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**ELECTRICAL MAINTENANCE TESTING  
CITY OF SPARKS, NEVADA**

THIS CONTRACT made and entered into on this 29th day of May, 2012, by and between the City of Sparks, Nevada, a municipal corporation, existing under and by virtue of the laws of the State of Nevada, hereinafter called "City", and **Emerson Process Management Electrical Reliability Services, Inc.**, a qualified vendor in the class of work required, hereinafter called "Vendor".

W I T N E S E T H

WHEREAS, the City has awarded a contract to Vendor for performing the work hereinafter mentioned in accordance with the proposal of said Vendor;

WHEREAS, the Vendor will perform the work for the compensation stated in said proposal, for an amount which has been arrived at after negotiations between the parties;

WHEREAS, each party is willing to and does assume joint liability for the contents of this Contract, and each party accordingly agrees that it shall not be construed against any party as a drafting party;

NOW, THEREFORE, IT IS AGREED as follows:

**1. Scope of Work:**

The scope of work for this contract is generally defined as **Electrical Maintenance Testing**. The City's Contract Documents and Vendor's Entire Proposal are on file with the City of Sparks. All terms, conditions and requirements contained in these Documents, including any and all addenda issued by the City, are hereby incorporated into this Contract.

The Vendor shall perform within the time stipulated, the Contract as herein defined and shall provide and furnish any and all of the labor, materials, methods or processes, equipment implements, tools, machinery and equipment, and all utility, transportation and other services required to construct, install and put in complete order for use in a good and workmanlike manner all of the work covered by the Contract in connection with strict accordance with the plans and specifications therefore, which were approved by said City and are on file with the City, including any and all addenda issued by the City, and with the other contract documents hereinafter enumerated.

**2. Payment for Services**

As full consideration for the Services to be performed by Vendor, City agrees to pay Vendor as set forth in accordance with the Fee Schedule set forth in the proposal, bid or quotation and not to exceed fee of **\$43,850.00**. The City will not hire or directly compensate the Vendor's employees, assistants or subcontractors, if any. It is expressly understood and agreed that all work done by Vendor shall be subject to review as to its result by the City at the City's discretion. Payment of any invoice shall not be taken to mean that the City is satisfied with Vendor's services to the date of payment and shall not forfeit City's right to require the correction of any deficiencies. Payment shall be Net Thirty (30) Days from the date of the invoice or acceptance of work by the City (whichever is later).



**3. Term (Check One)**

This is a One-Time Service, or

This is a term contract from (6/1/2012) to (5/31/2013) with two mutually agreeable options to extend the agreement for two (2) additional 12-month terms, not to exceed 5/31/15.

The Vendor shall perform the services called for in the specifications/proposal and within the time specified and in accordance with the terms of the contract. The Vendor shall not alter or vary any terms or conditions contained or incorporated herein, including but not limited to, the quantity, price, delivery date or date designated as After Receipt of Order (ARO) or date for commencement or completion of services as mutually agreed upon, unless such alteration or variation is consented to in writing by a duly authorized representative of the City.

The City reserves the right to cancel resultant Contract upon ten days written notice in the event the type and quality of the work performance is unsatisfactory or in default, subject to Vendor's right to cure as outlined in termination clause.

This is a non-exclusive Contract and the City reserves the right to acquire the services at its discretion, from other sources during the term of this Contract.

**4. No Unfair Employment Practices:**

In connection with the performance of work under this Agreement, Vendor agrees not to discriminate against any employee or applicant because of race, creed, color, national origin, disability, sex, sexual orientation or age. Such agreement shall include, but not be limited to, the following: recruitment or recruitment advertising, rates or pay or other forms of compensation, and selection. Any violation of these provisions by Vendor shall constitute a material breach of contract.

**5. No Illegal Harassment:**

Violation of the City's harassment policy, which is incorporated by reference and available from the Human Resource Division, by the Vendor, its officers, employees, agents, consultants, subcontractors and anyone from whom it is legally liable, while performing or failing to perform Vendor's duties under this Contract shall be considered a material breach of contract.

**6. Acceptance by the City:**

It is expressly understood and agreed that all materials provided and/or work done by the Vendor shall be subject to inspection and acceptance by the City at its discretion, and that any progress inspections and approval by the City of any item or work shall not forfeit the right of the City to require the correction of faulty workmanship or material at any time during the course of the work, although previously approved by oversight. Nothing herein contained shall relieve the Vendor of the responsibility for proper construction and maintenance of the work, materials and equipment required under the terms of this Contract until all work has been completed and accepted by the City.

**7. Waiver:**

No waiver of any term, provision or condition of this Contract, whether by conduct or otherwise, in any one or more instances, shall be deemed to be nor shall it be construed as a further or continuing waiver of any such term, provision or condition of this Contract. No waiver shall be effective unless it is in writing



and signed by the party making it.

**8. Notices:**

All notices required to be given in writing by this Contract shall be deemed to be received (i) upon delivery if personally delivered, or (ii) when receipt is signed for if mailed by certified or registered mail, postage prepaid, or by express delivery service or courier, when addressed as follows (or sent to such other address as a Party may specify in a notice to the others):

PURCHASING MANAGER  
CITY OF SPARKS  
431 PRATER WAY  
PO BOX 857  
SPARKS, NV 89432-0857

VENDOR:  
Kevin Cunningham  
Emerson  
1380 Greg St., Suite 217  
Sparks, NV 89431

**9. Jurisdiction and Venue:**

Any action or proceeding seeking to do so must be brought in the courts of the State of Nevada, County of Washoe, or if the party can acquire subject-matter jurisdiction, in the United States District Court for the District of Nevada in the City of Reno. Each of the parties consents to the personal jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on either party by sending it certified mail to the respective addresses designated for notice.

**10. Indemnity:**

Vendor agrees to indemnify, hold harmless and defend Buyer against any third party claims for personal injury, death or tangible property damage resulting from Vendor’s negligence, reduced to the extent of any other party’s negligence, provided Vendor is provided reasonable notice regarding such claim and has the sole right to select and direct counsel and settle the claim. THIS INDEMNIFICATION OBLIGATION IS NOT SUBJECT TO THE LIMIT OF LIABILITY DESCRIBED IN ARTICLE 23.

**11. Licenses and Permits:**

The Vendor shall procure at his own expense all necessary licenses and permits and shall adhere to all the laws, regulations and ordinances applicable to the performance of this Contract.

All vendors doing business within the City of Sparks are required to obtain a current business license from the City of Sparks prior to commencement of this contract. Per Sparks Municipal Code Section 5.08.020A: “It is unlawful for any person to transact business in the City without first having obtained a license from the City to do so and without complying with all applicable provisions of this title and paying the fee therefore.”

Vendor’s scope of work is not encompassed within any prevailing wage classifications provided under any prevailing wage laws, statutes, rules, or regulations, including without limitation, Davis Bacon Act, (“Prevailing Wage Law”) therefore Vendor takes express exception to any and all prevailing wage requirements and shall not be required to comply with such under this Agreement, and further shall not be required to submit certified payroll and related documentation. Vendor shall indemnify, defend, and hold harmless Buyer and its directors, officers, employees, and agents from and against any and all claims, costs, expenses, liabilities, and losses to the extent arising out of Vendor’s violation of any Prevailing



Wage Law held to be applicable to Vendor's scope of work by a court of competent jurisdiction or agency with jurisdiction over the matter.

## 12. Insurance:

Vendor shall maintain the following insurance or self-insurance coverage: **Worker's Compensation** in accordance with the statutory requirements of the state in which the work is performed. **Employer's Liability** with a limit of liability of \$1,000,000 per occurrence for bodily injury by accident or bodily injury by disease. **Commercial General Liability (CGL)** for bodily injury and property damage with a limit of \$2,000,000 per occurrence and aggregate. CGL includes Contractual Liability. CGL does not include Products and Completed Operations coverage. **Automobile Liability** insurance that covers usage of all owned, non-owned and leased vehicles and which is subject to a combined single limit per occurrence of \$1,000,000. Automobile Liability insurance includes Contractual Liability, but no special endorsements. Provisions regarding waiver of subrogation, self-insurance retention/deductibles, additional insured status, or the primary/non-contributing nature of Vendor's insurance shall be limited to the extent of Vendor's negligent acts or omissions and any reference to bonds is hereby deleted.

### ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a Best's rating of no less than A-: VII. City, with the approval of the Risk Manager, may accept coverage with carriers having lower Best's ratings upon review of financial information concerning Vendor and insurance carrier. City reserves the right to require that Vendor's insurer be a licensed and admitted insurer in the State of Nevada, or on the Insurance Commissioner's approved but not admitted list.

### VERIFICATION OF COVERAGE

Vendor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Prior to the start of any Work, Vendor must provide the following documents to City of Sparks, Attention: Purchasing Division, P.O. Box 857, Sparks, NV 89432-0857:

- A. **Certificate of Insurance.** Vendor must provide a Certificate of Insurance form to the City of Sparks to evidence the insurance policies and coverage required of Vendor.
- B. **Additional Insured Endorsements.** An original Additional Insured Endorsement, signed by an authorized insurance company representative, must be submitted to City of Sparks, by attachment to the Certificate of Insurance, to evidence the endorsement of City of Sparks as additional insured.
- C. **Policy Cancellation Endorsement.** Except for ten days notice for non-payment of premium, each insurance policy shall be endorsed to specify that without thirty (30) days prior written notice to City of Sparks, the policy shall not be cancelled, non-renewal or coverage and/or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address specified above. A copy of this signed endorsement must be attached to the Certificate of Insurance.



All certificates and endorsements are to be addressed to the City of Sparks, Purchasing Division and be received and approved by City before work commences. The City reserves the right to require complete certified copies of all required insurance policies at any time.

**SUBCONTRACTORS**

Vendor shall include all Subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to all of the requirements stated herein.

**MISCELLANEOUS CONDITIONS**

1. Vendor shall be responsible for and remedy all damage or loss to any property, including property of City, caused in whole or in part by Vendor, any subcontractor, or anyone employed, directed, or supervised by Vendor.
2. Nothing herein contained shall be construed as limiting in any way the extent to which Vendor may be held responsible for payment of damages to persons or property resulting from its operations or the operations of any subcontractor under it.
3. In addition to any other remedies City may have if Vendor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:
  - a. Purchase such insurance to cover any risk for which City may be liable through the operations of Vendor under this Agreement and deduct or retain the amount of the premiums for such insurance from any sums due under the Agreement;
  - b. Order Vendor to stop work under this Agreement and/or withhold any payments which become due Vendor here under until Vendor demonstrates compliance with the requirements hereof; or,
  - c. Terminate the Agreement.

**13. Liquidated Damages (This Section  IS  IS NOT Applicable to this Contract):**

If the service is not completed within the time stipulated in the bid, the Vendor shall pay to the City of Sparks as fixed, agreed and liquidated damages for delay and not as a penalty (it being impossible to determine the actual damages occasioned by the delay) \$\_\_\_\_\_ for each calendar day of delay until delivery is completed; the Vendor shall be liable to the City of Sparks for the amount herein. This amount may be deducted from money due or to become due to the Vendor as compensation under this proposal in the event the Vendor fails to meet delivery schedules or product specifications.

**14. Material Breach of Contract:**

In the event Vendor fails in their delivery of services as contracted for herein, to the satisfaction of the City of Sparks or otherwise fails to perform any provisions of this Contract, the City, after providing five (5) days written notice and vendor's failure to cure such breach, may without waiving any other remedy, make good the deficiencies and deduct the actual cost of providing alternative services from payment due the Vendor. Non-performance after the first notice of non-performance shall be considered a material breach of contract.



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**15. Force Majeure:**

Neither party to the Contract shall be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party's reasonable control. City may terminate the Contract upon written notice after determining such delay or default will reasonably prevent successful performance of the Contract.

**16. Termination:**

Failure to Cure:

The City may terminate the Contract for material breach of contract upon ten (10) days written notice and recover all damages, deducting any amount still due the Vendor from damages owed to the City, or seek other remedy including action against all bonds. The Vendor may terminate the Contract for material breach of contract upon thirty (30) days written notice to the City.

Non-Funding:

Continuance of this contract beyond the fiscal year (July – June) in which the contract was initiated shall be contingent upon appropriation of the requisite funds in the ensuing fiscal year(s) and the termination of this contract due to lack of appropriation shall be without penalty.

Convenience:

The City may terminate this agreement for any reason without penalty upon giving thirty (30) days written notice to the Vendor. In the event of termination, the full extent of City liability shall be limited to an equitable adjustment and payment for materials and related services authorized by and received to the satisfaction of the City prior to termination.

**17. Assignment:**

All of the terms, conditions and provisions of this Contract, and any amendments thereto, shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns. The Vendor shall not assign this Contract without the written consent of the City which will not be unreasonably withheld.

**18. Entire Contract:**

This Contract constitutes the entire agreement of the parties and shall supersede all prior offers, negotiations, agreements and contracts whether written or oral. Any modifications to the terms and conditions of this Contract must be in writing and signed by both parties.

**19. Severability:**

If any part of this Contract is found to be void it will not affect the validity of the remaining terms of this Contract which will remain in full force and effect.

**20. Headings:**

Paragraph titles or captions contained in this Contract are inserted only as a matter of convenience and for reference only, and in no way define, limit, extend, or describe the scope of this Contract or the intent of any provision thereof.



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**21. Singular Includes the Plural; Gender; Title Reference:**

Whenever the singular number is used in this Contract and when required by the context, the same shall include the plural, and the use of any gender, be it masculine, feminine or neuter, shall include all of the genders, and the word "person" or "entity" shall include corporation, firm, partnership, or any other combination or association.

The use of the title "Bidder", "Vendor", "Contractor" or "Consultant" within this contract or associated bid document shall be deemed interchangeable and shall refer to the person or entity with whom the City of Sparks is contracting for the service or product referenced within this contract.

**22. Execution:**

The parties agree to execute such additional documents and to take such additional actions as are reasonably necessary or desirable to carry out the purposes hereof. They also agree, acknowledge and represent that all corporate authorizations have been obtained for the execution of this Contract and for the compliance with each and every term hereof. Each undersigned officer, representative or employee represents that he or she has the authority to execute this Contract on behalf of the party for whom he or she is signing.

**23. Damages:**

**NEITHER PARTY SHALL BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF THE PARTIES SET FORTH HEREIN ARE EXCLUSIVE. IN NO EVENT SHALL A PARTY'S LIABILITY TO THE OTHER AND/OR ITS CUSTOMERS EXCEED AN AGGREGATE OF \$500,000 UNDER THIS AGREEMENT. THE PARTIES AGREE THAT NEITHER PARTY SHALL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.** The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment.

**24. Vendor Warranty:**

Vendor warrants to Buyer that the Services will be performed by trained personnel using proper equipment and instrumentation for the particular service. Vendor warrants that any analysis of data, subsequent recommendations and other services will be in accordance with applicable established industry standards and practices. Vendor warrants the proper performance of the Services for a period of ninety (90) days from the completion of the Services. Warranties applicable to third party equipment, parts or materials furnished by Vendor shall be that of the manufacturer of such Parts and only to the extent assignable to Buyer. EXCEPT AS SPECIFIED ABOVE, THIRD PARTY SERVICES AND/OR PARTS ARE FURNISHED AS-IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. THE WARRANTY SET FORTH IN THIS SECTION IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY VENDOR WITH RESPECT TO THE SERVICES AND PARTS AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO VENDOR IN SPECIFICATIONS, DRAWINGS OR OTHERWISE. If within thirty (30) days after



Buyer's discovery of any warranty defects within the warranty period, Buyer notifies Vendor thereof in writing, Vendor shall, at its option, repair, correct or replace F.O.B. point of manufacture, or refund the purchase price for, that portion of the services or equipment found by Vendor to be defective.

IN WITNESS WHEREOF, the City of Sparks has caused this Contract to be executed by its officers thereunto duly authorized and the Consultant has subscribed same, all on the day and year first above written.

\_\_\_\_\_  
(Vendor)

CITY OF SPARKS, NEVADA  
A Municipal Corporation

By: \_\_\_\_\_

By: \_\_\_\_\_  
Geno R. Martini, Mayor

\_\_\_\_\_  
(Title)

APPROVED AS TO FORM

ATTEST:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Linda Patterson, City Clerk





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Attachment A

Pricing and scope (only) per Emerson quote, dated April 27, 2012 (Attached).