

STATE OF TEXAS           §  
                                     §  
COUNTY OF COLLIN   §

**AGREEMENT FOR STREETLIGHT  
MAINTENANCE AND REPAIR SERVICES**

This Agreement (“Agreement”) is made by and between the City of Allen, Texas (“City”) and Siemens Mobility, Inc., a Delaware Corporation (“Contractor”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

**RECITALS:**

**WHEREAS**, City desires to engage the services of the Contractor as an independent contractor, and not as an employee, to provide streetlight maintenance and repairs services on the terms and conditions set forth in this Agreement; and

**WHEREAS**, Contractor desires to provide streetlight maintenance and repairs services for the City in accordance with City Invitation for Bid No. 2020-8-12 (the “Bid”) and as set forth in the response to the Bid submitted by the Contractor dated October 21, 2020 (the “Response”) on the terms and conditions set forth in this Agreement;

**NOW THEREFORE**, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

**Article I  
Term**

1.1 The term of this Agreement shall begin on December 13, 2020 (the “Effective Date”) and continue until December 12, 2021, unless sooner terminated as provided herein (the “Initial Term”).

1.2 City maintains the right to automatically renew the term of this Agreement for up to two (2) additional renewal terms of one (1) year each (each a “Renewal Term”) at the City’s sole discretion, the first renewal term beginning on December 13, 2021. Term shall mean the Initial Term and any Renewal Term.

1.3 Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other Party. Contractor shall be entitled to compensation for any services completed to the reasonable satisfaction of the City in accordance with this Agreement prior to such termination.

1.4 Either Party may upon written notice to the other Party terminate this Agreement if the other Party is in breach of the terms and conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof.

## **Article II**

### **Contract Documents**

The documents below are incorporated into this Agreement by reference. The documents referenced below are in descending order of precedence. Any conflict between or among any of the documents shall be resolved in favor of the document with higher precedence. These documents shall be referred to collectively as "Contract Documents".

- (a) This Agreement;
- (b) Bid (Invitation for Bid 2020-8-121 for Streetlight Maintenance and Repair Services a copy of which is on file in the office of the Purchasing Manager); and
- (c) Response (Contractor's Response to Invitation for Bid 2020-8-121 Streetlight Maintenance and Repair Services dated October 21, 2020, a copy of which is on file in the office of the Purchasing Manager.

## **Article III**

### **Scope of Services**

Contractor agrees to provide services in accordance with the Bid and the Response.

## **Article IV**

### **Schedule of Work**

The Contractor agrees to provide the required services in accordance with the schedule outlined in the Contract Documents. Contractor agrees to commence Services upon the Effective Date of this Agreement and to complete the required Services in accordance with the schedules and at the times and locations provided by the City as set forth in the Contract Documents.

## **Article V**

### **Compensation and Method of Payment**

City shall compensate Contractor for the services, including all labor, materials, equipment and supplies in accordance with the payment schedule and amounts set forth in the Contract Documents. The total compensation to Contractor shall not exceed Two Hundred Thirty-Seven Thousand Dollars (\$237,000.00) during the Initial Term or any Renewal Term. Unless otherwise provided herein, payment to the Contractor shall be monthly based on the Contractor's monthly itemized statement for services, in a form reasonably acceptable to the City. The City shall pay such monthly statements within thirty (30) days after receipt unless otherwise provided herein.

## **Article VI Notice to Proceed**

Contractor shall not proceed with any work required under this Agreement without a written Notice to Proceed from City. Any work performed or expenses incurred by Contractor prior to Contractor's receipt of a written Notice to Proceed from City shall be entirely at Contractor's own risk. Work performed and expenses incurred after Contractor has received a written Notice to Proceed from City will be eligible for reimbursement under the terms of this Agreement, subject to an approved task order.

## **Article VII Suspension of Work**

City shall have the right to immediately suspend work by Contractor if City determines in its sole discretion that Contractor has, or will fail to perform, in accordance with this Agreement. In such event, any payments due Contractor shall be suspended until Contractor has taken satisfactory corrective action.

## **Article VIII Devotion of Time; Personnel; and Equipment**

8.1 The Contractor shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement. Should the City require additional services not included under this Agreement, the Contractor shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by the City; and without decreasing the effectiveness of the performance of services required under this Agreement.

8.2 To the extent reasonably necessary for the Contractor to perform the services under this Agreement, the Contractor shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Contractor may deem proper to aid or assist in the performance of the services under this Agreement. The cost of such personnel and assistance shall be borne exclusively by the Contractor.

8.3 The Contractor shall furnish the facilities, equipment, telephones, facsimile machines, email facilities, and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

## **Article IX Insurance**

9.1 Contractor shall during the term hereof maintain in full force and effect the insurance set forth in the table below.

9.2 All insurance shall be endorsed to provide the following provisions: (1) name the City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability; (2) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability Insurance. A specific endorsement needs to be added to all policies, with a copy of the endorsement provided to the City that indicates the insurance company will provide to the City at least a thirty (30) day prior written notice for cancellation, non-renewal, and/or material changes of the policy. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements, the Contractor shall provide at least thirty (30) days prior written notice to the City of any cancellation, non-renewal and/or material changes to any of the policies of insurance.

9.3 All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City.

9.4 A certificate of insurance and copies of policy endorsements evidencing the required insurance shall be submitted to the City prior to commencement of services. On every date of renewal of the required insurance policies, the Contractor shall cause a certificate of insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition, the Contractor shall within ten (10) business days after written request provide the City with certificates of insurance and policy endorsements for the insurance required herein. The delivery of the certificates of insurance and policy endorsements to the City is a condition precedent to the payment of any amounts due to Contractor by the City. The failure to provide valid certificates of insurance and policy endorsements shall be deemed a default and/or breach of this Agreement.

### **Table of Required Insurance**

#### **Contracts in the Amount of \$0-\$100,000**

<b>Type of Insurance</b>	<b>Amount of Insurance</b>	<b>Provisions</b>
1. Commercial General (Public) Liability to include coverage for: a) Premises/Operations b) Products/Completed Operations c) Independent Contractors d) Personal Liability e) Contractual Liability	\$500,000 each occurrence, \$1,000,000 general aggregate;  or  \$1,000,000 combined single limits	City to be listed as additional insured and provided 30-day notice of cancellation or material change in coverage.  City prefers that insurer be rated A or higher by A.M. Best or equivalent. Waiver of Subrogation to apply

2. Business Auto Liability	\$500,000 combined single limit	Owned, non-owned, and hired vehicles
3. Workers' Comp & Employers' Liability	Statutory Limits \$1,000,000 each accident	Waiver of subrogation
4. a) Professional Liability b) E & O coverage	1,000,000 per occurrence	If Applicable

**Contracts in the Amount of \$100,000-\$1,000,000**

Type of Insurance	Amount of Insurance	Provisions
1. Commercial General (Public) Liability to include coverage for: f) Premises/Operations g) Products/Completed Operations h) Independent Contractors i) Personal Liability j) Contractual Liability	\$1,000,000 each occurrence  \$2,000,000 general aggregate  \$2,000,000 Umbrella/ Excess Liability	City to be listed as additional insured and provided 30-day notice of cancellation or material change in coverage.  City requires that insurer be rated A or higher by A.M. Best or equivalent. Waiver of subrogation
2. Business Auto Liability	<ul style="list-style-type: none"> <li>\$1,000,000 per occurrence</li> <li>\$1,000,000 aggregate or;</li> <li>\$1,000,000 combined single limits</li> </ul>	City to be named as a additional insured
3. Workers' Comp & Employers' Liability	Statutory Limits \$1,000,000 each accident	Waiver of subrogation
4. Builders Risk Policy	100% of construction total	If Applicable
5.a) Professional Liability b) E & O coverage	1,000,000 per occurrence	If Applicable

**Contracts in the Amount of \$1,000,000-\$8,000,000**

<b>Type of Insurance</b>	<b>Amount of Insurance</b>	<b>Provisions</b>
1. Broad Form Commercial General Liability to include coverage for: k) Premises/Operations l) Products/Completed Operations m) Independent Contractors n) Personal Liability o) Contractual Liability	\$2,000,000 each occurrence, \$4,000,000 general aggregate; \$4,000,000 umbrella	City to be listed as additional insured and provided 30-day notice of cancellation or material change in coverage.  City requires that insurer be rated A or higher by A.M. Best or equivalent. Waiver of Subrogation
2. Business Auto Liability	<ul style="list-style-type: none"> <li>• \$1,000,000 per occurrence</li> <li>• \$2,000,000 aggregate or;</li> <li>• \$2,000,000 combined single limits</li> </ul>	City to be named as additional insured
3. Workers' Comp & Employers' Liability	Statutory Limits \$1,000,000 each accident	City to be provided a waiver of subrogation
4. Builders Risk Policy	100% of construction total	If Applicable
5. a) Professional Liability b) E & O coverage	1,000,000 per occurrence	If Applicable

**Article X  
Miscellaneous**

10.1 Entire Agreement. This Agreement constitutes embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties and relating to the matters in this Agreement.

10.2 Assignment. Contractor may not assign this Agreement in whole or in part without the prior written consent of City. In the event of an assignment by Contractor to which City has consented, the assignee shall agree in writing with City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

10.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

10.4 Governing Law. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said Court.

10.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

10.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it

10.7 Independent Contractor. It is understood and agreed by and between the Parties that Contractor, in satisfying the conditions of this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Contractor pursuant to this Agreement shall be in the capacity of an independent Contractor, and not as an agent or employee of City. Contractor shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

10.8 Under the Authority of the Clean Water Act, the Environmental Protection Agency (EPA), the City has endeavored to reduce / improve storm water quality per direction of the Texas Commission of Environmental Quality (TCEQ). The City has developed standard operating procedures (SOP's) for our Storm Water Management Program (SWMP). By signing this contract all vendors accept to follow our SOP's of our SWMP. Follow the link for our SOP's <http://www.cityoffallen.org/933/Storm-Water-Management>

10.9 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, courier, or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery or on the day actually received if sent by courier or otherwise hand delivered:

If intended for City:

Eric Ellwanger  
City Manager  
3rd floor, City Hall  
305 Century Parkway  
Allen, Texas 75013  
Facsimile: 214-509-4118  
Telephone: 214-509-4110

With copy to:

Peter G. Smith  
Nichols, Jackson, Dillard, Hager &  
Smith, L.L.P.  
500 N. Akard, 1800 Lincoln Plaza  
Dallas, Texas 75201

If intended for Contractor:

Siemens Mobility, Inc.  
16515 Aldine-Westfield Rd.  
Houston, Texas 77032  
Facsimile: 817-738-7864

10.10 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

10.11 Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Contract.

10.12 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

10.13 Indemnification. CONTRACTOR DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, CAUSED BY OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE CONTRACTOR, ITS AGENT, ITS CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONTRACTOR EXERCISES CONTROL SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002 (B).



INDEMNIFIED ITEMS SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO THE CONTRACTOR'S LIABILITY.

THE CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY CONTRACTOR UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

10.14 Audits and Records. Contractor agrees that during the term hereof, City and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of the Contractor's records relating to the services provided pursuant to this Agreement for a period of one year following the date of completion of services as determined by City or date of termination if sooner.

10.15 Conflicts of Interests. The Contractor represents that no official or employee of City has any direct or indirect pecuniary interest in this Agreement.

10.16 Warranty. The Contractor warrants to the City that all labor furnished to perform the work under this Agreement will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that the work will be performed in a good and workmanlike manner and at least in accordance with industry standards, and that the work will be of good quality, free from faults and defects and in strict conformance with this Agreement. All work not conforming to these requirements may be considered defective.

10.17 Uniforms. Contractor shall provide and require its employees to wear a uniform that bears the company name, logo, and the employee's name. Uniforms are not to be dirty, stained, or torn. Uniforms shall be worn at all times while on the job. Contractor shall provide and ensure the wearing of protective clothing, masks, eye protection, etc., as required by laws, regulation, ordinances, and/or manufacturer's instruction for material and equipment. All employees of Contractor working on rights-of-way or medians must utilize personal protective equipment such as safety vests to insure their visibility to drivers.

10.18 Warning Devices and Barricades. The Contractor shall furnish and maintain such warning devices, barricades, lights, signs, and other devices as may be necessary or appropriate or required by the City to protect persons or property in, near or adjacent to the jobsite. The Contractor shall comply with all applicable Federal, State, and Local Laws regarding occupational safety and health as well as providing protection of the environment. This shall include but not be limited to compliance with U.S. Department of Labor-Occupational Safety and Health Administration (OSHA), and U.S. Environmental Protection Agency (EPA) guidelines and regulations. No separate compensation shall be paid to the Cor for such measures.

10.19 Protection of Utilities. The Contractor shall use best efforts to leave undisturbed and uninterrupted all irrigation systems, utilities, and utility services provided to the job site or which presently exist at, above, or beneath the location where the work is to be performed. In the

event that any irrigation system, utility, or utility service is disturbed or damaged during the progress of the work, the Contractor shall forthwith repair, remedy or restore the utility at Contractor's sole expense. The Contractor is responsible for an inspection of the site prior to commencing work on site to ensure that no damage is existing or will not occur when maintenance begins. If damage is noted or if probable damage will occur, then it is the Contractor's responsibility to notify the City representative so that the City can take action to correct and document the problem(s). The Contractor is responsible for the replacement of all irrigation heads that are damaged by mowing with like equipment approved by the City of Allen.

10.20 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

10.21 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

10.22 Prohibition of Boycott Israel. Contractor verifies that it does not Boycott Israel and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended. This section does not apply if Contractor is a sole proprietor, a non-profit entity or a governmental entity; and only applies if: (i) the Contractor has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

*(Signature page to follow)*

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**CITY OF ALLEN, TEXAS**


By: \_\_\_\_\_  
Eric Ellwanger, City Manager

**ATTEST**

\_\_\_\_\_  
Shelley B. George, City Secretary

EXECUTED this 4th day of November, 2020.

**SIEMENS MOBILITY, INC.**

By:   
Name: William Tucker  
Title: Operations Manager SE