CITY OF SANTA CLARA

REQUEST FOR PROPOSAL
FOR PUBLIC RELATIONS AND ADVERTISING SERVICES

Branding & Marketing and Public Relations Services

Proposals dues by 5:00pm on May 20, 2014

Submit to:

Sheila Tucker
Assistant City Manager
City of Santa Clara
1500 Warburton
Santa Clara, CA 95050
PHONE: (408) 615-2218
FAX: (408) 241-6771
EMAIL: stucker@santaclaraca.gov

REQUEST FOR PROPOSAL
FOR PROFESSIONAL SERVICES

1. INTRODUCTION

The City of Santa Clara is seeking consultant services with one or more communications and outreach firms to assist the City in developing a new brand and providing a broad range of on-going advertising and public relations services.

The City of Santa Clara is in the heart of Silicon Valley, and the home of several large corporate headquarters, but lacks awareness and identity outside of the immediate area as a premium location to live, work and/or start and grow a business. The City has a lot to offer residents, visitors, and businesses including low utility rates, a diverse and skilled workforce, a safe community, access to transportation, major university and colleges, theme park, convention center and a ranking as the 15th most livable city in the United States.

In addition, Santa Clara has been catapulted onto the global stage spurred by the selection of Santa Clara as the home of the new Levi's stadium, San Francisco 49ers, and the site of 2016 Super Bowl. Early indications suggest the new stadium is serving as a catalyst to create greater opportunities for job creation, business expansion and relocation, new hotels, restaurants, retail and an exciting place to live, work and play.

Developing a stable and sustainable revenue strategy is fundamental to the economic health of the City. Without funds, the City cannot deliver services to residents or businesses. Santa Clara has a unique opportunity to leverage the current exciting developments into a long-term strategy that will provide a solid financial future for the community. A key challenge in this regard will be to create a fresh marketing strategy that will establish a brand and identity reflective of Santa Clara's strengths and ambitions and enable effective communications in this modern era to key stakeholders.

The City officially kicked off its marketing and branding initiative this year by establishing a new Council Marketing Committee. The new Council Committee includes three City Council members and a number of community stakeholders that promote Santa Clara as a destination such as the City's Chamber of Commerce, Santa Clara Convention Center, Convention & Visitors Bureau, Santa Clara University, Mission College, California's Great America, San Francisco 49ers and local hoteliers.

The City has also partnered with a team of Harvard Business School (HBS) Alumni, on a Community Partners Project. The HBS project team, comprised of marketing and advertising industry specialist, is assisting the City with the initial stages of research and discovery on Santa's Clara unique assets as a place to live, work, and play.

More information about the City of Santa Clara can be found at http://santaclaraca.gov/.

2. ATTACHMENTS

The attachments below are included with this Request for Proposals ("RFP").

Attachment A – Proposal Form
Attachment B – Proposer's Questionnaire
Attachment C – Insurance Requirements
Attachment D – Affidavit of Compliance with Ethical Standards
Attachment E – Standard Agreement for Services

3. INSTRUCTIONS TO PROPOSERS

3.1. Pre-proposal Conference.

There is an optional pre-proposal conference on May 2, 2014 at 2:00 pm at Santa Clara City Hall, 1500 Warburton Avenue, Santa Clara, CA 95050. For further information, please call or email Sheila Tucker at (408) 615-2218 or stucker@santaclaraca.gov.

3.2. Examination of Proposal Documents.

The submission of a proposal shall be deemed a representation and certification by the Proposer that they:

3.2.1. Have carefully read and fully understand the information that was provided by the City to serve as the basis for submission of this proposal.
3.2.2. Have the capability to successfully undertake and complete the responsibilities and obligations of the proposal being submitted.
3.2.3. Represent that all information contained in the proposal is true and correct.
3.2.4. Did not, in any way, collude, conspire to agree, directly or indirectly, with any person, firm, corporation or other Proposer in regard to the amount, terms or conditions of this proposal.
3.2.5. Acknowledge that the City has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Proposer, and Proposer hereby grants the City permission to make these inquiries, and to provide any and all related documentation in a timely manner.

No request for modification of the proposal shall be considered after its submission on grounds that Proposer was not fully informed of any fact or condition.

3.3. Questions.

Any questions by the Proposer regarding this RFP or the project must be put in writing and received by the City no later than 3:00 p.m. on May 7, 2014. Correspondence shall be addressed to:
There is an optional pre-proposal conference on May 2, 2014 at 2:00pm at Santa Clara City Hall, City Council Chambers. For further information, please call or email:

Sheila Tucker, Assistant City Manager
City of Santa Clara
City Manager's Office
1500 Warburton Avenue
Santa Clara, CA 95050
(408) 615-2218 (phone)
(408) 2416771 (fax)
stucker@santaclaraca.gov

The City shall not be responsible for nor be bound by any oral instructions, interpretations or explanations issued by the City or its representatives.

Responses from the City to questions by any Proposer will be communicated in writing to all recipients of this RFP. Questions received after the date and time stated above will not be accepted, and will be returned to senders without response.

3.4. Addenda.
Any addenda issued by City shall be in writing, shall become a part of this RFP, and shall be acknowledged and responded to by Proposer.

3.5. Submission of Proposals.
All proposals shall be submitted to:

City of Santa Clara
City Manager's Office
Attention: Sheila Tucker, Assistant City Manager
1500 Warburton Avenue
Santa Clara, CA 95050

Please note that faxes, or electronic submissions, or any media other than hard copies are not acceptable.

Proposals must be delivered no later than 5:00 PM PDT on May 20, 2014. All proposals received after that time will be returned to the Proposer unopened.

The Proposer shall submit four (5) copies of its proposal in a sealed envelope, including one (1) original, clearly marked "Original", addressed as noted above, bearing the Proposer's name and address clearly marked, **"**RFP FOR BRANDING & MARKETING AND PUBLIC RELATIONS SERVICES.

3.6.Withdrawal of Proposals.
A Proposer may withdraw its proposal at any time before the expiration of the time for submission of proposals as provided in the RFP by delivering a written request for withdrawal signed by, or on behalf of, the Proposer.

4. RIGHTS OF THE CITY OF SANTA CLARA

This RFP does not commit the City to enter into a contract, nor does it obligate the City to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract. The City 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 for its own convenience;
- Remedy errors in the Request for Proposals process;
- Approve or disapprove the use of particular subconsultants;

- Negotiate with any, all or none of the Proposers;
- Accept other than the lowest offer;
- Waive informalities and irregularities in the Proposals; and/or
- Enter into an agreement with another Proposer in the event the originally selected Proposer defaults or fails to execute an agreement with the City.

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

5. RFP TIMELINE

The RFP Timeline is as follows:

RFP Issued	April 25, 2014
Pre-proposal Conference	May 2, 2014, 2:00 PM PDT
Deadline for questions, clarifications	May 7, 2014
Proposals must be submitted by	**May 20, 2014, 5:00 PM PDT**
Oral Interviews	May 26-30, 2014
Final Selection & Begin Contract/Scope Development	June 2, 2014
Contract Development Complete	June 13, 2014
Council Awards Contract	June 19, 2014
Contract Begins	July 1, 2014

The City reserves the right to add, remove or combine steps in the timeline, and/or compress or extend the timeline as the City, in its sole discretion, sees fit.

6. GENERAL SCOPE OF SERVICES

There are two phases to this project, Phase 1 and Phase 2. Each Phase is discussed in more detail below. Phase 1 involves assisting the City in developing its new brand. Phase 2 will provide on-going marketing and public relations support. The City may select one or more communications and outreach firms to assist the City with each Phase. Proposers may bid on Phase 1 or Phase 2, or bid on both phases. Joint proposals with other firms are encouraged.

Phase 1: Brand Review and Brand Platform Development

Building on the initial work of the HBS Community Partners Project Team, the City of Santa Clara is looking for a communications firm to help lead us through a brand review and brand platform development process. The City is looking to clarify who we are, who we want to be and where we want to go and then develop a brand, a message and framework for delivering our brand story over time. The City is looking for a partner that has done a number of similar projects before, preferably with public agencies and has had comparable brand challenges.
The City currently sees Phase 1 as having three main parts as detailed below. The City welcomes your guidance and recommendations on the most effective way to reach our objectives.

1. Discovery & Assessment

The research and information phase. Help us gather the critical insights, from both internal and external sources, that will inform the new brand. To assist Santa Clara in the initial research

efforts, a team of Harvard Business School Alumni is undertaking a Community Partners project with the City. As part of this effort the Team is conducting 1:1 interviews with a diverse range of stakeholders inside and outside the City, and facilitating public meetings and opportunities for online input about what makes Santa Clara a uniquely attractive place to live and work. From this research, the HBS Team will:

- Identify potential brand drivers that are relevant and unique to Santa Clara
- Recommend from a broader perspective key elements for the positioning of Santa Clara within the greater Silicon Valley region that may be used to build the brand for an ongoing marketing effort that resonates with the market as a whole and supports future revenue-strategy activities.
- Identify major audience segments for the marketing effort and the messages that resonate most powerfully with each segment.

The analysis and recommendations will serve as a foundation for the development of the City's new brand. The scope of work for this Phase involves reviewing and validating the HBS Team's raw information, findings and recommendations and conducting any other necessary information to complement the HBS effort – if needed.

2. Positioning Process

Use the information from the Assessment above to craft a brand platform for the City. Help us articulate the City's promise – confirming what we stand for, our unique value proposition and how we carve out a unique and differentiated place in our target audience's mind. The new Santa Clara brand platform will be a road map for all communications and a filter for other activities. We expect our brand to permeate everything we do, both internally and externally. Building on the HBS Community Partners Team's findings and recommendations as needed, key deliverables include:

- Identifying core audience(s)
- Articulation of the main issue we solve for our audiences
- Articulation of our positioning
- Articulation of our brand persona
- Brand Essence: the 1 to 3 words that form the soul of what the Santa Clara brand story should be

3. Tag Line Development and Messaging Guidelines

The City is currently known as the "Mission" City and the logo is the City seal. The City is the site of the eighth of 21 California missions, Mission Santa Clara de Asís, and was named after the mission. The City is also home to numerous large technology companies and has so much to offer residents, visitors, and businesses including low utility rates, a diverse and skilled workforce, a safe community, access to transportation, major university and colleges, theme park, convention center and a ranking as the 15th most livable city in the United States. The City is evaluating options to revitalize and re-energize its brand with a new logo and tagline. The key deliverables include:

- Logo and tag line development
- Process and timeline for community feedback/reactions to ideas and validation

- Once logo and tagline(s) have been chosen, include development of a full identity system including, but not limited to, graphic elements, brand architecture, verbal branding (tone of voice), logo type, fonts, color palette, icon system, imagery, co-branding, website branding, templates for presentations, business cards, letterhead, envelopes, brochures, interior and exterior signage, advertising, email signature, uniforms, and vehicle placards.
- Messaging guidelines
  - Written - The brand platform should include guidelines and examples on how to talk about the City and the services in marketing the City. These could be shared with all employees, especially those who write about the City or our services, as well as external writers, agencies and partners who create content on our behalf
  - Visual Collateral – Guidelines should include guidance for brochures and thought leadership
  - Digital – Guidelines should include high level guidance for website, email marketing and social media.
  - Communications – Guidelines should include guidance for a PowerPoint template, City stationary, and office signage
- Internal activation. Provide suggestions and recommendations for introducing and embedding a new brand with employees.

Timing

Our goal is to kick off this project July 1 and complete it within 4-5 months.

Phase 2. Brand Execution and On-going Marketing and Advertising Services
The following Scope of Services presents an outline of potential work assignments that may be part of the selected Proposer(s) contract.

If selected, the City and the selected Proposer(s) will prepare a detailed Scope of Services for specific tasks, budgets, and timelines to be included in the negotiated contract. Key deliverables may include:

- Brand execution
- Develop and implement comprehensive multimedia marketing plans
- Develop collateral and advertising material (services may include: graphic design for the development of print collateral (such as bill inserts, posters, service packets, direct mail, service cards), print and broadcast advertising, public meeting presentation materials, and supplemental video productions.
- Propose methods to measure and track effectiveness of marketing plans/campaigns
- Develop public relations campaigns
- Support City staff in preparing for and responding to media inquiries.

The list of tasks above is not meant to be exclusive and proposals containing alternative and innovative approaches that have been employed in other communities are encouraged. The City reserves the right to revise or eliminate tasks from the Scope of Services based on the outcome of the proposal evaluation process.

Timing
Brand execution is expected to commence in the winter of 2014.

7. INSTRUCTIONS TO PROPOSERS

These instructions outline the guidelines governing the format and content of the proposal and the approach to be used in its development and presentation. Only that information which is essential to an understanding and evaluation of the proposal should be submitted. No limitation on the content of the proposal is intended in these instructions and inclusion of any pertinent data or information is permitted. However, *the proposal will demonstrate your firm's ability to communicate clearly and concisely.*

The Proposal shall include the following elements in the order listed:

1. **Exhibit A Proposal Form:** Complete and fully executed

2. **Branding & Marketing and Communication Plan:** Using the GENERAL SCOPE OF SERVICES as described for Phase 1 above:

   Phase 1. Brand Review and Brand Platform Development
   - Outline the overall process you envision for this project, and how you will manage the project and develop each deliverable. The City would like to understand your firm's approach to branding, how you would manage each step and how you would produce the most impactful results.
   - Deliverables - Describe the outputs you will provide for each part of the project. The City would like to understand what you see as being included in each deliverable with as much detail (and examples) as necessary.
   - Resources - Explain for each step who you would expect to be involved in the work (strategy, management and execution), and specifically whether you will use in-house or outside resources. Parts of this project are quite specialized and we'd like to understand if you would bring in additional expertise on any of the tasks.
   - Describe how you would measure the success of this rebrand project. What criteria (quantitative and/or qualitative) should we use to evaluate that we have established and are building a strong brand?
   - Outline your anticipated schedule for the project, ideally broken down by each major step of the process. Suggestions for how to keep the project on track and be most efficient are welcome.

   Phase 2. Brand Execution and On-going Marketing and Advertising Services: Using the GENERAL SCOPE OF SERVICES as described for Phase 2 above:
   - Provide examples of deliverables that you have developed and/or executed for other clients that demonstrate your qualifications i.e., branding execution, marketing & public relations campaigns, collateral material development. The list of potential deliverables is not meant to be exclusive and proposals containing alternative and innovative approaches that you have employed in other communities are encouraged.
   - Provide the cost to develop and/or execute each of example deliverables highlighted above.

Note: If selected, the City and the selected Proposer will prepare a detailed scope of services for specific tasks, budgets, and timelines to be included in the negotiated contract. It is the City intent to enter into a one-year agreement with the selected firm, with options to renew for two additional years. An annual work plan will be developed each year and a monthly retainer will support unanticipated service needs.

3. **Qualifications of the Firm:**
   Include a brief description of the Proposer's qualifications and previous experience supplying like services to similar public agencies. Include all areas of expertise, scope of services provided, and relevant experience, including description of each project, role of professional for that project and date completed. Give a brief statement of the firm's adherence to the schedule and budget for each project.

   Five (5) references from clients with similar projects must be submitted along with the names and telephone numbers of contact persons.

4. **Cost Proposal:** Proposer shall indicate clearly the proposed cost to the City, on a not-to-exceed basis, for implementing the proposed Marketing and Communication Plan presented by proposer in #2 above. This cost proposal shall be broken down as follows:

   Phase 1. Brand Review and Brand Platform Development
   - Total overall cost of proposal. Provide a breakout of costs by each of the three (3) major section of the project for comparison purposes.
   - Hourly rates of key staff assigned to the project.

   Phase 2. Brand Execution and On-going Marketing and Advertising Services
   - Hourly rates of key staff assigned to the project.

COST PROPOSAL NOTES:

All costs associated with developing and submitting proposals for work contained herein are entirely the responsibility of the proposing Proposer(s); and therefore, the City shall assume no liability.

The Proposer will be responsible for payment of all 3rd Party Costs (all costs not covered by the Agency Retainer, excluding postage), then bill through all third party costs to the City without mark-up or special management fees.

When pieces are mailed, printing and mailing is the responsibility of Proposer and/or its 3rd party mail house. We provide an electronic mailing list and cover postage with a USPS permit numbered account.

Ownership of all materials created or purchased by Proposer or a third party vendor on City's behalf shall be transferred in full to the City and priced accordingly in the proposal.

The final contract amount shall be negotiated with the highest-ranking Proposer(s) after the selection process. The selected Proposer(s)' negotiated contract amount shall be stated in the City's Standard Agreement on a not-to-exceed basis and shall include payment for professional services and reimbursable expenses.

Each month, selected Proposer(s) shall furnish to the City a statement of the work performed for compensation for each task, as described in the Scope of Services or as otherwise agreed to on a contingency basis, completed during the preceding month. The monthly statement shall specify each task, the services performed in association with the task, the number of hours expended for completing all services, the hourly rate for each service, the variation between this rate and the monthly retainer, and the total amount due for the month (inclusive of both retainer and third party charges). Such statement shall also include a detailed record of the month's actual reimbursable expenditures associated with the task. Documentation supporting such expenditures shall be made available upon request.

5. **Additional information:** Any other relevant information that supports the proposal.

6. **Exhibit B PROPOSER'S QUESTIONNAIRE:** Complete and fully executed

7. **Exhibit C INSURANCE REQUIREMENT FORM:** fully executed

8. **Exhibit D AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS** fully executed

9. **Requested Changes to the Master Agreement:** A detailed list of any requested exceptions or required changes to the Master Agreement or contracting arrangements.

10. **Work Samples:** One set of samples of one of most successful multimedia campaigns. (Samples will not be returned.)

EXHIBIT "A" PROPOSAL FORM

Proposer Name:	Telephone:
Title:	Facsimile:
Agency Name:	Email:
Address:	Website URL:
Contact person (if different):	
Title:	Telephone:
Email:	Facsimile:

Proposer understands, agrees, and warrants:

1 That Proposer has carefully read and fully understands the information that was provided by the City to serve as the basis for submission of this proposal for Advertising/Public Relations Services.

2. That Proposer has the capability, including but not limited to personnel and financial resources, to successfully undertake and complete the responsibilities and obligations outlined in the proposal.

3. That all information contained in the proposal is true and correct to the best of Proposer's knowledge.

4. That Proposer did not, in any way, collude, conspire or agree, directly or indirectly, with any person, firm, corporation or other Proposer in regard to the amount, terms, or conditions of this proposal.

5. That by submission of this proposal, the Proposer acknowledges that the City has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Proposer.

_____ _____

PROPOSER'S SIGNATURE DATE

By signing above, the submission of a proposal shall be deemed a representation and certification by the Proposer that the Proposer has investigated all aspects of the RFP, that the Proposer is aware of the applicable facts pertaining to the RFP process, its procedures and requirements, and that the Proposer has read and understands the RFP and is an authorized representative of the corporation.

EXHIBIT "B" PROPOSER'S QUESTIONNAIRE

All information requested in the Questionnaire shall be furnished by the proposer, and shall be submitted with the proposal. Statements shall be complete and accurate and in the form requested. Omission, inaccuracy or misstatement may be cause for the rejection of a proposal.

1. Name of Proposer exactly as it is to appear on a management services agreement and address which Proposer would designate under the agreement for service of notices:

2. Proposer, if selected, intends to carry on the business as
   Individual Partnership, Joint Venture, Corporation, or Other. If "Other" attach explanation.

3. If a partnership or joint venture, attach a copy of the partnership agreement or joint venture agreement and identify the participants:
   A. Provide the NAME, ADDRESS and SHARE of each participant.
   B. Date of Organization:
   C. General or Limited Partnership: (if applicable)
   D. Agreement Recorded: COUNTY, STATE and DATE
   E. Registered in California? If so, when?

4. If a corporation, answer the following:
   A. When incorporated?
   B. In what state?
   C. Authorized to do business in California?
      If so, what date?

5. Are you currently engaged in merger or acquisition negotiations, or do you anticipate entering into merger or acquisition negotiations within the time period of this Request for Proposals?
      If yes, give details.
      Attach copy of such agreement(s).

6. What is the duration and extent of your experience in Advertising/Public Relations Services? Experience must reflect local office as well as overall organization's experience (i.e., if your local office is part of a larger group, nationwide).

7. What is your experience in creating multimedia marketing campaigns on environmental issues and/or environmentally sensitive projects?

8. Are you now representing or have you represented any clients who provide energy or energy related services?
   If yes, give details and attach copy of such agreement(s).

EXHIBIT B - PROPOSER'S QUESTIONNAIRE -Continued-

9. Submit at least three persons, firms and/or governmental bodies, with whom you currently have arrangements or agreements for Advertising/Public Relations Services.
   Provide contact person's name and telephone number.

10. Submit at least three persons, firms and/or governmental bodies with whom you have had arrangements or agreements that are now canceled (organizations that are no longer active customers of your (firm).
    Provide contact person's name and phone number for each organization.

The undersigned hereby declares under penalty of perjury that all statements, answers and representations made in this questionnaire are true and accurate, including all supplementary statements hereto attached. In the case of a corporate proposer, the signature of one duly authorized representative is sufficient.

_____ _____

PROPOSER'S SIGNATURE DATE

Title:

Company:

Address:

EXHIBIT "C" INSURANCE REQUIREMENT FORM

INSURANCE REQUIREMENTS:

Proposer has read the insurance requirements contained in the attached sample of the City of Santa Clara's Master Agreement (Exhibit C) and acknowledges that insurance will be made a part of the Agreement and warrants that Proposer has or will acquire the required insurance coverage by execution of the Agreement.

_____ _____

PROPOSER'S SIGNATURE DATE
Title:
Company:
Address:

EXHIBIT "D" AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

ETHICAL STANDARDS REQUIREMENTS:

Proposer has read the ethical standards requirements set forth in the attached sample of the City of Santa Clara's Master Agreement (Exhibit A & B) and acknowledges that compliance with these standards will be made a part of the Agreement and warrants that Proposer will abide by said standards if an Agreement is executed.

_____ _____

PROPOSER'S SIGNATURE DATE

Title:
Company:
Address:

EXHIBIT "E" 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 _____2014 ("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 INSUREDS 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 INSUREDS 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.

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 Contractor[1] does any of the following:

   a. Is convicted[2] 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 dishonesty[3];

   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 capability[4] or business experience[5] 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.

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[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 COVERAGE REQUIREMENTS

1.0

2.0 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:

COMMERCIAL GENERAL LIABILITY INSURANCE

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

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.

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:

Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

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.

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.

WORKERS' COMPENSATION

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.

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).

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.

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.

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.

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.

Cancellation.

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.

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.

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.

ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

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.

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.

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.

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.

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 Hemet, CA 92546-8010	or	151 North Lyon Avenue Hemet, CA 92543

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

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.

3.0

Sample Call

CALL NO. *<u>ENTER NUMBER</u>
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"