GENERAL CONSTRUCTION CONTRACT

THIS CONTRACT dated_____is by and between the CITY OF SUNNYVALE, a California chartered municipal corporation of the State of California ("Owner"), and TENNYSON ELECTRIC, INC. a General Contractor ("Contractor").

RECITALS:

The parties to this Contract have mutually covenanted and agreed, as follows:

1. The Contract Documents. The complete Contract consists of the following documents: Notice Inviting Bids; Instructions to Bidders; Performance Bond and Payment Bond; Guaranty; City of Sunnyvale Standard Specifications for Public Works Construction, 2006 Edition; City of Sunnyvale Standard Details for Public Works Construction, 2006 Edition; Plans and Specifications, "STREET LIGHTS CONDUIT REPLACEMENT 2022, Project No. ST-21-04, Invitation for Bids No. PW23-07", including two (2) Addenda; OSHA, and other standards and codes as outlined in the Specifications. These documents are all incorporated by reference. The documents comprising the complete contract are collectively referred to as the "Contract Documents".

Any and all obligations of the Owner and the Contractor are fully set forth and described therein.

All of the above documents are intended to work together so that any work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all documents.

2. The Work. Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform and complete the project in a good and workmanlike manner. The work consists of the replacement, removal, and installation of street lighting conduits, pull boxes, wiring, and modifications to street light poles and luminaires, as called for, and in the manner designated in, and in strict conformity with, the Plans and Specifications prepared by TJKM Transportation Consultants and adopted by the Owner. These Plans and Specifications are entitled respectively, STREET LIGHTS CONDUIT REPLACEMENT 2022, Project No. ST-21-04.

It is understood and agreed that the work will be performed and completed as required in the Plans and Specifications under the sole direction and control of the Contractor, and subject to inspection and approval of the Owner, or its representatives. The Owner hereby designates as its representative for the purpose of this contract the Senior Civil Engineer for Construction or an employee of the Owner who will be designated in writing by the Director of Public Works.

3. Contract Price. The Owner agrees to pay and the Contractor agrees to accept, in full payment for the work above agreed to be done, the sum of Three Hundred Eighty Eight Thousand Six Hundred Eleven and 50/100 Dollars ($388,611.50) subject to final determination of the work performed and materials furnished at unit prices per "Exhibit A" attached hereto and incorporated by this reference, and subject to additions and deductions in accordance, as provided in the Documents and in accordance with Contract Documents. The sum includes base bid and accepted Additive Alternate(s) No. Number(s). All other Additive Alternate(s) are rejected by Owner and are not included in this contract.

4. Permits; Compliance with Law. Contractor shall, at its expense, obtain all necessary permits and licenses, easements, etc., for the construction of the project, give all necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules and regulations relating to the work and to the preservation of the public health and safety.

5. Inspection by Owner. Contractor shall at all times maintain proper facilities and provide safe access for inspection by the Owner to all parts of the work, and to the shops wherein the work is in preparation. Where the Specifications require work to be specially tested or approved, it shall not be tested or covered up without timely notice to the Owner of its readiness for inspection and without the approval thereof or consent thereto by the latter. Should any such work be covered up without such notice, approval,

or consent, it must, if required by Owner, be uncovered for examination at the Contractor's expense.

6. Extra or Additional Work and Changes. Should Owner at any time during the progress of the work request any alterations, deviations, additions or omissions from the Specifications or Plans or other Contract Documents it shall be at liberty to do so, and the same shall in no way affect or make void the contract, but will be added to or deducted from the amount of the contract price, as the case may be, by a fair and reasonable valuation, agreed to in writing between the parties hereto. No extra work shall be performed, or change be made unless in pursuance of a written order from the Director of Public Works or authorized representative, stating that the extra work or change is authorized and no claim for an addition to the contract sum shall be valid unless so ordered.

7. Time for Completion. All work under this contract shall be completed before the expiration sixty (60) working days from the date specified in the Notice to Proceed.

If Contractor shall be delayed in the work by the acts or neglect of Owner, or its employees or those under it by contract or otherwise, or by changes ordered in the work, or by strikes, lockouts by others, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the Owner, or by any cause which the Owner shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the Owner may decide.

This provision does not exclude the recovery of damages for delay by either party under other provisions.

8. Inspection and Testing of Materials. Contractor shall notify Owner a sufficient time in advance of the manufacture or production of materials, to be supplied under this contract, in order that the Owner may arrange for mill or factory inspection and testing of same, if Owner requests such notice from Contractor.

9. Termination. If Contractor should file a bankruptcy petition and/or be judged bankrupt, or if Contractor should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency, or if Contractor or any subcontractors should violate any of the provisions of the Contract, Owner may serve written notice upon Contractor and its surety of Owner's intention to terminate the Contract. The notice shall contain the reasons for such intention to terminate the Contract, and, unless within ten days after serving such notice, such violation shall cease and satisfactory arrangements for correction thereof be made, upon the expiration of the ten days, the Contract shall cease and terminate. In the event of any such termination, Owner shall immediately serve written notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the Contract; provided, however that, if the surety within fifteen days after the serving upon it of notice of termination does not give Owner written notice of its intention to take over and perform the Contract or does not commence performance thereof within thirty days from the date of the serving of such notice, Owner may take over the work and prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of Contractor, and Contractor and its surety shall be liable to Owner for any excess cost occasioned Owner thereby, and in such event Owner may without liability for so doing take possession of and utilize in completing the work, such materials, appliances, plant and other property belonging to Contractor as may be on the site of the work and necessary therefor.

10. Owner's Right to Withhold Certain Amounts and Make Application Thereof. In addition to the amount which Owner may retain under Paragraph 21 until the final completion and acceptance of all work covered by the Contract, Owner may withhold from payment to Contractor such amount or amounts as in its judgment may be necessary to pay just claims against Contractor or any subcontractors for labor and services rendered and materials furnished in and about the work. Owner may apply such withheld amount or amounts to the payment of such claims in its discretion. In so doing Owner shall be

deemed the agent of Contractor and any payment so made by Owner shall be considered as a payment made under the Contract by Owner to the Contractor and Owner shall not be liable to Contractor for any such payment made in good faith. Such payment may be made without prior judicial determination of the claim or claims.

11. Notice and Service Thereof. All notices required pursuant to this Contract shall be communicated in writing, and shall be delivered in person, by commercial courier or by first class or priority mail delivered by the United States Postal Service. Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by email or fax, to accomplish timely communication. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three business days after mailing. All notices sent pursuant to this Contract shall be addressed as follows:

Owner: City of Sunnyvale
Department of Public Works
Construction Contract Administrator
P. O. Box 3707
Sunnyvale, CA 94088-3707

Contractor: Tennyson Electric, Inc.
7275 National Dr, Suite A-2
Livermore, CA 94550

12. Assignment of Contract. Neither the Contract, nor any part thereof, nor moneys due or to become due thereunder may be assigned by Contractor without the prior written approval of Owner.

13. Compliance with Specifications of Materials. Whenever in the Specifications, any material or process is indicated or specified by patent or proprietary name, or by name of manufacturer, such Specifications must be met by Contractor, unless Owner agrees in writing to some other material, process or article offered by Contractor which is equal in all respects to the one specified.

14. Contract Security. Contractor shall furnish a surety bond in an amount at least equal to 100 percent of the contract price as security for the faithful performance of this Contract. Contractor shall also furnish a separate surety bond in an amount at least equal to 100 percent of the contract price as security for the payment of all persons for furnishing materials, provisions, provender, or other supplies, or teams, used in, upon, for or about the performance of the work contracted to be done, or for performing any work or labor thereon of any kind, and for the payment of amounts due under the Unemployment Insurance Code with respect to such work or labor in connection with this Contract, and for the payment of a reasonable attorney's fee to be fixed by the court in case suit is brought upon the bond. Bonds shall be issued by an admitted surety insurer authorized to operate in the state of California.

15. Insurance. Contractor shall not commence work under this Contract until all insurance required under this paragraph has been obtained and such insurance has been approved by the Owner, nor shall Contractor allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Contractor shall furnish the Owner with satisfactory proof of the carriage of insurance required, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Contract and particularly Paragraph 16 hereof. Any policy of insurance required of the Contractor under this Contract shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to the Owner of any pending change in the limits of liability or of any cancellation or modification of the policy. Insurance carrier shall be California-admitted.

(a) Compensation Insurance and Employer's Liability Insurance. Contractor shall take out and maintain during the life of this Contract Workers' Compensation Insurance and Employer's Liability Insurance for all of employees employed at the site of the project and, in case any work is sublet, Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance and Employer's Liability Insurance for all of the latter's employees unless such employees are covered by the protection afforded by Contractor.

In signing this Contract, Contractor makes the following certification, required by Section 1861 of the Labor Code:

> "I am aware of the provision of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

(b) General Liability Insurance. Contractor, at its own cost and expense, shall maintain personal injury liability and property damage insurance for the period covered by the Contract in the amount of two million dollars exactly ($2,000,000.00) per occurrence and four million dollars exactly ($4,000,000.00) annual aggregate combined single limit coverage. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to the Owner and shall provide that notice must be given to Owner at least thirty (30) days prior to cancellation or material change. The following endorsements shall be attached to the policy:

> Policy shall cover on an "occurrence" basis. Policy must cover personal injuries as well as bodily injuries. Exclusion of contractual liability must be eliminated from personal injury endorsement. Broad form property damage endorsement must be attached. Owner is to be named as an additional insured on any contracts of insurance under this paragraph (b). Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code. The policies of insurance shall be considered primary insurance before any policies of insurance maintained by Owner.

(c) Automobile Liability. Contractor, at its own cost and expense, shall maintain automobile insurance for the period covered by the Contract in the amount of one million dollars exactly ($1,000,000.00) combined single limit coverage. Such coverage shall include, but shall not be limited to, protection against claims arising therefrom, and damage to property resulting from activities contemplated under this Contract, use of owned automobiles, products and completed operations.

16. Indemnification and Hold Harmless. Contractor agrees to defend, save, indemnify and hold harmless Owner and all its officers, employees, and agents, against any and all liability, claims, judgments, or demands, including demands arising from injuries or death of persons (Contractor's employees included) and damage to property, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by Contractor, save and except claims or litigation arising through the active negligence or willful misconduct of Owner, or of Owner's officials, agents, employees, servants, or independent contractors who are directly responsible to Owner. Contractor shall make good and reimburse Owner for any expenditures, including reasonable attorneys' fees, Owner may make by reason of such claim or litigation, and, if requested by Owner, Contractor shall defend any such suits at the sole cost and expense of Contractor.

17. Hours of Work. Eight hours of labor during any one calendar day and forty hours of labor during any one calendar week shall constitute the maximum hours of service upon all work done hereunder, and it is expressly stipulated that no laborer, worker, or mechanic employed at any time by the Contractor or by any subcontractor or subcontractors under this Contract, upon the work or upon any part of the work

contemplated by this Contract, shall be required or permitted to work thereon more than eight hours during any one calendar day and forty hours during any one calendar week, except, as provided by Section 1815 of the Labor Code of the State of California, work performed by employees of contractors in excess of eight hours per day and forty hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. It is further expressly stipulated that for each and every violation of Sections 1811-1815, inclusive, of the Labor Code of the State of California, all the provisions whereof are deemed to be incorporated herein, Contractor shall forfeit, as a penalty to Owner, twenty-five dollars exactly ($25.00) for each laborer, worker, or mechanic employed in the execution of this Contract by Contractor, or by any subcontractor under this Contract, for each calendar day during which the laborer, worker, or mechanic is required or permitted to work more than eight hours in any one calendar day and forty hours in any one calendar week in violation of the provisions of the Sections of the Labor Code.

Contractor, and each subcontractor, shall, in accordance with California Labor Code Section 1776 or as the same may be later amended, keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with work under this agreement. Each payroll record shall contain or be verified by a written declaration under penalty of perjury, in accordance with Labor Code Section 1776(a). Such payroll records shall be made available at all reasonable times at the Contractor's principal office to the persons authorized to inspect such records pursuant to Labor Code Section 1776. A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations, as well as to the Owner's representative. In the event the Contractor or a Subcontractor fails to comply in a timely manner within ten days to a written notice requesting the records, such contractor or subcontractor shall forfeit one hundred dollars exactly ($100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, in accordance with Labor Code Section 1776(h).

18. Wage Rates. Pursuant to the Labor Code of the State of California, or any applicable local law, Owner has ascertained the general prevailing rate per diem wages and rates for holidays, and overtime work in the city, for each craft, classification or type of laborer, worker, or mechanic needed to execute this Contract. Owner has adopted, by reference, the general prevailing rate of wages applicable to the work to be done under the Contract, as adopted and published by the Division of Labor Standards Enforcement and Labor Statistics and Research of the State of California, Department of Industrial Relations, to which reference is hereby made for a full and detailed description. A copy of the prevailing wage rates may be reviewed in the office of the Director of Public Works, City of Sunnyvale, 456 West Olive Avenue, Sunnyvale, California. Wage rates can also be obtained through the California Department of Industrial Relations website at: http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm.

Neither the notice inviting bids, nor this Contract, shall constitute a representation of fact as to the prevailing wage rates upon which the Contractor or any subcontractor may base any claim against Owner.

It shall be mandatory upon Contractor and upon any subcontractor to pay not less than the specified rates to all laborers, workers, and mechanics employed in the execution of the Contract. It is further expressly stipulated that Contractor shall, as a penalty to Owner, forfeit two hundred dollars ($200.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic paid less than the stipulated prevailing rates for any work done under this Contract by Contractor or by any subcontractor; and Contractor agrees to comply with all provisions of Section 1775 of the Labor Code.

In case it becomes necessary for Contractor or any subcontractor to employ on the project under this Contract any person in a trade or occupation (except executives, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate is herein specified, Contractor shall immediately notify Owner who will promptly thereafter determine the prevailing rate for such additional trade or occupation and shall furnish Contractor with the minimum rate based thereon. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

19. Accident Prevention. Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment, and other hazards shall be guarded or eliminated in accordance with the safety provisions of the Construction Safety Orders issued by the Industrial Accident Commission of the State of California.

20. Contractor's Guarantee. Owner shall not, in any way or manner, be answerable or suffer loss, damage, expense or liability for any loss or damage that may happen to the building, work, or equipment or any part thereof, or in, on, or about the same during its construction and before acceptance. Contractor unqualifiedly guarantees the first-class quality of all workmanship and of all materials, apparatus, and equipment used or installed by Contractor or by any subcontractor or supplier in the project which is the subject of this Contract, unless a lesser quality is expressly authorized in the Plans and Specifications, in which event Contractor unqualifiedly guarantees such lesser quality; and that the work as performed by Contractor will conform with the Plans and Specifications or any written authorized deviations therefrom. In case of any defect in work, materials, apparatus or equipment, whether latent or patent, revealed to Owner within one year of the date of acceptance of completion of this Contract by Owner, Contractor will forthwith remedy such defect or defects without cost to Owner.

21. Liquidated Damages. Time shall be the essence of this Contract. If Contractor fails to complete, within the time fixed for such completion, the entire work mentioned and described and contracted to be done and performed, Contractor shall become liable to Owner for liquidated damages in the sum of one thousand dollars exactly ($1,000.00), for each and every calendar day during which work shall remain uncompleted beyond such time fixed for completion or any lawful extension thereof. The amount specified as liquidated damages is presumed to be the amount of damage sustained by Owner since it would be impracticable or extremely difficult to fix the actual damage; and the amount of liquidated damages may be deducted by Owner from moneys due Contractor hereunder, or its assigns and successors at the time of completion, and Contractor, or its assigns and successors at the time of completion, and its sureties shall be liable to Owner for any excess.

22. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflict of law or choice of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara and waive all venue objections.

23. Severability Clause. In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

24. Entire Agreement; Amendment. This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

25. Execution and Counterparts. This Agreement may be executed in multiple counterparts and/or with the signatures of the Parties set forth on different signature sheets and all such counterparts, when taken together, shall be deemed one original.

IN WITNESS WHEREOF, two identical counterparts of this contract, each of which shall for all purposed be deemed an original thereof, have been duly executed by the parties.

CITY OF SUNNYVALE
a California chartered municipal corporation
of the State of California, Owner

By_____ /____/_____
City Manager Date

Attest:
City Clerk

By_____ /____/_____
City Clerk Date

(SEAL)

APPROVED AS TO FORM:

_____ /____/_____
City Attorney Date

TENNYSON ELECTRIC, INC.
Contractor

License No. 717998

By_____

_____ /____/_____
Title Date

By_____

_____ /____/_____
Title Date

EXHIBIT A

No.	Description	QTY	Unit	Unit Cost
1	Mobilization (Recommend Not to Exceed 5% of Total Base Bid)	1	LS	$ 8,750
2	Traffic Control System	1	LS	$ 19,500
3	Furnish and Install 2” Conduit	2330	LF	$ 256,300
4	Furnish and Install No. 3 ½ Pull Box	11	EA	$ 18,425
5	Furnish and Install Conductors and Grounding	6850	LF	$ 20,550
6	Furnish and Install LED Luminaire	3	EA	$ 7,125
7	Furnish and Install Luminaire Mast Arm on Existing Street Light Pole	1	EA	$ 5,750
8	Splice Conductors	1	LS	$ 17,500
9	Slurry Seal (Revocable)	9510	SF	$ 34,711.50

EXHIBIT B

Utilization of Local Workforce in Construction Projects – The Sunnyvale City Council has adopted a policy which encourages utilization of local workforces, including State-certified apprentices, as a means of supporting economic opportunities for all members of the community. Local workforce is defined as workers residing in Santa Clara County. The lowest responsive and responsible bidder must provide a projection of locally-hired workers utilized for this contract.

Contractor	Projected Number of Locally Hired Workers_____ Projected Percent of Locally Hired Workers_____%
Subcontractor(s)	Projected Number of Locally Hired Workers_____ Projected Percent of Locally Hired Workers_____%