



Request for Proposal (RFP)
For Commercial / Industrial Energy Audit and Rebate
Management Services

January 2014

Table of Contents

1	Introduction.....	3
1.1	Purpose of the RFP	3
1.2	City of Santa Clara and SVP Overview	3
2	General Rules and Procurement Information.....	5
2.1	Key Contact	5
2.2	Questions Pertaining to the RFP	6
2.3	Registered Responder Information/ Intent to Bid Form.....	6
2.4	Key Action Dates	6
2.5	Modifications or Cancellations to the RFP	6
2.6	Proposal Costs	6
2.7	Subcontractors	6
2.8	Public Records Act	7
2.9	Rights of the City of Santa Clara dba Silicon Valley Power (SVP).....	7
2.10	Contract Terms and Conditions.....	8
2.11	Insurance Requirements	8
2.12	Collusion	8
2.13	Acceptance, Rejection, and/or Disqualification of Proposals	8
2.14	Non-Conforming Proposal	9
2.15	Gratuities	9
2.16	Project Duration.....	9
2.17	Confidentiality	9
3	Proposed Solution	10
3.1	Goals and Objectives	10
3.2	Scope of Services.....	10
3.3	Volumetric Details.....	12
4	Administrative Requirements from Respondents.....	14
4.1	Company Information	14
4.2	Staffing.....	16
4.3	General Rules and Procurement.....	17
5	Technical Requirements.....	17
6	Pricing Instructions	18
7	Terms of Agreement.....	19
8	Response Format, Submission, and Delivery Instructions	19
8.1	Overview.....	19
8.2	Proposal Format.....	19
8.3	Proposal Submission and Delivery Instructions	21
9	Proposal Evaluation	21
9.1	Proposal Opening and Content Validation	22
9.2	Review of Administrative Requirements.....	22
9.3	Review of Technical Requirements.....	23
9.4	Review of Pricing Proposal.....	23
9.5	Selection of Respondent	23
10	Attachments.....	23
	Attachment A – Registered Responder Information/ Intent to Bid Form	25
	Attachment B – Format for RFP Questions	26
	Attachment C – Sample Call Agreement for Services.....	27
	Attachment D – Sample Call	35
	Attachment E – Non-Disclosure Agreement.....	37
	Attachment F – List of Public Benefit Programs.....	45
	Attachment G – List of Subcontractors.....	48
	Attachment H – Pricing Worksheets.....	49
	Attachment I – Customer Reference Form.....	52
	Attachment J – Key Personnel Reference Form	53
	Attachment K – General Information Form.....	54

1. Introduction

The City of Santa Clara's Electric Department, doing business as Silicon Valley Power (SVP or City), seeks third party services to administer, manage and implement ways to reduce energy use and costs in the City under the Business Public Benefit Program Services offered to SVP's customers in the City of Santa Clara. SVP wishes to enhance its programs to achieve more kilowatt hours in savings. This Request for Proposal (RFP) is meant to enhance the effectiveness of SVP's existing programs in order to achieve these savings. Additionally, SVP seeks to continuously improve customer satisfaction with SVP's programs and services.

SVP is initiating this process with a desire to fully leverage the capabilities, knowledge and experience of the Respondent (Third Party Provider) to bring in best of breed solutions and resources and help SVP better serve internal customers and businesses, as well as help reduce the City's energy consumption.

While SVP may have provided details about a suggested operating model and pricing approach, SVP seeks creative solutions from the Respondent. If an alternate operating model and pricing approach is proposed, the Respondent should clearly indicate all details about the proposed solution and highlight the added benefits that the City will receive compared to the SVP suggested approach.

It should be noted that SVP has made every effort to provide details of the requirements and the Respondent selection process. However, it is likely that certain information provided might not be accurate and SVP is cognizant of the fact that the Respondent may have to make certain assumptions to build the solution and pricing in response to this RFP. Respondents should ensure that all such assumptions are listed in the proposal.

All proposals must be submitted by 5:00 PM PST on February 18, 2014.

A. Purpose of the RFP

The purpose of this document is to provide information to help the Respondent understand the process and schedule that will be followed, the high level functionality in scope, and the general terms and conditions that must be satisfied to proceed in the next steps of the sourcing process.

B. City of Santa Clara and SVP Overview

About the City of Santa Clara

Santa Clara is a family-oriented and business friendly city in the center of Silicon Valley, located in Santa Clara County at the southern tip of San Francisco Bay, about 45 miles south of San Francisco. The City of Santa Clara is in a strategic regional location convenient to freeways, airports, railroads, expressways, light rail and other public transportation. "The Mission City," as Santa Clara is known, was founded in 1852. It is now a community of about 115,500 residents with an employment base of about 135,000. Voted one of ten All-America Cities in the New Millennium by the National Civic League, Santa Clara has a "High Tech, Human Touch, HT2"™ approach to serving the community's needs. It offers the region's lowest combined utility costs in the nine Bay Area counties, with savings of 25 to 40% on electricity alone, and it is consistently rated one of the most affordable cities in the nation for business. Santa Clara is a Charter City with a Council/Manager form of government. The City's financial stability ensures the highest levels of citizen and business service, low business taxes and solid real estate value, and it is also one of the safest U.S. cities with a population of 75,000+. Our outstanding public safety record includes the highest fire rating in Santa Clara County and some of the fastest emergency response times in the state.

With a focus on high quality customer services and its reputation, it is no wonder more than 4,500 companies, including many of the world's top technology firms, and thousands of long-time residents have made the City of Santa Clara their home.

About SVP

Silicon Valley Power, Santa Clara's municipal electric utility, is a not-for-profit enterprise of the City of Santa Clara, and was established in 1896. SVP owns power generation facilities, has investments in joint ventures that produce electric power, and trades power on the open market. These efforts are directed toward ensuring its retail customers – the citizens, organizations and businesses of the City – a highly reliable source of electric power at competitive, stable rates.

SVP serves over 52,000 customers. At the end of 2012, SVP had 52,285 meters with a peak demand of 471.1 megawatts. 44,350 of these customers were residential, but only 8.1% of power sales were to residents. Over 88% of sales went to 1,768 industrial customers ("industrial" as defined by electric rate schedule).

Santa Clara customers enjoyed almost twice the amount of renewable energy in their mix during 2012 than those receiving the State's average power mix during 2011. SVP's 2012 power mix consisted of 25.9% percent eligible renewable resources compared to 14% statewide in 2011. When large hydroelectric resources are included, SVP's power mix consisted of 38.3% renewable and large hydro, as compared to 27% for the statewide mix.

SVP's Public Benefit Programs (PBC) are separated into residential and business programs, with the majority of funding toward the business sector. This is due to the fact that the programs are required by City Council policy to be spent in the customer class from which the funding is received. This results in program funding less than 10% from the residential class. Total PBC funds are about \$7 million per year. Residential programs include rate assistance for low-income customers, energy efficiency rebates (refrigerators, ceiling fans, hot water heat pumps, clothes dryers, and LED lighting), solar electric installations, energy audits, and programs for schools and libraries. Business programs include energy audits, installation management for small companies, rebates for a wide variety of equipment (lighting, air conditioning systems, chillers, programmable thermostats, washing machines, new construction, photovoltaic systems and customized installations), and design and construction assistance. In addition, SVP periodically contracts for additional third party programs. An RFP for such programs is also underway at the time that this RFP is being issued and several new third party programs may come online effective July 1, 2014. Over 331.4 million kilowatt hours in gross first year savings alone have been achieved since 1998.

Because the vast majority of SVP's energy efficiency achievements come from its large commercial and industrial customers, the greatest percentage of savings from programs are calculated based on actual metered pre- and post-savings. These large, unique projects also result in "lumpy" savings levels, depending on the projects being completed at customer sites and their implementation budgets in any given year. Even though SVP has a full suite of programs (see Attachment F – List of Public Benefit Programs for a full program listing and description), SVP wishes to enhance its programs and achieve more kilowatt hours in savings.

i. SVP Mission and Goals

SVP's mission is to be a progressive, service-oriented utility, offering reliable, competitively priced services for the benefit of the City of Santa Clara and its customers.

SVP's goals include:

1. Be competitive in the marketplace with a continuous focus on customer service.

2. Provide economic value to the City of Santa Clara and its customers, maintain low residential rates, and offer competitive rates for all customer classes.
3. Manage debt and resources to achieve and maintain a competitive position.
4. Be a strategically driven organization with a focus on performance as an energy services supplier.
5. Operate Silicon Valley Power in a safe, reliable, efficient, and environmentally responsible manner.
6. Manage Silicon Valley Power successfully through electric industry restructuring.
7. Enhance value to our customers through the delivery of new products and services.
8. Manage Silicon Valley Power's participation in joint powers agencies to achieve the City of Santa Clara's goals.
9. Develop flexibility to respond to changing business environments.
10. Achieve quality communications with all stakeholders.

2. General Rules and Procurement Information

A. Key Contact

The Key Contact for this RFP is:

Mary Medeiros McEnroe
Public Benefit Program Manager
City of Santa Clara
Silicon Valley Power
1601 Civic Center Drive, Suite 102
Santa Clara, CA 95050
Email: mmedeiros@svpower.com

B. Questions Pertaining to the RFP

Respondents requiring clarification of the intent or content of this RFP or on procedural matters regarding the competitive proposal process may request clarification by submitting questions to the Key Contact listed in Section 2.1. To ensure a response, questions must be submitted in writing, via e-mail by the scheduled date identified in Section 2.4 – Key Action Dates and as per the format specified in Attachment B – Format for RFP Questions. Written question and answer sets will be provided to all Respondents without identifying the submitters.

SVP shall not be responsible for or be bound by any oral instructions, interpretations or explanations issued by SVP or its representatives. This includes oral responses to questions. Questions received after the date and time stated above for final questions will not be accepted.

A Respondent who desires clarification or further information on the content of the RFP, but whose questions relate to the proprietary aspect of that Respondent's proposal and which, if disclosed to other Responders, would expose that Respondent's proposal, may mark such questions "CONFIDENTIAL" and submit them in the same manner as above no later than the scheduled date specified in Section 2.4 to ensure a response. The Respondent must explain why such questions are sensitive in nature. If SVP concurs that the disclosure of the question or answer would expose the proprietary nature of the proposal, the question will be answered and both the question and answer will be kept in confidence. If SVP does not concur with the proprietary aspect of the question, the question will not be answered in this manner and the Respondent will be so notified.

C. Registered Responder Information/ Intent to Bid Form

All Respondents must submit a completed Registered Responder Information / Intent to Bid Form. This form is included in the RFP as Attachment A. Respondents that complete and submit this form will receive copies of all RFP addenda (if any) and all questions submitted by Respondents with the corresponding SVP responses. Failure to do so and resulting non-receipt of information regarding addenda and/or RFP questions and answers shall be the sole responsibility of the Respondent. This form will also signify a Responder's intent to submit a bid.

D. Key Action Dates

The key phases of the sourcing process and their target completion dates are set forth below.

Activity	Date
Issue RFP	January 17, 2014
Registered Responder Information/Intent to Bid Form Due	January 27, 2014
Receive questions on RFP	4:00 PM PST, January 31, 2014
Answers to RFP questions	February 7, 2014
Proposals due	4:00 PM PST, February 18, 2014
Send notifications / questions to Respondents	March 6, 2014
RFP presentation by short-listed Respondents	Week of March 24, 2014
Notify short-listed Respondents	April 4, 2014
Commence Contract negotiations (tentative)	April 5, 2014
Commencement of Contract	July 1, 2014

Please note that SVP may decide to change these dates at its sole discretion and convenience. SVP will notify registered Respondents of any changes in the Key Action Dates via RFP addenda.

E. Modifications or Cancellations to the RFP

SVP reserves the right to modify or cancel the RFP in whole, or in part, at any time. SVP may modify the RFP prior to the date that proposals are due by issuance of an addendum (or addenda). Addenda will be numbered consecutively. Respondents will be given the opportunity to ask questions pertaining specifically to each addendum by following the question submission process detailed in RFP Section 2.2, but must do so within five (5) working days of the release of the addendum.

F. Proposal Costs

SVP will provide no reimbursement of any kind to Respondents for any costs incurred in responding to this RFP.

G. Subcontractors

Respondents may utilize Subcontractors as part of their solution. If Respondent plans to utilize Subcontractors, Respondent must identify the Subcontractors and summarize their scope of work on RFP Attachment G – List of Subcontractors, and include this list in their proposal as described in RFP Section 8.0.

In addition, throughout the Respondent's proposal, specifically in their responses to both the Administrative and Technical Requirements, Respondents must identify any tasks and/or deliverables to be completed by Subcontractors in accordance with the requirements.

H. Public Records Act

Respondents should familiarize themselves with the provisions of the California Public Records Act (Cal. Gov. Code § 6250 et seq.).

In no event shall the City of Santa Clara, or any of its agents, representatives, consultants, directors, officers or employees be liable to a respondent or respondent team member for the disclosure of all or a portion of a Respondent's proposal submitted under this RFP. Responses to this RFP become the exclusive property of the City. At such time the City recommends a Responder to the City Council, all proposals received in response to this RFP become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are defined by the Responder as business or trade secrets and plainly marked as "Confidential," "Trade Secret," or "Proprietary."

The City shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as "Confidential," "Trade Secret," or "Proprietary" or if disclosure is required under the California Public Records Act. Any proposal which contains language purporting to render all or significant portions of the proposal "Confidential," "Trade Secret," or "Proprietary," shall be regarded as nonresponsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of Santa Clara may not be in a position to establish that the information a Responder submits is a trade secret. If the City of Santa Clara receives a request for public disclosure of all or any portion of a Respondent's proposal that the submitting firm has designated as a trade secret, proprietary information, or other confidential information exempted from disclosure, the City of Santa Clara will use reasonable efforts to notify the applicable respondent of the request and give such respondent an opportunity to assert, in writing and at its sole expense, a claimed exception under the California Public Records Act or other applicable law within the time period specified in the notice issued by the City of Santa Clara and allowed under the California Public Records Act.

I. Rights of the City of Santa Clara dba Silicon Valley Power (SVP)

This RFP does not commit SVP to enter into a contract, or obligate SVP to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract.

SVP reserves the right to:

- Make the selection based on its sole discretion
- Reject any and all proposals
- Issue subsequent Requests for Proposals
- Postpone opening proposals if necessary for any reason
- Remedy errors in the Request for Proposal process

- Approve or disapprove the use of particular Subcontractors
- Negotiate with any, all, or none of the Respondents
- Accept other than the lowest offer
- Waive informalities and irregularities in the proposals
- Enter into an agreement with another Respondent in the event the originally selected Respondent defaults or fails to execute an agreement with the City

An agreement shall not be binding or valid with SVP unless and until it is approved by the City Council, if so required, and executed by authorized representatives of the City and of the selected Respondent.

J. Contract Terms and Conditions

Submitting a proposal in response to this RFP constitutes acknowledgement and acceptance of all requirements, terms and conditions set forth in the RFP (minus any exceptions, if any, taken by Respondents), which includes all contract requirements as discussed in RFP Section 7.0 and Attachment C – Sample Call Agreement for Services.

K. Insurance Requirements

The selected Respondent(s), at Respondent’s sole cost and expense and for the full term of the agreement or any extension thereof, shall obtain and maintain, at a minimum, all of the insurance requirements outlined in Exhibit C (Insurance Coverage Requirements) part of Attachment C – Sample Call Agreement for Services.

All policies, endorsements, certificates and/or binders shall be subject to the approval of SVP as to form and content. The selected Respondent agrees to provide SVP with a copy of policies, certificates and/or endorsement during contract negotiations.

L. Collusion

By submitting a proposal, each Respondent represents and warrants that its proposal is genuine and not made in the interest of or on behalf of any person not named therein and that the Respondent has not directly induced or solicited any other person to submit a sham proposal or any other person to refrain from submitting a proposal, and that the Respondent has not in any manner sought collusion to secure any improper advantage over any other person submitting a proposal.

M. Acceptance, Rejection, and/or Disqualification of Proposals

SVP reserves the right to award an agreement to the Respondent whose proposal most closely satisfies the needs of SVP and is deemed to be most advantageous to SVP.

In SVP’s sole discretion, SVP may:

- Discuss with all Respondents responding to this RFP their proposals, as part of the evaluation process
- Take other action that SVP deems appropriate including rejecting all proposals
- SVP reserves the right to reject any proposal where:
 - Any of the RFP forms are left blank or are materially altered; or

- Any document or item necessary to the proposal is incomplete, improperly executed, indefinite, ambiguous, or missing.

Additionally, factors including, but not limited to the following may also disqualify a Respondent without further consideration:

- Evidence of collusion among Respondents
- Any attempt to improperly influence any member of the Evaluation Team
- Respondent's default under any type of agreement which resulted in the termination of that agreement
- Respondent's default under any previous agreement with the City
- Existence of any unresolved litigation between Respondent and the City
- Evidence of incorrect information submitted as part of Respondent's proposal
- Evidence of Respondent's inability to successfully complete the responsibilities and obligations contained in the RFP and as detailed in Respondent's proposal

N. Non-Conforming Proposal

A proposal shall be prepared and submitted in accordance with the provisions of these RFP instructions and specifications. Any alteration, omission, addition, variance, or limitation of, from or to a proposal may be sufficient grounds for non-acceptance of the proposal, at the sole discretion of the City.

O. Gratuities

No person shall offer, give or agree to give any City employee or its representatives any gratuity, discount or offer of employment in connection with the award of contract by the City. No City employee or its representatives shall solicit, demand, accept or agree to accept from any other person a gratuity, discount or offer of employment in connection with a City contract.

P. Project Duration

It is anticipated that the initial term of the Agreement will be from July 1, 2014 through June 30, 2015, with the option for renewal for 12 months (July 1, 2015 through June 30, 2016). These durations are estimates. The City reserves the right to make changes to these durations as necessary.

Q. Confidentiality

In the course of performing work, successful Respondent(s) may have access to confidential commercial or personal information concerning, but not limited to, California residents, technological, ratemaking, legislative, and personnel matters, and practices of the City of Santa Clara. Selected Respondent(s) agrees not to disclose any such confidential information or otherwise make it available to any other person, including any affiliate of SVP that produces energy or energy-related products or services, without the prior written approval of SVP. Respondent shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect any personal or confidential information from unauthorized access, destruction, use, modification, or disclosure. Respondent(s) are not

guaranteed access to SVP Proprietary or Trade Secret information, including, but not limited to, customer data or information.

However, if SVP does grant Respondent(s) access to such information, Respondent and Respondent's employees and subcontractors will be required to sign SVP's nondisclosure agreement, attached as Attachment E – Non-Disclosure Agreement

3. Proposed Solution

A. Goals and Objectives

SVP has been using the services of leading energy services providers since 1998. SVP periodically initiates a competitive selection process to identify the best suited Respondent(s) to meet SVP's strategic and operational goals.

The key objectives and requirements from Respondents are stated below:

Strategic

- Energy savings: Meet SVP's energy reduction goals as measured in kilowatt hour energy consumption, thereby increasing energy savings. For FY 14-15, the net energy savings goal for commercial/ industrial customers is approximately 24.4 Million kWh.
- Customer satisfaction: Improve the levels of customer satisfaction by improving timeliness of response to the City's electric utility customers as well as reducing the number of customer complaints.
- Customer outreach: Increase the effectiveness of SVP's Business Public Benefit Program and proactively target those business customers in the City who are either unaware of these programs or have not implemented energy saving measures. This outreach includes door-to-door marketing to small businesses.
- Cost savings: Achieve cost savings that is sustainable over the long term.

Operational

- Streamline and improve the efficiency of the administration of services that fall under the Business Public Benefit Program.
- Reduce time, effort and cost on operational activities by deploying tools, processes and standardization.
- Measure, track, report, and improve the quality of service to SVP's business customers.
- Leverage best-practices in managing operations.

Optimization

- Proactively seek and provide recommendations to reduce energy consumption, improve quality of service and reduce costs for accomplishing goals and objectives more effectively.

B. Scope of Services

This section outlines the scope of services that the selected Respondent(s) will be required to provide under this Agreement. Please also refer Attachment F – List of Public Benefit Programs that is in-scope for a full program listing and description.

Note: SVP will launch additional Public Benefit Programs in future, often covered by 3rd party providers by separate contract. The scope of Respondent(s) will be limited to inspection /

verification of the measurement & verification (M&V) for these additional programs. This will include 100% inspection/verification for projects with custom energy savings and 10% inspection/verification for projects with approved deemed savings values.

i. Program Administration

- Customer application and pre and post rebate application processing
- Program implementation, tracking and reporting of program performance
- Contractor bid evaluation
- Data management
- M&V Tool Library: Manage the tool library and maintain the instrumentation.
- Database Support and Reporting:
 - Provide support for reporting the results from the non-residential energy efficiency program to the Northern California Power Agency (NCPA) and other regulatory bodies.
 - Maintain a database of key customer information and provide monthly reports of program activities and goals to SVP.
 - Track program metrics and report these metrics to SVP on a monthly basis.

ii. Field Services

Activities include the following:

- Conduct pre and post inspections and on-site energy audits
- Conduct energy usage analysis
- Conduct energy savings analysis
- Financial analysis including payback period, ROI, etc
- Preparation of customer audit reports
- Design services
- Monitoring and verification for measurement and reporting of the performance and savings from improvements
- Customer Outreach:
 - As part of the Small Business Efficiency Services Program and Midsize Customer Program, proactively reach out to customers through door-to-door and direct mail efforts to educate and enroll them under these programs.
 - Generate initiatives to reach out to these customer segments and develop an implementation plan, including timelines, budgets and list of qualifying measures, rules and eligibility requirements. Respondent will take ownership and will execute after SVP approval.

iii. Customer Service

- Serve as the basic point of communication with the commercial customer
- Respond to customer inquiries regarding the audit / rebate program
- Provide program education to the general public and vendors
- Maintain SVP's Trade Ally Network, including periodic training and newsletters for participating contractors
- Handle and respond to SVP's customer inquiries, field vendor inquiries
- Determine whether a vendor's new product falls with SVP's program guidelines and meet with vendors and customers regarding specific rebate requirements
- Address questions/ queries regarding website, surveys, rebates, etc

- Forward billing questions and requests to the proper department
- Evaluation of claims on energy savings by customers or vendors
- Validation of M&V data for custom and third party rebates

iv. Custom Audits

- Conduct custom energy audits for SVP's largest customers. These audits are comprehensive energy studies that are tailored to meet the customer's informational and strategic energy planning requirements. The Custom Audit typically consists of a comprehensive site survey, in-depth energy analysis (costs, savings, ROI, etc), spot metering, system-specific evaluation and preparation of a customized report.

C. Volumetric Details

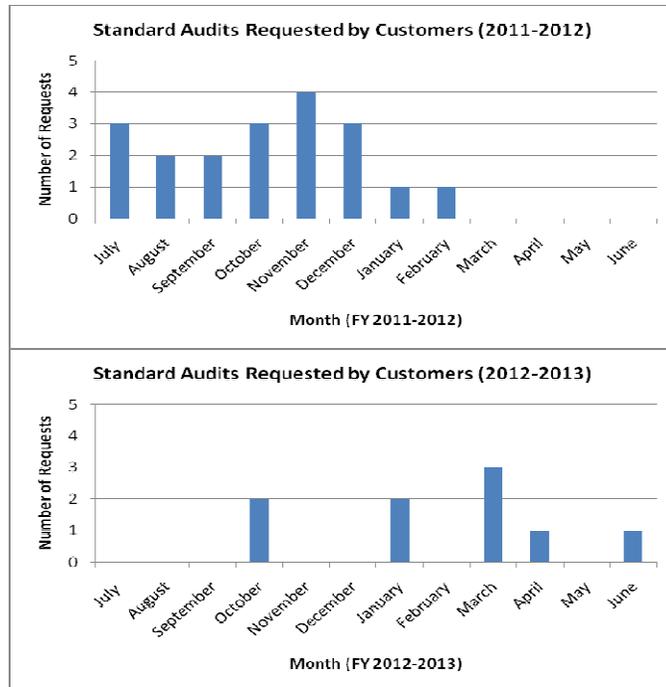
Based on FY 11-12 and 12-13 (July 1st to June 30th) data, following information is provided:

Custom Audits

- No custom audits were conducted in either year, but one custom audit is currently underway in FY 2013-2014. Previous years included multiple custom audits, but these have declines as customer funds and staffing levels have declined for energy efficiency projects due to the economy.
- It is anticipated that on average 0-4 custom audits will be conducted annually going forward.

Standard Audits (Energy Surveys)

- Only two standard audits were conducted in FY 13-14. Thirteen standard audits were conducted in FY 11-12. The reduction of standard audits over time is a result of the economy's effect on customer funds and staffing for energy efficiency projects, as well as a shift by SVP to providing Design Assistance for specific projects in small customer facilities, rather than providing a full audit report when only one or two possible energy efficiency measures exists.
- The graph below shows the monthly requests that were received.
NOTE: This is only meant to illustrate the variation in monthly customer requests. Actual number of requests in each month will vary.



- Total potential energy savings (kWh) amounted to 806,099 kWh over FY 11-12 and FY 12-13 combined. Corresponding potential cost savings amounted to \$101,211 over the two fiscal years combined. The table below provides additional details on the standard audits conducted.

Standard Audit Details FY 2011-2012 and FY 2012-2013							
Building Classification	Total Number	Building Size (SF)			Average kWh	Total Potential Annual Savings (kWh)	Total Potential Annual Cost Savings
		Min	Max	Average			
Automotive Repair	2	3,820	6,500	5,160	35,437	26,212	\$3,602
Office - Small	4	3,408	30,000	20,577	407,646	135,513	\$16,878
Warehouse	1			18,000	23,808	14,138	\$1,950
Retail	3	1,500	120,000	47,300	379,591	357,531	\$41,204
Light Industrial	1			8,000	61,920	22,238	\$3,056
Restaurant	3	1,300	2,000	1,733	67,218	34,999	\$4,774
Office, Lab	1			70,000	4,589,760	216,468	\$29,747
Total	15					807,099	\$101,211

- Due to an increase in the use of third party programs with focused energy surveys, the target for the Energy Survey Program is 30 surveys.

Rebate Program Details

The table below provides the annual energy savings and total rebate paid by program type for FY 07-08.

Program Type	Description	Number of Rebates	Total Energy Savings (kWh)	Total Rebates Paid
Std	HVAC Rebate	4	26,130	\$20,700
Std	LEED Rebate	1	0	\$900
Std	Lighting Rebate	63	1,955,859	\$306,134
Std	Motor/VFD Rebate	2	65,215	\$6,923
Std	ENERGY STAR UPS Rebate	1	306,000	\$105,000
Std	PC Power Management	1	165,250	\$19,830
Custom	Customer Directed Rebate	10	4,659,916	\$307,983
Custom	Data Center Rebate	2	5,811,684	\$424,534
Custom	Small Business Program	162	1,655,108	\$388,776
3rd Party	School Program	5	289,144	\$39,041
3rd Party	Small Data Center Airflow Optimization Prog	1	69,510	\$9,036
Totals		252	15,003,816	\$1,628,858

Note:

1. Standard rebate (STD) is the rebate received by all customers, unless they are a small business customer who receives a bonus rebate in the first 6 months of program enrollment.

4. Administrative Requirements from Respondents

In this section, we detail the Administrative Requirements pertaining to this solicitation. Respondent must meet and adhere to all of the Administrative Requirements. Failure to positively identify the Respondent's intention to fulfill these requirements may, at the discretion of the City, result in a determination of material defect and result in disqualification of the Respondent's response.

To address the Administrative Requirements, Respondent should repeat the headings from this section in their proposal and then provide full written responses to the requirements under each heading.

Note that unless requested, it is not appropriate to provide generic presentations, references to content on websites, general marketing materials, or other similar items as your primary response. Questions must be answered fully.

A. Company Information

Respondent must address all the company information-related requirements in this section. Additionally, if a Respondent plans to utilize the services of one or more Subcontractors to meet any of the RFP requirements, the Respondent must provide responses to all the company information requirements identified in this section for each Subcontractor.

i. Company Background

Respondent must provide company background information via responses to the following:

- Company name and address
- Number/location of offices (specifically identifying the one(s) that would support this project)
- Length of time in business
- Total years serving the utility industry
- Total years in energy audit and rebate management business
- Number of full-time employees, including the number of full-time employees in California
- Average turnover rate per year for the last two (2) years
- Annual gross revenue for last three (3) years
- Annual gross revenue for last three (3) years derived from the utility industry
- Description of company history/background
- Description of company services

ii. Experience

Respondent must provide company experience information via responses to the following:

- a. Primary Implementer's and Subcontractors' company experience managing similar programs or projects as defined in this RFP. Describe how Respondent has successfully delivered coordinated offerings with multiple programs, implementers or market actors.
- b. List of clients with similar solutions, a description of each solution, including the length of time each solution has been provided, the deliverables provided and ongoing services provided. Also provide details on the projected annual kWh/kW savings. If any guarantees were provided on savings, state the amount of the guarantee and how the guarantee functioned as well as how the Respondent was required to pay funds to meet the guarantee.
- c. If the Respondent has had a contract terminated for default during the past three (3) years, all such incidents must be described. Termination for default is defined as notice to stop performance due to the Respondent's nonperformance or poor performance, and the issue was either (a) not litigated; or (b) litigated and such litigation determined the Responder to be in default. Please submit full details of all terminations for default, including the other party's name, address, and telephone number. Please present the Respondent's position on the matter. The City will evaluate the facts and may, in its sole discretion, reject the Respondent's proposal if the facts discovered indicate that completion of a contract resulting from this RFP may be jeopardized by selection of the Respondent. If the Respondent has experienced no such terminations for default in the past three years, please indicate as such. If the Respondent has had a contract terminated for convenience, nonperformance, non-allocation of funds, or any other reason, which termination occurred before completion of the contract, during the past three years, describe fully all such terminations, including the name, address and telephone number of the other contracting party. A Respondent response that indicates that the requested information will only be provided if and when the Respondent is selected as the apparently successful Respondent is not acceptable. Restricting the Respondent's response to include only legal action resulting from terminations for default is also not acceptable.

iii. Financial Stability

Respondent must provide documents to demonstrate financial capability, to demonstrate financial solvency, and the capacity to fulfill the obligations of this RFP. Respondent must provide a copy of most recent financial statements that comply with one of the following:

- a. Audited or reviewed by an independent certified public account, or
- b. Compiled by an independent CPA, public accountant, or internal accountant and certified as accurate by the Respondent's Chief Financial Officer or President, or annual report for the last three (3) years. A Respondent's 10-K is acceptable. If the most recent financial statements are more than nine (9) months old, then it must be certified as accurate by either the Chief Financial Officer or President, or
- c. Tax returns for the Respondent are acceptable in lieu of audited, reviewed, or certified financial statements or annual reports. If a 10-K is not provided by an applicant other than an individual, there shall be a statement of ownership for Respondent's business entity.

iv. Customer References

Respondent must provide three (3) references for similar projects that have been undertaken in the last five years. For each project, Respondent must include a completed Attachment I – Customer Reference Form. SVP may, at its discretion, contact any or all of the references provided.

B. Staffing

Respondent must address all the staffing related requirements in this section. Additionally, if a Respondent plans to utilize the services of one or more Subcontractors to meet any of the RFP requirements, the Respondent must provide responses to all the staffing requirements identified in this section for each Subcontractor.

i. Proposed Organization

- a. The Respondent's response must contain a complete description of the organization, functionality, and skill set of the proposed project team. Specifically, Respondent must provide the following:
 - Proposed project team structure (organization chart)
 - Identification of key staff (including names and titles)
 - Job description for each key staff position

Key staff includes, but is not limited to, a Project Manager and any other implementation and/or ongoing operations staff identified by the Respondent.

- b. If your firm is not headquartered locally (within Santa Clara County), discuss the mechanism that will guarantee the local support services necessary for completing and servicing this project through the term of the contract.

ii. Key Staff Résumés

Attach résumés of key personnel who will perform proposed work and who are assigned to this project. The résumés must include a summary of the person's experience (especially that which is specific to this RFP), a chronological, detailed account of their experience, education information, and identification of any certifications. Please also provide an explanation as to why these personnel are best suited to meeting the requirements of this RFP.

iii. Key Staff References

Respondent must provide three (3) references for each key staff person proposed by using Attachment J – Key Personnel Reference Form. The references provided for each individual must be for projects/programs of similar size and scope (or larger) to the one described in this RFP.

C. General Rules and Procurement

If Respondent has any comments or reservations about any of the sub-sections listed in Section 2 – General Rules and Procurement Information, the section number along with Respondent's comments should be listed.

5. Technical Requirements

1. *Sample Energy Audit Report:* A complete sample energy audit for a project listed under Section 4.1.2.b is required from each Respondent submitting qualifications. The audit will be identified as an attachment of the response to this RFP.
2. *Energy Audit Timeframe:* The Respondent shall indicate typical ranges of time required to complete comprehensive energy audits. Additionally provide the explanation as to the assumptions and measures used to determine the timeframes.
3. *Energy Savings Goals:* A key objective of SVP is to translate energy audits that are conducted to actual kilowatt hour savings by means of following up with customers on the recommendations such that it will translate to implementation of energy savings measures.
 - a. Explain how the Respondent proposes to follow-up on energy audits with SVP's customers that will result in implementation of energy saving measures.
 - b. Describe in detail the energy savings guarantees that the Respondent may be willing to propose.
4. Describe the willingness and relative merits of Respondent implementing a project on the basis of a shared savings agreement or a guaranteed savings agreement, as well as any other compensation approaches that the Respondent may recommend.
5. What are the best practices, tools, initiatives and solutions that Respondent would leverage and deploy at SVP to ensure that operational costs are reduced year over year?
6. Provide an overview of your integrated solution to support the current scope of services for SVP. In this overview, Respondent must include the following details
 - Organization structure of the team providing services to SVP
 - Location of service provision; See notes in Attachment H
 - Roles and responsibilities of key personnel
 - Tools that Respondent would deploy
 - Best practices that Respondent would leverage
 - Provide reporting to SVP about performance and utilization
 - Governance model
 - Operating model
 - Other key characteristics of the solution
7. *Custom Audits:* Describe the approach to conducting a Custom Energy Audit for a facility. Refer Section 3.2.4 – Custom Audits for a description.

8. *Monitoring & Verification:* Describe the methodology proposed for ongoing monitoring and savings verification of each recommended program's performance, including the frequency of such efforts.
9. *Customer Satisfaction:* A key goal of SVP is to improve the customer satisfaction level amongst its customers. What approach does the Respondent propose to a) measure, and b) improve, customer satisfaction? What feedback mechanism would be put in place to improve customer satisfaction?
10. *Quality Assurance:* Respondent should provide a detailed approach and methodology to quality control and assurance.
11. *Reporting Metrics:* SVP will require selected vendor(s) to report on a monthly basis at the strategic and operational level the goals and achievements towards these goals. Some metrics (not limited to) include:
 - Overall kWh targeted savings and actual savings achieved
 - Customer satisfaction level
 - Source of leads (contractor, key customer representative, marketing brochure, incoming email from website, vendor staff outreach program, etc).
 - Number of staff hours spent per activity for activities such as: pre and post inspections, standard audits, custom audits, rebate processing, direct marketing to small business (door to door, cold calls, etc), tracking of activities
 - Number of rebates and kWh saved as a direct result of performing an audit and kWh in potential projects remaining.
 - Number of audits that result in no projects
 - Number of hours spent in training, education, workshops, conferences, etc
 - Number of incoming calls for customer inquiries

Respondent must provide the following as part of its response:

 - a. Approach to reporting metrics to SVP
 - b. Define key metrics that Respondent will report to SVP
 - c. Provide a sample copy of a metrics report
12. *Success Criteria:* Based on Respondent's understanding of SVP's requirements, what would be the key success criteria for this program? How does the Respondent propose to measure and improve based on the success criteria. What mechanism does the Respondent propose to ensure success?
13. *Alternate model:* Respondent is encouraged to provide an alternate approach to the operating and pricing model to help SVP achieve its goals. In case the Respondent wishes to propose an alternate model, the Respondent should provide a detailed description of the solution including reasons as to why the alternate approach is superior to the one proposed by SVP. Additionally, provide any key challenges or limitations that the Respondent foresees in implementing this solution at SVP. If Respondent, has provided a similar solution to other utilities in the past, please provide a case study.

6. Pricing Instructions

SVP expects Respondents to provide firm, fixed prices, not price estimates. The Pricing Worksheets are included as Attachment H. The instructions for completing these sheets are as follows:

1. Do not leave pricing cells blank. Enter "0" if there are no costs involved and insert "Not Applicable" or "Included in Item #" with comments.

2. Prices should not include sales or any other taxes.
3. All pricing must be valid for 90 days from the date of proposal submittal. The monthly rates pertaining to service categories must be valid from July 1, 2014 to June 30, 2015.
4. Clearly state all assumptions, inclusions and exclusions used in arriving at the final pricing. A table format has been specified. Add additional rows if required.
5. If Respondent is proposing an alternate pricing model, SVP expects the pricing worksheet in Attachment H to be filled at a minimum in addition to alternate pricing proposal.
6. The price for Custom Audits shall not exceed \$100,000 for the period from July 1, 2014 to June 30, 2015.
7. Respondent proposing a performance incentive should clearly explain how the incentive mechanism will work.
8. SVP's standard work hours are from 8:00 a.m. to 5:00 p.m.

7. Terms of Agreement

SVP has included a copy of the City's Sample Call Agreement for Services as Attachment C. The City's Call Agreement for Services includes insurance requirements, which Respondents will be expected to fulfill upon award, before the Agreement may be signed.

Please review the contract in its entirety. If Respondent desires to take any exception to the Agreement, Respondent shall provide the following information in response to RFP

Section 8.2.7:

- Respondent shall identify the contract item number (and page number) at issue.
- Respondent shall identify their specific issue with the item.
- Respondent shall propose a change (alternative language) pertaining to each item.

NOTE: The above factors will be taken into account in evaluating proposals. Proposals that take exceptions to the proposed agreement may be determined by the City, at its sole discretion, to be unacceptable and no longer considered for award.

8. Response Format, Submission, and Delivery Instructions

This section describes the mandatory proposal format and provides the proposal submission and delivery instructions.

A. Overview

All RFP requirements must be answered and all requested information must be supplied. All pages in the proposal must be standard 8.5" x 11" paper, except charts, diagrams, etc., which may be foldouts. If foldouts are used, the folded size must fit within the 8.5" x 11" format. All charts and diagrams must be sized so they are readable. Proposals must be provided in an appropriately sized three-ring binder. Page numbers must be located in the same page position throughout the proposal. Figures, tables, charts, etc. must be assigned their own numbers and must be referenced by these numbers in the proposal text and in the proposal Table of Contents. Figures, tables, charts, etc. must be placed as close to text references as possible.

B. Proposal Format

Proposals must be structured and presented in the following manner:

- General Information Form
- Cover Letter
- Table of Contents

- Executive Summary
- Administrative Requirements Response
- Technical Requirements Response
- Price Proposal
- Contract Terms and Conditions

SVP provides additional instructions pertaining to these items in the following sections.

i. General Information Form

Respondent must complete Attachment K – General Information Form and place it on the cover of their proposal response.

ii. Cover Letter

The proposal must contain a Cover Letter, on letterhead, signed by an individual who is authorized to bind the Respondent contractually, and indicating the title that person holds in the firm. The Cover Letter must also include a statement that the Respondent commits to fulfilling the requirements of this RFP.

iii. Table of Contents

The proposal must contain a Table of Contents. Figures, tables, charts, etc. must be assigned index numbers and must be identified in the Table of Contents.

iv. Executive Summary

The proposal must contain the Executive Summary that describes the salient features of the proposal. It must condense and highlight the contents of the proposal, including pricing and include conclusions and recommendations. The Executive Summary must list each Subcontractor and explain each Subcontractor's role in relation to meeting the RFP requirements. *Not to exceed two (2) pages.*

v. Administrative Requirements Response

In responding to the Administrative Requirements, Respondent should repeat the heading names from the Administrative Requirements section and address each of the requirements under those headings. Respondent shall include a narrative description of what the Respondent is going to do, how they are going to do it, and who is going to do it. There are a number of RFP Attachments that correspond to the Administrative Requirements sections, and those attachments should be inserted into the Respondent's proposal as required.

vi. Technical Requirements Response

In responding to the Technical Requirements, Respondent should repeat the heading names from the Technical Requirements section and address each of the requirements under those headings.

vii. Price Proposal

Respondent's Price Proposal will consist of the Pricing Worksheets included in Attachment H. Respondent must complete these sheets in their entirety.

viii. Contract Terms and Conditions Response

Respondent must include a statement of compliance with all contract terms and conditions as identified in Attachment C – Sample Call Agreement for Services. Additionally, please state your comments or reservations (if any), specifically highlighting the section number in Attachment C. Please refer Section 7 – Terms of Agreement for additional instructions on responding to this section.

C. Proposal Submission and Delivery Instructions

i. Proposal Submission

Respondents must submit one (1) original (double-sided and bound) of each proposal. Each proposal must be on recycled 8½" x 11" paper. Proposals must be provided in an appropriately sized three-ring binder. In addition, Contractor shall also submit an electronic copy of the proposal in Microsoft Word format or a PDF version. Each copy should be on a CD in the format specified above.

Proposals should be typed and should be as brief as possible and should not include any unnecessary promotional material. Restrict proposal to not more than 40 pages total, including all responses, reference work, and information about the firm and individuals assigned to the project.

Note: The sample audit report and financial statements will not be counted as part of the page limit.

Additional information submitted after the formal closing date and time will not be accepted, except that copies of a presentation may be provided during an oral presentation, if required.

Respondents are encouraged to refrain from using general marketing material and make this portion of the proposal as specific to the City of Santa Clara and this scope of work as possible.

ii. Delivery Instructions

All proposal packages must be delivered to the address below by 4:00 p.m., PST, on February 18, 2014.

Proposals which are faxed or emailed will not be accepted. To ensure fairness, proposals received after this deadline will not be accepted and will be returned unopened. SVP will date stamp and log in the proposal packages as they are received.

For all deliveries:

Silicon Valley Power, City of Santa Clara
ATTN: Mary Medeiros McEnroe
1601 Civic Center Drive, Suite 102
Santa Clara, CA 95050
Telephone: (408) 615-6646

Due to the possibility of delays, SVP recommends an expedited delivery service or you may deliver them to our office personally during business hours.

9. Proposal Evaluation

SVP staff will evaluate proposals provided in response to this RFP based on the following criteria:

- Quality and completeness of proposal

- Quality, performance and effectiveness of the solution, and/or services to be provided by the Respondent
- Respondent's experience, including the experience of staff to be assigned to the project, with engagements of similar scope and complexity
- Cost to the City
- Respondent's ability to partner with SVP in achieving its stated goals
- Respondent's ability to enhance the effectiveness of SVP's energy efficiency programs
- Respondent's financial stability and length of time in business
- Respondent's ability to perform the work within the time specified
- Respondent's prior record of performance with City or others
- Respondent's ability to provide future records, reports, data and/or services
- Respondent's compliance with applicable laws, regulations, policies (including city council policies), guidelines and orders governing prior or existing contracts performed by the Respondent
- Risk assessment based on the following factors:
 - Relevant experience and performance record in similar projects involving the proposed technical components and business processes
 - Respondent's depth of resources and reputation for success in similar projects
 - Clarity of the proposed approach and methodology
 - Degree to which the proposed solution has been proven (in use) in other cities, counties and/or electric and water utilities for the relevant functions
 - Project timing
 - Other risk factors that may be identified

The following sections detail the evaluation approach.

A. Proposal Opening and Content Validation

All proposals must be delivered to contact/address as identified in Section 2.1 – Key Contact, and by the date/time specified in Section 2.4 - Key Action Dates (or indicated in any RFP addenda that changes the Key Action Dates). All proposals received by the time and place identified will be acknowledged as having been received. SVP will assign an Evaluation Team to review all proposals. The Evaluation Team will review each proposal for the presence of the proper number of proposal copies and required information in conformance with the requirements of this RFP. Absence of the required number of copies or required information may result in the proposal being deemed nonresponsive and rejected.

B. Review of Administrative Requirements

The Evaluation Team will review and evaluate the Responder's responses to all of the Administrative Requirements. Scores will be determined according to the elements described in the following sections.

Company background and experience will be evaluated based on the Respondent's company background, experience, market focus, size and completion of similar projects in like or dissimilar industries. Scoring of these responses will be based on the consensus of the Evaluation Team.

The evaluation process may involve contacting any or all of the customer references. SVP may interview these customers so it can confirm the information submitted.

Customers must respond positively in order for the Respondent to be successful in this portion of the evaluation.

SVP will evaluate the proposed organization and staff based on the Respondent's proposed staff in terms of their organization, skills, knowledge, references, and experience as described in the narrative response and in their resumes. Scoring of these responses will be based on the consensus of the Evaluation Team.

SVP will evaluate the project management approach based on the Respondent's description. Scoring of these responses will be based on the consensus of the Evaluation Team.

C. Review of Technical Requirements

The Evaluation Team will assess and score each Respondent's technical solution in terms of the probability of successful implementation of a solution that meets the RFP requirements.

D. Review of Pricing Proposal

Each Respondent's Pricing Proposal will be reviewed for completeness and checked for accuracy. Respondent's proposals will be evaluated, scored, and prioritized based on the pricing that is the most advantageous to SVP.

E. Selection of Respondent

After evaluating all proposals, SVP will notify Respondents of their status. If SVP determines that more than one Respondent meets SVP's qualifications, these Respondents may be asked to respond to more detailed questions and participate in an interview and/or provide a presentation. SVP may enter into contract negotiations with the qualified Respondent or Respondents.

SVP shall negotiate an agreement based on the City's Standard Agreement (refer Attachment C – Sample Call Agreement for Services) format with the highest-ranking Responder(s) after the selection process. The selected Respondent(s) negotiated fee shall be stated in the Scope of Work that will be attached to the Call Agreement on a not-to-exceed basis and shall include payment for professional services and reimbursable expenses. Negotiations, if initiated, are not a guarantee that SVP will execute a contract. SVP reserves the right to cancel this RFP at any time.

In the event a contract is awarded for services resulting from this RFP, no indication of such services to the City of Santa Clara will be used in any advertising without prior agreement of the City of Santa Clara.

The parties may agree in writing to modify the scope of the project. An increase or decrease in the price resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the project.

10. Attachments

In this section, the following attachments are provided:

- Attachment A – Registered Responder Information / Intent to Bid Form

- Attachment B – Format for RFP Questions
- Attachment C – Sample Call Agreement for Services
- Attachment D – Sample Call
- Attachment E – Non-Disclosure Agreement
- Attachment F – List of Public Benefit Programs
- Attachment G – List of Subcontractors
- Attachment H – Pricing Worksheets
- Attachment I – Customer Reference Form
- Attachment J – Key Personnel Reference Form
- Attachment K – General Information Form

Attachment A – Registered Responder Information/ Intent to Bid Form

In order to register as a Respondent for Silicon Valley Power’s RFP for Commercial / Industrial Energy Audit and Rebate Management Services and relay your intent to bid, please provide the following information, including signature, and fax a copy of the form to:

Mary Medeiros McEnroe
Public Benefit Program Manager
City of Santa Clara
Silicon Valley Power
Fax: 408-244-2990

Intent to Bid: Please fill the check-box with (✓)
 Yes, I intend to bid

Date: _____

Company Name: _____

Company Primary Contact: _____

Street Address: _____

Mailing Address: _____

Phone: _____

Fax: _____

Email: _____

Signature: _____

Note: This Attachment A should reach SVP no later than January 27, 2014.

Attachment B – Format for RFP Questions

Any queries that Respondents have on the RFP are to be consolidated and forwarded by e-mail to Mary Medeiros McEnroe (mmedeiros@svpower.com) in the format provided below.

All queries must reach the intended recipient by 5:00 PM PST, January 31, 2014 via email.

Respondent Name	
Contact Person	
Contact Email	

Query 1

Document Title	
Section Number	
Section Title	
Page Number	
Query	

Query 2

Document Title	
Section Number	
Section Title	
Page Number	
Query	

Note: Please replicate the format for additional questions, if any.

Attachment C – Sample Call Agreement for Services

The City's Standard Agreement follows this page (paginated separately). This agreement will be amended, finalized, and signed during contract negotiations.

**SAMPLE CALL AGREEMENT FOR SERVICES
CALL AGREEMENT BY AND BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
(Insert contractor's name here)
for _____ Services**

PREAMBLE

This call agreement ("Agreement") is made and entered into in the City of Santa Clara, California, on this ____ day of _____ 200__ ("Effective Date"), by and between the City of Santa Clara, California, a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, California 95050 ("City") and _____, a _____ insert appropriate corporation\contractor\partnership reference as required _____, with its principal place of business located at _____ ("Contractor"). City and Contractor may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

Whereas:

- A. Contractor agrees to provide certain professional services to City on an on-call basis;
- B. Contractor has the ability and desire to provide the quality and type of professional services which meet the objectives and requirements of City as set forth in this Agreement; and,
- C. The Parties have specified in this Agreement the terms and conditions under which such services will be provided to and paid for by the City.

In consideration for the mutual promises contained in this Agreement, the Parties agree as follows:

AGREEMENT PROVISIONS

1. SCOPE OF SERVICES

- 1.1 To the extent possible, the professional services to be provided under this Agreement shall be performed in the City of Santa Clara and the services shall be described in detail by the Contractor and submitted in a written proposal to the City ("Services"). The Contractor's final proposal will be included as an exhibit entitled, "Scope of Services" attached to a subsequent agreement between the Parties referred to in this Agreement as a "Call" or a "Call for Services." Each Call will incorporate the terms of this Agreement by reference and must be signed by both Parties. Contractor agrees to provide professional services to the City as specified in each respective Call, to the extent funds have been authorized by the City.

- 1.2 No Services shall be performed or paid for under this Agreement except as specifically set forth and required in a written Call. No compensation may be sought under this Agreement for work performed prior to the issuance of a Call or for work to be performed or paid for under another contract. No compensation shall be paid in excess of the maximum dollar amount indicated in each respective Call for Services.
- 1.3 The Parties acknowledge that on the Effective Date of this Agreement, they are unaware of the details of all of the services which may be needed by City or provided by Contractor during the term of this Agreement. The Parties intend to specify the details and value of such Services in a subsequent Call, if any. This Agreement does not require that any Call(s) be signed. The Parties intend to provide the details of the contractual relationship between the Parties in this Agreement, so that by incorporating the terms of this Agreement in the Call(s), the Call may be brief and address the specific Services to be provided, the details of the time when the Services are to be provided and the schedule and amount the Contractor is to be paid for such Services.

2. PAYMENT

- 2.1 **Not to Exceed Maximum Amount.** The total amount billed to, and paid by, City for Services provided and authorized expenses incurred under a Call shall not exceed the maximum dollar amount specified in the Call. Contractor shall complete all Services contained within the scope of a Call regardless of whether the not to exceed amount has been reached, at no extra charge to the City. However, Contractor shall not perform any Services outside the scope of the Call without prior written authorization when the amount billed for under a Call exceeds the maximum dollar authorized amounts in the Call.
- 2.2 **Monthly Invoices.** Unless provided otherwise in a particular Call, payment to Contractor shall be in accordance with the procedures in this paragraph 2.2 and in paragraph 2.3. On a monthly basis, Contractor shall prepare an invoice which includes an itemization of all time spent based on the percent of Services complete, as well as any Authorized Expenses incurred (i.e., Out-of-Pocket Costs, Sub-contracted Services and/or Extraordinary Expenses).
- 2.2.1 If a particular Call directs that an invoice be presented in a format of a time sheet rather than as a percentage of Services completed, the itemization on each monthly invoice shall set forth the amount of time (recorded in quarter hours), the name of the employee performing the task and a description of each task performed. After setting forth the time spent on a daily basis, the itemization will provide a summary, at its end, of the total hours spent by each employee for the month, the hourly rate charged for that employee, and the total value of the service rendered by that employee for the month. The amount billed for Services shall then be determined by adding the value for the Services rendered by each employee for that particular month.

- 2.2.2 All monthly invoices shall also include a written itemization of the Authorized Expenses incurred, if any, with a detail listing the cost and source of such expenses and when they were incurred.
- 2.2.3 Contractor shall maintain documentation of such time and costs for City inspection for a period of three (3) years from the date of termination of this Agreement.
- 2.2.4 Within thirty (30) days of receipt of an itemized written invoice from the Contractor, City shall pay Contractor the amount billed for Services performed and authorized costs incurred under the Call during that billing period.
- 2.3 **Authorized Expenses.** The amount billed for Services shall be determined as set forth in paragraph 2.2 above plus the following amounts, if allowed under the Call:
- 2.3.1 **“Out-of-Pocket Costs”.** Contractor’s Out-of-Pocket Costs are those expenditures made by Contractor, other than employees’ salaries and payment for Services of retained specialists, which are directly chargeable to the Services performed and which would not otherwise have been incurred by Contractor. Unless otherwise provided, the Out-of-Pocket Costs must be approved in writing in advance by City and may be billed to the City and reimbursed to the Contractor only as specifically authorized and set forth in each respective Call. Authorized Out-of-Pocket Costs shall be billed without additional markup or administrative charge;
- 2.3.2 **Per Diem.** A Call will state whether or not it includes an estimate for anticipated travel expenses. If the Call does not include an estimate for anticipated travel, then the provisions of this paragraph shall apply. A Party’s travel expenses include airfare, rental car, or mileage, lodging and meals. The Party who is receiving the services pursuant to a particular Call, is the Reimbursing Party. Prior to incurring any charge for travel, the Party planning to travel (“Traveling Party”) shall (1) confirm that the Reimbursing Party is available for meetings on the proposed dates and (2) provide (either verbally or by facsimile) a price quote to the Reimbursing Party for the anticipated airfare prior to the charge being incurred, the Reimbursing Party shall either verbally or by facsimile confirm that the airfare may be incurred; in the event that the Reimbursing Party verbally confirms that the airfare may be incurred, the Traveling Party *shall* confirm in writing (prior to incurring the charge) that the Reimbursing Party has agreed to the charge. All travel expenses shall be reimbursed at cost, with no mark-up. Hotel rooms shall not exceed a cost of \$125 per night unless otherwise agreed by Reimbursing Party. Airfare and car rentals shall be reimbursed at economy class, unless economy class is unavailable through no fault of the booking party. Mileage, if applicable, shall be reimbursed in accordance with the current IRS guidelines for mileage reimbursement. Reasonable attempts shall be made to make plane

reservations in advance in order to take advantage of lower fares. In the event that travel plans must be canceled or re-scheduled due to the fault of the Reimbursing Party, then the Reimbursing Party shall pay for any costs associated therewith; if the travel is canceled or re-scheduled due to the fault of the Traveling Party, then the Traveling Party shall bear the expense. Invoices for travel expenses shall be supported by receipts, and shall be reimbursed in accordance with paragraph 2.2.1. Meals, if reimbursed, shall not exceed fifty dollars (\$50) per day.

2.3.3 **Any authorized “Sub-contracted Services” incurred by Contractor.** Authorized Sub-contracted Services are services provided by a retained specialist or sub-contractor and may be billed to City only if specifically described and authorized in a Call. (Retained specialists and sub-contractors shall include individuals or organizations offering qualified special services to City who are particularly skilled in one or more fields and who may be occasionally employed by the Contractor to fill the need for special or unusual services. Unless otherwise provided, the cost of furnishing such special services must be approved in writing in advance by City and the costs billed to City and reimbursed to the Contractor shall be only the actual charges of the retained specialist or sub-contractor, without additional markup or administrative charge); and/or,

2.3.4 **Any other authorized “Extraordinary Expenses” incurred, if any, as set forth in the Call.** Authorized Extraordinary Expenses shall be billed without additional markup or administrative charge.

2.4 **Retainer or Flat Fee for Services.** The Parties to this Agreement may, from time to time, determine that payment for a certain Scope of Services set forth in a Call pursuant to this Agreement should be made to Contractor on a retainer or flat fee for Services basis (“Stipulated Fee”). If the Parties so agree, then the provisions of this paragraph and the provisions of paragraph 2.2.1 shall apply, unless the Call provides otherwise. The Call shall set forth the maximum monthly or annual fee agreed to by the Parties as it relates to any Agency Fee or to any Out-of-Pocket Costs, and Contractor shall not exceed the amount(s) agreed to without written approval of City. The maximum Agency Fee agreed upon by the Parties is deemed to fully compensate Contractor for all work necessary for Contractor to complete the Scope of Work set forth in a Call.

3. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, through its authorized employees, representatives, or agents shall have the right during the term of this Agreement, and for three (3) years from the date of final payment under this Agreement, to audit Contractor’s books and records for the purpose of verifying any and all charges made by Contractor in connection with Contractor’s compensation under Calls made pursuant to this Agreement, including termination of Contractor’s Services. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of

all charges submitted to City. Any expense not so recorded shall be disallowed to Contractor.

4. PROSECUTION OF WORK

Contractor shall perform the Services required under this Agreement and the Call(s) made pursuant to it in an efficient and expeditious manner. Contractor shall commence work on the Effective Date specified in the applicable Call. Contractor is responsible for any delays caused by Contractor, its agents or subcontractors, or caused by factors directly or indirectly under its control. No extension of time for performance shall be given for such delays.

5. QUALIFICATIONS OF CONTRACTOR; STANDARD OF WORKMANSHIP

Contractor represents that it has sufficient qualified personnel to furnish the Services described under this Agreement and that the Services will be furnished in accordance with generally accepted professional standards and practices in the industry.

The work furnished to the City pursuant to any of the Calls under this Agreement shall be of a quality acceptable to the City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct. The minimum standard of appearance, organization and content of the documents shall be that used by the City for similar projects.

6. SUSPENSION OR TERMINATION

City may suspend or terminate this Agreement or any or all work covered under any Call under this Agreement at any time upon thirty (30) days' prior written notice. Contractor may terminate this Agreement as set forth in paragraph 6.4. Said termination or suspension shall be effective as of the thirtieth day after the date of the notice ("Effective Date of Termination"). This Agreement, and any portion of the Scope of Services described in any Call including but not limited to any specific task, project, study, advertisement or campaign, may be terminated by the City upon written notice delivered personally or by registered mail or equivalent mail or delivery service which provides for an office signature of receipt. With regard to termination of any portion of the Scope or any specific task, termination will be effective immediately, unless economic or practical considerations result in the Parties mutually agreeing to a specific termination date.

6.1 If such termination is due to the fault of Contractor, and if City agrees to make payment for all work and Services satisfactorily rendered up to the Effective Date of Termination, payment will be made within thirty (30) days of receipt of a statement for work and Services performed. Contractor shall immediately take proper steps to effect City's instructions, canceling any commitments previously authorized by City, if City so requires. City may deduct from such payment the amount of actual damage, if any, sustained by City by virtue of the failure to perform the Services or for breach of this Agreement by Contractor.

- 6.2 If such termination is not due to the fault of Contractor, then City agrees to make payment for all work and Services rendered up to the Effective Date of Termination within thirty (30) days from receipt of a statement for work and Services performed. Contractor shall immediately take proper steps to effect City's instructions, canceling any commitments previously authorized by City, if City so requires. City shall reimburse Contractor for any costs, expenses or service charges incurred by Contractor as a result of canceling previously authorized outsourced services.
- 6.3 Upon termination of this Agreement, Contractor shall transfer, assign and make available to City or City's representative, all property and materials in Contractor's possession belonging to and paid for by City.
- 6.4 Contractor may suspend or terminate this Agreement upon completion of work on all outstanding Call(s). Contractor may terminate work under a particular Call if the City is in default of the terms of this Agreement or any Call.

7. AVAILABILITY OF FUNDS

City represents that adequate funds will be available to make payments for Services received as required by each Call.

8. CONTRACTOR IS AN INDEPENDENT CONTRACTOR

In performing work under this Agreement, Contractor is not an agent or employee of City, but is an independent contractor for professional Services with full rights to manage its employees subject to the requirements of the law. All persons employed by Contractor in connection with this Agreement will be employees of Contractor and not employees of City in any respect.

9. AMENDMENTS

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties.

10. HOLD HARMLESS/INDEMNIFICATION

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissioners, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost and/or expense or damage ("Claim"), including all costs and reasonable attorney's fees in providing a defense to any such Claim which arises from Contractor's acts, errors or omissions with respect to, or in any way connected with, the prosecution of the work performed by Contractor pursuant to this Agreement.

11. TERM OF AGREEMENT

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall be three (3) years, beginning on the Effective Date and terminating three years later. However, this Agreement shall be deemed extended for such time as is necessary for Contractor to complete work on any Call which is issued prior to the termination date of this Agreement, but is still in progress on the termination date of this Agreement. Any incomplete Call(s) which have been issued pursuant to the terms of a previous agreement between the Parties is/are hereby reaffirmed and each such Call shall remain in full force and effect under this Agreement, subject to the terms of such Call.

12. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any period following the termination date as set forth in this Agreement, Contractor shall purchase and maintain in full force and effect the following insurance policies:

- 12.1 commercial general liability (including bodily injury and property damage);
- 12.2 business automobile liability insurance;
- 12.3 worker's compensation employer's liability; and
- 12.4 if applicable, professional liability insurance.

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts and with the required endorsements, certificates of insurance and coverage verifications as defined in Exhibit C, attached and incorporated by this reference. Contractor shall make its best effort to secure, and thereafter maintain in effect, such insurance policies. In the event that any required insurance policy expires or is terminated for any reason, Contractor agrees to replace the policy prior to any lapse in coverage. In the event any policy required under this Agreement is allowed to lapse, City may, in its sole discretion, elect to purchase the required insurance policy and the cost of such policy shall be charged to Contractor or withheld from the payments due to Contractor from City under this Agreement.

CONTRACTOR AGREES THAT, PRIOR TO EXECUTION OF THIS AGREEMENT, CONTRACTOR SHALL PROVIDE ITS INSURANCE BROKER WITH A COPY OF THIS PAGE OF THE AGREEMENT AS WELL AS WITH A COMPLETE COPY OF EXHIBIT C, AND WILL OBTAIN ASSURANCE FROM ITS CARRIER THAT ITS INSURANCE CARRIER WILL PROVIDE: (1) THE EXACT COVERAGES IN THE REQUIRED DOLLAR AMOUNTS STATED THEREIN, (2) AN ENDORSEMENT NAMING THE CITY OF SANTA CLARA, ITS COUNCIL, EMPLOYEES AND OFFICERS AS ADDITIONAL INSURED ON THE CGL AND BAL, AND (3) AN ACCORD EXPLICITLY STATING THAT "THE CITY OF SANTA CLARA, ITS COUNCIL, EMPLOYEES, AND OFFICERS ARE HEREBY ADDED AS ADDITIONAL INSURED IN RESPECT TO ALL LIABILITIES ARISING OUT OF

CONTRACTOR'S PERFORMANCE OF WORK UNDER THIS AGREEMENT" AS REQUIRED BY PARAGRAPH 2 OF EXHIBIT C.

13. **OWNERSHIP OF DATA AND INFORMATION**

City shall own any written reports or other items deemed deliverables by the respective Call, as well as any documents, data or other information supplied by City to Contractor during the course of this Agreement. Contractor shall deliver said data and information to City whenever requested to do so, but in any event within thirty (30) calendar days of the completion of the task. All material, including information developed on computer(s), which shall include, but not be limited to, data, artwork, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, advertisements, pamphlets, mailers and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City whether or not used, so long as that material has been paid for by the City. City shall not be limited in any way or at any time in its use of said material. City acknowledges that it shall not own any of Contractor's proprietary, confidential or trade secret information, such as formulas, patterns, compilations, programs, devices, methods, techniques or processes through which Contractor derives independent economic value because the foregoing item[s] is not generally known to the public and is the subject of reasonable efforts to maintain its secrecy.

14. **CONFIDENTIALITY OF DATA AND MATERIAL**

14.1 All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Such data information or reports may be viewed by or distributed to third parties only after prior written approval of City. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

14.2 Contractor shall take reasonable efforts to safeguard any and all City property entrusted to Contractor's custody or control; however, Contractor shall not be liable to City for any loss, damage, or destruction of any such property unless Contractor's actions constitute negligence or reckless disregard of City's property.

14.3 A Party disclosing information to the other which it considers to be Confidential Information, shall clearly label that information "Confidential" before disclosing it to the other Party. Confidential Information means information which is of a non-public, proprietary or confidential nature belonging to the Disclosing Party, including without limitation, all reports and analyses, technical and economic data,

studies, forecasts, trade secrets, research or business strategies, financial or contractual information, gas or coal reserve information, rates, loads, energy requirements, certain sales market information, research, developmental, engineering, manufacturing, technical, marketing, sales, financial, operating, performance, cost, business and process information or data, know-how, and computer programming or other written or oral information. Confidential Information may be in any form whatsoever, including without limitation writings, recordings, electronic or oral data, computer programs, logic diagrams, component specifications, drawings or other media. Only that information disclosed by a Party and clearly designated in writing as Confidential Information prior to its disclosure shall be deemed to be Confidential Information. Verbal information that is intended to be treated as Confidential Information shall be described in writing and identified as Confidential Information.

14.4 Contractor acknowledges that City is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. City acknowledges that Contractor may submit information to City that Contractor considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Contractor acknowledges that City may submit to Contractor information that City considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by a Disclosing Party as Confidential Information, the Receiving Party as soon as practical but within three (3) days of receipt of the request, shall notify the Disclosing Party that such request has been made by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed at the end of the Agreement. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.

14.5 The Receiving Party may cooperate with the Disclosing Party in any efforts to prevent release of the Confidential Information; however, the Receiving Party shall not be required to expend any monies in excess of the cost of notifying the Disclosing Party by telephone, facsimile and/or mail of the pendency of a demand for the Confidential Information. So long as the Receiving Party complies with the provisions of notification set forth in this Agreement, the Receiving Party shall not be liable for, and Customer and City hereby release each other from, any

liability for any damages arising from any requirement under the law that the Receiving Party release Confidential Information to a Requestor, and such release includes the officers, commissioners, employees, agents, council members, and directors, as those terms may apply to each Party hereto, without limitation.

14.6 The Receiving Party may, at its sole expense, institute, or intervene in any proceeding, in order to protect the Confidential Information from disclosure, and if the Disclosing Party requests and agrees in writing to indemnify the Receiving Party from any expense or liability for expenses, the Receiving Party may cooperate actively in any such action or proceeding; provided, however, that the Receiving Party shall have no duty to the Disclosing Party to actively cooperate, notwithstanding an offer by the Receiving Party to provide a complete indemnity.

15. **CORRECTION OF WORK**

The performance of Services by Contractor shall not relieve Contractor from any obligation to correct any incomplete, inaccurate or defective work at no further cost to City.

16. **NOTICES**

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050,
or by facsimile at (408) [insert fax number]

and to Contractor addressed as follows:

or by facsimile at (____) ____-____

17. **CHANGES**

City may, from time to time, request changes in the “Scope of Services” to be performed pursuant to a Call issued under this Agreement. Such changes, including any increase or decrease in the amount of Contractor’s compensation, which are mutually agreed upon by and between City and Contractor, shall be incorporated in written amendments to the Call, or included in a subsequent Call.

18. **CONTRACT FOR ADMINISTRATIVE SERVICES**

To the extent that this Agreement is a contract authorizing Calls to be made for Administrative Services, the City Council entered into such Agreement upon the recommendation of the City Manager pursuant to Section 1108 of City’s Charter. The

policy decision with respect to the Services to be provided under this Agreement was made exclusively by the City Council.

19. SUB-CONTRACTING AND ASSIGNMENT

Except as specifically provided in this Agreement, the City intends that the work described in each Call must be performed by the Contractor and not by a subcontractor or agent of the Contractor. Contractor shall not assign any interest in this Agreement, or any Call issued pursuant to this Agreement, and shall not transfer any interest in same (whether by assignment or novation) without prior written approval of City. Inclusion of a subcontractor in a proposal attached to a Call, once signed by the City, constitutes written approval.

However, claims for money due to or to become due to Contractor from City under this Agreement may be assigned to a bank, trust company or other financial institution, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to City. In case of the death of one or more members of Contractor's firm, the surviving member or members shall complete the Services covered by this Agreement or any incomplete Call. Any such assignment shall not relieve Contractor from any of its obligations or liability under the terms of this Agreement.

20. OTHER AGREEMENTS

This Agreement shall not prevent either Party from entering into similar agreements with others.

21. TOTALITY OF AGREEMENT

This Agreement embodies the entire Agreement between City and Contractor and all the terms and conditions agreed upon by the Parties to this Agreement. No other understanding, agreements, conversations, oral or otherwise, with any officer, agent, or employee of the City prior to the execution of this Agreement, regarding the subject matter of this Agreement shall affect or modify any of the forms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding on either Party to this Agreement.

22. SERVICE WARRANTY

Contractor warrants that Services provided hereunder shall conform with the generally accepted professional practices and standards appropriate to the nature of the Services rendered, that the personnel furnishing said Services shall be qualified to perform the Services assigned to them and that the recommendations, guidance and performance of such personnel shall meet the standard of care normally practiced by engineers or contractors performing the same or similar Services. Contractor shall be required to correct, at no expense to City, all deficiencies in the performance of the contract service

that results from Contractor's failure to observe and adhere to the above warranty and which are detected within one (1) year from the date of completion of the Services. Work performed under this warranty shall also be warranted for a one (1) year period from the date of completion of such work. Contractor shall be required to reimburse City for all misexpenditure of funds resulting from Contractor's deficient performance of its Services.

23. **DISPUTE RESOLUTION**

Any documented dispute between the Parties which arises during the performance of this Agreement and which the Parties cannot then resolve, shall be subject to the following administrative remedy prior to any litigation occurring between the Parties.

23.1 Internal Resolution. Both Parties shall attempt to resolve any controversy claim, problem or dispute arising out of, or related to, this Agreement through good faith consultation in the ordinary course of business. In the event that any problem or dispute is not resolved, by the project managers of each Party, either Party may upon written notice to the other request that the matter be referred to senior management officials within each respective organization with express authority to resolve the problem or issue. Such representatives shall meet or confer at least once in good faith, to negotiate a mutually acceptable resolution within ten (10) business days of such written notice. If the parties cannot reach a mutually agreeable resolution, then the dispute or issue shall be submitted to mediation within thirty (30) calendar days of the written request of one Party after the service of that request on the other Party.

23.2 Notice. A Party with claims arising under this Agreement shall, within thirty (30) days of knowledge of said claim, begin the process of exhausting all administrative remedies, as well as any other administrative remedies required by law. If the final decision or outcome of any administrative proceeding is unacceptable to a Party, then within thirty (30) days of the date of that final decision, the dissatisfied Party shall give written notice (certified mail-return receipt requested) to the other Party of the issues it deems outstanding that must be submitted to mediation (Request for Mediation).

23.3 Mediation. Any controversies between City and Contractor regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, except those for which the appropriate remedy should be injunctive relief shall be mediated within sixty (60) days of the date on the written Request for Mediation, or the soonest date thereafter that the mediator is available.

23.4 Mediator. Within twenty (20) days or less of the written Request for Mediation, the Parties shall agree on one mediator. If they cannot agree on one mediator within such twenty-day period each Party shall list the names of three (3) potential mediators affiliated with the Judicial Arbitration and Mediation Service ("JAMS") and shall supply them to the Party demanding the mediation. The Party demanding the mediation shall merge the names of all the potential mediators into a single list, not indicating which Party submitted the name. On that same date as

all names are received by the demanding Party, the Parties shall jointly sign a letter directed to the San Jose office of JAMS, requesting that JAMS appoint a mediator from the enclosed list. If a Party refuses or fails to submit three (3) names within the three day period to the Party preparing the letter, then the letter shall be sent on the fifth day without input from the Party failing to submit names. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.

23.5 **Costs.** The costs of mediation shall be borne by the Parties equally.

23.6 **Discovery.** If, during any dispute between the Parties, a demand is made by Contractor for documents under the Public Records Act, the City shall have reciprocal rights to demand documents from Contractor.

23.7 **Condition Precedent to Filing Suit.** Except as provided in Article 23.3, mediation under this section is a condition precedent to a Party filing an action in any court, unless that Party has made demand for mediation and the other Party has failed or refused to engage in mediation. In the event of litigation arising out of any dispute related to this Agreement, the Parties shall each pay their respective attorneys fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

23.8 **Work Through Disputes.** If the City and the Contractor are unable to reach agreement on disputed work, the Contractor shall nevertheless proceed with the disputed work, and Payment therefore shall be as subsequently determined pursuant to this Article.

24. **CAPTIONS**

The captions of the various paragraphs of this Agreement are for convenience or record only, and shall not be considered or referred to in resolving questions or interpretations.

25. **APPLICABLE LAW**

Any dispute regarding this Agreement, including without limitation, its validity, interpretation, performance, enforcement and damages shall be determined in accordance with the laws of the State of California without regard to California's choice of law principles.

26. **NO THIRD PARTY BENEFICIARY**

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

27. **NO PLEDGING OF CITY'S CREDIT**

Under no circumstances shall Contractor have the authority or power to pledge the credit of the City of Santa Clara, or to incur any obligation in the name of the City without City's prior written agreement or confirmation. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor or its subcontractors under this Agreement. Contractor agrees to obtain City's approval of all expenditures in connection with any materials to be purchased, projects to be performed, advertising to be placed, work to be "outsourced" or other items or Services which will or might be charged to the City. Such approval, if verbal, shall be confirmed by the City in a written letter sent via facsimile and U.S. mail to Contractor in accordance with the terms of this Agreement.

28. USE OF CITY NAME OR LOGO

Contractor shall not use City of Santa Clara's or Silicon Valley Power's name, insignia, trademark, logo or distribute exploitative publicity pertaining to the Services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of City.

29. MONITORING AND EVALUATION OF SERVICES

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accordance with applicable City, county, state and federal requirements. If, in the course of monitoring and evaluation, City believes it has discovered any practice, actions, procedure or policy of Contractor which deviates from the terms of this Agreement, City may notify Contractor in writing and Contractor agrees to respond in writing to City within seven (7) calendar days regarding such action, procedure or policy. However, if any action of Contractor constitutes a breach of this Agreement, City may notify contractor in writing that the Agreement has been terminated pursuant to the provisions set forth in this Agreement.

30. FAIR EMPLOYMENT

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

31. 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.

32. WAIVER

Waiver by a Party of any one or more of the conditions of performance under this Agreement shall not be construed as a subsequent waiver(s) of that condition or of any other condition of performance under this Agreement. No delay in exercising, partial exercise, or complete failure to exercise any right, power, or privilege under this Agreement shall operate as a waiver.

33. **CONFLICT OF INTEREST**

Contractor certifies that to the best of its knowledge, no City employee or officer of any public agency has any pecuniary interest in the business of Contractor and that no person associated with Contractor has any interest that would conflict in any manner or degree with the performance of this Agreement. Contractor represents that it presently has no interest and shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which constitute a violation of said provisions. Contractor will advise City if a conflict arises.

34. **CONSTRUCTION AND INTERPRETATION OF AGREEMENT**

This Agreement, and each of its provisions, terms and conditions, has been reached as a result of negotiations between the Parties. Accordingly, each of the Parties expressly acknowledges and agrees that this Agreement shall not be deemed to have been authored by, prepared by, or drafted by, any particular party, and that the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or in the resolution of disputes.

35. **COMPLIANCE WITH ETHICAL STANDARDS**

As a condition precedent to entering into this Agreement, Contractor shall:

35.1. Read Exhibit A, entitled “ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA” incorporated by this reference; and,

35.2. Execute the affidavit included in Exhibit B, entitled “AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS” incorporated by this reference.

(continued on page 16 of 16)

///

///

The Parties acknowledge and accept the terms and conditions stated herein as evidenced by the following signatures of their duly authorized representatives. It is the intent of City and Contractor that this Agreement shall become operative on the Effective Date first set forth in the Preamble, above.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

***INSERT CONTRACTOR’S NAME**

*choose one: corporation/partnership/individual

By: _____
(Signature of Person executing the Agreement on behalf of Contractor)

Name: _____

Title: _____

Local Address: _____

Email Address: _____

Telephone: () _____

Fax: () _____

“CONTRACTOR”

**CALL AGREEMENT BY AND BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
[INSERT NAME OF COMPANY]**

EXHIBIT A

**ETHICAL STANDARDS FOR CONTRACTORS
SEEKING TO ENTER INTO AN AGREEMENT WITH
THE CITY OF SANTA CLARA, CALIFORNIA**

Termination of Agreement for Certain Acts

- A. City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or sub-contract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City Contractor or sub-contractor; and/or,
 - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.
 2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor

¹ For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

- B. City may also terminate this Agreement in the event any one or more of the following occurs:
1. If City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or
 2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with city, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code [11 U.S.C.], as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

**CALL AGREEMENT BY AND BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
[INSERT COMPANY NAME]**

EXHIBIT B

**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS
[CITY OF SANTA CLARA]**

I, _____, being first duly sworn, depose and say that I am the _____ (title or capacity) of _____ and I hereby state that I have read and understand the language, entitled “*ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA*” (herein “Ethical Standards”) set forth in Exhibit A. I have authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records and I have made inquiry of those individuals potentially included within the definition of “Contractor” contained in the Ethical Standards.

Based on my review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in footnote #1 of Exhibit A [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in Exhibit A within the past five (5) years. The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

[Name of Company]

By: _____

Type name: _____

Title _____

NOTARY’S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public’s acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity’s complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

**CALL AGREEMENT BY AND BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
[INSERT COMPANY NAME]**

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City,

using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. **ADDITIONAL INSURANCE RELATED PROVISIONS**

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon

Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

Attachment D – Sample Call

**CALL NO. *ENTER NUMBER
FOR PROFESSIONAL SERVICES
TO BE PROVIDED TO THE
CITY OF SANTA CLARA, CALIFORNIA
BY (Insert Contractor’s Name Here)**

The Parties to this Call No. *ENTER NUMBER (“Call”) agree that on this ____ day of *ENTER MONTH AND YEAR, this Call is made pursuant to the terms of a Call Agreement between the Parties entitled, “Call Agreement by and between the City of Santa Clara, California and *INSERT CONTRACTOR’S NAME,” dated *ENTER EFFECTIVE DATE OF CALL AGREEMENT, the terms of which are incorporated by this reference. This Call describes the Services to be provided to the City of Santa Clara, California (“City”) by *INSERT CONTRACTOR’S NAME (“Contractor”), which are more fully described in Contractor’s proposal to City entitled “*INSERT TITLE OF PROPOSAL HERE” dated *ENTER DATE OF PROPOSAL (“Proposal”), attached to this Call as Exhibit A and incorporated by this reference. The Services to be performed under this Call shall be completed within the time period beginning on *ENTER DATE and ending on *ENTER DATE. The attached Proposal contains a complete description of the Services, and performance dates for the completion of such Services, to be performed by the Contractor under this Call. In no event shall the amount paid to the Contractor for the Services provided to City by the Contractor under this Call, including all fees or pre-approved costs and/or expenses, exceed *SPELL OUT DOLLAR AMOUNT dollars (*INSERT NUMERICAL DOLLAR AMOUNT), subject to budgetary appropriations.

The Parties acknowledge and accept the terms and conditions of this Call as evidenced by the following signatures of their duly authorized representatives.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

***INSERT CONTRACTOR’S NAME**

*choose one: corporation/partnership/individual

By: _____
(Signature of Person executing the Agreement on behalf of Contractor)

Name: _____

Title: _____

Local Address: _____

Email Address: _____

Telephone: () _____

Fax: () _____

“CONTRACTOR”

Attachment E – Non-Disclosure Agreement

CITY OF SANTA CLARA, CALIFORNIA CONFIDENTIALITY AGREEMENT

PREAMBLE

This Confidentiality Agreement (“Agreement”) is made and entered into on this _____ day of _____, 201__, (“Effective Date”) by and between *insert name, a *choose one: a _____ (enter State name) corporation/partnership/individual, with its principal place of business located at *insert primary business address (“Counterparty”), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 (“City”). City and Counterparty may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

- A. Counterparty and the City (the “Parties”) have agreed to enter into discussions concerning _____ (“Transaction”);
- B. It is anticipated that all materials, documents and information (including meetings and discussions) concerning the Transaction may be exchanged and shared by the Parties and are confidential (“Confidential Information”); and,
- C. The Parties desire to have any such Confidential Information kept in the strictest confidence and maintain their respective rights without making the Confidential Information general public or common knowledge.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. DEFINITIONS.

As used herein, the following terms have the following meanings.

- A. Confidential Information means information which is of a non-public, proprietary or confidential nature belonging to the Disclosing Party, including without limitation, all reports and analyses, technical and economic data, studies, forecasts, trade secrets, research or business strategies, financial or contractual information, rates, certain sales market information, research, developmental, engineering, technical, marketing, sales, financial, operating, performance, cost, business and process information or data, know-how, and computer programming or other written or oral information. Confidential Information may be in any form whatsoever, including without limitation writings, recordings, electronic

or oral data, computer programs, logic diagrams, component specifications, drawings or other media. Only that information disclosed by a Party and clearly designated in writing as Confidential Information prior to its disclosure shall be deemed to be Confidential Information. Verbal information that is intended to be treated as Confidential Information shall be described in writing and identified as Confidential Information.

- B. Disclosing Party is the Party to whom the Confidential Information originally belongs and who (after appropriate notice) shall bear the burden of pursuing legal remedies to retain confidentiality as set forth below in paragraphs 2E and 7.
- C. Receiving Party is the Party to this Agreement who receives information designated as Confidential Information by the Disclosing Party.

2. EXCEPTIONS.

The Parties to this Agreement agree to maintain as confidential, to the extent permitted by law, all Confidential Information. Notwithstanding the foregoing and the provisions of paragraph 1, the term Confidential Information shall not include (and neither Party shall be under any obligation to maintain in confidence or not use) any information (or any portion thereof) disclosed to it by the other Party to the extent that such information:

- A. is in the public domain at the time of disclosure; or
- B. at the time of or following disclosure, becomes generally known or available through no act or omission on the part of the Receiving Party; or
- C. is known, or becomes known, to the Receiving Party from a source other than the Disclosing Party or its Representatives (as defined herein), provided that disclosure by such source is not in breach of a confidentiality agreement with the Disclosing Party; or
- D. is independently developed by the Receiving Party without violating any of its obligations under this Agreement; or
- E. is legally required to be disclosed by judicial or other governmental action; provided, however, that prompt notice of such judicial or other governmental action shall have been given to the Disclosing Party and that the Disclosing Party shall be afforded the opportunity (consistent with the legal obligations of the Receiving Party) to exhaust all reasonable legal remedies to maintain the Confidential Information in confidence, in accordance with paragraph 7 below.

Specific information shall not be within the exceptions of sub-part 2A to 2E above merely because it is embraced by more general information within such exceptions.

3. USE OF CONFIDENTIAL INFORMATION.

The Confidential Information (i) may be used by the Receiving Party solely in connection with performing the tasks required under the Agreement and (ii) will be kept confidential and not disclosed by the Receiving Party to any other person, except that Confidential Information may be disclosed to any of the Receiving Party's affiliates, directors, officers, council members, Strategic Allies, employees, attorneys and agents (collectively, its "Representatives") who require access to such information in connection with performing the tasks under the Agreement between the Parties. Each of the Parties agrees that any of its Representatives to whom Confidential Information is disclosed will be informed of the confidential or proprietary nature thereof and of the Receiving Party's obligations under this Agreement. Each Party shall be responsible for any use of Confidential Information by any of its Representatives.

4. RIGHTS TO CONFIDENTIAL INFORMATION.

The parties agree that (i) all rights to Confidential Information disclosed pursuant to this Confidentiality Agreement are reserved to the Disclosing Party; (ii) nothing in this Confidentiality Agreement shall diminish or restrict in any way the rights that each Party has to market, lease, sell, or otherwise make available its own products and services to any other customer or third party; and (iii) no license or conveyance or any rights under any discoveries, inventions, or patents is granted or implied by either Party to the other.

5. TERM.

This Confidentiality Agreement shall commence as of the Effective Date of the Agreement and may be terminated by either Party on thirty (30) days prior written notice with respect to subsequent disclosures and, unless sooner terminated by the Parties, shall terminate two (2) years after the date on which the Agreement expires.

6. NO OBLIGATION TO DISCLOSE.

Nothing in this Agreement shall obligate either Party to disclose specific Confidential Information, which disclosure shall be at the Disclosing Party's sole discretion.

7. PUBLIC RECORDS ACT.

Counterparty acknowledges that Santa Clara is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et

seq. Santa Clara acknowledges that Counterparty may submit information to Santa Clara that Counterparty considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Counterparty acknowledges that Santa Clara may submit to Counterparty information that Santa Clara considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by a Disclosing Party as Confidential Information, the Receiving Party as soon practical but within three (3) days of receipt of the request, shall notify the Disclosing Party that such request has been made, by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed at the end of the Agreement. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.

8. LIABILITY.

The Receiving Party may cooperate with the Disclosing Party in any efforts to prevent release of the Confidential Information; however, the Receiving Party shall not be required to expend any monies in excess of the cost of notifying the Disclosing Party by telephone, facsimile and/or mail of the pendency of a demand for the Confidential Information. So long as the Receiving Party complies with the provisions of notification set forth in this Agreement, the Receiving Party shall not be liable for, and Counterparty and Santa Clara hereby release each other from, any liability for any damages arising from any requirement under the law that the Receiving Party release Confidential Information to a Requestor, and such release includes the officers, commissioners, employees, agents, council members, attorneys and directors, as those terms may apply to each Party, without limitation.

9. COOPERATION.

The Receiving Party may, at its sole expense, institute or intervene in any proceeding, in order to protect the Confidential Information from disclosure, and if the Disclosing Party requests and agrees in writing to indemnify the Receiving Party from any expense or liability for expenses, the Receiving Party may cooperate actively in any such action or proceeding; provided, however, that the Receiving Party shall have no duty to the Disclosing Party to actively cooperate, notwithstanding an offer by the Disclosing Party to provide a complete indemnity.

10. RETURN OF CONFIDENTIAL INFORMATION.

While this Agreement remains in effect, and for a period of ninety (90) days after termination, upon a Disclosing Party's request, the Receiving Party agrees to return to the Disclosing Party, or to provide an officer's certificate certifying that all Confidential Information has been destroyed, as promptly as practicable, but in all cases within thirty (30) days, all Confidential Information provided to the Receiving Party, including all copies of such Confidential Information, notes or other documents with respect to or reflecting such Confidential Information and materials derived from such Confidential Information in its possession or in the possession of its Representatives.

11. ENTIRE AGREEMENT.

This Agreement embodies all of the understandings between the Parties concerning the subject matter hereof, and merges all prior discussions and writings between them as to confidentiality of information other than as expressly provided in this Agreement, or as duly set forth subsequent to the date hereof in writing and signed by both Parties. This Agreement may not be assigned by either Party without the prior written consent of the other Party except in connection with the sale of all or substantially all of the business or assets of the assigning Party.

12. REMEDIES.

Without prejudice to the rights and remedies otherwise available to the Disclosing Party, the Disclosing Party will be entitled to equitable relief by way of injunction if there is a breach or threat of breach of any of the provisions of this Agreement by the Receiving Party. The Parties agree and acknowledge that damages would not be an adequate remedy in the event of a breach of this Agreement.

13. AUTHORITY.

Each Party represents and warrants to the other Party that it has the full unrestricted authority to disclose its Confidential Information and to discuss or enter into a Contract without breaching any agreement or commitment with another party(ies) which would prohibit such discussions, disclosure or Contract.

14. GOVERNING LAW.

THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA EXCLUDING ITS CONFLICT OF LAW RULES. STATE AND FEDERAL COURTS SITUATED IN THE STATE OF CALIFORNIA SHALL HAVE EXCLUSIVE JURISDICTION TO RESOLVE ANY DISPUTES WITH RESPECT TO THIS AGREEMENT OR THE CONFIDENTIAL INFORMATION WITH EACH PARTY IRREVOCABLY CONSENTING TO THE JURISDICTION THEREOF FOR ANY ACTIONS,

SUITS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE CONFIDENTIAL INFORMATION.

15. SEVERABILITY.

The provisions of this Agreement are severable, and if any one or more of such provisions is determined to be judicially unenforceable, the remaining provisions shall nevertheless be binding and enforceable.

16. INDEPENDENT CONTRACTOR.

The Parties acknowledge that no agency, joint or other fiduciary relationship shall be deemed to exist or arise with respect to the matters addressed in this Agreement.

17. NO FURTHER AGREEMENTS HEREUNDER.

Neither Counterparty nor City or any parent, subsidiary or affiliate thereof, shall be under any obligation to enter into any further agreements with the other signatory to this Agreement or its parents, subsidiaries or affiliates of any nature whatsoever as a result of this Agreement. The Parties shall be free at all times to hold negotiations or enter into agreements with any other persons whatsoever (including with respect to projects under discussion by the Parties) in addition to or in lieu of the discussions hereunder and any such activities shall not be a breach of this Agreement or any obligations owed to the other Party hereunder. Each Party reserves the right, in its sole discretion, to decline and make, to retract or to reject at any time any proposal which has not yet become legally binding by execution of a written agreement between the Parties with respect thereto or with respect to any further agreements or business arrangements with the other Party, its parents, subsidiaries or affiliates and to terminate all further discussions and negotiations.

18. AMENDMENT.

This Agreement may not be modified, amended or waived except by a written instrument duly executed by both Parties.

19. WAIVER.

No failure or delay by either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

20. ASSIGNMENT.

This Agreement may not be assigned by either Party without the prior written consent of the other and shall be binding on, and inure to the benefit of, the respective successors of the Parties.

21. HEADINGS.

The headings used herein are for aid in reference only and shall not be used to interpret the substantive portions of this Agreement.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

ATTEST:

ROD DIRIDON, JR.
City Clerk

“CITY”

***INSERT CONTRACTOR’S NAME**

*choose one: corporation/partnership/individual

By: _____
(Signature of Person executing the Agreement on behalf of Contractor)

Name: _____

Title: _____

Local Address: _____

Email Address: _____

Telephone: () _____

Fax: () _____

“COUNTERPARTY”

Attachment F – List of Public Benefit Programs

The following is the list of Public Benefit Programs offered by SVP to the City's customers. The programs have been separated in two sections in this attachment based on those programs that are in-scope and out of scope of this RFP. Together, these provide a comprehensive listing of all programs offered currently to the City's residential and commercial customers.

Programs out-of-scope of the RFP

- *Residential Appliance Rebates:* The program encourages residents to purchase and install ENERGY STAR[®] labeled refrigerators. Customers receive \$50 rebates for new refrigerators if they also participate in the refrigerator-recycling program. Under the recycling program, residents receive \$35 rebates for turning in old working air conditioners or refrigerators. The program also includes rebates for ENERGY STAR[®] labeled ceiling fans, electric hot water heat pumps, LED light bulbs and the Emerging Technology Award-winning clothes dryer.
- *Low-Income Direct install program:* Upgrades attic insulation, provides weatherization services and efficient lighting, efficient pool pumps, HVAC tune ups and other energy efficiency measures, as well as an educational component regarding behavior change.
- *Residential In-Home Energy Audits, Education, and Hot Line:* The program encourages residents to become more energy efficient and reduce energy bills. Staff members visit homes and provide information and may provide energy saving items, in addition to educational information. The *Solar Explorer* and the SVP information booth are displayed at several city events, providing education on energy efficiency and solar electric generation systems. Many other presentations are made throughout the year.
- *Neighborhood Solar Program:* Customers pay into a special fund to support the installation of solar electric systems at community buildings
- *Rate Assistance Program:* Customers receive a 25% discount on their electric bill if they qualify through low income or needing high electric use for medical reasons. The financial program is administered by a third-party contractor, while the medical discount is managed in-house.
- *Demand Response:* In 2012, Silicon Valley Power had a load factor of 74.4%. This is primarily due to the large percentage of sales to large high tech firms that operate on three shifts daily, 365 days per year. In addition, because of the relatively mild climate, residential and commercial customers do not have the peak in energy usage that they show in others parts of the state. This is particularly true for residents, who very often do not have air conditioning. Due to this very high load factor, Silicon Valley Power's demand response consists of a voluntary load-shedding program called the "Power Reduction Pool." In a voluntary arrangement, these customers reduce their load by at least 200 kilowatts during system emergencies. The communication network of customers and SVP staff for these shut-downs is tested at least once per year.
- *Business Energy Information:* Management Information and education on energy usage through 15-minute interval meters, Itron's EEM Suite software, training, etc.

Programs in-scope of this RFP

- *Small Business Efficiency Services (Under 200kW):* This program is created for small business customers, especially small business owners, who are busy running a business and may not have the time or knowledge to pursue retrofit installations. Under this program, SVP provides management and implementation services during the customer's entire energy retrofit process. SVP offers time-limited incentives that pay up to 100% of the installed energy efficiency equipment costs. Target market segments include, but are not limited to, machine shops, small manufacturing, restaurants, and convenience stores.
- *Midsized Customer Program (200 kW to 1,000 kW):* This program is created for mid-sized customers. Under this program, SVP offers incentives for installed energy efficiency equipment costs as well as provides free energy efficiency audits. Target market segments include, but are not limited to, warehouse, machine shops, midsized manufacturing, assembly, grocery and retail.
- *Energy Efficient Equipment and Software Rebates:* Encourages businesses to install energy efficient lighting products, advanced lighting controls, HVAC equipment, food service equipment, air conditioners, motion sensors, programmable thermostats, PC power management software, Energy Star UPS, and customized energy-efficiency/peak load reduction installations. The rebate program is essential as it helps to ensure all customers have access to public benefit funding.
- *Customer Directed Rebates:* SVP offers its business customers a rebate for implementing customized energy efficiency projects. Customers whose projects do not fall into other SVP program offerings are given the opportunity to submit a customized energy efficiency project. The purpose of the Customer Directed Rebate (CDR) Program is to encourage business customers to invest in custom energy efficiency measure and reduce energy consumption. Specifically, the CDR Program provides financial incentives to help offset the additional costs of installing systems and equipment that are more energy efficient than standard industry practice. Customers are paid a fixed cash incentive per kWh of energy savings depending on the type of energy efficient measure.
- *Controls Rebate Pilot Program:* This is a performance-based incentive for controls systems under a pilot rebate program. The incentive requires demonstrated energy savings over a 5 year period and will make payments annually upon submission of a verification report.
- *Data Center Efficiency Program:* The program is targeted to data centers with IT server loads greater than 350 kW or IT cooling loads greater than 100 tons. This program provides unique opportunities for energy-efficiency projects that may not otherwise fit into our standard rebate and customer assistance offerings.
- *New Construction Rebate:* This program provides an incentive to customers who exceed Title 24 by at least 10% on non-residential new construction projects.
- *Energy Surveys (Audits):* SVP offers its nonresidential customers energy surveys to help them identify opportunities to reduce operating costs through improving the efficiency of their operations. Standard Energy Surveys are offered to small and mid-sized customers. These surveys are free and provide information about the customer's current energy consumption patterns and offer basic energy saving recommendations for lighting, HVAC, and other energy efficiency retrofits.
- *Energy Innovation Grant Program:* This program encourages businesses to demonstrate new products and product applications not yet commercially viable in today's marketplace,

install energy efficient technologies not generally known or widely accepted, yet show potential for successful market growth, successfully apply energy efficiency solutions in new ways, or introduce energy efficiency into industries or businesses that are resistant to adopting new technologies or practices.

- *Energy Design Assistance Program:* SVP offers assistance to customers planning new facilities within the City of Santa Clara. SVP offers plan review and recommendations for making the new facility more energy efficient. By affecting energy efficiency in the programming stages, SVP captures energy savings that would otherwise be lost. The program is directed at public and non-profit new facility construction.
- *Public Facility Energy Efficiency Assistance Program:* SVP provides technical assistance and financial incentives for the expansion, remodel, and new construction of City of Santa Clara buildings. The Program includes:
 - Energy Efficiency Equipment Rebates: Building exceeding Title 24 energy efficiency standards by 10% or more may be eligible for special energy efficient equipment incentives.
 - Energy Efficient Design Incentives: Incentives will be available to reward the design of energy efficient facilities. A sliding incentive scale will provide increasing incentive levels based upon the proposed design efficiency. Additional incentives may be available for facilities obtaining LEED certification one level higher than adopted standards (in 2007, the City adopted a LEED Silver standard for all new City buildings).
 - Energy Management Assistance: SVP will provide technical assistance to staff managing the design and operation of city buildings. SVP will provide customized energy use reports of selected buildings for informing staff of energy use patterns and costs. These reports help analyze building energy use and help to determine further ways to save energy.
- *M&V Tool Library:* SVP provides direct resource support to customers seeking to learn more about their energy usage profiles through short-term field measurements. SVP maintains a library of hand held instrumentation and data loggers that customers may borrow for analyzing their electrical energy consumption and demand. (Currently, this program is utilized fewer than six times per year.)

Note: third party programs may be added effective July 1, 2014 based on the results of an RFP that is active at the time that this RFP has been issued. Respondent would be responsible for 100% of the inspections/verification for projects with custom energy savings and 10% of the projects with deemed energy savings.

Attachment G – List of Subcontractors

Subcontractor Name	Subcontractor Address	Subcontractor Scope of Work

Attachment H – Pricing Worksheets

In this section, respondent should provide pricing that is valid from July 1, 2014 to June 30, 2015.

Table 1: Price for Services excluding custom audits

Task	Service Category	Fixed Price (Monthly)
1	Program Administration	
2	Field Services	
3	Customer Service	
Subtotal Fixed Price (A)		

Table 2: Price for Custom Audits

Task	Service Category	Hourly FTE Rate	Estimated Total Hours per Audit	Estimated Price per Audit
1	Custom Audits			
Subtotal Fixed Unit Price (B)				

NOTE: The estimated price for custom audits must not exceed \$100,000 for 12 months.

Table 3: Total not to exceed price

Subtotal Fixed Price (A) X 12 months	
Subtotal Fixed Unit Price (B)	
Performance Incentives (C)	
Price for 1 (one) additional temporary staff (90 days) for Field Services ¹ (D)	
Total Not to Exceed Price (A+B+C+D)	

NOTE ¹: SVP may require the service of additional staff for Field Services on occasion depending on customer demand. SVP proposes that this price should not exceed the price for one FTE for Field Services by more than 10 percent.

Assumptions:

Assumptions (Please state in detail)
1.
2.
3.

Inclusions:

Inclusions (Cost Components)
1.
2.
3.

Exclusions:

Exclusions (Cost Components)
1.
2.
3.

NOTES:

1. Hourly Full Time Equivalent (FTE) pricing should include all overhead, management, training, travel, space cost, buffer staff, software tools used and any other long-term cost associated with providing the FTE on an hourly basis.
2. Clearly list all assumptions.
3. Mention any cost components excluded from pricing under "Exclusions".
4. Clearly state all cost components that are included in pricing under "Inclusions".
5. The Total Not to Exceed Price must be for total cost of project in the first year.
6. Pricing proposal shall be scored based on the Total Not to Exceed Price.
7. It is assumed that primary staff assigned to work on SVP programs will be located in SVP's offices in order to have access to SVP customer utility usage history (one PC provided by SVP for this access) and provide a presence for customers/contractors to walk into the office for assistance. SVP provides an office with three cubicles and one temporary workspace, along with phones, filing cabinets, and a copy machine. All other equipment is provided by Respondent. Additional program staff may be located elsewhere in a location paid for by the Respondent.

Attachment H – Pricing Worksheets

Table 4: Pricing Information for Renewal Option

Category of Services	Original Term – July 1, 2014 to June 30, 2015	1st Option to Extend July 1, 2015 to June 30, 2016
Program Administration		
Field Services		
Customer Service		
Custom Audits		
Performance Incentives (as applicable)		
Total Not to Exceed Price	\$	\$

(State all assumptions related to cost/pricing in detail)

Assumptions:

- 1.

Attachment I – Customer Reference Form

Company (Customer) Name	
Project Name	
Customer Contact Name, Title, Address, Phone, Fax, and E-mail	
Project Summary (Scope of Work)	
Summary of Respondent's Involvement (Specific tasks performed by the Respondent)	
Current Status of the Project	
Project Start and End Dates	
Type of Contract	<input type="checkbox"/> Fixed Price <input type="checkbox"/> Time & Material <input type="checkbox"/> Not-to-exceed <input type="checkbox"/> Others (please explain)
Original Cost Estimate	
Actual Cost	

Attachment J – Key Personnel Reference Form

Proposed Staff Name	
Company (Customer) Name	
Project Name	
Customer / Reference Name, Title, Address, Phone, Fax and E-mail	
Brief Project Description (Scope of Work)	
Summary of Individual's Involvement	
Current Status of the Project	

Attachment K – General Information Form

General Information Form

To be completed by the proposer and placed at the front of your proposals

REQUEST FOR PROPOSALS

FOR THIRD PARTY ENERGY AUDIT & REBATE MANAGEMENT PROGRAMS

FOR CITY OF SANTA CLARA, DBA SILICON VALLEY POWER

Legal Name of Firm

Date

Contact Email Address

Firm's Telephone Number

Type of Organization (Partnership, Corporation, etc.)

Name of Main Contact and Title

Name, Title and Phone Number of Person to whom Project Correspondence Should be Directed

Address Where Correspondence Should be Sent

Company Address