

REQUEST FOR PROPOSALS

SVP OUTDOOR WIRELESS WI-FI SYSTEM

SIGNAL STRENGTH SURVEY (HEAT MAP)

FOR CITY OF SANTA CLARA, DBA SILICON VALLEY POWER



*Giving You the Power
to Change the World*

September 2013

REQUEST OVERVIEW

The City of Santa Clara, Silicon Valley Power has recently launched a outdoor Wi-Fi system that covers the entire city for both utility use and to offer a free outdoor Wi-Fi connection to the public. The City of Santa Clara is approximately 19 square miles and utilizes approximately 600 Tropos radios distributed throughout the City as Wi-Fi access points.

This Request for Proposal (RFP) outlines the requirements that the City of Santa Clara, Silicon Valley Power has for the mapping of Received Signal Strength Indication (RSSI) Wi-Fi signals across the entire city (heat maps) and the ability of various devices to access that network. SVP will provide the equipment list and GPS coordinates for each Tropos AP to the winning bidder to facilitate the generation of the Heat Maps and fulfillment of RFP requirements.

1. Bidders shall conduct a passive Received Signal Strength Indication RSSI Wi-Fi site survey across the entire city where the Tropos Mesh routers reside. The passive Wi-Fi site survey shall consist of the following at a minimum:
 - a. Provide specifications and utilize third party site survey software
 - b. Capture all data with GPS coordinates (specify accuracy)
 - c. Upload site maps into site survey software
 - d. Walk or drive the entire city where the existing Tropos Mesh network is located, recording the RSSI readings (specify accuracy)
 - e. Produce RSSI heat map raw data in original format (on flash drive)
 - f. Produce heat map in PDF, raw format of each type specified below in item #4 (Google Earth ready if possible). Provide files of each type electronically on a flash drive as well as printed 11"X17" copies.
2. In addition, SVP requires spot check(s) of the current signal strength consistency to a stationary device over a period of one hour at 6 (six) publicly accessible outdoor locations in the City of Santa Clara's service territory to be identified prior to commencing work;
3. In addition, SVP requires spot check(s) of the time to connect and the landing page fully loads (progress bar indicates 100%) with two common single devices (a laptop and an iPad). These would be performed at the above 6 (six) publically accessible outdoor locations as well as 14 (fourteen) additional publically accessible outdoor locations throughout the City of Santa Clara's service territory to be identified prior to commencing work.
4. Individual heat maps should include/indicate the accessibility to the Wi-Fi network:
 - a. common smart phones signal level
 - b. common tablets signal level
 - c. common laptops signal level
 - d. spot check locations with signal variation values (Item 2 above)

5. Reports shall include an Executive Summary as well as any general observations and recommendations of potential system improvements to better serve our public and utility workforce user base.
6. As an option for SVP, proposal shall include a separate quote for the acquisition and transfer of a copy of the software tool used during the Heat Map upon request.

PROPOSAL REQUIREMENTS

1. Proposals will include the provision of clear deliverables in the form of accurate maps, data, documentation and metric based reports (in narrative and technical report forms) of the work completed and at a minimum include:
 - a. Breakdown of total cost for materials and personnel
 - b. A time line for starting and finishing each area of the city with a final deadline for completion of the project
 - c. Specify all software to be used
 - d. Specify and describe all data gathering equipment
 - e. Estimated number of technicians/personnel assigned to the project along with their roles and responsibilities
2. All testing is to be done from publicly available roads, parks and sidewalks. No permission for entry to private or commercial areas is to be implied or granted.
3. Successful bidders must provide all required proof of insurance coverage as required in the attachments.
4. All data collected shall remain the sole property of the City of Santa Clara. Bidder will not retain any data gathered or provided. A Confidentiality Agreement is required (see attached).

Overall, proposals should include 1) both detailed technical (including methodology) and budgetary (including rate/fee schedules) components; 2) provide references for similar projects evaluating in-service Wi-Fi coverage completed in the last five years, and; 3) at least two sample outdoor heat map reports done by your organization.

At SVP's sole discretion, SVP may ask one or more proposers to present their submitted proposal in person as part of the final selection process.

The budget for this project is expected to be less than \$50,000.

Deadline for proposals is 5:00 PM (PDT), Friday, October 4, 2013. Proposals should include "SVP Heat Map" in the subject line and must be submitted electronically to:

Larry Owens
Silicon Valley Power – Manager, Customer Services
lowens@siliconvalleypower.com

Parties interested in submitting a proposal can send an email to Larry Owens to receive any RFP updates. Questions regarding requirements should include "SVP Heat Map" in the subject line, must be submitted electronically and received before 5:00 (PDT) Monday, September 20, 2013. Questions regarding the requirements and their responses will be returned electronically to all parties indicating an interest in submitting a proposal within 48 hours from that time.

City's standard agreements used for contracting services are attached for bidder's information. Please note any issues and return with proposals:

1. Sample Agreement For The Performance of Services;
2. Sample Insurance Coverage Requirements and;
3. Sample Confidentiality Agreement

**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 principal 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";
- 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. SERVICES TO BE PROVIDED.

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

2. 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

* _____, 20__.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. AMENDMENTS.

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

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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."

31. 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.

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

Name: _____

Title: _____

Local Address: _____

Email 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

SCHEDULE OF FEES

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

insert proper exhibit from s:\Attorney\Insurance\City.*

**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:
1. If a Contractor¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - 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 subcontractor; and/or,
 - e. 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.

2. 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.
- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. The City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
 2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal 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.

**CITY OF SANTA CLARA, CALIFORNIA
CONFIDENTIALITY AGREEMENT**

PREAMBLE

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

RECITALS

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

The Parties agree as follows:

AGREEMENT PROVISIONS

32. DEFINITIONS.

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

- A. Confidential Information means information which is of a non-public, proprietary or confidential nature belonging to the Disclosing Party, including without limitation, all reports and analyses, technical and economic data, studies, forecasts, trade secrets, research or business strategies, financial or contractual information, rates, certain sales market information, research, developmental, engineering, technical, marketing, sales, financial, operating, performance, cost, business and process information or data, know-how, and computer programming or other written or oral information. Confidential Information may be in any form whatsoever, including without limitation writings, recordings, electronic or oral data, computer programs, logic diagrams, component specifications, drawings or other media. Only that information disclosed by a Party and clearly designated in writing as Confidential Information prior to its disclosure shall be deemed to be Confidential Information. Verbal information that is intended to be treated as

Confidential Information shall be described in writing and identified as Confidential Information.

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

33. EXCEPTIONS.

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

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

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

34. USE OF CONFIDENTIAL INFORMATION.

The Confidential Information (i) may be used by the Receiving Party solely in connection with performing the tasks required under the Agreement and (ii) will be kept confidential and not disclosed by the Receiving Party to any other person, except that Confidential Information may be disclosed to any of the Receiving Party's affiliates, directors, officers, council members, Strategic Allies, employees, attorneys and agents

(collectively, its "Representatives") who require access to such information in connection with performing the tasks under the Agreement between the Parties. Each of the Parties agrees that any of its Representatives to whom Confidential Information is disclosed will be informed of the confidential or proprietary nature thereof and of the Receiving Party's obligations under this Agreement. Each Party shall be responsible for any use of Confidential Information by any of its Representatives.

35. RIGHTS TO CONFIDENTIAL INFORMATION.

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

36. TERM.

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

37. NO OBLIGATION TO DISCLOSE.

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

38. PUBLIC RECORDS ACT.

Counterparty acknowledges that Santa Clara is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. Santa Clara acknowledges that Counterparty may submit information to Santa Clara that Counterparty considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Counterparty acknowledges that Santa Clara may submit to Counterparty information that Santa Clara considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Disclosing Party as Confidential Information, the Receiving Party as soon practical but within three (3) days of receipt of the request, shall notify the Disclosing Party that such request has been made, by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed at the end of the Agreement. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the

Requestor by the Receiving Party. If the Disclosing Party takes no such action, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

39. LIABILITY.

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

40. COOPERATION.

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

41. RETURN OF CONFIDENTIAL INFORMATION.

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

42. ENTIRE AGREEMENT.

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

43. REMEDIES.

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

44. AUTHORITY.

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

45. GOVERNING LAW.

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

46. SEVERABILITY.

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

47. INDEPENDENT CONTRACTOR.

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

48. NO FURTHER AGREEMENTS HEREUNDER.

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

binding by execution of a written agreement between the Parties with respect thereto or with respect to any further agreements or business arrangements with the other Party, its parents, subsidiaries or affiliates and to terminate all further discussions and negotiations.

49. AMENDMENT.

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

50. WAIVER.

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

51. ASSIGNMENT.

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

[Paragraph 21 and signatures follow on Page 7]

52. HEADINGS.

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

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

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

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

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: () _____

“COUNTERPARTY”

INSURANCE COVERAGE 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:

D. 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
\$1,000,000 general aggregate
\$1,000,000 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.

E. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01, with minimum policy limits 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.

F. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with the following limits: at least one million dollars (\$1,000,000) policy

limit Illness/Injury by disease, and one million dollars (\$1,000,000) for each Accident/Bodily Injury.

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.

G. 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.

H. 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.

I. 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.

J. 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.

