

Silicon Valley Power Request for Proposals

Cost of Service Analysis

1 General

1.1 Request for Proposal Process

The City of Santa Clara, through its municipal electric utility Silicon Valley Power (SVP), requests proposals for a comprehensive cost of service analysis and retail rate design review.

1.2 Invitation to Submit a Proposal

Proposals shall be submitted no later than 3:00 pm on March 28, 2014.

Two (2) copies, one (1) unbound original, signed by an officer who is authorized to execute legally binding agreements, and one (1) electronic copy, shall be delivered to:

Silicon Valley Power
Attn: Jan Pepper, Electric Division Manager
1601 Civic Center Drive, Suite 102
Santa Clara, CA 95050

Proposals shall include a cost proposal in a format provided as **Attachment A** as follows:

- Fee Schedule showing hourly rates and the effective date for said rates in addition to any overhead rates not directly provided by potential contractor;
- Cost Proposal identifying the number of hours and total cost associated with each task; and
- A “not to exceed” estimate for reimbursable expenses.

Cost Proposal should include a clear delineation of the total cost (including fees and reimbursable expenses) between Phase I and Phase II services as requested.

Proposals must be clearly marked and labeled:

Proposal: Cost of Service Analysis Silicon Valley Power
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Any proposal received after the due date and time will not be accepted and returned, unopened, to the potential contractor.

Firms interested in submitting a proposal must indicate their intent to respond by 5:00 pm on March 10, 2014 by emailing Jan Pepper at jpepper@svpower.com. Only those firms who indicate their intent to respond will receive further updates and addenda regarding this proposal. Include in your e-mail your company name and contact information for receiving information regarding this proposal.

2 Background

2.1 City of Santa Clara

The City of Santa Clara is located at the southern end of the San Francisco Bay. Encompassing a total area of approximately 19 square miles and a population of approximately 120,000 within northern Santa Clara County, the City is situated in the heart of “Silicon Valley.” Santa Clara is home to many high tech firms involved in the design and production of computers and software, as well as numerous computer data centers serving the needs of corporate offices and internet-related businesses. It is also home to the new Levi’s Stadium which will host the 2016 Super Bowl.

2.2 Silicon Valley Power

The City of Santa Clara provides electric utility service through its electric utility department under the trademarked name “Silicon Valley Power” (SVP). In Fiscal Year 2012/2013, SVP served approximately 52,285 customers, with total sales of 2,922 GWh, peak demand of 471 MW, and annual revenues of \$303 million.

SVP is very proud of the fact that it offers the lowest average electric rates in the state of California, with a very high level of reliability, and delivers over 25% renewable power to its customers, exceeding the renewable portfolio standard requirements in the state.

The ten largest customers, in terms of kWh sales for the fiscal year ending June 30, 2012, accounted for 35.1% of total kWh sales and 30.9% of revenues. Industrial customers make up 87% of SVP’s load and 86% of its revenues. To help retain its industrial customers and assure the stability of SVP’s sales and revenue, SVP has entered into power purchase contracts with a number of its largest customers. Currently, 16 customers, representing approximately 43.7% of SVP’s load and approximately 39.1% of annual sales revenues are under contract. The contracts have varied terms, with none exceeding five years.

A utility fact sheet can be found at: <http://siliconvalleypower.com/index.aspx?page=2024>.

2.3 Existing Rate Structure

Residential rates can be found at <http://siliconvalleypower.com/index.aspx?page=1926> and commercial/industrial rates can be found at <http://siliconvalleypower.com/index.aspx?page=2001>.

Rates were increased in January 2014. The council memo and resolution, along with the full schedule of rates can be found at:

<http://sireweb.santaclaraca.gov/sirepub/cache/2/gt1jssi3xpnk3f45oolvbp45/66837802132014043825271.PDF>.

2.4 Purpose

The purpose of this RFP is for potential contractors to present their qualifications, capabilities and approach to a) perform a cost of service analysis for Silicon Valley Power and b) based on the results of the COSA, provide a review and recommendation regarding SVP's current rate structure. If changes in SVP's rate structure are recommended, SVP is looking for revenue neutral recommendations that also seek to maintain the relative simplicity of SVP's current rate structure.

2.5 Scope of Work

Phase 1: COSA

- Review current customer classes and recommend any alterations to existing customer class definitions and/or expansion/reduction/combination of the number of customer classes. The major customer classes include:
 - Residential (D-1 rate)
 - General (commercial) service (C-1)
 - General service, demand metered (CB-1)
 - Large general service, demand metered (CB-3)
 - Large standby general service, demand metered (SB-1)
 - Street and highway lighting (SL-1)

Other smaller customer rate schedules include Schedules P-1, SL-2, TC, IC, TS-1, and A. Contractor and SVP will discuss the level of analysis to be used for these smaller customer groupings.

- Conduct a comprehensive cost of service study to determine the cost of serving each customer class, including segments within each customer class that SVP may identify. Elements of this cost determination are expected, at a minimum, to include determining functionalized costs, classifying costs to cost components (customer, demand, energy), calculating allocation factors, and allocating assets and expenses to each customer class on the basis of cost causation. Contractor will use industry accepted methodologies for the study.
- Identify the cost of each rate component for each customer class as applicable (meter or customer cost, energy-related cost, demand-related cost). Consideration should also be given to net-metered solar customers.
- The final cost of service analysis model shall be prepared in Microsoft Excel and be made available to SVP for future internal use. Contractors shall train SVP staff on the use of the model which should be designed in such a way as to take into account alternative scenarios.

Phase 2: Rate Design Review

- Contractor shall compare the cost of service for each customer class to the revenue generated by each such class. Contractor shall start with the basic premise that each customer should be classified and served under a schedule that will cover all the costs of his/her service. Contractor shall provide discussion and analysis of approaches to reconcile any differences between the allocated cost of service and revenues for different customer classes. Contractor shall also provide discussion and analysis of possible multi-year rate change strategies addressing multi-year revenue requirement projections. SVP's latest published 5-year plan can be found on page 28 of the following link:
<http://santaclaraca.gov/modules/showdocument.aspx?documentid=9730>.

SVP is interested in potential alternative rate designs that include a) a fixed customer or access charge, b) time-of-use, and c) a hydro/dry year cost adjustment component. With respect to these alternatives, or such other alternatives that contractor may identify, contractor shall provide discussion regarding the prevalence of such approaches by other utilities in California.

- For each rate design proposal, contractor shall provide a sampling of a minimum of 3 usage patterns per classification showing the difference in bills under the present and proposed rate designs, by fiscal year for the proposed period(s) of adjustment.
- The contractor will compare the effects of the rate design proposals on customer bills under the following circumstances: 1) implementing a new rate design without a concurrent rate increase; and 2) implementing a new rate design along with a 5% across-the-board rate increase.
- The contractor will provide a comparative analysis of average rates charged by PG&E and other NCPA members.
- Meet or confer with SVP staff and/or other consultants as needed.

2.6 Proposed Project Schedule

Potential contractor to review and suggest any changes to this proposed schedule.

Issue RFP	February 28, 2014
Registration by Potential Contractors	March 10, 2014
Registration Confirmation to Potential Contractors	March 11, 2014
Deadline for Submitting Questions	March 13, 2014
All Addenda Provided	March 20, 2014
Proposals Due	March 28, 2014
Complete Consultant Interviews (if necessary)	Week of April 7, 2014
Select Consultant/Negotiate Contract	April 15, 2014
Request City Council Approval	May 6, 2014
Initial Meeting with Consultants	Week of May 12, 2014
Issue Phase 1 Draft Report	Week of June 16, 2014
Meeting re Phase 1 Draft Report	Week of June 16, 2014
Staff Review/Training/Refinements	June 25, 2014

Issue Phase 2 Draft Report
Meeting with Phase 2 Draft Report
Staff Review/Refinements
Final Report: Phases 1 and 2
Final Report to Council by SVP

Week of July 28, 2014
Week of July 28, 2014
August 5, 2014
August 12, 2014
August 26, 2014 (approx.)

3 Proposals

3.1 Proposal Format

SVP will use a qualifications based selection process in obtaining these services. All requirements set forth in this RFP must be addressed. Proposals shall be concise and shall not exceed eleven (11) pages, excluding covers, cover letter, tabs, references, resumes and financial statements. Please do not include preprinted and prepared general company advertising literature such as color brochures, etc.

Please submit two (2) copies, one (1) unbound original, and (1) one electronic copy of your proposal.

All proposals must be signed with the full name of the proposed contractor, if an individual; by an authorized general partner, if a partnership; or by an authorized officer, if a corporation.

When proposals are signed by an agent other than an officer of a corporation or a member of a general partnership, a power of attorney authorizing the signature must be submitted with the proposal.

The original proposal must have wet ink signatures. Modifications to a proposal after the proposal submittal deadline will not be accepted by SVP.

3.2 Proposal Content

Proposals shall include, at a minimum, the following information in the order provided below:

- **Cover Letter (Limit 1 Page – not included in page limit)**

A cover letter on company letterhead addressing the proposal. The letter should be signed by an officer of the firm authorized to bind the firm to all comments made in the proposal, and shall include the name, address, and phone number of the person(s) to contact who will be authorized to represent your firm. In addition, the cover letter must acknowledge receipt of any and all addenda issued in association with this RFP.

- **Minimum Experience Qualifications Summary (Limit 2 Pages)**

Sufficient evidence as to the potential contractor's qualifications to perform the work. This information shall disclose and include all pertinent facts as may be appropriate and shall include at least a description of past performance on projects of similar type, scope and size; project team members who worked on each project and their roles and percentage commitment

of time on the project; and any other pertinent information to demonstrate experience on similar assignments. In addition, please provide a statement regarding potential contractor's ability to complete the work in a timely and professional manner.

- **Management/Method of Operation (Limit 3 Pages)**

Indication that the potential contractor has a clear understanding of the requested services. This should include a description of each task, how tasks will be accomplished, the challenges that are expected to be encountered and how the potential contractor will address these challenges. Highlight innovative ideas and/or unique capabilities your firm may have to provide to SVP and describe your procedures and management techniques. SVP has proposed a schedule in Section 2.6 of this RFP; please include your proposed schedule for completing this project as shown in Attachment B.

- **References (Limit 2 Pages)**

Provide a list of 3 references with current contact person, e-mail address and phone number who may be contacted regarding firm performance. Please include a description of the nature of the services, cost, if the services were completed on time and if the services were completed within the original contract budget and if not, why.

- **Corporate Structure/Organization (Limit 1 Page)**

Provide the proposed organization structure under which the potential contractor will provide the requested services to SVP including the designation of the Principal in Charge and other key personnel. Provide the name, project responsibilities, experience and resumes (including sub-consultants) of designated personnel that will be assigned to work on the project, the amount of time they can be expected to give to the project, and their availability to SVP.

- **Cost Proposal and Schedule (Limit 2 Pages)**

A cost proposal, in the format provided as Attachment A, and proposed schedule, in the format provided as Attachment B. The cost proposal will list your standard professional hourly rates, a cost estimate by deliverable task(s) for the scope of work outlined above, and a not-to-exceed estimate for reimbursable expenses. Cost proposal should include a clear delineation of the total cost (including fees and reimbursable expenses) between Phase I and Phase II services. Please note the final scope of work and compensation will be negotiated with the selected potential contractor.

- **Other (Limit 1 Page)**

A description of all projects which the potential contractor is currently working on which could pose a potential conflict of interest with this project. Please also provide a description of assumptions regarding SVP staff responsibilities as it pertains to the proposed scope of work. Please also discuss any exceptions or requested changes to the City's RFP conditions, requirements and sample contract. If there are no exceptions noted, it is assumed the potential contractor will accept all conditions and requirement identified in the Attachment C. Items not excepted will not be open to later negotiation.

4 Acceptance or Rejection of Proposals

4.1 Reservation of Rights

SVP reserves the right to select the successful proposal and negotiate an agreement as to the scope of services, the schedule for performance and duration of the services with potential contractors whose proposals is/are most responsive to the needs of SVP. Further, SVP reserves the right to reject any and all proposals.

4.2 Product Ownership

Any documents, spreadsheets and/or computer models resulting from the contract will be the property of SVP.

4.3 Proposal Development Costs

The cost of preparing and submitting a proposal is the sole responsibility of the potential contractor and shall not be chargeable in any manner to SVP.

5 General Terms and Conditions

5.1 Contract Requirements

It is anticipated that the agreement resulting from this solicitation, if awarded, will be as provided in Attachment C, "Agreement for Professional Services," including Insurance Coverage Requirements in Attachment D. If a potential contractor desires to take exception to the Agreement, potential contractor shall provide the following information as part of their submittal as described in Section 3.2 of this RFP:

- Identification of each proposed change, including all relevant attachments
- Reasons for, as well as specific recommendations, for alternative language

The above factors will be taken into account in the evaluation of proposals. Proposals that take substantial exceptions to the proposed Agreement may be determined by SVP, at its sole discretion, to be unacceptable and no longer considered for award.

5.2 Insurance Requirements

Potential contractors, at their sole cost and expense for the entire term of the Agreement or any extension thereof, shall obtain and maintain, at a minimum, all of the insurance requirements outlined in Attachment D.

6 Selection Process

6.1 Selection Criteria

SVP will evaluate each proposal based on the following three categories: Contractor Qualifications, Specifics of the Proposal, and Cost Effectiveness.

Contractor Qualifications:

- Team leadership and technical qualifications and strengths; the contractor's lead and key personnel that will be working on the project including professional history and respective roles and responsibilities
- Depth and breadth of contractor and team experience
- Demonstrated capability on similar projects, including satisfaction results
- Review of references from customers of similar studies

Specifics of the Proposal:

- Proposed Program approach and methodology, including:
 - Professional and technical quality
 - Comprehensiveness
 - Benefit to SVP
 - Practicality

Cost Effectiveness:

- Overall cost effectiveness of approach
- Total project cost range and not-to-exceed cost
- Individual Work Segment not-to-exceed costs
- Individual team member hourly rates

7 Contact Information

Questions regarding this RFP shall be directed to:

Jan Pepper, Electric Division Manager, Market Analysis and Pricing
Silicon Valley Power
1601 Civic Center Drive, Suite 102
Santa Clara, CA 95050
408-615-6679
E-Mail: jpepper@sypower.com

Any and all questions regarding this RFP must be submitted via e-mail to the contact person identified above no later than March 13, 2014. Any addenda (including answers to questions) will be provided by March 20, 2014.

Attachment A: Cost Proposal Format
Attachment B: Proposed Schedule
Attachment C: Sample Agreement for Professional Services
Attachment D: Insurance Coverage Requirements

**Attachment A
Cost Proposal Format**

Scope (Identify Each Task Accordingly)	Labor Category	Estimated Hours	Hourly Rate	Extended Rate
Phase I - Cost of Service Analysis				
Subtask 1: (Describe)			\$	\$
Subtask 2: (Describe)			\$	\$
Subtask 3: (Describe)			\$	\$
Not to Exceed Reimbursable Expenses:			£	£
SUBTOTAL Phase I:			\$	\$
Phase II – Rate Design Review				
Subtask 1: (Describe)			\$	\$
Subtask 2: (Describe)			\$	\$
Subtask 3: (Describe)			\$	\$
Not to Exceed Reimbursable Expenses:			£	£
SUBTOTAL Phase II:			\$	\$
TOTAL (Phase I and II):			\$	\$

Effective Date of Rates Identified Above: _____

Overhead Rate or Mark-Up Included Above: (Please describe below) or N/A: _____

Description: _____ Amount: _____

**Attachment B
Proposed Schedule**

Phase I and Phase II (Cost of Service Analysis & Rate Design Review)	Start Date	End Date
Subtask 1: (Describe)		
Subtask 2: (Describe)		
Subtask 3: (Describe)		
Subtask 4: (Describe)		
Subtask 5: (Describe)		
Subtask 6: (Describe)		
Subtask 7: (Describe)		
Estimated Completion Date:		

ATTACHMENT C

EBIX Insurance No. *

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

PREAMBLE

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

RECITALS

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

The Parties agree as follows:

AGREEMENT PROVISIONS

1. SERVICES TO BE PROVIDED.

Except as specified in this Agreement, Contractor shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as “Services”) to satisfactorily complete the work required by City at his/her own risk and expense. Services to be provided to City are more fully described in Exhibit A entitled “SCOPE OF SERVICES.” All of the exhibits referenced in this Agreement are attached and are incorporated by this reference. Contractor acknowledges that the execution of this Agreement by City is predicated upon representations made by Contractor in that certain document entitled “*insert name of proposal” dated *insert date of proposal, (“Proposal”) set forth in Exhibit A, which constitutes the basis for this Agreement.

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 *insert end date.

3. CONTRACTOR’S SERVICES TO BE APPROVED BY A LICENSED PROFESSIONAL.

- A. All reports, costs estimates, plans and other documentation which may be submitted or furnished by Contractor shall be approved and signed by a qualified licensed professional in the State of California.
- B. The title sheet for specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the professional responsible for their preparation.

4. QUALIFICATIONS OF CONTRACTOR - STANDARD OF WORKMANSHIP.

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

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

5. 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.

6. 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.

7. 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.

8. 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's 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.

9. 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.

10. PROGRESS SCHEDULE.

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

11. TERMINATION OF AGREEMENT.

Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to

terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Contractor shall discontinue further services as of the effective date of termination, and City shall pay Contractor for all Services satisfactorily performed up to such date.

12. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.

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

13. NO THIRD PARTY BENEFICIARY.

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

14. INDEPENDENT CONTRACTOR.

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

15. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall Contractor have the authority or power to pledge the credit of City or incur any obligation in the name of City. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor under this Agreement.

16. CONFIDENTIALITY OF MATERIAL.

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

17. USE OF CITY NAME OR EMBLEM.

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

18. OWNERSHIP OF MATERIAL.

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

19. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR.

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for three (3) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City.

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

20. CORRECTION OF SERVICES.

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

21. FAIR EMPLOYMENT.

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

22. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and

agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which City shall become liable arising from Contractor's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Contractor pursuant to this Agreement.

23. INSURANCE REQUIREMENTS.

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

24. AMENDMENTS.

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

25. INTEGRATED DOCUMENT.

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

26. SEVERABILITY CLAUSE.

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

27. WAIVER.

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

28. NOTICES.

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

City of Santa Clara
Attention: *insert City Department
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) -

And to Contractor addressed as follows:

Name: _____
Address: _____
or by facsimile at () -

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

29. CAPTIONS.

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

30. LAW GOVERNING CONTRACT AND VENUE.

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

31. DISPUTE RESOLUTION.

- A. Unless otherwise mutually agreed to by the Parties, any controversies between Contractor and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.

- C. The costs of mediation shall be borne by the Parties equally.
- D. For any contract dispute, mediation under this section is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, through mediation only. In the event of litigation, the prevailing party shall recover its reasonable costs of suit, expert's fees and attorney's fees.

32. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall:

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

33. 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.

(Signatures follow on Page 9)

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

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

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

“CITY”

***INSERT CONTRACTOR’S NAME**

***choose one: a _____ (enter State name) corporation/partnership/individual**

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

Name: _____

Title: _____

Local Address: _____

Email Address: _____

Telephone: () _____

Fax: () _____

“CONTRACTOR”

S:\Attorney\AGREEMENTS\Service\PROFESSIONAL SERVICE AGREEMENT FORM.doc

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

***INSERT CONTRACTOR'S NAME**

EXHIBIT B

FEE SCHEDULE

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

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

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

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

**AGREEMENT FOR PROFESSIONAL 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 PROFESSIONAL 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 convicted of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted² 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 PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND**

***INSERT CONTRACTOR'S NAME**

EXHIBIT E

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Contractor" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Contractor" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

***INSERT CONTRACTOR'S NAME**

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

By: _____
Signature of Authorized Person or Representative

Name: _____

Title: _____

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

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

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

EXHIBIT F

MILESTONE SCHEDULE

(If Applicable)

ATTACHMENT D

INSURANCE COVERAGE REQUIREMENTS FOR PROFESSIONAL SERVICES

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant shall purchase and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Consultant's insurance. The minimum coverages, provisions and endorsements are as follows:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

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

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

2. Exact structure and layering of the coverage shall be left to the discretion of Consultant; 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 Consultant to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), 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, Consultant and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

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

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Consultant. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

E. 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 Consultant'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 Consultant 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 indemnitied 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 Consultant'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 E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and City agree as follows:

1. Consultant 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 Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant 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. Consultant 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. Consultant 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 Consultant 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 Consultant in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Consultant, 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. Consultant 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.

H. EVIDENCE OF COMPLIANCE

Consultant 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, Consultant 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

