



CITY OF LODI
COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolutions Authorizing the City Manager to Execute Professional Services Agreements for Electric Utility Compliance Support with URS Corporation Americas of Sacramento (\$51,000) and Duncan, Weinberg, Genzer & Pembroke, P.C. of Washington, D.C. (\$47,500)

MEETING DATE: March 19, 2014

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Adopt resolutions authorizing the City Manager to execute professional services agreements for electric utility compliance support with URS Corporation Americas of Sacramento in an amount not to exceed \$51,000 and Duncan, Weinberg, Genzer & Pembroke, P.C. of Washington, D.C. in an amount not to exceed \$47,500.

BACKGROUND INFORMATION: At a City Council Shirtsleeve Session held on June 4, 2013 the Electric Utility (EU) staff provided the council with a status report on the 230 kV Interconnection Project. At that time staff's next steps for the project included the need for various Professional Services Agreements (PSA) as the project moved forward.

The two PSAs included in this communication will provide EU staff and the project team with engineering and legal services regarding reliability compliance issues related to the project. These issues are part of the risk mitigation efforts associated with the project to ensure that the projected cost savings for the project associated with paying the \$2 million low voltage transmission charges are not offset by corresponding regulatory costs of being designated a transmission owner/operator.

The Risk Oversight Committee received a report on this agenda item on March 12, 2014 and recommended City Council approval of two PSAs as follows:

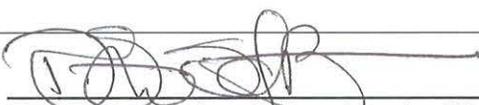
1. URS Corporation Americas for engineering studies in an amount not to exceed \$51,000.
2. Duncan, Weinberg, Genzer & Pembroke, P.C. for specialized EU compliance legal representation in an amount not to exceed \$47,500.

FISCAL IMPACT: No additional funding is required.

FUNDING AVAILABLE: Included in FY2013/14 Budget Account No. 161076.



Jordan Ayers
Deputy City Manager/Internal Service Director

APPROVED: 

Stephen Schwabauer, Interim City Manager

Adopt Resolutions Authorizing the City Manager to Execute Professional Services Agreements for Electric Utility Compliance Support with URS Corporation Americas of Sacramento (\$51,000) and Duncan, Weinberg, Genzer & Pembroke, P.C. of Washington, D.C. (\$47,500)
March 19, 2014
Page 2 of 2



Elizabeth A. Kirkley
Electric Utility Director

EAK/lst

AGREEMENT FOR PROFESSIONAL SERVICES

ARTICLE 1 PARTIES AND PURPOSE

Section 1.1 Parties

THIS AGREEMENT is entered into on _____, 2014, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and URS Corporation Americas (hereinafter "CONTRACTOR").

Section 1.2 Purpose

CITY selected the CONTRACTOR to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONTRACTOR for Conceptual Design Services - 230kV Interconnection Project (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONTRACTOR acknowledges that it is qualified to provide such services to CITY.

ARTICLE 2 SCOPE OF SERVICES

Section 2.1 Scope of Services

CONTRACTOR, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

Section 2.2 Time For Commencement and Completion of Work

CONTRACTOR shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY or on the date set forth in Section 2.6, whichever occurs first, and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONTRACTOR shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONTRACTOR shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be

counted against CONTRACTOR's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONTRACTOR shall remain in contact with reviewing agencies and make all efforts to review and return all comments.

Section 2.3 Meetings

CONTRACTOR shall attend meetings as may be set forth in the Scope of Services.

Section 2.4 Staffing

CONTRACTOR acknowledges that CITY has relied on CONTRACTOR's capabilities and on the qualifications of CONTRACTOR's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONTRACTOR, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONTRACTOR of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONTRACTOR of any changes of CONTRACTOR's project staff prior to any change.

CONTRACTOR represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONTRACTOR represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONTRACTOR to practice its profession, and that CONTRACTOR shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

Section 2.5 Subcontracts

Unless prior written approval of CITY is obtained, CONTRACTOR shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

Section 2.6 Term

The term of this Agreement commences on April 7, 2014 and terminates upon the completion of the Scope of Services or on April 7, 2015, whichever occurs first.

ARTICLE 3 COMPENSATION

Section 3.1 Compensation

CONTRACTOR's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference.

CONTRACTOR shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

Section 3.2 Method of Payment

CONTRACTOR shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONTRACTOR's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

Section 3.3 Costs

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

Section 3.4 Auditing

CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under this Agreement. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

ARTICLE 4
MISCELLANEOUS PROVISIONS

Section 4.1 Nondiscrimination

In performing services under this Agreement, CONTRACTOR shall not discriminate in the employment of its employees or in the engagement of any sub CONTRACTOR on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

Section 4.2 ADA Compliance

In performing services under this Agreement, CONTRACTOR shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

Section 4.3 Indemnification and Responsibility for Damage

CONTRACTOR to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONTRACTOR, any subcontractor employed directly by CONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

Section 4.4 No Personal Liability

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

Section 4.5 Responsibility of CITY

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

Section 4.6 Insurance Requirements for CONTRACTOR

CONTRACTOR shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

Section 4.7 Successors and Assigns

CITY and CONTRACTOR each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONTRACTOR shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY.

Section 4.8 Notices

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY: City of Lodi
 221 West Pine Street
 P.O. Box 3006
 Lodi, CA 95241-1910
 Attn: Jay Marchesseault, Engineering & Operations Mgr.

To CONTRACTOR: URS Corporation Americas
 2870 Gateway Oaks Drive, Ste. 150
 Sacramento, CA 95833
 Dennis A. Dudzik, PE, Project Manager

Section 4.9 Cooperation of CITY

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

Section 4.10 CONTRACTOR is Not an Employee of CITY

CONTRACTOR agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONTRACTOR meet specific standards without regard to the manner and means of accomplishment thereof.

Section 4.11 Termination

CITY may terminate this Agreement, with or without cause, by giving CONTRACTOR at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase.

Upon termination, CONTRACTOR shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONTRACTOR shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONTRACTOR with third parties in reliance upon this Agreement.

Section 4.12 Confidentiality

CONTRACTOR agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONTRACTOR and clearly marked by CONTRACTOR as “Confidential” or “Proprietary”, except to the extent otherwise required by law or permitted in writing by CONTRACTOR. CONTRACTOR acknowledges that CITY is subject to the California Public Records Act.

Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney’s Fees

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney’s fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

Section 4.14 City Business License Requirement

CONTRACTOR acknowledges that Lodi Municipal Code Section 3.01.020 requires CONTRACTOR to have a city business license and CONTRACTOR agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

Section 4.15 Captions

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

Section 4.16 Integration and Modification

This Agreement represents the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

Section 4.17 Contract Terms Prevail

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

Section 4.18 Severability

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

Section 4.19 Ownership of Documents

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONTRACTOR shall allow CITY to inspect all such documents during CONTRACTOR's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONTRACTOR to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONTRACTOR harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

Section 4.20 Authority

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

Section 4.21 Federal Transit Funding Conditions

If the box at left is checked, the Federal Transit Funding conditions attached as Exhibit D apply to this Agreement. In the event of a conflict between the terms of this Agreement or any of its other exhibits, and the Federal Transit Funding Conditions, the Federal Transit Funding Conditions will control.

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement as of the date first above written.

CITY OF LODI, a municipal corporation

ATTEST:

RANDI JOHL-OLSON
City Clerk

D. STEPHEN SCHWABAUER
Interim City Manager

APPROVED AS TO FORM:
JANICE D. MAGDICH, Interim City Attorney

URS Corporation Americas

By: _____


By: _____
Name: Dennis Bane, PE
Title: Vice President

- Attachments:**
Exhibit A – Scope of Services
Exhibit B – Fee Proposal
Exhibit C – Insurance Requirements
Exhibit D – Federal Transit Funding Conditions (if applicable)

Funding Source: 161076.1820
(Business Unit & Account No.)

Doc ID:

CA:rev.02.2014



January 9, 2014

Jules Marchesseault
Engineering & Operations Manager
City of Lodi, Electrical Utility Department
1331 S. Ham Lane
Lodi, CA 95242

Reference: Price Proposal for the 230kV Interconnection Project

Dear Mr. Marchesseault,

URS Corporation dba URS Corporation Americas (URS) is pleased to submit this price proposal for Conceptual Design Services in support of the 230kV Interconnection Project.

To provide the maximum benefit to City of Lodi (LEU) from the URS Team's recent experience with substations in northern California, URS is bringing LEU the same team of key URS and EETS technical experts who has served SMUD over a decade of development of the Russell Substation, which now interconnects the 230 MW Solano Wind Project with the PG&E's 230kV System. URS Team qualifications are provided in the accompanying Statement of Qualifications (SOQ). This same Team will be available to serve LEU with continuity of owner's engineering services (up to 30% design and bid specification development) going forward, should LEU decide to continue with the project. It is understood that that the detailed engineering (100% design), procurement, and construction of the Lockeford-Lodi 230kV Interconnection Project, and subject to future solicitation/selection.

URS will take the following technical approach to each of the LEU work plan elements (re-stated in italics) to serve as the Conceptual Design Engineer to help advance the project development. The estimate of the hours and resources required are provided in the attached URS Price Proposal Spreadsheet.

1. Review the conceptual design as it stands to date and provide an engineering second opinion as to feasibility, expected cost and savings, and an assessment of significant risks and possible risk mitigations.

The URS Team leads; Mr. Dennis Dudzik, PE (Program Manager) and Mr. Michael Bregar, PE (Principal Electrical Engineer) will participate in a kick-off meeting and coordinate closely with the Electric Department of the LEU in reviewing the initial conceptual design. Mr. Dudzik will lead the Conceptual Design Engineer's team in reviewing all elements of the design concept for feasibility, constructability, and reliability with the proposed service arrangement from a new PG&E 230kV switchyard. Because we are committed to quality and service, Mr. Shabad Khalsa (Consulting Engineer) will also participate in the kick-off meeting, to be certain that the LEU work elements are understood and the LEU Project Manager's expectations are exceeded throughout performance of all Conceptual Design Services. In this Task, risk issues along with potential mitigation will be evaluated for both technical aspects of the project, and the construction timeline and construction interface with PG&E switchyard construction, as well as issues relating to the cutover and sequencing of the work.

From the December 16th email from Jules Marchesseault, we understand LEU would like all components necessary to make this project functional included in this study, with the assumption that the 230 kV transmission line will be a separate project. The assessment will consider the PG&E switching station, the CAISO metering equipment, the 230/60kV substation equipment, and the tie to the existing 60 kV distribution equipment (Industrial Sub). The assessment will differentiate between PG&E responsibility and LEU responsibility. The CAISO metering equipment and downstream equipment will be the responsibility of LEU, and the upstream equipment will be the responsibility of PG&E.



2. Provide LEU with project control drawings suitable for public presentation including General Arrangement on a site plan, maps representing Lockeford-Lodi Area 230kV Development Project, and other high level drawings and documents as needed to describe the project and the work required at this stage of development.

The URS Team will consult with LEU personnel in the development of the necessary high-level drawings and documents, suitable for public presentation, depicting the features, arrangement, and work required in the project development. The URS team has assisted other municipal utilities with technical evaluations and subsequent public presentation materials. For the SMUD Solano Wind Project, this URS team developed the Environmental Impact Reports and then assisted with presentation of the documents during several public meetings. We understand that public agencies must convey appropriate technical and cost information to the public while avoiding too much detail or confusing technical language.

3. Provide LEU with a high level schedule showing significant design, procurement, and construction activities. Schedule should also show Lodi City Council approval milestones and planned energization dates.

- Meet with PG&E and establish coordination efforts with respect to their project schedule, their use of LEU and for their switching station and contracting requirements

The URS Team will work with LEU personnel and establish coordination with PG&E on 230kV switching station construction to develop an overall high level procurement and construction schedule (in MS Project) for the project with identification of critical path items including Lodi City Council approval milestones. URS will include a brief review of procurement and construction activities and scheduling by a member of our Sacramento office construction management team. The schedule will incorporate allowance for float for overlap of critical path items with early and late start dates. The schedule will also include allowance for implementing a staged cutover of facilities and necessary LEU and PG&E testing and startup timeline based on discussions with both utilities.

4. Provide LEU with an estimate of project costs plus an appropriate contingency amount for the level of design and known business conditions.

The URS Team will develop an estimate of project costs at the level of design and known business conditions, with contingency based on anticipated risks, necessary modifications for final design, and allowance for unknowns.

5. Conduct technical studies and load flows in coordination with LEU and Duncan, Weinberg, Genzer and Pembroke, P.C. (Outside Legal Counsel) to determine as conclusively as possible whether the proposed project will meet FERC's "Seven Factor Test" for electric distribution facilities.

The URS Team will develop the necessary load flow, short circuit, and other technical studies to validate the design concept and show compliance with FERC's seven factor test. Technical studies will be conducted in close coordination with LEU and LEU outside legal counsel. The full conceptual design report will be prepared, compiling all features of the conceptual design work with conclusions, findings, and summary. All work will be independently reviewed for technical quality by Mr. Khalsa, before submittal to LEU. Along with the report submission, Mr. Dudzik and Mr. Bregar will meet with LEU and review all aspects of the report. Following LEU review and comment, the URS Team will incorporate all comments and modifications and issue the final conceptual design report document to LEU.

URS Corporation Americas

Dennis A. Dudzik, PE
Project Manager

Dennis Bane, PE
Vice President

EXHIBIT B

URS COST ESTIMATE

Project Name:

230kV Interconnection Project

Date: 2/28/14

Contract:

The City of Lodi Electric Utility Department

LABOR	Labor Rates	Task 1 Kickoff Meeting & Review Conceptual Design		Task 2 Drawings, Site Plan & Maps		Task 3 High Level Schedule		Task 4 Cost Estimating		Task 5 Conduct Technical Studies & Load Flows		TOTAL	
		Hours	Costs	Hours	Costs	Hours	Costs	Hours	Costs	Hours	Costs	Hours	Costs
PERSONNEL SERVICES													
Program Manager - Dennis Dudzik, PE	\$170	4	\$680	1	\$170	1	\$170	1	\$170	12	\$2,040	19	\$3,230
Electrical Power & Controls Engineer - Shabad Khalsa, PE	\$185	6	\$1,110	8	\$1,480	2	\$370	2	\$370	8	\$1,480	26	\$4,810
Project Controls / Procurement GIS/CADD Technician	\$90	4	\$360		\$0		\$0		\$0	4	\$360	8	\$720
	\$95	4	\$380	12	\$1,140		\$0		\$0	6	\$570	22	\$2,090
Subcontractor - EETS Inc.			\$0		\$0		\$0		\$0		\$0	0	\$0
Principal Engineer - Michael Bregar, PE	\$165	8	\$1,320	10	\$1,650	15	\$2,475	5	\$825	20	\$3,300	58	\$9,570
Sr. Engineer - John A Guillory, PE	\$150	14	\$2,100	25	\$3,750	15	\$2,250	15	\$2,250	40	\$6,000	109	\$16,350
Engineer - Koosha Toofan, PE	\$120	8	\$960	12	\$1,440	5	\$600	5	\$600	20	\$2,400	50	\$6,000
CADD Technician	\$90		\$0	25	\$2,250		\$0		\$0		\$0	25	\$2,250
Administrative Assistant	\$65	8	\$520	8	\$520	10	\$650	10	\$650	10	\$650	46	\$2,990
Total Subcontractor Labor		38	\$4,900	80	\$9,610	45	\$5,975	35	\$4,325	90	\$12,350	288	\$37,160
Fee	5%		\$245		\$481		\$299		\$216		\$618		\$1,858
Total Labor		56	\$7,675	101	\$12,881	48	\$6,814	38	\$5,081	120	\$17,418	363	\$49,868
TRAVEL	\$/Unit	Amt	Cost	Amt	Cost	Amt	Cost	Amt	Cost	Amt	Cost	Amt	Cost
Air fare													\$0
Mileage Reimbursement	\$0.560	100	\$56		\$0	100	\$56		\$0	100	\$56		\$168
Per Diem													\$0
Total Travel							\$0		\$0		\$0		\$168
OTHER DIRECT COSTS (ODCs)	\$/Unit	Amt	Cost	Amt	Cost	Amt	Cost	Amt	Cost	Amt	Cost	Amt	Cost
Reproduction	\$50			8	\$400	2	\$100	2	\$100	2	\$100		\$700
Shipping	\$10			2	\$20		\$0	1	\$10	1	\$10		\$40
ODC Subtotal			\$ -		\$ 420		\$ 100		\$ 110		\$ 110		\$ 740
Fee (ODCs only)	5%		\$ -		\$ 21		\$ 5		\$ 6		\$ 6		\$ 37
TRAVEL - PERDIEM			\$ 56		\$ -		\$ 56		\$ -		\$ 56		\$ 168
TOTAL ODCs + Travel			\$ 56		\$ 441		\$ 161		\$ 116		\$ 172		\$ 945
TOTAL COSTS			\$ 7,731		\$ 13,322		\$ 6,975		\$ 5,197		\$ 17,589		\$ 50,813

AGREEMENT FOR PROFESSIONAL SERVICES

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Section 1.1 Parties

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Section 1.2 Purpose

CITY selected the CONTRACTOR to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONTRACTOR for NERC Compliance related to the 230 kV Interconnection Project and Lodi's 60 kV system (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONTRACTOR acknowledges that it is qualified to provide such services to CITY.

ARTICLE 2 SCOPE OF SERVICES

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Section 2.6 Term

The term of this Agreement commences on April 7, 2014 and terminates upon the completion of the Scope of Services or on April 7, 2017, whichever occurs first.

Section 2.7 Option to Extend Term of Agreement

At its option, City may extend the terms of this Agreement for an additional two (2) two (2)-year extensions; provided, City gives Contractor no less than thirty (30) days written notice of its intent prior to expiration of the existing term. In the event City exercises any option under this paragraph, all other terms and conditions of this

Agreement continue and remain in full force and effect.

The total duration of this Agreement, including the exercise of any option under this paragraph, shall not exceed seven (7) years.

ARTICLE 3 **COMPENSATION**

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CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with

this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

ARTICLE 4 **MISCELLANEOUS PROVISIONS**

Section 4.1 Nondiscrimination

In performing services under this Agreement, CONTRACTOR shall not discriminate in the employment of its employees or in the engagement of any sub CONTRACTOR on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

Section 4.2 ADA Compliance

In performing services under this Agreement, CONTRACTOR shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

Section 4.3 Indemnification and Responsibility for Damage

CONTRACTOR to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONTRACTOR, any subcontractor employed directly by CONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

Section 4.4 No Personal Liability

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

Section 4.5 Responsibility of CITY

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

Section 4.6 Insurance Requirements for CONTRACTOR

CONTRACTOR shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

Section 4.7 Successors and Assigns

CITY and CONTRACTOR each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONTRACTOR shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY.

Section 4.8 Notices

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY: City of Lodi
 221 West Pine Street
 P.O. Box 3006
 Lodi, CA 95241-1910
 Attn: Elizabeth Kirkley, Electric Utility Director

To CONTRACTOR: Duncan, Weinberg, Genzer & Pembroke, P.C.
 1615 M Street, N.W., Ste. 800
 Washington, DC 20036
 Attn: Lisa A. Gast, Shareholder .

Section 4.9 Cooperation of CITY

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

Section 4.10 CONTRACTOR is Not an Employee of CITY

CONTRACTOR agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONTRACTOR meet specific standards without regard to the manner and means of accomplishment thereof.

Section 4.11 Termination

CITY may terminate this Agreement, with or without cause, by giving CONTRACTOR at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONTRACTOR shall be entitled to payment as set forth in the

attached Exhibit B to the extent that the work has been performed. Upon termination, CONTRACTOR shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONTRACTOR with third parties in reliance upon this Agreement.

Section 4.12 Confidentiality

CONTRACTOR agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONTRACTOR and clearly marked by CONTRACTOR as “Confidential” or “Proprietary”, except to the extent otherwise required by law or permitted in writing by CONTRACTOR. CONTRACTOR acknowledges that CITY is subject to the California Public Records Act.

Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney’s Fees

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney’s fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

Section 4.14 City Business License Requirement

CONTRACTOR acknowledges that Lodi Municipal Code Section 3.01.020 requires CONTRACTOR to have a city business license and CONTRACTOR agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

Section 4.15 Captions

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

Section 4.16 Integration and Modification

This Agreement represents the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered

hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

Section 4.17 Contract Terms Prevail

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

Section 4.18 Severability

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

Section 4.19 Ownership of Documents

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONTRACTOR shall allow CITY to inspect all such documents during CONTRACTOR's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONTRACTOR to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONTRACTOR harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

Section 4.20 Authority

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

Section 4.21 Federal Transit Funding Conditions

If the box at left is checked, the Federal Transit Funding conditions attached as Exhibit D apply to this Agreement. In the event of a conflict between the terms of this Agreement or any of its other exhibits, and the Federal Transit Funding Conditions, the Federal Transit Funding Conditions will control.

(signatures on following page)

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement as of the date first above written.

CITY OF LODI, a municipal corporation

ATTEST:

RANDI JOHL-OLSON
City Clerk

STEPHEN SCHWABAUER
Interim City Manager

APPROVED AS TO FORM:
JANICE D. MAGDICH, Interim City Attorney

DUNCAN, WEINBERG, GENZER & PEMBROKE, P.C.

By: _____


By: _____
Name: LISA A. GAST
Title: Shareholder

- Attachments:**
Exhibit A – Scope of Services
Exhibit B – Fee Proposal
Exhibit C – Insurance Requirements
Exhibit D – Federal Transit Funding Conditions (if applicable)

Funding Source: 161076.1820
(Business Unit & Account No.)

Doc ID:

CA:rev.02.2014

Law Offices
Duncan, Weinberg, Genzer & Pembroke, P.C.

WALLACE L. DUNCAN (1937-2008)
EDWARD WEINBERG (1918-1995)
ROBERT WEINBERG
JEFFREY C. GENZER
THOMAS L. RUDEBUSCH
MICHAEL R. POSTAR
ELI D. EILBOTT*
LISA S. GAST
PETER J. SCANLON
KATHLEEN L. MAZURE
DEREK A. DYSON
BHAVEETA K. MODY
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THOMAS J. LYNCH⁺

February 19, 2014

*REGISTERED TO PRACTICE BEFORE U.S.
PATENT AND TRADEMARK OFFICE

*OF COUNSEL

To: Elizabeth Kirkley, City of Lodi

From: Lisa S. Gast

Re: Scope of Work/Budget for NERC Compliance Issue

As requested, below please find a Scope of Work, and related budget proposal, for the project we overviewed on the phone on October 8, 2013.

The facilities proposed to be constructed include transmission facilities (to be constructed by PG&E) which add a cross-town transmission line connecting two separate PG&E transmission systems and a substation with a breaker-and-a-half schema and three transformers. The proposal is for PG&E to retain ownership of the 230 kV transmission line and 230 kV ring bus breakers, and for Lodi to purchase and own the three 230/60 kV Transformers (two now and one in the future) that tap off from the PG&E system to deliver power to Lodi load. A 60 kV line from each of the three transformers connect the 60 kV Industrial Substation through a double-breaker bus system.

This configuration, on paper, would allow for power to loop through the Lodi transformers and double-breaker bus system back to PG&E (PG&E's side is considered "Bulk Electric System" facilities under any BES definition). Depending on the resolution of the outstanding BES definition issues, allowing power to loop through the Lodi transformers and double-breaker bus system back to PG&E may render these new facilities "BES" facilities, and subject Lodi to Transmission Owner (TO) and Transmission Operator (TOP) status with NERC and WECC. Lodi, understandably, wants to avoid such designation, as compliance with the TO and TOP designations is very costly, both in terms of time and resources.

My understanding is as follows: that Lodi wishes to achieve 100% confidence from FERC that the three 230/60 kV transformers and the 60 kV double-breaker bus system owned by Lodi are viewed as distribution facilities, and not Bulk Electric System transmission elements; or, if such a determination cannot be garnered by FERC, Lodi wishes to obtain an agreement by NERC (likely through negotiation with WECC) on a limited number of Reliability Standards that would be applicable to the proposed new facilities. Lodi wishes to ensure that the facilities it proposes to construct will not enable WECC and NERC to forcibly register Lodi as a Transmission Owner and Transmission Operator. To that end, Lodi wishes to: (1) have FERC issue an order declaring the proposed facilities “distribution facilities” and out of the purview of NERC and WECC; or, if upon study of the system, the facts indicate FERC will not grant such an order, (2) negotiate the limited set of standards that would be applicable to the proposed facilities. Lodi wants to know the results of either (1) or (2) *prior* to determining whether or not to construct the proposed facilities that will improve the overall reliability of the Lodi distribution system.

EXHIBIT A SCOPE OF WORK

This proposal, divided into three Phases, assumes that the facilities proposed to be constructed would, as a factual matter, meet FERC's "Seven Factor Test." If we deviate from this proposal at the end of Phase 1, due to a preliminary determination that the proposed facilities would not have a high probability of success at FERC under the Seven Factor Test, we could prepare a new Scope/Budget for negotiation with WECC and NERC on a reduced set of Reliability Standards for the proposed facilities.

Phase 1—Research (15-25 hours)

Before getting into the time and expense of preparing a Petition for Declaratory Order to be filed at FERC, there are several preliminary questions that will need to be answered to determine whether it would be worthwhile to proceed on this path. If the answers we find indicate that our probability of success is not good, we can alternate paths, and begin preparing to negotiate a limited TO/TOP set of standards (as explained above).

- (1) Will FERC hear a Petition for facilities that have not yet been constructed? I believe the answer to be "yes," but would need to make sure.
- (2) More information will be needed on the facilities proposed to be constructed and the options for construction (including, can the proposed 60 kV loop be modified such that there is no 60 kV loop proposed?).
- (3) Technical consultants will need to be retained, and a study conducted, to determine as conclusively as possible whether the facilities proposed to be constructed will meet FERC's "Seven Factor Test." [This piece is not included in the DWGP estimated hours, but still has to be completed.]
- (4) Review of elements needed to be included in a Petition for Declaratory Order at FERC, draft skeleton of Petition, comparison of elements with Lodi's facts.

Phase 2—Draft Petition for Declaratory Order and Pre-Filing Meeting at FERC (60-80 hours)

Assuming that the findings in Phase 1 indicate that a Petition for Declaratory Order has a high probability of success at FERC, the next Phase would include drafting the Petition for Declaratory Order, and scheduling/attending a Pre-Filing Meeting with FERC Staff. This Phase constitutes the majority of the hours/cost of the project.

- (1) Research and drafting Petition for Declaratory Order
- (2) Initiating contact with FERC staff regarding Pre-Filing Meeting, and preparation for that Meeting
- (3) Pre-Filing Meeting itself
- (4) Research and Revision of Draft Petition for Declaratory Order using information gained at Pre-Filing Meeting

Phase 3—Filing of Petition of Declaratory Order and Follow-Up issues (10-20 hours)

Under the best-case scenario, we have fixed all the flaws exposed during the Pre-Filing Meeting, and FERC staff is able to give us confidence that the Petition, when filed, will be approved by the Commission. If we are not able to get a definitive answer from FERC staff during the Pre-Filing phase, this Phase 3 will be the hardest to nail down. The Petition is already completed; making the filing is inexpensive. Should FERC not grant our Petition in its entirety, we may wish to request rehearing and/or ultimately appeal to the Court of Appeals for the DC Circuit. We can make those decisions as they (hopefully do not) come up.

- (1) File Petition for Declaratory Order
- (2) Summarize/Respond to Answers as necessary
- (3) Review FERC Order
- (4) Request Rehearing/Clarification as necessary (not included in budget numbers)
- (5) Appeal if necessary (not included in budget numbers)

Timeline:

Phase 1: Our piece of Phase 1 can be done relatively quickly. The timing of Phase 1 is really dependent on how quickly Lodi can retain the technical consultants needed to prove the elements of the Seven Factor Test.

Phase 2: Approximately 2-4 months, depending on the results of the technical consultants' study and whether additional information is needed from them.

Phase 3: I'm reluctant to set a timeline for Phase 3, as it depends entirely on how quickly FERC acts on our Petition. The only proceeding that we can use as an example is *City of Holland*, RC11-5-000. In that case, the FERC issued its Order approximately 7 months after the Petition was filed. (Although outside of our Phase 3, you should be aware that Holland lost that case, and it was an additional 18 months until FERC issued its Order on Appeal. However, FERC was likely waiting until it issued its Final Rule on the revised BES Definition.)

**EXHIBIT B
FEE SCHEDULE**

Our current rates for municipal utilities are as follows:

Senior Principles (including Lisa Gast and Pete Scanlon)	\$380.00/hr.
Other Principles (including Kristen Connolly McCullough)	\$355.00/hr.
Senior Associates	\$340.00/hr.
Other Associates	\$300.00/hr.
Senior Paralegals	\$170.00/hr.

We understand the need to reduce expenses wherever possible, so my plan would be to use Kristen Connolly McCullough (who also does a lot of the NERC Compliance work in my office) and an associate as appropriate to reduce the overall cost.

Total Not to Exceed: \$47,500 (excluding Phase III rehearing requests and/or appeals, if needed)

RESOLUTION NO. 2014-40

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE CITY MANAGER TO EXECUTE A PROFESSIONAL
SERVICES AGREEMENT FOR ELECTRIC UTILITY
ENGINEERING STUDIES FOR THE 230 KV
INTERCONNECTION PROJECT WITH URS CORPORATION

WHEREAS, at a City Council Shirtsleeve Session held on June 4, 2013, the Electric Utility (EU) staff provided the Council with a status report on the 230 kV Interconnection Project; and

WHEREAS, at that time, staff's next steps for the project included the need for various Professional Services Agreements (PSA) as the project moved forward; and

WHEREAS, engineering services regarding reliability compliance issues related to the project are required as part of the risk mitigation efforts associated with the project; and

WHEREAS, the Risk Oversight Committee received a report on this agenda item on March 12, 2014, and recommended City Council approval of a PSA with URS Corporation Americas for engineering studies in an amount not to exceed \$51,000; and

WHEREAS, funding is available in FY Budget Account No. 161076.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a Professional Services Agreement with URS Corporation Americas, of Sacramento, for engineering services in an amount not to exceed \$51,000.

Dated: March 19, 2014

I hereby certify that Resolution No. 2014-40 was passed and adopted by the City Council of the City of Lodi in a regular meeting held March 19, 2014, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Mounce, Nakanishi,
and Mayor Katzakian

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL-OLSON
City Clerk

RESOLUTION NO. 2014-41

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE CITY MANAGER TO EXECUTE A PROFESSIONAL
SERVICES AGREEMENT FOR ELECTRIC UTILITY
COMPLIANCE LEGAL SERVICES FOR THE 230 KV
INTERCONNECTION PROJECT WITH DUNCAN, WEINBERG,
GENZER & PEMBROKE, P.C.

=====

WHEREAS, at a City Council Shirtsleeve Session held on June 4, 2013, the Electric Utility (EU) staff provided the Council with a status report on the 230 kV Interconnection Project; and

WHEREAS, at that time, staff's next steps for the project included the need for various Professional Services Agreements (PSA) as the project moved forward; and

WHEREAS, specialized legal representation regarding EU reliability compliance issues related to the project are required as part of the risk mitigation efforts associated with the project; and

WHEREAS, the Risk Oversight Committee received a report on this agenda item on March 12, 2014, and recommended City Council approval of a PSA with Duncan, Weinberg, Genzer & Pembroke, P.C. for legal services in an amount not to exceed \$47,500; and

WHEREAS, funding is available in FY Budget Account No. 161076.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a Professional Services Agreement with Duncan, Weinberg, Genzer & Pembroke, P.C. for legal services in an amount not to exceed \$47,500.

Dated: March 19, 2014

=====

I hereby certify that Resolution No. 2014-41 was passed and adopted by the City Council of the City of Lodi in a regular meeting held March 19, 2014, by the following vote:

- AYES: COUNCIL MEMBERS – Hansen, Johnson, Mounce, Nakanishi, and Mayor Katzakian
- NOES: COUNCIL MEMBERS – None
- ABSENT: COUNCIL MEMBERS – None
- ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL-OLSON
City Clerk