00	\$2,280.00
14	Streetlight Shelf stock (GCM2-40F-MV-NW-3-GY-1A-PCR7-WL)	65	N/A	\$280.00	\$18,200.00
15	Photocell shelf stock (Acuity DLL127F 1.5 JU)	65	N/A	\$20.00	\$1,300.00
16	Underpass light shelf stock (W4GLED 20C1000 40K T3M MVOLT SPD AO BZSDP)	15	N/A	\$520.00	\$7,800.00
17	Underpass light shelf stock (W4GLED 10C1000 30K T3M MVOLT SPD BZSDP)	6	N/A	\$440.00	\$2,640.00
18	Parking lot fixture shelf stock (AR13-48N-MV-NW-3-BK-200-PCR7-SP2-WL-RPA-BSK-SC)	3	N/A	\$815.00	\$2,445.00
19	Parking lot fixture shelf stock (AR18-96N-MV-NW-5-BK-220-PCR7-SP2-WL-RPA-BSK-SC)	2	N/A	\$940.00	\$1,880.00
Subtotal					\$417,210.00
Project Contingency (10%)					\$41,721.00
Total					\$458,931.00