

**SERVICE AGREEMENT BETWEEN
THE CITY OF HUNTINGTON BEACH
AND
ECB SOLUTIONS, LLC FOR THE PURCHASE OF
3-PHASE PADMOUNT TRANSFORMER**

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Huntington Beach, a municipal corporation of the State of California, hereinafter called "City," and ECB SOLUTIONS, LLC, hereinafter referred to as "Contractor."

Recitals

- A. The City desires to retain a Contractor having special skill and knowledge in the fabrication of electrical transformers and switchgear.
- B. Contractor represents that Contractor is able and willing to provide such services to the City.
- C. In undertaking the performance of this Agreement, Contractor represents that it is knowledgeable in its field and that any services performed by Contractor under this Agreement will be performed in compliance with such standards as may reasonably be expected from a comparable company or firm in the field.

Contractor has been selected to perform these services pursuant to Huntington Beach Municipal Code Chapter 3.02.

NOW THEREFORE, it is agreed by City and Contractor as follows:

1. Scope of Services

Contractor shall provide all services as described in Exhibit "A," which is attached hereto and incorporated into this Agreement by this reference. These services shall sometimes hereinafter be referred to as the "Project."

Contractor hereby designates Ellis Bledsoe, who shall represent it and be its sole contact and agent in all consultations with City during the performance of this Agreement.

2. City Staff Assistance

City shall assign a staff coordinator to work directly with Contractor in the performance of this Agreement. City may change who is serving as staff

coordinator without prior notice to Contractor.

3. Compensation

a. City agrees to pay, and Contractor agrees to accept as total payment for its services, the rates and charges identified in Exhibit "B." The total sum to be expended under this Agreement, shall not exceed Forty Six Thousand Dollars (\$46,000.00) during the term of this Agreement.

b. Payment by City shall be made within thirty (30) days following receipt of proper invoice, subject to City accounting procedures. Payment need not be made for work which fails to meet the standards of performance set forth in the Recitals which may reasonably be expected by City.

c. Contractor shall be paid pursuant to the terms below:

"Deliverable Items Payment Schedule."

- 20% - at placement of order. [Subject to Change]
- 80% - Upon delivery [Subject to Change]

Unless otherwise specified, invoice(s) shall be sent to the address set forth herein. Invoices shall include the purchase order number, the item(s) City is taking ownership of, total milestone price as determined below, and shall have the word "invoice" with an invoice number printed on the document. Invoice(s) not meeting these requirements will be considered not acceptable. All payments shall utilize a "Net 30" payment cycle from the date the City received a compliant invoice(s)

Each milestone payment shall be invoiced separately and payment shall be made only upon review and approval by the City representative(s) in writing.

4. Late Delivery Charges and Failure to Perform

The parties to this agreement acknowledge that the City shall incur actual damages should the Contractor fail to perform the work as called out in the agreement and specification set forth herein. The parties, specifically agree that a late delivery charge in the amount of \$750 per business day past 60 weeks, as outlined in the proposal, will apply.

The parties also agree that the amount specified is not unreasonable nor punitive in nature and both parties have carefully considered the amount specified and believe it to be a reasonable estimate, for damages and not excessive.

It is, therefore agreed, that the Contractor will pay the City the sum of \$750 per business day for each day the work remains incomplete or otherwise not delivered to the

City. In the event such damages are not paid, the Contractor agrees that the City may deduct the amount thereof from any monies due or that may become due to said Contractor.

Further, should Contractor fail to deliver the total order per the quote six months beyond the quoted schedule, the City shall be entitled to recover the reasonable total increase in price between the quoted price by Contractor and the reasonable estimated price at the time of failure to deliver, including any increases in price for installation, updated design, and any unforeseen costs incurred due to the delay in delivery. The increase in price shall be determined through a competitive procurement process or other process which complies with the City's procurement policies while also ensuring expedient delivery of the order.

5. Term

Time is of the essence of this Agreement. The services of Contractor are to as soon as practicable after the execution of this Agreement by City (the "Commencement Date"). The time for performance of the tasks identified in Exhibit "A" are generally to be shown in Exhibit "A." This schedule and Term may be amended to benefit the Project if mutually agreed to in writing by City and Contractor.

In the event the Commencement Date precedes the Effective Date, Contractor shall be bound by all terms and conditions as provided herein.

6. Extra Work

In the event City requires additional services not included in Exhibit "A" or changes in the scope of services described in Exhibit "A," Contractor will undertake such work only after receiving written authorization from City. Additional compensation for such extra work shall be allowed only if the prior written approval of City is obtained.

7. Hold Harmless

Contractor hereby agrees to protect, defend, indemnify and hold harmless City, its officers, elected or appointed officials, employees, agents, and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands and defense costs, and consequential damage or liability of any kind or nature, however caused, including those resulting from death or injury to Contractor's employees and damage to Contractor's property, arising directly or indirectly out of the obligations or operations herein undertaken by Contractor, caused in whole or in part by any negligent act or omission of the Contractor, any subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including but not limited to concurrent active or passive negligence, except where caused by the active negligence, sole negligence, or willful misconduct of the City. Contractor will conduct all defense at its sole cost and

expense and City shall approve selection of Contractor's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor.

8. Workers Compensation Insurance

Pursuant to California Labor Code Section 1861, Contractor acknowledges awareness of Section 3700 *et seq.* of this Code, which requires every employer to be insured against liability for workers' compensation; Contractor covenants that it will comply with such provisions prior to commencing performance of the work hereunder.

Contractor shall obtain and furnish to City workers' compensation and employer's liability insurance in an amount of not less than the State statutory limits.

Contractor shall require all subcontractors to provide such workers' compensation and employer's liability insurance for all of the subcontractors' employees. Contractor shall furnish to City a certificate of waiver of subrogation under the terms of the workers' compensation and employer's liability insurance and Contractor shall similarly require all subcontractors to waive subrogation.

9. Independent Contractor

Contractor is, and shall be, acting at all times in the performance of this Agreement as an independent contractor herein and not as an employee of City. Contractor shall secure at its own cost and expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for Contractor and its officers, agents and employees and all business licenses, if any, in connection with the Project and/or the services to be performed hereunder.

10. Conflict of Interest

Contractor covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

11. Termination

This Agreement may be terminated by the City upon thirty (30) days written notice of termination. In such event, Contractor shall be entitled to receive and the City shall pay Contractor compensation for all services performed by Contractor prior to receipt of such notice of termination, subject to the following conditions:

a. As a condition of such payment, the Director may require Contractor to deliver to the City all work product completed as of such date, and in such case such work product shall be the property of the City unless prohibited by law, and Contractor consents the City's use thereof for such purposes as the City deems appropriate.

b. Payment need not be made for work which fails to meet the standard of performance specified in the Recitals of this Agreement.

12. Exclusivity and Amendment

This Agreement represents the complete and exclusive statement between the City and Contractor, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Contractor. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Contractor or the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.

13. Assignment

Inasmuch as to this Agreement is intended to secure the specialized services of Contractor, Contractor may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject to this Agreement performed by City personnel or by other Contractors retained by City.

14. City Employees and Officials

Contractor shall employ no City official nor any regular City employee in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement in violation of the applicable provisions of the California Government Code.

15. Notices

Any notices, certificates, or other communications hereunder shall be given either by personal delivery to Contractor's agent (as designated in Section 1 hereinabove) or to City as the situation shall warrant, or by enclosing the same in a sealed

envelope, postageprepaid, and depositing the same in the United States Postal Service, to the addresses below. City and Contractor may designate different addresses to which subsequent notices, certificates or other communications will be sent by notifying the other party viapersonal delivery, a reputable overnight carrier or U.S. certified mail-return receipt requested:

To City:
City ofHuntington Beach
Attn: Director of Public Works
2000 Main Street
Huntington Beach, CA 92648

Contractor:
ECB Solutions, LLC
Attn: Ellis Bledsoe
669 Centerpointe CV
Oxford, MS 38655

16. Consent

When City's consent/approval is required under this Agreement, its consent/approval for one transaction or event shall not be deemed to be a consent/approvalto any subsequent occurrence of the same or any other transactions or event.

17. Modification

No waiver or modification of any language in this Agreement shall be valid unless in writing and duly executed by both parties.

18. Section Headings

The titles, captions, section, paragraph and subject headings, and descriptive phrases at the beginning of the various sections in this Agreement are merely descriptiveand are included solely for convenience of reference only and are not representative of matters included or excluded from such provisions, and do not interpret, define, limit or describe, or construe the intent of the parties or affect the construction or interpretation of any provision of this Agreement.

19. Interpretation of this Agreement

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect theremaining covenants and provisions of this Agreement. No covenant or provision shall bedeemed dependent upon any other unless so expressly provided here. As used in this Agreement, the masculine or neuter gender and singular or plural number shall be deemedto include the other whenever the context so indicates or requires. Nothing contained herein shall be

construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, then the latter shall prevail, and the provision of this Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

20. Duplicate Original

The original of this Agreement and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against any party who has signed it.

21. Immigration

Contractor shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provisions of the United States Code regarding employment verification.

22. Legal Services Subcontracting Prohibited

Contractor and City agree that City is not liable for payment of any subcontractor work involving legal services, and that such legal services are expressly outside the scope of services contemplated hereunder. Contractor understands that pursuant to *Huntington Beach City Charter* Section 309, the City Attorney is the exclusive legal counsel for City; and City shall not be liable for payment of any legal services expenses incurred by Contractor.

23. Confidentially

Contractor recognizes that in the performance of its duties under this Agreement, it must conduct its activities in a manner designed to protect information of a sensitive nature from improper use or disclosure. Contractor warrants that it will use reasonable efforts consistent with practices customary in the facilities management industry in recruiting, training and supervising employees and in otherwise performing its duties hereunder in order to achieve this result. In the furtherance of this, Contractor agrees, at the request of the City, to require its employees to execute written undertakings to comply with the foregoing confidentiality provision.

24. Discrimination

Contractor shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Contractor affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

25. Jurisdiction Venue

This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed and construed in accordance with the laws of the State of California. This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

26. Professional Licenses

Contractor shall, through the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Huntington Beach and all other governmental agencies. Contractor shall notify the City immediately and in writing of his or her inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

27. Attorney's Fees

In the event suit is brought by either party to construe, interpret and/or enforce the terms and/or provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the non-prevailing party.

28. Survival

Terms and conditions of this Agreement, which by their sense and context survive the expiration or termination of this Agreement, shall so survive.

29. Governing Law

This Agreement shall be governed and construed in accordance with the laws

of the State of California.

30. Signatories

Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

31. Entirely

(a) The parties acknowledge and agree that they are entering into this Agreement freely and voluntarily following extensive arm's length negotiation, and that each has had the opportunity to consult with legal counsel prior to executing this Agreement. The parties also acknowledge

(b) and agree that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by that party or anyone acting on that party's behalf, which are not embodied in this Agreement, and that that party has not executed this Agreement in reliance on any representation, inducement, promise, agreement warranty, fact or circumstance not expressly set forth in this Agreement.

(c) All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

32. Effective Date

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers. This Agreement shall be effective on the date of its approval by the Mayor. This Agreement shall expire when terminated as provided herein.

[SIGNATURES ON FOLLOWING PAGE]

CONTRACTOR
ECB SOLUTIONS, LLC

CITY OF HUNTINGTON BEACH, a
municipal corporation of the State of
California

By: _____

Mayor

Print name
ITS: (*circle one*) Chairman/President/
Vice President

City Clerk

AND

By: _____


INITIATED AND APPROVED:

Print name
ITS: (*circle one*) Secretary/Chief Financial
Officer/Asst. Secretary-Treasurer



Director of Public Works

APPROVED AS TO FORM:



City Attorney

REVIEWED AND APPROVED:

City Manager

EXHIBIT "A"

- A. STATEMENT OF WORK: (Narrative of work to be performed)

3-Phase Padmount Transformer (1):

New/reconditioned 1000Kva 3-Ph Padmount Transformer

High Voltage: 4160 D, 60Kv BIL

Low Voltage: 480 Y 277, 30 kV BIL

Taps: 4368, 4264, 4160, 4056, 3952

HV Bushings: (6) 200A Wells & Inserts (dead front, loop feed)

LV Bushings: (4) 8-Hole Spades

Fluid: Mineral Oil

Frequency: 60Hz

Temperature Rise: 65°C

Cooling Class: ONAN

Conductor: Cu/Al

Fusing: Weak Link w/CLF's

Switch: 4 pos. LBOR T-blade Features & Accessories: -Drain-Type Thermometer -

Liquid Level Gauge -Pressure Vacuum Gauge -Pressure Relief Valve -Gas Sampler -

Warranty: 3 Years

- B. CONSULTANT'S DUTIES AND RESPONSIBILITIES:

- C. CITY'S DUTIES AND RESPONSIBILITIES:

- D. WORK PROGRAM/PROJECT SCHEDULE:

EXHIBIT "B"

Payment Schedule (Fixed Fee Payment)

1. CONSULTANT shall be entitled to monthly progress payments toward the fixed fee set forth herein in accordance with the following progress and payment schedules.

Total Not to Exceed - \$46,000.00

- 20% - at placement of order
- 80% - Upon delivery

2. Delivery of work product: A copy of every memorandum, letter, report, calculation and other documentation prepared by CONSULTANT shall be submitted to CITY to demonstrate progress toward completion of tasks. In the event CITY rejects or has comments on any such product, CITY shall identify specific requirements for satisfactory completion.

3. CONSULTANT shall submit to CITY an invoice for each monthly progress payment due. Such invoice shall:

- A) Reference this Agreement;
- B) Describe the services performed;
- C) Show the total amount of the payment due;
- D) Include a certification by a principal member of CONSULTANT's firm that the work has been performed in accordance with the provisions of this Agreement; and
- E) For all payments include an estimate of the percentage of work completed.

All billing shall be done monthly in fifteen (15) minute increments and matched to an appropriate breakdown of the time that was taken to perform that work and who performed it.

Each month's bill shall include a total to date. That total shall provide the total fees and costs incurred to date for the project.

A copy of memoranda, letters, reports, calculations, and other documentation prepared by CONSULTANT may be required to be submitted to the CITY to demonstrate progress towards completion of tasks. In the event the CITY rejects or has comments, on any such product, CITY shall identify specific requirements for satisfactory completion.

Upon submission of any such invoice, if CITY is satisfied that CONSULTANT is making satisfactory progress toward completion of tasks in accordance with this Agreement, CITY shall approve the invoice, in which event payment shall be made within thirty (30) days of receipt of the invoice by CITY. If CITY does not approve an invoice, CITY shall notify CONSULTANT in writing of the reasons for non-approval and the schedule of performance set forth in **Exhibit "A"** may at the option of CITY be suspended until the parties agree that past performance by CONSULTANT is in, or has been brought into compliance, or until this Agreement has expired or is terminated as provided herein.

4. Any billings for extra work or additional services authorized in advance and in writing by CITY shall be invoiced separately to CITY. All extra work or additional services will be in accordance with the extra work or additional services and if CITY is satisfied that the statement of hours worked and costs incurred is accurate. Any dispute between the parties concerning payment of such an invoice shall be treated as separate and apart from the ongoing performance of the remainder of this Agreement.