



PROFESSIONAL SERVICES AGREEMENT

1. **PARTIES**

This Agreement is made by and between the City of Cupertino, a municipal corporation (“City”), and 4Leaf, Inc. (“Contractor”), a Corporation for Project Management, Construction Management and Inspection services for the Capital Improvement Programs (CIP) Photovoltaic (PV) Systems Design and Installation Project (Project), and is effective on the last date signed below (“Effective Date”).

2. **SERVICES**

2.1 Basic Services. Contractor agrees to provide the Basic Services for the Project, which are set forth in detail in the Scope of Services, attached here and incorporated as **Exhibit A**, and as further specified in Contractor’s written Proposal as approved by City, except for any provision in the Proposal which conflicts or is inconsistent with this Agreement and the Exhibits hereto, or as otherwise expressly rejected by City. Contractor further agrees to carry out its work in compliance with any applicable local, State, or Federal order regarding COVID-19.

2.2 Additional Services. City may request at any time during the Contract Time that Contractor provide additional services for the Project, which are not already encompassed, expressly or implicitly, in the Agreement, the Scope of Services, or the Proposal (“Additional Services”). Additional Services must be authorized in writing by City and Contractor will not be paid for unauthorized Additional Services rendered. Additional Services are subject to all the provisions applicable to Basic Services, except and only to the extent otherwise specified by City in writing.

All references to “Services” in the Agreement include Basic Services and Additional Services, unless otherwise stated in writing. The Services may be divided into separate sequential tasks, as further specified in this Agreement, the Scope of Services, and Contractor’s Proposal.

2.3 Contractor’s duties and services under this agreement shall not include preparing or assisting the City with any portion of the City’s preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the City. The City shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Contractor’s participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Contractor shall cooperate with the City to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by contractor pursuant to this agreement.

3. **TIME OF PERFORMANCE**

3.1 This Agreement begins on the Effective Date and ends on December 31, 2026 (“Contract Time”), unless terminated earlier as provided herein. Contractor’s Services shall begin on the Effective Date and shall be completed by December 31, 2026. The City’s appropriate department

head or the City Manager may extend the Contract Time through a written amendment to this Agreement, provided such extension does not include additional contract funds. Extensions requiring additional contract funds are subject to the City's purchasing policy.

3.2 Schedule of Performance. Contractor must deliver the Services in accordance with the Schedule of Performance, attached and incorporated here **Exhibit B**.

3.3 Time is of the essence for the performance of all the Services. Contractor must have sufficient time, resources, and qualified staff to deliver the Services on time.

4. COMPENSATION

4.1 Maximum Compensation. City will pay Contractor for satisfactory performance of the Basic Services and Additional Services, if approved, a cumulative total amount that will be capped so as not to exceed \$225,000.00 ("Contract Price"), as specified in Exhibit C, Compensation, attached and incorporated here. The Contract Price includes all expenses and reimbursements and will remain in place even if Contractor's actual costs exceed the capped amount. No extra work or payment is permitted in excess of the Contract Price.

4.2 Basic Services. City will pay Contractor **\$180,043.00** ("Lump Sum Price") for the complete and satisfactory performance of the Basic Services in accordance with Exhibit A and Exhibit C. The Lump Sum Price is inclusive of all time and expenses, including, but not limited to, subcontractor's costs, materials, supplies, equipment, travel, taxes, overhead, and profit. If the Basic Services are not fully completed, Contractor will be compensated a percentage of the Lump Sum Price proportionate to the percentage of Basic Services that were completed to City's reasonable satisfaction

4.3 Additional Services. City has the discretion, but not the obligation, to authorize Additional Services up to an amount not to exceed **\$44,957.00**. Additional Services provided to City's reasonable satisfaction will be compensated on a lump sum basis or based on time and expenses, in accordance with the Hourly Rates and Reimbursable Expenses Schedules included in Exhibit C. If paid on an hourly basis, Contractor will be compensated for actual costs only of normal business expenses and overhead, with no markup or surcharge ("Reimbursable Expenses"). Contractor will not be entitled to reimbursement for copying, printing, faxes, telephone charges, employee overtime, or travel to City offices or to the Project site

4.4 Invoices and Payments. Monthly invoices must state a description of the deliverable completed and the amount due for the preceding month. Within thirty (30) days of completion of Services, Contractor must submit a requisition for final and complete payment of costs and pending claims for City approval. Failure to timely submit a complete and accurate payment requisition relieves City of any further payment or other obligations under the Agreement.

5. INDEPENDENT CONTRACTOR

5.1 Status. Contractor is an independent contractor and not an employee, partner, or joint venture of City. Contractor is solely responsible for the means and methods of performing the Services and for the persons hired to work under this Agreement. Contractor is not entitled to health benefits, worker's compensation, or other benefits from the City.

5.2 Contractor's Qualifications. Contractor warrants on behalf of itself and its subcontractors that they have the qualifications and skills to perform the Services in a competent and professional

manner and according to the highest standards and best practices in the industry.

5.3 Permits and Licenses. Contractor warrants on behalf of itself and its subcontractors that they are properly licensed, registered, and/or certified to perform the Services as required by law and have procured a City Business License, if required by the Cupertino Municipal Code.

5.4 Subcontractors. Only Contractor's employees are authorized to work under this Agreement. Prior written approval from City is required for any subcontractor, and the terms and conditions of this Agreement will apply to any approved subcontractor.

5.5 Tools, Materials, and Equipment. Contractor will supply all tools, materials and equipment required to perform the Services under this Agreement.

5.6 Payment of Benefits and Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Contractor and any of its employees, agents, and subcontractors shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Contractor shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Contractor's business including, but not limited to, federal and state income taxes. City shall have no obligation whatsoever to pay or withhold any taxes or benefits on behalf of Contractor. In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction, arbitrator, or administrative authority, including but not limited to the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City, and actual attorney's fees incurred by City in connection with the above.

6. PROPRIETARY/CONFIDENTIAL INFORMATION

In performing this Agreement, Contractor may have access to private or confidential information owned or controlled by the City, which may contain proprietary or confidential details the disclosure of which to third parties may be damaging to City. Contractor shall hold in confidence all City information provided by City to Contractor and use it only to perform this Agreement. Contractor shall exercise the same standard of care to protect City information as a reasonably prudent contractor would use to protect its own proprietary data.

7. OWNERSHIP OF MATERIALS

7.1 Property Rights. Any interest (including copyright interests) of Contractor in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document, or other information or work, in any medium (collectively, "Work Product"), prepared by Contractor in connection with this Agreement will be the exclusive property of the City upon completion of the work to be performed hereunder or upon termination of this Agreement, to the extent requested by City. In any case, no Work Product shall be shown to any third-party without prior written approval of City.

7.2 Copyright. To the extent permitted by Title 17 of the U.S. Code, all Work Product arising

out of this Agreement is considered “works for hire” and all copyrights to the Work Product will be the property of City. Alternatively, Contractor assigns to City all Work Product copyrights. Contractor may use copies of the Work Product for promotion only with City’s written approval.

7.3 Patents and Licenses. Contractor must pay royalties or license fees required for authorized use of any third party intellectual property, including but not limited to patented, trademarked, or copyrighted intellectual property if incorporated into the Services or Work Product of this Agreement.

7.4 Re-Use of Work Product. Unless prohibited by law and without waiving any rights, City may use or modify the Work Product of Contractor or its sub-contractors prepared or created under this Agreement, to execute or implement any of the following:

- (a) The original Services for which Contractor was hired;
- (b) Completion of the original Services by others;
- (c) Subsequent additions to the original Services; and/or
- (d) Other City projects.

7.5 Deliverables and Format. Contractor must provide electronic and hard copies of the Work Product, on recycled paper and copied on both sides, except for one single-sided original.

8. RECORDS

Contractor must maintain complete and accurate accounting records relating to its performance in accordance with generally accepted accounting principles. The records must include detailed information of Contractor’s performance, benchmarks and deliverables, which must be available to City for review and audit. The records and supporting documents must be kept separate from other records and must be maintained for four (4) years from the date of City’s final payment.

Contractor acknowledges that certain documents generated or received by Contractor in connection with the performance of this Agreement, including but not limited to correspondence between Contractor and any third party, are public records under the California Public Records Act, California Government Code section 6250 et seq. Contractor shall comply with all laws regarding the retention of public records and shall make such records available to the City upon request by the City, or in such manner as the City reasonably directs that such records be provided.

9. ASSIGNMENT

Contractor shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of City. Any attempt to do so will be null and void. Any changes related to the financial control or business nature of Contractor as a legal entity is considered an assignment of the Agreement and subject to City approval, which shall not be unreasonably withheld. Control means fifty percent (50%) or more of the voting power of the business entity.

10. PUBLICITY / SIGNS

Any publicity generated by Contractor for the project under this Agreement, during the term of this Agreement and for one year thereafter, will reference the City’s contributions in making the project possible. The words “City of Cupertino” will be displayed in all pieces of publicity, including flyers, press releases, posters, brochures, public service announcements, interviews and

newspaper articles. No signs may be posted, exhibited or displayed on or about City property, except signage required by law or this Contract, without prior written approval from the City.

11. INDEMNIFICATION

11.1 To the fullest extent allowed by law, and except for losses caused by the sole and active negligence or willful misconduct of City personnel, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, officials, employees, agents, servants, volunteers, and consultants (“Indemnitees”), through legal counsel acceptable to City, from and against any and all liability, damages, claims, actions, causes of action, demands, charges, losses, costs, and expenses (including attorney fees, legal costs, and expenses related to litigation and dispute resolution proceedings) of every nature, arising directly or indirectly from this Agreement or in any manner relating to any of the following:

- (a) Breach of contract, obligations, representations, or warranties;
- (b) Negligent or willful acts or omissions committed during performance of the Services;
- (c) Personal injury, property damage, or economic loss resulting from the work or performance of Contractor or its subcontractors or sub-subcontractors;
- (d) Unauthorized use or disclosure of City’s confidential and proprietary Information;
- (e) Claim of infringement or violation of a U.S. patent or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.

11.2 Contractor must pay the costs City incurs in enforcing this provision. Contractor must accept a tender of defense upon receiving notice from City of a third-party claim. At City’s request, Contractor will assist City in the defense of a claim, dispute, or lawsuit arising out of this Agreement.

11.3 Contractor’s duties under this section are not limited to the Contract Price, workers’ compensation payments, or the insurance or bond amounts required in the Agreement. Nothing in the Agreement shall be construed to give rise to an implied right of indemnity in favor of Contractor against City or any Indemnitee.

11.4. Contractor’s payments may be deducted or offset to cover any money the City lost due to a claim or counterclaim arising out of this Agreement, a purchase order, or other transaction.

11.5. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subcontractor, or any other person or entity involved by, for, with, or on behalf of Contractor in the performance of this Agreement. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

11.6. This Section 11 shall survive termination of the Agreement.

12. INSURANCE

Contractor shall comply with the Insurance Requirements, attached and incorporated here as **Exhibit D**, and must maintain the insurance for the duration of the Agreement, or longer as required by City. City will not execute the Agreement until City approves receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Failure to comply with this provision

may result in City, at its sole discretion and without notice, purchasing insurance for Contractor and deducting the costs from Contractor's compensation or terminating the Agreement.

13. COMPLIANCE WITH LAWS

13.1 General Laws. Contractor shall comply with all local, state, and federal laws and regulations applicable to this Agreement. Contractor will promptly notify City of changes in the law or other conditions that may affect the Project or Contractor's ability to perform. Contractor is responsible for verifying the employment authorization of employees performing the Services, as required by the Immigration Reform and Control Act.

13.2 Labor Laws. Contractor shall comply with all labor laws applicable to this Agreement. If the Scope of Services includes a "public works" component, Contractor is required to comply with prevailing wage laws under Labor Code Section 1720 and other labor laws.

13.3 Discrimination Laws. Contractor shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS), or any other protected classification. Contractor shall comply with all anti-discrimination laws, including Government Code Sections 12900 and 11135, and Labor Code Sections 1735, 1777, and 3077.5. Consistent with City policy prohibiting harassment and discrimination, Contractor understands that harassment and discrimination directed toward a job applicant, an employee, a City employee, or any other person, by Contractor or its employees or sub-contractors will not be tolerated. Contractor agrees to provide records and documentation to the City on request necessary to monitor compliance with this provision.

13.4 Conflicts of Interest. Contractor shall comply with all conflict of interest laws applicable to this Agreement and must avoid any conflict of interest. Contractor warrants that no public official, employee, or member of a City board or commission who might have been involved in the making of this Agreement, has or will receive a direct or indirect financial interest in this Agreement, in violation of California Government Code Section 1090 et seq. Contractor may be required to file a conflict of interest form if Contractor makes certain governmental decisions or serves in a staff capacity, as defined in Section 18700 of Title 2 of the California Code of Regulations. Contractor agrees to abide by the City's rules governing gifts to public officials and employees.

13.5 Remedies. Any violation of Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursements or terminating this Agreement. City reserves all other rights and remedies available under the law and this Agreement, including the right to seek indemnification under Section 11 of this Agreement.

14. PROJECT COORDINATION

City Project Manager. The City assigns Susan Michael as the City's representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Scope of Services. City reserves the right to substitute another Project manager at any time, and without prior notice to Contractor.

Contractor Project Manager. Subject to City approval, Contractor assigns _____ as its single Representative for all purposes under this

Agreement, with authority to oversee the progress and performance of the Scope of Services. Contractor's Project manager is responsible for coordinating and scheduling the Services in accordance with the Scope of Services and the Schedule of Performance. Contractor must regularly update the City's Project Manager about the progress with the work or any delays, as required under the Scope of Services. City written approval is required prior to substituting a new Representative.

15. ABANDONMENT OF PROJECT

City may abandon or postpone the Project or parts therefor at any time. Contractor will be compensated for satisfactory Services performed through the date of abandonment, and will be given reasonable time to assemble the work and close out the Services. With City's pre-approval in writing, the time spent in closing out the Services will be compensated up to a maximum of ten percent (10%) of the total time expended to date in the performance of the Services.

16. TERMINATION

City may terminate this Agreement for cause or without cause at any time. Contractor will be paid for satisfactory Services rendered through the date of termination, but final payment will not be made until Contractor closes out the Services and delivers the Work Product.

17. GOVERNING LAW, VENUE, AND DISPUTE RESOLUTION

This Agreement is governed by the laws of the State of California. Any lawsuits filed related to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California. Contractor must comply with the claims filing requirements under the Government Code prior to filing a civil action in court. If a dispute arises, Contractor must continue to provide the Services pending resolution of the dispute. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

18. ATTORNEY FEES

If City initiates legal action, files a complaint or cross-complaint, or pursues arbitration, appeal, or other proceedings to enforce its rights or a judgment in connection with this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs.

19. THIRD PARTY BENEFICIARIES

There are no intended third party beneficiaries of this Agreement.

20. WAIVER

Neither acceptance of the Services nor payment thereof shall constitute a waiver of any contract provision. City's waiver of a breach shall not constitute waiver of another provision or breach.

21. ENTIRE AGREEMENT

This Agreement represents the full and complete understanding of every kind or nature between the Parties, and supersedes any other agreement(s) and understanding(s), either oral or written, between the Parties. Any modification of this Agreement will be effective only if in writing and signed by each Party's authorized representative. No verbal agreement or implied covenant will be valid to amend or abridge this Agreement. If there is any inconsistency between any term, clause, or provision of the main Agreement and any term, clause, or provision of the attachments or exhibits thereto, the terms of the main Agreement shall prevail and be controlling.

22. INSERTED PROVISIONS

Each provision and clause required by law for this Agreement is deemed to be included and will be inferred herein. Either party may request an amendment to cure mistaken insertions or omissions of required provisions. The Parties will collaborate to implement this Section, as appropriate.

23. HEADINGS

The headings in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit, or amplify the terms or provisions of this Agreement.

24. SEVERABILITY/PARTIAL INVALIDITY

If any term or provision of this Agreement, or their application to a particular situation, is found by the court to be void, invalid, illegal, or unenforceable, such term or provision shall remain in force and effect to the extent allowed by such ruling. All other terms and provisions of this Agreement or their application to specific situations shall remain in full force and effect. The Parties agree to work in good faith to amend this Agreement to carry out its intent.

25. SURVIVAL

All provisions which by their nature must continue after the Agreement expires or is terminated, including the Indemnification, Ownership of Materials/Work Product, Records, Governing Law, and Attorney Fees, shall survive the Agreement and remain in full force and effect.

26. NOTICES

All notices, requests and approvals must be sent in writing to the persons below, which will be considered effective on the date of personal delivery or the date confirmed by a reputable overnight delivery service, on the fifth calendar day after deposit in the United States Mail, postage prepaid, registered or certified, or the next business day following electronic submission:

| | |
|--|--|
| <p>To City of Cupertino Department of Public Works 10300 Torre Avenue Cupertino, CA 95014</p> <p>Attention: Susan Michael Email: susanm@cupertino.gov_</p> | <p>To Contractor: _____</p> <p>Attention: _____ Email: _____</p> |
|--|--|

27. EXECUTION

The person executing this Agreement on behalf of Contractor represents and warrants that Contractor has full right, power, and authority to enter into and carry out all actions contemplated by this Agreement and that he or she is authorized to execute this Agreement, which constitutes a legally binding obligation of Contractor. This Agreement may be executed in counterparts, each one of which is deemed an original and all of which, taken together, constitute a single binding instrument.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed.

CITY OF CUPERTINO

CONTRACTOR

A Municipal Corporation

By _____

Name _____

Title _____

Date _____

By _____

Name _____

Title _____

Date _____

APPROVED AS TO FORM:

CHRISTOPHER D. JENSEN

Cupertino City Attorney

ATTEST:

KIRSTEN SQUARCIA

City Clerk

DATE: _____

Exhibit A

SCOPE OF WORK

The City will contract with a Consultant that to provide project management, construction management, inspection, and material testing services during design and construction of the Project. The City is seeking Consultants with engineering, project management, construction management, inspection, and material testing experience with projects of similar scopes.

A. Project Description:

- Project Name: Photovoltaic Systems Design and Installation Project
- City Project No.: 2025-02
- Estimated Construction Contract Cost: \$ 4,800,000
- Estimated Working Days: 400
- Anticipated Start of Work: February 2025

Background Information:

The Net Energy Metering (“NEM”) program is administered by the California Public Utilities Commission and provides credits to a building’s utility bill for producing excess on-site clean energy over a 20-year period. In 2023 PG&E announced a new NEM3 rate that signified a decrease for electricity generated by photovoltaic (“PV”) systems but provided a window to allow grandfathering the more economically attractive NEM 2.0 rates if interconnection applications were successfully submitted and corresponding systems operational by 2026.

NEM 2.0 Interconnection Applications were successfully submitted to PG&E for five Cupertino facilities. This Project aims to design and build PV systems at three of these five locations: Community Hall, Quinlan Community Center, and Cupertino Sports Center.

NEM 2.0 projects must be completed by April 15, 2026 to receive the incentive. Otherwise, the NEM 3.0 program, that offers reduced incentives/savings, would need to be pursued. NEM 2.0 provides 75 - 80% greater compensation than NEM 3 rates for electricity that is fed back into the electrical system. The savings in utility costs are projected to be approximately \$500,000 annually, and \$26.5 million over a 30yr lifespan.

This Capital Improvement Programs (CIP) project was approved by the Cupertino City Council (Council) as part of the Fiscal Year (FY) 24-25 annual budget at an overall budget of \$ 6.3 million. This includes all project costs from initiation to completion.

The City is in the process of evaluation statements of qualification (SOQs) from Design Build Entities (DBEs). Proposers can review the documentation provided as part of that RFP process to gain a better understanding of the project scope and existing conditions. The RFP and Addendums are Attachment E. The Bridging Documents are a part of Attachment E.

The project qualifies for the direct pay program of the Inflation Reduction Act (IRA). This requires application

and submittal of documentation at the project's completion. The DBE will be an active participant in the application process. A similar goal for the project is to qualify for the "Build America Buy America Act" discount for domestic content procurement at the end of the project [which will have specific accounting requirements].

The Consultant shall have a suitable file sharing method for the City to obtain documentation real time.

B. Project Team

The Consultant is responsible for providing a team of qualified personnel to deliver the Project on schedule, per specifications, and within budget. The Consultant shall provide all necessary key personnel for the project, including a Project Manager[s], and Construction Inspector[s], (the Team) along with all other supporting staff necessary to provide for the administration of this project. The Consultant key personnel identified in the proposal may not be substituted during the course of the project without written approval of the City.

The City requires that the Consultant's proposal includes quality assurance Material Testing services to ensure the projects complies with the City's Quality Assurance Program as shown in Attachment D. Specifically, all sampling and testing personnel shall have proper certifications, all laboratories shall have proper qualifications, and all equipment is verified to be calibrated.

Firm Experience:

The ideal firm would provide a Team that has the experience to fulfill the City's needs and administer the project per project plans, specifications, and budget as well as complying with project delivery requirements appropriate for federally-funded projects.

1. Project Manager

The Project Manager must at a minimum meet the desired qualifications and experience as described below:

- Is a California registered professional civil engineer or directly reports to a professional civil engineer
- Has over 6 years of experience with project management/construction management of projects that includes oversight of similar design and construction projects
- Communicates on a regular basis with [client] on project status
- Supervises assigned personnel
- Makes recommendations to City staff for change orders and time extensions
- Manages project budget
- Provides expert assistance on construction matters for design and construction
- Conducts weekly construction meetings
- Proficient in writing reports, memos, letters, and contract documentation
- The ability to foresee, anticipate, plan, coordinate and execute the scheduling of critical path project activities well in advance of actual construction
- Familiarity with the requirements of federally-funded project processes and documentation.

2. Construction Inspector

The Construction Inspector(s) (CI) must at the minimum meet the desired qualifications and experience as described below:

- Has over 4 years of experience with construction inspection of projects that include oversight of similar construction projects
- Proficient in writing reports, memos, letters, and contract documentation
- The ability to accept direction from City staff in a positive and open manner
- Can provide firm and clear directions to contractors
- Can communicate well with members of the public when required.

C. Services to be Provided:

Listed below are tasks that proposers are expected to incorporate into the proposed scope of services. Each consultant or consultant team should, based on their expertise, develop a comprehensive and detailed scope of services necessary to complete the project. The proposer may propose modifications to the individual tasks or the entire scope of services if the proposer can demonstrate innovative, advanced, and well-considered methodologies that the City may not have specifically identified in the scope of services. Any proposed modifications shall be identified as optional items and prices out separately.

Task 1 – Design Phase Project Management

1A. Project Management:

- Design Phase weekly meeting attendance
- Constructability review of schematic design proposals (50% progress) and design development proposals (85%), including cost analysis
- 100% construction documentation constructability review, including cost analysis.
- Permit application support
- Budget and Schedule reviews
- Progress Payments to DBE

1B. Procurement Review and Analysis

Task 2 – Construction Phase Project Management

2A. Pre-Construction: pre-construction meeting, pre-construction jobsite documentation, and project setup

2B. Project Management:

- Submittals, Impacts and Schedule Analysis
- Change Order Management
- Progress Payments
- Contract Claims Review and Support
- Project Closeout and Record Drawings

2C. Construction Inspection:

- Storm Water Pollution Prevention

- Daily Field Inspection and Documentation
- Special Inspections
- Material Testing

SECTION D: PROJECT WORK PLAN AND APPROACH

Exhibit A, B & C

4LEAF is proposing to provide **PM and CM Services for the CIP Photovoltaic Systems Design and Installation Project**. Our approach to providing PM and CM Services will be to develop and maintain a collaborative approach with the City; the DBE; various utility providers, project stakeholders, and the Public.

DESIGN PHASE

The general, anticipated tasks that will be performed in support of these services will include the following.

- Meet with City staff to discuss each of the three photovoltaic projects scopes, funding source(s), schedules, budgets, various project stakeholders including various City departments, the Design-Build Entity, 3rd-party utility providers, and nearby businesses and/or residents.
- Prepare information for City Staff Reports and attend City Council or Planning Commission meetings as requested by the City's CIP Manager.
- Manage the design phase activities including:
 - Hold regularly scheduled meetings with the City and the DBE to ensure the projects remain on schedule and budget.
 - Identify any long-lead-time items (e.g. environmental permits or biological/cultural resource surveys, encroachment permits, utility conflicts, material procurement, etc.).
 - Assist the DBE with permit applications as needed.
 - Manage the DBE for performing any pre-design activities (e.g. geotechnical investigations, potholing, identifying potential utility conflicts, and evaluating potential impacts and resolutions for impacts to reduced parking spaces during construction).
 - Manage and maintain communication between the various project stakeholders and manage the DBE through the development of various iterations of the plans, project manual, and cost estimate packages.
 - Review and process the DBE's progress payments and recommend for payment to the City during the design phase. Routinely review the project budget and schedule with the DBE to ensure milestones are met.
- Manage the process for preparing and submitting Federal funding applications for elective pay under the Inflation Reduction Act and Build America Buy America Act provisions.

PRE-CONSTRUCTION PHASE

The pre-construction phase of the project will include the following key tasks.

Perform Pre-Construction Project Site Condition Inspection

Using digital and/or video cameras, 4LEAF's staff will record the existing conditions of the three project sites and area(s) of new construction before the contractor starts work, during construction, and then again at the completion of construction activities. This documentation will be a useful tool in identifying and/or assigning ownership of any damage to existing City or privately owned facilities once work begins. If it isn't already a contract requirement, we recommend that the Design-Build Entity performs the same documentation to adequately protect the City and themselves from outside influences on the areas where they will be performing their work.



Project Files

4LEAF will utilize the City's cloud-based CIP PM application and Share Point for recording, logging, storing, and retrieving information pertaining to all technical, financial, and administrative aspects of the Project. 4LEAF has utilized the City's CIP PM application on numerous City projects.

Pre-Construction Meeting

The 4LEAF team will conduct a pre-construction conference with the project team including City staff, the DBE and subcontractors, and other interested parties. Some of the topics to be discussed at the pre-construction conference will include:

- Performing introductions and identifying roles/responsibilities.
- Discussing lines of communication and authority for City, DBE, and various project stakeholders.
- Identifying the status of notifications made to underground utilities and protocols for submitting notices to Underground Service Alert (USA).
- Coordinating with any other nearby projects under construction to the three project areas.
- Establish a collaborative role for every on-site worker to maintain the public's safety.
- Identifying construction phasing, scheduling, and staging information including where the Design-Build Entity may stage equipment and materials during the three projects.
- Discussing material inspection requirements and coordination.
- Discussing cooperation with the public, minimizing impacts to available parking spaces in areas impacted by the construction activities, allowable work hours and procedures for public work notices, and any signage that will need to be installed in the construction areas.
- Discussing the DBE's Baseline Schedule.
- Discussing required DBE submittals.
- Discussing procedures for submitting and approving the DBE's pay requests and anticipated dates pay requests.
- Discussing the process for submitting RFIs, change orders, submittals, etc.
- Discuss mobilization and any additional issues that need to be resolved before work commences.

CONSTRUCTION PHASE

4LEAF's proposed PM/CM/Inspector will perform on-site inspections to check the quality and quantity of the work performed by the DBE and guard the City against defects and deficiencies in the work by the DBE. As necessary, we will inspect construction means, methods, techniques, and sequences to evaluate the DBE's compliance with the intent of the construction documents and recommend necessary remedial action as required.

Progress Meetings

4LEAF will schedule, prepare agendas for, chair, and provide minutes for all meetings including the weekly progress meetings, periodic meetings with the City, as well as any additional stakeholder meetings that may be necessary to successfully complete the project.

The *weekly progress meeting* will be used to review the DBE's 3-week look ahead schedules (highlighting critical project activities, operations, and necessary coordination), open issues, status of submittals and open RFIs, deficient work, stormwater and erosion control concerns, and safety concerns.

Review DBE Submittals

The contractor will be required to prepare detailed submittal items (such as emergency contacts, phased traffic control plans for parking areas that will not be available during construction, baseline schedule, Erosion Control Plan (ECP), etc.). As a design-build project, the DBE will prepare all technical submittals identified in the bridging documents prior to submitting to our Construction Manager. 4LEAF's Construction Manager will review the

submittals for completeness and ensure that each component meets the design intent of the bridging documents. Our Construction Manager will also review the technical submittals to ensure they meet the City's standards (e.g. concrete mix designs). For non-technical submittals (such as traffic control plans, construction phase plans, etc.) our Construction Manager will review the submittals and either respond directly to the DBE or provide our insight to the City's CIP Project Manager for their concurrence with our assessment. The RFI process will be dealt with in the same manner.

PM, CM, Field Inspection, and Quality Assurance

4LEAF's on-site staff will observe and monitor the progress of the work in accordance with the plans, specifications, and contract documents and in alignment with the construction schedule; including work that affects on-site traffic control and the ECP. Progress photos will be taken, and daily inspection reports will be prepared using the report format required or requested by the City. The information on the daily reports will include but will not be limited to weather, shift hours, traffic controls that are in place (both vehicles and pedestrian), ECP control measure conditions, work activities, labor, and equipment hours, work complete, quantities, and other related information and discussions.

4LEAF's staff will complete Weekly Statement of Working Days (WSWD) reports providing a snapshot of the project progress including contract time elapsed, weather conditions, working and non-working days counted for the week, time extensions, computation of current Estimated Completion Date, and controlling operations progress made for the week. As controlling operations are performed, 4LEAF's staff will collect certificates of compliance, engineered fill material tags, AC and concrete batch tags, and bills of lading for materials delivered to the site. Our staff will then compare these documents to the approved submittals to ensure proper materials are being used on site. Our staff will first communicate verbally with the DBE for any items installed that do not meet the project requirements. A more formal written notice [e.g. a Non-Conformance Report (NCR)] will be submitted to the DBE if the non-compliant items are not corrected in a timely manner. Although 4LEAF's staff will not be contracted to be the project safety officers, we would make the contractor aware of unsafe conditions we notice on the job site throughout the life of the project.

4LEAF will do a thorough review of the DBE's monthly progress payment requests to ensure the City is only making payments for work completed each month or those items that are allowed in the DBE's contract. The monthly measurements and calculations will come from the quantities measured and reported on the inspector's daily reports. Before the start of construction, 4LEAF and the DBE will develop a procedure that is acceptable to the City for submitting and reviewing monthly progress payments and the final payment. We will review the DBE's schedule of values for bid items and segregate them into a form that is acceptable to the City for reimbursement. 4LEAF staff will review the DBE's payment requests and will compare them to the quantities calculated and measured on the Quantity Data Sheets. If payment for materials on hand is allowed in this contract, we will verify the materials on the job site, or coordinate with the DBE for source verification at the time of the payment request.

After 4LEAF and the DBE agree on the monthly progress payment amount, 4LEAF's Construction Manager will prepare the final progress payment request using the form and procedure previously approved by the City (showing work completed each month, work completed to date, percentage completed for each item, and any applicable deductions to the net payment) for approval and execution by the City. Additionally, 4LEAF will provide a project progress summary in the monthly status report. This summary will include the percentage of the budget spent and the percentage of working days used.

Public Outreach

Although public works improvement projects will encounter standard construction issues, our experience and knowledge of how to address these types of issues place those in the manageable category and are inherent to the job. Completing the construction process alone is not enough to deliver a successful project. During construction, the project must minimize the impact to the community to gain their trust in meeting the City's commitment to them. Construction activities will likely result in the temporary loss of highly utilized parking spaces and Public streets may experience increased contractor vehicular for deliveries of construction materials. With our experience managing the construction of these types of projects, we understand the need to communicate effectively with the public, keep them informed of planned activities and when schedules change, and address their concerns in a timely manner. Public forums and other advanced notices are a great start for the community at large; however, once construction begins it becomes more of an individual effort as the residents will be more concerned with the direct impact to them as opposed to the community in general.



4LEAF's staff can assist the City with public outreach activities by making an initial site visit to City offices, residences, and businesses in the vicinities of the three project locations and provide them with our contact information. Although the main impacts will be to the Public using these sites, we will ensure that all nearby businesses and residences have adequate warning prior to construction. Follow-up visits will be performed once the DBE's 3-week look-ahead schedule is provided, and we know the exact dates of when work will directly impact their locations. Individual businesses and residences need to know when they will be directly impacted and that we will listen to their concerns including that access to their residence will be maintained, traffic controls will be monitored and maintained throughout the project, construction noise will be minimized to the extent possible and only allowed during approved hours, notices and barriers outlining the areas of parking that are closed during construction will be maintained per the project's requirements, etc. They need to know we care about their concerns and will do whatever possible to minimize the impact.

Traffic Control

4LEAF's staff will continuously monitor the contractor's traffic and construction zone boundary control measures and ensure they are in place before the start of each workday, maintained throughout the workday, and in place at the end of each workday. This will include ensuring the contractor provides all the required notification signage for parking areas that are temporarily unavailable and the appropriate number of flagmen.

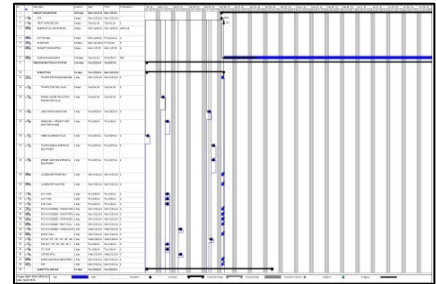


Schedule Management

4LEAF's staff will perform a detailed review of the Design-Build Entity's baseline schedule to ensure all the controlling operation durations, critical path, and order of work follow a logical sequence to the project completion. We will then monitor the contractor's progress throughout the project and compare it to their baseline schedule, so we can identify any deviations of the contract completion date as soon as possible; therefore, giving the contractor ample time to develop and present their plan for getting the project back on schedule. With such a critical completion date, it is vitally important that our Construction Manager works with the DBE to ensure that the final completion deadline is met.

To accomplish tasks in the time frame allotted and to further ensure the success of the project, we will do the following to provide good schedule management throughout the project:

- We will consistently review and monitor the project schedule to ensure the DBE is routinely updating the schedule and providing 3-week look-ahead schedules. We will request monthly critical path method (CPM) schedule updates are provided with pay applications, and track delays or accelerations based on actual construction activities.
- We will continually assess critical project items to assist in determining the best use of schedule float in the DBE's CPM schedules to avoid downtime.
- We will coordinate regularly with the City regarding all construction activities and impacts to the baseline and 3-week look-ahead schedules.
- We will recommend introducing various phasing options to deal with potential worst-case scenarios in scheduling for the project such as concurrent project delays, inclement weather delays, etc.
- We will include "what if" meetings as the project progresses; for example, what if we accelerate a portion of construction- how would that affect the overall CPM.



If schedule slippage occurs, we will immediately meet with the DBE to discuss ways to accelerate other portions of work. Another way to accommodate slippage in the schedule is to re-sequence work to make up for lost time.

Labor Compliance Monitoring

Our cost proposal does not include budget for detailed or in-depth labor compliance monitoring services. 4LEAF staff will provide intermittent and cursory reviews of the DBE and their subcontractor's certified payroll information that is provided with their pay applications. As outlined in the RFP Addendum No. 4, the DBE will be responsible for their own labor compliance, but we will request the DBE provide records of certified payrolls that are submitted to the California's Department of Industrial Relations (DIR) project portal on a monthly basis. Our labor compliance does not include an in-depth review of contractor and subcontractor certified payrolls. If more in-depth labor compliance services are requested, we can request a written cost proposal for these services from our subconsultant, Contractor Compliance & Monitoring (CCMI), and submit a revised Cost Proposal to include these services.

Cost Management

Progress payments received from the DBE will be reviewed, verified, and processed with recommendations for action. Payment requests, which must be returned to the DBE, will be returned with a written explanation of any deficiencies in the payment request. *Other financial controls 4LEAF will provide include the following:*

- We will review the project budget continually, performing "what if" scenarios to better manage costs and cash flow as the project moves forward.
- We will establish, implement, and maintain cost monitoring and control procedures.
- We will carefully document all information related to manpower, equipment, and time for extra or force account work.
- We will work with the DBE to ensure that proper documentation is maintained in order to apply for federal elective pay provisions of the Inflation Reduction Act and material credits in the Build America Buy America Act.

QA Materials Testing

4LEAF will coordinate and schedule special inspections and materials testing with our team firm, CTS, for as-needed materials testing and special inspections, both on site and at off-site fabrication sites as necessary. These inspections will be conducted in accordance with the project or relevant City Standard Specifications and additional project specific QA requirements. 4LEAF will receive documentation for all tests, including retests, and observe and document the testing. We will notify the DBE immediately of any non-compliant test results and

maintain test reports and logs of any verification tests performed.

Contract Modifications, Extra Work, Change Orders and Claims

4LEAF will meet with the City to discuss utilizing any existing City change order tracking systems that are currently in place as well as suggest protocols for use on the project. Using the project's contract documents or Caltrans standards, 4LEAF will provide the City with assurance that the DBE is not presenting requests for change orders that are already included in the original scope of the contract. Our Project/Construction Manager and/or Inspector will meet face-to-face with the DBE's representative to gather more information on the nature of the potential change order. We will ensure all potential changes and extra work requests to the contract have been reviewed and evaluated for cost and time impacts and properly justify a response to the contractor. As this is a design-built project, we will apply an increased level of scrutiny to claims, specifically any design changes that could have been reasonably anticipated. 4LEAF's Project/Construction Manager will review requests for change orders and extra work requests from the DBE for contractual and technical merit and prepare independent cost estimates and schedule analysis for the proposed work. If directed by the City, 4LEAF can negotiate change orders on behalf of the City and prepare all required documents for execution by the City and the DBE. 4LEAF's Project/Construction Manager will keep the City informed of the cumulative cost and time impacts to the contract through a CCO log that will be updated upon execution of each change order. 4LEAF will take no action without the review and approval of the City.

| CHANGE ORDER | |
|--|-------------------|
| Date: | Change Order No.: |
| [Contractor/Remodeler Name] is directed to make the following changes: | |
| Reason for Change: | |
| Cost for Change: | |
| Original Contract Amount: | \$ _____ |
| Total Prior Changes: | \$ _____ |
| Total Amount of This Change: | \$ _____ |
| Total Contract Amount With All Changes: | \$ _____ |
| Time for Change: | |
| Original Estimated Completion: | _____ |
| New Estimated Completion Date With All Change Orders: | _____ |
| [Contractor/Remodeler Name] | |
| By: | _____ |
| Its: | _____ |
| [Owner] | |

We pride ourselves on maintaining positive working relationships with the contractors that we work with, resulting in addressing most issues early enough to avoid potential claims. There will be times, however, when mutual agreements on issue resolution cannot be achieved. At that point, the DBE may issue a Notice of Potential Claim. If we become aware of a potential claim, 4LEAF will require the DBE to submit documentation supporting the claimed delay (including a time-impact analysis).

4LEAF's staff will compare the DBE's initial baseline schedule, revised schedules, actual time of work activity, the DBE's operational efficiencies, and our daily inspection reports to determine the source and contractual responsibility for all delay claims. If the analysis results in a City-approved resolution that favors the DBE's stance on the issue, a CCO will be recommended. If this action does not adequately resolve the potential claim, 4LEAF's Construction Manager will generate and compile all backup data, copies of reports, and correspondence that pertain to the Notice of Potential Claim on the issue. We will include this backup data in a claim settlement report package in case the contractor goes through a claim on the unresolved issue. All such packages will be forwarded to the City with a cover letter with the facts as 4LEAF sees them and recommends actions, if any. A log of Notices of Potential Claims will be prepared and updated for discussion at regular City meetings and/or weekly progress meetings. We will work with the contractor on every unresolved issue throughout the life of the project with the goal of coming to a mutually agreeable resolution with the contractor prior to it escalating to higher levels of management.

POST-CONSTRUCTION PHASE

The post-construction and contract closeout phases consist of three distinct closeout elements: physical closeout, document closeout, and fiscal closeout.

Physical closeout consists of a series of inspections performed to document that the work is complete to one of two levels: (1) Substantial Completion – when work, or a designated portion of the work, is sufficiently complete



that the client or the public may utilize it; or (2) Final Completion – acceptance by the client that the project is completed in full.

Applicable certificates will be issued at each stage of completion, and punch lists will be updated during each inspection.

Document closeout is the process of assembling and transferring the required contract files from 4LEAF to the City when the contract is complete. Documents typically include project correspondence, change orders, change notices, RFIs, submittals, warranties, and claims. 4LEAF will prepare a completion report that includes all the necessary documents and provide a hard copy and electronic copy of the report to the City. 4LEAF's staff will compare the contractor's "as-builts" to his as-builts and will submit drawings to the designer.

Fiscal closeout includes the review of contract administration (submittal log, RFI log, punch lists, etc.), accounting, and financial functions to confirm they are coordinated with physical closeout functions to ensure that no outstanding financial liability is present after the final payments/retentions are made to the contractor.

**Cost Estimate to Perform Project Management, Construction Management, and Inspection Services
for the City of Cupertino Photovoltaic Systems Design and Installation Project**

January 27, 2025

| Task | Sub Task | Task Description | PIC (4LEAF) | Project Manager / Construction Manager (4LEAF) | Construction Inspector (4LEAF) | Public Works Inspector Apprentice | Total Hours Per Task | Cost Per Task | Notes |
|----------|----------|---|--------------|--|--------------------------------|-----------------------------------|----------------------|------------------|----------------------------|
| | | Hourly Rate | \$207 | \$175 | \$175 | \$98 | | | See Notes (a), (b), & (c). |
| 1 | | Design Phase Support | Hours | Hours | Hours | | Hours | | |
| | 1a | Prepare for and Hold Introductory Meeting w/ the City and the City-contracted DBE. | 2 | 4 | 0 | | 6 | \$1,114 | See Note (d). |
| | 1b | Perform Design Project Management Tasks. | 2 | 170 | 0 | | 172 | \$30,164 | See Note (e). |
| | 1c | Manage Process for Federal Funding Applications. | 0 | 80 | 0 | | 80 | \$14,000 | |
| | | Task 1 Subtotal: | 4 | 254 | 0 | | 258 | \$45,278 | |
| 2 | | Pre-Construction Phase | Hours | Hours | Hours | | Hours | | |
| | 2a | Setup Project in City's CIP PM System. | 2 | 16 | 0 | | 18 | \$3,214 | |
| | 2b | Prepare for and Chair Virtual Pre-Construction Conference. | 1 | 8 | 0 | | 9 | \$1,607 | |
| | 2c | Receive and Process Contractor's early Submittals, RFIs, and Misc. Correspondence. | 0 | 24 | 0 | | 24 | \$4,200 | |
| | 2d | Miscellaneous Tasks. | 0 | 24 | 0 | | 24 | \$4,200 | |
| | | Task 2 Subtotal: | 3 | 72 | 0 | | 75 | \$13,221 | |
| 3 | | Construction Phase | Hours | Hours | Hours | | Hours | | |
| | 3a | Perform PM and CM Tasks. | 0 | 390 | 0 | | 390 | \$68,250 | See Note (f). |
| | 3b | Perform As-Needed Inspections. | 0 | 0 | 130 | | 130 | \$22,750 | See Note (g). |
| | 3c | Materials Testing and Special Inspections (CTS). | | | | | | \$15,000 | See Note (h). |
| | 3d | Administrative Processing Fee On Subconsultants (5%). | | | | | | \$750 | |
| | | Task 3 Subtotal: | 0 | 390 | 130 | | 520 | \$106,750 | |
| 4 | | Project Closeout Phase | Hours | Hours | Hours | | Hours | | |
| | 4a | Update Punch List, Perform Final Inspections, Coordinate Final Inspections with City Inspectors, and Provide Conformed Set of Red-Lined Set of Drawings to DBE for Preparing As-Built Drawings. | 0 | 30 | 0 | | 30 | \$5,250 | |
| | 4b | Project Closeout Tasks. | 0 | 40 | 0 | | 40 | \$7,000 | |
| | | Task 4 Subtotal: | 0 | 70 | 0 | | 70 | \$12,250 | |
| 5 | | Public Works Inspection Apprenticeship (if Required) | Hours | Hours | Hours | Hours | Hours | | |
| | 5a | Provide Public Works Inspection Apprentice | 0 | 0 | 0 | 26 | 26 | \$2,544 | See Notes (a) and (b). |
| | | Task 5 Subtotal (Apprentice Only) | 0 | 0 | 0 | 26 | 26 | \$2,544 | |
| | | | | | | | | | |
| | | TOTALS (4LEAF + Apprentice if required): | 7 | 786 | 130 | 26 | 949 | \$180,043 | |

Notes:

- (a) Assumes project will require compliance with California Prevailing Wage rate requirements under SB 854, and the Client will be required to file a PWC-100 Form to the California Department of Industrial Relations for the project.
- (b) Per the requirements being enforced under SB 854 and because it is assumed that a PWC-100 Form will be filed by the City to the CA DIR, 4LEAF is required to notify an authorized Apprenticeship Committee through submittal of a DAS-140 form. We are then required to make an official request to an authorized Apprenticeship Committee for an apprentice by submitting a DAS-142 form. We are not assured the apprenticeship committee will be able to provide a suitable / qualified apprentice for the project. Per the apprenticeship requirements, the hours worked by the apprentice must be in a ratio of 1:5 for apprentice to journeyman hours. Hours are included as a placeholder in the event that an apprenticeship for a public works inspector is required and dispatched by the apprenticeship committee. We have assumed the public works apprentice assigned to the project will be classified as a Period 1 Apprentice as defined by the DIR's Wage Determination dated 8/22. In the event that a higher classification apprentice is assigned to the project, we will contact the City to request a change order for this line item.
- (c) 4LEAF staff will be supplied with typical tools of the trade to perform their daily tasks
- (d) Meet to discuss each of the three photovoltaic projects scopes, funding source(s), schedules, budgets, various project stakeholders including various City departments, the Design-Build Entity, 3rd-party utility providers, and nearby businesses and/or residents..
- (e) Assumes a Design Phase duration of 17 weeks at 10 hours per week for 4LEAF's Project Manager.
- (f) Budgetary Estimate only. At the time of preparation of this cost proposal, the City provided a copy of the DBE's Preliminary Construction Schedule. We have assumed a construction duration of 6 months (26 Weeks) and 15 hours/week for performing CM/PM tasks during the Construction Phase of the Project.
- (g) Assumes 5 hours per week at 26 weeks for Construction Inspector during the Construction Phase.
- (h) **Budgetary placeholder only.** We will request a detailed cost estimate from our subconsultant, CTS, at the completion of the Design phase and the 100% plans/specs are available.