



REQUEST FOR PROPOSALS  
FOR HOME ENERGY AUDIT TOOL  
FOR CITY OF SANTA CLARA, DBA SILICON VALLEY POWER



SPONSORED BY:  
CITY OF SANTA CLARA  
SILICON VALLEY POWER

March 2014

## TABLE OF CONTENTS

Introduction .....	3
Overview of Utility and Energy Efficiency Programs .....	3
Project Description and Scope of Work:.....	3
Budget.....	5
Payment.....	5
RFP Procedure and Intent to Bid .....	5
Submission Requirements .....	6
Evaluation Process and Criteria .....	9
Confidentiality.....	10
Non-Exclusivity.....	10
Proposal Due Date and Delivery .....	10
Instructions to all Proposers .....	11
ATTACHMENT “A” .....	12
ATTACHMENT “B” .....	13
ATTACHMENT “C”.....	32

## REQUEST FOR A HOME ENERGY AUDIT TOOL

### FOR CITY OF SANTA CLARA, DBA SILICON VALLEY POWER

#### ***Introduction***

The City of Santa Clara's Electric Department, doing business as Silicon Valley Power (SVP), wishes to obtain proposals for an online home energy audit tool to assist our staff in collecting data and preparing home energy audit reports while in the field. This tool will be used specifically for residential dwellings and will not be used for commercial facility energy audits.

#### ***Overview of Utility and Energy Efficiency Programs***

Santa Clara's municipal electric utility (dba Silicon Valley Power) is a not-for-profit enterprise of the City of Santa Clara, and was established in 1896. Silicon Valley Power 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 business of the City of Santa Clara a highly reliable source of electric power at competitive, stable rates.

SVP serves over 52,000 customers. The City of Santa Clara is located in the San Francisco Bay Area and has a population of 116,468. At the end of 2012, the utility had 52,285 meters with a peak demand of 471 megawatts which 44,350 of these customers were residential, but only 8.1% of power sales were to residents. Approximately 87% of sales went to commercial and industrial customers.

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, electric heat pump water heaters, Energy Star Emerging Technology Award-winning clothes dryers, a low income direct install program, and LED lighting), solar electric installations, energy audits, and programs for schools and libraries. Business programs include energy audits, installation management for small companies, and rebates for a wide variety of equipment (lighting, air conditioning systems, chillers, washing machines, VFDs, controls, new construction, photovoltaic systems and customized installations). Over 331 million kilowatt hours in gross first year savings alone have been achieved since 1998.

#### ***Project Description and Scope of Work:***

Currently, SVP averages between 120 and 160 audits per year with roughly 15%-20% of those being high bill complaints, not specifically in improving the energy efficiency in their homes. It currently takes approximately 3 hours of staff time per audit from initial call to sending the final report and we are looking for a tool to reduce this staff time and provide the audit report to customers faster. Prior to the appointment we export 24

months of the customer's electric usage history from our billing system for analysis during the audit and use in the final report.

During the in-home audit, we walk through the customer's historical electric usage with them and then walk through the various systems in their home. We have a standard hard copy form we use to collect the data and help guide us through the conversation and the infrastructure of the home. The audit itself typically takes anywhere from 35 minutes to an hour.

Back in the office, we do data entry from the field-gathered information, which is used in the audit report. Our current reports are divided into three sections. The first section outlines the existing infrastructure in the home which comes from the field-collected data. The second section outlines the customer's electric usage and includes a pie chart of the average usage by activity in a home in Santa Clara. The third section is a list of our top energy efficiency or conservation recommendations based on the conversation we've had with the customer. We utilize generic recommendations from a report template we have created and then edit them to conform to the situation. The report is then mailed to the customer along with a customer satisfaction survey.

We would like to streamline the data collection and report writing processes in order to cut down on the staff time necessary for each audit so that we can serve more customers and still provide a customized report with meaningful recommendations. SVP has installed free outdoor WiFi throughout the City of Santa Clara and could utilize this infrastructure to create and email these reports in the field with a tool that is available for use on a tablet or smart phone. The system must be able to do the following:

- Have an easy to use interface accessible via tablet or smart phone
- Import historic energy use data via Excel file
- Illustrate up to 24 months of historic energy use data graphically to the customer.
- Easily allow for input of pre-determined data from the customer's home, including but not limited to the number of people in the household, insulation levels, type of appliances, etc. Common behavior patterns should also be included.
- Offer a checklist of standard recommendations that the auditor will choose from to include in the report. These recommendations must be editable from the tablet/smart phone to allow for custom recommendations, depending on information gathered during the audit. Recommendations should include not only energy efficiency measures, but also behavioral changes.
- Ability to import photos directly from the tablet/smart phone and from other devices, such as an Infrared camera, and incorporate those photos into the report.
- Provide an audit report that can be printed or emailed directly from the tablet or smart phone.
- Data collected on types of appliances, insulation levels, household demographics, etc. must have the ability to be exported into an Excel file for program analysis and targeted marketing efforts.

Contractors must also demonstrate that they have requisite financial stability necessary to complete the work. A Contractor must have sufficient financial strength to implement the proposal to be eligible.

### ***Budget***

Please provide pricing for any up-front development or modification costs, as well as any annual licensing fees or other ongoing costs. Costs must be clearly broken out and specify what is covered under these costs. Please provide pricing for year one and year two separately. Please note that the costs for bid preparation are not reimbursable.

### ***Payment***

SVP will pay for development costs on a time-and-materials basis, with not-to-exceed amounts, according to the terms of the attached General Conditions, and annual licensing or other costs on a unit price basis. All payments shall be dependent upon satisfactory completion of tasks or achievement of goals, as demonstrated by deliverables submitted by contractor and subject to verification by SVP. Satisfactory completion means that the deliverables are completed to the satisfaction of the SVP Public Benefit Program Manager.

### ***RFP Procedure and Intent to Bid***

**Contact Procedure:** All correspondence or contact with SVP, including questions about this RFP, shall be submitted in writing through email to SVP's official contact email address of "[mmedeiros@siliconvalleypower.com](mailto:mmedeiros@siliconvalleypower.com)". No interpretation, revision, or other communication regarding this RFP is valid unless received at SVP's official contact email address.

All Respondents must submit a completed Registered Responder Information / Intent to Bid Form. This form is included in the RFP as Attachment C. 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. The Intent to Bid form must be received no later than 5:00p.m. Pacific Daylight Time on March 19, 2014.

All questions regarding the RFP document and process must be submitted in writing to the SVP official contact email address of "[mmedeiros@siliconvalleypower.com](mailto:mmedeiros@siliconvalleypower.com)" no later than 11:00 a.m. Pacific Daylight Time on March 31, 2014. SVP will reply to all questions no later than 5:00 p.m. Pacific Daylight Time on April 7, 2014. Note to all Contractors: No telephone inquiries or faxed questions will be accepted. SVP will provide answers to all questions submitted by Contractors according to the procedures described in this section, and which are received by SVP prior to 11:00 a.m. Pacific Daylight Time (PDT), on March 31, 2014. Questions submitted after this time will not be accepted.

A Contractor that discovers an error or omission in its proposal package may withdraw that proposal package and resubmit, provided that it does so before the close of the solicitation period as specified above.

It is the Contractor's sole responsibility to ensure that its proposal package is received by SVP at the designated proposal delivery address by the close of the solicitation period as specified in this RFP. Bids that are delivered differently than discussed above will not be accepted. Proof of timely delivery (e.g., return receipt for certified, registered or overnight mail) must be obtained by the Contractor for each proposal package submitted.

SVP will not keep either the proposals responding to this RFP nor any contracts entered into as part of this solicitation confidential, except for certain pricing information (unit prices, labor rates, Contractor financial information). Furthermore, SVP will have no liability to a Contractor or other party as a result of any public disclosure of any proposal or contract.

SVP shall not reimburse any Contractor for any cost incurred in the preparation or submission of a proposal package and/or in any negotiations regarding the contract. This RFP does not, in any way, obligate SVP to award a contract, to pay any costs incurred in the preparation of a proposal to this request, or to procure or contract for services or supplies. This RFP is not a guarantee of work.

SVP reserves the right to withdraw this RFP at any time before executing final contracts with Contractors. SVP may accept or reject any or all responses, and may accept other than the lowest price proposed. SVP will not be liable, by reason of such withdrawal or rejection, to any Contractor submitting a proposal in response to this RFP. SVP may award only part of total program funds.

### ***Submission Requirements***

**Proposal Form:** Contractors must submit two originals (double-sided and bound) of each proposal. Each proposal must be on recycled 8½" x 11" paper. 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 20 pages total, including all responses, reference work, and information about the firm and individuals assigned to the project.

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 Santa Clara and this scope of work as possible.

**Proposal Submission and Delivery Address:** *All proposal packages must be delivered to the address below by 5:00 p.m., PDT, on April 23, 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.

**Proposal Requirements:** The proposal must include: (1) the General Information form, included at the end of this document, (2) the proposal checklist, (3) all items required in the proposal checklist, and, (4) be within the page limits specified. Each component of the proposal is discussed below.

**Proposal Checklist:** This section contains the completed checklist of items that must be included in the proposal.

- I. Program Narrative
  - A. Budget: Not to exceed 1 page
  - B. Product Description / Overview: Not to exceed 5 pages
  - C. Implementation
    1. Detailed Scope of Work
    2. Payment Schedule
  - D. Subcontractor List and List of Activities
    1. Summary: Not to exceed 2 pages
    2. Detailed Information
- II. Company Information and References: Not to exceed 2 pages
- III. License, insurance and financial Information: As required
  - A. Affirmative statement of proper licensure, and insurance documentation: As required
  - B. Copy of each license
  - C. Certificate of Insurance
  - D. Financial Information
- IV. Exceptions to the General Terms and Conditions
- V. Signature Page: As required
- VI. Supplemental Information: Not to exceed 4 pages

**Detailed Explanation of Proposal Checklist:**

- I. Program Narrative:
  - A. Budget
    1. Development costs
    2. Ongoing licensing or other fees
  - B. Product Description / Overview: Give a complete description of the product's capabilities and any modifications that need to be made to meet our needs as outlined in this RFP.
  - C. Program Implementation: Provide the following:
    1. Detailed Scope of Work: Provide a detailed scope of work. This detailed scope of work will form the basis of the contract specific conditions. The scope of work shall describe Product Development Tasks and ongoing support. The tasks should

contain detailed descriptions of the individual tasks that Contractor proposes to complete (Task Descriptions).

2. Payment Schedule: Invoices, accompanied by complete and accurate reports on work performed for development tasks, shall be submitted to SVP on a monthly basis. Ongoing annual licensing or other fees shall be invoiced on an annual basis. All payments to the winning Contractor will be made by the City of Santa Clara. Payments will be processed upon verification of correctness of each submitted invoice. SVP reserves the right to question any invoice based on complaints, observations, reports, or data that in any way do not correspond to the information submitted in or with an invoice. In the event that an error is found in an invoice, the Contractor will be required to submit a corrected invoice. Expenses in excess of those specified in the Proposals will be reimbursed pursuant to the provisions set forth in the Agreement for the Performance of Services (sample attached), allowing prior written approval from City. Provide not-to-exceed (NTE) amounts for each task in the Scope of Work. If Contractor is proposing an alternative payment structure, provide a detailed explanation of the proposed payment structure, including any underlying assumptions.

D. Subcontractor Activities:

1. Summary (not to exceed 2 pages): Describe what portions of work will be subcontracted out. List subcontractors (to the extent known) and briefly describe what work each will perform.
  2. Detailed Information: Provide a list of the subcontractor program team members, a brief description of the tasks performed by each member, and an estimate of the percent of the total budget assigned to each entity. If the primary contractor plans to subcontract more than 50% of the total proposed budget, note the reason for this use of subcontractors.
- II. Company Information and References (not to exceed 2 pages). Provide three relevant, satisfactory references. Discuss examples of prior related work, in implementing a project similar to this proposal.
- III. License, Insurance, and Financial Information: As required.
1. Affirmative statement of proper licensure, and insurance documentation. Contractors shall describe what licenses are required for the work they propose to perform and include an affirmative statement that Contractor has all necessary licenses. Contractor shall include an affirmative statement that it has insurance for the required coverage shown in the general terms and conditions. It is the Contractor's responsibility to clearly identify information to be kept confidential.
  2. Copy of each license, as required. Contractor must submit an affirmative statement of proper licenses and insurance and copies of any and all licenses and/or registrations required for the performance of the proposed work, including those held by subcontractors. It is the Contractor's responsibility to determine what licenses, if any, are required.
  3. Certificate of Insurance: Contractor shall provide the certificate of insurance for the required coverage shown in the general terms and

conditions. Proposed Contractors must meet the City's insurance requirements, as in the Sample Professional Services Agreement in its Attachment "B" (included in this RFP). Proof of insurance or the ability to obtain such insurance must be included in all proposal packets.

4. Financial Information, including any guarantees: 2 years audited financial statements, including balance sheet, statement of cash flows, and income statement, and Dunn and Bradstreet number. If vendor cannot provide audited financial statement, they shall provide 2 years of complete income tax returns.
- IV. Exceptions to the General Terms and Conditions
  - V. Signature Page: As required
  - VI. Supplemental Information: Not to exceed 4 pages. In this section, Contractor is invited, but not required, to provide any supplemental information that it thinks SVP should consider in evaluating Contractor's proposal. Contractor may wish to address the feasibility of the proposal, describe the strength of its company or team, or why its proposal will be successful in achieving the primary goals of this solicitation. Contractor shall limit supplemental information to no more than four (4) pages.

### ***Evaluation Process and Criteria:***

A team of reviewers using the process described in this document will evaluate proposals. Eligible proposals must meet the following minimum requirements to be evaluated:

- (a) The proposal must contain all of the items contained in the proposal checklist.
- (b) The proposal must be submitted on time to the location identified in this package.
- (c) The proposal must meet the needs outlined in this RFP.

SVP staff will evaluate all proposals received by the due date in response to this RFP using evaluation criteria and methods determined by SVP. The criteria listed below will be evaluated to determine which, if any, Contractor may be selected for this project.

### **Evaluation Criteria**

- Relevant experience
- Conformance with the RFP
- References from other clients in similar projects
- Features available in the product
- Price

SVP, at its own discretion, may request additional information from any or all proposed Contractors after the initial evaluation to clarify terms, conditions, and/or information submitted in proposals.

After evaluating all proposals, SVP will notify all proposed Contractors of their status by May 5, 2014. Contractors may be asked to respond to more detailed questions and participate in an interview with the SVP team. After these interviews, SVP will notify the Contractors of their status by May 27, 2014. SVP may enter into contract negotiations with the qualified Contractor. Negotiations, if initiated, are not a guarantee that SVP will execute a contract. SVP reserves the right to cancel this RFP at any time. Proposals

failing to satisfy any of these requirements will be considered non-responsive. At its sole discretion, SVP may notify Contractors who have made errors or omissions that can be easily corrected, and these Contractors will be given seven (7) days to respond. It is within SVP's sole discretion to determine whether a proposal is responsive, and whether any submitted corrections cure a non-responsive proposal.

### ***Confidentiality***

In the course of performing Work, successful Contractors 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. Contractor 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. Contractor 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. Contractors 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 Contractor access to such information, Contractor and Contractor's employees and subcontractors will be required to sign SVP's non-disclosure agreement, attached as Amendment D.

### ***Non-Exclusivity***

THE PARTIES AGREE THAT THIS RFP WILL NOT ESTABLISH AN EXCLUSIVE CONTRACT BETWEEN THE CITY OF SANTA CLARA OR SVP AND CONTRACTOR, NOR CONSTITUTE A COMMITMENT BY SVP, WHETHER EXPRESS OR IMPLIED, TO CONTRACT. SVP EXPRESSLY RESERVES ALL ITS RIGHTS, INCLUDING BUT NOT LIMITED TO THE FOLLOWING: THE RIGHT TO UTILIZE OTHERS TO PERFORM OR SUPPLY WORK OF THE TYPE CONTEMPLATED BY THIS RFP; THE RIGHT TO REQUEST PROPOSALS FROM OTHERS WITH OR WITHOUT REQUESTING PROPOSALS FROM CONTRACTORS FOR WORK OF THE TYPE CONTEMPLATED BY THIS RFP, AND THE UNRESTRICTED RIGHT BY SVP TO RE-BID OR PERFORM ANY SUCH WORK.

### ***Proposal Due Date and Delivery***

Proposals must be delivered no later than April 23, 2014, or hand-delivered prior to 5:00 p.m. on April 23, 2014. If proposal is delivered by overnight mail, a City employee must acknowledge receipt by signature prior to April 23, 2014 at 5:00 p.m. Information must be delivered to:

City of Santa Clara  
Silicon Valley Power  
Mary Medeiros McEnroe  
Public Benefits Program Coordinator  
1601 Civic Center Drive, Suite 102  
Santa Clara, California 95050

Late proposals will not be accepted. Questions and clarifications concerning this RFP may be sent to [mmedeiros@siliconvalleypower.com](mailto:mmedeiros@siliconvalleypower.com).

### ***Instructions to all Proposers***

SVP will evaluate all proposals received by the deadline. Evaluation criteria are included in this document. SVP will be sole decision-maker on how these criteria are used to select the successful Proposal.

SVP staff, at their discretion, may hold interviews with one or more of the proposed Contractors, who will be required to attend such interviews, if requested. SVP will be the sole point of contact for all proposers. SVP reserves the right to reject any and/or all proposals. In submitting proposals, Contractors hold SVP and the City harmless from any claim or liability as a result of submitting such proposals.

Once the top ranking selection is known, a contract will be negotiated for the scope of services to be rendered and for the method of compensation. If agreement is not reached after a reasonable period of time, as determined by the Director of the Electric Utility, negotiations with the top selection will be terminated and negotiations will then be opened with the second choice of the selection committee. When agreement is reached, the agreement will be submitted by the City Manager to the City Council for approval and execution.

### ***Attachments***

- A. General Information Form
- B. Sample Professional Services Agreement
- C. Intent to Bid Form

**ATTACHMENT "A"**

General Information Form

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

REQUEST FOR PROPOSALS

FOR HOME ENERGY AUDIT TOOL

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

**ATTACHMENT "B"**

EBIX Insurance No. \_\_\_\_\_

**AGREEMENT FOR THE PERFORMANCE OF SERVICES  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
\*INSERT CONTRACTOR'S NAME**

**PREAMBLE**

This agreement for the performance of services ("Agreement") is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 201\*\_\_\_\_, ("Effective Date") by and between \*insert Contractor's name, a \*choose one: a \_\_\_\_\_ (enter State name) corporation/partnership/individual, with its principal place of business located at \*insert Contractor's address ("Contractor"), 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 Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

- A. City desires to secure professional services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services"; and
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

**AGREEMENT PROVISIONS**

**1. EMPLOYMENT OF CONTRACTOR.**

City hereby employs Contractor to perform services set forth in this Agreement. To accomplish that end, City may assign a Project Manager to personally direct the Services to be provided by Contractor and will notify Contractor in writing of City's choice. City shall pay for all such materials and services provided which are consistent with the terms of this Agreement.

## **2. SERVICES TO BE PROVIDED.**

Except as specified in this Agreement, Contractor shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work required by City at his/her own risk and expense. Services to be provided to City are more fully described in Exhibit A entitled "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference.

## **3. COMMENCEMENT AND COMPLETION OF SERVICES.**

- A. Contractor shall begin providing the services under the requirements of this Agreement upon receipt of written Notice to Proceed from City. Such notice shall be deemed to have occurred three (3) calendar days after it has been deposited in the regular United States mail. Contractor shall complete the Services within the time limits set forth in the Scope of Services or as mutually determined in writing by the Parties.
- B. When City determines that Contractor has satisfactorily completed the Services, City shall give Contractor written Notice of Final Acceptance. Upon receipt of such notice, Contractor shall not incur any further costs under this Agreement. Contractor may request this determination of completion be made when, in its opinion, the Services have been satisfactorily completed. If so requested by the contractor, City shall make this determination within fourteen (14) days of its receipt of such request.

## **4. QUALIFICATIONS OF CONTRACTOR - STANDARD OF WORKMANSHIP.**

Contractor represents and maintains that it has the necessary expertise in the professional calling necessary to perform services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under Exhibit A shall be of a quality acceptable to City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by City for similar projects.

## **5. 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 begin on the Effective Date of this Agreement and terminate on **\*insert end date**.

## **6. MONITORING 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 accord with applicable City, county, state, and federal requirements. If any action of Contractor constitutes a breach, City may terminate this Agreement pursuant to the provisions described herein.

## **7. WARRANTY.**

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect, and shall conform to the specifications, requirements, and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate, or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

## **8. PERFORMANCE OF SERVICES.**

Contractor shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by City. Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it. Contractor will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

## **9. RESPONSIBILITY OF CONTRACTOR.**

Contractor shall be responsible for the professional quality, technical accuracy and coordination of the Services furnished by it under this Agreement. Neither City's review, acceptance, nor payments for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and Contractor shall be and remain liable to City in accordance with applicable law for all damages to City caused by Contractor negligent performance of any of the Services furnished under this Agreement.

Any acceptance by City of plans, specifications, construction contract documents, reports, diagrams, maps and other material prepared by Contractor shall not in any respect absolve Contractor from the responsibility Contractor has in accordance with customary standards of good professional practice in compliance with applicable federal, state, county, and/or municipal laws, ordinances, regulations, rules and orders.

## **10. COMPENSATION AND PAYMENT.**

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and services rendered by Contractor at the rate per

hour for labor and cost per unit for materials as outlined in Exhibit B, entitled "SCHEDULE OF FEES."

Contractor will bill City on a monthly basis for Services provided by Contractor during the preceding month, subject to verification by City. City will pay Contractor within thirty (30) days of City's receipt of invoice.

#### **11. TERMINATION OF AGREEMENT.**

Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Contractor shall discontinue further services as of the effective date of termination, and City shall pay Contractor for all Services satisfactorily performed up to such date.

#### **12. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.**

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

#### **13. 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.

#### **14. INDEPENDENT CONTRACTOR.**

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights, however, to manage its employees in their performance of Services under this Agreement. Contractor is not authorized to bind City to any contracts or other obligations.

#### **15. NO PLEDGING OF CITY'S CREDIT.**

Under no circumstances shall Contractor have the authority or power to pledge the credit of City or incur any obligation in the name of City. 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 under this Agreement.

#### **16. CONFIDENTIALITY OF MATERIAL.**

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. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

#### **17. USE OF CITY NAME OR EMBLEM.**

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

#### **18. OWNERSHIP OF MATERIAL.**

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

#### **19. 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 for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. 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 expenses not so recorded shall be disallowed by City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

#### **20. CORRECTION OF SERVICES.**

Contractor agrees to correct any incomplete, inaccurate or defective Services at no further costs to City, when such defects are due to the negligence, errors or omissions of Contractor.

**21. 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.

**22. HOLD HARMLESS/INDEMNIFICATION.**

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which City shall become liable arising from Contractor's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Contractor pursuant to this Agreement.

**23. INSURANCE REQUIREMENTS.**

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall purchase and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the Performance of Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C.

**24. AMENDMENTS.**

This Agreement may be amended only with the written consent of both Parties.

**25. INTEGRATED DOCUMENT.**

This Agreement represents the entire agreement between City and Contractor. No other understanding, agreements, conversations, or otherwise, with any representative of City prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon City.

**26. SEVERABILITY CLAUSE.**

In case any one or more of the provisions in this Agreement 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.

**27. WAIVER.**

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

**28. NOTICES.**

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

City of Santa Clara  
Attention: [insert Dept. here]  
1500 Warburton Avenue  
Santa Clara, California 95050  
or by facsimile at (408) \_\_\_\_ - \_\_\_\_\_

And to Contractor addressed as follows:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

or by facsimile at (\_\_\_\_) \_\_\_\_ - \_\_\_\_

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

**29. CAPTIONS.**

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

**30. LAW GOVERNING CONTRACT AND VENUE.**

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

**31. DISPUTE RESOLUTION.**

- A. Unless otherwise mutually agreed to by the Parties, any controversies between Contractor and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. 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.

- C. The costs of mediation shall be borne by the Parties equally.
- D. For any contract dispute, mediation under this section is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit through mediation only. In the event of litigation, the prevailing Party shall recover its reasonable costs of suit, expert's fees, and attorney's fees. If mediation does not resolve the dispute, the Parties agree that the matter shall be litigated in a court of law, and not subject to the arbitration provisions of the Public Contracts Code.

### **32. COMPLIANCE WITH ETHICAL STANDARDS.**

Contractor shall:

- A. Read Exhibit D, entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,
- B. Execute Exhibit E, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

### **33. LIQUIDATED DAMAGES.**

It is mutually agreed by Contractor and City that, in the event completion of the Services to be provided by the Contractor under this Agreement is delayed beyond \*insert date, City will suffer damages and will incur other costs and expenses of a nature and amount which is difficult or impractical to determine. The Parties agree that by way of ascertaining and fixing the amount of damages, costs and expenses, and not by way of penalty, Contractor shall pay to City the sum of \*spell out dollar amount (\$\*insert numerical dollar amount) per day in liquidated damages for each and every calendar day such delay in completion of said Services continues beyond \*insert date. In the event that said liquidated damages are not paid, Contractor agrees that City may deduct the amount of said unpaid damages from any money due or that may become due to Contractor under this Agreement.

- 34. CONFLICT OF INTERESTS.** This Agreement does not prevent either Party from entering into similar agreements with other parties. To prevent a conflict of interest, Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict 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 would violate these code provisions. Contractor will advise City if a conflict arises.

**35. PROGRESS SCHEDULE.**

The Progress Schedule will be as set forth in the attached Exhibit F, entitled "MILESTONE SCHEDULE" if applicable.

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.

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.

**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: a \_\_\_\_\_ (enter State name) corporation/partnership/individual**

By:

Title:

Address:

Telephone:

Fax:

"CONTRACTOR"

**AGREEMENT FOR THE PERFORMANCE OF SERVICES  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
\*INSERT CONTRACTOR'S NAME**

**EXHIBIT A**

**SCOPE OF SERVICES**

The Services to be performed for the City by the Contractor under this Agreement are more fully described in the Contractor's proposal entitled, "**\*insert name of proposal**" dated **\*insert date of proposal**, which is attached to this Exhibit A.

**AGREEMENT FOR THE PERFORMANCE OF SERVICES  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND**

**\*INSERT CONTRACTOR'S NAME**

**EXHIBIT B**

**FEE SCHEDULE**

Consultant shall provide a schedule of rates and fees which includes all billing amounts and costs as follows (if applicable), such as :

[NOTE TO CITY DEPARTMENTS: This Exhibit "B" should contain a schedule of rates and fees which includes all billing amounts and costs as follows (if applicable), such as:

- Fee Schedule Effective Date;
- Hourly Billing Rates for Each Staff Position/level;
- Minimum Billing Hours;
- Charges for Equipment by Day/week/month;
- Travel Time and Costs;
- Per Diem Expenses;
- Expendable Material or New Parts Costs;
- Outside Services Costs; and,
- Overtime Costs.]

In no event shall the amount billed to City by Contractor for services under this Agreement exceed **\*spell out dollar amount** (\$**\*insert numerical dollar amount**), subject to budget appropriations.

**AGREEMENT FOR THE PERFORMANCE OF SERVICES  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND**

**\*INSERT CONTRACTOR'S 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 request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.	
City of Santa Clara Electric Department	
P.O. 12010-S2	or 151 North Lyon Avenue
Hemet, CA 92546-8010	Hemet, CA 92543

Telephone number:	951-766-2280
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.

**AGREEMENT FOR THE PERFORMANCE OF SERVICES  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND**

**\*INSERT CONTRACTOR'S NAME**

**EXHIBIT D**

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

**Termination of Agreement for Certain Acts.**

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

If a Contractor<sup>1</sup> does any of the following:

Is convicted<sup>2</sup> of operating a business in violation of any Federal, State or local law or regulation;

Is convicted of a crime punishable as a felony involving dishonesty<sup>3</sup>;

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 subcontract;

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 subcontractor; and/or,

Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

---

1 For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and 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.

If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor 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.

The City may also terminate this Agreement in the event any one or more of the following occurs:

The City determines that Contractor no longer has the financial capability<sup>4</sup> or business experience<sup>5</sup> to perform the terms of, or operate under, this Agreement;  
or,

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.

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 the 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.

**AGREEMENT FOR THE PERFORMANCE OF SERVICES  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND**

**\*INSERT CONTRACTOR'S NAME**

**EXHIBIT E**

**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS**

I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the 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 appropriate inquiry of those individuals potentially included within the definition of "Contractor" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Contractor" category [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 the Ethical Standards 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.

**\*INSERT CONTRACTOR'S NAME**

**\*choose one: a corporation/partnership/individual**

By: \_\_\_\_\_  
Signature of Authorized Person or Representative

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.

**AGREEMENT FOR THE PERFORMANCE OF SERVICES  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
\*INSERT CONTRACTOR'S NAME**

**EXHIBIT F**

**MILESTONE SCHEDULE**

(If Applicable)

**ATTACHMENT "C"**

**Registered Responder Information/ Intent to Bid Form**

In order to register as a Respondent for Silicon Valley Power's RFP for the Home Energy Audit Tool 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 March 19, 2014.**